

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

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

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

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

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

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

25 101. 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 of such
27 a policy, despite extensive discussions of a loan secured by Aruze USA's stock.

28 102. Third, Ms. Sinatra and Mr. Tourek stated that, if there was a loan,
Mr. Okada would have to step down from the Board and then would have the right to pledge or

1 sell Aruze USA's shares subject to the voting agreement. Again, this was the first mention of
2 such a requirement.

3 103. Fourth, Ms. Sinatra and Mr. Tourek proposed to change the Stockholders
4 Agreement to allow Aruze USA to sell or pledge shares, but subject to a voting trust, which
5 would allow Mr. Wynn to vote the shares, and a right of first refusal for Mr. Wynn to purchase
6 the shares. This proposal was improper. Ms. Sinatra and Mr. Tourek were again advocating for
7 Mr. Wynn, not for Wynn Resorts. This was another breach of duty by Ms. Sinatra to Wynn
8 Resorts and to its largest shareholder, Aruze USA.

9 104. Fifth, Ms. Sinatra and Mr. Tourek stated that Mr. Okada has a fiduciary
10 duty to present to Wynn Resorts any proposed competitive opportunities. Further, they stated that
11 if Mr. Okada has a competing casino business, he should consider stepping down from the Board.
12 This was the first mention of any "competitive" concerns. Mr. Wynn and Wynn Resorts (and,
13 indeed, Ms. Sinatra and Mr. Tourek) had known about Universal's Philippine project for years.
14 Universal had committed hundreds of millions of dollars to pursuing the project. Wynn Resorts
15 and Mr. Wynn had never objected to the Philippine project.

16 105. Sixth, toward the end of the meeting, Ms. Sinatra gave Mr. Okada's
17 counsel a copy of the Articles of Incorporation of Wynn Resorts, with certain provisions
18 highlighted in yellow. The highlighted portions included the redemption provision. That was the
19 first time that redemption was ever obliquely mentioned to Mr. Okada or his counsel.

20 106. Ms. Sinatra then brought her threat into stark relief. She stated that the
21 Compliance Committee would meet on October 31, 2011 (in advance of a November 1 Board
22 meeting). She told Mr. Okada that she hoped a "resolution" would be reached before those
23 meetings regarding Mr. Okada's directorship and the voting rights of Aruze USA's stock, so as to
24 avoid presenting this matter to the Compliance Committee and the Board. Ms. Sinatra's intent
25 was clear – Wynn Resorts' compliance procedures were being used to extract a personal benefit
26 for Mr. Wynn.

1
2 **B. Steve Wynn and Kim Sinatra Try to Intimidate and Threaten Kazuo Okada,**
3 **While Hiding Supposed Evidence of Wrongdoing**

4 107. On an October 3, 2011 telephone call, Aruze USA's counsel asked
5 Ms. Sinatra to provide Aruze USA with a copy of the Compliance Committee's investigative
6 report regarding Mr. Okada. Ms. Sinatra replied that she would have to check to see if a copy
7 could be provided; in fact, she did not and has never provided a copy of the investigative report to
8 Aruze USA, Mr. Okada, or their counsel.

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

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

27 110. During the October 4, 2011 meeting, Mr. Wynn stated that the purported
28 "grounds" upon which the other directors based their decision to move against Mr. Okada were as
29 follows:

- That the Philippines were so corrupt that no one could possibly do business in that country without violating the FCPA;
- That "research" showed Mr. Okada owned land without a Philippines partner, and that this violated Philippines law;
- That the other directors were "convinced" that Mr. Okada's use of his Wynn Resorts business card in other countries had caused a belief that Wynn Resorts was involved in the Philippine project and that the Company would not be in this position had he instead used his Universal business card;
- That Mr. Okada had used the Wynn Resorts' building design and other trade secrets without permission; and
- That Mr. Okada had associated with persons who had later been indicted in the Philippines on charges unrelated to the Philippine project.

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

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

1 113. Around this same time, the Chairman of Universal's Compliance
2 Committee also requested a copy of the investigative report through the Chairman of Wynn
3 Resorts' Compliance Committee. This request has been ignored.

4 **C. A Letter From Steve Wynn's Outside Lawyer Confirms that, While Wynn**
5 **Resorts Had Already Determined the Outcome, a Pretextual "Investigation"**
6 **was Only Just Starting**

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

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

20 **D. Wynn Resorts Refuses to Allow Kazuo Okada and Aruze USA to Review Any**
21 **Supposed "Evidence"**

22 116. On October 24, 2011, Mr. Okada through his counsel made an initial
23 demand for documents regarding the Philippine investigation. Although he was plainly entitled
24 to such documents as a director under Nevada law, Wynn Resorts refused this and numerous
25 subsequent demands for documents. Wynn Resorts aimed to conduct a secret investigation and
26 never allow Mr. Okada or his counsel to scrutinize or respond to the supposed "evidence" against
27 him.
28

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

2 117. At the Board's November 1, 2011 meeting, Mr. Miller presented an oral
3 report of an alleged investigation by the Compliance Committee into Mr. Okada's and
4 Universal's activities in the Philippines. The report disclosed that the Compliance Committee
5 had allegedly conducted one internal and two "independent" investigations into allegations of
6 suitability, conflicts of interest, and possible breaches of fiduciary duties related to acquisition of
7 land for the Philippine project and charitable contributions made by Universal. To date, the
8 contents of these purported investigations have not been presented to Mr. Okada.

9 118. Mr. Miller reported that the Compliance Committee (and not a committee
10 consisting of the independent directors) had retained Freeh Sporkin & Sullivan LLP ("Freeh
11 Sporkin") as a special investigator to conduct an investigation into the allegations against Mr.
12 Okada. The Board – without debate, deliberation, or allowing Mr. Okada a chance to respond –
13 summarily eliminated Mr. Okada's position as Vice-Chairman of the Board and ratified the
14 decision to hire Freeh Sporkin.

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

16 119. The vehemence of the actions by Mr. Wynn, Ms. Sinatra, Mr. Miller, and
17 the Board against Mr. Okada is highly suspicious. After all, Mr. Okada had raised concerns about
18 the donation to the University of Macau before Wynn Resorts had raised any type of unsuitability
19 allegations against Mr. Okada and before anyone associated with Wynn Resorts even mentioned
20 the word "redemption" to him. Mr. Okada made several requests for access to Wynn Resorts'
21 books and records for information relating to the donation made by Wynn Resorts to the
22 University of Macau, all of which were denied without a valid basis. In the state court of Nevada,
23 Mr. Okada even filed a petition for a writ of mandamus on January 11, 2012 to compel Wynn
24 Resorts to grant him access to Wynn Resorts' books and records. *Okada v. Wynn Resorts, Ltd.*,
25 case number A-12-65422-B, Department XI (the "Inspection Action"). At a hearing on February
26 9, 2012, the Court ordered Wynn Resorts to comply with Mr. Okada's reasonable requests.

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

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

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

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

21 122. While Wynn Resorts alleges in its Complaint that Mr. Okada "long
22 evaded" his interview (Complaint at 2), the record conclusively contradicts this contention. Freeh
23 Sporkin did not contact Mr. Okada or his counsel about an interview until January 9, 2012, at
24 which time it demanded (not requested) an interview of Mr. Okada during the week of January 30
25 (*i.e.*, January 30-February 5). On January 15, 2012, four days after Mr. Okada filed his
26 Inspection Action, Freeh Sporkin informed Mr. Okada's counsel that the "schedule has changed"
27 and pressured Mr. Okada to agree to an interview *before* the week of January 30.

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

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

9 124. Mr. Okada had only recently hired new counsel to assist with the response
10 to the Freeh Sporkin investigation. In order to prepare for the interview, the new counsel
11 requested that the parties seek a mutually convenient date for an interview by February 15, 2012.
12 Freeh Sporkin then agreed to schedule the interview on February 15. This undeniable record
13 demolishes any claim that Mr. Okada avoided an interview with Freeh Sporkin, let alone that he
14 "long evaded" an interview.

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

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

27 126. Freeh Sporkin refused to provide anything more than a statement that it
28 was investigating "all matters related to Mr. Okada's, Universal's, and Aruze's activities in the

1 Philippines and Korea.” This was the first time that Korea was even mentioned as the subject of
2 any investigation by the Company. Again – the basis of Aruze USA’s supposed “unsuitability”
3 kept changing.

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

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

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

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

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

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

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

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

9 132. Similarly, the Wynn Resorts Complaint states that "Freeh announced that
10 he would report his findings to the Board of Directors on February 18, 2012." (Compl. at ¶ 43.)

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

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

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

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

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

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

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

1 interview. So I would expect you can make such a proffer.

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

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

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

14 Best regards,

15 Louie

16
17 (emphasis added.)

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

20 Louis:

21
22 Thanks for your response. I am still traveling in Asia, and did not
23 have a chance to review Joel's message or contact him. I appreciate
24 your willingness to review any supplemental information that we
25 provide and to consider it in your findings. *Under the*
26 *circumstances, and in particular the tight time framework, I think it*
27 *makes the most sense for Mr. Okada, UE, Aruze USA, and our Firm*
28 *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.)

2 137. Mr. Freeh responded "Thanks Tom and safe travels."

3 138. 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 Compliance
6 Committee having completed my investigation regarding the
7 matters under inquiry. It is my understanding that the Compliance
8 Committee will thereafter provide all of the Directors, including
9 Mr. Okada, with a copy of the report. As we both stated, Mr. Okada
10 can then submit any responses to the report which will be
11 considered and evaluated. However, the report I am submitting is
12 not a 'draft' subject to being finalized after Mr. Okada provides any
13 response. Rather this is akin to a final brief being submitted with
14 the opportunity for a response to be made.

11 Please let me know if you have any questions.

12 Best regards

13 Louie

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

19 140. In addition, Mr. Freeh's statement that he was preparing a "final brief" is
20 very telling about how Mr. Freeh viewed his role in the process. Mr. Freeh was not preparing an
21 objective report of the facts by an "independent" investigator — he was providing the Board with
22 an argumentative document as an *advocate* against Mr. Okada. But even so, Mr. Freeh clearly
23 contemplated that Mr. Okada would and should have the opportunity for a response.
24 Nevertheless, spurred on by Mr. Wynn, the Board ignored Mr. Freeh's promise of an opportunity
25 to respond to the report (and the express statements in Mr. Freeh's report that further
26 investigation would be needed on certain topics), and instead acted rashly to redeem Aruze
27 USA's stock on an incomplete factual record and a faulty understanding of governing legal
28

1 principles, including, for example, the application of the FCPA to the facts, as well as Wynn
2 Resorts' (lack of) contractual rights to attempt to redeem Aruze USA's stock.

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

4 141. 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 meeting was
6 set for Saturday, February 18, 2012, at 9:00 a.m. in Las Vegas – which is 2:00 a.m. Sunday
7 morning in Japan. Although the notice for the Board meeting went out immediately following the
8 conclusion of the interview of Mr. Okada, and was scheduled to occur a mere three days after the
9 interview, Mr. Wynn and Ms. Sinatra included on the agenda a review of the Freeh Sporkin
10 report.

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

13 142. Following the interview, Mr. Wynn communicated to Aruze USA through
14 intermediaries that, instead of having the Board consider the Freeh Sporkin report, Mr. Wynn
15 would be willing to buy Aruze USA's stock for his benefit at a significant discount. A sale to Mr.
16 Wynn was presented as an alternative to the embarrassment and regulatory issues attendant to
17 possible disclosure of the Freeh Sporkin report.

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

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

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

6 144. 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.

8 145. 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 that Aruze
11 USA's holdings were worth *more* than \$2.7 billion, stating that Aruze USA's shares are "valued
12 at approximately \$2.9 billion[.]" In the 22 days following Wynn Resorts' \$2.9 billion valuation
13 of Aruze USA's stock, Aruze USA's stock was not sold, transferred, or further encumbered by
14 any additional restrictions.

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

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

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

27 148. 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 present to

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

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

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

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

26 152. At some point, someone at Wynn Resorts hung up the telephone, cutting
27 Mr. Okada off from the meeting. Mr. Okada waited to be reconnected, staying up until the sun
28 rose in Asia, all the while not knowing whether the Board had resolved anything following the

1 presentation by Mr. Freeh. Ms. Sinatra later claimed that cutting off the telephone connection to
2 Mr. Okada was a "misunderstanding." No other contact was made with Mr. Okada.

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

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

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

18 156. Despite repeated requests to Ms. Sinatra and Mr. Shapiro, Mr. Okada's
19 counsel only obtained a copy of the "confidential" report when it sent a messenger to court on
20 February 21, 2012, the first court day following the weekend Board meeting. Wynn Resorts
21 continues to refuse to provide the Freeh Sporkin report's exhibits to Mr. Okada or Aruze USA.

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

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

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

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

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

9 160. Second, according to the Articles of Incorporation, Wynn can redeem when
10 a person "causes the Corporation or any Affiliated Company to lose or to be threatened with the
11 loss of any Gaming License." This has not occurred.

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

21 162. No such showing was made in the rushed Freeh Sporkin report. In fact, in
22 the gaming industry, any impact on the right to use or entitlement to a gaming license requires
23 action by the cognizant gaming authority. No gaming authority has found Aruze USA, Universal,
24 or Mr. Okada to be "unsuitable." Furthermore, association with an "unsuitable" person would
25 only conceivably create a problem for a gaming license *after* that person has been found by a
26 gaming authority to be unsuitable. Even then, such concerns can be addressed via a voting trust
27 or orderly sale of shares. If Wynn Resorts' true aim was to disassociate itself from Aruze USA in
28 order to protect its interests, it failed miserably. Even if the redemption were effective, Aruze

1 USA would now be Wynn Resorts' largest holder of debt — a circumstance which would be
2 impermissible under Nevada law if Aruze USA were truly "unsuitable." Under the
3 circumstances, it is obvious that the supposed redemption of Aruze USA's shares was simply a
4 pretext to seek to quiet a potential dissident shareholder and director, increase the relative
5 ownership interests of the Board members by virtue of their shareholdings in Wynn Resorts, and
6 to enhance and maintain Mr. Wynn's personal control over Wynn Resorts.

7 **E. Even if Aruze USA Was Subject to the Redemption Provision (Which it is**
8 **Not), the Unilateral Blanket 30% Discount that Wynn Resorts Applied to the**
9 **Stock is Erroneous and the Promissory Note is Unconscionably Vague,**
10 **Ambiguous, and Oppressive**

11 163. According to a press release dated February 19, 2012, Wynn Resorts issued
12 a note in the amount of \$1.936 billion to Aruze USA. This amount is exactly 30% less than the
13 market value of Aruze USA's stock as measured by the closing price of Wynn Resorts' stock on
14 the Friday prior to the Saturday Board meeting. According to its press release, Wynn Resorts
15 arrived at this value because "it engaged an independent financial advisor to assist in the fair
16 value calculation and concluded that a discount to the current trading price was appropriate
17 because of restrictions on most of the shares which are subject to the terms of an existing
18 stockholder agreement." The irony here is rich, because the Stockholders Agreement, by its
19 terms, either precludes the redemption of Aruze USA's stock altogether or, alternately, the
20 transfer restrictions are not binding on Aruze USA to the extent that they constitute an illegal
21 restraint on alienability, and thus could not legitimately impact the value of Aruze USA's shares
22 so as to support a discount against the market price.

23 164. The February 19, 2012 Wynn Resorts press release also falsely stated that
24 the redemption process in the Articles of Incorporation had "been [in place] since the Company's
25 inception." This is untrue, as Mr. Wynn unilaterally *amended* the Articles of Incorporation to
26 include the purported redemption language months *after Wynn Resorts was created*, and nearly
27 90 days after Aruze USA agreed to invest in Wynn Resorts and committed its interests in Valvino
28 to Wynn Resorts. Wynn Resorts and Mr. Wynn thus sought to continue their fraudulent scheme

1 by publishing a false basis under which Wynn Resorts purported to have the authority to redeem
2 Aruze USA's shares of Wynn Resorts' stock.

3 165. Nevertheless, hoping to unilaterally decide on a "clearance" price for
4 Aruze USA's almost 20% shareholder interest in the Company, Wynn Resorts relied solely on
5 one opinion from Moelis & Company ("Moelis"), *which has done business with Wynn Resorts in*
6 *the past.*

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

16 167. Mr. Wynn called on Mr. Moelis' loyalty in this case. Despite the fact that
17 at least some of the stock was exempted from the Stockholders Agreement, Moelis discounted
18 Aruze USA's more than \$2.7 billion shares of Wynn Resorts' stock by a round 30%.

19 168. The terms of the note are unreasonable and one-sided in the extreme,
20 completely lacking reasonable and customary terms used to protect and preserve the interests of
21 the note holder. Among other things, the hastily issued, ten-year \$1.936 billion promissory note
22 is unsecured and fully subordinated, not merely to current outstanding Wynn Resorts debt, but
23 potentially to all future debt Wynn Resorts may incur, and pays a mere 2% interest per annum. In
24 contrast, for example, less than a month after the purported redemption, Wynn Resorts issued
25 \$900 million aggregate principal amount in collateralized notes paying 5.375% interest.
26 Moreover, though Nevada gaming regulations do not permit an "unsuitable" person from holding
27 debt of a publicly-traded licensee, by its terms the note sent to Aruze USA is not even
28 transferable. Wynn Resorts prepared the promissory note without any input from Mr. Okada, or

1 any representative at Aruze USA, forcibly imposing an unsecured, non-transferrable, non-voting,
2 un-marketable, severely discounted and oppressive debt instrument on its largest shareholder.

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

6 169. On March 2, 2012, Wynn Resorts released a Form 8-K.

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

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

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

The foregoing description of the Land Concession Contract is
qualified in its entirety by reference to the full English translation of
the Land Concession Contract (originally published in the Gazette
in traditional Chinese and Portuguese), which is filed as Exhibit
10.1 hereto and incorporated herein by reference. Dollar amounts
in the Land Concession Contract refer to Macau Patacas.

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

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

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

15 **CLAIMS FOR RELIEF**

16 **COUNT I**

17 **Declaratory Relief**

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

19 174. Aruze USA and Universal reassert and reallege Paragraphs 4 through 173
20 above as if set forth in full below.

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

1 further restrictions without agreement of the parties, before the enactment of the redemption
2 provision, and Wynn Directors' acts were *ultra vires*; (2) the redemption provision in the Articles
3 of Incorporation is inconsistent with Nevada law and public policy, and thus void; (3) the
4 Stockholders Agreement bars redemption of the Wynn Resorts' stock owned by Aruze USA; (4)
5 the Board lacked a sufficient basis for a finding of "unsuitability" or for redemption; and/or, (5)
6 the redemption provision as written and as applied is unconscionable.

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

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

24 178. In addition or alternatively, Aruze USA and Universal seek a judicial
25 declaration that the Board resolution to redeem Aruze USA's shares was procedurally and/or
26 substantively defective, and contrary to law and public policy. As alleged in detail above, this
27 declaration is appropriate because (1) the Stockholders Agreement bars redemption of the Wynn
28 Resorts' stock owned by Aruze USA; (2) the redemption provision in the Articles of

1 Incorporation is inapplicable to the Wynn Resorts' stock owned by Aruze USA because Aruze
2 USA entered into the Contribution Agreement, which prevented any further restrictions without
3 agreement of the parties, before the enactment of the redemption provision, and Wynn Directors'
4 acts were *ultra vires*; (3) the Board lacked a sufficient basis for a finding of "unsuitability" or
5 redemption and made its findings without a thorough and complete review of relevant law, facts,
6 and evidence; (4) the redemption provision in the Articles of Incorporation is inconsistent with
7 Nevada law and public policy, and thus void; and, (5) the redemption provision, as written and as
8 applied, is unconscionable.

9 179. Alternatively, to the extent that redemption is not otherwise barred, Aruze
10 USA and Universal seek a judicial declaration that the form and amount of compensation paid for
11 Aruze USA's shares was improper and/or inadequate and that Aruze USA is entitled to cash in an
12 amount equivalent to at least the closing price of the stock on February 17, 2012. Indeed, Wynn
13 Resorts asserted in a court filing dated January 27, 2012, that "[w]ith holdings valued at
14 approximately \$2.9 billion, Aruze is one of Wynn's largest shareholders." As alleged in detail
15 above, this declaration is appropriate because simply converting Wynn Resorts' largest
16 shareholder to Wynn Resorts' largest creditor serves no valid legal purpose. Furthermore, the
17 valuation by Moelis was not objective, independent, or the product of sound financial analysis,
18 and, among other things, did not consider material non-public information available to Wynn
19 Resorts that would militate in favor of a higher valuation, did not account for the premium that
20 would be applied to such a large block of shares, and did not consider the extent to which transfer
21 restrictions were not valid as to Aruze USA.

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

1 181. An actual justifiable controversy has now arisen between the parties whose
2 interests are adverse, and the dispute is ripe for adjudication. Wynn Resorts acted unlawfully
3 when it purported to "redeem" Aruze USA's equity interest in Wynn Resorts.

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

7 **COUNT II**

8 **Permanent Prohibitory Injunction**

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

10 183. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if
11 set forth in full below.

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

20 185. For the reasons alleged above, the purported redemption is invalid as a
21 matter of law and violated applicable contracts, and/or depends on provisions of contracts that are
22 unenforceable as a matter of law. Even if there were a potentially valid legal mechanism to
23 redeem Aruze USA's stock, which there is not, redemption would be inappropriate in this case
24 because the Board lacked sufficient basis to find Aruze USA or any of its affiliates or employees
25 "unsuitable."

26 186. Harm will result if relief is not granted because Aruze USA's interest in
27 Wynn Resorts is not fungible and Aruze USA's status as the largest shareholder in Wynn Resorts
28 cannot be fully remedied through damages.

1 187. Injunctive relief poses no appreciable risk of undue prejudice to Wynn
2 Resorts and the Wynn Directors.

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

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

11 COUNT III

12 **Permanent Mandatory Injunction**

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

14 190. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if
15 set forth in full below.

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

23 192. For the reasons alleged above, the purported redemption was contrary to
24 law and violated applicable contracts, and/or depends on provisions of contracts that are
25 unenforceable as a matter of law. Even if there were a potentially valid legal mechanism to
26 redeem Aruze USA's stock, redemption would be inappropriate in this case because the Board
27 lacked sufficient basis to find Aruze USA or any of its affiliates or employees unsuitable.
28

193. 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.

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

195. 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.

196. 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.

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

COUNT IV

Breach of Contract in Connection with Wynn Resorts' Involuntary Redemption

(By Aruze USA Against Wynn Resorts)

198. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if set forth in full below.

199. 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.

200. The Agreement between Aruze USA, Wynn Resorts, Mr. Wynn, and Elaine Wynn does not permit Wynn Resorts to redeem Aruze USA's shares of Wynn Resorts' stock.

201. 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.

202. Moreover, if the Stockholders Agreement is enforceable, Wynn Resorts' involuntary redemption (*i.e.*, transfer) of Aruze USA's shares is expressly prohibited under the terms of the Stockholders Agreement.

203. Wynn Resorts' involuntary redemption of Aruze USA's shares is therefore a breach of the Agreement between Aruze USA, Wynn Resorts, Mr. Wynn, and Elaine Wynn.

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

205. 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.

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

COUNT V

Breach of Articles of Incorporation/Breach of Contract in Connection with Wynn Resorts'

Discounting Method of Involuntary Redemption

(By Aruze USA Against Wynn Resorts)

207. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if set forth in full below.

208. The Contribution Agreement, the Stockholders Agreement, and the Articles of Incorporation form a contractual relationship and understanding (the “Agreement”) between Aruze USA, Wynn Resorts, Mr. Wynn, and Elaine Wynn.

1 209. To the extent that the redemption provision in the Articles of Incorporation
2 applies to Aruze USA's shares (despite the parties' understanding under the Agreement), Wynn
3 Resorts' involuntary redemption breaches the terms of the Agreement.

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

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

9 212. Wynn Resorts improperly discounted the fair value of the Aruze USA
10 stock to the extent the Stockholders Agreement between Mr. Wynn, Elaine Wynn, and Aruze
11 USA is not enforceable for any reason, including that it imposes an unreasonable restraint on
12 alienation and is therefore unenforceable.

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

16 214. Among other things, although known to Wynn Resorts, Wynn Resorts did
17 not take into account material non-public information concerning positive developments for
18 Wynn Resorts regarding the Cotai land concession in Macau, as well as other positive non-public
19 information, when redeeming Aruze USA's shares for far less than the value of the shares.
20 Furthermore, Wynn Resorts' unilateral valuation did not account for the premium that would be
21 applied to such a large block of shares.

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

23 216. Aruze USA brings this claim within the relevant statute of limitations
24 under Nevada law, having discovered facts giving rise to this claim, including injury arising from
25 the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February
26 18, 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not
27 reasonably have discovered earlier the facts giving rise to this claim.
28

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

4 **COUNT VI**

5 **Breach of Fiduciary Duty**

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

7 218. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if
8 set forth in full below.

9 219. Directors of a corporation owe a fiduciary duty to the corporation and to its
10 shareholders, including a duty of care and a duty of loyalty toward the corporation and each
11 shareholder.

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

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

18 222. The Wynn Directors abused their discretion in finding Aruze USA,
19 Universal, and Mr. Okada "unsuitable" and resolving to have the Company cause the purported
20 redemption of Aruze USA's shares of Wynn Resorts' stock. The outcome of the Compliance
21 Committee's "investigation" was already determined prior to engaging a supposedly
22 "independent" investigator, which then openly acted as an advocate against Aruze USA,
23 Universal, and Mr. Okada rather than providing an objective, balanced, and fully informed review
24 of the facts and law. Despite the fact that Freeh Sporkin informed the Board that further
25 investigation would be required with respect to matters encompassed by its report, and despite
26 assurances that Aruze USA, Mr. Okada, and Universal would be permitted to respond
27 substantively to the report, the Wynn Directors deprived them of an opportunity to understand
28

1 and to present any information to address the allegations against them prior to the vote on
2 redemption.

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

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

16 225. Further, the purported redemption was voted on by persons with
17 irreconcilable conflicts of interest, including breaches of the duty of loyalty, the duty of care, and
18 the duty of good faith.

19 226. Through their acts, the Wynn Directors have acted in a manner that seeks
20 to deprive Aruze USA alone from its right to vote its shares, receive dividends, elect directors and
21 other benefits of stock ownership.

22 227. Harm will result if relief is not granted because Aruze USA's more than
23 \$2.7 billion equity stake in Wynn Resorts will be instantaneously and irreversibly damaged by the
24 Company's purported action to convert Aruze USA's substantial ownership interest into a wholly
25 subordinated ten-year promissory note in a principal amount 30% less than the fair market value
26 of the stock, and paying a mere 2% percent interest, without providing Aruze USA any voting
27 rights, rights to dividends, or the right to transfer the note.

28

228. As a further direct and proximate result of the wrongful conduct by the Wynn Directors, as alleged herein, Aruze USA was and continues to be damaged in an amount in excess of \$10,000.

229. 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.

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

COUNT VII

Imposition of a Constructive Trust and Unjust Enrichment

(By Aruze USA Against Wynn Resorts)

231. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if set forth in full below.

232. By engaging the in the wrongful conduct alleged herein, Wynn Resorts purportedly redeemed Aruze USA's stock in exchange for a wholly subordinated, unsecured ten-year promissory note in a principal amount at least 30% less than the fair value of Aruze USA's stock, and paying a mere 2% interest, without providing Aruze USA any voting rights, rights to dividends, or the right to transfer the note.

233. As a result of the relationship between the parties and the facts stated above, Wynn Resorts will be unjustly enriched if it is permitted to retain Aruze USA's stock and dividends and, therefore, a constructive trust should be established over Aruze USA's stock, and all dividends that would be paid on such shares if held by Aruze USA. These shares and dividends are traceable to Wynn Resorts.

234. 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

1 the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February
2 18, 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not
3 reasonably have discovered earlier the facts giving rise to this claim.

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

7 **COUNT VIII**

8 **Conversion**

9 **(By Aruze USA Against Wynn Resorts)**

10 236. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if
11 set forth in full below.

12 237. Wynn Resorts did not have a legal right to redeem and in addition lacked a
13 proper and sufficient basis to find that the allegations in the Freeh Sporkin report against Aruze
14 USA, Mr. Okada, and Universal were activities that "were likely to jeopardize [the Company's]
15 or any Affiliated Company's . . . right to the use of, or entitlement to any Gaming License."

16 238. As a result, Wynn Resorts' Board lacked a fair, proper, and sufficient basis
17 for seizing Aruze USA's stock.

18 239. Wynn Resorts wrongfully exercised dominion over Aruze USA's stock.

19 240. Wynn Resorts' dominion over Aruze USA's stock without a valid basis for
20 redemption is inconsistent with the Articles of Incorporation and Aruze USA's rights in the stock
21 under the Contribution Agreement and the Stockholders Agreement.

22 241. Wynn Resorts converted Aruze USA stock, damaging Plaintiff in an
23 amount in excess of \$10,000.

24 242. Aruze USA brings this claim within the relevant statute of limitations
25 under Nevada law, having discovered facts giving rise to this claim, including injury arising from
26 the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February
27 18, 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not
28 reasonably have discovered earlier the facts giving rise to this claim.

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

COUNT IX

Violations Of Nevada's Racketeer Influenced And Corrupt Organizations Act (RICO)

(N.R.S. § 207.350, *et. Seq.*)

(By Aruze USA Against Steve Wynn And Kim Sinatra)

244. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if set forth in full below.

245. **The Enterprise.** As alleged above, Wynn Resorts is a corporation formed under the laws of Nevada. In a conspiracy with Ms. Sinatra, Mr. Wynn engaged in wrongful conduct to acquire or maintain, directly or indirectly, an interest in or control of Wynn Resorts in violation of N.R.S. § 207.400(1)(b) and (j). Moreover, Mr. Wynn and Ms. Sinatra were and are employed by Wynn Resorts and conducted or participated, directly or indirectly, in racketeering activity by and through the affairs of Wynn Resorts, and/or conducted or participated, directly or indirectly, in the affairs of Wynn Resorts through racketeering activity, in violation of N.R.S. § 207.400(1)(c) and (j). Mr. Wynn and Ms. Sinatra are separate and distinct persons from Wynn Resorts. Thus, Wynn Resorts is an "enterprise" within the meaning of N.R.S. § 207.380.

246. **Mr. Wynn and Ms. Sinatra engaged in at least two predicate acts related to racketeering.** Mr. Wynn and Ms. Sinatra have each engaged in at least two predicate acts related to racketeering that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents, within the meaning of N.R.S. § 207.390.

247. Pursuant to N.R.S. § 207.360, a “crime related to racketeering” includes the commission of, attempt to commit, or conspiracy to commit securities fraud, “[o]btaining possession of money or property valued at \$250 or more, or obtaining a signature by means of false pretenses.” Securities fraud occurs under N.R.S. § 90.570 when a person, in connection with the purchase or sale of a security, either directly or indirectly, employs any device, scheme

1 or artifice to defraud, makes a material misstatement or omission with the intent to deceive,
2 and/or engages in any act, practice or course of business which operates or would operate as a
3 fraud or deceit. Under N.R.S. § 205.380, a person obtains possession of money or property by
4 false pretenses when he/she, with an intent to defraud, makes a false representation (whether by
5 direct or indirect conduct), that induces reliance on that representation, and defrauds the victim.
6 A person obtains a signature by false pretenses under N.R.S. § 205.390 when he/she has an intent
7 to defraud, obtains a signature on a written interest, and uses a false representation (whether by
8 direct or indirect conduct) to obtain the signature.

9 248. In particular, Mr. Wynn and Ms. Sinatra engaged in a scheme to defraud
10 Aruze USA and, ultimately, forcibly take its ownership interest in Wynn Resorts. The central
11 purpose of their scheme to deceive and steal from Aruze USA was to allow Mr. Wynn to
12 consolidate, acquire, and maintain control of Wynn Resorts through a series of fraudulent and
13 deceptive acts.

14 249. In violation of N.R.S. § 207.400(1)(b), Mr. Wynn, through the above
15 crimes related to racketeering detailed herein, acquired and maintained control over Wynn
16 Resorts in connection with various agreements entered into by fraudulent means. Mr. Wynn's
17 control over Wynn Resorts has allowed him to use and operate, and transfer assets obtained in
18 connection with Wynn Resorts, to the financial detriment of Aruze USA. Specifically, Mr. Wynn
19 personally committed, among other acts, the following acts constituting racketeering activity:

20 250. On or about June 11, 2002, Mr. Wynn obtained Aruze USA's signature on
21 the Contribution Agreement under false pretenses;

22 251. On or about May 16, 2011, Mr. Wynn obtained under false pretenses Aruze
23 USA's signature on a document entitled "Waiver, Consent and Limited Release," relating to the
24 transfer of Elaine Wynn's shares;

25 252. On or about February 18, 2012, Mr. Wynn purportedly caused Wynn
26 Resorts to redeem Aruze USA's shares of Wynn Resorts' stock through an ongoing fraudulent
27 and deceptive scheme in violation of N.R.S. § 90.570; and,
28

1 253. On or about February 18, 2012, Mr. Wynn caused Wynn Resorts to
2 purportedly redeem Aruze USA's shares under false pretenses, in particular based on false,
3 incomplete and/or misleading factual allegations made in the Freeh Sporkin report, for the central
4 purpose of allowing Mr. Wynn to acquire and/or maintain control of Wynn Resorts.

5 254. In violation of N.R.S. § 207.400(1)(c), Ms. Sinatra, who was employed by
6 or associated with Wynn Resorts, has participated in and conducted the racketeering activity
7 alleged in detail above through the affairs of Wynn Resorts. Wynn Resorts, although ultimately
8 controlled by Mr. Wynn, is separate and distinct from Mr. Wynn and Ms. Sinatra. Specifically,
9 Ms. Sinatra committed, among other acts, the following acts constituting racketeering activity:

10 255. On or about May 16, 2011, in concert with Mr. Wynn, Ms. Sinatra
11 obtained under false pretenses Aruze USA's signature on a document entitled "Waiver, Consent
12 and Limited Release," relating to the transfer of Elaine Wynn's shares;

13 256. On or about February 18, 2012, in concert with Mr. Wynn, Ms. Sinatra
14 purportedly caused Wynn Resorts to redeem Aruze USA's shares of Wynn Resorts' stock
15 through an ongoing fraudulent and deceptive scheme in violation of N.R.S. § 90.570; and,

16 257. On or about February 18, 2012, in concert with Mr. Wynn, Ms. Sinatra
17 caused Wynn Resorts to purportedly redeem Aruze USA's shares under false pretenses, in
18 particular based on false, incomplete and/or misleading factual allegations made in the Freeh
19 Sporkin report, for the central purpose of allowing Mr. Wynn to acquire and/or maintain control
20 of Wynn Resorts.

21 258. In addition, Mr. Wynn and Ms. Sinatra have joined together to defraud
22 Aruze USA and forcibly take its Wynn Resorts shares, and agreed to commit the racketeering
23 activity detailed above. Mr. Wynn's and Ms. Sinatra's activities, as demonstrated by the facts
24 alleged above, establish Mr. Wynn's and Ms. Sinatra's agreement to knowingly participate in a
25 collective venture toward a common goal, and thereby establish a conspiracy to commit the
26 racketeering activity alleged in detail above within the meaning of N.R.S. § 207.400(1)(b) and
27 (c). Mr. Wynn's and Ms. Sinatra's activities, therefore, violate N.R.S. § 207.400(1)(j), which
28 prohibits a conspiracy to violate N.R.S. § 207.400(1)(b) and (c).

1 Resorts, Mr. Wynn, and Ms. Sinatra agreed would be backed by shares of Wynn Resorts' stock
2 held by Aruze USA.

3 266. Mr. Wynn and Ms. Sinatra, acting in their individual capacity and as agents
4 of Wynn Resorts, made these false and misleading statements and omissions knowingly or
5 without sufficient basis of information because they believed Wynn Resorts permitted to enter
6 into such a lending transaction pursuant to the restrictions in Section 402 of SOX. As alleged
7 above, Mr. Wynn and Ms. Sinatra engaged in this wrongful conduct for the purpose of
8 maintaining Mr. Wynn's control over Wynn Resorts after Mr. Wynn's shares in the Company
9 were split with Elaine Wynn following their divorce, and keeping alive the opportunity to later
10 have Wynn Resorts seek to redeem Aruze USA's shares at a discount.

11 267. Furthermore, Mr. Wynn and Ms. Sinatra, acting in their individual capacity
12 and as agents of Wynn Resorts, made these false and misleading statements and omissions
13 knowingly or without sufficient basis of information regarding the immediate need for Elaine
14 Wynn to transfer her shares under the Stockholders Agreement. On information and belief, Mr.
15 Wynn and Ms. Sinatra knew or were without a sufficient basis to make those material statements.

16 268. Aruze USA relied on the false and misleading statements and omissions
17 made by Wynn Resorts, Mr. Wynn, and Ms. Sinatra. Aruze USA's reliance on the false and
18 misleading statements and omissions was reasonable and justifiable, especially in light of Mr.
19 Okada's trusting relationship with Mr. Wynn.

20 269. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra
21 knew that Aruze USA intended to rely on this information as a reason for Aruze USA to consent
22 to Elaine Wynn's transfer of shares under the Stockholders Agreement, and for Aruze USA to not
23 take steps to invalidate the purported restrictions on alienability contained in the Stockholders
24 Agreement. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra further knew
25 and intended that, in reliance on these misrepresentations, Aruze USA would relinquish its own
26 opportunity to liquidate its own shares of Wynn Resorts' stock to fund Universal's project in the
27 Philippines or seek other financing. Therefore, Aruze USA relied on the fact that Wynn Resorts
28 was a committed lender to the project at the expense of pursuing other financing options.

1 270. As a further direct and proximate result of the wrongful conduct by Wynn
2 Resorts, Mr. Wynn, and Ms. Sinatra, as alleged herein, Aruze USA was and continues to be
3 damaged in an amount in excess of \$10,000 to be proven at trial.

4 271. Pursuant to N.R.S. § 42.005, by reason of the fraudulent, reckless,
5 misleading, malicious, willful, and wanton misconduct of Wynn Resorts, Mr. Wynn, and Ms.
6 Sinatra, Aruze USA is entitled to punitive damages not to exceed three times the amount of
7 compensatory damages awarded.

8 272. Aruze USA brings this claim within the relevant statute of limitations
9 under Nevada law, having discovered facts giving rise to this claim, including injury arising from
10 the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about September
11 30, 2012.

12 273. Aruze USA brings this claim within the relevant statute of limitations
13 under Nevada law, having discovered facts giving rise to this claim on or about September 30,
14 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not
15 reasonably have discovered earlier the facts giving rise to this claim.

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

19 **COUNT XI**

20 **Negligent Misrepresentation in Connection with Financing for Aruze USA**

21 **(By Aruze USA Against Wynn Resorts, Steve Wynn, and Kim Sinatra)**

22 275. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if
23 set forth in full below.

24 276. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made false and misleading
25 statements and omissions of material facts to Aruze USA. Specifically, on or about May 16,
26 2011, and for months thereafter, Mr. Wynn and Ms. Sinatra made false and misleading statements
27 and omissions concerning the ability of Aruze USA to obtain a loan from Wynn Resorts, which
28

1 Wynn Resorts, Mr. Wynn, and Ms. Sinatra agreed would be backed by shares of Wynn Resorts'
2 stock held by Aruze USA.

3 277. The false statements of facts alleged herein were material because had
4 Wynn Resorts, Mr. Wynn, and Ms. Sinatra provided Aruze USA with truthful and correct
5 information, Aruze USA would not have consented to Elaine Wynn's transfer of shares under the
6 Stockholders Agreement, and would have taken steps to invalidate the purported restrictions in
7 the Shareholder Agreement.

8 278. Wynn Resorts, Mr. Wynn, and Ms. Sinatra failed to exercise reasonable
9 care or competence in obtaining or communicating the false statements of fact alleged herein.

10 279. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made the false statements or
11 omissions of fact alleged herein with the intent to induce Aruze USA to consent to Elaine Wynn's
12 transfer of shares under the Stockholders Agreement without pledging its own shares in a manner
13 that would reduce Mr. Wynn's control over those shares. Furthermore, Wynn Resorts, Mr.
14 Wynn, and Ms. Sinatra made the false statements of fact alleged herein with the intent of gaining
15 their own financial advantage to the disadvantage of Aruze USA, including, but not limited to, the
16 opportunity to seek to have Wynn Resorts redeem Aruze USA's shares at a discount.

17 280. Furthermore, Mr. Wynn and Ms. Sinatra, acting in their individual capacity
18 and as agents of Wynn Resorts, made these false and misleading statements and omissions
19 knowingly or without sufficient basis of information regarding the immediate need for Elaine
20 Wynn to transfer her shares under the Stockholders Agreement. On information and belief, Mr.
21 Wynn and Ms. Sinatra knew or were without a sufficient basis to make those material statements.

22 281. Aruze USA relied upon the false statements of fact alleged herein by
23 providing consent for Elaine Wynn to transfer her shares under the Stockholders Agreement.
24 Aruze USA's reliance on these representations and concealment of facts was reasonable and
25 justifiable, especially in light of Mr. Okada's trusting relationship with Mr. Wynn.

26 282. Wynn Resorts, Mr. Wynn, and Ms. Sinatra aided and abetted each of the
27 others in making the false statements of fact set herein by each failing to exercise reasonable care
28 or competence in obtaining or communicating those statements.

1 283. Aruze USA has suffered and continues to suffer economic and non-
2 economic losses because of Wynn Resorts', Mr. Wynn's, and Ms. Sinatra's false statements of
3 fact. The amount of losses will be determined according to proof at trial, but damages are in an
4 amount in excess of \$10,000.

5 284. Pursuant to N.R.S. § 42.005, by reason of the fraudulent, reckless,
6 misleading, malicious, willful, and wanton misconduct of Wynn Resorts, Mr. Wynn, and Ms.
7 Sinatra, Aruze USA is entitled to punitive damages not to exceed three times the amount of
8 compensatory damages awarded.

9 285. Aruze USA brings this claim within the relevant statute of limitations
10 under Nevada law, having discovered facts giving rise to this claim on or about September 30,
11 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not
12 reasonably have discovered earlier the facts giving rise to this claim.

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

16 **COUNT XII**

17 **Civil Conspiracy in Connection with Financing for Aruze USA**

18 **(By Aruze USA Against Steve Wynn and Kim Sinatra)**

19 287. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if
20 set forth in full below.

21 288. Aruze USA, Mr. Wynn and Elaine Wynn entered into an agreement
22 regarding the disposition of shares pursuant to the January 6, 2010 Amended and Restated
23 Stockholders Agreement.

24 289. Ms. Sinatra, as General Counsel for Wynn Resorts, had knowledge of the
25 Stockholders Agreement and its restriction on transfer of shares.

26 290. On information and belief, Ms. Sinatra had knowledge that Mr. Wynn
27 needed Aruze USA to waive the restriction, permitting Elaine Wynn to transfer her shares.
28

1 291. On information and belief, Ms. Sinatra and Mr. Wynn agreed to persuade
2 Aruze USA to permit Elaine Wynn to transfer her shares without permitting Aruze USA to
3 transfer or pledge any shares to anyone outside the control of Mr. Wynn. In fact, upon receiving
4 an email from Aruze USA's representative on July 13, 2011 permitting the immediate transfer of
5 Elaine Wynn's shares, Ms. Sinatra expressed happiness for Mr. Wynn, stating, "Thank you very
6 much for this. I'm sure Mr. Wynn will be happy about the clarification."

7 292. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made false and misleading
8 statements and omissions of material facts to Aruze USA. Specifically, on or about May 16,
9 2011, and for months thereafter, Mr. Wynn and Ms. Sinatra made false and misleading statements
10 and omissions concerning Wynn Resorts' ability and/or willingness to loan money to Aruze USA,
11 which Wynn Resorts, Mr. Wynn, and Ms. Sinatra agreed would be backed by shares of Wynn
12 Resorts' stock held by Aruze USA.

13 293. Mr. Wynn and Ms. Sinatra, acting in concert with Wynn Resorts, made
14 these false and misleading statements and omissions knowingly or without sufficient basis of
15 information because they believed Wynn Resorts was not legally permitted to enter into such a
16 lending transaction pursuant to the restrictions in Section 402 of SOX. As alleged above, Mr.
17 Wynn and Ms. Sinatra engaged in this wrongful conduct for the purpose of maintaining Mr.
18 Wynn's control over Wynn Resorts after Mr. Wynn's shares in the Company were split with
19 Elaine Wynn following their divorce, and keeping alive the opportunity to later have Wynn
20 Resorts seek to redeem Aruze USA's shares at a discount.

21 294. Furthermore, Mr. Wynn and Ms. Sinatra, acting in their individual capacity
22 and as agents of Wynn Resorts, made these false and misleading statements and omissions
23 knowingly or without sufficient basis of information regarding the immediate need for Elaine
24 Wynn to transfer her shares under the Stockholders Agreement. On information and belief, Mr.
25 Wynn and Ms. Sinatra knew or were without a sufficient basis to make those material statements.

26 295. Aruze USA relied on the false and misleading statements and omissions
27 made by Wynn Resorts, Mr. Wynn, and Ms. Sinatra. Aruze USA's reliance on the false and
28

1 misleading statements and omissions was reasonable and justifiable, especially in light of Mr.
2 Okada's trusting relationship with Mr. Wynn.

3 296. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra
4 knew that Aruze USA intended to rely on this information as a reason for Aruze USA to consent
5 to Elaine Wynn's transfer of shares under the Stockholders Agreement. On information and
6 belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra further knew and intended that, in reliance on
7 these misrepresentations, Aruze USA would relinquish its own opportunity to liquidate its own
8 shares of Wynn Resorts' stock to fund Universal's project in the Philippines or seek other
9 financing. Therefore, Aruze USA relied on the fact that Wynn Resorts was a committed lender to
10 the project at the expense of pursuing other financing options.

11 297. As a further direct and proximate result of the wrongful conduct by Wynn
12 Resorts, Mr. Wynn, and Ms. Sinatra, as alleged herein, Aruze USA was and continues to be
13 damaged in an amount in excess of \$10,000 to be proven at trial.

14 298. Aruze USA brings this claim within the relevant statute of limitations
15 under Nevada law, having discovered facts giving rise to this claim on or about September 30,
16 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not
17 reasonably have discovered earlier the facts giving rise to this claim.

18 299. Pursuant to N.R.S. § 42.005, by reason of the fraudulent, reckless,
19 misleading, malicious, willful, and wanton misconduct of Wynn Resorts, Mr. Wynn, and Ms.
20 Sinatra, Aruze USA is entitled to punitive damages not to exceed three times the amount of
21 compensatory damages awarded.

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

1 **COUNT XIII**

2 **Promissory Estoppel in Connection with Financing for Aruze USA**

3 **(By Aruze USA Against Wynn Resorts, Steve Wynn, and Kim Sinatra)**

4 301. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if
5 set forth in full below.

6 302. On or about May 16, 2011, Mr. Wynn, in the presence of Ms. Sinatra, gave
7 Mr. Okada an explicit personal assurance that Wynn Resorts would provide a loan or facilitate the
8 lending of money to Aruze USA, which would be backed by shares of Wynn Resorts' stock held
9 by Aruze USA. As alleged above, Mr. Okada agreed to the financing from Wynn Resorts –
10 rather than causing Aruze USA to attempt to liquidate or pledge its shares of Wynn Resorts or
11 seek alternative financing – based on assurances made by Mr. Wynn. Ms. Sinatra agreed to
12 provide draft loan agreements to Aruze USA within 10 days to support the agreement reached
13 between Mr. Wynn and Mr. Okada.

14 303. Based on the foregoing agreement, on July 13, 2011, Ms. Sinatra stated in
15 an email to Aruze USA's counsel that Wynn Resorts was negotiating with Deutsche Bank on a
16 margin loan transaction on Aruze USA's behalf, with Wynn Resorts acting as a "backstop."

17 304. Mr. Wynn and Ms. Sinatra, acting in their individual capacities and as
18 agents of Wynn Resorts, made these statements knowingly or without sufficient basis of
19 information because they believed Wynn Resorts was not legally permitted to enter into such a
20 lending transaction pursuant to the restrictions in Section 402 of SOX. As alleged above,
21 Mr. Wynn and Ms. Sinatra engaged in this wrongful conduct with the intent to induce Aruze USA
22 to consent to Elaine Wynn's transfer of shares under the Stockholders Agreement. Mr. Wynn and
23 Ms. Sinatra acted with the purpose of maintaining Mr. Wynn's control over Wynn Resorts after
24 Mr. Wynn's shares in the Company were split with Elaine Wynn following their divorce, and
25 keeping alive the opportunity to later have Wynn Resorts seek to redeem Aruze USA's shares at a
26 discount.

27 305. At the time, Aruze USA was not aware that Wynn Resorts would take the
28 position that it was not legally permitted to enter into such a lending transaction pursuant to the

1 restrictions in Section 402 of SOX. Aruze USA relied on the false and misleading statements and
2 omissions made by Wynn Resorts, Mr. Wynn, and Ms. Sinatra. Aruze USA's reliance on the
3 false and misleading statements and omissions was reasonable and justifiable, especially in light
4 of Mr. Okada's trusting relationship with Mr. Wynn.

5 306. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra
6 knew that Aruze USA intended to rely on this information as a reason for Aruze USA to forego
7 seeking to liquidate its shares or seeking another source of financing backed by its Wynn Resorts
8 shares. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra further knew and
9 intended that, in reliance on these misrepresentations, Aruze USA would relinquish its own
10 opportunity to liquidate its own shares of Wynn Resorts' stock to fund Universal's project in the
11 Philippines or seek other financing. Therefore, Aruze USA relied on the fact that Wynn Resorts
12 was a committed lender to the project at the expense of pursuing other financing options.

13 307. On September 30, 2011, Wynn Resorts' Compliance Committee refused to
14 permit the loan to Aruze USA or to otherwise serve as a "backstop" for a margin loan transaction
15 on Aruze USA's behalf.

16 308. As a further direct and proximate result of the wrongful conduct by Wynn
17 Resorts, Mr. Wynn, and Ms. Sinatra, as alleged herein, Aruze USA was and continues to be
18 damaged in an amount in excess of \$10,000 to be proven at trial.

19 309. Aruze USA brings this claim within the relevant statute of limitations
20 under Nevada law, having discovered facts giving rise to this claim on or about September 30,
21 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not
22 reasonably have discovered earlier the facts giving rise to this claim.

23 310. 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 said
25 services performed and to be performed in a sum to be determined.

1 **COUNT XIV**

2 **Fraud/Fraud in the Inducement of the Contribution Agreement**

3 **(By Aruze USA Against Wynn Resorts and Steve Wynn)**

4 311. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if
5 set forth in full below.

6 312. In the alternative, to the extent the Court finds that the redemption
7 provision in the later amended Articles of Incorporation applies to Aruze USA's shares, Aruze
8 USA asserts the claim of fraudulent inducement into entering the Contribution Agreement against
9 Wynn Resorts and Steve Wynn. Aruze USA thus brings this claim in the alternative to Aruze
10 USA's claims that assert the purported redemption by Wynn Resorts is void *ab initio*.

11 313. On or about April 11, 2002, Aruze USA, Baron Asset Fund, and Mr. Wynn
12 entered into the Stockholders Agreement in recognition of their desire to form Wynn Resorts. On
13 June 3, 2002, Mr. Wynn caused Wynn Resorts to file its Articles of Incorporation with Nevada's
14 Secretary of State without including a redemption provision.

15 314. On behalf of Aruze USA, on or about June 11, 2002, Mr. Wynn caused
16 Aruze USA to enter into a Contribution Agreement between Aruze USA, Mr. Wynn, and Wynn
17 Resorts. The Contribution Agreement committed Aruze USA's LLC interests in Valvino in
18 exchange for Wynn Resorts common stock.

19 315. Prior to causing the contribution to occur, on or about September 10, 2002,
20 Mr. Wynn filed amended Articles of Incorporation that included the redemption provision. On
21 information and belief, Mr. Wynn deliberately delayed in causing the contribution in order to
22 allow Mr. Wynn to amend the Articles of Incorporation without affording Aruze USA a
23 shareholder vote as would have been required pursuant to N.R.S. § 78.390. At the time of the
24 amendment, Mr. Wynn was the sole stockholder of Wynn Resorts.

25 316. On or about September 28, 2002, about three months after Aruze USA
26 entered into the Contribution Agreement, and eighteen days after Mr. Wynn amended the Articles
27 of Incorporation, Mr. Wynn caused the contribution of Aruze USA's LLC interests in Valvino to
28 Wynn Resorts in exchange for Wynn Resorts common stock.

1 317. In entering into the Contribution Agreement, Wynn Resorts and Mr. Wynn
2 made materially false and/or misleading representations to Aruze USA regarding Wynn Resorts'
3 stockholder obligations under the Articles of Incorporation. Mr. Wynn and Wynn Resorts
4 misrepresented and/or failed to disclose that Wynn Resorts' Articles of Incorporation would seek
5 to impose substantial financial risk on Aruze USA's shares of Wynn Resorts stock by providing
6 Wynn Resorts' Board – which was controlled by Mr. Wynn – purported discretion to redeem
7 Aruze USA's stock on potentially onerous terms.

8 318. The misrepresentations and concealment of facts alleged herein were
9 material because, had Wynn Resorts and Mr. Wynn provided Aruze USA with truthful and
10 correct information, Aruze USA would not have entered into the Contribution Agreement.

11 319. Wynn Resorts and Mr. Wynn knew the misrepresentations and
12 concealment of facts alleged herein were false, or alternatively, made misrepresentations of facts
13 with reckless disregard for whether those representations were true.

14 320. Wynn Resorts and Mr. Wynn made the misrepresentations and concealed
15 facts as set forth herein with the intent to induce Aruze USA to enter into the Contribution
16 Agreement. Furthermore, Wynn Resorts and Mr. Wynn made the misrepresentations and
17 concealment of facts alleged herein with the intent of gaining their own financial advantage to the
18 disadvantage of Aruze USA.

19 321. Aruze USA relied upon the misrepresentations and concealment of facts
20 made by Wynn Resorts and Mr. Wynn regarding Wynn Resorts' common stock at the time Aruze
21 USA entered into the Contribution Agreement. Aruze USA's reliance on these representations
22 and concealment of facts was reasonable and justifiable, especially in light of Mr. Okada's
23 trusting relationship with Mr. Wynn.

24 322. Aruze USA was not aware of and could not have known about the
25 misrepresentations until September 30, 2011, when Wynn Resorts, for the first time, indicated
26 that it might attempt to apply the redemption restriction to Aruze USA's shares.

323. Wynn Resorts and Mr. Wynn aided and abetted each other in making the false statements of facts alleged herein by each failing to exercise reasonable care or competence in obtaining or communicating those statements.

324. Aruze USA has suffered and continues to suffer injury because of Wynn Resorts' and Mr. Wynn's misrepresentations and concealment of facts set forth herein. As a direct and proximate result of Wynn Resorts' and Mr. Wynn's wrongful conduct, Aruze USA suffered injury when the redemption provision was purportedly invoked by Wynn Resorts' Board on or about February 18, 2012.

325. As a remedy for Wynn Resorts' and Mr. Wynn's fraudulent inducement, Aruze USA seeks imposition of a constructive trust over Aruze USA's Wynn Resorts shares purportedly redeemed by the Board, or, in the alternative, recovery of unjust enrichment/restitution.

326. 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.

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

COUNT XV

Negligent Misrepresentation in Connection with the Contribution Agreement

(By Aruze USA Against Wynn Resorts and Steve Wynn)

328. Aruzc USA reasserts and realleges Paragraphs 4 through 173 above as if set forth in full below.

329. In the alternative, to the extent that the redemption provision in the later amended Articles of Incorporation is found to apply to Aruze USA's shares, Aruze USA asserts the claim of negligent misrepresentation in connection with the Contribution Agreement against

1 Wynn Resorts and Steve Wynn. Aruze USA thus brings this claim in the alternative to Aruze
2 USA's claims that assert the purported redemption by Wynn Resorts is void *ab initio*.

3 330. On or about April 11, 2002, Aruze USA, Baron Asset Fund, and Mr. Wynn
4 entered into the Stockholders Agreement in recognition of their desire to form Wynn Resorts. On
5 June 3, 2002, Mr. Wynn caused Wynn Resorts to file its Articles of Incorporation with Nevada's
6 Secretary of State without including a redemption provision.

7 331. On behalf of Aruze USA, on or about June 11, 2002, Mr. Wynn caused
8 Aruze USA to enter into a Contribution Agreement between Aruze USA, Mr. Wynn, and Wynn
9 Resorts. The Contribution Agreement committed Aruze USA's LLC interests in Valvino in
10 exchange for Wynn Resorts common stock.

11 332. Prior to causing the contribution to occur, on or about September 10, 2002,
12 Mr. Wynn filed amended Articles of Incorporation that included the redemption provision. On
13 information and belief, Mr. Wynn deliberately delayed in causing the contribution in order to
14 allow Mr. Wynn to amend the Articles of Incorporation without affording Aruze USA a
15 shareholder vote as would have been required pursuant to N.R.S. § 78.390. At the time of the
16 amendment, Mr. Wynn was the sole stockholder of Wynn Resorts.

17 333. On or about September 28, 2002, about three months after Aruze USA
18 entered into the Contribution Agreement, and eighteen days after Mr. Wynn amended the Articles
19 of Incorporation, Mr. Wynn caused the contribution of Aruze USA's LLC interests in Valvino to
20 Wynn Resorts in exchange for Wynn Resorts common stock.

21 334. In entering into the Contribution Agreement, Wynn Resorts and Mr. Wynn
22 made materially false representations and/or omissions to Aruze USA regarding Wynn Resorts'
23 stockholder obligations under Articles of Incorporation. Mr. Wynn and Wynn Resorts
24 misrepresented and/or failed to disclose that Wynn Resorts' Articles of Incorporation would seek
25 to impose substantial financial risk to Aruze USA by providing Wynn Resorts' Board (which was
26 controlled by Mr. Wynn) purported discretion to redeem Aruze USA's stock on potentially
27 onerous terms.

28

1 335. Aruze USA was not aware of and could not have known about the
2 misrepresentations until September 30, 2011, when Wynn Resorts, for the first time, indicated
3 that it might attempt to apply the redemption restriction to Aruze USA's shares.

4 336. The false statements and/or omissions of facts alleged herein were material
5 because, had Wynn Resorts and Mr. Wynn provided Aruze USA with truthful and correct
6 information, Aruze USA would not have entered into the Contribution Agreement.

7 337. Wynn Resorts and Mr. Wynn failed to exercise reasonable care or
8 competence in obtaining or communicating the false statements of fact alleged herein.

9 338. Aruze USA relied on the false and misleading statements and omissions
10 made by Wynn Resorts and Mr. Wynn regarding Wynn Resorts' common stock at the time Aruze
11 USA entered into the Contribution Agreement. Aruze USA's reliance on the false and misleading
12 statements and omissions was reasonable and justifiable, especially in light of Mr. Okada's
13 trusting relationship with Mr. Wynn.

14 339. On information and belief, Wynn Resorts and Mr. Wynn knew that Aruze
15 USA intended to rely on this information as a reason for Aruze USA to enter into the
16 Contribution Agreement.

17 340. Aruze USA has suffered and continues to suffer injury because of Wynn
18 Resorts' and Mr. Wynn's false and misleading statements and omissions alleged herein. As a
19 direct and proximate result of Wynn Resorts' and Mr. Wynn's wrongful conduct, Aruze USA
20 suffered injury when the redemption provision was purportedly invoked by Wynn Resorts' Board
21 on or about February 18, 2012.

22 341. As a remedy for Wynn Resorts' and Mr. Wynn's negligent
23 misrepresentations, Aruze USA seeks imposition of a constructive trust over Aruze USA's Wynn
24 Resorts shares purportedly redeemed by the Board, or, in the alternative, unjust
25 enrichment/restitution.

26 342. Aruze USA brings this claim within the relevant statute of limitations
27 under Nevada law, having discovered facts giving rise to this claim, including injury arising from
28 the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February

1 18, 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not
2 reasonably have discovered earlier the facts giving rise to this claim.

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

6 **COUNT XVI**

7 **Breach of Contract in Connection with the Stockholders Agreement**

8 **(By Aruze USA Against Steve Wynn)**

9 344. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if
10 set forth in full below.

11 345. Mr. Wynn, Elaine Wynn, and Aruze USA are parties to the Stockholders
12 Agreement.

13 346. Section 2(a) of the Stockholders Agreement provides that Mr. Wynn must
14 endorse and vote for Aruze USA's proposed slate of directors so long as the resulting Board is
15 composed of a majority of directors selected by Mr. Wynn.

16 347. Aruze USA has designated three nominees for election to the Board. If the
17 stockholders of the Company elect the Aruze USA director candidates, the resulting Board shall
18 be comprised of at least nine of the directors nominated by Mr. Wynn, a clear majority.

19 348. Mr. Wynn has failed and refused to endorse Aruze USA's slate of directors
20 in violation of his obligations under the Stockholders Agreement and failed and refused to
21 provide assurances of his intent to vote his and Elaine Wynn's stock in favor of those nominees.

22 349. Mr. Wynn has materially breached the Stockholders Agreement without
23 justification and has frustrated the essential purpose of the Stockholders Agreement.

24 350. The Stockholders Agreement provides that each of the parties to it
25 recognizes and acknowledges that a breach by any party of any covenants or agreements
26 contained in the Agreement will cause the other parties to sustain damages for which they would
27 not have an adequate remedy at law for money damages, and therefore each of the parties agrees
28 that in the event of any such breach the parties shall be entitled to appropriate equitable relief.

351. On account of Mr. Wynn's material breach of the Stockholders Agreement, Aruze USA is entitled to be excused and completely discharged from any further performance of its obligations contained therein.

352. Further, the breaches by Mr. Wynn have frustrated the entire purpose of the Stockholders Agreement, and have instead served to further entrench Mr. Wynn's control over the Company to the detriment of the other parties to the Agreement. Thus, the appropriate equitable relief for Mr. Wynn's breach is rescission of the Stockholders Agreement.

353. 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.

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

COUNT XVII

Breach of Covenant of Good Faith and Fair Dealing in Stockholders Agreement

(By Aruze USA Against Steve Wynn)

355. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if set forth in full below.

356. In every contract, there exists an implied covenant of good faith and fair dealing.

357. Aruze USA and Mr. Wynn are parties to the Stockholders Agreement, between Mr. Wynn, Elaine Wynn, and Aruze USA.

358. Aruzc USA has properly sought to exercise its rights under the Stockholders Agreement in seeking to designate directors for endorsement by Mr. Wynn while complying with the contractual condition that the Board will consist of a majority of directors nominated by Mr. Wynn.

1 359. Mr. Wynn has materially breached the Stockholders Agreement by failing
2 to endorse Aruze USA's slate of nominees for directors to the Wynn Resorts Board and by failing
3 to confirm his intent to vote his and Elaine Wynn's stock in favor of those nominees, thereby
4 frustrating the essential purpose of the Stockholders Agreement.

5 360. Mr. Wynn has breached the reasonable and justifiable expectations of
6 Aruze USA with respect to Aruze USA's ability to successfully designate director candidates, an
7 essential purpose of the Stockholders Agreement.

8 361. Mr. Wynn also has breached the reasonable and justifiable expectations of
9 Aruze USA by unreasonably withholding his consent for Aruze USA to liquidate stock, and by
10 falsely promising financing in order to persuade Aruze USA to delay its demands for liquidity.

11 362. Accordingly, Mr. Wynn's conduct has breached the covenant of good faith
12 and fair dealing. On account of Mr. Wynn's material breach, Aruze USA is entitled to contract
13 damages, or in the alternative, Aruze USA is entitled to being excused and discharged from its
14 obligations under the Stockholders Agreement. Aruze USA is also entitled to rescission of the
15 Stockholders Agreement.

16 363. By virtue of his purported position as power of attorney under the
17 Stockholders Agreement, Mr. Wynn owed fiduciary duties to Aruze USA. Given the existence of
18 this "special relationship" between Mr. Wynn and Aruze USA, Mr. Wynn is also liable for a
19 tortious breach of the implied duty of good faith and fair dealing and the accompanying tort
20 damages.

21 364. Aruze USA brings this claim within the relevant statute of limitations
22 under Nevada law, having discovered facts giving rise to this claim, including injury arising from
23 the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February
24 18, 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not
25 reasonably have discovered earlier the facts giving rise to this claim.

26 365. 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 said
28 services performed and to be performed in a sum to be determined.

1 **COUNT XVIII**

2 **Unconscionability/Reformation of Promissory Note**

3 **(By Aruze USA Against Wynn Resorts)**

4 366. Aruze USA reasserts and realleges Paragraphs 4 through 173 above as if
5 set forth in full below.

6 367. In the alternative, to the extent that the redemption provision in the later
7 amended Articles of Incorporation is found to apply to Aruze USA's shares and the redemption
8 was lawful, Aruze USA asserts that the promissory note is unconscionable and therefore subject
9 to reformation.

10 368. On January 27, 2012, Wynn Resorts declared in a publicly filed Opposition
11 to Mr. Okada's Petition for Writ of Mandamus that Aruze USA's nearly 20% stake in Wynn
12 Resorts was "valued at approximately \$2.9 billion."

13 369. Just 22 days later, on February 18, 2012, Wynn Resorts acted to forcibly
14 acquire Aruze USA's stake in Wynn Resorts in exchange for a \$1.936 billion promissory note,
15 paying a mere 2% interest per annum over a ten-year term.

16 370. The promissory note is unconscionably vague, ambiguous, and oppressive.

17 371. Aruze USA was never permitted the opportunity to negotiate the amount of
18 the promissory note given the market value of its shares, nor was Aruze USA permitted the
19 opportunity to negotiate the terms of the promissory note, including, but not limited to, the
20 interest rate, the restrictions on transfer, and the subordination provisions.

21 372. Wynn Resorts received a grossly one-sided windfall by forcibly redeeming
22 \$2.9 billion of securities at a deep discount, transforming equity into a 2 percent per annum debt
23 instrument that Aruze USA may not transfer, retaining the ability to issue additional debt at any
24 time and provide any new lender priority rights above Aruze USA's note, and removing voting
25 and other rights from Aruze USA.

26 373. Aruze USA, therefore, seeks reformation of the promissory note, including
27 but not limited to its principal, duration, interest rate, restrictions on transfer, restrictions on
28 subordination, and inclusion of other customary and reasonable terms, conditions, and covenants.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Aruze USA and Universal each expressly reserves its and their
3 right to amend these Counterclaims before or at the time of the trial of this action to include all
4 items of injury and damages not yet ascertained. Aruze USA and Universal pray that the
5 Honorable Court enter judgment in favor of each of them, and against Wynn Resorts, Mr. Wynn,
6 Ms. Sinatra, and the other Wynn Directors, and each of them, as follows:

- 7 a. For general damages in an amount in excess of \$10,000;
8 b. For consequential damages;
9 c. For treble and statutory damages;
10 d. For punitive damages three times the amount of compensatory damages
11 awarded;
12 c. For disgorgement of profits;
13 f. For constructive trust and unjust enrichment;
14 g. For preliminary and/or permanent injunctive relief;
15 h. For declaratory relief;
16 i. For reformation of the promissory note;
17 j. For costs and expenses of this action, prejudgment and post-judgment interest,
18 and reasonable attorneys' fees incurred herein; and,
19 k. Any and all such other and further equitable and legal relief as this Court
20 deems just and proper.

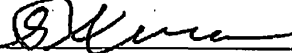
21 **JURY DEMAND**

22 Defendants and Counterclaimants hereby demand a trial by jury on all claims and
23 issues so triable.
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1
2 DATED: September ¹² 7, 2012

Respectfully Submitted,

LIONEL SAWYER & COLLINS

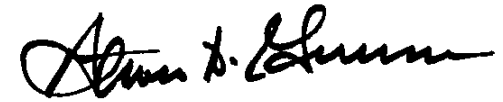
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18 ARUZE USA, INC. and UNIVERSAL
19 ENTERTAINMENT CORPORATION
* *pro hac vice application pending*



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DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED CLAIMS

Case No.: A-12-656710-B

Dept. No.: XI

**ORDER DENYING DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION**

Date of Hearing: October 2, 2012

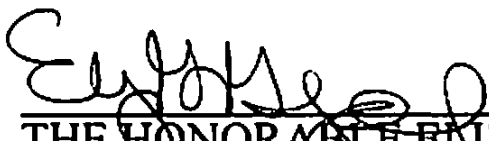
Time of Hearing: 8:30 a.m.

Defendants/Counter-claimants Aruze USA, Inc. ("Aruze USA) and Universal Entertainment Corp.'s ("Universal") (collectively "Defendants") Motion for Preliminary Injunction came before this Court for hearing on October 2, 2012. Appearing on behalf of Plaintiff Wynn Resorts, Limited ("Plaintiff" or "Wynn Resorts") was James J. Pisanelli, Esq., and Debra L. Spinelli, Esq., of PISANELLI BICE PLLC, Robert Shapiro, Esq., of Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP, and Paul K. Rowe, Esq., Wachtell, Lipton, Rosen & Katz. Appearing on behalf of Stephen A. Wynn ("Mr. Wynn") was Donald J. Campbell, Esq., and J. Colby Williams, Esq., of Campbell & Williams. Appearing on behalf of Defendants Aruze USA and Universal was Charles H. McCrea, Esq. and Samuel Lionel, Esq., of Lionel Sawyer & Collins, Paul M. Spagnoletti, Esq., of Davis Polk & Wardwell LLP, and Howard M. Privette, Esq., of Paul Hastings LLP. The Court having considered the papers filed on behalf of all parties, the arguments of counsel presented at the hearing, and good cause appearing therefor:

THE COURT HEREBY FINDS that the agreements among the parties allow the exercise of redemption rights where a determination of unsuitability has been made by the Board of Directors. The Defendants ^{have} failed to demonstrate ^{at this early stage} that they have a substantial likelihood of success on the merits and that the Board of Directors' action should not be given deference in its exercise of business judgment pursuant to NRS 78.138(3).

Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion for Preliminary Injunction is DENIED without prejudice.

DATED this 2nd day of October, 2012.


THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

1 Respectfully submitted by:

2 PISANELLI BICE PLLC

3 By: 

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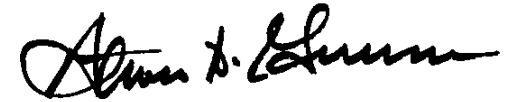
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18 Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman
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Attorneys for Petitioner KAZUO OKADA
**Admitted Pro Hac Vice*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KAZUO OKADA, an individual,

Petitioner,

v.

WYNN RESORTS, LIMITED, a Nevada
corporation,

Respondent.

CASE NO. A-12-654522-B

DEPT. NO. XI

**NOTICE OF ENTRY OF ORDER ON
FIRST AMENDED PETITION FOR WRIT
OF MANDAMUS**

1 PLEASE TAKE NOTICE that an ORDER ON FIRST AMENDED PEITION FOR
2 WRIT OF MANDAMUS, a copy of which is attached hereto as Exhibit 1, was entered in the
3 above-captioned matter on October 15, 2012.

4 DATED this 15th day of October, 2012.

5
6 LIONEL SAWYER & COLLINS

7
8 By: /s/Charles H. McCrea, Jr.

9 Samuel L. Lionel (SBN 1766)
10 Paul R. Hejmanowski (SBN 94)
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16 *Attorneys for Petitioner KAZUO OKADA*
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nevada Rule of Civil Procedure 5(b), I hereby certify that I am an employee
3 of LIONEL SAWYER & COLLINS and that on this 1 day of July, 2012, I caused documents
4 entitled **NOTICE OF ENTRY OF ORDER ON FIRST AMENDED PETITION FOR WRIT**
5 **OF MANDAMUS** to be served as follows:

6 ☐ by depositing same for mailing in the United States Mail, in a sealed envelope
7 addressed to:

8 ☐ pursuant to Nev. R. Civ. P. 5(b)(2)(D) to be sent via facsimile as indicated:

9 ☐ to be hand delivered to:

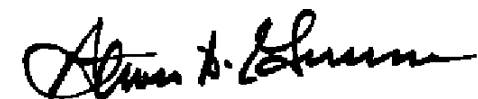
10 and/or

11 ☒ by the Court's ECF System through Wiznet.
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13
14

15 /s/V. Raynell Caliguire
16 An Employee of
17 LIONEL SAWYER & COLLINS
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EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

1 **ORD**

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4
5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**
7

8 KAZUO OKADA, an individual,

9 Petitioner,

10 v.

11 WYNN RESORTS, LIMITED, a Nevada
12 corporation,

13 Respondent.

CASE NO. A-12-654522-B

DEPT. NO. XI

**ORDER ON FIRST AMENDED
PETITION FOR WRIT OF MANDAMUS**

14 Petitioner KAZUO OKADA's First Amended Petition for Writ of Mandamus ("Petition")
15 having come on for hearing on October 2, 2012, and good cause appearing, the Court FINDS as
16 follows:

- 17 1. As previously ordered on February 9, 2012, each director, as a fiduciary, has a
18 right of inspection of that corporation's books and records, limited by
19 reasonableness of the requests under the common law.
20 2. Mr. Okada is currently and has been a director of Respondent WYNN RESORTS,
21 LIMITED ("Wynn" or the "Company") since its inception.
22 3. Mr. Okada made requests to Wynn to inspect certain books and records of the
23 corporation as specified in the Petition.
24 4. In Nevada, a director of a corporation has a common law right to inspect the
25 books and records of the corporation. The corporation is required to promptly
26 honor any reasonable request of a director to inspect books and records unless the
27 corporation can show that the request is for an improper purpose.
28

ORDER, Page 1 of 2

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CLERK OF THE COURT

5. Wynn failed to demonstrate by a preponderance of the evidence that Mr. Okada's requests, as narrowed, are for an improper purpose.

Accordingly, it is

ORDERED that the Petition be and the same is GRANTED. And it is further

ORDERED that on or before October 16, 2012, Wynn shall produce to Mr. Okada the following books and records:

A. Documents from 2000-2002

(1) Valvino Lamore LLC's entertainment of Macau government officials (which includes City Ledger Accounts, defined as deposit accounts at Wynn Resorts utilized by directors and senior management of the Company to avoid running afoul of the loan prohibitions contained in the Sarbanes-Oxley Act);

(2) Contacts with Macau government officials regarding gaming licenses; and

(3) Accounting records of expenditures in excess of \$10,000;

B. Macau Reimbursement Amount

Expenditures incurred and amounts advanced directly or indirectly by Stephen A. Wynn in pursuit of the development of a casino project in Macau;

C. Use of Proceeds from Aruze USA's \$120 Million Capital Contribution

(1) Expenditures greater than \$10,000 from the \$120 million capital contribution of Aruze USA, Inc.;

(2) Expenditures of any amount for or on behalf of government or gaming officials from the \$120 million capital contribution of Aruze USA, Inc.; and

(3) Documents reflecting the capital accounts of Stephen A. Wynn, Baron Asset Fund, and Aruze USA, Inc. from 2000 to 2002.

DATED this 12th day of October 2012.


DISTRICT COURT JUDGE


ORDER, Page 2 of 2

Certificate of Service

I hereby certify that on or about the date filed, I mailed a copy of the Order Scheduling Status Check, or placed a copy in the attorney's folder, to:

James Pisanelli, Esq. (Pisanelli Bice)

Charles H. McCrea, Jr., Esq. (Lionel Sawyer & Collins)


Maximilien D. Fetaz

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

Electronically Filed
Jul 22 2015 08:40 a.m.

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 IV 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

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Las Vegas, Nevada 89101

Attorneys for Real Party in Interest

Wynn Resorts, Limited

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Odyssey Docket Report – Books and Records Proceeding. No. A-12-654522-B	07/21/15	V	SA1402-1410

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:

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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

9

11 **Imposition of a Constructive Trust and Unjust Enrichment**

13 232. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set
14 forth in full below.

20 234. As a result of the relationship between the parties and the facts stated above,
21 Wynn Resorts will be unjustly enriched if it is permitted to retain Aruze USA's stock and
22 dividends and, therefore, a constructive trust should be established over Aruze USA's
23 stock, and all dividends that would be paid on such shares if held by Aruze USA. These
24 shares and dividends are traceable to Wynn Resorts.

28

1 about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA did
2 not and could not reasonably have discovered earlier the facts giving rise to this claim.

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

6
7 **COUNT VIII**

8 **Conversion**

9 **(By Aruze USA Against Wynn Resorts)**

10 237. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set
11 forth in full below.

12 238. Wynn Resorts did not have a legal right to redeem and in addition lacked a
13 proper and sufficient basis to find that the allegations in the Freeh Sporkin report against
14 Aruze USA, Mr. Okada, and Universal were activities that “were likely to jeopardize [the
15 Company’s] or any Affiliated Company’s . . . right to the use of, or entitlement to any
16 Gaming License.”

17 239. As a result, Wynn Resorts’ Board lacked a fair, proper, and sufficient basis
18 for seizing Aruze USA’s stock.

19 240. Wynn Resorts wrongfully exercised dominion over Aruze USA’s stock.

20 241. Wynn Resorts’ dominion over Aruze USA’s stock without a valid basis for
21 redemption is inconsistent with the Articles of Incorporation and Aruze USA’s rights in
22 the stock under the Contribution Agreement and the Stockholders Agreement.

23 242. Wynn Resorts converted Aruze USA stock, damaging Plaintiff in an amount
24 in excess of \$10,000.

25 243. Aruze USA brings this claim within the relevant statute of limitations under
26 Nevada law, having discovered facts giving rise to this claim, including injury arising
27 from the purported redemption of Aruze USA’s shares of Wynn Resorts’ stock, on or
28

1 about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA did
2 not and could not reasonably have discovered earlier the facts giving rise to this claim.

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

6 7 COUNT IX

8 **Violations Of Nevada's Racketeer Influenced And Corrupt Organizations Act** 9 **(RICO) (N.R.S. § 207.350, *et. Seq.*)**

10 **(By Aruze USA Against Steve Wynn And Kim Sinatra)**

11 245. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set
12 forth in full below.

13 246. **The Enterprise.** As alleged above, Wynn Resorts is a corporation formed
14 under the laws of Nevada. In a conspiracy with Ms. Sinatra, Mr. Wynn engaged in
15 wrongful conduct to acquire or maintain, directly or indirectly, an interest in or control of
16 Wynn Resorts in violation of N.R.S. § 207.400(1)(b) and (j). Moreover, Mr. Wynn and
17 Ms. Sinatra were and are employed by Wynn Resorts and conducted or participated,
18 directly or indirectly, in racketeering activity by and through the affairs of Wynn Resorts,
19 and/or conducted or participated, directly or indirectly, in the affairs of Wynn Resorts
20 through racketeering activity, in violation of N.R.S. § 207.400(1)(c) and (j). Mr. Wynn
21 and Ms. Sinatra are separate and distinct persons from Wynn Resorts. Thus, Wynn
22 Resorts is an "enterprise" within the meaning of N.R.S. § 207.380.

23 247. **Mr. Wynn and Ms. Sinatra engaged in at least two predicate acts**
24 **related to racketeering.** Mr. Wynn and Ms. Sinatra have each engaged in at least two
25 predicate acts related to racketeering that have the same or similar pattern, intents, results,
26 accomplices, victims or methods of commission, or are otherwise interrelated by
27 distinguishing characteristics and are not isolated incidents, within the meaning of N.R.S.
28 § 207.390.

1 248. Pursuant to N.R.S. § 207.360, a “crime related to racketeering” includes the
2 commission of, attempt to commit, or conspiracy to commit securities fraud, “[o]btaining
3 possession of money or property valued at \$250 or more, or obtaining a signature by
4 means of false pretenses.” Securities fraud occurs under N.R.S. § 90.570 when a person,
5 in connection with the purchase or sale of a security, either directly or indirectly, employs
6 any device, scheme or artifice to defraud, makes a material misstatement or omission with
7 the intent to deceive, and/or engages in any act, practice or course of business which
8 operates or would operate as a fraud or deceit. Under N.R.S. § 205.380, a person obtains
9 possession of money or property by false pretenses when he/she, with an intent to defraud,
10 makes a false representation (whether by direct or indirect conduct), that induces reliance
11 on that representation, and defrauds the victim. A person obtains a signature by false
12 pretenses under N.R.S. § 205.390 when he/she has an intent to defraud, obtains a
13 signature on a written interest, and uses a false representation (whether by direct or
14 indirect conduct) to obtain the signature.

15 249. In particular, Mr. Wynn and Ms. Sinatra engaged in a scheme to defraud
16 Aruze USA and, ultimately, forcibly take its ownership interest in Wynn Resorts. The
17 central purpose of their scheme to deceive and steal from Aruze USA was to allow Mr.
18 Wynn to consolidate, acquire, and maintain control of Wynn Resorts through a series of
19 fraudulent and deceptive acts.

20 250. In violation of N.R.S. § 207.400(1)(b), Mr. Wynn, through the above crimes
21 related to racketeering detailed herein, acquired and maintained control over Wynn
22 Resorts in connection with various agreements entered into by fraudulent means. Mr.
23 Wynn’s control over Wynn Resorts has allowed him to use and operate, and transfer
24 assets obtained in connection with Wynn Resorts, to the financial detriment of Aruze
25 USA. Specifically, Mr. Wynn personally committed, among other acts, the following acts
26 constituting racketeering activity:

- 27 a. On or about June 11, 2002, Mr. Wynn obtained Aruze USA’s signature
28 on the Contribution Agreement under false pretenses;

- b. On or about May 16, 2011, Mr. Wynn obtained under false pretenses Aruze USA's signature on a document entitled "Waiver, Consent and Limited Release," relating to the transfer of Elaine Wynn's shares;
- c. On or about February 18, 2012, Mr. Wynn purportedly caused Wynn Resorts to redeem Aruze USA's shares of Wynn Resorts' stock (*i.e.*, the forced sale) through an ongoing fraudulent and deceptive scheme in violation of N.R.S. § 90.570; and,
- d. On or about February 18, 2012, Mr. Wynn caused Wynn Resorts to purportedly redeem Aruze USA's shares under false pretenses, in particular based on false, incomplete and/or misleading factual allegations made in the Freeh Sporkin report, for the central purpose of allowing Mr. Wynn to acquire and/or maintain control of Wynn Resorts.

251. In violation of N.R.S. § 207.400(1)(c), Ms. Sinatra, who was employed by or associated with Wynn Resorts, has participated in and conducted the racketeering activity alleged in detail above through the affairs of Wynn Resorts. Wynn Resorts, although ultimately controlled by Mr. Wynn, is separate and distinct from Mr. Wynn and Ms. Sinatra. Specifically, Ms. Sinatra committed, among other acts, the following acts constituting racketeering activity:

- a. On or about May 16, 2011, in concert with Mr. Wynn, Ms. Sinatra obtained under false pretenses Aruze USA's signature on a document entitled "Waiver, Consent and Limited Release," relating to the transfer of Elaine Wynn's shares;
- b. On or about February 18, 2012, in concert with Mr. Wynn, Ms. Sinatra purportedly caused Wynn Resorts to redeem Aruze USA's shares of Wynn Resorts' stock (*i.e.*, the forced sale) through an ongoing fraudulent and deceptive scheme in violation of N.R.S. § 90.570; and,

1 c. On or about February 18, 2012, in concert with Mr. Wynn, Ms. Sinatra
2 caused Wynn Resorts to purportedly redeem Aruze USA's shares
3 under false pretenses, in particular based on false, incomplete and/or
4 misleading factual allegations made in the Freeh Sporkin report, for the
5 central purpose of allowing Mr. Wynn to acquire and/or maintain
6 control of Wynn Resorts.

7 252. In addition, Mr. Wynn and Ms. Sinatra have joined together to defraud
8 Aruze USA and forcibly take its Wynn Resorts shares, and agreed to commit the
9 racketeering activity detailed above. Mr. Wynn's and Ms. Sinatra's activities, as
10 demonstrated by the facts alleged above, establish Mr. Wynn's and Ms. Sinatra's
11 agreement to knowingly participate in a collective venture toward a common goal, and
12 thereby establish a conspiracy to commit the racketeering activity alleged in detail above
13 within the meaning of N.R.S. § 207.400(1)(b) and (c). Mr. Wynn's and Ms. Sinatra's
14 activities, therefore, violate N.R.S. § 207.400(1)(j), which prohibits a conspiracy to violate
15 N.R.S. § 207.400(1)(b) and (c).

16 253. **Aruze USA's damages.** As alleged above, each of Mr. Wynn and
17 Ms. Sinatra has engaged in at least two crimes related to racketeering activity in
18 connection with Wynn Resorts' violation of N.R.S. § 207.400(1).

19 254. As a direct and proximate result of Mr. Wynn's and Ms. Sinatra's violations
20 of N.R.S. § 207.400(1)(b), (c), and (j), Aruze USA has suffered and continues to suffer
21 injuries to its property, most notably the fraudulent purported redemption of Aruze USA's
22 shares held in Wynn Resorts' stock. Those shares, with a stock market value of more than
23 \$2.7 billion, were purportedly redeemed for a 10-year, \$1.9 billion promissory note.

24 255. Pursuant to N.R.S. § 207.400(1), Aruze USA is entitled to recover threefold
25 its actual damages, the costs of this action, and its reasonable attorneys' fees incurred in
26 the trial and appellate courts.

27 256. Aruze USA brings this claim within the relevant statute of limitations under
28 Nevada law, having discovered facts giving rise to this claim, including injury arising

1 from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or
2 about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA did
3 not and could not reasonably have discovered earlier the facts giving rise to this claim.

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

8 **COUNT X**

9 **Fraud/Fraudulent Misrepresentation in Connection with Financing for Aruze USA** 10 **(By Aruze USA Against Wynn Resorts, Steve Wynn, and Kim Sinatra)**

11 258. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set
12 forth in full below.

13 259. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made false and misleading
14 statements and omissions of material facts to Aruze USA. Specifically, on or about May
15 16, 2011, and for months thereafter, Mr. Wynn and Ms. Sinatra made false and misleading
16 statements and omissions concerning the ability of Wynn Resorts to loan money to Aruze
17 USA, which Wynn Resorts, Mr. Wynn, and Ms. Sinatra agreed would be backed by
18 shares of Wynn Resorts' stock held by Aruze USA.

19 260. Mr. Wynn and Ms. Sinatra, acting in their individual capacity and as agents
20 of Wynn Resorts, made these false and misleading statements and omissions knowingly or
21 without sufficient basis of information because they believed Wynn Resorts permitted to
22 enter into such a lending transaction pursuant to the restrictions in Section 402 of SOX.
23 As alleged above, Mr. Wynn and Ms. Sinatra engaged in this wrongful conduct for the
24 purpose of maintaining Mr. Wynn's control over Wynn Resorts after Mr. Wynn's shares
25 in the Company were split with Elaine Wynn following their divorce, and keeping alive
26 the opportunity to later have Wynn Resorts seek to redeem Aruze USA's shares at a
27 discount.

1 261. Furthermore, Mr. Wynn and Ms. Sinatra, acting in their individual capacity
2 and as agents of Wynn Resorts, made these false and misleading statements and omissions
3 knowingly or without sufficient basis of information regarding the immediate need for
4 Elaine Wynn to transfer her shares under the Stockholders Agreement. On information
5 and belief, Mr. Wynn and Ms. Sinatra knew or were without a sufficient basis to make
6 those material statements.

7 262. Aruze USA relied on the false and misleading statements and omissions
8 made by Wynn Resorts, Mr. Wynn, and Ms. Sinatra. Aruze USA's reliance on the false
9 and misleading statements and omissions was reasonable and justifiable, especially in
10 light of Mr. Okada's trusting relationship with Mr. Wynn.

11 263. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra knew
12 that Aruze USA intended to rely on this information as a reason for Aruze USA to consent
13 to Elaine Wynn's transfer of shares under the Stockholders Agreement, and for Aruze
14 USA to not take steps to invalidate the purported restrictions on alienability contained in
15 the Stockholders Agreement. On information and belief, Wynn Resorts, Mr. Wynn, and
16 Ms. Sinatra further knew and intended that, in reliance on these misrepresentations, Aruze
17 USA would relinquish its own opportunity to liquidate its own shares of Wynn Resorts'
18 stock to fund Universal's project in the Philippines or seek other financing. Therefore,
19 Aruze USA relied on the fact that Wynn Resorts was a committed lender to the project at
20 the expense of pursuing other financing options.

21 264. As a further direct and proximate result of the wrongful conduct by Wynn
22 Resorts, Mr. Wynn, and Ms. Sinatra, as alleged herein, Aruze USA was and continues to
23 be damaged in an amount in excess of \$10,000 to be proven at trial.

24 265. Pursuant to N.R.S. § 42.005, by reason of the fraudulent, reckless,
25 misleading, malicious, willful, and wanton misconduct of Wynn Resorts, Mr. Wynn, and
26 Ms. Sinatra, Aruze USA is entitled to punitive damages not to exceed three times the
27 amount of compensatory damages awarded.
28

266. Aruze USA brings this claim within the relevant statute of limitations under Nevada law, having discovered facts giving rise to this claim, including injury arising from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about September 30, 2012.

267. Aruze USA brings this claim within the relevant statute of limitations under Nevada law, having discovered facts giving rise to this claim on or about September 30, 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not reasonably have discovered earlier the facts giving rise to this claim.

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

COUNT XI

Negligent Misrepresentation in Connection with Financing for Aruze USA
(By Aruze USA Against Wynn Resorts, Steve Wynn, and Kim Sinatra)

269. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set forth in full below.

270. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made false and misleading statements and omissions of material facts to Aruze USA. Specifically, on or about May 16, 2011, and for months thereafter, Mr. Wynn and Ms. Sinatra made false and misleading statements and omissions concerning the ability of Aruze USA to obtain a loan from Wynn Resorts, which Wynn Resorts, Mr. Wynn, and Ms. Sinatra agreed would be backed by shares of Wynn Resorts' stock held by Aruze USA.

271. The false statements of facts alleged herein were material because had Wynn Resorts, Mr. Wynn, and Ms. Sinatra provided Aruze USA with truthful and correct information, Aruze USA would not have consented to Elaine Wynn's transfer of shares under the Stockholders Agreement, and would have taken steps to invalidate the purported restrictions in the Shareholder Agreement.

1 272. Wynn Resorts, Mr. Wynn, and Ms. Sinatra failed to exercise reasonable care
2 or competence in obtaining or communicating the false statements of fact alleged herein.

3 273. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made the false statements or
4 omissions of fact alleged herein with the intent to induce Aruze USA to consent to Elaine
5 Wynn's transfer of shares under the Stockholders Agreement without pledging its own
6 shares in a manner that would reduce Mr. Wynn's control over those shares. Furthermore,
7 Wynn Resorts, Mr. Wynn, and Ms. Sinatra made the false statements of fact alleged
8 herein with the intent of gaining their own financial advantage to the disadvantage of
9 Aruze USA, including, but not limited to, the opportunity to seek to have Wynn Resorts
10 redeem Aruze USA's shares at a discount.

11 274. Furthermore, Mr. Wynn and Ms. Sinatra, acting in their individual capacity
12 and as agents of Wynn Resorts, made these false and misleading statements and omissions
13 knowingly or without sufficient basis of information regarding the immediate need for
14 Elaine Wynn to transfer her shares under the Stockholders Agreement. On information
15 and belief, Mr. Wynn and Ms. Sinatra knew or were without a sufficient basis to make
16 those material statements.

17 275. Aruze USA relied upon the false statements of fact alleged herein by
18 providing consent for Elaine Wynn to transfer her shares under the Stockholders
19 Agreement. Aruze USA's reliance on these representations and concealment of facts was
20 reasonable and justifiable, especially in light of Mr. Okada's trusting relationship with
21 Mr. Wynn.

22 276. Wynn Resorts, Mr. Wynn, and Ms. Sinatra aided and abetted each of the
23 others in making the false statements of fact set herein by each failing to exercise
24 reasonable care or competence in obtaining or communicating those statements.

25 277. Aruze USA has suffered and continues to suffer economic and non-
26 economic losses because of Wynn Resorts', Mr. Wynn's, and Ms. Sinatra's false
27 statements of fact. The amount of losses will be determined according to proof at trial,
28 but damages are in an amount in excess of \$10,000.

278. Pursuant to N.R.S. § 42.005, by reason of the fraudulent, reckless, misleading, malicious, willful, and wanton misconduct of Wynn Resorts, Mr. Wynn, and Ms. Sinatra, Aruze USA is entitled to punitive damages not to exceed three times the amount of compensatory damages awarded.

279. Aruze USA brings this claim within the relevant statute of limitations under Nevada law, having discovered facts giving rise to this claim on or about September 30, 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not reasonably have discovered earlier the facts giving rise to this claim.

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

COUNT XII

Civil Conspiracy in Connection with Financing for Aruze USA

(By Aruze USA Against Steve Wynn and Kim Sinatra)

281. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set forth in full below.

282. Aruze USA, Mr. Wynn and Elaine Wynn entered into an agreement regarding the disposition of shares pursuant to the January 6, 2010 Amended and Restated Stockholders Agreement.

283. Ms. Sinatra, as General Counsel for Wynn Resorts, had knowledge of the Stockholders Agreement and its restriction on transfer of shares.

284. On information and belief, Ms. Sinatra had knowledge that Mr. Wynn needed Aruze USA to waive the restriction, permitting Elaine Wynn to transfer her shares.

285. On information and belief, Ms. Sinatra and Mr. Wynn agreed to persuade Aruze USA to permit Elaine Wynn to transfer her shares without permitting Aruze USA to transfer or pledge any shares to anyone outside the control of Mr. Wynn. In fact, upon receiving an email from Aruze USA's representative on July 13, 2011 permitting the

1 immediate transfer of Elaine Wynn's shares, Ms. Sinatra expressed happiness for Mr.
2 Wynn, stating, "Thank you very much for this. I'm sure Mr. Wynn will be happy about
3 the clarification."

4 286. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made false and misleading
5 statements and omissions of material facts to Aruze USA. Specifically, on or about May
6 16, 2011, and for months thereafter, Mr. Wynn and Ms. Sinatra made false and misleading
7 statements and omissions concerning Wynn Resorts' ability and/or willingness to loan
8 money to Aruze USA, which Wynn Resorts, Mr. Wynn, and Ms. Sinatra agreed would be
9 backed by shares of Wynn Resorts' stock held by Aruze USA.

10 287. Mr. Wynn and Ms. Sinatra, acting in concert with Wynn Resorts, made these
11 false and misleading statements and omissions knowingly or without sufficient basis of
12 information because they believed Wynn Resorts was not legally permitted to enter into
13 such a lending transaction pursuant to the restrictions in Section 402 of SOX. As alleged
14 above, Mr. Wynn and Ms. Sinatra engaged in this wrongful conduct for the purpose of
15 maintaining Mr. Wynn's control over Wynn Resorts after Mr. Wynn's shares in the
16 Company were split with Elaine Wynn following their divorce, and keeping alive the
17 opportunity to later have Wynn Resorts seek to redeem Aruze USA's shares at a discount.

18 288. Furthermore, Mr. Wynn and Ms. Sinatra, acting in their individual capacity
19 and as agents of Wynn Resorts, made these false and misleading statements and omissions
20 knowingly or without sufficient basis of information regarding the immediate need for
21 Elaine Wynn to transfer her shares under the Stockholders Agreement. On information
22 and belief, Mr. Wynn and Ms. Sinatra knew or were without a sufficient basis to make
23 those material statements.

24 289. Aruze USA relied on the false and misleading statements and omissions
25 made by Wynn Resorts, Mr. Wynn, and Ms. Sinatra. Aruze USA's reliance on the false
26 and misleading statements and omissions was reasonable and justifiable, especially in
27 light of Mr. Okada's trusting relationship with Mr. Wynn.
28

1 290. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra knew
2 that Aruze USA intended to rely on this information as a reason for Aruze USA to consent
3 to Elaine Wynn's transfer of shares under the Stockholders Agreement. On information
4 and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra further knew and intended that, in
5 reliance on these misrepresentations, Aruze USA would relinquish its own opportunity to
6 liquidate its own shares of Wynn Resorts' stock to fund Universal's project in the
7 Philippines or seek other financing. Therefore, Aruze USA relied on the fact that Wynn
8 Resorts was a committed lender to the project at the expense of pursuing other financing
9 options.

10 291. As a further direct and proximate result of the wrongful conduct by Wynn
11 Resorts, Mr. Wynn, and Ms. Sinatra, as alleged herein, Aruze USA was and continues to
12 be damaged in an amount in excess of \$10,000 to be proven at trial.

13 292. Aruze USA brings this claim within the relevant statute of limitations under
14 Nevada law, having discovered facts giving rise to this claim on or about September 30,
15 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not
16 reasonably have discovered earlier the facts giving rise to this claim.

17 293. Pursuant to N.R.S. § 42.005, by reason of the fraudulent, reckless,
18 misleading, malicious, willful, and wanton misconduct of Wynn Resorts, Mr. Wynn, and
19 Ms. Sinatra, Aruze USA is entitled to punitive damages not to exceed three times the
20 amount of compensatory damages awarded.

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

COUNT XIII

Promissory Estoppel in Connection with Financing for Aruze USA

(By Aruze USA Against Wynn Resorts, Steve Wynn, and Kim Sinatra)

295. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set forth in full below.

296. On or about May 16, 2011, Mr. Wynn, in the presence of Ms. Sinatra, gave Mr. Okada an explicit personal assurance that Wynn Resorts would provide a loan or facilitate the lending of money to Aruze USA, which would be backed by shares of Wynn Resorts' stock held by Aruze USA. As alleged above, Mr. Okada agreed to the financing from Wynn Resorts – rather than causing Aruze USA to attempt to liquidate or pledge its shares of Wynn Resorts or seek alternative financing – based on assurances made by Mr. Wynn. Ms. Sinatra agreed to provide draft loan agreements to Aruze USA within 10 days to support the agreement reached between Mr. Wynn and Mr. Okada.

297. Based on the foregoing agreement, on July 13, 2011, Ms. Sinatra stated in an email to Aruze USA's counsel that Wynn Resorts was negotiating with Deutsche Bank on a margin loan transaction on Aruze USA's behalf, with Wynn Resorts acting as a "backstop."

298. Mr. Wynn and Ms. Sinatra, acting in their individual capacities and as agents of Wynn Resorts, made these statements knowingly or without sufficient basis of information because they believed Wynn Resorts was not legally permitted to enter into such a lending transaction pursuant to the restrictions in Section 402 of SOX. As alleged above, Mr. Wynn and Ms. Sinatra engaged in this wrongful conduct with the intent to induce Aruze USA to consent to Elaine Wynn's transfer of shares under the Stockholders Agreement. Mr. Wynn and Ms. Sinatra acted with the purpose of maintaining Mr. Wynn's control over Wynn Resorts after Mr. Wynn's shares in the Company were split with Elaine Wynn following their divorce, and keeping alive the opportunity to later have Wynn Resorts seek to redeem Aruze USA's shares at a discount.

1 299. At the time, Aruze USA was not aware that Wynn Resorts would take the
2 position that it was not legally permitted to enter into such a lending transaction pursuant
3 to the restrictions in Section 402 of SOX. Aruze USA relied on the false and misleading
4 statements and omissions made by Wynn Resorts, Mr. Wynn, and Ms. Sinatra. Aruze
5 USA's reliance on the false and misleading statements and omissions was reasonable and
6 justifiable, especially in light of Mr. Okada's trusting relationship with Mr. Wynn.

7 300. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra knew
8 that Aruze USA intended to rely on this information as a reason for Aruze USA to forego
9 seeking to liquidate its shares or seeking another source of financing backed by its Wynn
10 Resorts shares. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra
11 further knew and intended that, in reliance on these misrepresentations, Aruze USA would
12 relinquish its own opportunity to liquidate its own shares of Wynn Resorts' stock to fund
13 Universal's project in the Philippines or seek other financing. Therefore, Aruze USA
14 relied on the fact that Wynn Resorts was a committed lender to the project at the expense
15 of pursuing other financing options.

16 301. On September 30, 2011, Wynn Resorts' Compliance Committee refused to
17 permit the loan to Aruze USA or to otherwise serve as a "backstop" for a margin loan
18 transaction on Aruze USA's behalf.

19 302. As a further direct and proximate result of the wrongful conduct by Wynn
20 Resorts, Mr. Wynn, and Ms. Sinatra, as alleged herein, Aruze USA was and continues to
21 be damaged in an amount in excess of \$10,000 to be proven at trial.

22 303. Aruze USA brings this claim within the relevant statute of limitations under
23 Nevada law, having discovered facts giving rise to this claim on or about September 30,
24 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not
25 reasonably have discovered earlier the facts giving rise to this claim.

26 304. 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 XIV

Fraud/Fraud in the Inducement of the Contribution Agreement

(By Aruze USA Against Wynn Resorts and Steve Wynn)

305. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set forth in full below.

306. In the alternative, to the extent the Court finds that the redemption provision in the later amended Articles of Incorporation applies to Aruze USA's shares, Aruze USA asserts the claim of fraudulent inducement into entering the Contribution Agreement against Wynn Resorts and Steve Wynn. Aruze USA thus brings this claim in the alternative to Aruze USA's claims that assert the purported redemption by Wynn Resorts is void *ab initio*.

307. On or about April 11, 2002, Aruze USA, Baron Asset Fund, and Mr. Wynn entered into the Stockholders Agreement in recognition of their desire to form Wynn Resorts. On June 3, 2002, Mr. Wynn caused Wynn Resorts to file its Articles of Incorporation with Nevada's Secretary of State without including a redemption provision.

308. On behalf of Aruze USA, on or about June 11, 2002, Mr. Wynn caused Aruze USA to enter into a Contribution Agreement between Aruze USA, Mr. Wynn, and Wynn Resorts. The Contribution Agreement committed Aruze USA's LLC interests in Valvino in exchange for Wynn Resorts common stock.

309. Prior to causing the contribution to occur, on or about September 10, 2002, Mr. Wynn filed amended Articles of Incorporation that included the redemption provision. On information and belief, Mr. Wynn deliberately delayed in causing the contribution in order to allow Mr. Wynn to amend the Articles of Incorporation without affording Aruze USA a shareholder vote as would have been required pursuant to N.R.S. § 78.390. At the time of the amendment, Mr. Wynn was the sole stockholder of Wynn Resorts.

1 310. On or about September 28, 2002, about three months after Aruze USA
2 entered into the Contribution Agreement, and eighteen days after Mr. Wynn amended the
3 Articles of Incorporation, Mr. Wynn caused the contribution of Aruze USA's LLC
4 interests in Valvino to Wynn Resorts in exchange for Wynn Resorts common stock.

5 311. In entering into the Contribution Agreement, Wynn Resorts and Mr. Wynn
6 made materially false and/or misleading representations to Aruze USA regarding Wynn
7 Resorts' stockholder obligations under the Articles of Incorporation. Mr. Wynn and
8 Wynn Resorts misrepresented and/or failed to disclose that Wynn Resorts' Articles of
9 Incorporation would seek to impose substantial financial risk on Aruze USA's shares of
10 Wynn Resorts stock by providing Wynn Resorts' Board – which was controlled by Mr.
11 Wynn – purported discretion to redeem Aruze USA's stock on potentially onerous terms.

12 312. The misrepresentations and concealment of facts alleged herein were
13 material because, had Wynn Resorts and Mr. Wynn provided Aruze USA with truthful
14 and correct information, Aruze USA would not have entered into the Contribution
15 Agreement.

16 313. Wynn Resorts and Mr. Wynn knew the misrepresentations and concealment
17 of facts alleged herein were false, or alternatively, made misrepresentations of facts with
18 reckless disregard for whether those representations were true.

19 314. Wynn Resorts and Mr. Wynn made the misrepresentations and concealed
20 facts as set forth herein with the intent to induce Aruze USA to enter into the Contribution
21 Agreement. Furthermore, Wynn Resorts and Mr. Wynn made the misrepresentations and
22 concealment of facts alleged herein with the intent of gaining their own financial
23 advantage to the disadvantage of Aruze USA.

24 315. Aruze USA relied upon the misrepresentations and concealment of facts
25 made by Wynn Resorts and Mr. Wynn regarding Wynn Resorts' common stock at the
26 time Aruze USA entered into the Contribution Agreement. Aruze USA's reliance on
27 these representations and concealment of facts was reasonable and justifiable, especially
28 in light of Mr. Okada's trusting relationship with Mr. Wynn.

1 316. Aruze USA was not aware of and could not have known about the
2 misrepresentations until September 30, 2011, when Wynn Resorts, for the first time,
3 indicated that it might attempt to apply the redemption restriction to Aruze USA's shares.

4 317. Wynn Resorts and Mr. Wynn aided and abetted each other in making the
5 false statements of facts alleged herein by each failing to exercise reasonable care or
6 competence in obtaining or communicating those statements.

7 318. Aruze USA has suffered and continues to suffer injury because of Wynn
8 Resorts' and Mr. Wynn's misrepresentations and concealment of facts set forth herein.
9 As a direct and proximate result of Wynn Resorts' and Mr. Wynn's wrongful conduct,
10 Aruze USA suffered injury when the redemption provision was purportedly invoked by
11 Wynn Resorts' Board on or about February 18, 2012.

12 319. As a remedy for Wynn Resorts' and Mr. Wynn's fraudulent inducement,
13 Aruze USA seeks imposition of a constructive trust over Aruze USA's Wynn Resorts
14 shares purportedly redeemed by the Board, or, in the alternative, recovery of unjust
15 enrichment/restitution.

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

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

COUNT XV

Negligent Misrepresentation in Connection with the Contribution Agreement

(By Aruze USA Against Wynn Resorts and Steve Wynn)

322. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set forth in full below.

323. In the alternative, to the extent that the redemption provision in the later amended Articles of Incorporation is found to apply to Aruze USA's shares, Aruze USA asserts the claim of negligent misrepresentation in connection with the Contribution Agreement against Wynn Resorts and Steve Wynn. Aruze USA thus brings this claim in the alternative to Aruze USA's claims that assert the purported redemption by Wynn Resorts is void *ab initio*.

324. On or about April 11, 2002, Aruze USA, Baron Asset Fund, and Mr. Wynn entered into the Stockholders Agreement in recognition of their desire to form Wynn Resorts. On June 3, 2002, Mr. Wynn caused Wynn Resorts to file its Articles of Incorporation with Nevada's Secretary of State without including a redemption provision.

325. On behalf of Aruze USA, on or about June 11, 2002, Mr. Wynn caused Aruze USA to enter into a Contribution Agreement between Aruze USA, Mr. Wynn, and Wynn Resorts. The Contribution Agreement committed Aruze USA's LLC interests in Valvino in exchange for Wynn Resorts common stock.

326. Prior to causing the contribution to occur, on or about September 10, 2002, Mr. Wynn filed amended Articles of Incorporation that included the redemption provision. On information and belief, Mr. Wynn deliberately delayed in causing the contribution in order to allow Mr. Wynn to amend the Articles of Incorporation without affording Aruze USA a shareholder vote as would have been required pursuant to N.R.S. § 78.390. At the time of the amendment, Mr. Wynn was the sole stockholder of Wynn Resorts.

327. On or about September 28, 2002, about three months after Aruze USA entered into the Contribution Agreement, and eighteen days after Mr. Wynn amended the

1 Articles of Incorporation, Mr. Wynn caused the contribution of Aruze USA's LLC
2 interests in Valvino to Wynn Resorts in exchange for Wynn Resorts common stock.

3 328. In entering into the Contribution Agreement, Wynn Resorts and Mr. Wynn
4 made materially false representations and/or omissions to Aruze USA regarding Wynn
5 Resorts' stockholder obligations under Articles of Incorporation. Mr. Wynn and Wynn
6 Resorts misrepresented and/or failed to disclose that Wynn Resorts' Articles of
7 Incorporation would seek to impose substantial financial risk to Aruze USA by providing
8 Wynn Resorts' Board (which was controlled by Mr. Wynn) purported discretion to
9 redeem Aruze USA's stock on potentially onerous terms.

10 329. Aruze USA was not aware of and could not have known about the
11 misrepresentations until September 30, 2011, when Wynn Resorts, for the first time,
12 indicated that it might attempt to apply the redemption restriction to Aruze USA's shares.

13 330. The false statements and/or omissions of facts alleged herein were material
14 because, had Wynn Resorts and Mr. Wynn provided Aruze USA with truthful and correct
15 information, Aruze USA would not have entered into the Contribution Agreement.

16 331. Wynn Resorts and Mr. Wynn failed to exercise reasonable care or
17 competence in obtaining or communicating the false statements of fact alleged herein.

18 332. Aruze USA relied on the false and misleading statements and omissions
19 made by Wynn Resorts and Mr. Wynn regarding Wynn Resorts' common stock at the
20 time Aruze USA entered into the Contribution Agreement. Aruze USA's reliance on the
21 false and misleading statements and omissions was reasonable and justifiable, especially
22 in light of Mr. Okada's trusting relationship with Mr. Wynn.

23 333. On information and belief, Wynn Resorts and Mr. Wynn knew that Aruze
24 USA intended to rely on this information as a reason for Aruze USA to enter into the
25 Contribution Agreement.

26 334. Aruze USA has suffered and continues to suffer injury because of Wynn
27 Resorts' and Mr. Wynn's false and misleading statements and omissions alleged herein.
28 As a direct and proximate result of Wynn Resorts' and Mr. Wynn's wrongful conduct,

1 Aruze USA suffered injury when the redemption provision was purportedly invoked by
2 Wynn Resorts' Board on or about February 18, 2012.

3 335. As a remedy for Wynn Resorts' and Mr. Wynn's negligent
4 misrepresentations, Aruze USA seeks imposition of a constructive trust over Aruze USA's
5 Wynn Resorts shares purportedly redeemed by the Board, or, in the alternative, unjust
6 enrichment/restitution.

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

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

15
16 **COUNT XVI**

17 **Breach of Contract in Connection with the Stockholders Agreement**

18 **(By Aruze USA Against Steve Wynn)**

19 338. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set
20 forth in full below.

21 339. Mr. Wynn, Elaine Wynn, and Aruze USA are parties to the Stockholders
22 Agreement.

23 340. Section 2(a) of the Stockholders Agreement provides that Mr. Wynn must
24 endorse and vote for Aruze USA's proposed slate of directors so long as the resulting
25 Board is composed of a majority of directors selected by Mr. Wynn.

26 341. Aruze USA has designated three nominees for election to the Board. If the
27 stockholders of the Company elect the Aruze USA director candidates, the resulting
28

1 Board shall be comprised of at least nine of the directors nominated by Mr. Wynn, a clear
2 majority.

3 342. Mr. Wynn has failed and refused to endorse Aruze USA's slate of directors
4 in violation of his obligations under the Stockholders Agreement and failed and refused to
5 provide assurances of his intent to vote his and Elaine Wynn's stock in favor of those
6 nominees.

7 343. Mr. Wynn has materially breached the Stockholders Agreement without
8 justification and has frustrated the essential purpose of the Stockholders Agreement.

9 344. The Stockholders Agreement provides that each of the parties to it
10 recognizes and acknowledges that a breach by any party of any covenants or agreements
11 contained in the Agreement will cause the other parties to sustain damages for which they
12 would not have an adequate remedy at law for money damages, and therefore each of the
13 parties agrees that in the event of any such breach the parties shall be entitled to
14 appropriate equitable relief.

15 345. On account of Mr. Wynn's material breach of the Stockholders Agreement,
16 Aruze USA is entitled to be excused and completely discharged from any further
17 performance of its obligations contained therein.

18 346. Further, the breaches by Mr. Wynn have frustrated the entire purpose of the
19 Stockholders Agreement, and have instead served to further entrench Mr. Wynn's control
20 over the Company to the detriment of the other parties to the Agreement. Thus, the
21 appropriate equitable relief for Mr. Wynn's breach is rescission of the Stockholders
22 Agreement.

23 347. Aruze USA brings this claim within the relevant statute of limitations under
24 Nevada law, having discovered facts giving rise to this claim, including injury arising
25 from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or
26 about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA did
27 not and could not reasonably have discovered earlier the facts giving rise to this claim.
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348. It has been necessary for Aruze USA to retain the services of attorneys to prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said services performed and to be performed in a sum to be determined.

COUNT XVII

Breach of Covenant of Good Faith and Fair Dealing in Stockholders Agreement

(By Aruze USA Against Steve Wynn)

349. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set forth in full below.

350. In every contract, there exists an implied covenant of good faith and fair dealing.

351. Aruze USA and Mr. Wynn are parties to the Stockholders Agreement, between Mr. Wynn, Elaine Wynn, and Aruze USA.

352. Aruze USA has properly sought to exercise its rights under the Stockholders Agreement in seeking to designate directors for endorsement by Mr. Wynn while complying with the contractual condition that the Board will consist of a majority of directors nominated by Mr. Wynn.

353. Mr. Wynn has materially breached the Stockholders Agreement by failing to endorse Aruze USA's slate of nominees for directors to the Wynn Resorts Board and by failing to confirm his intent to vote his and Elaine Wynn's stock in favor of those nominees, thereby frustrating the essential purpose of the Stockholders Agreement.

354. Mr. Wynn has breached the reasonable and justifiable expectations of Aruze USA with respect to Aruze USA's ability to successfully designate director candidates, an essential purpose of the Stockholders Agreement.

355. Mr. Wynn also has breached the reasonable and justifiable expectations of Aruze USA by unreasonably withholding his consent for Aruze USA to liquidate stock, and by falsely promising financing in order to persuade Aruze USA to delay its demands for liquidity.

358. 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.

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1 stock. Aruze USA brings this claim in the alternative to Aruze USA's claims that assert
2 the purported redemption by Wynn Resorts is void *ab initio*.

3 362. Since at least the beginning of 2011, Wynn Resorts and Mr. Wynn have
4 committed a series of manipulative or deceptive acts in furtherance of a device, scheme,
5 and/or artifice to defraud Aruze USA, which they knew or deliberately disregarded would
6 perpetrate a fraud.

7 363. In particular, as alleged in detail above, Wynn Resorts and Mr. Wynn caused
8 an illegal redemption (*i.e.*, a forced "sale" under the securities laws) of Aruze USA's more
9 than \$2.7 billion interest in Wynn Resorts by:

- 10 • Undertaking a series of acts in 2011 to prevent Aruze USA from pledging
11 its securities, including acts by Mr. Wynn and Ms. Sinatra dissuading Aruze
12 USA from pledging its shares of Wynn Resorts and holding out a false
13 promise of financing by Wynn Resorts, while knowing that Wynn Resorts
14 was secretly investigating Mr. Okada to create a pretext for redemption;
- 15 • Causing a redemption based on the Freeh Sporkin report, which among
16 other things:
 - 17 • was incomplete;
 - 18 • contained false and misleading statements;
 - 19 • failed to address or include exculpatory facts and evidence;
 - 20 • relied upon an inaccurate and incomplete understanding the FCPA;
 - 21 and,
 - 22 • relied upon an inaccurate and incomplete understanding of Philippine
23 law and related facts.
- 24 • Causing a redemption without evidence of any bona fide jeopardy to any
25 Wynn Resorts gaming license;
- 26 • Causing a redemption in the absence of a finding by the Nevada Gaming
27 Commission, or any other gaming regulator, that Aruze USA or its affiliates
28 is unsuitable;

- Causing Aruze USA not to apply for injunctive relief prior to the Board's consideration of redemption, by falsely representing through Mr. Freeh that Aruze USA and Mr. Okada would have an opportunity to review the Freeh Sporkin report and present responsive facts and evidence;
- Excluding Mr. Okada and his counsel from Wynn Resorts' Board meetings discussing redemption;
- Denying Aruze USA access to investigative materials, by falsely invoking attorney-client privilege;
- Falsely invoking "confidentiality" in an attempt to get Aruze USA to sign away legal rights in exchange for reviewing the Freeh Sporkin report;
- Setting a redemption price for Aruze USA's shares of Wynn Resorts' stock that was not the product of independent assessment;
- Setting a redemption price that does not reflect, among other things, fair value and that failed to consider:
 - the lack of applicability of the Stockholders Agreement to a redemption;
 - developments in Cotai and other positive inside information; and,
 - a premium for the volume of stock transacted.

364. The deliberate, intentional, and/or reckless aim of the above scheme by Wynn Resorts and Mr. Wynn was to force the illegal sale of Aruze USA's shares of Wynn Resorts' stock to Wynn Resorts at a price well below the fair value of the shares, consolidating Mr. Wynn's dominance over Wynn Resorts, and eliminating Aruze USA as a troublesome shareholder. As alleged in detail above, Wynn Resorts and Mr. Wynn's acts were carefully orchestrated to secure Aruze USA's continued acceptance of the Stockholders Agreement and to dissuade legal action to enjoin enforcement of the Stockholders Agreement or otherwise challenge the restraint on alienation purportedly contained therein. At the same time as Wynn Resorts and Mr. Wynn were promising Aruze USA financing secured by Aruze USA's stock in Wynn Resorts, Wynn Resorts and

1 Mr. Wynn were secretly conspiring to force a sale of Aruze USA's interest in Wynn
2 Resorts based on false, misleading, and incomplete allegations. This scheme was
3 deliberately calculated to perpetuate and consolidate Mr. Wynn's control over Wynn
4 Resorts and to enable the forced sale of Aruze USA's shares of Wynn Resorts' stock at
5 this steep discount. Wynn Resorts and Mr. Wynn took steps to conceal all aspects of the
6 investigation from Aruze USA and its representatives in order to prevent scrutiny or
7 rebuttal and to prevent legal action that would interrupt the scheme to take Aruze USA's
8 stock at a vast discount. In order to bring the scheme to fruition, Wynn Resorts and Mr.
9 Wynn fashioned a rushed and wholly inadequate determination that Aruze USA, Mr.
10 Okada, and Universal are "unsuitable." This determination necessarily depended on false
11 information, unreliable innuendo, an incorrect understanding of the FCPA and the laws of
12 the Philippines, and a flawed process that failed to (1) investigate or consider obvious
13 exculpatory evidence; (2) provide any reasonable opportunity for Aruze USA, Mr. Okada,
14 and Universal to respond to the allegations; or (3) consider the unprecedented nature of
15 the determination and the utter lack of any bona fide jeopardy to Wynn Resorts' gaming
16 licenses.

17 365. The determinations of unsuitability and subsequent redemption were aided
18 by actions deliberately calculated to prevent an application for injunctive relief or other
19 steps by Aruze USA to intervene and prevent a redemption, including but not limited to:
20 (1) false promises that Aruze USA, Mr. Okada, and Universal would have an opportunity
21 to respond, (2) false assertions of privilege, (3) exclusion of English speaking persons and
22 counsel from Board proceedings (so that Aruze USA could understand the proceedings
23 and/or respond appropriately or effectively), and (4) false assertions of confidentiality and
24 imposing onerous waivers of legal rights in order to see documents that were not
25 confidential because they were leaked to the *Wall Street Journal* and filed in Court at or
26 about the time Mr. Wynn and Wynn Resorts asserted they were confidential. Finally,
27 Wynn Resorts and Mr. Wynn conspired to ensure that the redemption price was set well
28 below fair value, by relying on one biased appraisal that relied centrally on an incorrect

1 premise of the enforceability of the restraint of sale in the Stockholders Agreement and
2 failed to account for inside information available to Mr. Wynn and Wynn Resorts.

3 366. In the absence of the wrongful conduct of Wynn Resorts and Mr. Wynn, no
4 redemption would have occurred, let alone a redemption of Aruze USA's shares in Wynn
5 Resorts at a price well below fair value or market value.

6 367. Under the "forced seller" or "fundamental change" doctrine, reliance is not
7 an element of a scheme liability claim alleging an involuntary sale, such as the purported
8 redemption in this case. The forced seller doctrine provides a cause of action under the
9 federal securities laws, because Aruze USA was forced by Wynn Resorts and Mr. Wynn
10 to convert its stock for money or other consideration, and/or because Aruze USA was
11 forced by Wynn Resorts and Mr. Wynn to fundamentally change the nature of its
12 investments as part of the fraudulent scheme. No volitional act was necessary by
13 Aruze USA to complete the transaction – and, in fact, Aruze USA did not want the sale to
14 occur.

15 368. As a direct consequence of the wrongful conduct of Wynn Resorts and
16 Mr. Wynn, Aruze USA suffered injury that resulted in the sale of its stock for more than
17 \$1 billion below fair value.

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

COUNT XIX

Claim for Violations of Section 10(b) of the Securities Exchange Act of 1934

and SEC Rule 10b-5(c) Promulgated Thereunder

(By Aruze USA Against Wynn Resorts and Steve Wynn)

370. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set forth in full below.

371. Wynn Resorts has claimed publicly and Wynn Resorts has alleged in its Complaint in this action that it has redeemed Aruze USA's shares of Wynn Resorts' stock. Aruze USA brings this claim in the alternative to Aruze USA's claims that assert the purported redemption by Wynn Resorts is improper, illegal, and void *ab initio*.

372. Since the beginning of 2011, Wynn Resorts and Mr. Wynn have engaged in a series of acts, practices, and/or courses of business, which Wynn Resorts and Mr. Wynn knew or deliberately disregarded would operate as a fraud and/or deceit upon Aruze USA, in connection with the redemption of Aruze's shares in Wynn Resorts.

373. In particular, as alleged in detail above, Wynn Resorts and Mr. Wynn caused an illegal redemption (*i.e.*, a forced "sale" under the securities laws) of Aruze USA's more than \$2.7 billion interest in Wynn Resorts by:

- Undertaking a series of acts in 2011 to prevent Aruze USA from pledging its securities, including acts by Mr. Wynn and Ms. Sinatra dissuading Aruze USA from pledging its shares of Wynn Resorts and holding out a false promise of financing by Wynn Resorts, while knowing that Wynn Resorts was secretly investigating Mr. Okada to create a pretext for redemption;
- Causing a redemption based on the Freeh Sporkin report, which, among other things:
 - was incomplete;
 - contained false and misleading statements;
 - failed to address or include exculpatory facts and evidence;

- relied upon an inaccurate and incomplete understanding of the FCPA;
and,
- relied upon an inaccurate and incomplete understanding of Philippine law and related facts.
- Causing a redemption without evidence of any bona fide jeopardy to any Wynn Resorts gaming license;
- Causing a redemption in the absence of a finding by the Nevada Gaming Commission, or any other gaming regulator, that Aruze USA or its affiliates is unsuitable;
- Causing Aruze USA not to apply for injunctive relief prior to the Board's consideration of redemption, by falsely representing through Mr. Freeh that Aruze USA and Mr. Okada would have an opportunity to review the Freeh Sporkin report and present responsive facts and evidence;
- Excluding Mr. Okada and his counsel from Wynn Resorts' Board meetings discussing redemption;
- Denying Aruze USA access to investigative materials, by falsely invoking attorney-client privilege;
- Falsely invoking "confidentiality" in an attempt to get Aruze USA to sign away legal rights in exchange for reviewing the Freeh Sporkin report;
- Setting a redemption price for Aruze USA's shares of Wynn Resorts' stock that was not the product of independent assessment;
- Setting a redemption price that does not reflect, among other things, fair value and that failed to consider:
 - the lack of applicability of the Stockholders Agreement to a redemption;
 - developments in Cotai and other positive inside information; and,
 - a premium for the volume of stock transacted.

1 374. The deliberate, intentional, and/or reckless aim of the above scheme by
2 Wynn Resorts and Mr. Wynn was to force the illegal sale of Aruze USA's shares of Wynn
3 Resorts' stock to Wynn Resorts at a price well below the fair value of the shares. As
4 alleged in detail above, Wynn Resorts and Mr. Wynn's acts were carefully orchestrated to
5 secure Aruze USA's continued acceptance of the Stockholders Agreement and to dissuade
6 legal action to enjoin enforcement of the Stockholders Agreement or otherwise challenge
7 the restraint on alienation purportedly contained therein. At the same time as Wynn
8 Resorts and Mr. Wynn were promising Aruze USA financing secured by Aruze USA's
9 stock in Wynn Resorts, Wynn Resorts and Mr. Wynn were secretly conspiring to force a
10 sale of Aruze USA's interest in Wynn Resorts based on false, misleading, and incomplete
11 allegations. This scheme was deliberately calculated to perpetuate and consolidate Mr.
12 Wynn's control over Wynn Resorts and to enable the forced sale of Aruze USA's shares
13 of Wynn Resorts' stock at this steep discount. Wynn Resorts and Mr. Wynn took steps to
14 conceal all aspects of the investigation from Aruze USA and its representatives in order to
15 prevent scrutiny or rebuttal and to prevent legal action that would interrupt the scheme to
16 take Aruze USA's stock at a vast discount. In order to bring the scheme to fruition, Wynn
17 Resorts and Mr. Wynn fashioned a rushed and wholly inadequate determination that
18 Aruze USA, Mr. Okada, and Universal are "unsuitable." This determination necessarily
19 depended on false information, unreliable innuendo, an incorrect understanding of the
20 FCPA and the laws of the Philippines, and a flawed process that failed to (1) investigate
21 or consider obvious exculpatory evidence; (2) provide any reasonable opportunity for
22 Aruze USA, Mr. Okada, and Universal to respond to the allegations; or (3) consider the
23 unprecedented nature of the determination and the utter lack of any bona fide jeopardy to
24 Wynn Resorts' gaming licenses.

25 375. The determinations of unsuitability and subsequent redemption were aided
26 by actions deliberately calculated to prevent an application for injunctive relief or other
27 steps by Aruze USA to intervene and prevent a redemption, including but not limited to:
28 (1) false promises that Aruze USA, Mr. Okada, and Universal would have an opportunity

1 to respond, (2) false assertions of privilege, (3) exclusion of English speaking persons and
2 counsel from Board proceedings (so that Aruze USA could understand the proceedings
3 and/or respond appropriately or effectively), and (4) false assertions of confidentiality and
4 imposing onerous waivers of legal rights in order to see documents that were not
5 confidential because they were leaked to the *Wall Street Journal* and filed in Court at or
6 about the time Mr. Wynn and Wynn Resorts asserted they were confidential. Finally,
7 Wynn Resorts and Mr. Wynn conspired to ensure that the redemption price was set well
8 below fair value, by relying on one biased appraisal that relied centrally on an incorrect
9 premise of the enforceability of the restraint of sale in the Stockholders Agreement and
10 failed to account for inside information available to Mr. Wynn and Wynn Resorts.

11 376. In the absence of the wrongful conduct of Wynn Resorts and Mr. Wynn, no
12 redemption would have occurred, let alone a redemption of Aruze USA's shares in Wynn
13 Resorts at a price well below fair value or market value.

14 377. Under the "forced seller" or "fundamental change" doctrine, reliance is not
15 an element of a scheme liability claim alleging an involuntary sale, such as the purported
16 redemption in this case. The forced seller doctrine provides a cause of action under the
17 federal securities laws, because Aruze USA was forced by Wynn Resorts and Mr. Wynn
18 to convert its stock for money or other consideration, and/or because Aruze USA was
19 forced by Wynn Resorts and Mr. Wynn to fundamentally change the nature of its
20 investments as part of the fraudulent scheme. No volitional act was necessary by
21 Aruze USA to complete the transaction – and, in fact, Aruze USA did not want the sale to
22 occur.

23 378. As a direct consequence of the wrongful conduct of Wynn Resorts and
24 Mr. Wynn, Aruze USA suffered injury that resulted in the sale of its stock for more than
25 \$1 billion below fair value.

26 379. Aruze USA brings this claim within the relevant statute of limitations under
27 federal law, having discovered facts giving rise to this claim, including injury arising from
28 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 XX

**Claim for Violations of Section 10(b) of the Securities Exchange Act of 1934
and SEC Rule 10b-5(b) Promulgated Thereunder**

(By Aruze USA Against Wynn Resorts and Steve Wynn)

380. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set forth in full below.

381. Wynn Resorts has claimed publicly and Wynn Resorts has alleged in its Complaint in this action that it has redeemed Aruze USA's shares of Wynn Resorts' stock. Aruze USA brings this claim in the alternative to Aruze USA's claims that assert the purported redemption by Wynn Resorts is improper, illegal, and void *ab initio*.

382. Furthermore, this claim under SEC Rule 10b-5(b) is made in the alternative to the prior claims under Rule 10b-5(a) and Rule 10b-5(c). While Aruze USA believes the allegations are more properly brought under Rule 10b-5(a) and Rule 10b-5(c) because the claims encompass conduct beyond mere misrepresentations and/or omissions, Aruze USA makes this alternate claim under Rule 10b-5(b) to the extent a Court might find certain allegations of wrongdoing are misstatements or omissions, and not: (i) devices, schemes, or artifices under Rule 10b-5(a); (ii) acts, practices, of courses of business under Rule 10b-5(c); or (iii) fraudulent statements that sound under Rule 10b-5(a) or (c) because they were intended to deceive third parties in furtherance of a scheme to defraud Aruze USA.

383. Since the beginning of 2011, Wynn Resorts and Mr. Wynn have made a series of untrue statements of material fact and/or have omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

1 384. In particular, as alleged in detail above, Wynn Resorts and Mr. Wynn caused
 2 an illegal redemption (*i.e.*, a forced “sale” under the securities laws) of Aruze USA’s more
 3 than \$2.7 billion interest in Wynn Resorts by:

- 4 • Making false statements by Mr. Wynn and Ms. Sinatra to dissuade Aruze
 5 USA from pledging its shares of Wynn Resorts and holding out a false
 6 promise of financing by Wynn Resorts, while knowing that Wynn Resorts
 7 was secretly investigating Mr. Okada to create a pretext for redemption;
- 8 • Adopting the Freeh Sporkin report, which, as alleged in detail above,
 9 contained numerous false and misleading statements, and omitted numerous
 10 material facts necessary to make the statements, in light of the
 11 circumstances under which they were made, not misleading and using the
 12 Freeh Sporkin report to cause a sale of securities on false premises;
- 13 • Making untrue statements that Mr. Okada and Aruze USA would have an
 14 opportunity to review the Freeh Sporkin report and present responsive facts
 15 and evidence, with the intent of inducing Aruze USA not to apply for
 16 injunctive relief prior to the Board’s consideration of redemption;
- 17 • Making false statements invoking attorney-client privilege to deny
 18 Aruze USA access to investigative materials and impede Aruze USA’s
 19 ability to present arguments against and/or enjoin the redemption;
- 20 • Making false statements claiming that the Freeh Sporkin report was
 21 “confidential” in an attempt to (i) delay Aruze USA’s access to the report
 22 and thereby impede Aruze USA’s ability to argue against the Board’s action
 23 and/or seek injunctive relief prior to redemption, and (ii) deceive Aruze
 24 USA into signing away legal rights in exchange for reviewing the report;
- 25 • Making false statements regarding the “fair value” or market value of Aruze
 26 USA’s shares in Wynn Resorts that failed to account for:
 - 27 • the lack of applicability of the Stockholders Agreement to a
 28 redemption;

- 1 • developments in Cotai and other positive inside information; and,
- 2 • a premium for the volume of stock transacted;
- 3 • Making false statements that Aruze USA, Universal Entertainment, and Mr.
- 4 Okada are unsuitable; and
- 5 • Making false statements that there was any bona fide jeopardy to Wynn
- 6 Resorts gaming license.

7 385. The deliberate, intentional, and/or reckless aim of the above
8 misrepresentations and omissions by Mr. Wynn and Wynn Resorts was to force the illegal
9 sale of Aruze USA's shares of Wynn Resorts' stock to Wynn Resorts at a price well
10 below the fair value of the shares. As alleged in detail above, Wynn Resorts and Mr.
11 Wynn's misrepresentations and omissions were carefully orchestrated to secure Aruze
12 USA's continued acceptance of the Stockholders Agreement and to dissuade legal action
13 to enjoin enforcement of the Stockholders Agreement or otherwise challenge the restraint
14 on alienation purportedly contained therein. At the same time as Wynn Resorts and Mr.
15 Wynn were holding out a false promise of financing to Aruze USA secured by Aruze
16 USA's stock in Wynn Resorts, Wynn Resorts and Mr. Wynn were secretly conspiring to
17 force a sale of Aruze USA's interest in Wynn Resorts based on false, misleading, and
18 incomplete allegations. Mr. Wynn and Wynn Resorts' misrepresentations and omissions
19 were deliberately calculated to perpetuate and consolidate Mr. Wynn's control over Wynn
20 Resorts and to enable the forced sale of Aruze USA's shares of Wynn Resorts' stock at a
21 vast discount.

22 386. In order to bring this to fruition, Wynn Resorts and Mr. Wynn fashioned a
23 rushed and wholly inadequate determination that Aruze USA, Mr. Okada, and Universal
24 were "unsuitable." This determination necessarily depended on misrepresentations and
25 omissions regarding the facts and law. The misrepresentations concern facts resulting
26 from an incomplete investigation that omitted to include obvious exculpatory evidence
27 and false statements regarding purported jeopardy to Wynn Resorts' gaming licenses.
28 The determinations of unsuitability and subsequent redemption were enabled by

1 misrepresentations and omissions, including but not limited to false promises that Aruze
2 USA, Mr. Okada, and Universal would have an opportunity to respond, false assertions of
3 privilege, and false assertions of confidentiality. Finally, Wynn Resorts and Mr. Wynn
4 misrepresented the fair value of the securities by relying on one biased appraisal that
5 failed to account for inside information available to Mr. Wynn and Wynn Resorts and
6 other relevant factors, including the lack of enforceability of the Stockholders Agreement.

7 387. In the absence of the wrongful conduct of Wynn Resorts and Mr. Wynn, no
8 redemption would have occurred, let alone a redemption of Aruze USA's shares in Wynn
9 Resorts at a price well below fair value or market value.

10 388. Under the "forced seller" or "fundamental change" doctrine, reliance is not
11 an element of a securities fraud claim alleging an involuntary sale, such as the purported
12 redemption in this case. The forced seller doctrine provides a cause of action under the
13 federal securities laws, because Aruze USA was forced by Wynn Resorts and Mr. Wynn
14 to convert its stock for money or other consideration, and/or because Aruze USA was
15 forced by Wynn Resorts and Mr. Wynn to fundamentally change the nature of its
16 investments as part of the fraudulent scheme. No volitional act was necessary by
17 Aruze USA to complete the transaction – and, in fact, Aruze USA did not want the sale to
18 occur.

19 389. As a direct consequence of the wrongful conduct of Wynn Resorts and
20 Mr. Wynn, Aruze USA suffered losses that resulted in the sale of its stock for more than
21 \$1 billion below fair value.

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

COUNT XXI

Claim for Violations of Section 20(a) of the Securities Exchange Act of 1934

and SEC Rule 10b-5 Promulgated Thereunder

(By Aruze USA Against Steve Wynn)

391. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set forth in full below.

392. Mr. Wynn acted as a controlling person of Wynn Resorts within the meaning of Section 20(a) of the Exchange Act, as alleged herein. By reason of his positions as an officer and director of Wynn Resorts, and his ownership of Wynn Resorts' stock, Mr. Wynn had the power and authority to cause Wynn Resorts to engage in the wrongful conduct complained of herein. Mr. Wynn controlled Wynn Resorts and all of its other employees.

393. By reason of such conduct, Mr. Wynn is liable pursuant to Section 20(a) of the Exchange Act.

394. Aruze USA brings this claim within the relevant statute of limitations under federal 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 XXII

Unconscionability/Reformation of Promissory Note

(By Aruze USA Against Wynn Resorts)

395. Aruze USA reasserts and realleges Paragraphs 4 through 184 above as if set forth in full below.

396. In the alternative, to the extent that the redemption provision in the later amended Articles of Incorporation is found to apply to Aruze USA's shares and the

1 redemption was lawful, Aruze USA asserts that the promissory note is unconscionable
2 and therefore subject to reformation.

3 397. On January 27, 2012, Wynn Resorts declared in a publicly filed Opposition
4 to Mr. Okada's Petition for Writ of Mandamus that Aruze USA's nearly 20% stake in
5 Wynn Resorts was "valued at approximately \$2.9 billion."

6 398. Just 22 days later, on February 18, 2012, Wynn Resorts acted to forcibly
7 acquire Aruze USA's stake in Wynn Resorts in exchange for a \$1.936 billion promissory
8 note, paying a mere 2% interest per annum over a ten-year term.

9 399. The promissory note is unconscionably vague, ambiguous, and oppressive.

10 400. Aruze USA was never permitted the opportunity to negotiate the amount of
11 the promissory note given the market value of its shares, nor was Aruze USA permitted
12 the opportunity to negotiate the terms of the promissory note, including, but not limited to,
13 the interest rate, the restrictions on transfer, and the subordination provisions.

14 401. Wynn Resorts received a grossly one-sided windfall by forcibly redeeming
15 \$2.9 billion of securities at a deep discount, transforming equity into a 2 percent per
16 annum debt instrument that Aruze USA may not transfer, retaining the ability to issue
17 additional debt at any time and provide any new lender priority rights above Aruze USA's
18 note, and removing voting and other rights from Aruze USA.

19 402. Aruze USA, therefore, seeks reformation of the promissory note, including
20 but not limited to its principal, duration, interest rate, restrictions on transfer, restrictions
21 on subordination, and inclusion of other customary and reasonable terms, conditions, and
22 covenants.

PRAYER FOR RELIEF

WHEREFORE, Aruze USA and Universal each expressly reserves its and their right to amend these Counterclaims before or at the time of the trial of this action to include all items of injury and damages not yet ascertained. Aruze USA and Universal pray that the Honorable Court enter judgment in favor of each of them, and against Wynn Resorts, Mr. Wynn, Ms. Sinatra, and the other Wynn Directors, and each of them, as follows:

- a. For general damages in an amount in excess of \$100,000;
- b. For consequential damages;
- c. For treble and statutory damages;
- d. For punitive damages three times the amount of compensatory damages awarded;
- e. For disgorgement of profits;
- f. For constructive trust and unjust enrichment;
- g. For preliminary and/or permanent injunctive relief;
- h. For declaratory relief;
- i. For reformation of the promissory note;
- j. For costs and expenses of this action, prejudgment and post-judgment interest, and reasonable attorneys' fees incurred herein; and,
- k. Any and all such other and further equitable and legal relief as this Court deems just and proper.

JURY DEMAND

Defendants and Counterclaimants hereby demand a trial by jury on all claims and issues so triable.

1 DATED: June 14, 2012

2 Respectfully Submitted,

3 PAUL HASTINGS LLP

4 By: /s/ Howard M. Privette
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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*

CERTIFICATE OF SERVICE

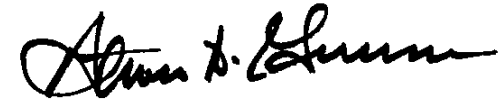
Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am an employee of Paul Hastings LLP and that on this 14th day of June, 2012, I caused the document entitled:

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

to be served to parties in this action via the Court's CM/ECF System.

/s/ Howard M. Privette

Howard M. Privette



CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

KAZUO OKADA, an individual,

Petitioner,

v.

WYNN RESORTS, LIMITED, a Nevada
corporation,

Respondent.

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

**WYNN RESORTS, LIMITED'S
EXPEDITED MOTION FOR LEAVE
TO DEPOSE KAZUO OKADA; ORDER
SHORTENING TIME**

Date of Hearing:

Time of Hearing:

Respondent Wynn Resorts, Limited ("Wynn Resorts") hereby moves for leave to immediately depose Petitioner Kazuo Okada ("Okada"). Okada has made numerous unsupported factual representations to advance his latest set of demands to review Wynn Resorts' financial

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1 books and records from 2000 to 2002. He accuses Stephen A. Wynn ("Mr. Wynn") of
2 wrongdoing and improprieties in the early years of Wynn Resorts' existence but provides no basis
3 for his defamatory statements. Not so unexpectedly, Okada's accusations mirror those that he has
4 been accused of committing on his own company's road to obtain a gaming license in the
5 Philippines. To obtain the extraordinary writ relief to which he claims entitlement, Okada is
6 required to submit a verified petition and swear to the facts that provide the alleged basis for
7 relief. While Okada has verified his original and now an amended writ petition, both fail to offer
8 any information that could explain: (1) why his request for old 2000 to 2002 records is
9 reasonable; (2) why he believes Mr. Wynn did anything wrong; (3) why he never thought to make
10 these accusations in the past when he (and all other directors) received, debated, and discussed (as
11 they were taking place) Wynn Resorts' efforts to obtain a gaming license in Macau; (4) how his
12 requests will advance the interests of Wynn Resorts; and, most importantly, (5) what besides his
13 own personal venom for Mr. Wynn and his personal agenda in his lawsuit against Wynn Resorts
14 has motivated his request.

15 Wynn Resorts is entitled to sworn testimony on these most important points. Indeed, in
16 his recently submitted Supplemental Submission in support of his amended petition, Okada seeks
17 to shift the burden so that Wynn Resorts must prove Okada's improper purpose behind the
18 requests. Wynn Resorts has offered more than ample evidence of Okada's improper purpose.
19 Okada's testimony will put to rest any and all doubts about the impropriety of his requests. Thus,
20 Wynn Resorts seeks immediate permission from this Court to conduct Okada's deposition, in this
21 jurisdiction, to bring forth in a fair fashion the actual factual circumstances behind Okada's
22 requests.

1 This Motion is brought pursuant to EDCR 2.26, and is based upon the accompanying
2 Memorandum of Points and Authorities, the attached Declaration of James J. Pisanelli, Esq., and
3 any additional argument this Court chooses to consider at the hearing on this matter.

4 DATED this 18th day of June, 2012.

5 PISANELLI BICE PLLC

6
7 By: 

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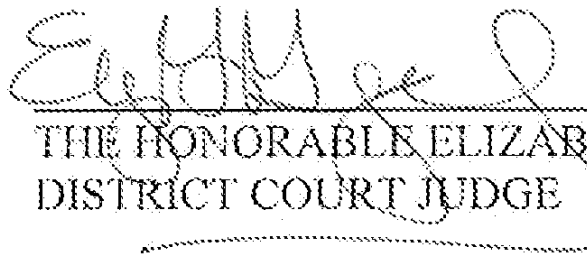
27 Attorneys for Respondent Wynn Resorts, Limited
28

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ORDER SHORTENING TIME

Good cause appearing, it is hereby ordered that the foregoing WYNN RESORTS, LIMITED'S EXPEDITED MOTION FOR LEAVE TO DEPOSE KAZUO OKADA; ORDER SHORTENING TIME shall be heard on shortened time on the 28th day of June, 2012, at the hour of 9:00 o'clock a.m. in Department XI of the Eighth Judicial District Court.

DATED this 18th day of June, 2012.


THE HONORABLE ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

Respectfully submitted:

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MEMORANDUM OF POINTS AND AUTHORITIES

On May 17, 2012, this Court directed Petitioner Okada to submit a supplemental brief in support of his Amended Petition for a Writ of Mandate explaining "the relevance of each of the requested categories of documents to his responsibilities as a director." (Ex. B, Hr'g Tr. 27:24-28:2, May 17, 2012.) Following receipt of Okada's Supplemental Submission, this Court ordered Respondent Wynn Resorts, Limited ("Wynn Resorts") to submit a response discussing the "reasonableness" of Okada's three (3) requests in his Amended Petition. (*Id.* at 28:20-22.)

Okada did submit his supplemental brief, and conclusorily stated that his three "amended" document requests for books and records are designed to allegedly "confirm that Wynn Resorts is complying with the applicable law and the proper operation, maintenance, and protection of corporate assets – categories that are clearly relevant to his responsibilities as a director." (Okada's Supp. Submission, 7:18-20.) Okada's brief offered virtually no greater detail or substance; just simple conclusions. The underlying theme of Okada's three new, but still broad, document requests is his accusation, unsupported by any factual basis, that "Okada [for some inexplicable reason] believe[s] that [Wynn Resorts'] money was actually used by Mr. Wynn himself, so that a company controlled entirely by Mr. Wynn would obtain a gaming license in Macau." (*Id.* at 8:15-17.) Replete throughout his Supplemental Submission is an obvious disdain for and antagonism against Mr. Wynn. But, still missing from Okada's story are any facts that: (1) make his requests for these old documents reasonable; and (2) demonstrate that he seeks these old documents with a proper purpose (*i.e.*, for the advancement of Wynn Resorts' interests).

It is clear from case law throughout jurisdictions that Okada needs a "proper purpose" to inspect Wynn Resorts' (and its predecessor's) financial records from 2000 and 2002. While Okada's Amended Writ Petition is verified, it offers nothing to the current Court-ordered discussion about why he wants to inspect Wynn Resorts' 2000-2002 financials (*i.e.*, why the requests for old records are reasonable and/or related to his fiduciary duties to Wynn Resorts). In the case law from foreign jurisdictions that Okada has cited, the directors are seeking records related to upcoming or planned events. *E.g.*, *Holdgreiwe v. Nostalgia Network, Inc.*, Civ. A.

1 No. 12914, 1993 WL 144604, 19 Del. J. Corp. L. 326 (Del. Ch. April 29, 2003) (an upcoming
2 SEC filing); *Intieri v. Avatex*, No. C.A. 16335-NC, 1998 WL 326608 (Del. Ch. June 12, 1998) (a
3 future merger); *Schoon v. Troy Corp.*, No. Civ. A. 1677-N, 2006 WL 1851481 (Del. Ch. June 27,
4 2006) (though deemed an improper purpose, a future sale of shares). With regard to past records
5 and an inspection demand made to investigate a possible wrongdoing or some impropriety by
6 another who owes a fiduciary duty, it is reasonable (and dare say expected) that a director can,
7 and certainly when called out would, explain the facts or basis for his or her belief.
8 *E.g.*, *Holdgreiwe*, 19 Del. J. Corp. L. at 329, 333 (facts and claims from independent third parties
9 of wrongdoing, mismanagement, and embezzlement).

10 Okada's verified First Amended Petition provides no factual basis for anyone to believe
11 that his "director" requests for records from 2000 to 2002 are reasonable. Via his First Amended
12 Petition, Okada does offer sworn testimony that he and Wynn Resorts are adversaries. (First Am.
13 Pet., on file with the Court, ¶¶ 2, 13 (Wynn Resorts commenced action against Okada for breach
14 of fiduciary duty), ¶ 14 (Okada, through his companies, filed counterclaims against
15 Wynn Resorts, its board members, and its general counsel).) He also testifies that Wynn Resorts
16 commenced what has turned out to be high profile litigation over Okada's breaches of the
17 fiduciary duties he owes to Wynn Resorts (the "Main Action"). (*Id.* ¶¶ 2, 13.) And, he attacks the
18 evidence against him in the Main Action – the report by former FBI director and federal judge,
19 Louis J. Freeh. (*Id.* ¶ 16.) But, what Okada fails to testify to in his Verified Amended Petition
20 (and even in his original Petition, for that matter) – and it is a glaring omission -- is any factual
21 basis for his belief that something was or may have been askew with regard to Wynn Resorts'
22 2000-2002 financials and/or the process by which Wynn Resorts was awarded a gaming license in
23 Macau. Nothing. Equally important, he never addresses how these issues relate to his current
24 duties as a dissident and disengaged director.

25 Not surprisingly, Okada now asks this Court to shift the burden and make Wynn Resorts
26 demonstrate that Okada lacks a "proper purpose" in searching out old company records to wage
27 his personal war against Mr. Wynn. (Okada's Supp. Submission, 2:6-4:28.) In other words,
28 Okada wants Wynn Resorts to prove that Okada desires these records to advance his own

1 personal goals in (further) breach of his fiduciary duties to Wynn Resorts, and maybe even to
2 "beat Wynn Resorts." Respectfully, Wynn Resorts believes it has done so. But, Okada demands
3 that Wynn Resorts present even more evidence of Okada's improper purposes and acts contrary to
4 the best interests of Wynn Resorts. Wynn Resorts will gladly do so but must be given the
5 opportunity to examine Okada about his requests and any factual basis (rather than his venom for
6 Mr. Wynn) for his allegations and demands. Wynn Resorts and this Court must hear from
7 Mr. Okada on these more than salient factual points; not merely from his lawyers. Okada must be
8 forced to provide the sworn testimony that should have been in his verified petition(s) and no
9 longer hide behind briefs or unsworn, self-serving press releases.

10 In light of the foregoing, Wynn Resorts respectfully requests that its motion be granted,
11 and that Okada be ordered to appear in Las Vegas, Nevada for his deposition, in advance of
12 Wynn Resorts' filing its response to Okada's Supplemental Submission.

13 DATED this 15 day of June, 2012.

14 PISANELLI BICE PLLC

15 By: 

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28 Attorneys for Respondent Wynn Resorts, Limited

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 18th day of June, 2012, I caused to be served a true and correct copy of the foregoing **WYNN RESORTS, LIMITED'S EXPEDITED MOTION FOR LEAVE TO DEPOSE KAZUO OKADA; ORDER SHORTENING TIME** via the Court's electronic filing system and electronic mail, addressed to the following individuals:

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An Employee of PISANELLI BICE PLLC

EXHIBIT A

1 **DECL**

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DISTRICT COURT

CLARK COUNTY, NEVADA

KAZUO OKADA, an individual,

Petitioner,

v.

WYNN RESORTS, LIMITED, a Nevada
corporation,

Respondent.

Case No.: A-12-654522-B

Dept. No.: XI

**DECLARATION OF JAMES J.
PISANELLI, ESQ. IN SUPPORT OF
WYNN RESORTS, LIMITED'S
EXPEDITED MOTION FOR LEAVE
TO DEPOSE KAZUO OKADA; ORDER
SHORTENING TIME**

Date of Hearing:

Time of Hearing:

I, JAMES J. PISANELLI, ESQ., hereby declare as follows:

1. I am one of the attorneys for Respondent Wynn Resorts, Limited
("Wynn Resorts") in the writ proceeding styled *Kazuo Okada v. Wynn Resorts, Limited*, Case

1 No. A-12-6542522-B, pending before this Court. I make this declaration in support of
2 Wynn Resorts' application for an order shortening time for this Court to hear the instant Expedited
3 Motion For Leave To Depose Kazuo Okada ("Motion"). I have personal knowledge of the facts
4 stated herein, except those facts stated upon information and belief, and as to those facts, I believe
5 them to be true. I am competent to testify to the matters stated herein.

6 2. On May 17, 2012, this Court directed Petitioner Kazuo Okada ("Okada") to submit
7 a supplemental brief in support of his Amended Petition for a Writ of Mandate explaining "the
8 relevance of each of the requested categories of documents to his responsibilities as a director."
9 This Court ordered Wynn Resorts, following receipt of Okada's Supplemental Submission, to
10 submit a response discussing the "reasonableness" of Okada's three (3) requests in his Amended
11 Petition.

12 3. Upon receipt and review of Okada's supplemental submission, it was clear that
13 Okada still had not provided any factual bases to support his accusations against Mr. Wynn that
14 would render any of his requests for Wynn Resorts financial records from 2000 to 2002
15 reasonable or related to any duty he has as a Wynn Resorts director.

16 4. Although Okada verified his original writ petition and his First Amended Petition,
17 neither document provides any testimony as to the facts underlying Okada's accusations and
18 requests.

19 5. There is good cause to hear Wynn Resorts' Motion for leave to depose Okada on
20 shortened time in that Wynn Resorts must file a reply to Okada's supplemental submission and
21 would like to depose Okada prior thereto. Although the parties agreed to alter and extend the
22 briefing schedule and hearing date (on dates yet to be determined), the parties expect and intend
23 to solidify the briefing schedule and propose to this Court a mutually agreeable July date to
24 conduct the hearing currently scheduled for June 28, 2012.

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6. I certify that this request for an order shortening time is made in good faith and not for any improper purposes.

7. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct and that I signed this declaration on June 18, 2012.


JAMES J. PISANELLI ESQ.

EXHIBIT B

ORIGINAL

Alvin D. Blum

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 ON PLAINTIFF'S MOTION TO AMEND
PETITION FOR WRIT OF MANDAMUS**

THURSDAY, MAY 17, 2012

APPEARANCES:

FOR THE PLAINTIFF:

CHARLES H. MCCREA, JR., ESQ.
GIDON CAINE, ESQ.

FOR THE DEFENDANT:

KIRK LENHARD, ESQ.
JAMES PISANELLI, 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

MAY 23 2012

CLERK OF THE COURT

33

1 LAS VEGAS, NEVADA, THURSDAY, MAY 17, 2012, 9:16 A.M.
2 (Court was called to order)
3 THE COURT: Okada versus Wynn Resorts.
4 MR. MCCREA: Good morning, Your Honor. Charles
5 McCrea and Gidon Caine for the petitioner.
6 THE COURT: Okay. I know that Mr. Lenhard's here,
7 because he was laughing at somebody earlier. Have you seen --
8 there is the team. Good morning.
9 MR. LENHARD: 'Morning, Judge.
10 MR. PISANELLI: Good morning, Your Honor.
11 THE COURT: Good morning. Could everybody please
12 identify yourselves for purposes of the record. Mr. McCrea,
13 you're starting.
14 MR. MCCREA: Charles McCrea and Gidon Caine for the
15 petitioner.
16 THE COURT: Thank you.
17 MR. PISANELLI: Good morning, Your Honor. James
18 Pisanelli on behalf of Wynn Resorts.
19 MR. LENHARD: Kirk Lenhard on behalf of Wynn
20 Resorts. With us is Kim Sinatra.
21 THE COURT: Thank you. It's your motion.
22 MR. CAINE: Good morning, Your Honor.
23 THE COURT: Good morning.
24 MR. CAINE: This is a very simple motion, and I
25 think it's been adequately briefed. I just wanted to

1 emphasize a couple of key points here.

2 The first is that leave to amend should be freely
3 granted. And this Court specifically invited Mr. Okada to
4 amend his petition. That's exactly what --

5 THE COURT: Yeah, but that was a long time ago.

6 MR. CAINE: It was 60 days ago, Your Honor, yes, and
7 there's a great deal that's been happening in the meantime.
8 But we think that nevertheless, in spite of the -- in spite of
9 that, we think that this is something that again complies with
10 the Court's directive. And again, it's not unreasonable in
11 light of the events that have transpired during this period,
12 some of which have been explained in the petition.

13 The other thing I wanted to bring up, Your Honor, is
14 that this motion was filed on the 3rd, and the Wynn Resorts
15 has filed its opposition yesterday at about noon. We have
16 still not been served through the court system.

17 THE COURT: Do you want a copy of it?

18 MR. CAINE: Huh? I'm sorry?

19 THE COURT: You want a copy of it?

20 MR. CAINE: That's correct. We got it last night at
21 midnight.

22 THE COURT: Want to read it?

23 MR. CAINE: I got it last night at midnight, Your
24 Honor.

25 THE COURT: So can I ask a question about it.

1 MR. CAINE: Well, I guess I have a couple of
2 questions.

3 THE COURT: Can I ask you a question.

4 MR. CAINE: Yes, you may, Your Honor.

5 THE COURT: Go to the last exhibit, which is
6 Exhibit G, which is the stip and order that Magistrate Leen
7 executed.

8 MR. CAINE: Yes, Your Honor.

9 THE COURT: Tell me what you think that stipulation
10 means.

11 MR. CAINE: Your Honor, if -- as I said, I actually
12 received these papers -- they were sent to us at midnight last
13 night even though they were released to the newspapers
14 sometime before that. But they were literally emailed to me
15 at midnight last night.

16 THE COURT: Well, but my question's really easy.
17 This is a stip and order you guys signed in Federal Court.

18 MR. CAINE: Uh-huh.

19 THE COURT: And you signed it April 10th.

20 MR. CAINE: Uh-huh.

21 THE COURT: So my question is what did you think the
22 stip meant. You, not anybody else, not the newspapers, what
23 did you think the stip meant? And if you want a copy, I have
24 it right here. I'd be happy to hand it to you.

25 MR. CAINE: I know. So, Your Honor, I think that

1 this stipulation is irrelevant to the current proceeding, and
2 I'd like to explain why, if I might.

3 THE COURT: Uh-huh.

4 MR. CAINE: The Wynn Resorts against Mr. Okada
5 matter relates to the Philippines and activities in the
6 Philippines. This inspection request does not relate to that,
7 quite simply. That is to say that they're just -- they're
8 simply separate matters. And the Wynn Resorts' attempt to try
9 to confuse this issue I think is actually quite telling. That
10 what we're seeking here are documents that relate to the --
11 how the \$120 million was spent, the Macau reimbursement
12 amount, and other matters that don't relate at all to
13 activities in the Philippines. What Wynn Resorts versus Okada
14 is about, it's about I think three things. Number one, it's
15 about activities in the Philippines. The second, it's about
16 redemption and redemption claim itself, that is, whether or
17 not redemption was appropriate, the so-called redemption was
18 appropriate.

19 In this instance really what's going on is that the
20 counterclaims filed concerning the free investigation and
21 again redemption and the fraud-based allegations arising out
22 of the stockholders agreement, but they don't concern -- the
23 requests here do not concern the free investigation, they
24 don't concern redemption. These are a separate dispute, Your
25 Honor. And that's I think the first thing I'd like to stress.

1 The second thing is that, again, Mr. Okada remains a
2 director. He's entitled to books and records that relate to
3 the issues that he has brought up. And again, this Court has
4 asked him to try to narrow. As a consequence of that, while
5 understand this argument -- and, again, if the Court would
6 like further briefing on this, I'm happy to do it, but this is
7 really actually irrelevant to what's going on in this
8 courtroom, because it's different discovery on a different
9 dispute.

10 THE COURT: Okay. Anything else you want to tell
11 me?

12 MR. CAINE: Well, Your Honor, again, if the Court
13 has further questions on this, we would like an opportunity to
14 brief it. But, again, we think that our motion is well
15 founded. And if there's no other questions, I'm happy to give
16 the podium to Mr. Lenhard.

17 THE COURT: Thank you.

18 MR. CAINE: Thank you, Your Honor.

19 THE COURT: Mr. Pisanelli.

20 MR. PISANELLI: Thank you, Your Honor.

21 Your Honor, with your permission I'd like to split
22 our presentation to the extent it's necessary. I will like to
23 address for Your Honor the procedural defects and the undue
24 prejudice that Wynn Resorts and others will suffer as a result
25 of this application.

1 THE COURT: Rule 15 says I have to grant leave
2 freely.

3 MR. PISANELLI: Whether we look at it as an
4 amendment, and I think our arguments apply equally at the
5 Rule 15 stage, or just at the heart of the motion, the
6 arguments are identical, and I'll present them to you in that
7 respect. Mr. Lenhard will address, if Your Honor is still
8 inclined to hear or you need to hear, the issues about
9 reasonableness, the standard that you brought to this
10 proceeding the first time around.

11 THE COURT: If I allow the amendment, I'm not going
12 to do reasonableness today, because I will have to have
13 additional briefing on the reasonableness of the amended
14 request in the petition.

15 MR. PISANELLI: Well, with that instruction, I will
16 then focus everything I have to say to the point that while
17 Rule 15 says "freely," it does not say "uniformly," it does
18 not say "in all circumstances." And if you'll indulge me,
19 I'll tell you why this is one of those circumstance where you
20 shouldn't be entertaining a motion of this sort.

21 Before I do, I will answer your question directly.
22 The stipulation from Magistrate Leen was a stay of discovery.
23 And I'll also tell you even more directly the reason it is a
24 stipulation for a stay is because that's what Mr. Okada and
25 his team asked for. We brought to the table a simple request

1 of reasonableness as it related to an answer or an analysis of
2 a 100-plus-page counterclaim. And I'm careful in using that
3 word "counterclaim," and filtering myself in the adjectives
4 that I want to put in front of it, but I'll just leave it at
5 that. And so when I put forth the request for a reasonable
6 extension so that we could analyze it, it was Mr. Okada and
7 his team said, okay, great, but let's stay all discovery.
8 That's a theme that'll be important as we go through this
9 process.

10 So I have to admit to you, Your Honor, I thought
11 this case was over, not the fight, not the big case, this
12 case, this documents case as we refer to it in our camp, the
13 writ case. I boxed up my records, put them away, and thought
14 that we were headed to where the real fight lie, that being
15 what I've characterized -- we have characterized in our brief
16 as the main action.

17 Your Honor left a window open for Mr. Okada. You
18 told him, you know, if you really think that you need
19 additional records you can narrow those requests and bring
20 them back to me, and Your Honor said you'd request them -- or
21 you would analyze them.

22 We also -- Ms. Peterson sent a letter inviting the
23 same thing when we got their request, tell us what you're
24 really looking for instead of all records in this category,
25 all records in that category, is there something specific,

1 we'll take a look at it. Silence. Crickets from this side.
2 So months goes by. Nothing. So I figured it was over. I
3 figured it was over because we had a lawsuit already, a
4 lawsuit that was progressing. These things don't move that
5 quickly, but we did have a lawsuit.

6 Now, remember, this is a writ proceeding, an
7 emergency writ proceeding. As Your Honor knows better than
8 any of us, when we're talking about a writ the standards for
9 relief under a writ use words like "urgency," "strong
10 necessity," "extraordinary," and "undue delay." These are all
11 words in cases that we've put before you in setting up this
12 question for Your Honor, is where has he been, where has Mr.
13 Okada been. If this really is urgent and so important to
14 whatever it is he claims he needs them for, where has he been?
15 Now, he tells you it's only been two months. But two months
16 under a circumstance where he claims it's urgent, that he
17 needs records from a decade ago in an urgent manner and two
18 months have lapsed, I think Your Honor, if may, thought the
19 same thing I did. You closed the case.

20 THE COURT: I did, because I didn't get a request to
21 amend within what appeared to be a reasonable period of time.

22 MR. PISANELLI: And so if we were talking -- to be
23 fair, if we were talking about ordinary litigation where each
24 party gets an opportunity to plead and there's rules that are
25 governed, would we come in on a motion to amend an actual

1 complaint two months later and say, where have you been, Mr.
2 Okada? Of course not. We're talking about an emergency writ.
3 We may count these days like dog years here; right? He had an
4 obligation to come forth in a hurry, but he disappeared. And
5 so we let it go, and we moved on to what we thought was the
6 real case, the main case as we've described.

7 Now, what can't be lost in this discussion is not
8 simply that they disappeared. The law tells us and we've set
9 forth in our opposition at page 11 that there is a burden on
10 Mr. Okada when he waits, and that is he has to come before you
11 with an explanation, right. If we're going to talk about
12 urgency and emergency and shortening time and making sure that
13 this company comes to a halt so we can start directing our
14 energies to his document requests, he has -- he owes an
15 explanation to this Court.

16 So I went through every page, every exhibit, and I
17 looked for it. What's the excuse? I still didn't hear it
18 today. All I heard today is two months, Your Honor. Come on.
19 Two months. Well, two month is a long time in light of all
20 the circumstances that have changed, and so I would suggest to
21 Your Honor in and of itself we can stop this in its tracks,
22 not simply for sitting on their hands, but because the facts
23 as we know them surrounding this dispute tell us why he waited
24 two months, tell us that this really is an afterthought. And
25 I'll tell you why it was an afterthought designed to support

1 the main action defense, having nothing to do with corporate
2 governance. An emergency request to fulfill duties on
3 corporate governance on something that happened 10 years ago.
4 That's their position. It's not a believable one, and we
5 don't have to look far in order to find what the real
6 motivation is.

7 So let's take a look. If Your Honor is willing and
8 inclined to forgive them and say, okay, let's look at the
9 heart of what we're debating here, let's do that. Let's look
10 at what we characterize as the improper purposes of this
11 motion. Now, in order to do that, Your Honor, it is
12 important, especially in a writ proceeding like this,
13 especially with what I've -- we should characterize as a
14 dissident director, it's important to take everything in
15 context, the context of the litigation pending between the
16 parties, and the context of the dealings between the parties.
17 And I don't think that there can really be any debate from Mr.
18 Okada and his team that this is an appropriate thing to do as
19 you see from his exhibits. And that's what I'm going to use
20 as my source of information for context, is Mr. Okada's
21 exhibits and what he wanted to tell you is the important part
22 of this case.

23 Now, of course, you know, I think the world knows
24 at this point, the parties are embroiled in litigation.
25 February 19th Wynn Resorts filed what -- again, the main

1 action against Mr. Okada and his companies that he owns and
2 controls. It's a big case by anyone's standard. It's a
3 serious one. The stakes are extraordinarily high. And, lucky
4 for you, it's been assigned to you, just like this one.
5 Unfortunately, Mr. Okada made a -- what I think a regrettable
6 choice. We'll find out at some point what the real motivation
7 was, but he tried to remove it. He did remove it. We've
8 filed all the briefs for remand, and we think it's on its way
9 back to Your Honor for resolution. That's an important fact
10 when you consider that this really is at its heart, today's
11 proceeding, a request for production of documents. These
12 requests for production of documents will end up right before
13 you in the proper context in any event once we weave through
14 the Federal Court system.

15 Now, why and how did we end up embroiled in this
16 litigation? Mr. Okada helps us with that analysis, and he
17 helps Your Honor, starting with Exhibit E. Exhibit E is a
18 copy of a report from Louis Free. Mr. Free was engaged by
19 Wynn to conduct an investigation of Mr. Okada, and on
20 February 18th, the same day that the board held a special
21 meeting to analyze the reasonableness of the first round of
22 requests, Mr. Free made a presentation to the board of
23 directors, and he submitted the report which Mr. Okada now
24 puts before you as Exhibit E. Judge Free had a lot to do, and
25 Judge Free had a lot to say.

1 Just very quickly summarizing from page 1 of Exhibit
2 E, what he found and what he reported to the Wynn board of
3 directors was, quote, "Despite being advised by the Wynn
4 Resorts board of directors and Wynn Resorts' attorneys on
5 strict United States antibribery laws which govern Wynn
6 Resorts and its board, Mr. Okada strongly believes and asserts
7 that when doing business in Asia he should be able to provide
8 gifts and things of value to foreign government officials,
9 whether directly or by use of third-party intermediaries or
10 consultants."

11 By the way, Your Honor, if you've had the
12 opportunity to review Judge Free's report, you'll know that
13 much of this investigation -- not much, but certainly a
14 portion of his investigation is from a direct multi-hour
15 interview of Mr. Okada himself.

16 Judge Free went on and said, "Mr. Okada, his
17 associates and companies appear to have engaged in a
18 longstanding practice of making payments and gifts to his two
19 chief gaming regulators at the Philippines Amusement & Gaming
20 Corporation is which is known as PAGOR, who directly oversee
21 and regulate Mr. Okada's provisional license agreement to
22 operate in that country. At times Mr. Okada, his associates
23 and companies have consciously taken measures to conceal both
24 nature and amount of these payments."

25 Now, he goes on talking about prima facie violations

1 of the Foreign Practices Act, he gives examples of how Mr.
2 Okada attempted to secret one of those officials into the Wynn
3 Resorts in Wynn Macau, and how he even attempted to get Wynn
4 Resorts to pay for it, which did not happen, of course,
5 because this is a practice abhorred and banned, flatly banned
6 by Wynn Resorts.

7 Now, as a result and in reliance upon that report --
8 and by the way, again, Your Honor, you'll see this is a
9 47-page report. It contains detail and reference to evidence
10 that Your Honor I'm sure would expect of the former head of
11 the FBI and that you would expect of a former judge conducting
12 an analysis like this.

13 So on February 18th some very important things
14 happened, contacts that even Mr. Okada wants you to know, as
15 we can see from these exhibits. What happened is the board
16 found Mr. Okada and his companies unsuitable, unsuitable to
17 hold shares in Wynn Resorts, and therefore it also redeemed
18 the shares of Aruze USA. That's not all that happened, Your
19 Honor. It also, "it" being the board, also authorized the
20 filing of the main action that I've referenced to you already.

21 So as early as February 19th, the day after the
22 board met to consider the request that Your Honor had looked
23 at and before the return hearing, Mr. Okada was aware that he
24 actually had a real lawsuit on his hands and not merely a
25 debate over requests for production of documents.

1 Now, Mr. Okada is again correct that understanding
2 what the complaint is about contextually is important for Your
3 Honor so that you can see if this is an end run, as some
4 courts have called it, for one-way discovery, if this is a
5 back-door attempt to get discovery in that case. So, again,
6 very, very briefly, at Exhibit F you'll see the complaint that
7 was launched in Federal Court, you'll see the allegations are
8 very much in tune with what Judge Free had to say. You'll see
9 at paragraph 15 we have alleged against Mr. Okada and his
10 companies that, "Forsaking his obligations required of
11 licensee, the company's code of conduct, and his other
12 fiduciary duties, Okada committed improper acts that included
13 making payments for the benefit of foreign gaming officials
14 who would advance his personal interests."

15 You'll see at paragraph 44 we detailed the manner in
16 which he conducted this activity and how he filtered money to
17 these gaming officials, including the use of something that's
18 called the city ledger account. That's important, because
19 you'll see that phrase in these new requests, right. The city
20 ledger account was used to pass money and benefits on to these
21 government officials, and you'll notice that it is not a
22 coincidence that although he's going to a different
23 transaction 10 years ago, he, too wants to see if somebody
24 else was using a city ledger account at Wynn in the improper
25 manner that he was.

1 So something odd happened in connection with the
2 main case that I have to bring to your attention, Your Honor.
3 And that is simply something -- or the dealings between the
4 parties as it related to service of process. Okada launches
5 with his companies 100-plus pages of counterclaims against the
6 directors, against personally Ms. Sinatra, against personally
7 Mr. Wynn separate and apart from his role as a director, very
8 inflammatory allegations, allegations related to state, RICO,
9 things of that sort. Very serious. Something that we're
10 going to take very serious.

11 And so we put our team together, and we started the
12 process of both prosecuting the claims against Mr. Okada and
13 defending against these counterclaims. What we did is what
14 Your Honor I'm sure would expect of us. We communicated with
15 Mr. Okada and his team about doing the housework and getting
16 this case moving. We offered to accept service on behalf of
17 everyone. Now, there's different teams here of who represents
18 which director, but every single person in the main action,
19 counterclaims alike, offered and did accept service of
20 process, except one person, Mr. Okada. He's the only one who
21 refused to accept service even in the derivative cases that
22 were spawned because of this type of infighting, which is
23 certainly predictable, all the directors, all the defendants
24 in every single case has accepted service of process, except
25 Team Okada. And I've got to tell you I sat and I scratched my

1 head, thinking how is a man of this sophistication and power
2 and influence and all of the other great adjectives I can give
3 him, how and why in the world does he play a game like this;
4 no, I'm not going to accept service, even though they request
5 and receive the same of us. I figured at some point I'd
6 figure it out or I would just forget about it and it was just
7 a gesture of spite. But I'll tell you, Your Honor, this
8 question was answered with complete clarity when I received
9 this motion. The lights went off. Now I could see what was
10 going on. Remember, at Okada's request the Federal Court
11 discovery was stayed. On the derivative side it stayed as a
12 matter of rule, because the cases haven't progressed yet,
13 nothing has happened in that case, they're -- actually the
14 plaintiff's bar is wrestling over lead counsel roles. And as
15 the defendants we're perfectly happy letting them have that
16 wrestling match, and we'll stay out of their way.

17 But -- so the strategy became clear to us, right.
18 And I'm sure Your Honor can see it, too. Mr. Okada takes the
19 advantage of a stay in discovery and the delay associated with
20 refusing to accept service and improperly removing this case
21 so that process under the Hague Convention cannot even get
22 underway because we can't get a court order yet. And what
23 does he do in the interim? Does he sit on his hands, does he
24 say, okay, I've got a big giant fight on my hands and I'm just
25 going to let it go and I'll wait until something happens of

1 importance? No. With all defendants' hands tied he comes in
2 here for free discovery, one-sided, back-door discovery that
3 relates to the very actions in which he stipulated to stay the
4 discovery.

5 Now, I understand, Your Honor, from my practice
6 before you, my history of arguing before you that simply
7 because there are two cases pending at one time you would
8 never allow me to make that logical leap. Simply because I
9 may hysterically cry foul play, you're going to say, Mr.
10 Pisanelli, not good enough, you're going to have to show me a
11 nexus before this is going to matter. And I'm prepared to do
12 that right now. There's far more than coincidence going on in
13 this scheme that Mr. Okada has hatched.

14 And if you will indulge me for a few moments and
15 turn to Mr. Okada's motion, he says more in that motion than I
16 can ever say to convince you or anyone of this point. If we
17 start at page 3 --

18 THE COURT: Of the motion?

19 MR. PISANELLI: -- of the motion, remember, at
20 any given time if you want to put your thumb on page 5 or a
21 Post-It or whatever, that's where the requests are. I'm sure
22 Your Honor's read them and know them all.

23 THE COURT: I actually have a different Post-It.
24 They're within Exhibit A.

25 MR. PISANELLI: Okay. Same ones, they're actually

1 throughout ours, their exhibits, these new requests are
2 everywhere. So the point being is, knowing what he has asked
3 for in these new requests, which are in essence documents
4 related to Wynn Resorts Valvino Lamore at the time, its
5 dealings in Macau a decade ago, its use of city ledger
6 accounts a decade ago to see if Mr. Wynn or Ms. Sinatra or
7 anyone was entertaining Macau government officials during the
8 licensing process, sounds like what's good for the goose is
9 good for the gander defense that he's looking for the main
10 action to make, put a little more formal tag on it, sounds
11 like he's looking for an unclean hands defense to the main
12 action to me. He certainly can't come before you with a
13 straight face and say that, I'm worried about corporate
14 governance, 10 years later, and I want to see what happened
15 just for the betterment of the company. That is not a
16 believable position, and when you put it in context of this
17 motion, you see that corporate governance, two sentences of
18 this entire brief, has nothing to do with these requests.

19 So at page 3 we start to see the story as Mr. Okada
20 likes to tell it. And he tells us that, "Mr. Wynn has caused
21 Wynn Resorts to waste funds and put the company at risk by
22 embroiling it in a morass of ever-growing litigation, and it
23 is the backdrop, the backdrop of this growing morass of
24 litigation against which Mr. Okada is forced to seek an
25 amendment to the petition."

1 Litigation is not a backdrop that forces him to do
2 anything. If he wants information -- and I'm going to say
3 this to a point where even I'll probably get tired of hearing
4 it. If he wants information because of the morass of
5 litigation, he has options available for it. It's called
6 discovery. In this courtroom it's called Rule 16.1, and it's
7 Rule 26 in Federal Court. It is not an emergency,
8 extraordinary, now stale and dusty writ that he's trying to
9 revive through this motion.

10 If you turn to page 7, we see the story develop even
11 further. Here we see the beginning of the whole story that
12 the motion tells. Mr. Okada tells this Court that, "The
13 members of the Wynn board, under the influence of Mr. Wynn,
14 have taken a number of actions intended to marginalize Mr.
15 Okada. These actions, he says, make all the more clear the
16 remedies sought in this petition are vital." These actions
17 that flow this introductory paragraph at Section 3 make all
18 the more clear that his document requests from the board are
19 vital. So let's just take one moment at a time to look at
20 even the headings of what is so vital. What are these actions
21 that make his request so vital?

22 Section A, the board votes to redeem \$2.7 billion
23 equity holdings in Wynn Resorts. All right. So if that is
24 the action that is so vital to his document request, I, I'm
25 sure like Your Honor, expected in turning back one page to

1 find at least one request about the redemption, at least one
2 request about the February 18th meeting, at least one request
3 having anything whatsoever to do with the redemption. And, of
4 course, you don't see a word about the redemption. What
5 you'll see, Your Honor, the common theme that I'm about to
6 tell you, is that some of these actions that make this
7 application vital show that it's really about the lawsuit.
8 The other actions that he claims makes his relief vital are
9 complete red herrings that have nothing to do with anything
10 [inaudible], and they're attempting to inflame the Court.

11 Heading B, the Wynn Resorts Lawsuit. I've got to
12 tell you Heading B says more than anything I could ever say to
13 you, that the Wynn Resorts lawsuit against Mr. Okada is an
14 action that has made his requests vital, vital, you must give
15 him document requests because, in his own words, Wynn Resorts
16 filed the main action suing him for breach of fiduciary duty
17 and seeking declaratory relief concerning the validity of
18 everything that happened on February 18th, including the
19 finding of unsuitability, including the fact -- or including
20 the redemption of his shares. This Section B, these
21 paragraphs on page 8 speak louder than anything that he said
22 in this entire motion.

23 Section C is a similar red herring, the initiation
24 of a proxy process, another vital fact of why he needs this
25 relief. Well, once again, Your Honor, same theme, so vital he

1 doesn't ask for a single document related to this proxy
2 process, whether he's suggesting this is a contest or not,
3 because -- and I would invite that debate, because there is no
4 proxy contest, none whatsoever. And he knows it, and he's
5 choosing his words very carefully here. But most importantly,
6 this vital fact has nothing to do whatsoever with the requests
7 for the unclean hands defense documents related to Macau 10
8 years ago.

9 Same thing with Exhibit -- I'm sorry, with Item D,
10 the SEC inquiry. There is an SEC inquiry, as often happens
11 when directors start slinging mud at one another like has
12 happened in this case, and so Mr. Okada never ties that fact
13 to anything. Again, he doesn't ask for anything related to
14 the SEC inquiry, but is he suggesting that he needs to do the
15 SEC's work for them, that the SEC won't be competent enough or
16 not have the appropriate power to look Ms. Sinatra in the eye
17 and ask her questions about what happened, look Mr. Wynn in
18 the eye and ask him questions about what happened? Is Mr.
19 Okada saying he's going to be the SEC police? As silly as
20 that sounds, it's the only theory that I can come up with of
21 why he thinks that you will see this as a compelling reason to
22 grant him a request for production of documents.

23 Point E is the derivative litigation argument. He
24 says on line 12 he has no access to the company's corporate
25 records to assist in formulating his defense. Once again, can

1 I say anything to Your Honor on this point that this is an
2 improper use of the writ proceeding, anything more clear or
3 more compelling than that statement? It is vital that he get
4 documents from Wynn because, quote, "He has no access to
5 corporate records to assist in formulating his defense"? How
6 about discovery in those cases, derivative or otherwise? And
7 interesting, Your Honor, this is another point where Mr. Okada
8 has not been up front with you. He says that he needs these
9 documents to formulate a defense in the derivative cases, yet
10 he doesn't ask for anything about the Macau gift. You recall
11 that was probably the central focus of the earlier requests.
12 Wynn Resorts has given every single document, nonprivileged
13 document it has to Mr. Okada on the Wynn gift. And what he
14 doesn't tell you is the Wynn gift is the only issue in the
15 derivative actions that have anything to do with Mr. Okada, a
16 vote that he cast against the gift, which absolved him of
17 liability. But even if that weren't the law, he doesn't ask
18 for anything on the gift because he has everything on the gift
19 already, and yet he says this is a vital fact of why he needs
20 additional documents dating back a decade ago.

21 And finally, the one that has me more confused than
22 any of them, I suspect, is damage to Wynn -- "the damage Mr.
23 Wynn's conduct has caused Wynn Resorts in the Philippines." I
24 can't imagine that it was lost on Mr. Okada that Wynn Resorts
25 is not conducting business in the Philippines, and not simply

1 because it hasn't gotten around to it, because it chose not to
2 conduct business in the Philippines despite how strongly Mr.
3 Okada tried to persuade Mr. Wynn to do so. So whether or not
4 people are angry at Mr. Wynn and the company for calling out
5 Mr. Okada on the manner in which he has conducted business
6 there doesn't really matter. It certainly doesn't matter for
7 these proceedings.

8 So in sum, Your Honor, what we're talking about here
9 are things that have been characterized in this motion as
10 vital, vital to his requests and the reasons why he needs
11 them. And you see that every -- I've read every category to
12 you. There is not a single argument here that he has tied to
13 an actual request. All he ties them to is one thing, one
14 common real purpose, and that is he is struggling and grasping
15 and hoping and praying that he can find documents maybe in a
16 Wynn city ledger account. And by Wynn I mean Mr. Wynn. He is
17 desperate and hoping that he can find some similar behavior of
18 what he did in the Philippines in connection with the
19 Philippine government officials, I should say, that somebody
20 else did it in Macau. That's what he's looking for. There's
21 no corporate governance at stake here. None. What there is
22 is a grasp for the unclean hands defense to the main action, a
23 one-sided, back-door approach to discovery that was
24 manipulated by Mr. Okada and his team by entering into the
25 stay in the Federal Court in the first place.

1 Now, Your Honor, again, coming full circle, we look
2 at the standard for motions like this. As I stated earlier,
3 it's an extraordinary remedy. He must show an urgent need,
4 and he must also show that there's no adequate means for these
5 records. On page 12 of his motion he tells you, starting at
6 line 21, on the concept of no adequate means the only sentence
7 he actually gives to this entire topic, the standard that goes
8 to the heart of his requests, he dedicated the following
9 compelling sentence, "If the board is successful in removing
10 Mr. Okada as a director based upon the same baseless
11 allegations used to justify its purported redemption of his
12 substantial ownership interest in the company," and here's the
13 kicker, "Mr. Okada will have no right to inspect the corporate
14 record, allowing Wynn Resorts to bury any issues that would
15 have been discovered through a review of the discovery --" I'm
16 sorry, "-- of the corporate records."

17 That is utter nonsense. He will have remedies
18 available to him as long as his arm if he follows the same
19 procedure that we will follow, discovery, Rule 16.1, Rule
20 26(f), and requests for production of documents that are
21 called just that, requests for production of documents. And
22 if Wynn Resorts does what he says we will be empowered to do,
23 that being, of course -- "burying" is the word. If we bury
24 our records so that you can't see them, so that maybe
25 Magistrate Leen can't see them, so that the SEC can't see

1 them, we know there are consequences to those actions, and you
2 know the consequences of those actions, as well. To suggest
3 to you that this is the only way he can get these records is
4 not being up front with you. He hasn't pulled the wool over
5 anyone's eyes here, Your Honor, not anyone's eyes. We know
6 what is going on here, and it's a charade. I have to call it
7 for what it is. It is a charade.

8 If Your Honor thinks that there is any, I mean even
9 a scrap of legitimacy to this request, that Mr. Okada really
10 is concerned about the fulfillment of his fiduciary duties, I
11 ask one condition of you before you grant him a single piece
12 of paper, and that is bring him in this courtroom, let us
13 challenge him in what he is telling you about his urgent and
14 vital need, let Your Honor challenge him of what he claims to
15 be so important. Let's find out where he's been for the last
16 two months. Let's talk about how he plans or intends to use
17 these records, whether it be for the betterment of the company
18 that he has vowed to beat, remember, an open combatant, he has
19 vowed to beat us. Let's challenge Mr. Okada in this
20 courtroom, put an end to this game he's playing about hiding
21 overseas, handcuffing everybody here, I'm sure with a smirk on
22 his face, while he starts to gather up discovery and defenses
23 where no one can do anything about it.

24 With that said, Your Honor, I will ask you to end
25 this now in its tracks even under Rule 15. As liberal as that

1 rule is, you have enough before you to tie this together and
2 say, no, not in this courtroom. If you're inclined to hear
3 anything about reasonableness, Mr. --

4 THE COURT: Not today.

5 MR. PISANELLI: Well, I was just going to say Mr.
6 Lenhard will address that for you.

7 THE COURT: I know Mr. Lenhard would be prepared and
8 do an excellent job, but I have a plan --

9 MR. PISANELLI: Okay.

10 THE COURT: -- and Mr. Lenhard talking today is not
11 part of the plan.

12 MR. PISANELLI: If you have any questions of me --

13 MR. LENHARD: I feel unwanted.

14 THE COURT: Well, you laughed at somebody earlier,
15 so, you know.

16 MR. PISANELLI: So unless you have questions of me,
17 those are the major points of why we ask you to deny this
18 motion right now.

19 THE COURT: I understand your position.

20 MR. PISANELLI: Thank you.

21 THE COURT: Because leave to amend is to be freely
22 given under Rule 15, the motion to amend the petition for writ
23 of mandamus is granted.

24 However, that does not mean that I am ordering any
25 documents to be produced. I need the plaintiff to provide a

1 brief in support of the relevance of each of the requested
2 categories of documents to his responsibilities as a director.
3 How long do you need before you can give me such a brief?
4 MR. CAINE: Your Honor, may we get 10 days?
5 THE COURT: Yes, you may.
6 Mr. Pisanelli, Mr. Lenhard, I need first an answer
7 on the amended petition. How long does that take?
8 MR. LENHARD: At least -- an answer to the actual
9 document itself --
10 THE COURT: Yes, just an answer to the petition.
11 MR. LENHARD: -- can we have at least a week?
12 THE COURT: You can.
13 MR. LENHARD: Appreciate it.
14 THE COURT: So if I could get the answer to the
15 petition by say the 25th of May. That's a little over a week.
16 MR. LENHARD: Thank you.
17 THE COURT: And then that means I will get the
18 plaintiff's supplemental brief in support of its request for
19 the documents by June 1st.
20 Mr. Lenhard and Mr. Pisanelli, how long do you need
21 after that point in time for a responsive brief on that would
22 address the reasonableness issues?
23 MR. LENHARD: Ten days.
24 THE COURT: That would be on June 15th.
25 How do you feel about visiting with me on June 21st

1 for a discussion about the reasonableness of the requests and
2 the relationship to the duties as a director?

3 MR. CAINE: Your Honor, I have a longstanding family
4 vacation. If we could move it --

5 THE COURT: How do you feel about June 28th?

6 MR. CAINE: Okay.

7 MR. LENHARD: That's fine.

8 MR. PISANELLI: We'll make it work.

9 MR. CAINE: Thank you, Your Honor. June 28th.

10 THE COURT: June 28th at 9:00 o'clock. You will
11 notice that that runs really close to the stipulation you've
12 entered into in Federal Court.

13 MR. LENHARD: That's fine.

14 THE COURT: Anything else?

15 MR. PISANELLI: Nothing from us, Your Honor.

16 THE COURT: Have a lovely day.

17 MR. PISANELLI: Thank you.

18 MR. LENHARD: Thank you, Judge.

19 THE COURT: And, Mr. Lenhard, I wasn't criticizing
20 you. I just had a different plan.

21 MR. LENHARD: I feel you've grown tired of us.

22 THE PROCEEDINGS CONCLUDED AT 9:56 A.M.

23 * * * * *

24

25

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

5/22/12

DATE

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WYNN RESORTS, LIMITED,)	CASE NO. 2:12-CV-400-LRH-PAL
)	
Plaintiff(s),)	MINUTES OF COURT
)	
vs.)	DATE: Thursday, June 21, 2012
)	
KAZUO OKADA, et al.,)	
)	
Defendant(s).)	
)	

PRESENT: THE HONORABLE LARRY R. HICKS, U.S. DISTRICT JUDGE

Deputy Clerk: Dionna Negrete

Reporter: Donna Davidson

Counsel for Plaintiff(s): Paul Rowe, James Pisanelli, and Bradley Wilson for Wynn Resorts; Donald J. Campbell for Stephen A. Wynn; Jeffrey Wu and William R. Urga for Elaine P. Wynne; Robert Shapiro for Wynn Resorts, Ltd. and Kim Sinatra, General Counsel for Wynne Resorts, Ltd.

Counsel for Defendant(s): Howard Privette, Charles McCrea, Samuel L. Lionel, Greg Andres, and John Durrant for Aruze USA, Inc. and Universal Entertainment Corporation

MINUTES OF PROCEEDINGS:

The Court addresses counsel. Mr. Rowe presents argument in support of plaintiff's Motion to Remand [43]. Mr. Privette argues in opposition on behalf of the defendants and counter claimants. Mr. Rowe replies. The Court addresses counsel. The Court recognizes that the federal court is a court of limited jurisdiction and removal statutes are construed restrictively against removal and finds that plaintiff's claims are state law claims which do not implicate a significant federal issue. The Court therefore concludes that it does not have jurisdiction over plaintiff's legal claims and grants plaintiff's motion to remand the case to the state court.

Mr. Privette addresses the Court as to defendants' counterclaims which include federal securities claims, and requests that if the case is remanded, that those claims be severed, and retained by this Court. Mr. Privette also addresses the Court regarding counter claimants Motion for Preliminary Injunction [96], requesting a Temporary Restraining Order be issued until such time as the state court can address the shareholders' rights issues via Temporary Restraining Order motion. Mr. Rowe objects.

Wynn Resorts, Limited v. Okada, et al.
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The Court further notes a remaining issue that the Wynn parties have requested is an award of attorney's fees. Attorney fees are subject to consideration when a motion to remand is granted. Mr. Rowe also requests clarification regarding whether or not defendants' motion for preliminary injunction should be responded to at this time.

IT IS ORDERED that plaintiff's motion to remand (Doc. #43) is GRANTED.

IT IS FURTHER ORDERED that plaintiff shall submit briefing regarding an award of attorney fees pursuant to local rules within two weeks, by Thursday, July 5, 2012.

IT IS FURTHER ORDERED that defendants/counter claimants may submit briefing to seek severance of counterclaims in federal court, by Thursday, July 5, 2012. Responses will be due by Thursday, July 12, 2012, and replies shall be filed within four days, by Monday, July 16, 2012.

IT IS FURTHER ORDERED that defendants' motion for preliminary injunction (Doc. #96) is DENIED as moot.

IT IS SO ORDERED. Court adjourns.

LANCE S. WILSON, CLERK

By: D. Negrete
Deputy Clerk

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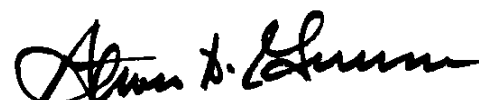
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Attorneys for Petitioner

KAZUO OKADA

** Admitted Pro Hac Vice*

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CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KAZUO OKADA, an individual,

Petitioner,

-against-

WYNN RESORTS, LIMITED, a Nevada
corporation,

Respondent.

CASE NO. A-12-654522-B

DEPT. NO. XI

Date of Hearing: June 28, 2012

Time of Hearing: 9:00 A.M.

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO
WYNN RESORTS, LIMITED'S EXPEDITED MOTION FOR LEAVE
TO DEPOSE KAZUO OKADA AND ALTERNATIVE COUNTER-MOTION FOR
LEAVE TO DEPOSE THE WYNN RESORTS DIRECTORS

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<i>Carlson v. Hallinan</i> , 925 A.2d 506 (Del. Ch. 2006).....	8
<i>Cattano v. Bragg</i> , No. 110692, -- S.E.2d --, 2012 WL 1377086 (Va. Apr. 20, 2012).....	5
<i>Chappel v. Applied Control Systems, Inc.</i> , 1998 WL 1068977, 39 Pa. D. & C.4th 168 (Pa. Com. Pl. 1998).....	9
<i>Deeds v. Bayer</i> , No. 303-CV-00453-LRH VPC, 2008 WL 582550 (D. Nev. Feb. 28, 2008).....	9
<i>Havlicek v. Coast-to-Coast Analytical Servs., Inc.</i> , 39 Cal. App. 4th 1844, 46 Cal. Rptr. 2d 696 (Cal. Ct. App. 1995)	5
<i>Henshaw v. Am. Cement Corp.</i> , 252 A.2d 125 (Del. Ch. 1969).....	5, 8
<i>Holdgreiwe v. Nostalgia Network, Inc.</i> , Civ. A. No. 12914, 1993 WL 144604, 19 Del. J. Corp. L. 326 (Del. Ch. Apr. 29, 1993)	5, 6
<i>Intrieri v. Avatex</i> , No. C.A. 16335-NC, 1998 WL 326608 (Del. Ch. Jun. 12, 1998)	5, 6
<i>McGowan v. Empress Entm't, Inc.</i> , 791 A.2d 1 (Del. Ch. 2000).....	5
<i>Saline v. Superior Court</i> , 100 Cal. App. 4th 909, 122 Cal. Rptr. 2d 813 (Cal. Ct. App. 2002)	9
<i>Stewart Title of Nevada, Inc. v. Haenisch</i> , No. 206CV-00966PMP-RJJ, 2006 WL 3717419 (D. Nev. Dec. 14, 2006).....	4

1	<u>RULES</u>	
2	Nev. R. Civ. P. 26 (2011).....	9
3	<u>OTHER AUTHORITIES</u>	
4	Model Bus. Corp. Act Ann. § 16.05 (2011).....	6
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Since November 2011, Mr. Okada has attempted to invoke his right, as a director of the Company, to inspect Wynn Resorts' corporate books and records. The Company's repeated refusal to permit Mr. Okada's review of the corporate books and records compelled Mr. Okada to file his initial verified Petition for a Writ of Mandamus ("Initial Petition") with this Court in January 2012. In May 2012, with leave of the Court, Mr. Okada filed a verified First Amended Petition for Writ of Mandamus ("Amended Petition") in order to more narrowly and specifically identify certain records, including accounting records, that he sought to inspect. The Amended Petition did not add any new categories of requests. Mr. Okada's requests are consistent with the type of inspection routinely engaged in by directors and managers of corporations in order to supervise the accounting and management of a company. Wynn Resorts' refusal to allow this inspection for more than seven months should not be tolerated.

Instead of complying with these reasonable inspection requests, Wynn Resorts has opposed Mr. Okada at every turn, asserting a variety of alleged justifications for denying its director inspection of these accounting records. Now, more than seven months after Mr. Okada

1 initially sought inspection of Wynn Resorts' books and records, the Company insists that it needs
2 an "opportunity to examine [Mr.] Okada about his requests and any factual basis . . . for his
3 allegations and demands." Motion for Leave at 7. But the Motion for Leave simply continues
4 the Company's pattern of dilatory tactics and creative misdirection, all in an effort to prevent Mr.
5 Okada from exercising his right of inspection. It would be the height of irony if Wynn Resorts
6 was able to obtain more disclosure from Mr. Okada by opposing his common law right to
7 inspection than Mr. Okada has been able to obtain thus far by seeking to enforce that right. A
8 director's right of inspection is a necessary tool to permit him to carry out his fiduciary duties to
9 the corporation. Wynn Resorts should not be allowed to frustrate that right any longer. This
10 Court should put an end to this evasion and deny the Motion for Leave.
11

12 First, Wynn Resorts' request for a deposition of Mr. Okada is untimely. Mr. Okada has
13 been making the same demands for inspection since November 2011. There is nothing in the
14 Amended Petition or Petitioner's Supplemental Submission in Support of First Amended Petition
15 for a Writ of Mandamus ("Supplemental Submission") that introduces a new issue of fact that
16 suddenly requires Wynn Resorts to take discovery.
17

18 Second, Respondent has not demonstrated any legal entitlement to or need for factual
19 discovery. Contrary to the Respondent's assertion, a director does not bear the burden of
20 proving — or even alleging — actual wrongdoing before being permitted to inspect corporate
21 books and records. Rather, the burden lies with the corporation to show that the director has an
22 improper purpose. Wynn Resorts cannot do this and has identified no contested fact that
23 warrants factual discovery. Instead, it merely points to the same inadequate excuses it has thus
24 far used to thwart Mr. Okada's inspection right: that Mr. Okada and Wynn Resorts are
25 adversaries in a separate legal proceeding; that Mr. Okada disputes the findings of a Wynn
26 Resorts' investigation against him; and that Mr. Okada and Stephen Wynn bear animosity
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MEMORANDUM IN OPPOSITION TO MOTION FOR LEAVE
TO DEPOSE KAZUO OKADA AND ALTERNATIVE COUNTER-MOTION FOR LEAVE
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1 towards one another. Motion for Leave at 6-7. Demonstrating the irrelevance of these excuses
2 to Mr. Okada's inspection right does not require discovery.

3 Finally, if this Court were to determine nevertheless that a deposition of Mr. Okada is
4 appropriate at this point in this proceeding, Mr. Okada respectfully requests that the Court set
5 conditions on the deposition, including its location, duration, and subject matters, in order to
6 mitigate its harassing nature. In addition, Mr. Okada requests that this Court grant his alternative
7 counter-motion for leave to depose the Wynn Resorts directors ("Counter-Motion"), so that Mr.
8 Okada may take the depositions of the members of Wynn Resorts' Board of Directors on matters
9 pertaining to his request for inspection.
10

11 ARGUMENT

12 I. THE MOTION FOR LEAVE SHOULD BE DENIED BECAUSE A DEPOSITION 13 OF MR. OKADA IS BOTH UNTIMELY AND UNNECESSARY

14 A. Wynn Resorts' Request for a Deposition is Untimely and Permitting It to Go 15 Forward at this Time Would Be Inequitable.

16 Wynn Resorts claims that Mr. Okada has "three new, but still broad document requests"
17 lacking "any facts that: (1) make his requests for these old documents reasonable; and (2)
18 demonstrate that he seeks these older documents with a proper purpose (*i.e.*, for the advancement
19 of Wynn Resorts' interests)." *See* Motion for Leave 5:14-21. Wynn Resorts argues that these
20 supposedly "new" requests and these unanswered questions entitle it to conduct a deposition of
21 Mr. Okada.

22 But, as the evidenced by the procedural history of this proceeding—of which Respondent
23 and the Court is amply aware—Mr. Okada has been seeking these very same documents for
24 almost eight months. Mr. Okada made his initial requests for inspection of these documents in
25 November 2011. The Initial Petition made five requests for inspection. The Court found three
26 of them overbroad in scope and invited Mr. Okada to submit narrowed requests, which he did in
27

28 MEMORANDUM IN OPPOSITION TO MOTION FOR LEAVE
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1 the Amended Petition. The Company has been aware that Mr. Okada is seeking information
2 regarding expenditures in 2000-2002, an accounting for the use of the proceeds of Aruze USA's
3 \$120 million capital contribution to Valvino Lamore, and details regarding the Macau
4 Reimbursement account since November of last year.

5
6 If Wynn Resorts believed that discovery was necessary to oppose Mr. Okada's petition, it
7 has had ample opportunity to make such a request at previous junctures in this proceeding. The
8 Company's request for discovery is late, and, under the equitable doctrine of laches, Wynn
9 Resorts should not be permitted to further delay this proceeding with a discovery request that it
10 could have sought at the outset. *See Bldg. & Const. Trades Council of N. Nevada v. State ex rel.*
11 *Pub. Works Bd.*, 108 Nev. 605, 611-12, 836 P.2d 633, 637 (1992) ("Laches is an equitable
12 doctrine which may be invoked when delay by one party works to the disadvantage of the other,
13 causing a change of circumstances which would make the grant of relief to the delaying party
14 inequitable."); *see also Stewart Title of Nevada, Inc. v. Haenisch*, No. 206CV-00966PMP-RJJ,
15 2006 WL 3717419, *8 (D. Nev. Dec. 14, 2006) (quoting *Bldg. & Constr. Trades Council*). To
16 permit Wynn Resorts to take discovery now would inequitably disadvantage Mr. Okada. Mr.
17 Okada has been seeking to enforce his inspection right since November 2011. Wynn Resorts has
18 repeatedly refused to cooperate with his reasonable requests and has, instead, pursued his
19 removal from the Board, which would negate his right of inspection. It is now seeking to further
20 delay the Court's consideration of this mandamus action in the hope that it can indefinitely delay
21 Mr. Okada's inspection right. The Court should rebuff Wynn Resorts' most recent delaying
22 tactic and order immediate inspection.

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24
25 **B. Wynn Resorts Has Not Demonstrated a Legal Entitlement to or Need for Mr.**
26 **Okada's Deposition.**

27 In addition to being untimely, Respondent's Motion for Leave should be denied on the

1 grounds that Wynn Resorts can show no legal entitlement or necessity that justifies this relief.
2 Wynn Resorts has offered no legal authority to support its claim that “[Mr.] Okada must be
3 forced to provide sworn testimony” about the factual basis for his demands. Motion for Leave at
4 7. Indeed, Mr. Okada is aware of no jurisdiction that imposes such a requirement on a director.
5 Contrary to Respondent’s implication, a director is *not* required to make factual allegations of
6 actual wrongdoing in order to justify the inspection of corporate records. Cf. *McGowan v.*
7 *Empress Entm’t, Inc.*, 791 A.2d 1, 5 (Del. Ch. 2000) (stating director was entitled to inspect
8 records sought simply to keep himself informed of the board’s actions). Respondent’s position
9 seeks to turn the burden of proof on its head.

10 Once a person shows that he is a director and his request for inspection was refused, “the
11 burden then shifts to the corporation to show why the director should not be permitted to exercise
12 his rights or that such exercise should be conditioned.” *Henshaw v. Am. Cement Corp.*, 252 A.2d
13 125, 129 (Del. Ch. 1969); *see also Havlicek v. Coast-to-Coast Analytical Servs., Inc.*, 39 Cal.
14 App. 4th 1844, 1856, 46 Cal. Rptr. 2d 696, 702 (Cal. Ct. App. 1995); *Cattano v. Bragg*, No.
15 110692, -- S.E.2d --, 2012 WL 1377086, *6 (Va. Apr. 20, 2012). A director is not required to
16 show anything to establish a proper purpose other than demonstrating an entitlement to the
17 documents by virtue of his or her status as a director and that the requests relate to his or her
18 duties as a director. *Holdgreiwe v. Nostalgia Network, Inc.*, Civ. A. No. 12914, 1993 WL
19 144604, 19 Del. J. Corp. L. 326, 332 (Del. Ch. Apr. 29, 1993); *Abate v. Naymie*, No.
20 065118BLS1, 2007 WL 869248, *1 (Mass. Sup. Ct. Mar. 1, 2007); *Intrieri v. Avatex*, No. C.A.
21 16335-NC, 1998 WL 326608, *1 (Del. Ch. Jun. 12, 1998).

22 This view is logical and sensible. Absent a director’s presumptive entitlement to inspect
23 the corporate books and records, the management of the company, or a majority of the directors,
24 could effectively prevent minority or dissident directors from uncovering any impropriety via
25 inspection absent proof of wrongdoing from the outset. Wynn Resorts’ proposed rule, in effect,
26 would make it nearly impossible for an inspection to occur unless the director could prove
27

1 wrongdoing— which may be exactly what the director is trying to investigate by asking for
2 inspection in the first place.

3 Consistent with this framework, this Court has found that under Nevada law, “[e]ach
4 director as a fiduciary, regardless of whether they are a shareholder, has a clear right of
5 inspection under the common law. However, that right is limited by reasonableness under the
6 common law.” Exhibit B to Declaration of Charles H. McCrea, Jr. in Support of Motion on
7 Order Shortening Time to Amend Petition for Writ of Mandamus, dated May 2, 2012 (“McCrea
8 Decl.”) at 19:3-5 (transcript of Hearing, February 9, 2012). As explained in the Supplemental
9 Submission, Mr. Okada’s Amended Requests reasonably relate to his duties as a director because
10 they seek to confirm that Wynn Resorts is complying with the applicable law and the proper
11 operation, maintenance, and protection of corporate assets – categories that are clearly relevant
12 to his responsibilities as a director. *See* Model Bus. Corp. Act Ann. § 16.05 official cmt. (2011);
13 *see also Abate*, 2007 WL 869248 at *1; *Holdgreiwe*, 1993 WL 144604, 19 Del. J. Corp. L. at
14 331; *Intrieri*, 1998 WL 326608 at *1. The oversight of the use of corporate funds goes to the
15 heart of a director’s fiduciary obligations. It is incumbent on a director to ensure that any
16 corporate funds be expended in a prudent and lawful fashion. Mr. Okada’s requests for
17 accounting records regarding the use of a capital contribution to the Company and expenses
18 incurred in obtaining a license in Macau go directly to these issues. Likewise, a director is
19 ultimately responsible for oversight regarding compliance with applicable laws and regulations
20 in the jurisdictions where the Company does business. No further factual inquiry is necessary to
21 establish that these requests reasonably relate to Mr. Okada’s duties as a director of Wynn
22 Resorts.¹ Producing and providing the accounting records of a corporation to a director should
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27 ¹ Wynn Resorts attempts to distinguish some of the inspection action case law on the
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1 be one of the easiest means to satisfy an inspection request, because presumably the books and
2 records are closed at the end of each fiscal year, audited, and maintained in the Company's
3 permanent records. It makes no sense for Wynn Resorts to continually refuse to disclose such
4 basic corporate records to one of its directors.

5
6 Nor is Wynn Resorts entitled to discovery on the grounds that it bears the burden of proof
7 to establish an improper motive. Motion for Leave at 6. This is not a typical civil action in
8 which the parties are necessarily entitled to full-blown discovery of the allegations of a
9 complaint and the defenses. Wynn Resorts must show why this discovery is necessary. But it
10 has not identified any contested fact upon which it needs discovery or explained what
11 information it needs to obtain from Mr. Okada to put forth its arguments regarding the propriety
12 of Mr. Okada's purpose.

13
14 Wynn Resorts has already articulated all of its arguments as to why Mr. Okada's
15 inspection is for an "improper purpose" and all of them have been found wanting. None of these
16 arguments require additional discovery of Mr. Okada. Primarily, Respondent objects to
17 inspection because (1) Mr. Okada and Wynn Resorts (and its entire Board) are adversaries in
18 another litigation arising out of Wynn Resorts' attempt to redeem Mr. Okada's equity interest in
19 the Company, and (2) Mr. Okada disputes the purported evidence against him in the report Wynn
20 Resorts commissioned from Louis J. Freeh. Motion for Leave at 6-7. As explained at the May
21 17 hearing and in the Supplemental Submission, the focus of the *Wynn Resorts v. Okada* action
22 concerns Mr. Okada's companies' activities in the Philippines, the redemption of Aruze USA,
23 Inc.'s shares, and the stockholders agreement. Declaration of Steven Anderson, dated June 8,
24

25
26 basis that the directors involved were seeking records related to upcoming or planned events.
27 (Motion for Leave at 5.) This is merely a distinction without a difference. Whether the records
28 were sought because of an upcoming or planned event was not dispositive. The records were

MEMORANDUM IN OPPOSITION TO MOTION FOR LEAVE
TO DEPOSE KAZUO OKADA AND ALTERNATIVE COUNTER-MOTION FOR LEAVE
TO DEPOSE THE WYNN RESORTS DIRECTORS, Page 7 of 12

1 2012, Exhibit B at 5:4-25; Supplemental Submission at 4-5. The Amended Requests focus on
2 documents related to the use of corporate assets, expenditures on foreign officials,
3 communications with foreign officials regarding licensing, and reimbursable expenses incurred
4 by Mr. Wynn in Macau. Likewise, Mr. Okada's Amended Requests do not seek any
5 information regarding the Louis Freeh report, how it came about, or the bases for its allegations.
6 No discovery is necessary in this proceeding in order to conclude that these facts do not establish
7 an improper purpose.
8

9 Respondent also seems to suggest that Mr. Okada's interest in the documents is tied to
10 the adversarial relationship between him and Mr. Wynn. *See* Motion for Leave at 7 (claiming
11 Mr. Okada has "venom" for Mr. Wynn). Even if this were so – which would be unsurprising
12 given Mr. Wynn's actions towards his partner – it would not negate the fact that the inspection
13 requests relate directly to Mr. Okada's role as a director. *See Henshaw*, 252 A.2d at 129 ("[a]n
14 examination of books and records to ascertain the condition of corporate affairs and the propriety
15 of certain actions is a proper purpose even though the one who seeks inspection may be hostile to
16 management."). A director is not barred from having additional motives for seeking the
17 inspection of corporate books and records absent proof of likely harm to the corporation. *See*
18 *e.g., Carlson v. Hallinan*, 925 A.2d 506, 546 n.267 (Del. Ch. 2006) ("Even if Carlson had some
19 proper and some improper purposes, he still had a right to inspect [the Company's] books and
20 records."); *see also Baker v. Henry Glass & Co.*, 531 N.Y.S. 2d 746, 749 (1988) ("Nor does
21 appellate authority support the denial of access to corporate records even where the director's
22 motives are questionable[;] [t]he approach suggested by the cases is to permit inspection liberally
23 and to rely on the deterrent of an action for misconduct to discourage the disclosure of
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27 sought, as they are here, to ensure that no wrongdoing occurred.

1 confidential information.”) (internal citation omitted); *Chappel v. Applied Control Systems, Inc.*,
2 1998 WL 1068977, 10-11, 39 Pa. D. & C.4th 168 (Pa. Com. Pl. 1998) (stating that motives are
3 illusive and irrelevant with respect to a director’s right to inspection, and that the key inquiry is
4 whether harm will be done to the corporation); *Saline v. Superior Court*, 100 Cal. App. 4th 909,
5 915, 122 Cal. Rptr. 2d 813, 817 (Cal. Ct. App. 2002) (finding that a protective order against
6 inspection should only be used where “the preponderance of the evidence establishes the
7 director’s clear intent to use the documents to commit an egregious tort”). Wynn Resorts
8 identifies no tort that Mr. Okada intends to commit that would be aided by inspection of these
9 documents, let alone an “egregious” one. At best, it vaguely claims that “Okada desires these
10 records to advance his own” – unidentified – “goals” in some unspecified “breach of his
11 fiduciary duties to Wynn Resorts.” Motion for Leave at 7. This is an insufficient basis to deny a
12 director inspection. Mr. Okada’s feelings about Mr. Wynn are irrelevant to this proceeding and
13 Wynn Resorts does not need discovery regarding them.

14
15
16 **C. Wynn Resorts’ Deposition Request Is an Attempt to Delay Inspection and**
17 **Harass Mr. Okada.**

18 Wynn Resorts’ discovery demand is nothing more than an attempt to further delay
19 inspection and to harass Mr. Okada for pursuing his inspection right. Under the Nevada Rules of
20 Civil Procedures, discovery requests cannot be made “for any improper purpose, such as to
21 harass, obscure, equivocate or to cause unnecessary delay or needless increase in the cost of
22 litigation.” Nev. R. Civ. P. 26(g)(2)(B); *see also Deeds v. Bayer*, No. 303-CV-00453-LRH
23 VPC, 2008 WL 582550, *2 (D. Nev. Feb. 28, 2008) (discussing the equivalent federal rule).
24 Wynn Resorts has no desire to allow Mr. Okada to enforce his right of inspection, even if he is
25 entitled, and it will do everything it can to avoid inspection going forward. Its current tactic is a
26 blatant attempt to avoid the Court’s decision on this matter as long as possible, perhaps hoping
27

1 that by the time the Court makes a decision, other developments will have rendered the
2 proceeding moot.

3 For the foregoing reasons, Respondent's Motion for Leave to depose Mr. Okada should
4 be denied.

5
6 **II. IF THE MOTION FOR LEAVE IS GRANTED, MR. OKADA'S DEPOSITION
SHOULD BE LIMITED IN SCOPE, TIME, AND PLACE**

7 If the Court were to determine that some level of discovery is appropriate prior to
8 deciding whether to grant the Writ, Mr. Okada respectfully requests that it impose certain
9 limitations on the deposition to prevent it from being an exercise in gross harassment. The
10 deposition should be limited in scope to the purpose of Mr. Okada's request for inspection of the
11 specific categories of documents identified in the Amended Petition. Wynn Resorts should not
12 be permitted to use this proceeding as a means to obtain discovery for the *Wynn Resorts v.*
13 *Okada* action, in which the parties are not currently entitled to pursue discovery. In order to
14 prevent Wynn Resorts from launching into free-wheeling questioning of Mr. Okada about such
15 other topics, the deposition should be limited to a reasonable period of time, such as one or two
16 hours. Finally, because forcing Mr. Okada to travel to Las Vegas for such a narrow deposition
17 that should have been requested months-ago (if at all) is unduly burdensome, the deposition
18 should be conducted telephonically or by video-conference. If Wynn Resorts' counsel insists on
19 conducting the examination in person, then they should travel to Hong Kong, where Mr. Okada
20 resides, to do so, and should pay for everyone, including Mr. Okada's counsel, to attend.

21
22
23 **III. IF THE MOTION FOR LEAVE IS GRANTED, THE COURT SHOULD GRANT
24 MR. OKADA'S ALTERNATIVE COUNTER-MOTION TO DEPOSE THE WYNN
RESORTS DIRECTORS**

25 Finally, should the Court grant Respondent's Motion for Leave, Mr. Okada requests that
26 it grant his Counter-Motion. Fundamental fairness dictates that, should Mr. Okada be subject to
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MEMORANDUM IN OPPOSITION TO MOTION FOR LEAVE
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1 discovery in this proceeding, he should also be permitted to take the deposition of each of the
2 members of the Wynn Resorts Board of Directors in order to develop evidence in support of his
3 Petition. Each director would be subject to examination on the following topics: (1) bias against
4 Mr. Okada in refusing to grant his inspection requests, (2) failure of the other directors to
5 investigate the matters raised by Mr. Okada, thus demonstrating the need for inspection, and (3)
6 knowledge of the underlying subjects that might support Mr. Okada's suspicion of non-
7 compliance with applicable laws and rules governing use of corporate assets. These facts would
8 establish that the corporation not only cannot establish an improper purpose, it is determined to
9 say and do just about anything to prevent disclosure of its corporate documents to one of its
10 directors.
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CONCLUSION

For the foregoing reasons, Mr. Okada respectfully requests that this Court deny Wynn Resorts' motion to depose Mr. Okada. In the alternative, if this Court grants the motion, the deposition of Mr. Okada should be limited to the topic of the purpose of Mr. Okada's inspection requests, no more than one or two hours, and be conducted either telephonically, by video-conference, or in Hong Kong, and if held overseas, Wynn Resorts should pay for Mr. Okada's counsel to attend. Also in the alternative, Mr. Okada respectfully requests that this Court permit Mr. Okada to depose the directors of Wynn Resorts.

Dated: June 27, 2012

LIONEL SAWYER & COLLINS

By: /s/ Charles H. McCrea, Jr.
Paul R. Hejmanowski (SBN #94)
Charles H. McCrea, Jr. (SBN #104)
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300 South Fourth Street
Las Vegas, Nevada 89101

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

Attorneys for Petitioner
KAZUO OKADA

** Admitted Pro Hac Vice*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nevada Rule of Civil Procedure 5(b), I hereby certify that I am an employee
3 of LIONEL SAWYER & COLLINS and that on this 27th day of June, 2012, I caused documents
4 entitled **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO**
5 **WYNN RESORTS, LIMITED'S EXPEDITED MOTION FOR LEAVE TO DEPOSE**
6 **KAZUO OKADA AND ALTERNATIVE COUNTER-MOTION FOR LEAVE TO**
7 **DEPOSE THE WYNN RESORTS DIRECTORS** to be served as follows:
8

9 ☒ by depositing same for mailing in the United States Mail, in a sealed envelope
10 addressed to:

11 Kirk B. Lenhard, Esq.
12 Tamara Beatty Peterson, Esq.
13 BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 N. City Parkway, Suite 1600
Las Vegas, NV 89106

14 and

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

18 and

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

23 *Attorneys for Defendant Wynn Resorts, Limited*

24 ☐ pursuant to Nev. R. Civ. P. 5(b)(2)(D) to be sent via facsimile as indicated:

25 ☐ to be hand delivered to:

26 ☒ by the Court's ECF System through Wiznet.

27 /s/V. Raynell Caliguire
28 An Employee of
LIONEL SAWYER & COLLINS

ORIGINAL

Alvin D. Quinn

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CLERK OF THE COURT

KAZUO OKADA

Plaintiff

vs.

WYNN RESORTS LIMITED

Defendant
.....

CASE NO. A-654522
A-656710

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

THURSDAY, JUNE 28, 2012

APPEARANCES:

FOR THE PLAINTIFF:

CHARLES H. MCCREA, JR., ESQ.
GIDON CAINE, ESQ.

FOR THE DEFENDANT:

JAMES J. PISANELLI, 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
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CLERK OF THE COURT

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 28, 2012, 9:16 A.M.

2 (Court was called to order)

3 THE COURT: Okada versus Wynn.

4 MR. McCREA: Good morning, Your Honor. Charles
5 McCrea and Gidon Caine for the petitioner.

6 THE COURT: Good morning.

7 MR. PISANELLI: Good morning, Your Honor. James
8 Pisanelli on behalf of Wynn Resorts, here with Kim Sinatra.

9 THE COURT: Can I ask an initial question. I read
10 in the paper that one of the federal judges remanded the case
11 that had been removed, which was the Wynn versus Okada case.

12 MR. PISANELLI: That's correct.

13 THE COURT: Is there any reason the discovery and
14 items in that case shouldn't be consolidated? Whether they're
15 consolidated for all purposes or not is an entirely different
16 issue, but there seem to be some overlapping issues which
17 relate to the reasonableness of the request and the potential
18 misuse of the information sought by the director, Mr. Okada,
19 with respect to the issues.

20 MR. CAINE: Yes, Your Honor. May I be heard?

21 THE COURT: Sure.

22 MR. CAINE: Thank you.

23 THE COURT: That's why I asked the question.

24 MR. CAINE: Thank you. The answer is, Your Honor,
25 that these are two separate actions. This is --

26 THE COURT: I thought that, Counsel.

1 MR. CAINE: And this is a -- this is a special
2 proceeding and is intended to be an expedited matter. The date
3 for the Okada deposition in the Wynn Resorts versus Okada
4 matter has not been set. There is other discovery which I'm
5 sure the parties want to do in that case. And the fact is
6 that we would like to be able to proceed now, particularly
7 since there is no genuine issue of fact as to regard to
8 anything regard to an improper purpose, which is the real
9 issue in this case.

10 Plaintiffs have shown -- Mr. Okada has shown that he
11 is a director and that he has made these requests, and at that
12 point the burden shifts to Wynn Resorts to show that it's an
13 improper purpose. They've listed five categories or five
14 reasons why they want to depose Mr. Okada. But even if they
15 were to get evidence on any of them, it wouldn't necessarily
16 help them to show an improper purpose in this case.

17 As a consequence of that, the discovery in this case
18 should -- is very different than the discovery that would be
19 ordered in the Wynn Resorts versus Okada matter, Your Honor.
20 That's why we see them as different.

21 THE COURT: Thank you.

22 Mr. Pisanelli.

23 MR. PISANELLI: That sounded like the opposition
24 brief and not necessarily an answer to your question. I would
25 be the last one in this debate to disagree with the

1 underlying premise of your question, because that's what I've
2 been saying from the beginning. I agree with one part of what
3 Mr. Gidon has to say, and that is we have two different case
4 numbers. Short of case numbers, there's not a lot of
5 difference between these cases. We can call them different,
6 we can say they're in different proceedings; but we do now,
7 after overcoming the improper removal, find ourselves before
8 you on both cases. And so if Your Honor's good judgment is to
9 say that there is so much overlap here as to do something even
10 more than just make this writ proceeding suspicious, then, of
11 course, the easiest thing to do is to have the cases
12 consolidated, move forward, and manage them together. How Mr.
13 Okada can possibly claim to be prejudiced by something like
14 that when, after all, he is seeking discovery from 10 years
15 ago and so he now is pressed for time and there's something
16 urgent about what he's doing on this retrospective look at
17 these old and cold documents and old and cold issues, that's
18 an issue that escapes me of how he can possibly say that your
19 idea is a bad one.

20 Your idea is the right one, and it puts an end, I
21 believe, to this gamesmanship of putting a different label and
22 stamp on something and pretending that no one in this
23 courtroom can see what's actually going on. And you can call
24 it a different case, but in the end it's one dispute.

25 So that's my long-winded way of saying consolidating

1 these cases together, managing discovery together is the best
2 option available to all of us.

3 THE COURT: Mr. Caine.

4 MR. CAINE: Yes, Your Honor. The fact is that this
5 intended to be an expediting proceeding, that the requests
6 have been out, as we know, for close to eight months -- or
7 seven months at this point. The purpose behind discovery in
8 the inspection action is simply to show an improper purpose.
9 But the point is -- again, it's a mandamus proceeding -- is to
10 move with some speed. Mr. Okada remains a director, and, as
11 the cases show, there is -- it's almost always the case that
12 when you reach an inspection action where there's actually a
13 mandamus proceeding there is adversity between the director
14 and management of the corporation. That's certainly true
15 here.

16 THE COURT: Otherwise, they might have just talked
17 to each other.

18 MR. CAINE: Precisely, Your Honor.

19 THE COURT: Okay. No, I got that, Mr. Caine.

20 MR. CAINE: Okay. And I think that the other part
21 of this is that to put the two together would be to delay the
22 right of inspection unduly. He has not -- Mr. Okada has not
23 yet been served in the other action, he has not yet -- I
24 believe he's -- you know, we have no idea when that action
25 will actually be remanded, we have no idea when document

1 discovery will actually happen, because it's been stayed.
2 It's likely that they're going to want document discovery
3 before they actually take Mr. Okada's deposition in that case,
4 and simply further and further delays the right that he has
5 here as a director to get immediate access to books and
6 records. And that's the concern.

7 In addition to that, Your Honor, again, the subject
8 matter here that would be a proper scope of inquiry is
9 vanishingly small. In fact, we believe that it doesn't exist
10 at all. And as a consequence of that they simply -- even if
11 they were to be able to prove the facts that they have -- that
12 they say that they want to prove, it wouldn't necessarily help
13 them in showing an improper purpose here.

14 THE COURT: Okay. Pursuant to EDCR Rule 2.50(b),
15 the cases are being coordinated, which means that they will be
16 handled in a unified fashion, but will not be consolidated for
17 all purposes, which means that where I have issues that are in
18 common we're going to deal with them together, and when there
19 are issues that are separate we'll deal with them separately.

20 Mr. Pisanelli, have you seen the order of remand
21 yet?

22 MR. PISANELLI: No. We have some motion practice.
23 Mr. Okada's team in the -- what I have characterized as the
24 main action has asked for a -- permission to brief a severance
25 issue so that some securities-related counterclaims may

1 possibly stay in Federal Court, with our complaint coming back
2 to you and presumably the remainder of his State-based
3 counterclaims will come here. So there's that issue. And the
4 judge indicated his interest in an award of attorneys' fees,
5 and so we have to assemble -- "we" being the Wynn team, are
6 assembling our attorneys' fees applications to go to Federal
7 Court. So there's a little motion practice before it actually
8 gets here.

9 THE COURT: Okay. When you receive the final order
10 of remand from the Federal Court will you file a notice of
11 coordination in this case, listing the two case numbers.

12 MR. PISANELLI: We will.

13 THE COURT: Okay. All right. If we can now go to
14 the motion that's on calendar today, which I understand we're
15 only going to deal with the discovery issue, and then we're
16 going to schedule a convenient time for the argument on the
17 reasonableness of the document request.

18 MR. CAINE: That's correct, Your Honor.

19 THE COURT: All right. Mr. Pisanelli, it's your
20 motion.

21 MR. PISANELLI: Thank you, Your Honor.

22 Continuing on this theme from the question that you
23 posed, we have document requests from Mr. Okada that date back
24 over a decade on issues that he participated in way back when,
25 and he sat silent for 10 years, until this present main action

1 dispute arose. And so now all of a sudden we hear cries of
2 urgency.

3 You'll note, Your Honor, that even in this case Mr.
4 Okada's claims were so urgent to him that when you gave him an
5 invitation to amend his previous requests that were overbroad
6 and unreasonable he waited so long that Your Honor closed the
7 case. I told you, a bit facetiously but literally, as well,
8 that I closed my files, too, that he took a shot, thought he'd
9 get some free discovery, it didn't work out, and so he went
10 about his way, and it looked like we were focused on the main
11 action. Months went by before he came back, and then there
12 was a change of strategy and they come here today. Now we
13 hear counsel for Mr. Okada saying that this is a writ
14 proceeding that is supposed to move quickly and that he would
15 be prejudiced in not getting these 10-year-old documents if we
16 have to wait for the remand to come down and the discovery to
17 be coordinated.

18 Well, we have to take a look at that position with a
19 skeptical eye. And so my point is this, Your Honor. If you
20 want to wait for the remand to come back and consolidate this
21 discovery and postpone the final ruling on the writ so that
22 Mr. Okada doesn't have to wait 10 years and six months for a
23 resolution of his writ, he'll have to wait 10 years and we'll
24 call it seven months. I don't know that there's going to be a
25 real prejudice to him. Those 10-year-old issues aren't going

1 to be any more stale in another month than they are today.
2 And so we can be efficient in the coordination of our
3 discovery if Your Honor wants to stay the final resolution of
4 the writ, the final briefing from our side pending the
5 deposition of Mr. Okada. I, of course, leave that to Your
6 Honor's judgment of whether that's a good idea or one that
7 you're simply not interested in.

8 But let's get to the issue at hand, and that is our
9 motion. Your Honor, it strikes me as remarkable of how
10 something about this courtroom or this courthouse seems to
11 inspire litigants, not just Mr. Okada and his team, but
12 litigants over and over, to do things in here --

13 THE COURT: Are you referring to people in the back
14 row?

15 MR. PISANELLI: No, I'm not necessarily talking
16 about the lawyers, certainly not talking about the press, I'm
17 talking about -- all right. I'll talk about the lawyers.
18 They do things in this courtroom that they would never do
19 outside of those doors right there and they would never do
20 sitting across a conference table from you. There's this
21 suspension of reality, it seems, where people seem to think
22 that no one can see that their argument has no close. But
23 they come into this courtroom thinking, somehow because we
24 stand at a podium, somehow because we put it on fancy pleading
25 paper with numbered pages that we can't see through, we can't

1 find the pretext in the debates that come before you. And
2 isn't that exactly what we're doing in this case? I mean, we
3 have Mr. Okada and his team coming before you, and you just
4 heard it moments ago, telling you that there is complete
5 separateness to these requests to what's going on in the main
6 action. Complete separateness. And I would suggest never in
7 a conference room, looking you in the eye, would someone say
8 that to you with expectation that you either wouldn't laugh or
9 perhaps even scold them for being short of completely frank
10 and honest with you. And so we find ourselves here having an
11 intellectual and academic debate, pretending to be doing
12 something other than what's really at issue. But that's the
13 game that they want to play, and so, you know, we're here to
14 give our contribution to I'm going to characterize it as
15 silliness.

16 So where is the end game here? We come in on an
17 extraordinary writ asking for discovery. That's really what
18 this is. And you can see, Your Honor, the rich irony in our
19 request for discovery back from Mr. Okada. He wants to come
20 in here as a litigant and ask for expedited relief for
21 discovery, but cries foul when we say, before you show an
22 entitlement to that discovery we want some discovery back from
23 you. And that's where we find ourselves here of them claiming
24 how unfair we're being to them because we want to actually
25 have him sit down in front of a court reporter and raise his

1 right hand and give sworn testimony about what this thing is
2 really about. And the topic that we're going to get to at
3 that deposition is the idea of a proper purpose.

4 We have seen in multiple filings before you the
5 suggestion that his right to inspect papers is absolute. If
6 we read their own authority, we know that that's not a true
7 statement, the right to inspection is not absolute. We -- if
8 you read the authority that we've submitted to you, we
9 certainly don't contend that it's absolute. And Your Honor
10 has entered a ruling in this case which is more important than
11 any of the authority that either of us have given you that
12 says it's not absolute. It says that there has to be a proper
13 purpose, you have to show, Mr. Okada, that what you want from
14 10 years ago, this old and cold documentation, these stale old
15 issues, show how it relates to your duties as a director. So
16 that's what we're here to do. And we don't really see much of
17 a contention on the concept, on the standard of proper
18 purpose. What we see out of the opposition to our motion
19 today is most of it dedicated to saying whose burden it is,
20 right.

21 So let's take a step back just for one second on the
22 burden, because I don't think it's worth debating. First of
23 all, it would be interesting or more interesting if we were
24 talking about something that Wynn wants to do, right. There's
25 something -- an event coming up, and that's what you see as

1 the theme of virtually every case that Mr. Okada has cited,
2 there's some events coming up and a director steps up and
3 says, I need more information so that I can protect the
4 interests of this company. When, however, we have someone
5 like Mr. Okada coming forward, even in a vacuum, without
6 looking at any extraneous circumstances, but even in a vacuum
7 looking backwards a decade, I think inherent in both the writ
8 statute and in the business judgment rule that we have
9 statutorily enacted here there is an obligation for him to
10 explain to the directors why, why are you looking back.

11 Now, if take a step back and then start looking at
12 the circumstances surrounding the request, then it becomes
13 painfully obvious of what the answer to that question is. But
14 he still says, don't have to tell you why, it's your burden to
15 prove I have a bad purpose. And there is a lot of authority
16 to that effect, I'm not [sic] going to concede that fact.
17 What's interesting about the burden argument, however, is he
18 comes into this courtroom saying, it's Wynn's burden to prove
19 I have an improper purpose but don't let them prove it, don't
20 let them have even the minimal tools that we have in
21 proceedings of this sort to let them prove it.

22 Now, Your Honor, I think we have proven it, quite
23 frankly. I think we've proven it in our initial papers to
24 you, but Your Honor has asked for more information from both
25 sides, and that's what we're going to do. But if we're going

1 to be pressed by their burden, equity and fairness says, okay,
2 let them prove it, let them prove it the way we prove
3 everything in civil litigation, through discovery.

4 Now, what are we going to do in this discovery
5 becomes the big question. We shouldn't be talking about
6 burdens, we shouldn't be talking about whether this is
7 absolute or not absolute, we should just simply be talking
8 about what are we going to do. Now, I can give you, as Mr.
9 Okada has, just a simple conclusion, right. In Mr. Okada's
10 petition his conclusion is, I need to see these records to
11 insure the company's doing the right thing, that's it, right,
12 not much more substance there. And I can say back to you, I
13 want discovery to show an improper purpose. And that doesn't
14 help you at all when people start throwing simple conclusions
15 around. What we want to get to, Your Honor, is the -- an
16 exhibition that Mr. Okada has a divided -- at best, divided
17 loyalty here and that he intends to use these documents for
18 pursuit of his personal interests.

19 Found it very, very compelling in a case out of
20 California -- and Your Honor will note from our earlier briefs
21 California has a statutory entitlement for directors that
22 actually uses the word "absolute." But even with the word
23 "absolute" in California, California courts still say it's not
24 really absolute, there are exceptions. So in the Tritech
25 Telcom decision versus Superior Court, 169 Cal.Ap. 4th, 1385,

1 the court said, quote, "A court may properly limit the
2 director's inspection rights because the director's loyalties
3 are divided and documents obtained by a director in his or her
4 capacity as a director could be used to advance the director's
5 personal interests in obtaining damages against the
6 corporation."

7 "Damage" is a key word there, because, as you would
8 guess, this corporate director in the Tritech decision was
9 also at the head of a litigation against his own company that
10 he's sitting on the board of.

11 And so I want the opportunity to have a deposition
12 of Mr. Okada to see does he do -- does he have a divided
13 loyalty. I'll tell you, Your Honor, in the preliminary
14 assessment of what is available to us, and that is his sworn
15 writ, we can already show that there's huge question marks
16 about a divided loyalty that go even beyond that, it goes to a
17 singular loyalty, a singular loyalty to himself.

18 And here's why I say that. We look at his amended
19 writ, the first place I went to to say, okay, let's find out
20 if we can see some sworn statements from Mr. Okada that shows
21 that he's pursuing a personal interest, as opposed to a
22 singular view towards the betterment of the company. And so I
23 go to his sworn amended -- first amended petition for writ of
24 mandamus, which is verified by Mr. Okada himself through a
25 translation, and I go right to the beginning, as you would

1 expect, to how did Mr. Okada characterize this writ proceeding
2 under the heading "Nature of the Action." Here I'm expecting
3 to find out something that happened 10 years ago that he's so
4 concerned about. But the nature of the action, he says, is
5 "The board of directors have engaged in unprecedented self
6 dealing and outright theft using the board room to steal
7 billions of dollars."

8 So I'm thinking to myself, when were billions of
9 dollars stolen from Wynn or Valvino Lamour 10 years ago. I
10 start reading down. That's not what -- the theft he's talking
11 about. He's talking about the theft from February 18th.
12 That's the word he's using for the redemption that occurred
13 after the board found him unsuitable under Nevada laws and
14 under the governing documents of the company. There's not a
15 word in the Nature of the Action about what happened 10 years
16 ago. All right. Maybe it's just introductory.

17 Let's now go to the heart of the writ, "Relevant
18 Events," Section A. So now I'm sure we're going to find out
19 what happened 10 years ago that he's so concerned about. And
20 if -- Your Honor, I'm not going to read it all to you, but I
21 can find buzz words starting at paragraph 10, the remedies --
22 I'm sorry, paragraph 11, "The board engaged in self dealing on
23 a massive scale," talking about February 18th. Next
24 paragraph, "The Free report was a witch hunt," February 18th
25 again, of this year, of course. Paragraph 13, "Wynn Resorts

1 filed a lawsuit -- under the heading of "Relevant Events" of
2 why he needs documents from 10 years ago Wynn filed a lawsuit
3 against him.

4 Next allegation, Universal and Aruze filed
5 counterclaims against Wynn, another relevant event of why he
6 needs these records. "Wynn Resorts filed false or misleading
7 proxy statements," he claims. "Wynn has been -- Mr. Wynn has
8 been declared persona non grata in the Philippines," a
9 relevant event of why he wants these records. "The SEC is
10 investigating everyone's allegations," another relevant event.
11 And now there are shareholder derivative actions.

12 I finally get to the end of what happened on
13 February 18th as a relevant event and think, okay, here comes
14 Section B 10 years ago, this is why we need this stuff. Not a
15 word. You can go all the way to the conclusion, you can go
16 all the way to the end of the brief, you can go to the
17 verification page, and you won't find anything from Mr. Okada
18 that says anything about what happened 10 years ago. What you
19 do find that says it all, Your Honor, is that in this brief,
20 after going through everything that happened on February 18th
21 and how he claims to have been victimized, he says on
22 paragraph 2 that the nature of this action is that "The board
23 of directors needs to be counteracted." I'm sorry. That's
24 paragraph 10. "The remedies sought in this petition are
25 necessary to counteract the board." And he didn't say, to

1 counteract the board from what happened 10 years ago. "The
2 remedies sought," the writ of mandamus, the documents
3 requested in this petition are necessary to counteract what
4 the board did on February 18th. This is what Mr. Okada says
5 in his brief. So what are the -- in his sworn petition.

6 So what are the conclusions that we are to draw from
7 what he tells you about why he wants these documents, a
8 divided loyalty, as Tritech told us? I think it's something
9 far worse than a divided loyalty. As I said, when you don't
10 have a single word of anything that occurred, then we must
11 reach a minimal conclusion that it's a divided loyalty. I
12 think the fair conclusion is that it's a singular loyalty to
13 himself and that he, like the Tritech court warned about,
14 wants to use these documents so he can seek damages against
15 Wynn in the lawsuit and his counterclaims that he has lodged
16 against them.

17 So if I get the opportunity, Your Honor, to depose
18 Mr. Okada, I have lots of questions for him. And his lawyers
19 have come into this courtroom, and they have said that these
20 are separate actions. Well, I want to find out if they're
21 really separate actions. I really -- I want to find out
22 whether he's looking for an unclean hands defense to the
23 finding of Wynn in February 18th that he was unsuitable to be
24 a shareholder in the company. I need to find that out to see
25 if this is an improper purpose that he is using these

1 documents for. I want to find out what he was doing 10 years
2 ago, and I want to find out what he was doing in the interim
3 10 years of why this issue didn't come up if it truly is a
4 legitimate concern that he is looking to protect this company
5 from itself. I want to know what it was that he saw then and
6 what he sees now of why he thinks that this is a legitimate
7 concern that he has to take control of because the remaining
8 directors who are actually running the company aren't
9 protecting -- I was going to say his investment, but he
10 doesn't even own stock in the company anymore, so, of course,
11 that will be another thing that we'll ask him.

12 So the issues really are self evident. I can break
13 them down. Your Honor can see where I'm going with this, I'm
14 sure. Mr. Okada has come into this courtroom thinking that
15 the mystique associated with litigation will put blinders on
16 all of us and we can't see what he is really up to, that his
17 argument is somewhat silly, to be kind. Is it disingenuous?
18 I will leave that to Your Honor to determine whether it's
19 something closer to that than just simple silliness.

20 Now, they also come in here trying to seek
21 restrictions, right. First of all, he says we should go to
22 Japan and pay for this team of very expensive counsel --

23 THE COURT: No. They said Hong Kong.

24 MR. PISANELLI: Hong Kong, I'm sorry. Go to Hong
25 Kong to pay -- and pay for all of his lawyers --

1 THE COURT: You're paying for everybody, is what
2 they say.

3 MR. PISANELLI: Sure, he does. Now, I can see --

4 THE COURT: Including Mr. Okada's counsel.

5 MR. PISANELLI: Yeah.

6 THE COURT: And Mr. McCrea wants to go, too. And he
7 probably wants to take Mr. Lionel with him.

8 MR. PISANELLI: I imagine they're going to have a
9 battery of people carrying their bags, as well, if someone
10 else is footing the bill.

11 Now, we can forgive outside counsel coming into our
12 jurisdiction and making a request like that. Maybe they just
13 don't know. But Nevada counsel who's been practicing before
14 you for all of 10 minutes knows that's not how we do business
15 here, you come into this jurisdiction, you come in here as the
16 plaintiff, you come here with responsibilities and with duties
17 and with obligations, and one of them, one of the many is that
18 you come here to be deposed if you came to this courtroom for
19 relief. Nevada counsel knows that. This is a threat to try
20 and scare us and to back us off, and it has no foundation
21 under the law.

22 Now, one has to question, why bother, right, why not
23 just come and do it. Well, I'm not going to pretend that you
24 don't see through that, either. We all know what's going on.
25 Mr. Caine said that Mr. Okada hasn't been served yet. He

1 hasn't been served yet because he's dodging service. Everyone
2 else in all of the cases has accepted service, except him, and
3 so he doesn't want to come here to be deposed because maybe
4 he's going to get served. Well, that's not a maybe. I'm not
5 going to pretend that's not going to happen. He has a right
6 concern that he's -- that game is going to end when he comes
7 here to be deposed. We're going to do everything we can to
8 put an end to all of the games and get this case focused
9 hopefully in a consolidated manner, moving forward as the way
10 it should have been in the first place.

11 So, you know, the final point I'll make is the other
12 scud that they shot over our bow to try and scare us off this
13 request is, of course, well, we now want to depose your
14 directors, every one of them. And I simply pose the question,
15 if the exercise is that we are here to determine whether Mr.
16 Okada has a proper purpose in seeking these old, stale
17 documents, how in the world can it be that 11 other people are
18 going to tell us what Mr. Okada's purpose is, what Mr. Okada's
19 intentions are. There's only one person who needs to be
20 deposed, in our view, to put the nails in the coffin of this
21 improper writ, and that is the person who is pretending to be
22 worrying about the company that he publicly vowed to beat.
23 That is Mr. Okada. We see through everything that's going on
24 here. He's not going to scare us by saying he wants to depose
25 the directors, he's not going to scare us by telling us that

1 we have to go to him and that he's going to set the rules on
2 how the game is played, he's not going to scare us with his
3 counterclaims, and he's not going to scare us with any other
4 tactics, including this improper writ.

5 We have a main case that is before Your Honor. I
6 reiterate my request to your suggestion that this can all be
7 coordinated together in one discovery process, Mr. Okada's 10-
8 year wait won't be prejudiced by waiting a few more weeks to
9 have everything before here, and even he will be benefitted by
10 only have to be deposed presumably once when we go through all
11 of the allegations in all of the cases, rather than bring him
12 back multiple times. Perhaps if he thought this through he
13 would see there's a benefit to that process that even he would
14 gain.

15 So, with that said, Your Honor, unless you have any
16 questions for us, we ask you for a very, very simple request.
17 If he wants discovery from us, give us a reciprocal right to
18 prove, since they say it's our burden, that this is improper
19 and he shouldn't get that discovery, and we'll wrap up this
20 case in July and move forward to the main action, where our
21 energies should be put in the first place.

22 THE COURT: Thank you.

23 Mr. Caine.

24 MR. CAINE: Thank you, Your Honor.

25 This is a matter that's well briefed, and I think

1 that there are a couple of issues that I simply want to
2 highlight for the Court.

3 The first is that Wynn Resorts repeatedly talks
4 about this as if it's normal civil litigation. It's not.
5 This is a mandamus proceeding. It's intended to move more
6 quickly.

7 THE COURT: Very specific type of proceeding that's
8 supposed to work very quickly.

9 MR. CAINE: Yes, Your Honor.

10 THE COURT: And the first time it did.

11 MR. CAINE: Yes, Your Honor. And it should now, as
12 well.

13 So I think that this notion about getting into
14 normal discovery is -- I believe Mr. Pisanelli put it, is
15 exactly wrong. It's not normal discovery. This is intended
16 to be a special proceeding.

17 In addition to that, when you strip away the
18 rhetoric, the thing that's important here is that they do have
19 the burden of showing an improper purpose, and they've listed
20 five reasons why they think -- and now Mr. Pisanelli I believe
21 has added a sixth, which is this notion somehow of competitive
22 harm. We can deal with the sixth one very easily, and that is
23 that there's a protective order, as this Court knows, that was
24 entered into that governs the documents that are produced
25 pursuant to the inspection action. Wynn Resorts has omitted

1 that in its presentation to the Court, but it's actually quite
2 important here, because it deals with a lot of the protective
3 -- deals with a lot of the competitive issues, Your Honor.
4 And certainly if there's a concern that it does not do it
5 adequately, it can be amended. That's not really a big issue
6 here. It's a writ hearing.

7 And it's important to remember this, because this,
8 again, has been going on for months. And if this had really
9 been an important concern, it would have been addressed
10 earlier on, and it wasn't. So, again, Your Honor, this is
11 further actual proof that this is really simply a last-ditch
12 effort to try to avoid getting disclosure.

13 Now, let's look at the five reasons that they've
14 listed in the emergency motion that they filed. And you'll
15 see that none of them actually provide a basis for denying the
16 request for inspection on the grounds of improper purpose.
17 And that's really what we're here for today, to look at
18 whether or not any of those five reasons, even if proven,
19 would in fact result in a supportable order that would in fact
20 say that, okay, Mr. Okada now has an improper purpose.

21 Now, I'd also like to address just for a moment --
22 there's this notion that Wynn Resorts has about Mr. Okada
23 dodging service. The fact is that there's the Hague
24 Convention. Mr. Okada has many -- or, I'm sorry. Wynn
25 Resorts has many able lawyers in the Far East. Mr. Okada is a

1 resident of Hong Kong. There's a way of serving under the
2 Hague Convention. The purpose here is clearly to litigate
3 against the empty chair. And, frankly, Your Honor, again, I'm
4 sort of surprised that they've done that, but that's sort of
5 what had happened here.

6 But, again, that's not what we're here to discuss.
7 What we're here to discuss is those five reasons. Now, when
8 you look at them, again -- and we've discussed this and it's
9 well briefed in our papers, none of them support this request
10 for discovery, not one of them.

11 Now, the other thing that he talks about is that the
12 -- the California case. It's actually an important matter to
13 think about, because, again, the easy way to deal with that is
14 the protective order; and if there needs to be an amendment to
15 it, we can do that.

16 Wynn Resorts spends a great deal of time talking
17 about the petition. What the petition was addressing was the
18 issue of demand futility. And the fact was that what those
19 allegations talk about is why it is that going back to the
20 board of directors, which was what Your Honor had ordered us
21 to do initially, in the first round, was go back to the board
22 and to seek to have them agree that the demands were
23 reasonable, why it is that that was simply not feasible here
24 and now. Mr. Pisanelli has very carefully laid those out.
25 But, again, that's what they're about. So I think that that

1 again addresses that issue.

2 Again, Your Honor, it's important to remember that
3 it would be ironic that Wynn Resorts would be granted more
4 discovery of Mr. Okada and more disclosure than he's been able
5 to get even though he is a director with fiduciary
6 obligations. And what we're seeking here is something very
7 simple. We're seeking the documents. And the fact is as a
8 director he has a responsibility to the stockholders, and he
9 has a right that Your Honor has already established.

10 And with that, Your Honor, unless there are any
11 questions, I'll cede the podium.

12 THE COURT: Thank you. The motion is granted in a
13 limited respect. The deposition will be permitted to occur in
14 Las Vegas, with Mr. Okada appearing in person to respond to
15 areas of inquiry limited to the alleged improper purpose of
16 the documents requests.

17 Because Case Number A-656710 upon its remand from
18 Federal Court will be coordinated with this case, there will
19 not be a duplication of any examination that occurs during
20 this limited deposition and any additional deposition that has
21 occurred.

22 From looking at the docket, it appears that both --
23 Is it Aruze?

24 MR. CAINE: Aruze, Your Honor.

25 THE COURT: -- Aruze and Universal Entertainment

1 have appeared in Case Number A-656710, so upon the remand
2 from Federal Court I anticipate we can immediately schedule a
3 Rule 16 conference perhaps at the same time Mr. Okada is here
4 for his deposition whether he's been served or not, and then
5 we can begin discovery following that conference so you don't
6 have a delay in that case, since we have a coordination. And
7 I'm not going to make you duplicate the discovery.

8 With respect to the countermotion for the deposition
9 of the board members, I believe that's more appropriate to the
10 other case, 656710, and if you want to take those depositions,
11 I will permit those depositions prior to the Rule 16
12 conference occurring, as long as the case has been remanded,
13 okay. I can't order them to be taken until it gets back to
14 me.

15 MR. CAINE: Okay. Your Honor --

16 THE COURT: You understand what I'm saying?

17 MR. CAINE: -- can we take them in the inspection
18 action for the purpose of showing that this entire improper
19 purpose --

20 THE COURT: No. Because my whole purpose in the
21 inspection action is to make a determination as to whether Mr.
22 Okada's request is reasonable and if it's -- and that it's not
23 for a improper purpose. Whether the other directors think
24 it's reasonable or not really isn't the determining factor,
25 whether they think it's for an improper purpose or not is

1 really not the determining factor. The determining factor is
2 whether I think that Mr. Okada is using it for a proper
3 purpose.

4 MR. CAINE: Understood.

5 THE COURT: So I don't see it as part of this writ
6 action. I do recognize that there may be some overlap, which
7 is why I'm trying to get you to take those depositions in the
8 other case as soon as it gets back here.

9 MR. CAINE: Yes, Your Honor. The reason we wanted
10 them there is because we wanted to show that they were in fact
11 ignoring the issues that Mr. Okada was raising.

12 THE COURT: Well, you want to show they have bias,
13 they failed to investigate, and they had knowledge of other
14 subjects that were of noncompliance that Mr. Okada's raised.
15 I read your brief.

16 MR. CAINE: Thank you, Your Honor. And, Your Honor,
17 in order to expedite the -- if the deposition happens, is it
18 possible for us to do it -- instead of having it in Las Vegas,
19 to do it by video conference?

20 THE COURT: I've had bad luck with video conference
21 and documents.

22 MR. CAINE: Okay. Would it be -- then how about
23 having everyone come to Hong Kong at the expense of -- or
24 simply everyone bearing their own expenses so that we can get
25 this done more quickly?

1 THE COURT: No.

2 MR. CAINE: And having Mr. Okada bear the expenses?

3 THE COURT: Maybe.

4 MR. CAINE: So the -- okay.

5 THE COURT: I didn't say no to that one.

6 MR. CAINE: And so, Your Honor, if we were to be

7 able to work that out with the other side, that would be

8 something that the Court would be willing to think about on

9 settled order?

10 THE COURT: That one I would.

11 MR. CAINE: Okay, Your Honor.

12 THE COURT: Anything else?

13 MR. PISANELLI: No. The only thing left, Your

14 Honor, is first of all I'll tell Counsel up front we want to

15 see Mr. Okada here in Las Vegas, and so we're not going to

16 reach an agreement there. But that's for a later day.

17 THE COURT: I said maybe. That doesn't mean you

18 have to talk to me about it right now.

19 MR. PISANELLI: Sorry. The other issue is in our

20 request and I think -- well, I know in our communications with

21 one another it was my proposal that we will file our

22 supplemental brief 10 days after deposing Mr. Okada. Can that

23 be part of the order, as well?

24 THE COURT: Well, but I wanted to talk about when

25 we're scheduling the hearing, which I think is going to drive

1 when Mr. Okada gets deposed.

2 MR. PISANELLI: We have proposed the 17th and the
3 31st to counsel. We are available. Mr. Lenhard's available,
4 Ms. Sinatra's available, we can all be here.

5 THE COURT: And that's what you propose for the
6 deposition?

7 MR. PISANELLI: No. For the hearing to come back to
8 you. That was before we checked with you. We were just
9 checking everyone's -- the schedules on this side.

10 THE COURT: Both of those days are hugely
11 problematic to me, one because of Mr. McCrea, and one because
12 of CityCenter.

13 MR. PISANELLI: Okay.

14 MR. CAINE: Are there other dates that are more
15 convenient for the Court, Your Honor?

16 THE COURT: Yes. Beginning August 9th is easier,
17 until you get to Labor Day, which is then the Planet Hollywood
18 case, which will last for a couple months.

19 MR. CAINE: So it's Tuesdays and Thursdays between
20 August 9th and Labor Day, Your Honor?

21 THE COURT: Are you guys going to just want to do it
22 on a morning calendar, or do you think this argument is longer
23 than a half hour? Yes, Judge, we think we're going to be
24 longer than a half hour because this simple motion on
25 discovery lasted 45 minutes.

1 MR. PISANELLI: I argued 45 minutes on a motion to
2 amend, so I can't tell you it's going to be under a half hour.
3 I know that's not --

4 MR. CAINE: And, Your Honor, I try to keep my
5 remarks brief, so --

6 THE COURT: You did. And I truly appreciated it
7 today --

8 MR. CAINE: Thank you, Your Honor. So I can say --

9 THE COURT: Okay. And I'm going to give Mr.
10 Pisanelli a hard time later in the morning, because he's on
11 the next page, as well.

12 MR. CAINE: So, Your Honor, I could easily do it
13 within a half hour. And I could split the time with Mr.
14 Pisanelli.

15 MR. PISANELLI: I can't.

16 THE COURT: Yeah, I know you can't.

17 MR. PISANELLI: If you make me, I'll do it. But
18 what we're going to be going through now is not only the
19 records that we have, but Mr. Okada's testimony. I think
20 realistically we're looking at 45 minutes to an hour.

21 THE COURT: Okay. If guys could make August 9 and
22 10 work, let Max know. Otherwise, see if you can come up with
23 a time, and I may even give you a Monday afternoon if that
24 will work.

25 MR. PISANELLI: We'll get together and see if we can

1 work it out.

2 THE COURT: See if you can work that out.

3 MR. PISANELLI: Okay. Thank you, Your Honor.

4 THE PROCEEDINGS CONCLUDED AT 9:51 A.M.

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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

7/4/12

DATE

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

WYNN RESORTS, LIMITED,

Plaintiff,

v.

KAZUO OKADA; et al.,

Defendants.

2:12-CV-0400-LRH-PAL

ORDER

Before the court is plaintiff Wynn Resorts, Limited's ("Wynn") request for attorney's fees. Doc. #107.¹ Also before the court is defendant Azure USA, Inc.'s ("Azure") notice of intent to not sever counterclaims. Doc. #106.

I. Facts and Background

Plaintiff Wynn is a Nevada corporation in the business of owning and operating casino resorts. On February 19, 2012, Wynn filed the underlying complaint in state court alleging three causes of action: (1) breach of fiduciary duty; (2) aiding and abetting a breach of fiduciary duty; and (3) declaratory judgment. Doc. #1, Exhibit A.

On March 12, 2012, defendants Aruze and Universal Entertainment Corp. ("Universal") removed the underlying complaint to federal court on the basis of federal question jurisdiction.

¹ Refers to the court's docket number.

1 Doc. #1. Removing defendants contended that Wynn's complaint involved a resolution of a
2 substantial federal question, namely the scope and interpretation of the Foreign Corrupt Practices
3 Act of 1977 ("FCPA"), 15 U.S.C. §§ 78dd-1, *et seq. Id.*

4 In response, Wynn filed a motion to remand (Doc. #43) which, after a hearing on the
5 motion, was granted by the court (Doc. #102). Along with remanding the action, the court granted
6 plaintiff Wynn leave to seek attorney's fees related to the motion to remand. *See* Doc. #100.
7 Thereafter, Wynn filed the present request for attorney's fees in the amount of \$148,583.00.
8 Doc. #107.

9 **II. Discussion**

10 **A. Awarding Attorney's Fees**

11 An order remanding a case to state court may include an award of attorney's fees. 28 U.S.C.
12 § 1447(c). A district court has wide discretion to grant attorney's fees. *Moore v. Permanent*
13 *Medical Group*, 981 F.2d 443, 446 (9th Cir. 1992). Generally, fees may be awarded when removal,
14 "while fairly supportable, was wrong as a matter of law." *Balcorta v. Twentieth Century-Fox Film*
15 *Corp.*, 208 F.3d 1102, 1106 n.6 (9th Cir. 1999).

16 In its request, Wynn contends that an award of attorney's fees on remand is appropriate
17 because defendants did not have a reasonable basis to remove the state law complaint to federal
18 court. In opposition, defendants contend that attorney's fees should not be awarded because they
19 had an objectively reasonable basis for removal, namely that the underlying conduct for the
20 complaint is that defendant Kazuo Okada ("Okada") engaged in unlawful activities with foreign
21 government officials at Wynn properties in violation of the FCPA.

22 On June 21, 2012, the court heard argument on Wynn's motion to remand. *See* Doc. ##100,
23 102. At the hearing, the court found that Wynn's complaint only alleged state law claims that were
24 "not dependent upon whether or not, in fact, the Federal Corrupt Practices Act was violated," and
25 that Wynn's claims, "in fact, do not implicate a significant federal issue." Doc. #100, p.33:21-34:3.

1 Further, the court found that “a federal question [was] not clear in any respect.” Doc. #100,
2 p.40:11-12. Thus, based on the findings of the court at the hearing and the moving documents in
3 this matter, the court finds that removing defendants did not have an objectively reasonable basis to
4 remove this action to federal court. Therefore, the court finds that an award of attorney’s fees on
5 remand is appropriate.

6 **B. Amount of Attorney’s Fees**

7 In determining the reasonableness of a request for attorney’s fees, a court considers several
8 factors including: (1) the reputation and skill of counsel; (2) the financial terms of the client fee
9 arrangement; (3) the nature and extent of work performed and results obtained; and (4) awards in
10 similar cases. *See, e.g.,* LR 54-16(b)(3); *Resurrection Bay Conservation Alliance v. City of Seward*
11 *Alaska*, 640 F. 3d 1087, 1095 (9th Cir. 2011).

12 Here, Wynn requests \$148,583.00 in attorney’s fees for work performed relating to the
13 motion to remand. *See* Doc. #107. In support of its motion, Wynn has complied with the applicable
14 provisions of Local Rule 54-16 by providing an itemization and description of the work performed
15 as well as a summary of the fees charged and the time and labor required.² The court has reviewed
16 the documents and pleadings on file in this matter and finds that Wynn’s request for \$148,583.00 is
17 reasonable based on the questions presented, the number of documents required for review, the
18 length of the motions, the number of hours worked, and the quality of counsel. Therefore, the court
19 shall grant Wynn’s motion for attorney’s fees.

20 ///

21 _____
22 ² Attached as Exhibit A is the declaration of Wynn’s counsel James J. Pisanelli, Esq. (“Pisanelli”), a
23 partner at the firm Pisanelli Bice PLLC (“Pisanelli Bice”) who worked on the motion to remand. *See* Doc. #107,
24 Exhibit A, Pisanelli Decl. In his declaration, Pisanelli provides an itemized summary of all work performed by
25 Pisanelli Bice on the motion to remand. *Id.*

26 Attached as Exhibit B is the declaration of Wynn’s counsel Paul K. Rowe, Esq. (“Rowe”), an attorney
at Wachtell, Lipton, Rosen & Katz (“WLRK”) who also worked on the motion to remand and associated
documents. *See* Doc. #107, Exhibit B, Rowe Decl. In his declaration, Rowe provides an itemized summary of
all work performed by WLRK on the motion to remand. *Id.*

1 **C. Notice of Non-Severance**

2 At the end of the court's June 21, 2012 hearing, defendants requested an opportunity to
3 brief the issue of severing their counterclaims to allow this court to retain federal jurisdiction over
4 part of this action. *See* Doc. #102. However, defendants have since filed a notice to the court
5 declining to sever its counterclaims, and instead expressing their intent file a separate federal
6 securities action. *See* Doc. #106. Therefore, the court finds that there is now no remaining issues
7 before the court concerning remand. Accordingly, this action shall now be remanded to state court
8 in its entirety.

9
10 IT IS THEREFORE ORDERED that plaintiff's request for attorney's fees (Doc. #107) is
11 GRANTED. The clerk of court shall enter an award of attorney's fees in favor of plaintiff and
12 against defendant in the amount of \$148,583.00.

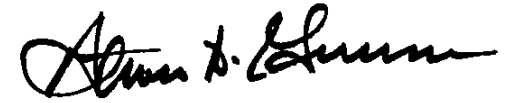
13 IT IS FURTHER ORDERED that this action, 2:12-cv-0400, is REMANDED in its entirety.

14 IT IS SO ORDERED.

15 DATED this 21st day of August, 2012.



16
17
18 _____
LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
19
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26



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Attorneys for Respondent Wynn Resorts, Limited

DISTRICT COURT
CLARK COUNTY, NEVADA

19 KAZUO OKADA, an individual,
20
21 Petitioner,
22
23 v.
24 WYNN RESORTS, LIMITED, a Nevada
25 corporation,
26
27 Respondent.
28

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

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

Date of Hearing: June 28, 2012

Time of Hearing: 9:00 a.m.

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

1 PLEASE TAKE NOTICE that an "Order Regarding Wynn Resorts, Limited's Motion for
2 Leave to Depose Kazuo Okada" was entered in the above-captioned matter on August 22, 2012, a
3 true and correct copy of which is attached hereto.

4 DATED this 23rd day of August, 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 3883 Howard Hughes Parkway, Suite 800
12 Las Vegas, Nevada 89169

13 and

14 Kirk B. Lenhard, Esq., Bar No. 1437
15 Tamara Beatty Peterson, Esq., Bar No. 5218
16 Nikki L. Baker, Esq., Bar No. 6562
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21 and

22 Robert L. Shapiro, Esq. (*pro hac vice admitted*)
23 GLASER WEIL FINK JACOBS HOWARD
24 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

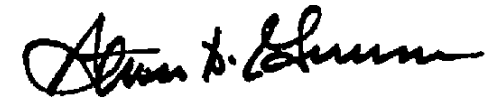
I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 23rd day of August, 2012, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER REGARDING WYNN RESORTS, LIMITED'S MOTION FOR LEAVE TO DEPOSE KAZUO OKADA** via the Court's electronic filing system **and** United States Mail, addressed to the following individuals:

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/s/ Kimberly Peets
An Employee of PISANELLI BICE PLLC



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Attorneys for Respondent Wynn Resorts, Limited

DISTRICT COURT

CLARK COUNTY, NEVADA

18 KAZUO OKADA, an individual,
19
20 Petitioner,

21 v.

22 WYNN RESORTS, LIMITED, a Nevada
23 corporation,
24
25 Respondent.

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

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

Date of Hearing: June 28, 2012

Time of Hearing: 9:00 a.m.

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

PISANELLI BICE PLLC
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LAS VEGAS, NEVADA 89169

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

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

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

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

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

17 DATED this 21st day of August, 2012.

18
19
20 THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT
21 *mf*

22 Respectfully submitted by:

23 PISANELLI BICE PLLC

24 By: 

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Attorneys for Respondent Wynn Resorts, Limited

Approved as to form by:

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By: 

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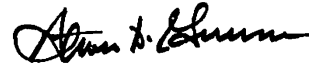
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Attorneys For Petitioner Kazuo Okada

CALENDARED

9/24/12

Electronically Filed
09/12/2012 11:55:05 AM



CLERK OF THE COURT

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ARUZE USA, INC. and UNIVERSAL ENTERTAINMENT
CORPORATION

**pro hac vice application pending*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Plaintiff,

vs.

KAZUO OKADA, an individual, et al.,

Defendants.

AND ALL RELATED CLAIMS.

CASE NO: A-12-656710-B

DEPT. NO: XI

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

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1 COUNTERCLAIM

2 JURISDICTION AND VENUE

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

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

11 NATURE OF THE ACTION

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

18 4. Among other things, Wynn Resorts purported to redeem the shares at a flat
19 30% discount to the most recent market price. Aruze USA's interests, valued by the market at
20 more than \$2.7 billion and by Wynn Resorts at \$2.9 billion three weeks prior to the redemption,
21 would be forcibly purchased in exchange for a non-transferable promissory note to pay
22 approximately \$1.9 billion in a single "balloon payment" 10 years from now. So Wynn Resorts
23 raced to court, electronically filing a complaint at 2:14 a.m. on a Sunday morning – even before
24 giving notice to Aruze USA of the purported redemption. Wynn Resorts apparently thought that

25
26 ¹ The Wynn Resorts' Board of Directors (the "Board"), other than Kazuo Okada ("Kazuo Okada")
27 and "Mr. Okada"), are Steve Wynn, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J.
28 Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Boone Wayson, Elaine P. Wynn,
and Allan Zeman (collectively, the "Wynn Directors").

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

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

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

25 7. Even if the Articles of Incorporation allowed the redemption of
26 Aruze USA's interests in Wynn Resorts (which they do not), there was no legitimate factual or
27 legal basis to invoke the redemption provision in this case. Wynn Resorts undertook a secret
28 investigation, hiding the subjects of the investigation from Aruze USA by erroneously invoking

1 attorney-client privilege and confidentiality, even after Wynn Resorts had leaked a "report" of the
2 investigation to the *Wall Street Journal*. Wynn Resorts refused Aruze USA any reasonable
3 opportunity to respond prior to redeeming Aruze USA's interests, despite prior written promises
4 to do so. If Wynn Resorts had provided the opportunity, it would be clear why redemption is
5 unwarranted.

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

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

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

PARTIES

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

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

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

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

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

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

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

1 17. Counterdefendant Linda Chen is a director of Wynn Resorts and, on
2 information and belief, is a resident of Macau. Ms. Chen owns 265,000 shares of the common
3 stock of Wynn Resorts.

4 18. Counterdefendant Ray R. Irani is a director of Wynn Resorts and, on
5 information and belief, is a resident of California. Mr. Irani owns 18,000 shares of the common
6 stock of Wynn Resorts.

7 19. Counterdefendant Russell Goldsmith is a director of Wynn Resorts and, on
8 information and belief, is a resident of California. Mr. Goldsmith owns 40,000 shares of the
9 common stock of Wynn Resorts.

10 20. Counterdefendant Robert J. Miller is a director of Wynn Resorts and, on
11 information and belief, is a resident of Nevada. Mr. Miller owns 20,500 shares of the common
12 stock of Wynn Resorts.

13 21. Counterdefendant John A. Moran is a director of Wynn Resorts and, on
14 information and belief, is a resident of Florida. Mr. Moran owns 190,500 shares of the common
15 stock of Wynn Resorts.

16 22. Counterdefendant Marc D. Schorr is a director and Chief Operating Officer
17 of Wynn Resorts and, on information and belief, is a resident of Nevada. Mr. Schorr owns
18 250,000 shares of the common stock of Wynn Resorts.

19 23. Counterdefendant Alvin V. Shoemaker is a director of Wynn Resorts and,
20 on information and belief, is a resident of New Jersey. Mr. Shoemaker owns 40,500 shares of the
21 common stock of Wynn Resorts.

22 24. Counterdefendant D. Boone Wayson is a director of Wynn Resorts and, on
23 information and belief, is a resident of Maryland. Mr. Wayson owns 90,500 shares of the
24 common stock of Wynn Resorts.

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

28

1 **GENERAL ALLEGATIONS**

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

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

5 26. Mr. Wynn has a long history of involvement in Las Vegas as a casino
6 operator. As Las Vegas changed, Mr. Wynn sought to present himself as a representative of the
7 new "corporate" Las Vegas. Mr. Wynn developed Mirage Resorts, Inc., a casino conglomerate
8 that owned and operated the Mirage, Treasure Island, and Bellagio. On May 31, 2000, MGM
9 Grand Inc. completed a merger with Mirage Resorts, Inc. In June 2000, after a bruising
10 boardroom battle, which centered on allegations that Mr. Wynn misappropriated company funds,
11 MGM Grand, Inc. ousted Mr. Wynn as Chief Executive Officer of Mirage Resorts, Inc.

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

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

27 29. Beginning in October 2000, Mr. Wynn used a Nevada limited liability
28 company called Valvino Lamore, LLC ("Valvino") as the holding entity for his new Desert Inn

1 casino project. After in-person discussions between Mr. Wynn and Mr. Okada, Aruze USA made
2 a contribution of \$260 million in cash to Valvino in exchange for 50% of the membership
3 interests in Valvino effective October 3, 2000. This contribution was the seed capital that
4 allowed for the development of what is now Wynn Resorts. Valvino is referred to by Wynn
5 Resorts as Wynn Resorts' "predecessor."

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

12 **B. The Stockholders Agreement**

13 31. In 2002, all three owners of LLC interests in Valvino – Mr. Wynn, Aruze
14 USA, and Baron Asset Fund³ – understood that the Wynn organization was planning to go public
15 as Wynn Resorts. This required a series of legal steps by which the owners' interests in Valvino
16 were converted into shares of a newly formed corporation, "Wynn Resorts, Limited," that could
17 then sell additional shares to the public.

18 32. On April 11, 2002, prior to the filing of the Articles of Incorporation for
19 Wynn Resorts, Mr. Wynn, Aruze USA, and Baron Asset Fund entered into the Stockholders
20 Agreement, which imposed certain restrictions on the sale of the stock they were to receive in
21 "NewCo," the entity that would become Wynn Resorts. As described in Wynn Resorts'
22 prospectus, dated October 29, 2002, "the stockholders agreement establishes various rights
23 among Mr. Wynn, Aruze USA and Baron Asset Fund with respect to the ownership and
24 management of Wynn Resorts."

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 33. Notably, the parties to the Stockholders Agreement stated that the terms of
2 that agreement were a condition of transferring their LLC interests in Valvino to Wynn Resorts.
3 Specifically, the Stockholders Agreement stated "as a condition to their willingness to form
4 [Wynn Resorts], either through the contribution of their interests in the LLC or through a
5 different technique, the Stockholders are willing to agree to the matters set forth" in the
6 Stockholders Agreement.

7 34. Wynn Resorts publicly acknowledged the impact of the Stockholders
8 Agreement on the Company and the shareholders, disclosing in Wynn Resorts' Form S-1/A filed
9 with the SEC on October 7, 2002 that the Stockholders Agreement established "restrictions on the
10 transfer of the shares of Wynn Resorts' common stock owned by the parties to the stockholders
11 agreement." In this way, Wynn Resorts – and all other stockholders – were aware that there were
12 limitations written in the Stockholders Agreement on the transferability of the Wynn Resorts'
13 stock held by Aruze USA.

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

26 36. Apart from removing Aruze USA from the purview of later-adopted
27 redemption provisions in Wynn Resorts' Articles of Incorporation, the Stockholders Agreement
28 also contained provisions that allowed Mr. Wynn to nominate a bare majority of directors, and

1 Aruze USA to nominate all remaining directors. Although Aruze USA repeatedly tried over the
2 years to nominate directors, Mr. Wynn refused to allow this to happen, instead nominating all of
3 the directors himself to ensure and perpetuate his complete control of the Board.

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

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

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

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

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

21 **D. The Contribution Agreement**

22 41. 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 Resorts
24 entity. This was no small matter. By this point, Aruze USA had contributed some \$380 million
25 in exchange for its LLC interests in Valvino.

26 42. 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 (the
28 "Contribution Agreement"), by which they agreed to contribute all of the Valvino membership

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

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

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

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

16 44. Wynn Resorts further agreed that the existing restrictions could be altered
17 only with Aruze USA's express written consent. The Contribution Agreement stated: "This
18 Agreement may *not be modified or amended* except by an instrument in *writing* signed by the
19 corporation and all of the Holders."

20 (emphasis added). Accordingly, Wynn Resorts cannot unilaterally impose a redemption
21 restriction on Aruze USA because such a provision is expressly precluded by the terms of Wynn
22 Resorts' agreements with Aruze USA.
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1 **E. After Securing Aruze USA's Contribution, Steve Wynn Unilaterally Amends**
2 **the Articles of Incorporation**

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

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

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

1 enforceable. The language Mr. Wynn unilaterally added to the Articles of Incorporation
2 provided, in pertinent part:

3 The Securities Owned or Controlled by an Unsuitable Person or an
4 Affiliate of an Unsuitable Person shall be subject to redemption by
5 the Corporation, out of funds legally available therefor, by action of
6 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. . . .

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

21 **F. Wynn Resorts Goes Public**

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

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

1 51. On April 28, 2005, Wynn Las Vegas opened. It was an instant success.
2 On 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 have been
4 possible without the capital funding, support, and expertise of Aruze USA and Mr. Okada.

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

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

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

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

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

24 56. And, indeed, Mr. Okada trusted Mr. Wynn. Mr. Wynn knew this, and
25 callously and illegally set out to exploit this trust for his advantage.
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2 **II. UNIVERSAL DISCLOSES AND ULTIMATELY PURSUES FOREIGN
DEVELOPMENT PROJECTS**

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

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

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

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

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

22 Well, first of all, I love Kazuo Okada as much as any man that I've
23 ever met in my life. He's my partner and my friend. And there is
24 hardly anything that I won't do for him. Now, we are not at the
25 present time an investor, nor do we contemplate, an investment in
26 the Philippines. *This is something that Kazuo Okada and his
27 company, [Universal], has done on its own initiative. He consults
28 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).

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

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

13 63. Once again, on September 24, 2009, Wynn Resorts acknowledged
14 Universal's project in the Philippines. Wynn Macau's IPO prospectus explicitly acknowledged
15 Universal's plans to develop a casino in the Philippines:

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

27 64. In this way, Wynn Macau's prospectus acknowledged and ratified
28 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.

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

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

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

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

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

22 68. In March 2009, Mr. Wynn divorced Elaine Wynn. The divorce proved to
23 be damaging to Mr. Wynn's financial position and standing within Wynn Resorts. By early 2010,
24 Mr. Wynn had reached an agreement to split his ownership of Wynn Resorts' stock with Elaine
25 Wynn. As a result of the divorce settlement, Aruze USA was now by far Wynn Resorts' largest
26 stockholder, owning some 24,549,222 shares of Wynn Resorts, or 19.66% of the outstanding
27 stock. Mr. Wynn would now own less than half what Aruze USA owned of Wynn Resorts' stock.
28 While neither Aruze USA nor Mr. Okada ever made any threats against Mr. Wynn, the possibility

1 loomed that Mr. Wynn could be losing control of Wynn Resorts, as had happened ten years
2 earlier, when Mr. Wynn lost control of Mirage Resorts, Inc.

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

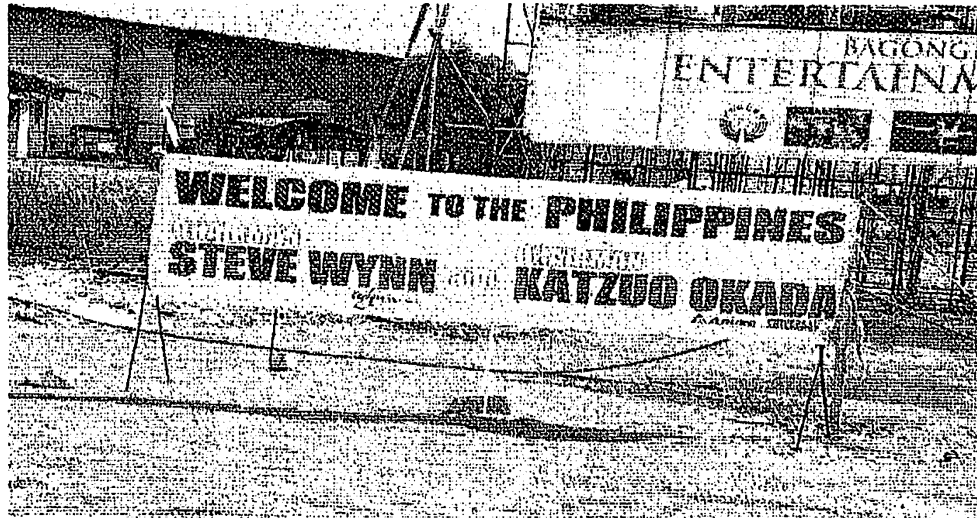
12 70. In addition, the Amended and Restated Stockholders Agreement continued
13 to contain a non-compete clause that prohibited Mr. Okada, Aruze USA, and Universal only from
14 operating casinos in Clark County, Nevada and in Macau, and certain Internet gaming ventures.
15 Neither this version of the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

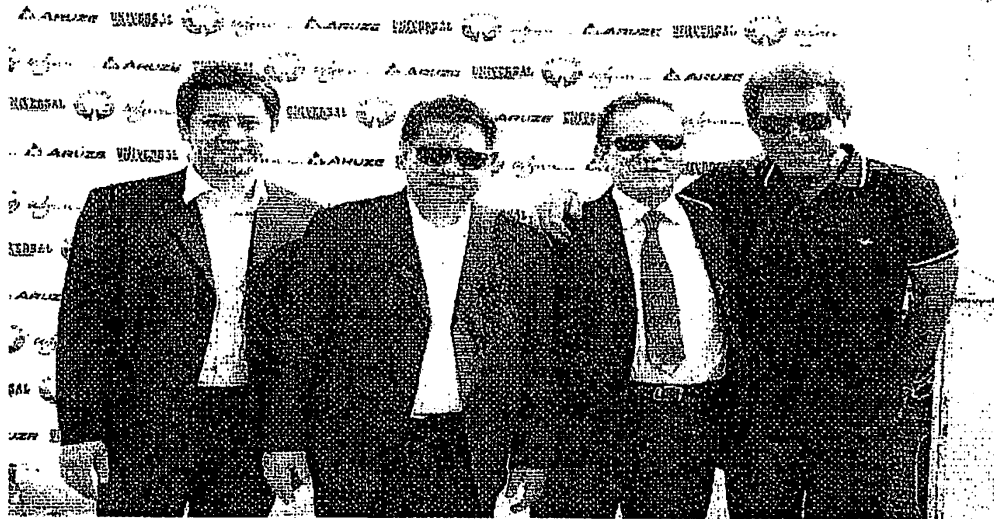
17 71. In January 2010, Mr. Okada indicated that he was willing to move ahead
18 with the amendments provided that Mr. Wynn reciprocated by allowing Aruze USA to sell
19 publicly the same number of shares as Mr. Wynn and Elaine Wynn. In this way, Mr. Okada
20 expected to receive liquidity for Aruze USA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

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

24 72. Though Mr. Wynn had consistently declined to involve Wynn Resorts
25 formally in the Philippine project, he began to reconsider the opportunity in 2010. On June 14,
26 2010, Mr. Wynn and Mr. Okada jointly visited Manila to conduct due diligence on behalf of
27 Wynn Resorts and Universal. On information and belief, Mr. Wynn was considering pursuing the
28 project in his individual capacity as well as on behalf of Wynn Resorts.

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





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

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

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

76. At a Board meeting in April, 2011, Mr. Okada objected to and voted against this donation, which appears to be unprecedented in the annals of the University of Macau, and in the history of Wynn Resorts. Mr. Okada objected to the unprecedented size and duration of the commitment. It was unclear how the University of Macau would use the funds. Mr. Okada wondered why a wealthy university that sits on government land and largely caters to

1 non-Macau residents might need or want such a large donation. Mr. Okada, who is himself a
2 significant philanthropist, wondered whether such a donation actually benefits the people who
3 live in Macau. He was concerned about the lack of deliberation of the boards of Wynn Resorts
4 and Wynn Macau (the donation was approved at a joint meeting in Macau of the two boards), and
5 that pending approvals in Macau related to a new development in Cotai, and the coincidence of
6 the date of the donation and the term of Wynn Macau's gaming license in Macau, might make it
7 appear that Wynn Macau and Wynn Resorts were paying for benefits.

8 77. Notably, for example, the Chancellor of the University of Macau is also the
9 head of Macao's government, with ultimate oversight of gaming matters.

10 78. While Wynn Resorts claims to have received a legal opinion sanctioning
11 the unprecedented donation, Wynn Resorts did not provide that legal opinion to Mr. Okada or, on
12 information and belief, to any other members of the board of either Wynn Macau or Wynn
13 Resorts. On information and belief, Mr. Wynn – and potentially others – misled the Wynn
14 Resorts' Board by securing its consent to the donation, without disclosing his personal knowledge
15 of the close connection between the University of Macau and officials responsible for regulatory
16 decisions related to Wynn Macau's gaming operations.

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

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

27 80. On or about April 29, 2011, Mr. Wynn married his current wife Andrea
28 Hissom. Shortly thereafter, on May 16, 2011, Mr. Wynn and Mr. Okada met in Macau. Ms.

1 Sinatra was present at the meeting, as was Matt Maddox ("Mr. Maddox"), the Chief Financial
2 Officer of Wynn Resorts, and Michiaki Tanaka ("Mr. Tanaka") of Aruze USA, who prepared a
3 transcript of the meeting.

4 81. According to the transcript of the meeting, Mr. Wynn told Mr. Okada that
5 Elaine Wynn was very angry at Mr. Wynn for remarrying. Knowing she was going through a
6 difficult time, Mr. Okada expressed sympathy for Elaine Wynn. Mr. Wynn said that Elaine
7 Wynn had a desire to transfer her shares to a new owner, and that there was an urgent need for
8 Mr. Okada to immediately consent on Aruze USA's behalf to the transfer of the securities under
9 the Stockholders Agreement.

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

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

21 84. Mr. Wynn gave Mr. Okada an explicit personal assurance that financing
22 would occur. Mr. Wynn stated that this proposal would be good for Mr. Okada and good for
23 Wynn Resorts, because it will contribute to the stability of Wynn Resorts. And, based on such
24 assurances, Mr. Okada agreed to financing from Wynn Resorts, rather than pledging Aruze
25 USA's stock.

26 85. Unbeknownst to Mr. Okada, Universal, or Aruze USA at the time,
27 Mr. Wynn was simultaneously orchestrating Wynn Resorts' "investigation" to have Mr. Okada,
28 Aruze USA, and Universal deemed unsuitable. Indeed, Wynn Resorts has publicly asserted that it

1 began its "investigation" into the Philippines as early as February 2011, well before Mr. Okada
2 proposed to pledge Aruze USA's shares of Wynn Resorts' stock. Through his assurances,
3 however, Mr. Wynn took deliberate steps to keep Aruze USA, Universal, and Mr. Okada
4 associated with Wynn Resorts. If Wynn Resorts and Mr. Wynn were truly concerned with any
5 risk that Aruze USA, Universal, and Mr. Okada supposedly posed to their gaming licenses, they
6 would have allowed Aruze USA to liquidate its position. Instead, to perpetrate the fraudulent
7 scheme, and seek to forcibly redeem Aruze USA's shares at a vast discount under extremely
8 oppressive terms, Mr. Wynn instead misled Aruze USA into not liquidating its shares.

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

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

27 88. Later that day, in response to Mr. Tanaka's note and after Mr. Okada had
28 signed the waiver and consent about Elaine Wynn's stock, Ms. Sinatra prepared a draft "Side

1 Letter" to replace the one prepared by Mr. Tanaka. The "Side Letter" prepared by Ms. Sinatra
2 stated that Wynn Resorts would negotiate a loan from Wynn Resorts to Aruze USA secured by
3 Aruze USA's stock "*to the extent compliant with all state and federal laws*" (emphasis added).
4 On information and belief, Ms. Sinatra inserted this language because she believed Section 402 of
5 SOX prohibited the loan proposed by Mr. Wynn and agreed to by both Mr. Wynn and Mr. Okada.

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

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

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

27 92. In the same email, Ms. Sinatra then explained that Wynn Resorts was
28 negotiating with Deutsche Bank on a margin loan transaction, with Wynn Resorts acting as a

1 "backstop." Ms. Sinatra suggested holding a telephone conference with Aruze USA's counsel to
2 discuss the proposed transaction further. She did not dispute that Mr. Okada's consent to the
3 amendment in the Stockholders Agreement was based on Wynn Resorts' agreement to continue
4 to pursue financing for a loan to Aruze USA (using Aruze USA's Wynn Resorts shares as
5 collateral). At no point in time did Ms. Sinatra call into question the Philippine project.

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

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

16 95. 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 Bob
18 Miller, and two Wynn Resorts insiders. On information and belief, each member of Wynn
19 Resorts' Compliance Committee depends on Mr. Wynn for his livelihood and each is beholden to
20 Mr. Wynn. On information and belief, Mr. Wynn has plenary control over the Compliance
21 Committee. On September 30, 2011, the Compliance Committee refused to permit the loan to
22 Aruze USA.

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

25 96. 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 position. In
27 addition to being the Chair of the Universal Compliance Committee, he was (and, on information
28 and belief, still is) a long-time lawyer for Mr. Wynn.