

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

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

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

21           173. On March 2, 2012, Wynn Resorts released a Form 8-K.

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

24                   As previously disclosed ... Wynn Macau, Limited ("WML"), an  
25                   indirect subsidiary of the Registrant with ordinary shares of its  
26                   common stock listed on The Stock Exchange of Hong Kong  
27                   Limited, announced that Palo Real Estate Company Limited  
28                   ("Palo") and Wynn Resorts (Macau) S.A. ("Wynn Macau"), each  
                    an indirect subsidiary of the Registrant, formally accepted the terms  
                    and conditions of a land concession contract (the "Land Concession  
                    Contract") from the government (the "Macau Government") of the  
                    Macau Special Administrative Region of the People's Republic of

1 China ("Macau") in respect of approximately 51 acres of land in the  
2 Cotai area of Macau (the "Cotai Land"). The Land Concession  
3 Contract permits Palo and Wynn Macau to develop a resort  
containing a five-star hotel, gaming areas, retail, entertainment,  
food and beverage, spa and convention offerings on the Cotai Land.

4 The Land Concession Contract was published in the official gazette  
5 of Macau (the "Gazette") on January [\*] 2012. Effective from such  
6 publication date, Palo will lease the Cotai Land from the Macau  
7 Government for an initial term of 25 years with the right to renew  
8 the Land Concession Contract for additional successive periods,  
9 subject to applicable legislation. The Land Concession Contract  
10 also requires that Wynn Macau, as a gaming concessionaire,  
11 operate and manage gaming operations on the Cotai Land. In  
12 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.

13 The foregoing description of the Land Concession Contract is  
14 qualified in its entirety by reference to the full English translation of  
15 the Land Concession Contract (originally published in the Gazette  
16 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.

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

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

22 177. On information and belief, these positive developments in Macau (or elsewhere in  
23 Wynn Resorts operational sphere) were imminent and known by Wynn Resorts. To the extent  
24 that the redemption of Aruze USA's stock actually occurred, Wynn Resorts redeemed Aruze  
25 USA's stock based on this material, non-public information. Although Wynn Resorts claims to  
26 have purchased Aruze USA's stock using the current stock market value, Wynn Resorts knew,  
27 but failed to disclose, that the stock market value did not reflect the land concession contract that  
28 it had obtained in Macau. Therefore, Wynn Resorts continued its fraudulent and misleading

1 omission of this information in calculating the redemption price knowingly based on materially  
2 misleading information.

3 **CLAIMS FOR RELIEF**

4 **COUNT I**

5 **Declaratory Relief**

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

7 178. Aruze USA and Universal reassert and reallege Paragraphs 4 through 178 above as  
8 if set forth in full below.

9 179. Aruze USA and Universal seek a judicial declaration that the purported  
10 redemption of Aruze USA's shares is void *ab initio*, and that Aruze USA is the owner of  
11 24,549,222 shares or 19.66% of the total outstanding common stock of Wynn Resorts, with all  
12 rights and privileges appurtenant thereto (including, but not limited to, payment of dividends and  
13 voting rights). This declaration is appropriate because, as alleged above: (1) the redemption  
14 provision in the Articles of Incorporation is inapplicable to the Wynn Resorts' stock owned by  
15 Aruze USA because Aruze USA entered into the Stockholders Agreement, which prevented any  
16 further restrictions without agreement of the parties and vested in Aruze USA the "sole power of  
17 disposition" of its shares, before the enactment of the redemption provision; (2) the redemption  
18 provision in the Articles of Incorporation is inconsistent with Nevada law and public policy, and  
19 thus void; (3) the Board lacked a sufficient basis for a finding of "unsuitability" or for  
20 redemption; and/or, (4) the redemption provision as written and as applied is unconscionable.

21 180. In addition or alternatively, Aruze USA and Universal seek a judicial declaration  
22 that the redemption provision in Wynn Resorts' Articles of Incorporation is invalid as a matter of  
23 law because it is impermissibly vague, contrary to law and public policy, and/or unconscionable.  
24 This declaration is appropriate because, among other things, Nevada gaming regulators are given  
25 the authority under the laws of Nevada to make determinations regarding "suitability." The  
26 redemption provision in Wynn Resorts' Articles of Incorporation purportedly relied on here by  
27 the Wynn Directors improperly and illegally usurps that authority. Furthermore, if and when  
28 Nevada gaming regulators were to make such a determination, redemption that simply replaces

1 equity with debt is ineffective to effect a disassociation; the redemption provision, therefore,  
2 would not comply with Nevada law.

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

10 182. In addition or alternatively, Aruze USA and Universal seek a judicial declaration  
11 that the Board resolution to redeem Aruze USA’s shares was procedurally and/or substantively  
12 defective, and contrary to law and public policy. As alleged in detail above, this declaration is  
13 appropriate because (1) the Stockholders Agreement, executed before the redemption provision  
14 was added to the Articles of Incorporation, prevented any further restrictions on Aruze USA’s  
15 shares without agreement of the parties and vested in Aruze USA the “sole power of disposition”  
16 of its shares; (2) the Board lacked a sufficient basis for a finding of “unsuitability” or redemption  
17 and made its findings without a thorough and complete review of relevant law, facts, and  
18 evidence; (3) the redemption provision in the Articles of Incorporation is inconsistent with  
19 Nevada law and public policy, and thus void; and, (4) the redemption provision, as written and as  
20 applied, is unconscionable.

21 183. Alternatively, to the extent that redemption is not otherwise barred, Aruze USA  
22 and Universal seek a judicial declaration that the form and amount of compensation paid for  
23 Aruze USA’s shares was improper and/or inadequate and that Aruze USA is entitled to cash in an  
24 amount equivalent to at least the closing price of the stock on February 17, 2012. Indeed, Wynn  
25 Resorts asserted in a court filing dated January 27, 2012, that “[w]ith holdings valued at  
26 approximately \$2.9 billion, Aruze is one of Wynn’s largest shareholders.” As alleged in detail  
27 above, this declaration is appropriate because simply converting Wynn Resorts’ largest  
28 shareholder to Wynn Resorts’ largest creditor serves no valid legal purpose. Furthermore, the



1 discount applied to Aruze USA's shares based on the transfer restrictions of the Stockholder  
2 Agreement is invalid because of Steve Wynn's and Elaine Wynn's prior breach of the  
3 Stockholders Agreement. Moreover, the amount and form of compensation paid for Aruze  
4 USA's shares does not represent the "fair value" of the shares under the Articles of Incorporation  
5 and governing law. The "fair value" of the Aruze USA's stock at the time of the redemption  
6 should not have included any discount for the transfer restrictions or lack of marketability of  
7 Aruze USA's stock. In addition, the valuation by Moelis was not objective, independent, or the  
8 product of sound financial analysis, and, among other things, did not consider material non-public  
9 information available to Wynn Resorts that would militate in favor of a higher valuation, did not  
10 account for the premium that would be applied to such a large block of shares, and did not  
11 consider the extent to which transfer restrictions were not valid as to Aruze USA.

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

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

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

## 23 COUNT II

### 24 **Permanent Prohibitory Injunction**

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

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

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

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

15           190.   Harm will result if relief is not granted because Aruze USA's interest in Wynn  
16 Resorts is not fungible and Aruze USA's status as the largest shareholder in Wynn Resorts cannot  
17 be fully remedied through damages.

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

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

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

1 COUNT III

2 **Permanent Mandatory Injunction**

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

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

6 195. To the extent it might be determined that Wynn Resorts' purported redemption has  
7 already occurred, Aruze USA seeks a permanent mandatory injunction directing Wynn Resorts  
8 and the Wynn Directors, their agents, servants, employees, attorneys, and all those acting in  
9 concert or in active participation with Wynn Resorts, to restore Aruze USA's ownership interest  
10 in Wynn Resorts. The injunction sought should restore both Aruze USA's ownership interest, as  
11 well as the value of Aruze USA's stock, and all dividends and other rights and privileges accruing  
12 to the shares.

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

18 197. Harm will result if relief is not granted because Aruze USA's interest in Wynn  
19 Resorts is not fungible and Aruze USA's status as the largest shareholder in Wynn Resorts cannot  
20 be fully remedied through damages.

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

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

27 200. 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 from the

1 purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18,  
2 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.

4 201. 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 IV**

8 **Breach of Contract in Connection with Wynn Resorts' Involuntary Redemption**

9 **(By Aruze USA Against Steve Wynn and Elaine Wynn)**

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

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

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

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

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

27 207. 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 from the

1 purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18,  
2 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.

4 208. 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 V**

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

9 **Discounting Method of Involuntary Redemption**

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

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

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

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

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

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

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

27 215. Among other things, although known to Wynn Resorts, Wynn Resorts did not take  
28 into account material non-public information concerning positive developments for Wynn Resorts



1 regarding the Cotai land concession in Macau, as well as other positive non-public information,  
2 when redeeming Aruze USA's shares for far less than the value of the shares. Furthermore,  
3 Wynn Resorts' unilateral valuation did not account for the premium that would be applied to such  
4 a large block of shares.

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

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

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

14 **COUNT VI**

15 **Breach of Fiduciary Duty**

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

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

19 220. Directors of a corporation owe a fiduciary duty to the corporation and to its  
20 shareholders, including a duty of care and a duty of loyalty toward the corporation and each  
21 shareholder.

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

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

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

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

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

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

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

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

229. 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.

230. 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.

231. 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)

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

233. 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-

1 year promissory note in a principal amount at least 30% less than the fair value of Aruze USA's  
2 stock, and paying a mere 2% interest, without providing Aruze USA any voting rights, rights to  
3 dividends, or the right to transfer the note.

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

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

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

### 17 COUNT VIII

#### 18 Conversion

#### 19 (By Aruze USA Against Wynn Resorts)

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

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

26 239. As a result, Wynn Resorts' Board lacked a fair, proper, and sufficient basis for  
27 seizing Aruze USA's stock.

28 240. Wynn Resorts wrongfully exercised dominion over Aruze USA's stock.

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

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

243. 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.

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

COUNT IX

### **Fraud/Fraudulent Misrepresentation in Connection with Financing for Aruze USA**

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

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

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

247. Mr. Wynn and Ms. Sinatra, acting in their individual capacity and as agents of Wynn Resorts, made these false and misleading statements and omissions knowingly or without sufficient basis of information because they believed Wynn Resorts was not permitted to enter into such a lending transaction pursuant to the restrictions in Section 402 of SOX. As alleged



1 above, Mr. Wynn and Ms. Sinatra engaged in this wrongful conduct for the purpose of  
2 maintaining Mr. Wynn's control over Wynn Resorts after Mr. Wynn's shares in the Company  
3 were split with Elaine Wynn following their divorce, and keeping alive the opportunity to later  
4 have Wynn Resorts seek to redeem Aruze USA's shares at a discount.

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

10 249. Aruze USA relied on the false and misleading statements and omissions made by  
11 Wynn Resorts, Mr. Wynn, and Ms. Sinatra. 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.

14 250. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra knew that  
15 Aruze USA intended to rely on this information as a reason for Aruze USA to consent to Elaine  
16 Wynn's transfer of shares under the Stockholders Agreement, and for Aruze USA to refrain from  
17 taking steps to invalidate the purported restrictions on alienability contained in the Stockholders  
18 Agreement. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra further knew  
19 and intended that, in reliance on these misrepresentations, Aruze USA would relinquish its own  
20 opportunity to liquidate its own shares of Wynn Resorts' stock to fund Universal's project in the  
21 Philippines or seek other financing. Therefore, Aruze USA relied on the fact that Wynn Resorts  
22 was a committed lender to the project at the expense of pursuing other financing options.

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

26 252. Pursuant to N.R.S. § 42.005, by reason of the fraudulent, reckless, misleading,  
27 malicious, willful, and wanton misconduct of Wynn Resorts, Mr. Wynn, and Ms. Sinatra, Aruze

1 USA is entitled to punitive damages not to exceed three times the amount of compensatory  
2 damages awarded.

3 253. Aruze USA brings this claim within the relevant statute of limitations under  
4 Nevada law, having discovered facts giving rise to this claim, including injury arising from the  
5 purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about September 30,  
6 2011.

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

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

14 **COUNT X**

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

16 **(By Aruze USA Against Wynn Resorts, Steve Wynn, and Kimmarie Sinatra)**

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

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

25 258. The false statements of facts alleged herein were material because had Wynn  
26 Resorts, Mr. Wynn, and Ms. Sinatra provided Aruze USA with truthful and correct information,  
27 Aruze USA would not have consented to Elaine Wynn's transfer of shares under the Stockholders  
28

1 Agreement, and would have taken steps to invalidate the purported restrictions in the Shareholder  
2 Agreement.

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

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

12 261. Furthermore, Mr. Wynn and Ms. Sinatra, acting in their individual capacity and as  
13 agents of Wynn Resorts, made these materially false and misleading statements and omissions  
14 knowingly or without sufficient basis of information regarding the immediate need for Elaine  
15 Wynn to transfer her shares under the Stockholders Agreement.

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

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

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

27 265. Pursuant to N.R.S. § 42.005, by reason of the fraudulent, reckless, misleading,  
28 malicious, willful, and wanton misconduct of Wynn Resorts, Mr. Wynn, and Ms. Sinatra, Aruze

1 USA is entitled to punitive damages not to exceed three times the amount of compensatory  
2 damages awarded.

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

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

10 **COUNT XI**

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

12 **(By Aruze USA Against Steve Wynn and Kimmarie Sinatra)**

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

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

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

20 271. On information and belief, Ms. Sinatra had knowledge that Mr. Wynn needed  
21 Aruze USA to waive the restriction in order to permit Elaine Wynn to transfer her shares.

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

28

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

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

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

20          276.   Aruze USA relied on the false and misleading statements and omissions made by  
21   Wynn Resorts, Mr. Wynn, and Ms. Sinatra. Aruze USA's reliance on the false and misleading  
22   statements and omissions was reasonable and justifiable, especially in light of Mr. Okada's  
23   trusting relationship with Mr. Wynn.

24          277.   On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra knew that  
25   Aruze USA intended to rely on this information as a reason for Aruze USA to consent to Elaine  
26   Wynn's transfer of shares under the Stockholders Agreement. On information and belief, Wynn  
27   Resorts, Mr. Wynn, and Ms. Sinatra further knew and intended that, in reliance on these  
28   misrepresentations, Aruze USA would relinquish its own opportunity to liquidate its own shares



1 of Wynn Resorts' stock to fund Universal's project in the Philippines or seek other financing.  
2 Therefore, Aruze USA relied on the fact that Wynn Resorts was a committed lender to the project  
3 at the expense of pursuing other financing options.

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

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

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

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

## 18 COUNT XII

### 19 **Promissory Estoppel in Connection with Financing for Aruze USA**

20 **(By Aruze USA Against Wynn Resorts, Steve Wynn, and Kimmarie Sinatra)**

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

23 283. On or about May 16, 2011, Mr. Wynn, in the presence of Ms. Sinatra, gave  
24 Mr. Okada an explicit personal assurance that Wynn Resorts would provide a loan or facilitate the  
25 lending of money to Aruze USA, which would be backed by shares of Wynn Resorts' stock held  
26 by Aruze USA. As alleged above, Mr. Okada agreed to the financing from Wynn Resorts –  
27 rather than causing Aruze USA to attempt to liquidate or pledge its shares of Wynn Resorts or  
28 seek alternative financing – based on assurances made by Mr. Wynn. Ms. Sinatra agreed to

1 provide draft loan agreements to Aruze USA within 10 days to support the agreement reached  
2 between Mr. Wynn and Mr. Okada.

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

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

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

21 287. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra knew that  
22 Aruze USA intended to rely on this information as a reason for Aruze USA to forego seeking to  
23 liquidate its shares or seeking another source of financing backed by its Wynn Resorts shares. On  
24 information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra further knew and intended that  
25 in reliance on these misrepresentations, Aruze USA would relinquish its opportunity to liquidate  
26 its own shares of Wynn Resorts' stock to fund Universal's project in the Philippines or seek other  
27 financing. Therefore, Aruze USA relied on the fact that Wynn Resorts was a committed lender to  
28 the project at the expense of pursuing other financing options.

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

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

290. 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.

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

COUNT XIII

### **Fraud/Fraud in the Inducement of the Stockholders Agreement**

(By Aruze USA Against Steve Wynn)

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

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

294. 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.

295. On behalf of Aruze USA, on or about June 10, 2002, Mr. Wynn caused Aruze USA to enter into a Contribution Agreement between Aruze USA, Baron Asset Fund, Kenneth R.

1 Wynn Family Trust, Wynn Resorts, and Mr. Wynn. The Contribution Agreement committed  
2 Aruze USA's LLC interests in Valvino in exchange for Wynn Resorts common stock.

3 296. Prior to causing the exchange to occur, on or about September 10, 2002,  
4 Mr. Wynn unilaterally filed amended Articles of Incorporation that, for the first time, included a  
5 redemption provision. On information and belief, Mr. Wynn deliberately delayed in causing the  
6 exchange in order to allow Mr. Wynn to unilaterally amend the Articles of Incorporation without  
7 affording Aruze USA a shareholder vote as would have been required pursuant to N.R.S.  
8 § 78.390. At the time of the amendment, Mr. Wynn was the sole stockholder of Wynn Resorts.  
9 On or about September 28, 2002, about eighteen days after Mr. Wynn unilaterally amended the  
10 Articles of Incorporation, Mr. Wynn caused the exchange of Aruze USA's LLC interests in  
11 Valvino to Wynn Resorts for Wynn Resorts common stock.

12 297. Mr. Wynn intentionally made materially false and/or misleading representations to  
13 Aruze USA regarding Wynn Resorts' stockholder obligations under the Articles of Incorporation  
14 to induce Aruze USA to enter into the Stockholders Agreement. The Stockholders Agreement  
15 expressly provided that Aruze USA would have the sole power of disposition of its stock in  
16 Wynn Resorts and there were to be no other provisions regarding the disposition of Aruze USA's  
17 stock, voluntarily or involuntary. Mr. Wynn misrepresented and/or failed to disclose that Wynn  
18 Resorts' amended Articles of Incorporation would seek to impose substantial financial risk on  
19 Aruze USA's shares of Wynn Resorts stock by providing Wynn Resorts' Board – which was  
20 controlled by Mr. Wynn – purported discretion to redeem Aruze USA's stock on potentially  
21 onerous terms.

22 298. The misrepresentations and concealment of facts alleged herein were material.

23 299. Mr. Wynn knew the misrepresentations and concealment of facts alleged herein  
24 were false, or alternatively, made misrepresentations of facts with reckless disregard for whether  
25 those representations were true.

26 300. Wynn Resorts and Mr. Wynn made the misrepresentations and concealed facts as  
27 set forth herein with the intent to induce Aruze USA to enter into the Stockholder Agreement.

1 Furthermore, Mr. Wynn made the misrepresentations and concealment of facts alleged herein  
2 with the intent of gaining his own financial advantage to the disadvantage of Aruze USA.

3 301. Aruze USA relied upon the misrepresentations and concealment of facts made by  
4 Mr. Wynn regarding Wynn Resorts' common stock at the time Aruze USA entered into the  
5 Stockholders Agreement. Aruze USA's reliance on these representations and concealment of  
6 facts was reasonable and justifiable, especially in light of Mr. Okada's trusting relationship with  
7 Mr. Wynn.

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

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

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

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

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



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

COUNT XIV

### **Negligent Misrepresentation in Connection with the Stockholders Agreement**

(By Aruze USA Against Steve Wynn)

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

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

310. 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.

311. On behalf of Aruze USA, on or about June 10, 2002, Mr. Wynn caused Aruze USA to enter into a Contribution Agreement between Aruze USA, Baron Asset Fund, Kenneth R. Wynn Family Trust, Wynn Resorts, and Mr. Wynn. The Contribution Agreement committed Aruze USA's LLC interests in Valvino in exchange for Wynn Resorts common stock.

312. Prior to causing the exchange to occur, on or about September 10, 2002, Mr. Wynn unilaterally filed amended Articles of Incorporation that, for the first time, included a redemption provision. On information and belief, Mr. Wynn deliberately delayed in causing the exchange in order to allow Mr. Wynn to unilaterally 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           313. On or about September 28, 2002, about three months after Aruze USA entered into  
2 the Contribution Agreement, and eighteen days after Mr. Wynn amended the Articles of  
3 Incorporation, Mr. Wynn caused the contribution of Aruze USA's LLC interests in Valvino to  
4 Wynn Resorts in exchange for Wynn Resorts common stock.

5           314. Mr. Wynn made materially false representations and/or omissions to Aruze USA  
6 regarding Wynn Resorts' stockholder obligations under at the time Aruze USA entered into the  
7 Stockholders Agreement. The Stockholders Agreement expressly provided that Aruze USA  
8 would have the sole power of disposition of its stock in Wynn Resorts and there were to be no  
9 other provisions regarding the disposition of Aruze USA's stock, voluntarily or involuntary.  
10 Mr. Wynn misrepresented and/or failed to disclose that Wynn Resorts' amended Articles of  
11 Incorporation would seek to impose substantial financial risk to Aruze USA by providing Wynn  
12 Resorts' Board (which was controlled by Mr. Wynn) purported discretion to redeem Aruze  
13 USA's stock on potentially onerous terms.

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

17           316. The false statements and/or omissions of facts alleged herein were material  
18 because, had Mr. Wynn provided Aruze USA with truthful and correct information, Aruze USA  
19 would not have entered into the Stockholders Agreement.

20           317. Mr. Wynn failed to exercise reasonable care or competence in obtaining or  
21 communicating the false statements of fact alleged herein.

22           318. Aruze USA relied on the false and misleading statements and omissions made by  
23 Mr. Wynn regarding Wynn Resorts' common stock at the time Aruze USA entered into the  
24 Stockholders Agreement. Aruze USA's reliance on the false and misleading statements and  
25 omissions was reasonable and justifiable, especially in light of Mr. Okada's trusting relationship  
26 with Mr. Wynn.

27           319. On information and belief, Mr. Wynn knew that Aruze USA intended to rely on  
28 this information as a reason for Aruze USA to enter into the Stockholders Agreement.

320. Aruze USA has suffered and continues to suffer injury because of Mr. Wynn's false and misleading statements and omissions alleged herein. As a direct and proximate result of 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.

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

322. 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.

323. 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

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

(By Aruze USA Against Steve Wynn)

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

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

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

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

328. Mr. Wynn's actions constitute a material breach of the Stockholders Agreement without justification and has frustrated the essential purpose of the Stockholders Agreement.

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

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

331. 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.

332. 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.

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

COUNT XVI

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

(By Aruze USA Against Steve Wynn)

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

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

1           336.   Aruze USA and Mr. Wynn are parties to the Stockholders Agreement, between  
2 Mr. Wynn, Elaine Wynn, and Aruze USA.

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

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

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

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

17           341.   Accordingly, Mr. Wynn's conduct has breached the covenant of good faith and  
18 fair dealing. On account of Mr. Wynn's material breach, Aruze USA is entitled to contract  
19 damages, or in the alternative, Aruze USA is entitled to be excused and discharged from its  
20 obligations under the Stockholders Agreement.

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

25           343.   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 from the  
27 purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18,

28

1 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.

3 344. 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 XVII**

7 **Breach of Fiduciary Duty**

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

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

11 346. In the alternative, to the extent the Court finds that the redemption provision in the  
12 Articles of Incorporation applies to Aruze USA's shares, Aruze USA asserts the claim of breach  
13 of fiduciary duty against Steve Wynn. Aruze USA thus brings this claim in the alternative to  
14 Aruze USA's claims that assert the purported redemption by Wynn Resorts is void *ab initio*.

15 347. Section 2(c) of the Stockholder Agreement provided that "Aruze [USA] hereby  
16 constitutes and appoints [Mr.] Wynn as its true and lawful attorney-in-fact and agent, with full  
17 power of substitution and reconstitution for it and in its name, place and stead, in any and all  
18 capacities, to execute and deliver any and all documents in connection with or related to the  
19 formation of [Wynn Resorts]." As Aruze USA's attorney-in-fact and agent, Mr. Wynn had a  
20 fiduciary duty to Aruze USA to act in good faith and in Aruze USA's best interest.

21 348. By virtue of his purported position as power of attorney under the Stockholders  
22 Agreement, Mr. Wynn owed fiduciary duties to Aruze USA. In breach of these duties, on or  
23 about September 10, 2002, Mr. Wynn caused to be filed amended Articles of Incorporation that  
24 included, for the first time, a redemption provision.

25 349. Mr. Wynn's act of unilaterally amending the Articles of Incorporation  
26 demonstrated that Mr. Wynn possessed a conflict of interest in his dual roles of sole shareholder  
27 in Wynn Resorts and attorney-in-fact and agent of Aruze USA. If applied to Aruze USA, the  
28 redemption provision would violate the Stockholders Agreement and impose substantial financial



1 risk on Aruze USA's shares of Wynn Resorts stock by providing Wynn Resorts' Board – which  
2 was controlled by Mr. Wynn – purported discretion to redeem Aruze USA's stock on potentially  
3 onerous terms. Despite the conflict of interest, Mr. Wynn included the redemption provision in  
4 the Articles of Incorporation to the detriment of Aruze USA in breach of his fiduciary duties as  
5 attorney-in-fact to Aruze USA. Further, as Aruze USA's attorney-in-fact, Mr. Wynn had a duty  
6 to inform Aruze USA that the redemption provision could be used against Aruze USA. In  
7 violation of this duty, Mr. Wynn not only failed to inform Aruze USA of this risk, but, on  
8 information and belief, his attorneys represented to Aruze USA's attorneys that such a  
9 redemption provision would *not* apply to Aruze USA's shares.

10 350. Mr. Wynn's fiduciary obligations to Aruze USA as attorney-in-fact are not subject  
11 to the business judgment rule.

12 351. Aruze USA was not aware of and could not have known about the breach of  
13 fiduciary duties until September 30, 2011, when Wynn Resorts, for the first time, indicated that it  
14 might attempt to apply the redemption restriction to Aruze USA's shares.

15 352. As a further direct and proximate result of the wrongful conduct by the Mr. Wynn,  
16 as alleged herein, Aruze USA was and continues to be damaged in an amount in excess of  
17 \$10,000.

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

23 354. 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 XVIII

2 **Tortious Interference of Contract**

3 **(By Aruze USA Against Wynn Resorts, Linda Chen, Russell Goldsmith, Ray R. Irani,**  
4 **Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Boone Wayson,**  
5 **and Allan Zeman)**

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

8 356. In the alternative, to the extent the Court finds the redemption of Aruze USA's  
9 shares enforceable, Aruze USA asserts the claim of tortious interference of contract against Wynn  
10 Resorts, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D.  
11 Schorr, Alvin V. Shoemaker, Boone Wayson, and Allan Zeman.

12 357. On or about February 18, 2012, Wynn Resorts purportedly redeemed Aruze USA's  
13 Wynn Resort shares for 30% less than the market value of the shares as measured by the closing  
14 price of Wynn Resort's stock on the Friday prior to the Saturday Board meeting. Wynn Resorts  
15 announced that it arrived at the 30% discounted value because of the existence of the  
16 Stockholders Agreement.

17 358. Wynn Resorts, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller,  
18 John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Boone Wayson, and Allan Zeman knew of  
19 the existence of the Stockholders Agreement between Aruze USA, Mr. Wynn, and Ms. Wynn,  
20 and believed the Stockholders Agreement to be valid and enforceable prior to voting to redeem  
21 Aruze USA's stock in Wynn Resorts.

22 359. By voting in favor of the redemption of Aruze USA's shares, Wynn Resorts, Linda  
23 Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin  
24 V. Shoemaker, Boone Wayson, and Allan Zeman knew or should have known that the  
25 redemption would violate the Stockholders Agreement by denying Aruze USA the right to have  
26 the "sole power of disposition" of its shares in Wynn Resorts.

27 360. To the extent the Court finds that the redemption of Aruze USA's stock actually  
28 occurred, Wynn Resorts, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A.

1 Moran, Marc D. Schorr, Alvin V. Shoemaker, Boone Wayson, and Allan Zeman intentionally and  
2 tortiously interfered with contractual relations, which resulted in injury to Aruze USA.

3 361. As a further direct and proximate result of the wrongful conduct by Wynn Resorts,  
4 Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr,  
5 Alvin V. Shoemaker, Boone Wayson, and Allan Zeman as alleged herein, Aruze USA was and  
6 continues to be damaged in an amount in excess of \$10,000 to be proven at trial.

7 362. 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 from the  
9 purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18,  
10 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not  
11 reasonably have discovered earlier the facts giving rise to this claim.

12 363. 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 said  
14 services performed and to be performed in a sum to be determined.

15 **COUNT XIX**

16 **Unconscionability/Reformation of Promissory Note**

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

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

20 365. In the alternative, to the extent that the redemption provision in the Articles of  
21 Incorporation is found to apply to Aruze USA's shares and the redemption is found to be lawful,  
22 Aruze USA asserts that the promissory note is unconscionable and therefore subject to  
23 reformation.

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



1 additional pressure on Aruze USA, Ms. Sinatra stated she hoped a “resolution” could be reached  
2 regarding Aruze USA’s shares and Mr. Okada’s directorship prior to the Compliance Committee  
3 meeting on October 21, 2011, in advance of the November 1 Board meeting.

4 374. Additionally, shortly after Mr. Okada’s February 15, 2012 interview with Freeh  
5 Sporkin, Mr. Wynn, through intermediaries, contacted Aruze USA and proposed to purchase  
6 Aruze USA’s stock at a significant discount off of the fair value of the shares. Mr. Wynn,  
7 through his intermediaries stated that in exchange for Aruze USA selling its stock to Mr. Wynn,  
8 Mr. Wynn would ensure that the Freeh Sporkin report would not be disclosed. Mr. Wynn’s  
9 intermediaries threatened that should the Freeh Sporkin report be disclosed, Aruze USA may be  
10 subject to much public embarrassment and attendant regulatory issues.

11 375. As a result of Aruze USA’s refusal to accede to the demands of Wynn Resorts, Mr.  
12 Wynn, and Ms. Sinatra that it sell its shares to Mr. Wynn at a discount, Wynn Resorts, Mr. Wynn,  
13 and Ms. Sinatra made good on their threats and commenced a systematic process of defaming Mr.  
14 Okada, Aruze USA, and Universal and redeeming Aruze USA’s shares at a \$1 billion discount off  
15 the fair value of the shares.

16 376. 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 from the  
18 purported redemption of Aruze USA’s shares of Wynn Resorts’ stock, on or about February 18,  
19 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not  
20 reasonably have discovered earlier the facts giving rise to this claim.

21 377. 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 said  
23 services performed and to be performed in a sum to be determined.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Aruze USA and Universal each expressly reserves its and their right to  
26 amend these Counterclaims before or at the time of the trial of this action to include all items of  
27 injury and damages not yet ascertained. Aruze USA and Universal pray that the Honorable Court

1 enter judgment in favor of each of them, and against Wynn Resorts, Mr. Wynn, Ms. Sinatra, and  
2 the other Wynn Directors, as follows:

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

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JURY DEMAND

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

Dated: August 29, 2013

By /s/ Charles H. McCrea, Jr. \_\_\_\_\_  
Samuel S. Lionel (SBN 1766)  
Charles H. McCrea, Jr. (SBN 104)  
Steven C. Anderson (SBN 11901)  
LIONEL SAWYER & COLLINS

Marc J. Sonnenfeld\*  
Rollin B. Chippey, II\*  
Joseph E. Floren\*  
Benjamin P. Smith\*  
Christopher J. Banks\*  
MORGAN, LEWIS & BOCKIUS, LLP

Attorneys for Defendants and Counterclaimants  
ARUZE USA, INC. and UNIVERSAL  
ENTERTAINMENT CORPORATION  
\*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 30th day of August 2013, I caused the  
4 document Third Amended Counterclaim of ARUZE USA, INC. and UNIVERSAL  
5 ENTERTAINMENT CORP., to be served as follows:  
6

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

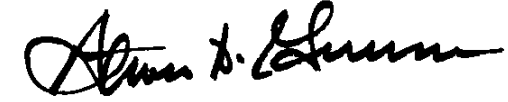
9 ☐ pursuant to Nev. R. Civ. P. 5(b)(2)(D) to be sent via facsimile as indicated:

10 ☒ to be hand delivered to:

11 and/or

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

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16 An Employee of LIONEL SAWYER & COLLINS  
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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

WYNN RESORTS LIMITED

Plaintiff

vs.

KAZUO OKADA, et al.

Defendants  
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CASE NO. A-656710

DEPT. NO. XI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**STATUS CONFERENCE**

MONDAY, DECEMBER 15, 2014

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.

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
ROBERT CASSITY, ESQ.  
DAVID KRAKOFF, ESQ.  
JOSEPH REILLY, ESQ.  
WILLIAM R. URGAS, ESQ.  
COLBY WILLIAMS, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, DECEMBER 15, 2014, 8:30 A.M.

2 (Court was called to order)

3 THE COURT: Good morning, counsel. You can be  
4 seated.

5 Mr. Urga, I am hopeful that the information you may  
6 have heard is true, but I can't confirm that yet.

7 MR. URGa: Well, I'm getting very frustrated here.

8 THE COURT: Just so you're -- I can't confirm  
9 anything.

10 MR. URGa: Okay, Your Honor.

11 MR. PISANELLI: We can neither confirm nor deny the  
12 rumors we've heard, either, Your Honor. So we're going to  
13 have to keep those to ourselves.

14 THE COURT: Yeah. We'll wait and see what the  
15 rumors turn out to be.

16 For those of you on the phone can you please  
17 identify yourselves for my record.

18 MR. KRAKOFF: Yes, Your Honor. Good morning. David  
19 Krakoff and Joseph Reilly at Buckley Sandler for the Aruze  
20 parties.

21 THE COURT: Thank you.

22 Can I have Mr. Pisanelli start by identifying  
23 everybody at his table on his own team.

24 MR. PISANELLI: Good morning, Your Honor. James  
25 Pisanelli and Debra Spinelli on behalf of Wynn Resorts and all

1 of the directors other than the Wynns.

2 MR. URGAS: Good morning, Your Honor. William Urga  
3 on behalf of Elaine Wynn.

4 MR. WILLIAMS: Good morning, Your Honor. Colby  
5 Williams on behalf of Steve Wynn.

6 MR. PEEK: Good morning, Your Honor. Stephen Peek  
7 and Bob Cassity on behalf of the Aruze party.

8 THE COURT: Good morning.

9 This is the status check that I try and schedule to  
10 keep track of cases that are a little more complex. Mr. Urga  
11 knows, because he got stuck here in Granite Gaming every month  
12 so that we could try and keep a handle on things. Given my  
13 CityCenter obligations it's even more important for me to  
14 actually talk to people, because I lose track more easily when  
15 I'm distracted by them.

16 So what's going on? What can I do to help you? Are  
17 we on track, or are we off the rails?

18 MR. PISANELLI: I'd be happy to start, Your Honor,  
19 and I'll invite Mr. Peek and all counsel, really, to interrupt  
20 me along the way. They don't need to wait if there's  
21 something that they think either they disagree with or they  
22 want to supplement. But I do think in general we probably all  
23 agree that we're on track, whatever that means in this  
24 extraordinary new format that we're going on here. And  
25 extraordinary, I mean really by size and time that it's going



1 to take.

2           We're all working on discovery. One of the topics  
3 we're working on is we've created a translation and  
4 interpretation protocol. This is one of those things that's  
5 taking a little more time because we kind of created it from  
6 scratch to work with one another. It started -- the genesis  
7 of that negotiation was the first deposition of Mr. Okada. I  
8 don't think anyone's going to accuse either side of  
9 participating in bad faith and nothing close to it; but we had  
10 a process with so many interpreters in the room that it became  
11 so burdensome that it took forever to get his name and address  
12 out with disagreement. So we're going to work with one  
13 another to see if we can get a protocol.

14           And here we have -- once we do start the depositions  
15 we have added difficulties because we also have to deal with  
16 the translation of documents. So we got together and thought  
17 that it made sense to work together so at least we stay on  
18 track and not get bogged down on issues like that.

19           THE COURT: Okay.

20           MR. PISANELLI: We've exchanged an agreement in that  
21 regard, but that is -- we're either just about to exchange it  
22 or we have, so, in other words, that's going to take a little  
23 time to have the Okada parties get their chance to look at it,  
24 digest it. It is a complicated document we created, so we'll  
25 give them the time that they need on that one.

1           ESI protocol, as you have ordered, that also has  
2 been in the works, and in that regard we have been working on  
3 a negotiation for quite some time for a predictive coding  
4 negotiation on how we're going to do our documents. So we  
5 have agreed on a lot of aspects of the predictive coding, but  
6 it looks like we are getting closer and closer to narrowing  
7 our disagreement to maybe even one topic which will require us  
8 to bring it to your attention and have the open full  
9 discussion of why it is we disagree on a particular topic.  
10 We're expecting to serve our motion, file and serve our motion  
11 as early as today. And the parties have already negotiated a  
12 briefing schedule and hearing schedule, subject to your  
13 approval, which I believe ends up with a hearing on  
14 January 12th on that topic --

15           THE COURT: That's fine.

16           MR. PISANELLI: -- if you can hear us.

17           On the summary judgment issues we have, again,  
18 communicated a lot. Summary judgment orders, that is. We've  
19 communicated a lot on what the order should say and maybe not  
20 say. It looks like we've agreed to disagree, and we're going  
21 to submit competing orders on those last two motions that  
22 we've recently argued before you.

23           On the discovery front the Okada parties have served  
24 a number of third-party subpoenas. Those are in the works, be  
25 by production, objection, or otherwise. There may even be

1 motion practice in other jurisdictions. Time will tell, but  
2 that's underway.

3 We are continuing to review our documents. We've  
4 just provided our objections to about 250 new requests for  
5 production from the Okada parties. They have those  
6 objections. They're digesting them, and will respond as they  
7 deem appropriate. And I think that's it.

8 Did I miss anything, Steve?

9 MR. PEEK: No. I think you covered it quite well.

10 The only concern that I had, Your Honor, on the  
11 briefing schedule is that the Court may recall in another  
12 matter in which Mr. Pisanelli are involved on the same side --

13 MR. PISANELLI: Cats and dogs; right?

14 MR. PEEK: Surprise, surprise. Jim and I both have  
15 had a moment about how did we end up this way.

16 THE COURT: Good lawyers can represent anybody  
17 regardless of the issue.

18 MR. PEEK: Well, to follow that up, as the Court  
19 knows, we have scheduled five motions to dismiss on January  
20 12th in the In re DISH Network matter.

21 THE COURT: Well, that's because you keep  
22 rescheduling it; right?

23 MR. PEEK: That is correct, Your Honor.

24 THE COURT: Okay.

25 MR. PISANELLI: That is correct.

1 THE COURT: I don't count on them going then.

2 MR. PEEK: Well, okay. Then that may really moot my  
3 issue. And I've discussed this with both Jim and Debbie on  
4 the phone when we spoke last week about that issue of having  
5 not only the predictive coding, which is going to be a real  
6 core issue to us, being heard either before or after those  
7 five motions, one of which is Jim's, two of which are mine.  
8 And I expect that that will take your morning calendar on the  
9 12th. I don't know how much time the Court has set --

10 THE COURT: Remember, I only set aside an hour on  
11 the Tuesdays and Thursdays before --

12 MR. PEEK: It's a Monday, the 12th. That's why I'm  
13 addressing the issue, is because it's on a Monday, the 12th,  
14 Your Honor.

15 THE COURT: Oh. Okay.

16 MR. PEEK: So I was hopeful --

17 THE COURT: I've got all day on Mondays.

18 MR. PEEK: We have all day. So if the Court's fine  
19 with that, I'm also fine with that, as well. But I want to at  
20 least call it to the Court's attention that there's an awful  
21 lot of reading on the DISH matter, and there's certainly --

22 THE COURT: I'm not worried about the amount of  
23 reading. What I'm worried about is trying to get focused  
24 arguments. You know, because sometimes I try and ask you  
25 questions to focus you --

1 MR. PEEK: Right.

2 THE COURT: -- and sometimes it works and sometimes  
3 it doesn't. Same thing with Mr. Pisanelli. And it just --  
4 I'd rather not spend four hours on something that we could do  
5 in two.

6 MR. PEEK: Well, I don't think that the predictive  
7 coding is going to be that lengthy.

8 THE COURT: No. All your issues. I could be Howard  
9 McKibben and give you a half hour for everything.

10 MR. PEEK: Well, that would be fine with me, Your  
11 Honor, actually. I think we could probably cover it --

12 MR. PISANELLI: But then I'd be scared to speak  
13 during that half hour, Your Honor, and need counseling  
14 afterwards. But I digress.

15 MR. PEEK: But I only bring that to the Court's  
16 attention. I don't want to speak for how long the other side  
17 will speak on the DISH matter, but certainly they have five  
18 motions to which they would like to be heard, I would imagine.  
19 So if --

20 THE COURT: You know I'm going to manage. Whatever  
21 we decide I'm going to manage.

22 MR. PEEK: It's fine with me, then, Your Honor.

23 THE COURT: My only concern is that, you know, it  
24 may be we need to stagger the two. But let's wait and get  
25 closer so that one's like at 9:00 and one's at 1:00.

1           MR. PEEK: That might work. Yeah, that might be  
2 better.

3           THE COURT: But I'm not quite to the point where I'm  
4 ready to commit to that yet. But if you guys as we're getting  
5 closer think that they're both really going to go that day,  
6 then let's talk about it.

7           MR. PEEK: Yeah. Because certainly --

8           THE COURT: Because I hate to stagger it and then  
9 have the other one disappear.

10          MR. PEEK: Yeah. Because, as the Court knows, we'll  
11 have a number of out-of-state counsel who will be coming for  
12 that hearing, so I don't want to have them sit --

13          THE COURT: That's why I suggested the staggering.

14          MR. PEEK: That might work for us, then, Your Honor.

15          THE COURT: Plus it's also you have less of an  
16 audience.

17          MR. PEEK: That would be fine, too, with us. So  
18 with that in mind I'm comfortable with the 12th, as well.

19          THE COURT: Well, let's see how the briefing goes.  
20 And the DISH case may not go when we think it's going to go.  
21 It seems to keep moving around.

22          MR. PEEK: Well, we have certainly -- as Mr.  
23 Pisanelli told you, we have narrowed it down to maybe just  
24 one. I don't know for certain, but we'll find out.

25          With respect to competing orders we have a



1 disagreement on the -- agreement to disagree on the --  
2 THE COURT: It's okay. Send them over.  
3 MR. PEEK: We'll send ours over this afternoon,  
4 they'll send theirs over --  
5 MR. PISANELLI: I'm not sure that we disagree on the  
6 motion for judgment on the pleadings.  
7 MR. PEEK: Right. I --  
8 MR. PISANELLI: We definitely disagree on the  
9 summary judgment. I have our form signed by those that do  
10 agree, if I --  
11 THE COURT: A form?  
12 MR. PISANELLI: Well, no, our --  
13 THE COURT: Your order.  
14 MR. PISANELLI: Our order. Signed by those that  
15 agree to it.  
16 THE COURT: Okay. And you're going to email it to  
17 me in Word format.  
18 MR. PISANELLI: Yes.  
19 THE COURT: You're going to email it to me in Word  
20 format. When I get Mr. Peek's then I'm going to read them  
21 both and I'm going to decide which, if either, more correctly  
22 represents what I did. And, if not, I'll modify them.  
23 MR. PEEK: And as is typically my practice, Your  
24 Honor, I'll file it with a notice of submission of order so  
25 that you'll --

1           THE COURT: Yeah. But you're still going to email  
2 it to me.

3           MR. PEEK: No, no. And I will. I will email it to  
4 you.

5           THE COURT: Because the Word document goes into a  
6 folder that triggers me to do some things. And until it gets  
7 in that folder I don't do anything.

8           MR. PEEK: And with respect to the 12(c) motion,  
9 Your Honor, we just got that I think on Thursday. I don't  
10 think we have disagreement, but certainly we'll work with them  
11 on that to try to narrow those issues if we have any at all,  
12 and we'll submit the 12(c) order, as well, once we've reached  
13 that.

14          THE COURT: Okay. So I'll look for your competing  
15 orders, and then I assume you're going to send me over  
16 something for -- with an OST so I can set the motion for that  
17 January 12th date.

18          MS. SPINELLI: Yes, Your Honor. It'll be my  
19 declaration, the briefing schedule, and the --

20          THE COURT: All right. And then we'll get it set.  
21 And then if it turns out you need to move it around because  
22 something unforeseen happens, briefing takes longer, it won't  
23 bother me. Just let me know.

24          MR. PEEK: And then so you would set that one at  
25 1:00 o'clock, then, you think, Your Honor?

1 THE COURT: No. I'm going to set them both at 9:00.

2 MR. PEEK: Okay.

3 THE COURT: And as we get closer if it looks like  
4 both of them are going to go, we'll then decide which one to  
5 set at 9:00 --

6 MR. PEEK: Okay.

7 THE COURT: -- and which one to set at 1:00.

8 MR. PISANELLI: The only other thing, Your Honor, is  
9 we have all gotten together, Mr. Peek hosted us, and we talked  
10 about the realities of life in this particular case and how  
11 we're going to handle things. And so we're continuing to work  
12 on things like order of discovery, places of deposition,  
13 things of that sort, some big issues, some small. We're going  
14 to continue to work on that. And if we can't agree on that  
15 over -- in all likelihood it's going to be after the holidays,  
16 but we'll bring the list of topics to you that we can't agree  
17 on, and hopefully neither of us will make a big long briefing  
18 to date. We'll just tell you what it is we disagree about for  
19 management purposes, and we'll tell you why we disagree.

20 THE COURT: And sometimes in these status  
21 conferences like this I'll get a report the day before, the  
22 evening before, and then I'll read it. So if you send it to  
23 us on Saturday, I can read it when I get in, and then I can at  
24 least be framed when you're discussing the issues with me.  
25 The only concern I have is if you're going to do that it's

1 important you serve it on everybody so nobody says, I didn't  
2 know we were going to talk about that.

3 MR. PISANELLI: Is that to suggest, Your Honor, that  
4 on things that are just case management related that if we  
5 give you those status reports --

6 THE COURT: Yes.

7 MR. PISANELLI: -- in advance we can actually  
8 resolve them in a setting like this?

9 THE COURT: Typically.

10 MR. PISANELLI: Okay.

11 THE COURT: Not always. Sometimes there will be  
12 things that are of a significant case management nature that  
13 I'll need a little more than just your status report. And you  
14 can do it in a letter form, but it's better if you do it in a  
15 pleading form. And just make sure you cc a copy on Laura and  
16 Dan so that I can get a copy when I get here. Because I get  
17 here a little before 7:00.

18 MR. PISANELLI: It's probably impossible to  
19 anticipate everything, but I think the best thing coming from  
20 these meetings and discussions we're having is identifying the  
21 problems that will slow us down and try and stay in front of  
22 them.

23 MR. URGAS: Your Honor, based on my experience, we  
24 had a very good meeting the first time. There are a series of  
25 issues. I think if they're outlined it'll be a lot easier for

1 everybody to deal with them, because a lot of them they agree  
2 with we agree with. Others there's going to be some issues.  
3 But there are a host of discovery issues.

4 THE COURT: Yes. And they're going to be.

5 MR. PEEK: And we got ahead of it, Your Honor, by  
6 convening a meet and confer with counsel and sending them at  
7 least an outline.

8 THE COURT: Well, I'm really impressed by this  
9 interpret protocol thing. That is an excellent idea. Good  
10 job.

11 MR. PEEK: Yeah. I haven't seen it yet, but we've  
12 all talked --

13 THE COURT: But, no, the concept is a really good  
14 idea.

15 MR. PEEK: -- we've all talked about it, and we did  
16 it at that meeting. So we think we're going to get there.

17 MR. URGAS: That's one of them that came -- that was  
18 one of the issues that came out of that meeting.

19 THE COURT: Well, I think that's an excellent idea.  
20 And those are the kinds of things that will hopefully help us  
21 as you go through this process.

22 Are you going to carry your court reporter with you  
23 as you travel, or are you going to use --

24 MR. PEEK: Yes, Your Honor, that is my goal, is to  
25 do that. Ms. Spinelli and I have talked about that already,

1 and we would take both a videographer, as well as a court  
2 reporter who would travel with us, and we'd spend not just a  
3 day or two, but perhaps a little longer in some of the  
4 jurisdictions where we know we'll be taking depositions, like  
5 Tokyo, Hong Kong, or Macau. So we just --

6 THE COURT: Sounds like you've got a plan.

7 MR. PEEK: We need to think about, you know, bids  
8 from court reporters as to services that would provide that  
9 type of service.

10 THE COURT: And if you'll alert me in a written  
11 document a day before, couple days before, just get it here so  
12 I can read it the morning before you show up, then, you know,  
13 we can discuss any of those purely management issues and  
14 probably resolve most of them. There's some that will require  
15 briefing, but not all of them.

16 MR. PISANELLI: You know, one of these days we may  
17 ask you to kind blaze some new ground on the interpreter. We  
18 had a court-appointed -- I don't know if it's called certified  
19 or whatever -- interpreter for the first deposition, and he  
20 really was not skilled enough, and he had to be dismissed  
21 within an hour. So we may pick one, agree who it is, and ask  
22 you to certify that person, rather than going off an existing  
23 list.

24 THE COURT: Well, I can absolutely do that if you  
25 stipulate to the person. The problem is that the Nevada

1 Supreme Court has so many languages that are not common enough  
2 -- commonly enough used here their protocols don't give us the  
3 depth of reporter pool that we would want.

4 MR. PEEK: And the challenge we have, Your Honor,  
5 particularly for the depositions in China is -- my  
6 recollection, having gone through a similar case, and Jim, as  
7 well, is that the Hong Kong and the Macau Chinese speakers  
8 speak Cantonese, so it's --

9 THE COURT: Cantonese and Mandarin.

10 MR. PISANELLI: And Mandarin.

11 MR. PEEK: And then Mandarin. Although they are  
12 very close, there are some differences. So we'll work out  
13 those issues.

14 THE COURT: Yeah.

15 MR. PISANELLI: Ms. Spinelli informs me that she's  
16 already anticipated this particular issue on certification,  
17 and that is part of the protocol we're going to negotiate.

18 MR. PEEK: Yeah. But we don't know which of the  
19 deponents speak Cantonese and which speak Mandarin, so we'll  
20 have to figure that out before we go forward.

21 One other -- there is one other issue, Your Honor.  
22 I don't know whether or not the DOJ was noticed for this  
23 hearing today, but the Court will recall that in its one order  
24 that the stay went until November 26th. And as far as we are  
25 concerned, there is no longer a stay or no longer a protocol

1 in place.

2 THE COURT: I got the impression the DOJ didn't want  
3 to play anymore.

4 MR. PEEK: That was the impression that I had, as  
5 well, Your Honor. But I just want to at least call the  
6 parties' attention to the fact that that protocol that did  
7 exist --

8 THE COURT: So when you have the status reports just  
9 make sure a copy goes to the DOJ, too, just in case they  
10 decide they want to be involved again.

11 MR. PEEK: For now, though, at least, Your Honor,  
12 it's our position that the protocol has expired -- or the stay  
13 has expired, which means that the protocol itself would have  
14 expired.

15 THE COURT: It was unlikely I was going to give them  
16 any more, Mr. Peek.

17 MR. PEEK: I knew that, as well, Your Honor.

18 THE COURT: I don't know if you knew how frustrated  
19 I was with them.

20 MR. PEEK: I do know that.

21 There's one more matter, Your Honor, and I'll  
22 probably get some laughter from the other side. But at the  
23 next status conference I'm going to be in Hawaii.

24 THE COURT: That's nice, Mr. Peek.

25 MR. URGAS: The phones work.



1 MR. PEEK: Yeah, the phones work. I'm going to --  
2 THE COURT: Is that January 20th?  
3 MR. PEEK: It is, Your Honor.  
4 THE COURT: So what would you like to do instead?  
5 MR. PEEK: Well, we could -- if we're going to be  
6 here on the 12th, we could do the 12th.  
7 THE COURT: That's fine with me. Is that okay with  
8 you?  
9 MR. PEEK: If that's okay with counsel.  
10 MR. PISANELLI: That's fine with us.  
11 THE COURT: Can we reschedule the January 20th  
12 conference to January 12th.  
13 THE CLERK: Yes, Your Honor.  
14 MR. URGAS: At 8:30?  
15 THE COURT: We'll do it at whatever time we do  
16 everything else. But I don't know what time that's going to  
17 be yet.  
18 MR. PEEK: And that might work, because Mr. Krakoff  
19 and Mr. Reilly may want to come, actually, to that hearing on  
20 predictive coding. So it would be nice to do it that day, as  
21 well, so they don't have to participate by phone.  
22 THE COURT: It'll be exciting.  
23 MR. PEEK: It will be really exciting, Your Honor.  
24 I don't know if the Court has had cases with predictive  
25 coding. It's brand new to me.

1           THE COURT: I've not had a single case where we've  
2 actually used predictive coding. We've talked about it, and  
3 I've been to way too many seminars about predictive coding.

4           MR. PEEK: Well, that's good. So we will not have  
5 to educate the Court, then. And I knew that already.

6           THE COURT: I know what it is, and I'll not reveal  
7 to you what my feelings are about predictive coding after  
8 listening --

9           MR. PEEK: Thank you.

10          THE COURT: -- but I do have some feelings about it,  
11 and we'll talk about it when the appropriate time is.

12          MR. PEEK: That would be good. So I think that's  
13 pretty much where we -- as Mr. Pisanelli said, we're working  
14 together very well. We have reached from time to time  
15 disagreements, but we have done that agreeably, as opposed to  
16 disagreeably, and so we will just present those to the Court  
17 and let the Court make the decisions for us where we can't  
18 reach agreement.

19          THE COURT: Okay. Anything else on this case?

20          MR. PISANELLI: Not from us, Your Honor.

21          MR. PEEK: Nothing, Your Honor.

22          THE COURT: On a related matter, on Jacobs versus  
23 Sands on Friday I finished, since I was not in trial. I was  
24 the one who was sick. So since I wasn't in trial, I went  
25 through and finished my re-review of the privilege log based

1 upon the supplemental information, and you should have gotten  
2 like eight Court's exhibits from Laura. She's sending to you  
3 this morning.

4 MR. PEEK: Yeah. I haven't seen it come it across  
5 my --

6 THE COURT: All right. So I redid each one of them  
7 as a replacement, and I tried to identify which one replaced  
8 which one to make your life a little easier, although I'm sure  
9 it's going to be worse.

10 MR. PEEK: And, Your Honor, with respect to that, as  
11 you know, we have a hearing this Thursday --

12 THE COURT: Uh-huh.

13 MR. PEEK: -- and there is the one motion which I  
14 think was submitted to chambers calendar which has to do with  
15 a request to designate those same documents that we'll be  
16 discussing on Thursday.

17 THE COURT: You want me to move that to your hearing  
18 on Thursday, your Friday hearing?

19 MR. PEEK: If you would, Your Honor. That would --

20 THE COURT: Dulce, on Jacobs-Sands can you move the  
21 hearing that's on the Friday chambers calendar to Thursday --

22 At what, 8:00 o'clock?

23 MR. PEEK: I think it's an 8:00 o'clock calendar.

24 THE COURT: Yeah. I don't do 9:00 right now.

25 MR. PEEK: I'll let the Jones brothers know, Your

1 Honor, that it is set for that time. I think they actually  
2 made a request to the Court, but I don't know if it got to you  
3 or not.

4 THE COURT: I am really, really swamped right now,  
5 so --

6 MR. PEEK: When do you have openings, Your Honor,  
7 tomorrow?

8 THE COURT: Tomorrow at 9:00 o'clock. Got jurors.

9 MR. PEEK: Your Honor, thank you for putting us on  
10 status conference every third Monday. It's helpful to have  
11 that.

12 MR. URGAS: It works.

13 THE COURT: Well, it works if counsel remember that  
14 you're coming. It's when nobody thinks about it ahead of time  
15 that it doesn't really work.

16 MR. PEEK: Well, I was here at 8:00 o'clock this  
17 morning, Your Honor.

18 THE COURT: I'm just so pleased, Mr. Peek.

19 (Off-record colloquy)

20 THE PROCEEDINGS CONCLUDED AT 8:50 A.M.

21 \* \* \* \* \*

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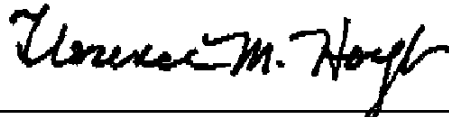
**CERTIFICATION**

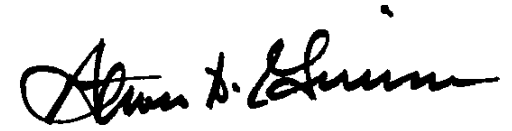
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Las Vegas, Nevada 89146**

  
\_\_\_\_\_  
FLORENCE M. HOYT, TRANSCRIBER



CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

WYNN RESORTS, LIMITED,

Plaintiff,

vs.

KAZUO OKADA, UNIVERSAL  
ENTERTAINMENT CORP., ARUZE USA  
INC.,

Defendants.

CASE NO. A-12-656710

A-13-678658

DEPT. NO. XI

**Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**STATUS CHECK**

THURSDAY, MARCH 5, 2015

SEE APPEARANCES ON PAGE 2

RECORDED BY:

JILL HAWKINS, DISTRICT COURT

TRANSCRIBED BY:

KRISTEN LUNKWITZ

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

1 APPEARANCES:

2 For the Plaintiff: JAMES J. PISANELLI, ESQ.  
3 DEBRA L. SPINELLI, ESQ.

4  
5 For the Aruze Parties: J. STEPHEN PEEK, ESQ.  
6 ROBERT J. CASSITY, ESQ.  
7 JOSEPH J. REILLY, ESQ.  
(Appearing via telephone)

8 For Elaine P. Wynn: WILLIAM R. URGAS, ESQ.  
9 MARK B. HELM, ESQ.

10 For Steve Wynn: DONALD J. CAMPBELL, ESQ.  
11 J. COLBY WILLIAMS, ESQ.

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1 THURSDAY, MARCH 5, 2015 AT 8:32 A.M.

2

3 THE COURT: Can I go to *Wynn versus Okada*? Do I  
4 have everybody I need?

5 MR. PEEK: Your Honor, there's some folks joining  
6 by telephone. I think --

7 THE COURT: Yes. They're on the phone already.

8 MR. PEEK: But other than that --

9 THE COURT: I'm still trying to multitask and be  
10 Judge Leavitt, too, this week. So, that's why I'm trying  
11 to get you guys on.

12 MR. PEEK: Well I'm not going to say I'll try to  
13 be brief, Your Honor, because I know that you wouldn't  
14 believe me if I said --

15 THE COURT: You are not going to --

16 MR. PEEK: -- that.

17 THE COURT: -- be brief. Good morning.

18 MR. PISANELLI: Good morning, Your Honor.

19 MR. PEEK: Good morning, Your Honor. Stephen Peek  
20 and Bob Cassity on behalf of the Aruze parties.

21 MR. PISANELLI: James Pisanelli on behalf of Wynn  
22 Resorts.

23 THE COURT: There's only two of them over there.

24 MR. PISANELLI: I wasn't used to it. I wasn't  
25 waiting for about three minutes of introductions. James



1 Pisanelli on behalf of Wynn Resorts and some, but not all,  
2 of the director defendants.

3 MR. CAMPBELL: Donald Judge Campbell on behalf of  
4 Mr. Wynn.

5 MR. URGAS: William Urga on behalf of Elaine Wynn.

6 MR. HELM: Mark Helm on behalf of Elaine Wynn.

7 MR. PEEK: And there's some folks on the --

8 THE COURT: Who is on the telephone?

9 MR. REILLY: This is -- Your Honor, it is Joe  
10 Reilly on behalf of the Aruze party with Buckley Sandler.

11 THE COURT: And I have other people in the back  
12 row of the courtroom because my courtroom has still not  
13 been put together after CityCenter.

14 MS. SPINELLI: Good morning, Your Honor. Debra  
15 Spinelli on behalf of the Wynn.

16 MR. WILLIAMS: And Colby Williams on behalf of Mr.  
17 Wynn, Your Honor.

18 THE COURT: Thank you. All right. I know there  
19 was a dispute about a meet and confer, which my hearing on  
20 *Sands Jacobs* and the lengthy argument of my half-day  
21 hearing that took six days created. Other than that issue,  
22 Mr. Peek, which is addressed in your status report, would  
23 you like to say anything else?

24 MR. PEEK: I would, Your Honor, because I'd like  
25 to have some dates. We've asked for, on many occasions,

1 for dates with respect to the meet and confer. Ms.  
2 Spinelli did offer up Monday, the 9<sup>th</sup>. I'll work with Ms.  
3 Spinelli to hopefully have that meet and confer Monday or  
4 no later than Tuesday and I'd like to at least hear today  
5 that we can get it done on the -- at least Monday or  
6 Tuesday.

7 THE COURT: I will not have her here with me,  
8 Monday. I don't know what other obligations she has, but I  
9 couldn't make her be in two places or three places --

10 MR. PEEK: I understand, Your Honor, but --

11 THE COURT: -- at once.

12 MR. PEEK: -- I'm at the point now where, you  
13 know, I've made every effort. In fact, the Court may  
14 recall that I did step out during the closing arguments and  
15 so did --

16 THE COURT: I did.

17 MR. PEEK: -- Ms. Spinelli.

18 THE COURT: I asked if I had to stop.

19 MR. PEEK: Right. And in order to -- and I did  
20 dial into that number that I had sent, but that said, we  
21 just want to have this happen very quickly.

22 THE COURT: What else?

23 MR. PEEK: Your Honor, we came before you, I  
24 think, on January 12<sup>th</sup> on a Motion for Protective Order  
25 filed by Wynn to ask the Court to adopt or to grant them a

1 protective order with respect to the method and manner by  
2 which they were going to use predictive coding to produce  
3 documents.

4 THE COURT: Right. I remember.

5 MR. PEEK: And --

6 THE COURT: And I denied it.

7 MR. PEEK: What we don't know yet, Your Honor, is  
8 whether or not the Wynn parties are going to go ahead and  
9 use predictive coding. We've asked them, because we  
10 certainly would like to engage in a process, whether it be  
11 through search of custodians, through the old fashioned  
12 method, or whether they're going to use predictive coding  
13 and how they're going to use it and whether they're going  
14 to offer up any transparency. So, that's something that we  
15 at least need guidance from the Court or at least hear from  
16 the Wynn parties --

17 THE COURT: I really don't. I think the reason  
18 that I denied the Motion for Protective Order, and what I  
19 said to the Wynn parties at that time, is if they choose to  
20 use predictive coding and not meet and confer with you,  
21 then they do so at their own risk. And if you are able to  
22 meet and confer and reach an agreement, then we are in a  
23 different --

24 MR. PEEK: We've done that, --

25 THE COURT: -- position.

1 MR. PEEK: -- Your Honor.

2 THE COURT: But --

3 MR. PEEK: Even after the 12<sup>th</sup> we did that.

4 THE COURT: Right.

5 MR. PEEK: So we just --

6 THE COURT: But either they're gonna do it and  
7 then if it's insufficient and you are unhappy with the  
8 results, then you would file a Motion to Compel and then if  
9 there's still an issue, we might have a sanctions hearing  
10 like I'm doing in another case that we've been involved in  
11 all week.

12 But to ask me to force them to tell you that  
13 they're using predictive coding and how they're going to  
14 use it after I've already denied their Motion for  
15 Protective Order because of a lack of transparency I think  
16 is silly.

17 MR. PEEK: I don't disagree with the Court and  
18 you'll have, Your Honor, competing orders, which I think  
19 you'll review -- when you review it, you'll see why we  
20 certainly --

21 THE COURT: I --

22 MR. PEEK: -- tell you today because this is a  
23 discovery status conference of -- do we still have problems  
24 that I'm at least --

25 THE COURT: Yes. You still have problems.

1 MR. PEEK: I -- we still have problems.

2 THE COURT: I knew that earlier in the week when  
3 you and Ms. Spinelli and Mr. Pisanelli were discussing the  
4 4 o'clock conference call on Tuesday.

5 MR. PEEK: So that's at least one issue with  
6 respect to predictive coding. The other issue is we can't  
7 seem to get any responses from the Wynn parties as to --  
8 excuse me -- I say the Wynn parties, those are the clients  
9 of Mr. Pisanelli and Ms. Spinelli represent --

10 THE COURT: And this is the date of the rolling  
11 productions?

12 MR. PEEK: Right. It's when are we going to start  
13 receiving --

14 THE COURT: It's a good point. We'll talk about  
15 that in a minute.

16 MR. PEEK: We did start -- we did receive at least  
17 their minimal documents back in January and some more -- a  
18 supplemental production as well. So that's at least  
19 another issue.

20 The other issue is we asked them if they would  
21 please prioritize certain documents that they're going to  
22 produce that we had requested and I haven't had a response  
23 to that either and we've made a number of requests of them  
24 to tell us, one, can they do that and will they do it, with  
25 no response. We have asked repeatedly to get answers to

1 that and we can't seem to get it.

2           There is another issue that has surfaced -- it's  
3 actually been lingering, but it has surfaced most recently  
4 with respect to a subpoena that we served on the Pepper  
5 Hamilton Firm and the --

6           THE COURT: I read that in your status report.

7           MR. PEEK: -- Freeh Consulting Firm back in March  
8 of 2013. We can see, certainly, that over a period of time  
9 from at least May of 2013 up through May of 2014, there was  
10 a stay in place with respect to the government. The Court  
11 will recall that in May of 2013 -- 14, excuse me, it denied  
12 the request by the DOJ to extend that stay; however, it  
13 gave them certain relief and also said to us: If you're  
14 going to ask for documents, you know, here's how you're  
15 going to do it and that protocol. We followed that  
16 protocol. And still, today, we do not have documents.

17           Finally, however, the Pepper Hamilton Firm has  
18 told us that, one, they have collected documents; two, that  
19 they are transferring those wholesale to the Wynn parties  
20 to have the Wynn parties make the decision as to what is or  
21 not protected by either an attorney/client privilege or a  
22 work product privilege. We take the position that since  
23 that consultant report was used to file a complaint and  
24 became public shortly after the filing that there is no  
25 privilege, but that at least we need to vet that issue with

1 this Court.

2 I do know from communications with Tom Zemaitis to  
3 Adam Miller at Buckley Sandler that he has transferred  
4 wholesale those documents to the Wynn parties as of last  
5 Friday.

6 THE COURT: So they've completed their review.  
7 And so, it's now the Wynn parties' --

8 MR. PEEK: Well they have collected. I can't say  
9 that they have, in fact, reviewed, Your Honor. That's what  
10 I -- I don't -- I can't --

11 THE COURT: They told you -- Mr. Freeh's counsel  
12 told you that they were completing their review.

13 MR. PEEK: Yes.

14 THE COURT: And then --

15 MR. PEEK: And they --

16 THE COURT: -- giving them to the Wynn parties for  
17 them to --

18 MR. PEEK: And that's what they've done. They --

19 THE COURT: Okay.

20 MR. PEEK: -- did that as of Friday last week. We  
21 got confirmation.

22 THE COURT: So they've been moved from the person  
23 you subpoenaed now to the client of the person you  
24 subpoenaed --

25 MR. PEEK: Correct.

1 THE COURT: -- for review? Okay.

2 MR. PEEK: There was a -- at least -- it's not  
3 contained within the report, but I will at least preview  
4 this and we can talk about it more on the 19<sup>th</sup>. One other  
5 consultant that is referenced in their Complaint that they  
6 retained and that is the Archean Group --

7 THE COURT: Evaluators.

8 MR. PEEK: Yeah.

9 THE COURT: Right.

10 MR. PEEK: No, no, no. That's Mohelas [phonetic],  
11 Your Honor. Archean is somebody like Mr. Freeh.

12 THE COURT: Okay.

13 MR. PEEK: So we're going to have issues with  
14 respect to the Archean Group and we'll bring that up to you  
15 on the 19<sup>th</sup>, but I didn't -- since I didn't put it in my  
16 status report, I don't want to be accused of surprising  
17 them.

18 So that's another --

19 THE COURT: Do you want to talk about the  
20 responses to requests for production which --

21 MR. PEEK: I do, Your Honor. And --

22 THE COURT: -- I saw in part from the other  
23 hearing?

24 MR. PEEK: Well, we will certainly have that meet  
25 and confer. I would imagine that we will perhaps narrow in



1 some very small fashion some additional -- we'll get some  
2 additional productions by some agreement, but it's my  
3 belief that we're not going to reach much agreement --

4 THE COURT: Well, if you don't, --

5 MR. PEEK: -- because we've been down this road  
6 with them --

7 THE COURT: -- reach an agreement --

8 MR. PEEK: -- before and, you know, they -- we  
9 just have disagreements and we're not being disagreeable  
10 about it, we just -- other than we're trying to get it set.  
11 And we'll follow that up with motion practice sooner than  
12 later, but we know that we have to at least go through that  
13 --

14 THE COURT: Can I go to --

15 MR. PEEK: -- process.

16 THE COURT: -- Mr. Pisanelli and I'll ask about  
17 the dates issues that are the ones that you've addressed  
18 that I think are important for us --

19 MR. PEEK: Certainly, Your Honor. I'll --

20 THE COURT: -- to try and figure out?

21 MR. PEEK: -- step away --

22 THE COURT: Okay.

23 MR. PEEK: -- from the lectern and I'll yield it  
24 to Mr. Pisanelli.

25 THE COURT: All right. Mr. Pisanelli, let's first

1 talk about the rolling productions from your review,  
2 whether it's electronic or not electronic, it doesn't  
3 really matter to me. What's the schedule that you're  
4 proposing at this point?

5 MR. PISANELLI: We don't have a set date. We're  
6 know we're coming upon the -- we don't think it's going to  
7 be that long. I can work today, tomorrow with our team,  
8 with our consultant, with Ms. Spinelli, of course, and come  
9 up with proposed dates for you. We're moving forward, Your  
10 Honor. Any suggestion, and I can't imagine that's what Mr.  
11 Peek is suggesting, that we're sitting on our hands, is  
12 completely false.

13 THE COURT: No. But I'm trying to figure out is  
14 this a short-term date like you anticipate the productions  
15 being completed, all the rolling productions being  
16 completed within a month or is to say a longer term  
17 production schedule is what I'm really trying to find out -  
18 -

19 MR. PISANELLI: Yeah. This is --

20 THE COURT: -- from you.

21 MR. PISANELLI: -- a long-term schedule. If you  
22 put this in context, we're talking about 300 plus request  
23 for production of documents.

24 THE COURT: You're not --

25 MR. PISANELLI: And --

1           THE COURT:  -- going to spend \$2.4 million doing  
2 that review?

3           MR. PISANELLI:  Well I'm not going to spend it  
4 with improper redactions, but I digress.  I suspect --

5           MR. PEEK:  I tried not -- Your Honor to --

6           THE COURT:  It's okay.

7           MR. PISANELLI:  But I suspect --

8           MR. PEEK:  The pots and kettles will certainly  
9 come up --

10          THE COURT:  Oh yeah.

11          MR. PEEK:  -- repeatedly in this --

12          THE COURT:  I know.  I've had that recently, Mr.  
13 Peek, and I know we're going to talk about it.

14          MR. PEEK:  We are going to talk about it.

15          THE COURT:  But I want to know what the thought  
16 process of the schedule is and I'm sorry that I mentioned  
17 the money at issue in the other case.

18          MR. PISANELLI:  No.  It is -- it's fair.

19          THE COURT:  I mean, it is --

20          MR. PISANELLI:  I know we're being lighthearted  
21 about it and it is extraordinarily expensive and it's been  
22 made even more expensive.

23                 We'll -- because of the voluminous request --  
24 because you know, Your Honor, we would not expect to go  
25 forward with just dumping data and say:  Here.

1 THE COURT: Right.

2 MR. PISANELLI: So it takes a ton of work to do  
3 this generally, as you know, and it takes -- now it's been  
4 compounded because of the complexity of all of these  
5 requests and matching documents up to all of them. We'll  
6 probably come back to you. That has become such a burden  
7 and has bogged this process down so much, we're probably  
8 going to have to come back to you and say that we need to  
9 do something about this. With 300 plus, it's -- I'm not  
10 going to say it's made it unworkable, but it has made a  
11 difficult situation far, far more troubling and just more  
12 difficult that it needed to be or needs to be.

13 So, the long story is if you're looking for a  
14 schedule, anticipated schedule of when we'll start with ESI  
15 rolling, I'll get that to you shortly. I don't want to  
16 give you a date and then come back and tell you why, you  
17 know, we're not --

18 THE COURT: No. I'm looking for a date, but I'm  
19 looking for a realistic date as opposed to --

20 MR. PISANELLI: Yeah.

21 THE COURT: -- a date pulled out of the air.

22 MR. PISANELLI: That's fair. So I'll give you an  
23 informed opinion.

24 THE COURT: How long do you think before you can  
25 give us an informed date?

1 MR. PISANELLI: We're going to have a conference  
2 call, coincidentally, on this today and another one tomorrow.  
3 So, give me by next week and I'll give you a status report  
4 of where we think we are on proposed rolling production  
5 dates.

6 THE COURT: Do you think you can file that status  
7 report by Wednesday?

8 MR. PISANELLI: I think so. Debbie?

9 MS. SPINELLI: Yes.

10 THE COURT: Okay. So we'll have that answer, Mr.  
11 Peek.

12 MR. PEEK: And I'm not pushing for it to be  
13 Wednesday, Your Honor. I understand the challenges they  
14 have, but --

15 THE COURT: You all understand the challenges  
16 because this is not your first time we've done issues like  
17 this and had disagreements about them and I'm just trying  
18 to get everyone to be reasonable, professional, and  
19 cooperative, and not point fingers at each other.

20 So, let's talk about the subpoenas to Pepper  
21 Hamilton and Freeh Group. Your people have them and you're  
22 reviewing them now?

23 MR. PISANELLI: We got them Friday.  
24 Unfortunately, they were corrupted and so they had to be  
25 fixed and reproduced, but I think we have a workable

1 version by now, Debbie?

2 MS. SPINELLI: Yes.

3 MR. PISANELLI: Yes. So now we do have them so we  
4 are going to --

5 THE COURT: How long for that review process?

6 MS. SPINELLI: I don't know how many there are,  
7 Your Honor. So, --

8 MR. PISANELLI: That's the problem.

9 MS. SPINELLI: I haven't looked at them yet, I  
10 just know that my team was making sure they had non-corrupt  
11 documents and that was confirmed yesterday. I don't know  
12 anything else about --

13 THE COURT: How about we move your status report  
14 from Wednesday to Friday and you have timeframes for both  
15 of those in that report? Okay?

16 MS. SPINELLI: I can do that, Your Honor.

17 THE COURT: Okay.

18 MR. PEEK: We understand that there is about 8,000  
19 documents, Your Honor. I don't know how many pages --

20 THE COURT: That's a lot.

21 MR. PEEK: -- that -- but that's an 8,000 --

22 MS. SPINELLI: He knows more than me, on this  
23 subject anyway.

24 THE COURT: Well he is the one who served the  
25 subpoena and was working with your client's counsel.

1           So, those are my big concerns are the timeframes  
2 because I'm trying to -- your discovery is not limited to  
3 strictly jurisdictional. So I understand the ESI is more  
4 challenging and it's going to be a very significant  
5 production, but my concern is to get you on a schedule so  
6 that we're not going to be left hanging at the end.

7           MR. PISANELLI: Fair enough. Understood. And the  
8 thing I appreciate, Your Honor, is that you, with your  
9 experience, can appreciate how challenging this is, even  
10 with a meet and confer process that is six-plus months long  
11 and how to do this. It's not because either side is  
12 sitting back doing nothing. I think we are both critical  
13 to some degree of the other and I, like Mr. Peek, am not  
14 going to engage in the mudsling or tit for tat today. If  
15 we ultimately get to the point, and we're probably creeping  
16 pretty close to it where we're not satisfied with what  
17 they're doing, we're not satisfied with their transparency,  
18 we're not satisfied with their production, I'll present it  
19 to you in full detail on a motion, and I expect Mr. Peek  
20 will do the same and so we won't have, you know, an attempt  
21 to litigate or pre-litigate it at these status conferences.

22           THE COURT: I'm just going to say this one more  
23 time to all of you and, Mr. Urga, you're probably in this  
24 more limited than anyone else, to the extent that you get  
25 to the point that you have reached the consensus that

1 you're going to be able to reach on certain issues and then  
2 you have more limited issues to which you do not have  
3 consensus, I am happy to try and make a decision on that  
4 limited issue. So if you, after your meet and confer on  
5 Monday, get to a point where you've got the custodian group  
6 narrowed down, you still have some you disagree of, I'm  
7 happy to make the decision on those that you disagree with.  
8 If you get to the point of search terms that you are unable  
9 to agree, I am happy to do it. The methodology is a little  
10 more tricky because of my concerns about the transparency  
11 and the verifiability about the results that we're getting.

12           So, I would encourage you to have a real meet and  
13 confer about these issues because I didn't grant your  
14 Motion for Protective Order because of the way it was  
15 presented to me. I'm not saying that I won't approve an  
16 ESI protocol that you agree to in helping narrow some of  
17 those issues but that's a different concept.

18           MR. PISANELLI: Sure.

19           THE COURT: Okay.

20           MR. PISANELLI: I understand that and from this,  
21 and other cases, and I don't even mean what we just  
22 finished. I think we have a good understanding of what you  
23 look for by way of the electronic discovery management, the  
24 transparency to give a sense of reliability, a sense of  
25 testing the effectiveness, not even if there's games being



1 played, just whether your choices were good on search  
2 terms, etcetera. So, --

3 THE COURT: Whether the date is being retrieved  
4 like you thought it --

5 MR. PISANELLI: Yeah.

6 THE COURT: -- was going to be retrieved.

7 MR. PISANELLI: Yeah. So I think we have a pretty  
8 clear understanding of what it is you expect.

9 Now taking those expectations and filtering our  
10 debate of what we want from one another through what you  
11 tell us has been, you know, the challenge to see if we can  
12 find the common ground. We haven't found it on everything.  
13 We found it on some things. I'm certain, as Mr. Peek is,  
14 that we're not going to come to an agreement on many things  
15 and we'll present that to you by motion.

16 THE COURT: I understand. What else, Mr. Peek? I  
17 tried to hit every issue in your status report.

18 MR. PEEK: No. That does cover it, although I did  
19 not hear from the Wynn parties as to whether they are or  
20 are not going to use predictive coding in the method and  
21 manner that they described to the Court in their motion  
22 practice and I think I'm entitled to know that, Your Honor,  
23 as to whether they're going to do predictive coding.

24 THE COURT: Well I think --

25 MR. PEEK: I'm entitled to know what custodians

1 they're going to search. I'm entitled to know what search  
2 terms, if they're going to use that methodology or if  
3 they're going to use predictive coding.

4 THE COURT: I think the issue is, at the time of a  
5 Motion to Compel, if you are not satisfied with the  
6 results, that's when you're entitled to know that if you're  
7 unable to reach an agreement.

8 MR. PEEK: Yeah, because here's the challenge we  
9 have. You say the results. So the result, because we've  
10 heard today it's going to be a rolling production and I can  
11 see there will be a rolling production. I'm looking  
12 probably --

13 THE COURT: We all know it's a rolling production  
14 in these kind of cases.

15 MR. PEEK: So what I'm looking at probably is six  
16 -- maybe six months or more, I don't know how long, I won't  
17 know until --

18 THE COURT: I sure hope not.

19 MR. PEEK: -- Friday, but if it's a rolling  
20 production and I get to that end, then I'm looking at  
21 hundreds of thousands of pages and I come to the Court and  
22 say: Oh, they used predictive coding. Didn't have  
23 transparency.

24 I think it's better to have that issue fronted as  
25 opposed to at the end.

1           THE COURT: That's why I am encouraging you to try  
2 and, in your meet and confer, reach consensus correlated to  
3 an ESI protocol for that process. I'm not forcing it on  
4 you though and you're absolutely right that if there is a  
5 lack of production of relevant information responsive to  
6 your discovery request, you are entitled to know the method  
7 by which they did that production and they are then at risk  
8 to have to redo it if I determine that it's not relevant.  
9 It would be better for everyone, and less expensive, if  
10 you're able to agree up front because then you know that  
11 you're only going to do the search -- the big search ones.  
12 You may have to go back and search additional custodians or  
13 add some additional search terms, but you're not going to  
14 have to do the wholesale search over.

15           MR. PEEK: Yeah.

16           THE COURT: But if you -- I'm not going to force  
17 it on you guys if you can't reach an agreement.

18           MR. PEEK: No, no. I -- and I appreciate that,  
19 Your Honor, and, of course, the challenge we have is when  
20 the Court says: Well, if you know that you didn't get  
21 documents. How will I know without the transparency  
22 whether I did or did not get a document? And that's always  
23 the challenge.

24           MR. PISANELLI: And that cart is way before --

25           THE COURT: I --

1 MR. PISANELLI: -- the horse.  
2 MR. PEEK: I mean, I --  
3 THE COURT: I --  
4 MR. PEEK: I --  
5 THE COURT: I think we all know the answer to that  
6 question, --  
7 MR. PEEK: I've certainly heard a lot of that --  
8 THE COURT: -- Mr. Peek. Yes. We all know the  
9 answer to that question and I'll be issuing a --  
10 MR. PEEK: Yes.  
11 THE COURT: -- decision on that soon.  
12 MR. PISANELLI: So here's the irony and the  
13 challenge that we have. This is going to have to be on  
14 motion practice, that we have, we think, different  
15 standards being applied by Mr. Okada. And Mr. Peek can  
16 correct me, but when asked for their custodians and search  
17 terms, we've been met with a work product privilege  
18 assertion and now, not only does he want our custodians and  
19 search terms, he wants a preview of how we're going to be  
20 doing our predictive coding and a blueprint. That's' just  
21 not going happen.  
22 If I believe, Your Honor, that I'm entitled to  
23 aspects of his search for his transparency, I'm going to  
24 bring it to your attention. I'm not going to do it in a  
25 context like this where you're just getting a fraction of

1 the picture. I'm going to give Mr. Peek a full  
2 opportunity to tell you why he's asserting a privilege in  
3 one sentence and then asserting that he gets the same  
4 information from us in the next sentence.

5 So, this is a little bit of a preview of why we  
6 are not going to agree on everything.

7 THE COURT: So I'm going to say this as you all  
8 leave. I encourage you in your meet and confer to try and  
9 develop an ESI protocol that applies equally to both of  
10 you. If, however, you're not able to, I'm not going to  
11 force it on you and if you choose to use certain  
12 methodologies as part of your practice to respond, you may  
13 then have to demonstrate why that process and procedure was  
14 appropriate.

15 MR. PISANELLI: We'll be prepared to do that.  
16 Thank you.

17 THE COURT: But I encourage you to try and agree  
18 to a mutual protocol.

19 MR. PEEK: I am getting that message, Your Honor,  
20 and I'll --

21 THE COURT: Mutual. You know that --

22 MR. PEEK: I understand the mutuality --

23 THE COURT: Okay.

24 MR. PEEK: -- of that process, Your Honor, and  
25 certainly will work towards that goal.

1           With respect to the other parties that are not  
2 previewed in the status report, we're working with Elaine  
3 Wynn's counsel on productions that they have called to our  
4 attention. We don't have any productions out to Mr. Wynn  
5 right now, but certainly that will be forthcoming because  
6 we're waiting really to see what we get from the Wynn  
7 parties because we believe they have the obligation to  
8 collect documents from Mr. Wynn that would be responsive to  
9 the same request. So rather than duplicate, we're moving  
10 in that direction.

11           MR. PISANELLI: And, Your Honor, the last preview  
12 of what's to come is we think we're ready to notice Mr.  
13 Okada's deposition. We've asked for availability dates in  
14 January. Don't have any. I think they're going to take a  
15 position that they don't have to produce him for some  
16 reason, so that will be coming to your attention soon.

17           THE COURT: Well if you get to the point where you  
18 notice a depo and you have a dispute, I will be happy to do  
19 it.

20           MR. PISANELLI: We are probably being forced into  
21 a corner where we're just going to notice it if we don't  
22 get dates --

23           THE COURT: I understand.

24           MR. PISANELLI: -- to instigate --

25           MR. PEEK: Your Honor, I --

1 MR. PISANELLI: -- the process --

2 THE COURT: Guys, you're either going to reach an

3 agreement on the date, --

4 MR. PISANELLI: All right.

5 THE COURT: -- or you're going to notice and

6 somebody's going to file a Motion for --

7 MR. PEEK: My --

8 THE COURT: -- Protective Order.

9 MR. PEEK: -- apologies to the Wynn parties. I

10 don't recall being asked for dates, but if I was asked for

11 dates and didn't respond, that's fine. I certainly will.

12 THE COURT: I'm sure you guys will talk.

13 MR. PEEK: But I can certainly preview to the

14 Court that one of the reasons why we don't think the

15 deposition should go forward is we don't have any documents

16 from Wynn parties yet and we think that we're entitled to

17 at least look at -- review their documents before he is

18 presented.

19 THE COURT: Well you know my position on that is

20 not necessarily.

21 MR. PEEK: I understand your position, but I'll

22 present it to you by motion practice and --

23 THE COURT: And sometimes my mind is changed.

24 MR. PEEK: Correct.

25 THE COURT: So I'm happy to listen, but I assume

1 that I will be seeing motions from you related to this if  
2 it's not a timeframe and I'm encouraging you to try and do  
3 an ESI protocol and a meet and confer. Mr. Campbell, it  
4 was lovely to see you.

5 MR. CAMPBELL: It was nice seeing you, Your Honor.

6

7 PROCEEDING CONCLUDED AT 8:56 A.M.

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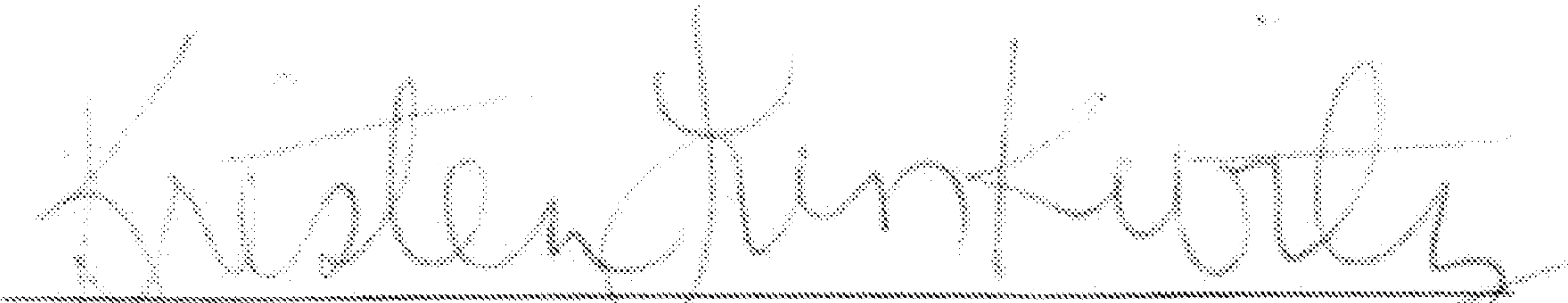
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**CERTIFICATION**

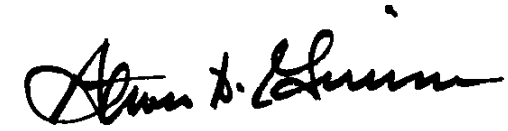
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

A handwritten signature in cursive script, reading "Kristen Lunkwitz", is written over a horizontal dotted line.

KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

WYNN RESORTS LIMITED

Plaintiff

vs.

KAZUO OKADA, et al.

Defendants

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CASE NO. A-656710

DEPT. NO. XI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**STATUS CHECK**

THURSDAY, APRIL 16, 2015

COURT RECORDER:

DEBRA WINN  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
ROBERT CASSITY, ESQ.  
DAVID KRAKOFF, ESQ.  
JEFFREY WU, ESQ.  
WILLIAM R. URGAS, ESQ.  
COLBY WILLIAMS, ESQ.

1 LAS VEGAS, NEVADA, THURSDAY, APRIL 16, 2015, 8:33 A.M.

2 (Court was called to order)

3 THE COURT: Can the individuals on the telephone  
4 please identify themselves for purposes of my record.

5 MR. KRAKOFF: Yes. This is David Krakoff at Buckley  
6 Sandler, Judge.

7 THE COURT: Good morning.

8 MR. WU: Good morning, Judge. This is Jeffrey Wu on  
9 behalf of Ms. Wynn from Munger Tolles.

10 THE COURT: Good morning.

11 Anybody else on the phone?

12 Those in the courtroom. Mr. Williams.

13 MR. WILLIAMS: Good morning, Your Honor. Colby  
14 Williams on behalf of Mr. Wynn.

15 MS. SPINELLI: 'Morning, Your Honor. Debra Spinelli  
16 on behalf of Wynn.

17 MR. PISANELLI: Good morning, Your Honor. James  
18 Pisanelli on behalf of Wynn Resorts and the director  
19 defendants.

20 MR. URGAS: Good morning, Your Honor. William Urga  
21 on behalf of Elaine Wynn.

22 MR. CASSITY: Good morning, Your Honor. Robert  
23 Cassity on behalf of the Aruze parties.

24 THE COURT: You brought Mr. Peek with you, but he's  
25 not here.

1 MR. PEEK: Good morning, Your Honor.

2 THE COURT: Do you anticipate anybody else on your  
3 side?

4 MR. CASSITY: No, Your Honor.

5 THE COURT: Okay. This is --

6 MR. PEEK: Other than the folks on the phone.

7 THE COURT: Right. This is the status check I'm  
8 trying to schedule in your case every month or so to try and  
9 keep you on track. Tell me where we are, please.

10 MR. PISANELLI: Your Honor, I'll run through a  
11 couple of items as we seem to be the most important nothing  
12 over the controversial since the last time we were before you.  
13 We gave you our best estimate of when our rolling production  
14 would begin, and that did in fact begin on the day we  
15 predicted, April 13th. Were continuing our review and expect  
16 the production to go as anticipated as we reported to you last  
17 time. So this will go through August.

18 Okada team has made another production to us, as  
19 well, and so I don't think we are at any type of crossroads on  
20 filing motions for our production or for their production;  
21 they're producing right now, we're producing right now. If we  
22 feel that we have slowed down or hit some type of a roadblock,  
23 we'll bring that to your attention. But I don't see that as I  
24 stand here right now.

25 Some of the meet and confers that have become a

1 regular process in this case continue. And I actually say  
2 that in a positive sense, that no one's walked away from the  
3 table on lots and lots of issues that we talk about. Several  
4 of them have been ongoing, including issues about the Okada  
5 defendants' objections and responses to our discovery requests  
6 and their issues with our objections and responses. So,  
7 rather than dump 300-plus type of objections to you and ask  
8 you to rule one way or another on them, we're doing our best  
9 to limit that. Realistically, we're not going to agree on  
10 every one of them, but we're continuing to work to give you as  
11 few as possible to resolve before we come in here.

12 Ms. Wynn has propounded discovery, as you may  
13 recall. Multiple rounds of that have occurred, some on non  
14 defendants, some on the directors via subpoenas. Those have  
15 been answered since the last we came here. We have not yet, I  
16 don't believe anyway, I'll be corrected by Ms. Wynn's team if  
17 I'm wrong, but I don't believe we have yet heard any responses  
18 or objections back or the meet and confers have not started if  
19 they are not happy with those productions yet. That will be  
20 something perhaps we report on next month.

21 The translation and interpretation protocol. I  
22 think both sides will agree we've made a lot of progress on  
23 it. There's some minor issues that are left. We anticipate  
24 that the parties will in fact agree and be able to present  
25 something to you for review and approval without necessity of

1 debate or motion on how it should happen. Give us a week or  
2 two weeks on that, and I think we should have something to  
3 show you to see how you feel about it.

4           Final issue on my list is that we've been meeting  
5 and conferring with the defendants about Mr. Okada's  
6 deposition. We have some disagreements over the length of  
7 the deposition and the locale of the deposition. We've gone  
8 ahead and noticed the deposition without consent from the  
9 Okada team for the last two weeks of July. It was not done as  
10 an aggressive adversarial move. It was done to basically tee  
11 the issue up. We can and will be ready to go in July. We're  
12 not going to be sticklers that it has to be our date, but we  
13 want the process in place so that we're moving. We're  
14 continuing to have meet and confers even as early as -- or as  
15 late, I should say, as seconds before you walked in Mr. Peek  
16 and I are still talking about the topic.

17           THE COURT: I was trying to let you finish talking  
18 before I walked in.

19           MR. PISANELLI: Yeah. And the point simply being  
20 that we think we might be able to work out some of the issues.  
21 We're probably not going to work out those two major issues,  
22 not for a lack of effort or trying, and we haven't given up  
23 trying yet. So no motion for you yet, no requests for you to  
24 do anything about it, just to let you know from a status  
25 perspective that deposition's teed up. We'll give Mr. Peek

1 and his team time to digest the dates, the issues, get back to  
2 us. And when a motion comes, whether it be from us to compel  
3 or from them for a protective order, it will be in essence by  
4 consent between the parties that we've reached an impasse and  
5 we need you to decide how we're going to handle the  
6 deposition.

7 THE COURT: You continue to work to find an  
8 agreeable date, location, and timing, but if you come to an  
9 impasse, I'll hear about it.

10 MR. PISANELLI: Very good.

11 THE COURT: Okay. Let me ask the one last thing I  
12 had on my list to talk to you about, and that related to the  
13 review by your clients for privilege of the Freeh, Spork, and  
14 Pepper Hamilton documents.

15 MR. PISANELLI: Sure. We are working on our review.  
16 We have, as I understand, and this is an issue that, as you've  
17 seen before, Ms. Spinelli is more involved than I, so she'll  
18 correct me if I misstate anything. But we are working on a  
19 review, and I guess that's all I know about it, that it's a  
20 work in progress.

21 THE COURT: Well, you weren't scheduled to  
22 production till next month. My question was I know that last  
23 time you were here you had just received the information, so  
24 at this point the privilege is ongoing, and you don't see it  
25 being off track at this point.



1           MR. PISANELLI: It is ongoing, and I am not aware of  
2 it being off track yet.

3           And, Debbie, if you think we're going to be off  
4 track --

5           No. So we don't think we'll be off track.

6           THE COURT: Thank you. That was my last thing on  
7 the list.

8           Mr. Cassity, anything from your team?

9           Mr. Peek.

10          MR. PEEK: I did get a script from Mr. Cassity, Your  
11 Honor, to make sure that I got it right, just as I know Jim  
12 got his script from other folks, too. But Mr. Pisanelli has  
13 actually laid out where we are, where we've been and where we  
14 think we may or may not have problems along the way. But at  
15 least we are still talking. If we have issues, we will bring  
16 them to the Court. With respect to, as he said, requests for  
17 production they likewise will, and we'll also at some time or  
18 another, if we cannot reach agreement on some of the other  
19 issues, particularly with respect to Mr. Okada and his timing,  
20 location, and length of deposition, we'll come back and talk  
21 to the Court about it. But right now we're not at that point.

22          THE COURT: Okay. Anything else from anybody else  
23 on your status? It sounds like you're making good progress  
24 and you're continuing to work together.

25          Mr. Urga? Anybody on the phone?

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Have a lovely day. 'Bye.

MR. PISANELLI: Thank you, Your Honor.

MR. PEEK: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 8:40 A.M.

\* \* \* \* \*

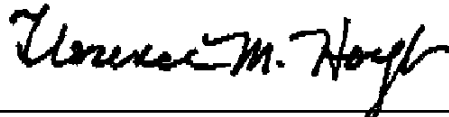
**CERTIFICATION**

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

**AFFIRMATION**

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

**FLORENCE HOYT  
Las Vegas, Nevada 89146**

  
\_\_\_\_\_  
FLORENCE M. HOYT, TRANSCRIBER

  
CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**STATUS CHECK**  
THURSDAY, JUNE 18, 2015

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS	FLORENCE HOYT
District Court	Las Vegas, Nevada 89146

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

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
ROBERT CASSITY, ESQ.  
WILLIAM R. URGAS, ESQ.  
ADAM MILLER, ESQ.  
JEFFREY WU, ESQ.

LAS VEGAS, NEVADA, THURSDAY, JUNE 18, 2015, 8:48 A.M.

(Court was called to order)

THE COURT: Can I go to Wynn versus Okada.

MR. URGAS: Good morning, Your Honor.

MR. PEEK: Good morning, Your Honor.

(Pause in the proceedings)

MR. PISANELLI: Messrs. Campbell and Williams send their apologies, ask Your Honor to proceed without them.

THE COURT: Lovely. Do we need to get people back on the telephone?

MR. URGAS: Probably.

MR. PEEK: Probably should, Your Honor, although I think we can proceed without them. But I might get in trouble if we did.

THE COURT: Mr. Morris, they're getting you some coffee.

MR. MORRIS: I thank you.

(Pause in the proceedings)

THE COURT: Good morning. Who's on the phone, please?

MR. MILLER: Good morning, Your Honor. This is Adam Miller from BuckleySandler for the Aruze parties.

MR. WU: Good morning, Your Honor. This is Jeff Wu from Munger Tolles & Olson on behalf of Ms. Elaine Wynn.

THE COURT: Anybody else on the phone?

All right. This is my monthly status check. I was hoping to see a translation/interpretation protocol.

MS. SPINELLI: You will, Your Honor. We actually -- you absolutely will. We thought we had a final, but we made a few tweaks just yesterday, so we are just going to collect signatures today, and you will get it, if not today, then certainly by tomorrow. It is done now, and everyone's reached an agreement.

THE COURT: Have you really reached an agreement?

MR. PEEK: Yes, Your Honor. There were just a few nits that Mr. Miller pointed out. And I think Mr. Wu has signed off on it.

MS. SPINELLI: He signed off on it before Adam added new stuff.

MR. PEEK: Before Adam made a few more comments. But they were, as I say, nits, and I think we probably file it before the end of this week.

THE COURT: Okay. Let me ask the fallback question. And the only reason I'm asking a fallback question is because of Tuesday in another case. Have you agreed on where and how depositions are going to be taken?

MR. PISANELLI: Other than the first one? No. Not yet.

THE COURT: No?

MR. PEEK: No, we have not, Your Honor. But we will

certainly work on that.

THE COURT: I just encourage you to discuss that amongst yourselves, rather than asking me to be the decision maker.

MR. PEEK: We discussed it some time ago, Your Honor, and --

THE COURT: I know we did. And I made a suggestion, and everybody laughed and went away.

MR. PISANELLI: And there is a message to be learned from other matters on that topic.

THE COURT: U.S. soil is a good place to take depositions.

MR. PEEK: I understand the Court's position on that, Your Honor.

THE COURT: You don't have to agree, Mr. Peek.

MR. PEEK: I know that.

THE COURT: Anything else that you want to tell me on Wynn-Okada?

MR. PISANELLI: There's not much to report. We have two issues that will be coming to your attention -- well, may be coming to your attention, one more urgent than the other. We have attempted, as Your Honor always wants us to do, to be flexible within reason on the deposition date for Mr. Okada. We have asked for a couple of weeks now if he is in fact and counsel are in fact available for the windows that we



presented to you in the last motion. We're hoping to get an answer soon, because, as everyone in here could predict, it's going to take a lot of work to prepare for that deposition. And only to find out days or a day before, oh, by the way, he's not available would be we'll call it unfortunate. So we're looking to avoid that. We'd be flexible today. Tomorrow's flexibility is obviously, you know, waning with each passing day. So we'd like an answer, if we can get it, from the defendants as quickly as possible if these dates will work.

The other issue is Mr. Okada I think as recently as yesterday has informed us that he will not provide a consent under the Data Privacy Act. Ad that is his choice to do so, but I think it's important to put out there that if he comes back later saying he wants to now give it and we have already packed up and left Macau, that's going to be an extraordinary expense to go back and do it again. So he and his team should make that choice with their eyes wide open. They've given us a reason why he didn't give the consent. We think it's a false reason based upon a false premise. But we're not going to argue about it. He can either give it or not give it. He's chosen not to give it, and I think there's going to be consequences to that choice.

THE COURT: I'm not dealing with it today.

Anything else?

MR. PEEK: I'm sorry, Your Honor. What did you say?

THE COURT: I'm not dealing with it today.

MR. PEEK: Thank you. However, I feel like I should be compelled to respond if you would --

THE COURT: If you want to respond. I'm not going to do anything.

MR. PEEK: I understand that. But I want the Court at least to understand our position, which I think we previewed it in our motion to compel. And that position is that it was certainly easy enough for the Wynn parties to transfer documents out of Macau related to stays by Philippine officials and others.

THE COURT: It seemed to be easy for everybody to move information out of Macau --

MR. PEEK: Exactly, Your Honor.

THE COURT: -- until we got here to Las Vegas in litigation.

MR. PEEK: And I -- you know, I heard this same refrain in another matter before the Court when we asked for a party's consent, and certainly we got whatever response we got. But in any event, Your Honor, they can certainly use it as a sword against Mr. Okada, and now they want to use it as a shield in their productions.

THE COURT: I'm not dealing with it today. So if you need to file a motion, file a motion. If you're not going

to file a motion and you're going to go forward on it and something happens later and you have to file a motion, that's a different issue.

MR. PEEK: We will most likely be filing a motion, Your Honor, if we get productions that are redacted. We will most likely file a motion on that, Your Honor.

THE COURT: Okay. Anything else on Wynn-Okada?

MR. PEEK: Yeah.

MR. URGAL: Your Honor, just to make it clear, we would also --

THE COURT: Good morning, Mr. Urgal.

MR. URGAL: I just want to make sure you know I'm here, Your Honor.

We echo what Mr. Pisanelli said. We would like to know if there's going to be dates, because everybody's got to try to work schedules out. That's all we're asking.

MR. PISANELLI: Your Honor, I don't recall when the defendants asked us to give our best prediction on when we would do our production. There's nothing under the rules that required it, but we gave it to them. We're just asking them to tell us are you going to appear on these dates or not so that all these lawyers can schedule next month preparation time, et cetera. It's not an unreasonable request to say, are you showing up or not.

THE COURT: Well, but you know Mr. Peek's going on

vacation.

For like two weeks; right?

MR. PEEK: I am, Your Honor. I'm leaving Saturday for two weeks.

MS. SPINELLI: He'll be back for the dates of a noticed depo, Your Honor. That's why we just want confirmation.

MR. PEEK: I will be back, Your Honor.

THE COURT: Lovely.

MS. SPINELLI: Will Mr. Okada? That's all we're asking for.

MR. PISANELLI: Is that an unreasonable request to say are you showing up or not?

MR. PEEK: Your Honor, I don't know if they're seeking your intervention.

THE COURT: I'm not involved.

MR. PEEK: Thank you.

THE COURT: It is a reasonable request, but I'm not going to make him answer. But it is a totally reasonable request, Mr. Pisanelli.

MR. PISANELLI: I guess my point is when they asked for a prediction of our production Your Honor did make us respond.

THE COURT: No. I asked you.

MR. PISANELLI: And so we're asking them --

MR. PEEK: Because it's a 30-day requirement, Your Honor --

THE COURT: Right.

MR. PEEK: -- to produce documents.

THE COURT: Guys. Will you guys stop two of you talking at a time. You know what happens when you do that.

MR. PEEK: Yes, Your Honor.

THE COURT: Mr. Pisanelli, would you like to finish?

MR. PISANELLI: That's all I'm really asking is in light of the obvious reasonableness of our position if Your Honor would require the defendants to simply say will you hold this date or do you need a continuance of the deposition?

THE COURT: Well, how about this? The depo's going to go forward unless there's a motion for a protective order unless you reach an agreement.

MR. PISANELLI: That we expect.

THE COURT: How's that?

MR. PISANELLI: That's perfect. And the only thing I would add to it is that it should go forward set in stone sooner, rather than later. In other words, if they sit on this issue for another week, then there's no more negotiation on a date, because now people are changing their schedules, preparing for the deposition, et cetera. It really is --

THE COURT: I understand. But the first time you guys take that position it makes it incredibly difficult for

you to negotiate on future depositions. And if you ask me, the answer's going to be the deposition goes forward unless there's a protective order granted. That doesn't keep you from being able to extend courtesies and negotiate among yourselves. It will, of course, extend to the history of your case.

MR. PISANELLI: Of course.

THE COURT: But don't start making me be the bad guy.

MR. PISANELLI: Well, I'll be the bad guy.

MR. PEEK: Better than you, Your Honor.

THE COURT: Anything else?

MR. PEEK: No, Your Honor, there is nothing else. I will certainly give very serious consideration to the requests that they have made, and I will respond --

MR. PISANELLI: It is a difficult challenge.

THE COURT: Mr. Peek, you need a vacation. So have a nice vacation, and we'll see you when you get back. Well, no. You're staying for a few minutes.

MR. PEEK: I have to stay here, Your Honor.

THE PROCEEDINGS CONCLUDED AT 8:57 A.M.

\* \* \* \* \*

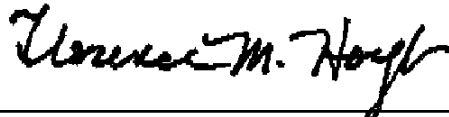
**CERTIFICATION**

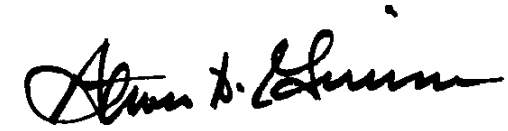
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**AFFIRMATION**

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, TRANSCRIBER



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

WYNN RESORTS LIMITED

Plaintiff

vs.

KAZUO OKADA, et al.

Defendants  
. . . . .

CASE NO. A-656710

DEPT. NO. XI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON MOTIONS**

WEDNESDAY, JULY 8, 2015

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.



APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
ROBERT CASSITY, ESQ.  
ADAM MILLER, ESQ.  
WILLIAM R. URGAS, ESQ.  
COLBY WILLIAMS, ESQ.

1 LAS VEGAS, NEVADA, WEDNESDAY, JULY 8, 2015, 8:41 A.M.

2 (Court was called to order)

3 THE COURT: Good morning. Can we start with Wynn-  
4 Okada, please.

5 Good morning.

6 MR. PISANELLI: Good morning, Your Honor.

7 THE COURT: Mr. Cassity, I understand from the  
8 Nevada Supreme Court that they may have made your issue in  
9 front of me moot for now.

10 MR. CASSITY: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. CASSITY: They stayed Mr. Okada's deposition  
13 pending their disposition of our [inaudible].

14 MR. PEEK: And it's set for oral argument, Your  
15 Honor. I don't know if you knew that, as well.

16 THE COURT: Really.

17 MR. PEEK: En banc oral argument on the 1st of  
18 September.

19 THE COURT: Interesting.

20 MS. SPINELLI: Along with the Jacobs case, Your  
21 Honor.

22 MR. PEEK: Jacobs is also set for --

23 THE COURT: Together.

24 MR. PEEK: One's at 10:00 for an hour. That's  
25 Jacobs. And then we're set for just a half an hour on Okada

1 at 1:30.

2 THE COURT: Interesting.

3 MR. PEEK: Pardon?

4 THE COURT: Interesting. Did you have a nice  
5 vacation?

6 MR. PEEK: I did, Your Honor. It was very --  
7 (Off-record colloquy)

8 THE COURT: So I think we still need to with Mr. --  
9 Who's on the phone?

10 MR. MILLER: Good morning, Your Honor. This is Adam  
11 Miller from Buckley Sandler for the Aruze parties.

12 THE COURT: Okay. So, Mr. Pisanelli, I think we  
13 still have your motion.

14 MR. PISANELLI: Your Honor, we'll submit on the  
15 papers, reserve time, if any, for rebuttal.

16 THE COURT: Mr. Peek. Remember, you only have  
17 10 minutes. It's the Steve Peek/Matt Dushoff rule.

18 MR. PEEK: Your Honor, I think this is adequately  
19 addressed in the papers, and I have nothing more to add, as  
20 well.

21 THE COURT: Okay. Now, Mr. Pisanelli, since nothing  
22 got added by Mr. Peek, I assume you don't have anything else  
23 to add, and I'm going to rule.

24 I'm going to grant the motion given the Nevada  
25 Supreme Court's decision to place me as their Discovery

1 Commissioner lately, I am going to stay this matter pending  
2 the oral argument on the Okada decision and additional  
3 direction from the Nevada Supreme Court as to my position and  
4 handling discovery matters in Business Court cases.

5 MR. PEEK: Your Honor --

6 MR. PISANELLI: Thank you, Your Honor.

7 MR. PEEK: -- I have one question about that.

8 THE COURT: Yes.

9 MR. PEEK: There's been no writ filed, there's been  
10 no writ accepted. And so you're xtnding it now until the  
11 decision on the other -- I think it should be -- it should  
12 only go until such time as the court as decided, Supreme Court  
13 has decided whether to even accept and file and address the  
14 writ. Because no writ's been filed, no writ's been accepted.

15 MR. PISANELLI: I think Mr. Peek is conflating two  
16 different things you just said. Your Honor gave direction to  
17 us based upon the direction you'd like to get from the Supreme  
18 Court of what's already pending. That doesn't tie it to what  
19 they do with this particular stay or writ. But I will be  
20 filing the writ obviously ASAP. I expect it to be early next  
21 week.

22 MR. PEEK: Your Honor --

23 THE COURT: And if the Supreme Court does not issue  
24 an order requiring an answer on your petition, that's a  
25 different issue, and then we'll come back and talk about it.

1 MR. PISANELLI: We can talk --

2 MR. PEEK: So then I have to come back and talk  
3 about it at that time? Because if they don't accept the writ,  
4 Your Honor, then there's no reason for a stay.

5 MR. PISANELLI: Well, again, that's --

6 MR. PEEK: So to me, I -- the issue of Mr. Okada's  
7 deposition I understand is --

8 THE COURT: I think the issue of Mr. Okada's  
9 deposition is a much weaker argument than Mr. Pisanelli's  
10 issue. But that's my personal opinion as the judge handling  
11 the case who typically has broad discretion in framing  
12 discovery in a case. That may be changing. I'm waiting to  
13 hear from the Nevada Supreme Court.

14 MR. PEEK: That doesn't really address the issue,  
15 Your Honor, that if they do not accept the writ and do not  
16 require an answer, then your order would stand and there'd be  
17 no reason to stay your order.

18 THE COURT: Through the argument -- through the  
19 argument on September 1st. You understand there is a period  
20 of time that typically occurs after an argument for a decision  
21 to be made.

22 MR. PEEK: That just has to do with Mr. Okada's  
23 deposition, not as to whether or not they should or should not  
24 produce documents in accordance with the motion to compel that  
25 you ordered.

1           THE COURT: I understand, Mr. Peek. But I'm not  
2 staying through a decision on that. I'm staying it through  
3 the argument.

4           MR. PEEK: To just September 1st.

5           THE COURT: Correct.

6           MR. PEEK: And if I want to come back and seek  
7 relief and move to dissolve the stay based upon the fact that  
8 they do not require an answer, then I can -- so we have the  
9 right to do that?

10          THE COURT: Absolutely. And I do typically, but not  
11 always, receive copies of the order from the Nevada Supreme  
12 Court. I didn't receive the most recent stay order from the  
13 Nevada Supreme Court until after our hearing. I learned about  
14 it during the hearing with you gentlemen and lady. But I  
15 don't always get those orders. So if you don't get an order  
16 directing an answer, I would be surprised, given what's  
17 happened recently in these two cases with some similar issues.

18          MR. PISANELLI: We're agreed with that point.

19          Your Honor, just for clarity, notwithstanding Mr.  
20 Peek's comment about tying your stay to this actual issue and  
21 our writ, there obviously is some overlap, and there's  
22 consequences to this case by actually staying the Okada  
23 deposition. In other words, the Supreme Court has, whether  
24 intentionally or unintentionally, created a sequencing of  
25 discovery in this case, something that Your Honor almost never

1 permits in this case. And so I fully --

2 THE COURT: Well, and I'd also said that Mr. Okada's  
3 deposition was going to go very early on in the case because  
4 you'd noticed it previously, and that is and continues to be  
5 my intent. And it may be that I have to do something to  
6 modify the schedule, but I'm going to wait to hear what kind  
7 of questions they ask and things happen during the argument of  
8 the two cases.

9 MR. PISANELLI: All fair. And my only point was  
10 whether it makes sense because of this de facto sequencing  
11 that we simply wait for the decision to figure out what to do.

12 THE COURT: I'm not willing to do that at this  
13 point. I'm not saying I wouldn't be willing to do it after  
14 hearing the questions they ask during the argument, which  
15 sometimes give us a hint as to what at least some of them are  
16 thinking.

17 MR. PISANELLI: Well, would it make sense, then,  
18 Your Honor, that we say that the stay is in place and we come  
19 back for a status check after --

20 THE COURT: No.

21 MR. PISANELLI: -- the oral argument to decide if  
22 you want to extend it or end it?

23 THE COURT: No.

24 MR. PISANELLI: I'm not saying waiting, just come  
25 back to talk about it.

1           THE COURT: If you want it extended, you're going to  
2 have to ask me in a separate document.

3           MR. PISANELLI: Okay.

4           THE COURT: If you want it dissolved, you'll have to  
5 ask me in a separate document.

6           MR. PEEK: I understand that, Your Honor. And  
7 certainly with respect to sequencing it certainly is important  
8 for us to have the documents before Mr. Okada's deposition  
9 goes forward. So I think the way --

10          MR. PISANELLI: Yeah. The exact sequencing --

11          MR. PEEK: May I -- may I please?

12          THE COURT: Guys. No. Only one at a time.

13          Mr. Peek, would you like to finish.

14          MR. PEEK: Yeah. Certainly we would like in terms  
15 of sequencing to have the documents that are the subject  
16 matter of the motion to compel, as well as the subject matter  
17 of the existing request for production. And so I just want to  
18 put that out there, because I understand Mr. Pisanelli's  
19 point. We don't agree with Mr. Pisanelli's point about  
20 sequencing. We'll have to discuss that later if we need to  
21 with the Court. I'm happy to do that. We're back in front of  
22 the Court a week from today --

23          THE COURT: Probably. You're here --

24          MR. PEEK: -- on a status conference?

25          THE COURT: You're here every week or every couple



1 weeks.

2 MR. PEEK: I am, Your Honor. Except I'm on  
3 vacation. But we'll be back here on the status conference,  
4 and certainly by that time I would hope we would have a writ  
5 filed and maybe an answer from the Supreme Court as to what to  
6 do so we can address it at that time.

7 MR. PISANELLI: I'll only remind the Court that Mr.  
8 Peek's request for sequencing of getting our documents before  
9 that deposition has already been rejected by this Court. This  
10 is the second or third time he's tried to bring it up before  
11 you.

12 THE COURT: No, that's not true, Mr. Pisanelli.

13 MR. PEEK: Thank you.

14 THE COURT: What I've said is I understand that you  
15 have a rolling production schedule. I had some types of  
16 documents they ordered moved up in the schedule. I understand  
17 the issues with the production of documents related to  
18 Macanese operations.

19 MR. PEEK: And, Your Honor, this stay only applies,  
20 as I understand it, to just those -- just the motion to compel  
21 that was ordered. All other productions with respect to the  
22 requests for production are not stayed.

23 THE COURT: Correct.

24 MR. PEEK: Okay.

25 THE COURT: Only the issues that were subject to the

1 motion for protective order which I denied. I did grant some  
2 of that relief. I don't remember if it was the motion to  
3 compel or protective order --

4 MR. PEEK: You did.

5 THE COURT: -- but the issue related to the Wynn  
6 production and whether the requests were overbroad. And some  
7 of those I denied. Not many.

8 MR. PEEK: Not many, Your Honor. Your Honor, if  
9 we're done here, I'd just like to ask the Court another  
10 question about a separate case.

11 THE COURT: Is there anything else on Wynn versus  
12 Okada?

13 Mr. Urga, do you have anything to add? You've been  
14 very quiet this morning.

15 MR. URGa: I have nothing to add, and nobody's asked  
16 me if I had a vacation.

17 THE COURT: Did you have a vacation, Mr. Urga?

18 MR. URGa: No.

19 THE COURT: I'm sorry to hear that. I haven't had  
20 one yet, either, but I'm going to enjoy now that Jacobs-Sands  
21 is not going to trial in October when I go in September.

22 (Off-record colloquy)

23 THE COURT: Was there anything else, Mr. Pisanelli,  
24 on this case? All right. Mr. Peek, you had another question.

25 THE PROCEEDINGS CONCLUDED AT 8:50 A.M.

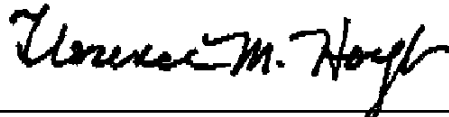
**CERTIFICATION**

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

**AFFIRMATION**

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

**FLORENCE HOYT  
Las Vegas, Nevada 89146**

  
\_\_\_\_\_  
FLORENCE M. HOYT, TRANSCRIBER

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Case Number	Citation Number	Style/Defendant Info	Filed/Location	Type/Status	Charge(s)
<a href="#">A-12-654522-B</a>		Kazuo Okada, Plaintiff(s) vs. Wynn Resorts Limited, Defendant(s)	01/11/2012 Department 11	Business Court Reactivated	

## REGISTER OF ACTIONS

CASE NO. A-12-654522-B

**Kazuo Okada, Plaintiff(s) vs. Wynn Resorts Limited,  
Defendant(s)**

§  
§  
§  
§  
§  
§

Case Type: **Business Court**  
Subtype: **NRS Chapters 78-89**  
Date Filed: **01/11/2012**  
Location: **Department 11**  
Cross-Reference Case Number: **A654522**

### PARTY INFORMATION

**Defendant**                      **Wynn Resorts Limited**

**Lead Attorneys**  
**Kirk Banks Lenhard**  
Ä Ä Retained  
702-382-2101(W)

**Plaintiff**                      **Okada, Kazuo**

**Bryce K. Kunimoto**  
Ä Ä Retained  
702222500(W)

### EVENTS & ORDERS OF THE COURT

#### OTHER EVENTS AND HEARINGS

01/11/2012 **Case Opened**  
01/11/2012 **Discovery Heard by Department/Deemed Complex**  
01/11/2012 **Complaint (Business Court)**  
*Petition for a Writ of Mandamus*

01/11/2012 **Affidavit in Support**  
*Affidavit of Charles H. McCrea, Jr. in Support of Petition for a Writ of Mandamus and Motion for Expedited Consideration*

01/11/2012 **Memorandum**  
*Memorandum of Law in Support of Petition for a Writ of Mandamus*

01/11/2012 **Ex Parte Motion**  
*Exparte Motion for Expedited Consideration of Issuance of Alternative Writ of Mandamus*

01/12/2012 **Motion** (1:00 PM) (Judicial Officer Gonzalez, Elizabeth)  
[Parties Present](#)  
[Minutes](#)

Result: Matter Heard

01/12/2012 **Notice of Appearance**  
*Notice of Appearance*

01/12/2012 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

01/12/2012 **Motion to Associate Counsel**  
*Motion to Associate Counsel - Gidon Menahem Caine*

01/13/2012 **Writ of Mandamus**  
*Alternative Writ of Mandamus*

01/13/2012 **Affidavit of Service**  
*Affidavit of Service*

01/20/2012 **Consent to Service By Electronic Means**  
*Consent to Service by Electronic Means*

01/25/2012 **Motion to Associate Counsel**  
*Motion to Associate Counsel - Steven Morse Collins*

01/26/2012 **Certificate of Service**  
*Certificate of Service*

01/27/2012	<b>Opposition</b> <i>Respondent's Opposition To Petition For A Writ Of Mandamus</i>
01/30/2012	<b>Motion to Associate Counsel</b> <i>Motion to Associate Robert L. Shapiro as Counsel on Order Shortening Time</i>
01/30/2012	<b>Receipt of Copy</b> <i>Receipt of Copy</i>
01/31/2012	<b>Motion for Protective Order</b> <i>Respondent Wynn Resorts, Limited's Motion for Protective Order on Order Shortening Time</i>
01/31/2012	<b>Motion to Associate Counsel</b> <i>Application for Order Shortening Time for Hearing on Petitioner's Motions to Associate Counsel</i>
01/31/2012	<b>Receipt of Copy</b> <i>Receipt of Copy of Respondent Wynn Resorts, Limited's Motion for Protective Order on Order Shortening Time</i>
02/02/2012	<b>Motion to Associate Counsel</b> (9:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Deft's motion to Associate Robert L. Shapiro as Counsel on Order Shortening Time</i>
02/02/2012	<b>Motion for Protective Order</b> (9:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Respondent Wynn Resorts, Limited's Motion for Protective Order on Order Shortening Time</i>
02/02/2012	<b>Motion to Associate Counsel</b> (9:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Application for Order Shortening Time for Hearing on Petitioner's Motions to Associate Counsel</i>
02/02/2012	<b>All Pending Motions</b> (9:00 AM) (Judicial Officer Gonzalez, Elizabeth) <a href="#">Parties Present</a> <a href="#">Minutes</a>
	Result: Granted
02/02/2012	<b>Order Admitting to Practice</b> <i>Order Admitting To Practice - Robert L Shapiro Esq</i>
02/02/2012	<b>Order Admitting to Practice</b> <i>Order Admitting to Practice - Gidon M Caine Esq</i>
02/02/2012	<b>Order Admitting to Practice</b> <i>Order Admitting to Practice - Steven Morse Collins Esq</i>
02/02/2012	<b>Notice of Entry of Order</b> <i>Notice of Entry of Order Admitting To Practice Gidon M. Caine</i>
02/02/2012	<b>Notice of Entry of Order</b> <i>Notice of Entry of Order Admitting to Practice Steven Morse Collins</i>
02/02/2012	<b>Answer</b> <i>Respondent Wynn Resorts, Limited's Verified Answer To Petition For Writ Of Mandamus</i>
02/02/2012	<b>Notice of Entry of Order</b> <i>Notice of Entry of Order</i>
02/03/2012	<b>Reply in Support</b> <i>Petitioner's Reply Memorandum of Law in Support of Petition for a Writ of Mandamus</i>
02/06/2012	<b>Proof of Compliance</b> <i>Proof of Compliance (Gidon M. Caine)</i>
02/06/2012	<b>Proof of Compliance</b> <i>Proof of Compliance (Steven M. Collins)</i>
02/07/2012	<b>Telephonic Conference</b> (1:00 PM) (Judicial Officer Gonzalez, Elizabeth) <i>Status Check Re: Media Request</i> <a href="#">Minutes</a>

02/07/2012	Result: Matter Heard <b>Response</b> <i>Response to Notification of Media Request</i>
02/08/2012	<b>Telephonic Conference</b> (1:45 PM) (Judicial Officer Gonzalez, Elizabeth) <a href="#">Parties Present</a> <a href="#">Minutes</a>
02/08/2012	Result: Matter Heard <b>Order</b> <i>Protective Order</i>
02/08/2012	<b>Notice of Entry of Order</b> <i>Notice of Entry of Protective Order</i>
02/09/2012	<b>At Request of Court</b> (9:00 AM) (Judicial Officer Gonzalez, Elizabeth) <b>02/09/2012, 03/08/2012</b> <i>At the Request of the Court: Argument on Writ of Mandamus</i> <a href="#">Parties Present</a> <a href="#">Minutes</a> <i>02/23/2012 Reset by Court to 03/08/2012</i>
02/09/2012	Result: Matter Continued <b>Receipt of Copy</b> <i>Receipt of Copy of Supplement to Respondent's Opposition to Petition for a Writ of Mandamus</i>
02/09/2012	<b>Filed Under Seal</b> <i>Supplement to Respondent's Opposition to Petition for a Writ of Mandamus</i>
02/13/2012	<b>Transcript of Proceedings</b> <i>Transcript of Proceedings Hearing on Petition For Writ of Mandamus February 9, 2012</i>
02/16/2012	<b>Media Request and Order</b> <i>Media Request And Order For Camera Access To Court Proceedings</i>
02/17/2012	<b>Motion to Associate Counsel</b> (3:00 AM) (Judicial Officer Gonzalez, Elizabeth) <a href="#">Minutes</a>
02/28/2012	Result: Matter Heard <b>Motion to Associate Counsel</b> (9:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Plt's Motion to Associate Counsel</i> <a href="#">Parties Present</a> <a href="#">Minutes</a>
02/28/2012	Result: Matter Heard <b>Order Admitting to Practice</b> <i>Order Admitting to Practice - Steven Morse Collins Esq</i>
03/07/2012	<b>Supplement to Opposition</b> <i>Wynn Resorts, Limited's Second Supplement To Respondent's Opposition To Petition For A Writ Of Mandamus</i>
03/07/2012	<b>Certificate of Service</b> <i>Certificate of Service</i>
03/07/2012	<b>Supplement</b> <i>Supplemental Submission in Support of Petition for a Writ of Mandamus and Opposition to Motion for a Stay</i>
03/09/2012	<b>Notice of Compliance</b> <i>Notice Of Compliance With March 8, 2012 Court Direction</i>
03/13/2012	<b>Transcript of Proceedings</b> <i>Transcript Of Proceedings Hearing At Request Of The Court: Argument On Writ Of Mandamus March 8, 2012</i>
04/03/2012	<b>Order to Statistically Close Case</b> <i>Civil Order To Statistically Close Case</i>
04/10/2012	<b>Media Request and Order</b> <i>Media Request and Order For Camera Access to Court Proceedings</i>
05/03/2012	<b>Motion to Amend</b>

	<i>Motion on Order Shortening Time to Amend Petition for Writ of Mandamus</i>
05/04/2012	<b>Errata</b> <i>Errata to Motion on Order Shortening Time to Amend Petition for Writ of Mandamus</i>
05/16/2012	<b>Opposition to Motion</b> <i>Wynn Resorts, Limited's Opposition to Kazuo Okada's Motion on Order Shortening Time to Amend Petition for Writ of Mandamus</i>
05/16/2012	<b>Notice of Appearance</b> <i>Notice of Appearance</i>
05/17/2012	<b>Motion to Amend</b> (9:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Pltf's Motion on Order Shortening Time to Amend Petition for Writ of Mandamus</i> <a href="#">Parties Present</a> <a href="#">Minutes</a>
	Result: Granted
05/23/2012	<b>Transcript of Proceedings</b> <i>Transcript of Proceedings Hearing on Plaintiff's Motion to Amend Petition for Writ of Mandamus May 17, 2012</i>
05/25/2012	<b>Amended Petition</b> <i>First Amended Petition for Writ of Mandamus</i>
05/30/2012	<b>Answer</b> <i>Respondent Wynn Resorts, Limited's Verified Answer to First Amended Petition for Writ of Mandamus</i>
06/08/2012	<b>Supplement</b> <i>Supplemental Submission in Support of First Amended Petition for a Writ of Mandamus</i>
06/18/2012	<b>Motion</b> <i>Wynn Resorts, Limited's Expedited Motion for Leave to Depose Kazuo Okada; Order Shortening Time</i>
06/19/2012	<b>Notice of Hearing</b> <i>Notice of Hearing</i>
06/26/2012	<b>Memorandum</b> <i>Status Memorandum</i>
06/27/2012	<b>Opposition</b> <i>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</i>
06/27/2012	<b>Appendix</b> <i>Appendix to 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</i>
06/27/2012	<b>Memorandum</b> <i>Response to Wynn Resort's Status Report</i>
06/28/2012	<b>Decision</b> (9:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>/ARGUMENT: REASONABLENESS OF REQUEST AND RELATIONSHIP TO THE DUTIES AS A DIRECTOR</i>
06/28/2012	<b>Motion for Leave</b> (9:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Wynn Resorts, Limited's Expedited Motion for Leave to Depose Kazuo Okada; Order Shortening Time</i>
06/28/2012	<b>All Pending Motions</b> (9:00 AM) (Judicial Officer Gonzalez, Elizabeth) <a href="#">Parties Present</a> <a href="#">Minutes</a>
	Result: Granted
07/05/2012	<b>Transcript of Proceedings</b> <i>Transcript of Proceedings Hearing on Motions June 28, 2012</i>
07/17/2012	<b>Notice of Appearance</b> <i>Notice of Appearance of Counsel</i>
07/17/2012	<b>Notice of Appearance</b>



	<i>Notice of Appearance of Counsel</i>
07/20/2012	<b>Motion to Associate Counsel</b> <i>Motion to Associate Counsel (Howard M. Privette, II)</i>
07/20/2012	<b>Motion to Associate Counsel</b> <i>Motion to Associate Counsel (William F. Sullivan)</i>
07/20/2012	<b>Motion to Associate Counsel</b> <i>Motion to Associate Counsel (John S. Durrant)</i>
07/20/2012	<b>Motion to Associate Counsel</b> <i>Motion to Associate Counsel (Paul M. Spagnoletti)</i>
07/20/2012	<b>Motion to Associate Counsel</b> <i>Motion to Associate Counsel (Linda Chatman Thomsen)</i>
07/20/2012	<b>Motion to Associate Counsel</b> <i>Motion to Associate Counsel (Greg D. Andres)</i>
07/20/2012	<b>Motion to Associate Counsel</b> <i>Motion to Associate Counsel (Gina M. Cora)</i>
07/20/2012	<b>Motion to Associate Counsel</b> <i>Motion to Associate Counsel (Jami S. Johnson)</i>
07/27/2012	<b>Certificate of Service</b> <i>Certificate of Service</i>
07/27/2012	<b>Substitution of Attorney</b> <i>Substitution of Attorneys</i>
08/22/2012	<b>Stipulation and Order</b> <i>Stipulation and Order Regarding Supplemental Briefing and Hearing</i>
08/22/2012	<b>Order</b> <i>Order Regarding Wynn Resorts, Limited's Motion for Leave to Depose Kazuo Okada</i>
08/23/2012	<b>Notice of Entry of Order</b> <i>Notice of Entry of Stipulation and Order Regarding Supplemental Briefing and Hearing</i>
08/23/2012	<b>Notice of Entry of Order</b> <i>Notice of Entry of Order Regarding Wynn Resorts, Limited's Motion for Leave to Depose Kazuo Okada</i>
08/24/2012	<b>Motion to Associate Counsel</b> (3:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Motion to Associate Counsel (Howard M. Privette, II)</i>
08/24/2012	<b>Motion to Associate Counsel</b> (3:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Motion to Associate Counsel (William F. Sullivan)</i>
08/24/2012	<b>Motion to Associate Counsel</b> (3:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Motion to Associate Counsel (John S. Durrant)</i>
08/24/2012	<b>Motion to Associate Counsel</b> (3:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Motion to Associate Counsel (Paul M. Spagnoletti)</i>
08/24/2012	<b>Motion to Associate Counsel</b> (3:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Motion to Associate Counsel (Linda Chatman Thomsen)</i>
08/24/2012	<b>Motion to Associate Counsel</b> (3:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Motion to Associate Counsel (Greg D. Andres)</i>
08/24/2012	<b>Motion to Associate Counsel</b> (3:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Motion to Associate Counsel (Gina M. Cora)</i>
08/24/2012	<b>Motion to Associate Counsel</b> (3:00 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Motion to Associate Counsel (Jami S. Johnson)</i>

08/24/2012	<b>All Pending Motions</b> (3:00 AM) (Judicial Officer Gonzalez, Elizabeth) <a href="#">Minutes</a>
	Result: Granted
08/28/2012	<b>Order Admitting to Practice</b> <i>Order Admitting to Practice Paul M. Spagnoletti</i>
08/28/2012	<b>Order Admitting to Practice</b> <i>Order Admitting to Practice Jami S. Johnson</i>
08/28/2012	<b>Order Admitting to Practice</b> <i>Order Admitting to Practice Gina M. Cora</i>
08/28/2012	<b>Order Admitting to Practice</b> <i>Order Admitting to Practice Greg D. Andres</i>
08/28/2012	<b>Order Admitting to Practice</b> <i>Order Admitting to Practice Linda Chatman Thomsen</i>
08/28/2012	<b>Order Admitting to Practice</b> <i>Order Admitting to Practice John S. Durrant</i>
08/28/2012	<b>Order Admitting to Practice</b> <i>Order Admitting to Practice Howard M. Privette, II</i>
08/28/2012	<b>Order Admitting to Practice</b> <i>Order Admitting to Practice William F. Sullivan</i>
08/29/2012	<b>Motion to Associate Counsel</b> <i>Motion to Associate Counsel (Daniel Scott Carlton)</i>
08/29/2012	<b>Notice of Entry of Order</b> <i>Notice of Entry of Order Admitting to Practice William F. Sullivan</i>
08/29/2012	<b>Notice of Entry of Order</b> <i>Notice of Entry of Order Admitting to Practice John S. Durrant</i>
08/29/2012	<b>Notice of Entry of Order</b> <i>Notice of Entry of Order Admitting to Practice Greg D. Andres</i>
08/29/2012	<b>Notice of Entry of Order</b> <i>Notice of Entry of Order Admitting to Practice Howard M. Privette, II</i>
08/29/2012	<b>Notice of Entry of Order</b> <i>Notice of Entry of Order Admitting to Practice Paul M. Spagnoletti</i>
08/29/2012	<b>Notice of Entry of Order</b> <i>Notice of Entry of Order Admitting to Practice Linda Chatman Thomsen</i>
08/29/2012	<b>Notice of Entry of Order</b> <i>Notice of Entry of Order Admitting to Practice Gina M. Cora</i>
08/29/2012	<b>Notice of Entry of Order</b> <i>Notice of Entry of Order Admitting to Practice Jami S. Johnson</i>
09/21/2012	<b>Motion to Associate Counsel</b> <i>Motion to Associate Counsel (Gina Caruso)</i>
09/28/2012	<b>Supplement to Opposition</b> <i>Wynn Resorts, Limited's Supplemental Brief in Opposition to First Amended Petition for a Writ of Mandamus</i>
10/01/2012	<b>Reply</b> <i>Reply to Wynn Resorts, Limited's Supplemental Brief in Opposition to First Amended Petition for a Writ of Mandamus</i>
10/01/2012	<b>Receipt of Copy</b> <i>Receipt of Copy</i>
10/02/2012	<b>Hearing</b> (8:30 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Hearing, Re: Reasonableness</i>

10/02/2012 **Petition for Writ of Mandamus** (8:30 AM) (Judicial Officer Gonzalez, Elizabeth)

10/02/2012 **All Pending Motions** (8:30 AM) (Judicial Officer Gonzalez, Elizabeth)  
[Parties Present](#)  
[Minutes](#)

10/03/2012 Result: Matter Heard  
**Order Admitting to Practice**  
*Order Admitting to Practice (Daniel Scott Carlton)*

10/03/2012 **Order Admitting to Practice**  
*Order Admitting to Practice (Gina Caruso)*

10/05/2012 **CANCELED Motion to Associate Counsel** (3:00 AM) (Judicial Officer Gonzalez, Elizabeth)  
*Vacated - per Judge*  
*Motion to Associate Counsel (Daniel Scott Carlton)*

10/11/2012 **Notice of Entry of Order**  
*Notice of Entry of Order Admitting to Practice Gina Caruso*

10/15/2012 **Order**  
*Order On First Amended Petition For Writ Of Mandamus*

10/15/2012 **Notice of Entry of Order**  
*Notice of Entry of Order on First Amended Petition for Writ of Mandamus*

10/16/2012 **Notice of Entry of Order**  
*Notice of Entry of Order Admitting to Practice Daniel Scott Carlton*

10/16/2012 **Notice of Compliance**  
*Notice of Compliance*

10/17/2012 **Transcript of Proceedings**  
*Transcript Of Proceedings Petition For Writ Of Mandamus October 2, 2012*

11/02/2012 **CANCELED Motion to Associate Counsel** (3:00 AM) (Judicial Officer Gonzalez, Elizabeth)  
*Vacated - per Judge*  
*Motion to Associate Counsel (Gina Caruso)*

11/02/2012 **Motion to Compel**  
*Petitioner's Motion To Compel And Request To Depose Wynn Resorts' Nrcp 30(B)(6) Representative On An Order Shortening Time*

11/05/2012 **Certificate of Service**  
*Certificate of Electronic Service*

11/07/2012 **Opposition to Motion to Compel**  
*Wynn Resorts, Limited's Opposition to Kazuo Okada's Motion to Compel and Request to Depose Wynn Resorts' NRCP 30(b)(6) Representative on an Order Shortening Time*

11/08/2012 **Motion to Compel** (8:30 AM) (Judicial Officer Gonzalez, Elizabeth)  
*Petitioner's Motion To Compel And Request To Depose Wynn Resorts' Nrcp 30(B)(6) Representative On An Order Shortening Time*  
[Parties Present](#)  
[Minutes](#)

11/13/2012 Result: Matter Heard  
**Transcript of Proceedings**  
*Transcript Of Proceedings Hearing On Motion To Compel 30(b)(6) Deposition November 8, 2012*

11/15/2012 **Notice of Withdrawal**  
*Notice of Withdrawal of Attorneys*

11/26/2012 **Order Denying Motion**  
*Order Denying Petitioner Kazuo Okada's Motion to Compel and Request to Depose Wynn Resorts' NRCP 30(b)(6) Representative*

11/26/2012 **Notice of Entry of Order**

	<i>Notice of Entry of Order Denying Motion to Compel and Request to Depose</i>
01/21/2013	<b>Notice of Withdrawal of Attorney</b> <i>Notice of Withdrawal of Attorneys</i>
04/28/2014	<b>Substitution of Attorney</b> <i>Substitution of Counsel</i>
01/12/2015	<b>Notice of Change of Firm Name</b> <i>Notice of Change of Firm Name</i>

#### FINANCIAL INFORMATION

	<b>Defendant</b> Wynn Resorts Limited			
	Total Financial Assessment			1,724.50
	Total Payments and Credits			1,724.50
	<b>Balance Due as of 07/21/2015</b>			<b>0.00</b>
01/12/2012	Transaction Assessment			1,483.00
01/12/2012	Wiznet	Receipt # 2012-04799-CCCLK	Wynn Resorts Limited	(1,483.00)
01/30/2012	Transaction Assessment			3.50
01/30/2012	Wiznet	Receipt # 2012-13425-CCCLK	Wynn Resorts Limited	(3.50)
02/02/2012	Transaction Assessment			3.50
02/02/2012	Wiznet	Receipt # 2012-15368-CCCLK	Wynn Resorts Limited	(3.50)
02/02/2012	Transaction Assessment			231.00
02/02/2012	Payment (Window)	Receipt # 2012-15390-CCCLK	WYNN RESORTS	(231.00)
02/02/2012	Transaction Assessment			3.50
02/02/2012	Wiznet	Receipt # 2012-15629-CCCLK	Wynn Resorts Limited	(3.50)
	<b>Plaintiff</b> Okada, Kazuo			
	Total Financial Assessment			2,540.50
	Total Payments and Credits			2,540.50
	<b>Balance Due as of 07/21/2015</b>			<b>0.00</b>
01/11/2012	Transaction Assessment			1,530.00
01/11/2012	Wiznet	Receipt # 2012-04341-CCCLK	Okada, Kazuo	(1,530.00)
02/07/2012	Transaction Assessment			117.00
02/07/2012	Payment (Window)	Receipt # 2012-17757-CCCLK	MOON CAPITAL	(117.00)
02/27/2012	Transaction Assessment			21.00
02/27/2012	Payment (Window)	Receipt # 2012-25557-CCCLK	MOON CAPITAL MANAGEMENT, LP	(21.00)
03/08/2012	Transaction Assessment			216.00
03/08/2012	Payment (Window)	Receipt # 2012-30982-CCCLK	MICHELE KANE	(216.00)
03/08/2012	Transaction Assessment			12.00
03/08/2012	Payment (Window)	Receipt # 2012-31033-CCCLK	Review Journal	(12.00)
04/03/2012	Transaction Assessment			8.00
04/03/2012	Payment (Window)	Receipt # 2012-43240-CCCLK	MICHELE KANE	(8.00)
04/17/2012	Transaction Assessment			15.00
04/17/2012	Payment (Window)	Receipt # 2012-49252-CCCLK	MOON CAPITAL MANAGMENT, LP	(15.00)
04/28/2014	Transaction Assessment			3.50
04/28/2014	Wiznet	Receipt # 2014-49181-CCCLK	Okada, Kazuo	(3.50)
05/09/2012	Transaction Assessment			163.00
05/09/2012	Payment (Window)	Receipt # 2012-60083-CCCLK	Valerie C. Miller	(163.00)
05/09/2012	Transaction Assessment			19.00
05/09/2012	Payment (Window)	Receipt # 2012-60164-CCCLK	BLOOMBERG NEWS	(19.00)
08/01/2012	Transaction Assessment			136.00
08/01/2012	Payment (Window)	Receipt # 2012-96251-CCCLK	JONATHAN D. ESTREICH	(136.00)
08/01/2012	Transaction Assessment			300.00
08/01/2012	Payment (Window)	Receipt # 2012-96255-CCCLK	JONATHAN D. ESTREICH	(300.00)

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 V of VI**

DATED this 21st day of July 2015.

PISANELLI BICE PLLC

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 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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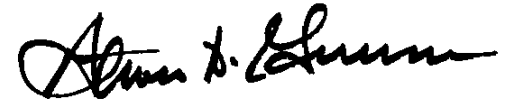
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**VIA HAND-DELIVERY**

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/s/ Kimberly Peets  
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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  
OPPOSITION TO KAZUO OKADA'S  
MOTION TO COMPEL AND REQUEST  
TO DEPOSE WYNN RESORTS'  
NRCP 30(B)(6) REPRESENTATIVE ON  
AN ORDER SHORTENING TIME**

Date of Hearing: November 8, 2012

Time of Hearing: 8:30 a.m.

**I. INTRODUCTION**

Two important points must be made at the outset: One, *Kazuo Okada is no longer a steward of Wynn Resorts, Limited* ("Wynn Resorts" or the "Company"), as he self-righteously proclaims. (Mot., 6:1.) He is, by his own admission, an adversary embroiled in litigation against the company across the globe with the singular goal of "beating Wynn Resorts." Second, Wynn Resorts did not "reliev[e] itself of [any] legal obligation," as Okada recklessly accuses. To

1 the contrary, Wynn Resorts has had to go back in time twelve years, to the start-up days of its  
2 predecessor, Valvino Lamore, LLC ("Valvino Lamore"), and it did so. From the day of this  
3 Court's October 2, 2012 hearing to the date of this filing, Wynn Resorts has spent approximately  
4 675 man hours diligently working to review and produce documents responsive to this Court's  
5 Order.<sup>1</sup> Rather than the electronic document management and storage process of which we have  
6 all become so intimately familiar, the start-up days of Valvino Lamore and Wynn Resorts were a  
7 different era. Wynn Resorts financial and accounting employees – most of who were not around  
8 in 2000 –pulled dusty, old boxes from storage and have been and are reviewing them one by one  
9 for documents potentially responsive to the Order. They have done so since the Court's hearing,  
10 and they continue to do so today.<sup>2</sup>

11 But Okada's Motion is not about what Wynn Resorts has done to fulfill its obligations  
12 under the Order. Okada's Motion is yet another step in his public relations strategy. Regardless  
13 of Wynn Resorts' ongoing efforts to fulfill its obligations in good faith, Okada seeks more than  
14 this Court ordered and otherwise complains that Wynn Resorts has not produced documents that  
15 do not exist. Okada's Motion should be denied in its entirety

## 16 **II. FACTUAL BACKGROUND**

### 17 **A. The Timing and History Behind the Macau Gaming License and the Creation** 18 **of Wynn Resorts.**

19 Okada's Motion is replete with so many assumptions and incorrect factual statements that  
20 it demonstrates Okada's fundamental misunderstanding of simple Company facts and history that  
21 a long-time alleged fiduciary of the Company should know intimately. All Okada seems to know  
22 is that Wynn Resorts (Macau) S.A. holds a Macau gaming license and is *presently* a subsidiary of  
23

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24 <sup>1</sup> This consists of 455 hours logged by the accounting department, and 140 hours logged by  
25 the in house legal department. This total does not include time spent by outside counsel on this  
issue.

26 <sup>2</sup> To be clear, Wynn Resorts completed the review of the boxes that contained the primary  
27 financial records and produced those records (and more) on October 16, 2012. However, out of  
28 an abundance of caution, Wynn Resorts is reviewing every single box in storage that does or may  
contain financial and accounting records for potentially responsive documents. The estimated  
completion date for this broader review of all boxes is two weeks from the date of this filing.

Wynn Resorts, Limited. Okada fails to recall or comprehend the genesis of the Macau gaming license and how it fit into the 2002 creation of Wynn Resorts. For the Court's edification and to demonstrate the baselessness of Okada's latest legal maneuvering, a very brief, bullet-point history is required and follows:

- Mr. Wynn explored personal opportunities in Macau beginning in 2000.
- Valvino Lamore was formed on April 21, 2000 to purchase the land upon which the old Desert Inn Resort and Casino was housed, and to design, develop, and finance a new casino resort that eventually would be Wynn Las Vegas. Valvino Lamore had nothing to do with Macau or Mr. Wynn's efforts to obtain a Macau gaming license.
- On October 17, 2001, Wynn Resorts (Macau) S.A. was formed.<sup>3</sup>
- At that time, out of 3,000 issued shares, Mr. Wynn personally owned 2,670 shares of Wynn Resorts (Macau) S.A., and Marc D. Schorr personally owned 30 shares. The remaining 300 shares (*i.e.*, at least 10 % of the voting shares) were owned by Mr. Wong Chi Seng, a Macau resident.
- Wynn Resorts (Macau) S.A. was a separate and distinct entity from Valvino Lamore (not a "operational subsidiary of" Valvino Lamore, as Okada states without any knowledge or basis in fact).
- On February 7, 2002, the Macau government awarded Wynn Resorts (Macau) S.A. a provisional gaming license.
- It was not until April 22, 2002, when Mr. Wynn and Mr. Schorr contributed their collective 2,700 shares of Wynn Resorts (Macau) S.A. to Valvino Lamore, that Wynn Resorts (Macau) S.A. became a majority (not wholly) owned, indirect subsidiary of Valvino Lamore.<sup>4</sup>

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<sup>3</sup> To avoid confusion, Wynn Resorts (Macau) S.A. will be referred to herein by its full and proper name.

<sup>4</sup> Okada seems confounded by the fact that the Company produced Wynn Design & Development's ("WDD") 2000 to 2002 general ledger (of expenses over \$10,000) but not

- In June 2002, Wynn Resorts (Macau) S.A. entered into its concession agreement with the Macau government.
- Although Wynn Resorts, Limited was created on June 3, 2002, it was formed to offer shares of its common stock for sale to the public in a then-forthcoming initial public offering.
- On September 24, 2002, all members of Valvino Lamore contributed their members' interests in Valvino Lamore to Wynn Resorts in exchange for shares of Wynn Resorts common stock.
- Wynn Resorts, Limited's IPO concluded in October 2002.
- Wynn Resorts, Limited's Form 10-K filing for the fiscal year ending December 31, 2002, indicates that, following the conclusion of the Wynn Resorts IPO, Wynn Resorts owned a 82.5% economic interest in Wynn Resorts (Macau) S.A. "indirectly through various subsidiaries" and "effectively controls 90% of the voting interest of Wynn Resorts (Macau) S.A."<sup>5</sup>

**B. Wynn Resorts Conducted an Exhaustive Search for all Responsive Documents.**

Okada assumes and argues – with absolutely no basis in fact – that "Wynn has not made a good faith effort to locate responsive documents." (Mot., 7:25.) Okada is wrong again. The following is a brief explanation of the efforts Wynn Resorts has employed since the Court's hearing. At the hearing wherein this Court announced its oral decision, Wynn Resorts stated that it would comply with the Court's order by producing responsive documents within 10 days, and

Wynn Resorts (Macau) S.A.'s general ledger. The basis for the production is simple. WDD was a wholly owned direct subsidiary of Valvino Lamore during the relevant 2000-2002 time period. But Wynn Resorts (Macau) S.A. never was wholly owned by either Valvino Lamore or Wynn Resorts, Limited. This writ proceeding is not the proper avenue for Okada to pursue his fishing expedition into a separate entity's books and records. In any event,

<sup>5</sup> Today, Wynn Resorts (Macau) S.A. is a subsidiary of Wynn Macau, Limited, an entity incorporated in the Cayman Islands and traded on the Hong Kong Stock Exchange, and has been such since the October 2009 Wynn Macau, Limited IPO.

Wynn Resorts did just that. The efforts listed below are only those that Wynn Resorts has undertaken since the October 2, 2012 hearing, and do not include the various, time-consuming preservation, collection, search, review, and production process taken since Okada commenced this writ proceeding. Wynn Resorts has acted with vigor and diligence to conduct additional searches to locate and gather any and all responsive documents to comply with the Order. These efforts have included, but are not limited to, the following:

- Followed up on interviews with current employees to try to identify and locate responsive documents (commenced prior to the commencement of this writ action);
- Requested all responsive documents from accounting department;
- Searched computer and hard documents for responsive information from accounting and legal departments;
- Met with and interviewed Scott Peterson (current Senior Vice President and CFO of Wynn Las Vegas, formerly VP of Finance for Valvino Lamore) and John Strzemp (current CAO & EVP of Wynn Resorts, formerly CFO of Valvino) to understand Valvino Lamore's operations during the responsive time period, to identify and gather, review, and understand all potentially responsive documents; to review the general ledger report of transactions over \$10,000 and receivable reports from the time period, and to identify what boxes have been located and what may have been contained therein.
- Identified in storage all boxes that may contain any accounting records from the 2000 to 2002 period, and request that they be pulled from the warehouse for review.
- Requested additional information from employees
- Met with outside counsel to review all located documents.
- Continued to review all accounting boxes from storage to try to locate the back up for all accounts receivables over \$10,000 in responsive time period.

1 Multiple internal meetings were held to review and understand documents from  
2 10-12 years ago, as well as meetings with counsel to review various documents and detail further  
3 searches to try to identify responsive documents. In total, Wynn Resorts employees spent nearly  
4 700 man hours on this project. Okada's comments are nothing more than wildly false accusations,  
5 at their core, that demonstrate a complete and utter disconnect with how Wynn Resorts operates  
6 and conducts itself on a routine basis.

7 Okada's counsel sent a letter on October 22, 2012, demanding additional records, claiming  
8 they were in response to the Court's October 2, 2012 Order, and demanded a supplemental  
9 production within a day. (Ex. A, Ltr. dated Oct. 22, 2012 from C. McCrea to J. Pisanelli.) Okada  
10 apparently does not understand the process associated with the gathering, review, and production  
11 of these old records. In any event, on October 24, 2012, Wynn Resorts substantively responded  
12 that Okada's new requests sought duplicative/redundant documents, and/or sought documents that  
13 sought information beyond the scope of the Court's Order (*i.e.*, overly broad). (Ex. B, Ltr. dated  
14 Oct. 24, 2012 from J. Pisanelli to C. McCrea.) This communication was met with silence from  
15 Okada, until he filed his motion to compel and sought an order on shortened time.

### 16 **III. DISCUSSION**

#### 17 **A. Okada's Failure to Comply with EDCR 2.34 Has Resulted in a Waste of this** 18 **Court's Time.**

19 Okada's motion should fail for not adhering to one of the most basic of our local rules,  
20 EDCR 2.34, requiring parties to meet and confer in advance of filing a motion to compel. While  
21 there was a single letter exchange, Okada's one piece of correspondence did not address many of  
22 the arguments he presents in his Motion. Okada concedes his failure when he affirmatively states  
23 that his October 22, 2012 letter "detail[ed] *some* of the most obvious deficiencies. . . ." (McCrea  
24 Decl. ¶ 5, attached to Okada's Mot.) He apparently thought it a better strategy to not mention the  
25 other "deficiencies" before filing a motion.

26 Importantly, had Okada bothered to follow the rules, the EDCR 2.34 conference may have  
27 resolved Okada's groundless complaint about the privilege log, and his ill-informed argument  
28 about the confidentiality provision in the Macau law relating to tender-related communications

1 and documents. It most certainly would have been the perfect opportunity to discuss  
2 Wynn Resorts' ongoing document review effort to discover and determine if there are any other  
3 documents that may be responsive to the Order.<sup>6</sup> It is more than apparent that Okada simply  
4 wanted a public platform to continue his public relations campaign. On this basis alone – failure  
5 to comply with local rules that guide practice in this Court – Okada's motion should be denied.

6 **B. Okada's Demands for Additional Documents Must be Denied.**

7 Rather than mischaracterize or misquote this Court's October 12, 2012 Order (as Okada  
8 does in his Motion), Wynn Resorts relied verbatim on the Order in its search for responsive  
9 documents. Each request is, as it must be, taken in turn.

10 **1. Request A – "Documents from 2000-2002"**

11 In the October 12, 2012 Order, this Court ordered Wynn Resorts to produce the following:

12 **A. Documents from 2000 to 2002:**

13 (1) Valvino Lamore LLC's entertainment of Macau  
14 government officials (which includes City Ledger Accounts, defined  
15 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);

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

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

19 (Ex. C, Order, 2:7-13.)

20 Now, Okada claims Wynn Resorts failed to produce and thus seeks to compel  
21 "[d]ocuments from 2000-2002' relating to the 'entertainment of Macau government officials. . . ."  
22 Wynn Resorts scoured its records and the records of its predecessor entity, Valvino Lamore, and  
23 produced the single, solitary record that may be responsive, consisting of a reimbursement request  
24

25 <sup>6</sup> This ongoing review has revealed a difference between how Wynn Resorts' general ledger  
26 is kept today and how it was kept in the early, start-up days of Valvino Lamore. While it was  
27 assumed that all wire transfers were included in the 2000-2002 general ledgers (because they are  
today), the ongoing document/box review revealed that this was not the case. Wire transfers were  
28 separately accounted for during the subject time period. Thus, concurrent with the filing of this  
opposition, Wynn Resorts supplemented its production to include documents reflecting all  
expenditures over \$10,000 made by wire during the 2000-2002 time period.

1 for lunch and dinner, totaling \$1750.00, for an "official delegation from Macau Government" that  
2 apparently traveled to San Francisco in January 2002. (Ex. D, WRL-001009-10.) Okada wrongly  
3 claims this one reimbursement was "only one example" of an expense. . . ." Rather, it was *the*  
4 *only* document potentially responsive to the request. Despite Okada's speculative proclamation  
5 that "documents reflecting expenses incurred on behalf of the Macau government and gaming  
6 officials" "almost certainly exist" (Mot., 11:6-11), they, in fact, do not. There are no other records  
7 to produce, so there are no records to compel.

8 Okada also cries foul that Wynn Resorts did not produce City Ledger Accounts, which  
9 Okada believes would reflect entertainment of government officials. (*E.g.*, Mot., 11:10-11.)  
10 (Okada apparently believes this to be true because he improperly used his City Ledger Account to  
11 do so.) But, Okada ignores the language of the Order (which comes from his own brief) and  
12 history. First, as stated immediately above, Wynn Resorts produced the only potentially  
13 responsive document relating to the entertainment of Macau government officials. Second, the  
14 Order expressly states that the production request "includes City Ledger Accounts, defined as  
15 deposit accounts at Wynn Resorts utilized by directors and senior management of the Company to  
16 avoid running afoul of the loan prohibitions in the Sarbanes Oxley Act." Sarbanes Oxley was  
17 passed and effective only as of July 31, 2002. Thus, there are no and could be no responsive  
18 documents prior to July 31, 2002. Moreover, City Ledger Accounts were not created at  
19 Valvino Lamore or Wynn Resorts until April 28, 2005, the opening date for the Wynn Las Vegas  
20 property. In short, there are no 2000 to 2002 City Ledger Accounts to produce in response to this  
21 Request. It follows that they cannot be compelled.

22 Okada next claims that Wynn Resorts failed to produce and thus seeks to compel  
23 "[d]ocuments from 2000-2002' relating to . . . '[a]ccounting records of expenditures in excess of  
24 \$10,000. . . ." (Mot., 4:18-19.) That said, in nearly the next written sentence, Okada admits that  
25 Wynn Resorts produced evidence of expenditures over \$10,000 from the Valvino Lamore general  
26 ledger as well as the general ledger of Wynn Design & Development (which was wholly owned  
27 by Valvino Lamore at the time). (Mot., 5:2-3, 5:12.) Since the Court ordered that Okada was  
28 entitled only to review "[a]ccounting records of expenditures in excess of \$10,000," (Ex. C,



1 Order ¶ A(3)), Wynn Resorts is befuddled by Okada's outrage that Wynn Resorts did not produce  
2 any of its accounts receivable. It simply is not responsive to any request that this Court ordered.

3 Okada sheds light on his argument that the general ledgers are allegedly deficient by  
4 claiming that Wynn Resorts "withheld sections relating to relevant expenses, payments, and  
5 disbursements--such as gifts, charitable contributions, commissions and fees, civic support and  
6 the like." (Mot., 5:12-15; *see also id.*, 27-11:3 (stating definitively but without any basis that  
7 "there are other sensitive and potentially suspect 'expenditures' that may appear elsewhere. . . such  
8 as gifts, charitable contributions, commissions, licensing fees, business development expenses  
9 and other expenditures made in connection with the gaming license interaction with Macau  
10 government officials.))) But Wynn Resorts "withheld" no such documents and, for fear of being  
11 repetitious, there are no such documents. Wynn Resorts produced its general ledger of all  
12 expenses over \$10,000, and has produced copies of all payments over \$10,000 made by wires  
13 (which were apparently then-separately maintained) in the 2000-2002 time period, as this Court  
14 ordered. While Okada speculated and apparently hoped his fishing expedition would uncover  
15 documents reflecting "gifts, charitable contributions, commissions and fees, civic support and the  
16 like" paid in pursuit of a license (like Okada and Universal have done in the Philippines to obtain  
17 a license), there are no such documents. Hence, no such documents could be produced, and there  
18 is nothing to compel.

19 Okada believes that in addition to the general ledgers, Okada is entitled to receive and  
20 review Valvino Lamore's "cash and deposit ledgers from 2000 to 2002, copies of all bank  
21 statements reflecting account activities and transactions, and copies of relevant overseas  
22 remittance applications for wire statements." (McCrae Decl. ¶¶ 3, 5; *see also* Mot., 7:28-8:2.)  
23 Okada feigns indignation as to how Wynn Resorts could possibly see these additional documents  
24 as being "overly burdensome." Rather simply, Okada once again ignores the language of the  
25 Order and ignores what Wynn Resorts did produce (despite that he wants more). First, Okada  
26 downplays the fact that Wynn Resorts produced its (and WDD's) general ledger for all amounts  
27  
28

1 over \$10,000 from 2000 to 2002 in response to A(3) in the Order.<sup>7</sup> Okada simply wants more  
2 paper, despite the duplicative nature of the production, and he wants more paper despite the undue  
3 burden on the Company.<sup>8</sup> This is not in the interest of the Company; rather, it is a further waste  
4 of the Company's time and resources with no proper purpose.

5 More importantly, in its Fourth Supplemental Disclosure, Wynn Resorts expressly invited  
6 Okada to request back up for any entry or entries on the general ledgers.

7 Wynn Resorts is disclosing its general ledger listing all payments  
8 over \$10,000 from 2000 to 2002, most or all of which are unlikely to  
9 be of interest. Due to the overly burdensome task of locating and  
10 pulling the back-up documents for each of these entries,  
11 Wynn Resorts will endeavor to locate and produce the back up for  
12 any specific entry upon request.

13 (Ex. E, Index of Documents attached to Wynn Resorts' Fourth Supp. Discl. as Ex. A, p. 1  
14 n.1 & 2.) Rather than this thoughtful approach, Okada has not identified any an entry or entries  
15 for which he wishes to see back up documents, to the extent those old records still exist. Instead,  
16 Okada asks for duplicative records, and, tellingly, records that provide more accounting and  
17 financial information than this Court ordered Wynn Resorts to produce. For instance, Okada  
18 seeks "cash and deposit ledgers," but deposits into a bank account do not show expenditures,  
19 which is what this Court ordered. In addition, Okada seeks "copies of all bank statements  
20 reflecting account activities and transactions," but bank statements necessarily provide more  
21 information than just expenditures over \$10,000 – which is what this Court ordered. Finally,  
22 Okada seeks "copies of certain overseas remittance applications," but fails to identify any entry  
23 from the general ledgers provided, as Wynn Resorts invited him to do in its Fourth Supplemental  
24 Disclosure. Plainly, Okada sees this motion to compel as a way to obtain more information than  
25 this Court ordered. He is not so entitled.

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26 <sup>7</sup> In addition, had there been a EDCR 2.34 call, Okada may have learned that Wynn Resorts  
27 discovered that wire transfers were separately accounted for and that Wynn Resorts was  
28 supplementing its production to produce documents reflecting those transfers over \$10,000.

<sup>8</sup> In other words, bank records, cash ledgers, etc., will at best reflect the *exact* expenditures  
already identified in the general ledgers. They will not uncover any additional expenditures over  
\$10,000.

Okada wide-sweepingly argues that Wynn Resorts is withholding responsive documents. It is not. More telling, however, is Okada's statement that Wynn Resorts cannot be the arbiter of relevance. (Mot., 8:20-24.) One ponders how a debate over relevance enters this writ proceeding. According to Nevada statute, "relevance" means "having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015. If Okada is seeking these records to fulfill his duties as a director rather than to improperly pursue discovery on his unclean hands defense in the main action – a premise that Wynn Resorts strongly disbelieves – then the broader records that Okada seeks make nothing more or less probable. They are just business records. Refocusing on the instant motion to compel, the additional records Okada demands provide greater information than what this Court ordered Wynn Resorts to produce via this writ proceeding. If Okada wants to seek to discover these records in the main action, that is the proper forum for Okada to argue relevance. Okada seems to be having a hard time keeping his cases straight.

**2. Request B – "The Macau Reimbursement Amount"**

This Court's October 12, 2012 Order also ordered Wynn Resorts to produce the following:

**B. The 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.

(Ex. C, Order, 2:14-16.)

For Request B, Okada claims that Wynn Resorts failed to produce "'Documents from 2000-2002' relating to . . . '[e]xpenditures incurred . . . by Stephen A. Wynn in pursuit of the development of a casino project in Macau. . . .'" This is not true. First, Okada cannot run from the simple fact that the term "Macau Reimbursement Amount" is a defined term in the Third Amendment to Amended and restated Operating Agreement of Valvino Lamore, LLC." That document expressly states "[f]or purposes hereof, 'Macau Reimbursement Amount' means the aggregate amount of all of the expenditures incurred and amounts advanced directly or indirectly by [Stephen A.] Wynn (including for this purpose all amounts advanced by Marc D. Schorr) with respect to the Macau Interest and the Macau Project." (Ex. F, Third Am. & Restated Op.

1 Agreement ¶ 8.)<sup>9</sup> Per the Closing Memorandum dated April 22, 2002, "[t]he Macau  
2 Reimbursement Amount has been determined to be \$824,529." (Ex. G, Closing Mem.  
3 at WRL-001020.) In response to this request, Wynn Resorts did, in fact, produce all responsive  
4 documents related to the Macau Reimbursement Amount, even if Okada fails to understand them.  
5 (Ex. H, WRL-001011-1014.) There is nothing more to produce and, thus, nothing to compel.

6 **3. Request C – The Company's Use of the Proceeds from Aruze USA's**  
7 **[April 2002] \$120 Million Investment"**

8 Finally, this Court's October 12, 2012 Order, this Court ordered Wynn Resorts to produce  
9 the following

10 C. The Company's Use of the Proceeds from Aruze  
11 USA's \$120 Million Investment

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

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

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

17 (Ex. C, Order, 2:17-23.)

18 For Request C, Okada wrongly claims that Wynn Resorts failed to produce documents  
19 reflecting the "[e]xpenditures of any amount for or on behalf of government of gaming officials  
20 from the \$120 million capital contribution from Aruze USA. . . ." (Mot., 5:15-18.) Okada  
21 ignores the fact that Wynn Resorts did produce its \$30 million bid bond (*see* Ex. H,  
22 WRL-001011-1014), which was paid to the Macau government following the April 2002 capital  
23 contributions. But there are no other documents responsive to this request. Again, Wynn Resorts  
24 did not make payments for or on behalf of government officials out of any funds – Aruze USA's

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25  
26 <sup>9</sup> Indeed, in Okada's Supplemental Submission in Support of First Amended Petition for a  
27 Writ of Mandamus, he argues that there is no ambiguity with respect to the term "Macau  
28 Reimbursement Amount," and expressly refers this Court to the definition in the Third Amended  
Operating Agreement. (Okada's Supp. Submission, dated June 8, 2012, 10:10-17, on file with the  
Court.) This Court would not have ordered Wynn Resorts to produce more records than Okada  
sought in the first instance.

1 \$120 million capital contribution or any others – even if this ethical practice is so inconceivable to  
2 Okada.

3 Finally, while Okada wants to "track the use and disbursement of" his company's  
4 April 2002 \$120 million capital contribution, it cannot be done. Wynn Resorts produced all of the  
5 records it had related to the April 2002 capital contribution, including charts and other accounting  
6 records. But, there was no record kept of how any specific capital contribution was spent,  
7 including Aruze USA's April 2002 contribution. Moreover, when the October 2002 IPO  
8 concluded (one of the major reasons for the capital call), all capital contributions were combined  
9 since they were Company funds, and there was no monitoring or records kept of how any specific  
10 contribution was spent. Okada seeks records that simply do not exist. Because Aruze USA's  
11 contribution was included in the Company's audited financials for 2002, Wynn Resorts produced  
12 them in response to the Order. (*See* Ex. I, WRL-001054-73.) Wynn Resorts produced all that it  
13 has responsive to Request C and "[t]he Company's Use of the Proceeds from Aruze USA's  
14 \$120 Million Investment" made in April 2002. (*See id.*, *see also* Ex. J, WRL-1015-18, 1029,  
15 1040, 1074.)

16 C. **Okada's Request to Depose a Wynn Resorts NRCP 30(b)(6) Designee is Solely**  
17 **Designed and Intended to Harass.**

18 Okada asks for leave to depose Wynn Resorts NRCP 30(b)(6) designee and wants that  
19 deposition "after receipt of the documents produced pursuant to [his] Motion . . . ." As explained  
20 in detail above, Okada is not entitled to the books and records he seeks via his motion to compel.  
21 But, even if he were, there would be no legitimate reason to depose a Wynn Resorts designee  
22 about the records in the context of this writ proceeding. Should Okada wish a NRCP 30(b)(6)  
23 designee for his unclean hands defense, he can do so in the context of the Main Action, which,  
24 given the fact that he failed to timely file a proposed discovery schedule, he apparently wants to  
25 delay for some time. Okada's side show should come to an end.

1           **D.     Okada Is Not Entitled to Review Wynn Resorts' Privileged Document, and the**  
2           **Company's Privilege Log More than Comports with Nevada Law**

3           Okada next complains about the privilege log. (McCrea Decl. ¶ 4.) First, Okada never  
4 brought his complaint to Wynn Resorts' attention. Since Okada claims that his October 22, 2012,  
5 letter did detail[] some of the most obvious deficiencies," it is clear that the privilege log is not  
6 too much of an issue – or is just an afterthought to pad his motion.

7           Second, despite Okada's claim to the contrary, Wynn Resorts' privilege log does, in fact,  
8 comport with Nevada law; even the law Okada chooses to cite. Moreover, Wynn Resorts'  
9 privilege log is in the exact same form and contains the exact same substance as its previous  
10 privilege logs, which have already been reviewed and approved by this Court. (*See* Ex. K,  
11 Wynn Resorts' Second Supp. Discl.) While Okada complains that the privilege log does not  
12 provide job titles (though he does not cite authority that such information is required), all  
13 attorneys are clearly designated by the "Esq." suffix every single time they appear on the privilege  
14 log. Also, many of the same names that appear on the previous privilege logs disclosed to Okada  
15 months ago appear in the most recent privilege log about which Okada now complains. If Okada  
16 does not know the title of any individual listed on the privilege log that should have been raised in  
17 a letter. Wynn Resorts would have supplied the information. Even now, however, Okada does not  
18 indicate the specific persons for whom he wants information over and above that which Nevada  
19 law requires.

20           Third, Wynn Resorts did not slap the attorney-client privilege and work product labels on  
21 every communication and hope for protection. To the contrary, the attorney-client privilege was  
22 selectively applied to appropriate confidential communications rendering legal counsel. (Ex. E,  
23 Privilege Log attached to Wynn Resorts' Fourth Supp. Discl. as Ex. B.) The work product  
24 designation does not even appear on the log. Where the attorney client privilege or any other  
25 privilege or protection did not apply, the documents were produced and not included on the  
26 privilege log. Finally, where a protection other than the attorney-client privilege applied, the only  
27 applicable protection as designated on the log. (*E.g., id.*, WRL-PRIV0530- WRL-PRIV0606;  
28 WRL-PRIV0642- WRL-PRIV0650; WRL-001004.)

1 Finally, although Okada again argues that he is entitled to review the Company's  
2 privileged communications, he was wrong the first time he made this argument and he is still  
3 wrong for all of the very same reasons. The attorney-client privilege belongs to Wynn Resorts,  
4 not to any individual corporate director. *Montgomery v. Etreppid Tech., LLC*, 548 F. Supp. 2d  
5 1175, 1187-88 (D. Nev. 2008) (adopting the "entity theory" and concluding that management  
6 owns the privilege). The Wynn Board has never authorized Wynn Resorts to disclose any of the  
7 Company's attorney-client privileged books and records. Thus, Wynn Resorts has asserted and  
8 continues to assert the attorney-client privilege with respect to certain privileged, confidential  
9 communications and has withheld documents that may be responsive to Okada's requests on that  
10 basis. Moreover, a corporation may block a director with interests adverse to or dissident from  
11 the corporation from inspecting privileged documents. *See id.*

12 Given that Okada has sued the Company to recover damages in what he has stated are in  
13 the billions of dollars, as well as his threat to "beat Wynn Resorts," Okada unquestionably is  
14 adverse to and a dissident director of the Company. Despite that fact that Okada is still a director,  
15 the Company operates via an executive committee of the Board because the Board has deemed  
16 Okada to be unsuitable pursuant to its Articles of Incorporation. Even if this Court was not  
17 convinced by a preponderance of the evidence that Okada had an improper purpose for seeking  
18 general books and records, this finding does not mean that Okada should be entitled to review of  
19 the Company's privileged and otherwise protected documents. Wynn Resorts' assertion of the  
20 attorney-client privilege is thus proper, as this Court has previously recognized in this very  
21 proceeding.<sup>10</sup>

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22  
23 <sup>10</sup> In his Motion, Okada also makes an argument concerning a statutory confidentiality  
24 obligation relating to tender-related document and communications between Mr. Wynn,  
25 Wynn Resorts (Macau) S.A. and the Macau Government. In essence, Okada offers the same  
26 arguments to access these communications deemed confidential by a Macau statute as he  
27 proffered to try to gain access to the Company's attorney-client privileged communications. As a  
28 dissident director and an open litigant against the Company, Okada must be treated the same  
under both circumstances (*i.e.*, as a third party). Wynn Resorts acted appropriately by disclosing  
the existence of these documents on a privilege log. To the extent that this Court has any  
concerns over the applicability of the Macau statute, Wynn Resorts respectfully requests an  
opportunity to fully brief the issue in the ordinary course (rather than on shortened time) to give  
all parties a fair opportunity to examine this issue.

1           **E.       Okada's Request for Fees and Costs is Baseless and Must be Denied.**

2           While cynics may not believe that engaging in a good faith meet and confer process,  
3 including the conference required by EDCR 2.34, is helpful, one thing the mandated process  
4 frequently does achieve is a narrowing of the issues in dispute. Because Okada failed to follow  
5 local rules, Okada's request for fees and costs should be denied outright. Even more, just because  
6 Okada assumes and repeatedly argues that documents of a specific type "certainly must exist,"  
7 does not make it so. Okada's wrong assumptions do not create an entitlement to fees and costs  
8 associated with a misplaced and confused motion to compel. If anything, the Company should be  
9 reimbursed its fees and costs for the time and effort it has taken them to oppose Okada's Motion  
10 and to continue to search for documents that do not exist to support a fishing expedition by a  
11 rightfully exiled director.

12           **IV.       CONCLUSION**

13           In light of the foregoing, Wynn Resorts requests that Okada's motion to compel and  
14 request for leave to conduct the deposition of a Wynn Resorts' NRCP 30(b)(6) designee  
15 be denied. Wynn Resorts also requests that Okada's knee jerk request for fees be denied. And,  
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24           Further, Wynn Resorts is cognizant of the laws under which it operates in Macau.  
25 Similarly, understanding that Chinese and Portuguese are the official languages of Macau,  
26 Wynn Resorts and its subsidiaries routinely translate business records into English. The  
translation of the official statute was done by the Company's translator, and is attached hereto as  
Ex. L.

27           To be clear, the records at issue are unrelated to the expenditure of funds which is the  
28 common, overriding theme of Okada's fishing expedition.



1 finally, Wynn Resorts requests that this proceeding be closed since Wynn Resorts has fully and  
2 completely complied with this Court's October 12, 2012 Order.

3 DATED this 7th day of November, 2012.

4 PISANELLI BICE PLLC

5 By: /s/ James J. Pisanelli

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

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

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

3883 Howard Hughes Parkway, Suite 800

Las Vegas, Nevada 89169

9 and

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

11 GLASER WEIL FINK JACOBS HOWARD

AVCHEN & SHAPIRO, LLP

12 10259 Constellation Boulevard, 19th Floor

Los Angeles, CA 90067

13 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 7th day of November, 2012, I caused to be served a true and correct copy of the foregoing **WYNN RESORTS, LIMITED'S OPPOSITION TO KAZUO OKADA'S MOTION TO COMPEL AND REQUEST TO DEPOSE WYNN RESORTS' NRCP 30(B)(6) REPRESENTATIVE ON AN ORDER SHORTENING TIME** via the Court's electronic filing system **and** electronic mail, addressed to the following individuals:

Paul R. Hejmanowski, Esq.  
[prh@lionelsawyer.com](mailto:prh@lionelsawyer.com)  
Charles H. McCrea, Esq.  
[cmccrea@lionelsawyer.com](mailto:cmccrea@lionelsawyer.com)  
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PAUL HASTINGS LLP  
515 South Flower Street, 25th Floor  
Los Angeles, CA 90071  
  
*Attorneys for Petitioner Kazuo Okada*

/s/ Kimberly Peets  
An Employee of PISANELLI BICE PLLC

# **EXHIBIT A**

**LIONEL SAWYER & COLLINS**

CHARLES H. MCCREA, JR.  
SHAREHOLDER

ATTORNEYS AT LAW  
1700 BANK OF AMERICA PLAZA  
300 SOUTH FOURTH STREET  
LAS VEGAS, NEVADA 89101  
(702) 383-8868  
FAX (702) 383-8845  
lsc@lionelsawyer.com  
www.lionelsawyer.com

DIRECT DIAL NUMBER:  
(702) 383-8861  
cmccrea@lionelsawyer.com

October 22, 2012

**BY EMAIL AND FACSIMILE**

James J. Pisanelli, Esq.  
PISANELLI BICE PLLC  
3883 Howard Hughes Parkway, Suite 800  
Las Vegas, Nevada 89169

Re: ***Kazuo Okada v. Wynn Resorts, Limited*; Case No. A-12-654522-B**

Dear Mr. Pisanelli:

The records produced by Wynn Resorts, Limited in its Fourth Supplemental Disclosure of Documents in response to the Order on First Amended Petition for Writ of Mandamus (the "Order") did not include the following:

- 1) Cash and bank deposit ledgers from 2000 through 2002;
- 2) Copies of all bank statements reflecting account activities and transactions from 2000 through 2002; and
- 3) Copies of overseas remittance applications from 2000 through 2002 regarding the wiring of funds between U.S. and Macau, directly or indirectly, including to all subsidiaries and affiliates of Valvino Lamore. (This would include, of course, any wiring instructions submitted by e-mail or other means.)

We believe these records are clearly responsive to the Order and should have been produced. As a director of Wynn Resorts, Limited, Mr. Okada believes it is important to clarify the use of \$260 million invested by Aruze in 2000 and, in particular, the \$120 million invested in 2002 upon the request of Mr. Wynn for the purpose of obtaining the gaming license in Macau.

G:\Valvino\CFD\JUEC (Okada) - Contract Review\ALL CASES\Petition for Writ of Mandamus\Motion to Compel\121022 Letter to James Pisanelli - Okada documents.doc

RENO OFFICE: 1100 BANK OF AMERICA PLAZA, 50 WEST LIBERTY STREET • RENO, NEVADA 89501 • (775) 786-9000 • FAX (775) 786-6682  
CARSON CITY OFFICE: 410 SOUTH CARSON STREET • CARSON CITY, NEVADA 89701 • (775) 861-2115 • FAX (775) 841-2118

**LIONEL SAWYER & COLLINS**  
ATTORNEYS AT LAW

James J. Pisanelli, Esq.  
October 22, 2012  
Page 2 of 2

Please let me know by close of business Tuesday, October 23 whether Wynn Resorts, Limited will produce these records voluntarily. If not, we will file an appropriate motion.

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles H. McCrea, Jr.", written in a cursive style.

Charles H. McCrea, Jr.

CHMc:cm

**LIONEL SAWYER & COLLINS**

ATTORNEYS AT LAW

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SHAREHOLDER  
DIRECT: (702) 383-8881  
cmccrea@lionsawyer.com

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**FACSIMILE TRANSMISSION**

**TO:** James J. Pisanelli  
PISANELLI & BICE

**FAX NO.:** 214-2101

October 22, 2012

**NO. PAGES:** 3 (including cover)

**DATE:** Kazuo Okada v. Wynn Resorts, Limited  
Case No. A-12-654522-B

**RE:**

\*\*\*\*\*

**MESSAGE:** Please see attached letter.

This transmission is confidential and intended only for the use of the individual(s) to whom it is addressed. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please call us immediately and mail it to the above address. Thank you.

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CARSON CITY OFFICE: 410 SOUTH CARSON STREET • CARSON CITY, NEVADA 89701 • (775) 851-2115 • FAX (775) 841-2110  
WASHINGTON, DC OFFICE: 101 CONSTITUTION AVENUE NW, SUITE 800 • WASHINGTON, DC 20001 • (202) 742-4204 • FAX (202) 742-4205

# **EXHIBIT B**



## PISANELLI BICE

October 24, 2012

VIA EMAIL

Charles McCrea, Esq.  
LIONEL SAWYER & COLLINS  
300 South Fourth Street, Suite 1700  
Las Vegas, NV 89101

JAMES J. PISANELLI  
ATTORNEY AT LAW  
702.214.2111 DIR  
702.214.2101 FAX  
JJP@PISANELLIBICE.COM

Re: *Wynn Resorts, Limited v. Kazuo Okada, et al.*, Case No. A654522

Dear Charlie:

As I indicated to you in an email yesterday, I had a bit of a delay in receiving your letter of October 22, 2012, due to a system malfunction on my end. Nonetheless, your demand for a response on one day's notice was patently unreasonable. Your failure to provide any reason for the short notice suggests that there was no legitimate basis for your short notice in the first instance.

In any event, I have now had an opportunity to review your letter and your demand for additional records. We believe that your requests are once again overly broad and run afoul of Judge Gonzalez' Order. Thus, your client is not entitled to the additional documents you request. Furthermore, each of your additional requests seek records, to the extent they even exist, that appear to be redundant with the documents that Wynn Resorts has already produced. That is, if Wynn Resorts were to expend further resources to locate, analyze and produce records responsive to your additional requests, it does not appear that such efforts would result in the production of any new information.

Wynn Resorts will continue to supplement its production as it deems appropriate, and of course only in the event that additional records are uncovered that are responsive to the requests set forth in Judge Gonzalez' Order. As it stands, Wynn Resorts has nothing further to produce to you at this time.

Cordially,

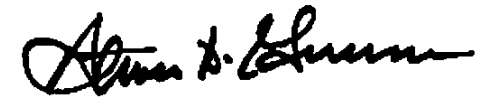


James J. Pisanelli

JJP/kap



# **EXHIBIT C**



CLERK OF THE COURT

ORD

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

KAZUO OKADA, an individual,

Petitioner,

v.

WYNN RESORTS, LIMITED, a Nevada  
corporation,

Respondent.

CASE NO. A-12-654522-B

DEPT. NO. XI

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

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

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

ORDER, Page 1 of 2

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CLERK OF THE COURT



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**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

# **EXHIBIT D**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT E**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**



# **EXHIBIT F**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT G**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# EXHIBIT H

**SUBMITTED  
UNDER  
SEAL  
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TO  
CONFIDENTIALITY  
ORDER**

# EXHIBIT I

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**



# **EXHIBIT J**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# EXHIBIT K

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT L**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

*Ann D. Quinn*  
CLERK OF THE COURT

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 MOTION TO COMPEL 30(b)(6) DEPOSITION**

THURSDAY, NOVEMBER 8, 2012

APPEARANCES:

FOR THE PLAINTIFF:

CHARLES H. McCREA, JR., ESQ.  
SAMUEL LIONEL, ESQ.

FOR THE DEFENDANT:

JAMES J. PISANELLI, ESQ.  
DEBRA SPINELLI, 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.

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NOV 13 2012

CLERK OF THE COURT

1 LAS VEGAS, NEVADA, THURSDAY, NOVEMBER 8, 2012, 8:40 A.M.

2 (Court was called to order)

3 THE COURT: That takes me to Okada versus Wynn,  
4 page 16.

5 MR. PISANELLI: Good morning, Your Honor. James  
6 Pisanelli and Debra Spinelli on behalf of Wynn Resorts here  
7 with general counsel, Kim Sinatra.

8 MR. MCCREA: Good morning, Your Honor. Charles  
9 McCrea and Sam Lionel on behalf of Kazuo Okada.

10 MR. LIONEL: Good morning, Your Honor.

11 THE COURT: Good morning. It's your motion, Mr.  
12 McCrea.

13 MR. MCCREA: Your Honor, this is not the first time  
14 we've been before you on this matter. All right. I'll cut to  
15 the chase. We have an order from you requiring Wynn Resorts  
16 to -- it's a writ of mandamus, actually, requiring Wynn  
17 Resorts to produce certain specific documents. No doubt they  
18 will come before you and tell you that they have complied with  
19 that order. They have -- they make that representation and  
20 they do so in a manner that is only half true. The truth is,  
21 Your Honor, that they have determined unilaterally what they  
22 consider responsive to your order and what is nonresponsive to  
23 your order, and they have left out a huge category of records  
24 which we believe go to the heart of the writ that this Court  
25 has issued and are indeed responsive to that order. And those  
26 documents are all the documents generated by Wynn Macau S.A.



1 during the period 2000, 2002 prior to the time that it became  
2 a subsidiary of what we now know as Wynn Resorts.s

3 Now, they claim that the documents generated through  
4 that entity were generated as a result of Mr. Wynn's personal  
5 interest in acquiring a gaming license in Macau and therefore  
6 they're nonresponsive to our writ.

7 We believe that Wynn Resorts, who controls Wynn  
8 Macau S.A., is the 82.5 percent shareholder of Wynn Macau  
9 U.S.A. [sic], clearly has possession, custody, and control of  
10 those documents and that those documents are very responsive  
11 to our requests and should be produced.

12 We also believe, Your Honor, that the privilege log  
13 that Wynn Resorts has submitted does not adequately identify  
14 the documents that are being -- purportedly being withheld on  
15 the grounds of attorney-client privilege. We also believe  
16 that the attempted assertion of the privilege based on Macau  
17 law is ineffective because they have not properly presented to  
18 this Court what that law is in the first place; and, second,  
19 it applies to withholding confidential documents from third  
20 parties. Mr. Okada is not a third party. He's a director of  
21 Wynn Resorts and should not be regarded as a third party under  
22 that law.

23 Lastly, Your Honor, the attorney-client privilege  
24 does not apply to Mr. Okada in this case, because he is a  
25 director of Wynn Resorts, he's a current director, has been a

1 director since the inception of the company, and they cannot  
2 assert that privilege against him. The only case they cite in  
3 support of that position is one that is completely  
4 inapplicable here. It was by -- it was asserting the  
5 privilege by a company against a former director who was suing  
6 the company in his own interests. This is a totally different  
7 proceeding. Mr. Okada is a current director. He is not suing  
8 the company in his own interest in this proceeding. This is a  
9 writ of mandamus proceeding where he is simply seeking access  
10 to documents that he has a right to review and this Court has  
11 determined that he has the right to review.

12           Your Honor, we would respectfully request that Wynn  
13 Resorts be not only compelled to produce the documents that  
14 are responsive to this Court's order, but also produce a Rule  
15 30(b)(6) deponent that we can examine to determine what they  
16 have done to locate and gather the documents that we believe  
17 are responsive to this Court's order. The Court will recall  
18 that you have already ordered the deposition of Mr. Okada. He  
19 sat for his deposition. We think it would be appropriate to  
20 provide us the same courtesy with respect to insuring  
21 compliance with this Court's order.

22           THE COURT: Thank you.

23           Mr. Pisanelli.

24           MR. PISANELLI: Thank you, Your Honor.

25           Your Honor, I think we need to start this debate

1 with what we believe is the most important and indisputable  
2 fact of this entire process, and that is simply that Wynn  
3 Resorts does not subscribe to the same business practices that  
4 Mr. Okada employed for his business in the Philippines. It  
5 doesn't bribe people, it doesn't entertain government  
6 officials, and, because it doesn't, it is the reason we find  
7 ourselves in this circumstance where Mr. Okada and his team  
8 are chasing their tail, looking for things that don't exist.

9           If we filter everything through that simple fact,  
10 that documents don't exist because we don't operate like Mr.  
11 Okada does, then I think the folly of this entire process  
12 starts to come into focus for all of us.

13           Now, before we go into the specific categories, in  
14 particular those relating to Wynn Macau S.A., let me talk  
15 about a striking irony of this whole process and this motion  
16 in particular. And there are many. The one that really needs  
17 to be pointed out the most is that Mr. Okada says in his  
18 brief, his lawyers say it at this podium, he says it to the  
19 press whenever he gets the opportunity, that he's a steward of  
20 this company and that's the reason why he wants to dig back  
21 through decades-old documents, because he wants to protect the  
22 company.

23           Well, let's set aside the elephant in the room, that  
24 this steward is sewing the company he seeks to protect for  
25 billions of dollars. Let's just put that aside for the moment

1 and look at this other irony. We have one of the most simple  
2 yet I would say important rules in our local rules of practice  
3 here that is designed to govern and prohibit abusive motions  
4 like this. And it is simply Rule 2.34. Before you come in  
5 and take a public platform and start talking about people  
6 hiding documents or this information is being withheld or that  
7 one is being secreted away you have an obligation to come to  
8 your opponent and put your cards on the table. I believe Your  
9 Honor has used that phrase before. I know I've heard other  
10 magistrates in Federal Court use it and the discovery  
11 commissioner here. Put your cards on the table, what it is  
12 that you claim is wrong, and let's talk about it, because you  
13 very well may find that you're not understanding what you have  
14 or I may find that I'm not understanding what you want. It's  
15 far more important, I will concede, when you're not dealing  
16 with direct and very specific order like the one you gave  
17 here, because discovery can be very broad and sometimes  
18 lawyers aren't so clear in what it is they're asking for.

19           The point is this. If a company -- or a person like  
20 Mr. Okada really is a steward that wants to protect Wynn  
21 Resorts and protect himself, one would surely expect him to do  
22 everything to protect all parties before dragging us in here  
23 before you and have that 2.34. My position is that, had they  
24 conducted it, we wouldn't be before you right now, we would  
25 have explained everything Mr. McCrea claims to be confused

1 about, we would have told him the 700, nearly 700 hours of  
2 labor that Ms. Sinatra and her team employed to dig through  
3 boxes like those QUiVX boxes up there out of dusty storerooms  
4 and looked paper by paper by paper to find everything that  
5 they're looking for and confirm whether it exists or it  
6 doesn't exist. But what did I get? I got a letter saying, I  
7 want more than what the Judge ordered and I want you to  
8 respond by tomorrow. And he says in his motion that that  
9 letter only set forth some of the things that he wanted, only  
10 set forth some of the alleged deficiencies.

11 All right. Well, if that letter was just  
12 introductory, then I expected a phone call, a meet and confer  
13 and lets' put the cards on the table. And the point of it is,  
14 without belaboring it, it never happened. It wasn't an  
15 oversight. This is a team of skilled and experienced lawyers.  
16 This motion itself has ten lawyers listed on it, on a motion  
17 to compel. Ten. It's not an oversight that they didn't  
18 conduct a 2.34. What it was was a calculated move designed to  
19 give Mr. Okada and his team a public platform yet again to  
20 complain about something that doesn't exist. It is not an  
21 oversight for these ten lawyers on this motion not to know  
22 that we have 2.34 obligation here in Nevada and you don't come  
23 in with arguments for the very first time in your motion.  
24 That's not how it works.

25 And for that reason alone, Your Honor, I would ask

1 you to stop this motion in its tracks, tell Mr. McCrea and the  
2 nine people standing behind him to follow the rules, have a  
3 meeting and confer, put all his evidence on the table. For  
4 instance, he continues to say, we don't have anything about  
5 entertaining of government officials, there certainly must be,  
6 there has to be something out there. Does that mean that Mr.  
7 Okada was engaged in that type of behavior when he was sitting  
8 with Valvino Lamore? Is that why he thinks it has to exist?  
9 I need to know why he thinks something exists when we say it  
10 doesn't. We've spent 700 hours to confirm that it doesn't,  
11 and he says recklessly to you in this motion, it certainly  
12 must exist and they must be hiding it. Well, let's put the  
13 cards on the table and figure out why. Stop this motion now  
14 in its tracks, and let's get to the heart of what we're really  
15 talking about.

16           So now let's talk about these particular requests.  
17 Let's not forget first and foremost, since what he is  
18 complaining about today at the podium is Wynn Resorts Macau  
19 S.A. and he says he doesn't have those documents, again that  
20 is a reckless statement that is just simply untrue. First of  
21 all let's put into context what this company is. Mr. Okada is  
22 not now a steward of this company. He has not been a steward  
23 of this company, he's never been a steward of this company.  
24 It is a company that is not, as they have alleged, a  
25 subsidiary that is owned no different than Wynn design and

1 development; it is a company that when Resorts owns a piece of  
2 it it's a separate and independent company.

3 THE COURT: Listed on the Hong Kong Exchange.

4 MR. PISANELLI: Yes, ma'am. That's correct.

5 Actually, it is Wynn Macau Limited that owns it, and that's  
6 what's traded.

7 But the point is this. It is an independent  
8 company. And to the extent that there were any expenditures  
9 that would fall under your order that ultimately were expended  
10 by Wynn Macau S.A. -- and I'm talking purely hypothetical  
11 here, what you would find in the accounting that we did  
12 produce is the reimbursement process whereby Wynn would have  
13 reimbursed Wynn Macau S.A. or would have forwarded the money  
14 in the first place. I'm talking in hypothetical, because  
15 you're not to going to find it. Even if you were to say that  
16 you were going to take jurisdiction over Wynn Macau S.A. and  
17 bring it in here and we want to do a complete accounting,  
18 you're not going to find anything in addition that we didn't  
19 produce already. That's the point of Mr. Okada and his team  
20 chasing its tail. It already has everything that you said it  
21 was entitled to get. No matter where the money actually went  
22 out, whether it be by check or wire, or where the money  
23 actually originated, they wanted to know all expenditures over  
24 \$10,000. And they have it.

25 What they have, Your Honor, is we gave them a

1 general ledger and we said, here it is, here's every single  
2 expenditure over \$10,000 as Your Honor ordered. Now, we  
3 didn't think they were going to be very interested in them,  
4 because they don't reflect business practices that Mr. Okada  
5 thinks must exist because he employs them. So, rather than go  
6 through these dusty old boxes in another multihundred-hour  
7 exercise of dragging up backup documentation for all of them  
8 that don't mean anything to this case or to his so-called  
9 stewardship, we invited Mr. Okada's team to tell us; anything  
10 on here you want in backup, let us know, we'll go back into  
11 those warehouses. And we were met with silence. With the  
12 exception of this letter, we were met with silence. They  
13 didn't ask for one piece of backup for the entire thing.

14           Now, I will admit to Your Honor we did make an  
15 assumption that was untrue. We believed that the general  
16 ledger, as it does today, would reflect all checks that went  
17 out and wires. When we were in the boxes going through the  
18 documents we realized the wires were not matching up with the  
19 general ledger, and so we went through the bank accounts and  
20 pulled out all of the wires and gave them that supplemental  
21 production. I would have liked to have done it originally,  
22 but there's I believe no harm, no foul. They do have all of  
23 the expenditures is the point, and they haven't asked for one  
24 backup from any of it. And the reason why is because there's  
25 nothing interesting in there. It looks like a company



1 operating in the ordinary course within the bounds of the law,  
2 trying to start a company.

3 Remember also, as it relates to Wynn Macau S.A. that  
4 it wasn't formed until October 17th, 2001, and so we are, you  
5 know, approaching the end of the so-called window, or at least  
6 limiting this window of when they think they're going to find  
7 the smoking guns of when government officials were being  
8 entertained.

9 Now, they also make some noise about the city ledger  
10 accounts. Remember, this is the mechanism Mr. Okada used to  
11 provide gifts, money, et cetera, to the Philippine gaming  
12 officials. He used a city ledger account that he had in  
13 Macau. And so now he says, if I did it, all of Wynn Macau  
14 must have done it, so I want to see everyone's city ledger  
15 account to see if they were entertaining government officials  
16 just like I was. That's his argument to Your Honor. And he  
17 defines the city ledger account, and Your Honor adopted his  
18 definition, as the accounts used to avoid running afoul of  
19 Sarbanes Oxley. Now, we all know that Sarbanes Oxley was not  
20 enacted until July 31st, 2002, and so he complains that, well,  
21 how come you didn't give me anything. Well, by his own  
22 definition the most we could have been talking about was about  
23 five months left of the actual window that we're talking  
24 about. Now throw in the fact that the city ledger accounts  
25 weren't even created until the property opened in 2005 and you

1 now can start to see why Mr. Okada is chasing his tail looking  
2 for something that doesn't exist.

3 THE COURT: Can I ask you a question about boxes.

4 MR. PISANELLI: Of course.

5 THE COURT: I know Ms. Sinatra and her team are  
6 working hard, but you indicated in your briefing that there  
7 were some additional boxes that people --

8 MR. PISANELLI: Yes.

9 THE COURT: -- were still going through. Tell me  
10 what the status of that is.

11 MR. PISANELLI: What we did is went through all of  
12 the boxes and all of the electronic information we could,  
13 gathered that first. And by the boxes I mean the boxes that  
14 were labelled and suggested to us that this is where the  
15 finances lie. Rather than stop there with comfort that we  
16 found it all, Ms. Sinatra has directed her team, let's look at  
17 every single piece of paper we have in those boxes. And so  
18 we're probably going through marketing materials, all kinds of  
19 things you could probably guess that have nothing to do with  
20 this. But we want complete confidence and comfort. Well,  
21 this is inspired in part by the wire issue, when we found out  
22 that we did miss something on the wires. So she made sure  
23 that we're going to go through and we're not going to miss a  
24 piece of paper that our human eyes haven't looked at. And  
25 that's probably another two weeks where every single dusty

1 document from a decade ago will have been reviewed.

2 THE COURT: Okay.

3 MR. PISANELLI: But we don't expect, Your Honor --  
4 to be fair to everyone, we don't expect that there will be a  
5 supplemental production. We think we had the finance records  
6 in the first place.

7 THE COURT: Okay. Let me ask another question.

8 MR. PISANELLI: Yes.

9 THE COURT: On your privilege log there are a number  
10 of entries that relate to the Macau confidentiality on the  
11 bidding process --

12 MR. PISANELLI: Yes.

13 THE COURT: -- for the licensing.

14 MR. PISANELLI: Right.

15 THE COURT: Is it your position that even though Mr.  
16 Okada was at the time a director he cannot review that  
17 information?

18 MR. PISANELLI: It is our position, Your Honor, both  
19 because at the time of the bidding process and as we stand now  
20 this confidentiality obligation is something owed and held no  
21 different than a privilege by the company. It is the company  
22 in the first instance. And I can't tell you that Mr. Okada  
23 ever had access to those records. He hasn't told you that he  
24 has ever had access to those records. And certainly now as a  
25 litigant us against us for billions of dollars who is

1 personally boasting about trying to inspire investigations  
2 about us, boasting about trying to beat the company, we can't  
3 see that there's any legitimate debate whatsoever that he is a  
4 dissident as it relates to privileges and confidentiality  
5 obligations that we owe to this government and others.

6 I'm about to be corrected by the brain trust.

7 And I am told, by the way, that he was not a  
8 director at the time of the bidding. So that answers your  
9 question even more directly. He was an investor.

10 THE COURT: Thank you.

11 MR. PISANELLI: Okay. So, Your Honor, really the  
12 remainder of what I'm going to tell you is in our papers, and  
13 that is that there's nothing being withheld, there is nothing  
14 that we are secreting away, there is nothing about our  
15 privilege log that is any different than the privilege log  
16 you've seen in this case and approved, and nothing about the  
17 privilege log that's different from any other privilege log  
18 that we ever create in any case. We believe it complies  
19 perfectly with the law. And Mr. Okada's claim, both with  
20 these confidentiality obligations under the Macau -- the law,  
21 by the way, is referred to as the Judicial System for  
22 Operating Games of Fortune in Casinos -- and for the  
23 privileges, for him to say because he was an investor as it  
24 relates to the confidential informations and because he was  
25 and is technically a director, that he gets access to our

1 privileged information, to stand here in this courtroom as a  
2 litigant against the company and saying, I still get to go  
3 into their war room, so to speak, and see their confidences,  
4 really is a silly proposition. He is an adversary to this  
5 company, he has declared himself to be, and he has acted like  
6 an adversary. Remember, in his deposition he said he doesn't  
7 fulfill any fiduciary obligations. The reason why, because we  
8 are in litigation. But he now wants to see the confidential  
9 information, the privilege information. Not to be too  
10 dramatic on the slippery slope, but where would that end?  
11 Does he get to see and know what I say to Ms. Sinatra? Does  
12 he get to see what our team strategizes about in this case and  
13 in the main case? Of course he doesn't. He's not on that  
14 inside circle, he's not governing the company, he really is  
15 not a steward. It is a sham to tell you that he is. An  
16 executive committee is running this company, and he openly  
17 declares he's not part of the executive committee and he is  
18 doing nothing to help steward this company anywhere except  
19 into litigation.

20           So if Your Honor has any questions on the categories  
21 that we've set forth in our brief, I'll certainly answer them  
22 for you. But the point is there's nothing left to produce.  
23 This 30(b)(6) deposition is harassing. He has not come forth  
24 with any reason for you to suspect that we've done anything  
25 but work from day one, from the day Ms. Sinatra told you she

1 would be ready in 10 days and I kind of gave her a look, from  
2 that day, not even the next day, from that day we started  
3 complying with your order, and we have given them everything  
4 that you said they're entitled to. They don't get additional  
5 bank records that have all kinds of information that's in  
6 there, they don't get accounts receivable, because we're  
7 talking about expenditures, not payments coming in, they don't  
8 get redundant old dusty papers that tell you exactly what's on  
9 the general ledger they already have. If there's something  
10 suspicious, tell us, and we'll get you the backup. The fact  
11 of the matter is you saw it, there was one production on  
12 entertainment, a Macau delegation in San Francisco, we paid  
13 \$1700 for dinner and lunch and that was it, and Mr. Okada  
14 cannot believe that this company operates in the bounds of the  
15 law. That's the simple fact, and he should -- this matter  
16 should come to an end.

17 THE COURT: Thank you.

18 MR. PISANELLI: Thank you.

19 THE COURT: Mr. McCrea.

20 MR. MCCREA: Your Honor, it's very difficult for me  
21 to controvert Mr. Pisanelli when he stands up here and he  
22 tells you that, we have produced everything that is responsive  
23 to this Court's order. Well, I'm sure that Mr. Pisanelli  
24 believes that. He's probably been told that by people in his  
25 organization and people in the Wynn Resorts organization, that

1 they have done this and that and whatever they think they're  
2 required to do to respond to this Court's order. But we have  
3 nothing in this record before you in the form of declarations  
4 or affidavits or anything other than attorney argument that  
5 says that they have fully complied.

6 And the letter that they wrote me on October 24th is  
7 what prompted this motion. And in that letter it was very  
8 clear that they had not reviewed all of the documents that  
9 were responsive to this Court's order. In that letter they  
10 say, "If Wynn Resorts were to expend further resources to  
11 locate, analyze, produce records responsive to your additional  
12 requests, it does not appear that such efforts would resort  
13 [sic] in the production of any new information." That is a  
14 clear statement that they have not reviewed all the documents  
15 that are responsive to our request and they have made the  
16 unilateral determination that they don't need to because all  
17 they're going to do is dig up what they think is redundant  
18 information or information that isn't relevant to the requests  
19 that we're making.

20 Your Honor, I can't really factually respond to Mr.  
21 Pisanelli's representations without having the opportunity to  
22 depose people who have actual custody and control of these  
23 documents and determine what they have done to locate these  
24 documents, review them, and determine what is responsive to  
25 this Court's order. And we would request, Your Honor, that we

1 at least be provided that opportunity to check the compliance  
2 of Wynn resorts with this Court's order.

3 THE COURT: Thank you, Mr. McCrea.

4 This action is a very limited type of action. It  
5 was a writ proceeding by a director against the company upon  
6 whose board he serves for additional information to assist him  
7 in doing his duties. The issue that has been presented here  
8 today goes into some of the companion cases, which are the  
9 litigation between the parties.

10 While I certainly agree with Mr. McCrea that there  
11 is some additional documentation that may be -- may exist in  
12 going through the boxes that are continued to be reviewed, and  
13 there may be some documentation that you need to review that  
14 reflects the backup information on the general ledgers, in  
15 large part it appears there has been compliance with my order.

16 So for that reason I am going to deny the motion to  
17 compel with the understanding that Wynn will finish the review  
18 of the paper boxes that they are currently reviewing, and,  
19 second, that there will be a backup provided for any general  
20 ledger entries with which Mr. Okada has questions.

21 The Wynn Macau S.A. is a separate entity. While it  
22 is certainly controlled by the -- in large part by the  
23 defendant, it is traded on a separate exchange. And I am not  
24 going to go into the Macau law at this point related to the  
25 bidding process and secrecy related to that for the Macau



1 entity -- or -- yeah, the Macau entity.  
2 Do you have any questions, Mr. McCrea?  
3 MR. McCREA: No, Your Honor.  
4 THE COURT: Mr. Pisanelli.  
5 MR. PISANELLI: Yes, ma'am.  
6 THE COURT: So we're going to continue to provide  
7 any requested information on backup items on the general  
8 ledger, and we're going to finish our document review.  
9 MR. PISANELLI: Will do.  
10 THE COURT: Okay?  
11 MR. PISANELLI: Thank you, Your Honor.  
12 THE PROCEEDINGS CONCLUDED AT 9:07 A.M.  
13 \* \* \* \* \*  
14  
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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.

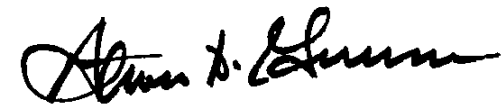
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Las Vegas, Nevada 89146**

*Florence M. Hoyt*

\_\_\_\_\_  
FLORENCE HOYT, TRANSCRIBER

11/9/12

\_\_\_\_\_  
DATE



CLERK OF THE COURT

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27 ARUZE USA, INC. and UNIVERSAL  
28 ENTERTAINMENT CORPORATION

DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada  
corporation.

Plaintiff

vs.

KAZUO OKADA, an individual, et al.,

Defendants.

AND ALL RELATED CLAIMS.

Case No. A-12-656710-B

Dept. No: XI

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

DEFENDANTS' THIRD AMENDED COUNTERCLAIM

1 COUNTERCLAIM

2 JURISDICTION AND VENUE

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

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

12 NATURE OF THE ACTION

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

19 4. Among other things, Wynn Resorts purported to redeem the shares at a flat 30%  
20 discount to the most recent market price. Aruze USA's interests, valued by the market at more  
21 than \$2.7 billion and by Wynn Resorts at \$2.9 billion three weeks prior to the redemption, would  
22 be forcibly purchased in exchange for a non-transferable promissory note to pay approximately  
23 \$1.9 billion in a single "balloon payment" 10 years from now. So Wynn Resorts raced to court,  
24 electronically filing a complaint at 2:14 a.m. on a Sunday morning – even before giving notice to  
25

26 <sup>1</sup> The Wynn Resorts' Board of Directors (the "Board"), other than Kazuo Okada ("Kazuo Okada"  
27 and "Mr. Okada"), were 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") during the events underlying the claims  
raised in this Counterclaim.

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

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

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

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

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

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

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

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

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

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

## PARTIES

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

#### 15                                   GENERAL ALLEGATIONS

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

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

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

26          29.     Humiliated by his public ouster, Mr. Wynn was anxious to re-enter the casino  
27    business and rebuild his reputation and standing in Las Vegas. He purchased the old Desert Inn  
28    casino and had plans to build a new casino on the site -- it was to be a monument to himself,

1 called "Wynn." But Mr. Wynn lacked the capital to fund the development of the casino, so he  
2 undertook an extensive search for investors. Having recently been forced out of Mirage Resorts,  
3 Inc., however, he was shunned by other sources of capital; Mr. Wynn eventually called on  
4 Universal, Aruze USA, and Mr. Okada to become the means for Mr. Wynn to get back on his  
5 feet.

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

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

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

26  
27  
28

1           **B.       The Stockholders Agreement**

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

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

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

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

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

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

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

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

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

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

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

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

14           D.       The Contribution Agreement

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

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

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

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

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

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

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



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

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

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

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

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

1           **F.       Wynn Resorts Goes Public**

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

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

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

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

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

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

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



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

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

12          58.     And, indeed, Mr. Okada trusted Mr. Wynn. Mr. Wynn knew this, and callously  
13    and illegally set out to exploit this trust for his advantage.

14    **III.    UNIVERSAL DISCLOSES AND ULTIMATELY PURSUES FOREIGN**  
15    **DEVELOPMENT PROJECTS**

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

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

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

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

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

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

19 (Emphasis added).

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

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

1           65.     Once again, on September 24, 2009, Wynn Resorts acknowledged Universal's  
2 project in the Philippines. Wynn Macau's IPO prospectus explicitly acknowledged Universal's  
3 plans to develop a casino in the Philippines:

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

10           66.     In this way, Wynn Macau's prospectus acknowledged and ratified Universal's  
11 plans to open a casino in the Philippines and -- by adopting Universal's statement -- affirmed that  
12 a casino in the Philippines will not materially compete with Wynn Macau.

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

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

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

23           69.     The Philippine government approached Universal as early as 2006 and courted  
24 Universal for years. The Philippine government ultimately secured an agreement that Universal  
25 would employ significant numbers of local people to work in the casinos. Press reports estimated  
26 that Universal's project and surrounding development could create as many as 250,000 jobs for  
27 Filipinos, and generate billions of dollars in tax revenues for the Philippine government. When  
28 Universal delayed the project in the wake of the 2008 financial crisis, the Philippine government

1 again stepped up its efforts to encourage Universal to advance the development of its project.  
2 While Universal certainly expects the Manila Bay Project to be a “win-win” for the Philippines  
3 and Universal, the idea that Universal needed to curry special favor with Philippine government  
4 officials is profoundly mistaken.

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

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

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

23 72. The amended agreement also altered the Stockholders Agreement language  
24 regarding Aruze USA’s right to nominate directors. Aruze USA could endorse nominees so long  
25 as the majority of nominees were endorsed by Mr. Wynn. Although the agreement required  
26 Mr. Wynn to support a minority slate of directors proposed by Aruze USA, he never did so. On  
27 information and belief, Mr. Wynn obtained the Amended and Restated Stockholders Agreement,  
28 with the intention of never supporting any director proposed by Aruze USA. In fact, Mr. Wynn

1 consistently refused efforts to consider Aruze USA directors for the Board, in an effort to  
2 continue to monopolize control over Wynn Resorts. [ADD EXAMPLES FROM CLIENT]

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

8 74. In January 2010, Mr. Okada indicated that he was willing to move ahead with the  
9 amendments provided that Mr. Wynn reciprocated by allowing Aruze USA to sell publicly the  
10 same number of shares as Mr. Wynn and Elaine Wynn. In this way, Mr. Okada expected to  
11 receive liquidity for Aruze USA whenever Mr. Wynn and Elaine Wynn asked permission to sell  
12 or transfer their stock.

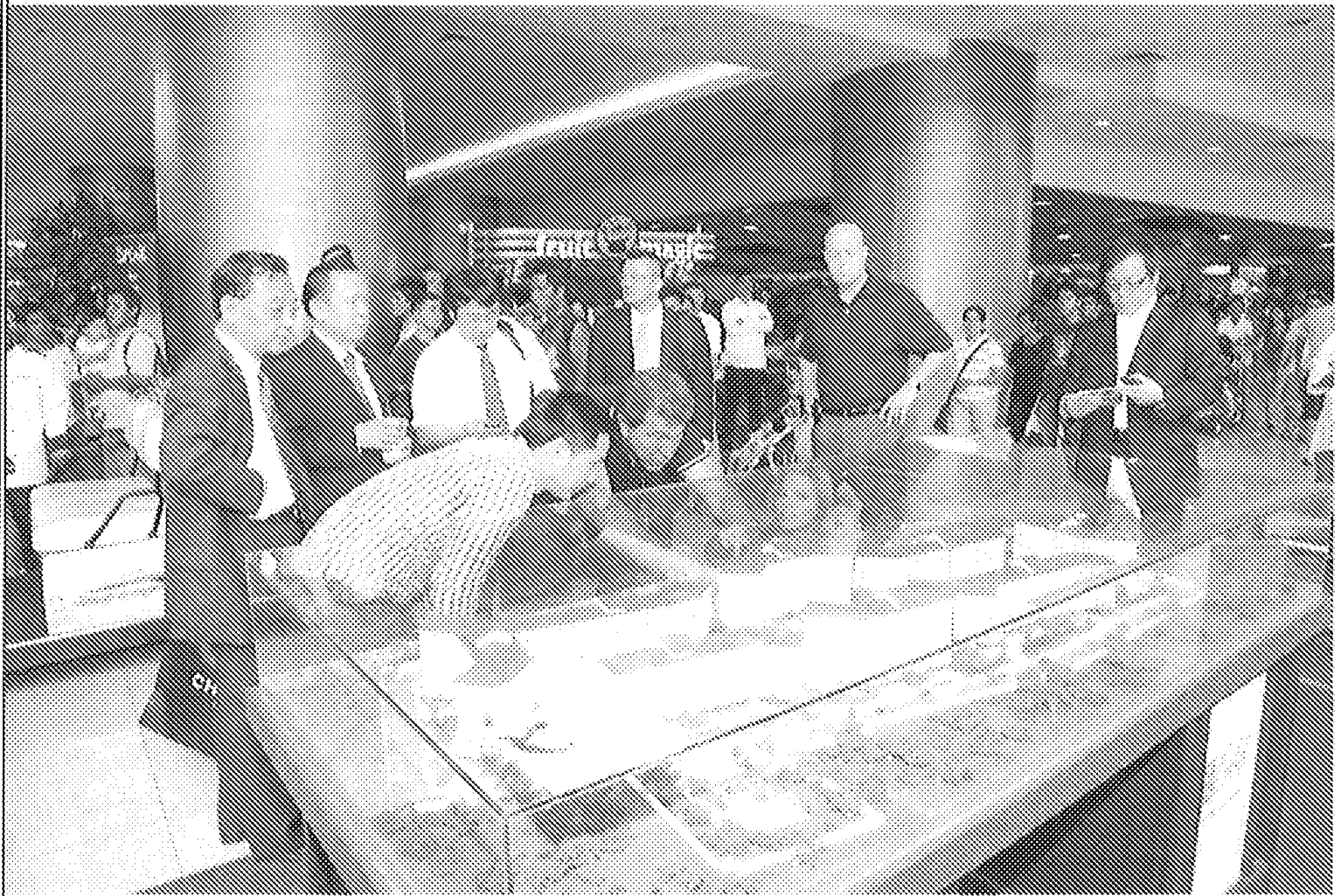
13 **D. Steve Wynn and Kazuo Okada Visit the Philippines in 2010, as Wynn Resorts**  
14 **Considers Involvement with the Philippine Project**

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





77. 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**

78. 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.

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

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

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

25           82.     Mr. Okada's opposition to this donation caught the attention of the U.S. Securities  
26 and Exchange Commission ("SEC"). According to Wynn Resorts 2011 Form 10-K, Wynn  
27 Resorts received a letter from the Division of Enforcement of the SEC indicating the SEC has  
28 commenced an "informal inquiry" regarding matters in Macau. Mr. Wynn, Ms. Sinatra (Wynn



1 Resorts' General Counsel), and Mr. Miller (head of Wynn Resorts' Compliance Committee) did  
2 not take kindly to Mr. Okada's scrutiny of the donation. On information and belief, Mr. Wynn,  
3 Ms. Sinatra, and Mr. Miller set out to discredit Mr. Okada, in an effort to distract attention from  
4 the problematic Macau donation.

5 **F. Steve Wynn and Kimmie Sinatra Fraudulently Promise Kazuo Okada**  
6 **Financing for the Philippine Project**

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

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

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

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

1           87.     Mr. Wynn gave Mr. Okada an explicit personal assurance that financing would  
2 occur. Mr. Wynn stated that this proposal would be good for Mr. Okada and good for Wynn  
3 Resorts, because it will contribute to the stability of Wynn Resorts. And, based on such  
4 assurances, Mr. Okada agreed to financing from Wynn Resorts, rather than pledging Aruze  
5 USA's stock.

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

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

1           90.     At the conclusion of the meeting, and in reliance on the assurances by Mr. Wynn  
2     and Ms. Sinatra that Wynn Resorts would make a loan to provide liquidity for Aruze USA and  
3     that loan documents would be forthcoming, Mr. Okada signed a waiver and consent granting  
4     Elaine Wynn the option to transfer her stock. Simultaneously, Mr. Tanaka of Aruze USA made a  
5     handwritten note to memorialize the agreement that Wynn Resorts would provide financing to  
6     Aruze USA.

7           91.     Later that day, in response to Mr. Tanaka's note and after Mr. Okada had signed  
8     the waiver and consent about Elaine Wynn's stock, Ms. Sinatra prepared a draft "Side Letter" to  
9     replace the one prepared by Mr. Tanaka. The "Side Letter" prepared by Ms. Sinatra stated that  
10    Wynn Resorts would negotiate a loan from Wynn Resorts to Aruze USA secured by Aruze  
11    USA's stock "*to the extent compliant with all state and federal laws.*" (Emphasis added.) On  
12    information and belief, Ms. Sinatra inserted this language because she believed Section 402 of  
13    SOX prohibited the loan proposed by Mr. Wynn and agreed to by both Mr. Wynn and Mr. Okada.

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

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

27          94.     On June 20, 2011, Ms. Sinatra asked Aruze USA's counsel if Mr. Okada's consent  
28    to Elaine Wynn's transfer of shares was conditioned on Aruze USA receiving the loan. On

1 July 13, 2011, Aruze USA's lawyer emailed Ms. Sinatra stating that Aruze USA, through  
2 Mr. Okada, would allow the immediate transfer of Elaine Wynn's shares because he understood  
3 that approval was needed urgently, but stated that the consent was "based upon the mutual  
4 understanding between Mr. Okada and Mr. Wynn that Mr. Wynn would pursue avenues for  
5 Mr. Okada to obtain financing." Ms. Sinatra immediately sent an email back: "Thank you very  
6 much for this."

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

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

20 97. On or about September 23, 2011, Ms. Sinatra called Aruze USA. Ms. Sinatra  
21 informed Aruze USA that Wynn Resorts' Compliance Committee would be meeting the  
22 following week regarding the Philippines, which could impact whether Wynn Resorts would  
23 allow the loan.

24 98. Wynn Resorts' Compliance Committee is not an independent committee of the  
25 Board. Rather, it is made up of one Wynn Resorts director, former Nevada Governor Bob Miller,  
26 and two Wynn Resorts insiders. On information and belief, each member of Wynn Resorts'  
27 Compliance Committee depends on Mr. Wynn for his livelihood and each is beholden to  
28 Mr. Wynn. On information and belief, Mr. Wynn has plenary control over the Compliance

1 Committee. On September 30, 2011, the Compliance Committee refused to permit the loan to  
2 Aruze USA.

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

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

9 100. Richard Morgan, the new Chairman of the Universal Compliance Committee,  
10 spoke with Mr. Schreck regarding his reasons for resignation. Mr. Schreck told Mr. Morgan that  
11 he did not resign from the Committees because of any suitability concerns about Mr. Okada.  
12 Mr. Morgan asked Mr. Schreck if he knew of any facts that gave Mr. Schreck concerns about  
13 Mr. Okada's suitability; Mr. Schreck told Mr. Morgan that he knew of no such facts.

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

18 **IV. STEVE WYNN DIRECTS WYNN RESORTS TO CONDUCT A PRETEXTUAL**  
19 **INVESTIGATION FOR THE PURPOSE OF REDEEMING ARUZE USA'S**  
20 **SHARES**

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

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

26 103. First, Ms. Sinatra and Mr. Tourek said that Wynn Resorts' Compliance Committee  
27 had commissioned two "investigations" and that the Compliance Committee had produced an  
28 investigative "report." Ms. Sinatra and Mr. Tourek were concerned that Universal had purchased

1 land from a person in the Philippines who was now under indictment for tax evasion. Neither  
2 Ms. Sinatra nor Mr. Tourek explained how Universal or Mr. Okada could bear any responsibility  
3 for another man's alleged failure to pay his taxes.

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

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

11 106. Fourth, Ms. Sinatra and Mr. Tourek proposed to change the Stockholders  
12 Agreement to allow Aruze USA to sell or pledge shares, but subject to a voting trust, which  
13 would allow Mr. Wynn to vote the shares, and a right of first refusal for Mr. Wynn to purchase  
14 the shares. This proposal was improper. Ms. Sinatra and Mr. Tourek were again advocating for  
15 Mr. Wynn, not for Wynn Resorts. This was another breach of duty by Ms. Sinatra to Wynn  
16 Resorts and to its largest shareholder, Aruze USA.

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

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

28



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

8           **B. Steve Wynn and Kimmie Sinatra Try to Intimidate and Threaten Kazuo**  
9           **Okada While Hiding Supposed Evidence of Wrongdoing**

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

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

21          112. Mr. Okada's counsel told Mr. Wynn that in all his years, he had never before  
22 experienced a situation where the subject of an investigative report had never been formally  
23 questioned or even permitted to respond to the accusations being levied against him. Mr. Okada's  
24 counsel once again requested a copy of the investigative report so that he and Mr. Okada's other  
25 attorneys could ensure they were advising Mr. Okada properly and that the Wynn Directors could  
26 make a decision based on accurate information. Over the course of the remainder of the  
27 October 4 meeting, counsel for Mr. Okada asked at least two additional times for a copy of the  
28 investigative report. Ms. Sinatra finally replied that Mr. Okada and his counsel could not see a

1 copy of the investigative report because it was “privileged.” On information and belief,  
2 Ms. Sinatra once again intentionally misrepresented the law (Mr. Okada, as a director of the  
3 Company, has a right to see the Company’s books and records, including its communications  
4 with counsel), in breach of her duties to Wynn Resorts.

5 113. During the October 4, 2011 meeting, Mr. Wynn stated that the purported  
6 “grounds” upon which the other directors based their decision to move against Mr. Okada were as  
7 follows:

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

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

27 115. Mr. Wynn closed the meeting by telling Mr. Okada that if he had any respect for  
28 Mr. Wynn and the other members of the Board, he would voluntarily step down from his role as a



1 director and Vice Chairman of Wynn Resorts. At this time, Mr. Okada's counsel explained to  
2 Mr. Wynn that Mr. Okada should not be required to respond to his demand for resignation until  
3 he had time to further consider it. Mr. Wynn agreed and the meeting was adjourned.

4 116. Around this same time, the Chairman of Universal's Compliance Committee also  
5 requested a copy of the investigative report through the Chairman of Wynn Resorts' Compliance  
6 Committee. This request has been ignored.

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

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

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

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

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

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

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

9           121.   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  
12 Mr. Okada. The Board – without debate, deliberation, or allowing Mr. Okada a chance to  
13 respond – summarily eliminated Mr. Okada's position as Vice-Chairman of the Board and ratified  
14 the decision to hire Freeh Sporkin.

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

16           122.   The vehemence of the actions by Mr. Wynn, Ms. Sinatra, Mr. Miller, and the  
17 Board against Mr. Okada is highly suspicious. After all, Mr. Okada had raised concerns about the  
18 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  
26 February 9, 2012, the Court ordered Wynn Resorts to comply with Mr. Okada's reasonable  
27 requests. In an order dated October 12, 2012, the Court further ordered that Wynn Resorts

1 produce to Mr. Okada documentation regarding expenditures advanced directly or indirectly by  
2 Mr. Wynn in pursuit of gaming concessions in Macau.

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

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

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

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

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

28

1           126. On January 19, 2012, Mr. Miller, Chair of Wynn Resorts' Compliance Committee,  
2 wrote directly to Mr. Okada, threatening that if Mr. Okada failed to make himself available for  
3 interviews with Freeh Sporkin on January 30 or 31, the Compliance Committee "can only  
4 conclude that you have refused participation." The letter stated that the Compliance Committee  
5 originally had a goal of receiving a report by the end of 2011, which was extended to January 15,  
6 2012. In addition to this being the first time anyone shared the Compliance Committee's  
7 purported deadlines with Mr. Okada, these dates are inconsistent with Freeh Sporkin making its  
8 initial request to conduct an interview of Mr. Okada that would take place in the first week of  
9 February. It proved not to be the first time Mr. Miller was "confused" about the "investigation"  
10 that was supposedly operating under his direction.

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

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

17           128. 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           129. Freeh Sporkin refused to provide anything more than a statement that it was  
28 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.

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

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

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

13 132. The questions focused mainly on expenses that Mr. Freeh claimed had been paid  
14 by Universal for lodging and meals at Wynn Resorts properties on behalf of persons Mr. Freeh  
15 identified as foreign officials. This was a subject that had never been mentioned in the months  
16 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.

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

26  
27  
28

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

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

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

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

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

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

16                     Louis:

17                     I hope you had a good trip back to the US. Following your  
18                     interview of Mr. Okada, we understand that you will be drafting a  
19                     report for submission to the Wynn Resorts Compliance Committee.  
20                     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.

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

23                     Joel Friedman called you about 900a today (PT) and left a message  
                    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 PacT today, with a proffer of what Mr. Okada and Universal  
27                     wish to submit for additional consideration. Your very able firm  
28                     has represented Mr. Okada now for several weeks and you know  
                    the principal areas of our investigation based on Wednesday's  
                    interview. So I would expect you can make such a proffer.



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

5 ...

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

11 ...

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

14 Best regards.

15 Louie

16 (Emphasis added.)

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

19 Louis:

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

(Emphasis added.)

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

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

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

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

7 Please let me know if you have any questions.

8 Best regards

9 Louie

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

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

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

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



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

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

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

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

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

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

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

26 148. Hardly a month later (and a mere 22 days before purporting to redeem the shares),  
27 on January 27, 2012, Wynn Resorts filed its opposition papers in response to Mr. Okada's  
28 Petition for a Writ of Mandamus. In that court filing, Wynn Resorts declared that Aruze USA's

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

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

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

11 150. Rather than addressing the substantive and procedural issues raised by Mr. Okada  
12 and his counsel, Wynn Resorts responded briefly, informing Mr. Okada's counsel that additional  
13 accommodations would not be made to facilitate translation to enable Mr. Okada's participation  
14 by teleconference. The Company also informed Mr. Okada's counsel that, despite the seriousness  
15 of the accusations against him, Mr. Okada was not permitted to have counsel present for the  
16 Board call.

17 151. When it came time for the meeting, at 2:00 a.m. on Sunday morning, Mr. Okada  
18 sat ready to participate by telephone. Mr. Wynn yelled at Mr. Okada's counsel when he  
19 introduced himself. Mr. Wynn also said that Mr. Okada's counsel could not be present to advise  
20 Mr. Okada even though counsel made clear that he would not address the meeting. (At the threat  
21 of having Mr. Okada's telephone connection to the meeting severed, Mr. Okada's counsel had to  
22 sit outside the room while the meeting went on, despite Wynn Resorts having a battery of lawyers  
23 from multiple law firms present on its end of the line.) Mr. Wynn and a company lawyer  
24 informed Mr. Okada that – despite prior assurances that Mr. Okada would receive a copy of the  
25 Freeh Sporkin report along with the other directors – he would not receive a copy of the report  
26 unless both he and his legal counsel signed a nondisclosure agreement. The nondisclosure  
27 agreement would have arguably precluded Mr. Okada from using the report in legal proceedings.  
28 Mr. Okada did not sign the nondisclosure agreement.

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

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

10           154. In this way, Mr. Okada sat and listened while Mr. Freeh made a presentation in  
11 English that Mr. Okada could not understand. After Mr. Freeh completed his presentation, the  
12 Board asked if Mr. Okada had any questions. Mr. Okada stated that he could not understand the  
13 presentation, and that he would be able to address the claims of the report only after receiving a  
14 copy and discussing with counsel. Mr. Okada also asked the Board to delay making any  
15 resolutions until he could respond to the Freeh Sporkin report.

16           155. At some point, someone at Wynn Resorts hung up the telephone, cutting  
17 Mr. Okada off from the meeting. Mr. Okada waited to be reconnected, staying up until the sun  
18 rose in Asia, all the while not knowing whether the Board had resolved anything following the  
19 presentation by Mr. Freeh. Ms. Sinatra later claimed that cutting off the telephone connection to  
20 Mr. Okada was a “misunderstanding.” No other contact was made with Mr. Okada.

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

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

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

8           159. Despite repeated requests to Ms. Sinatra and Mr. Shapiro, Mr. Okada's counsel  
9 only obtained a copy of the "confidential" report when it sent a messenger to court on  
10 February 21, 2012, the first court day following the weekend Board meeting. Wynn Resorts  
11 refused to provide the Freeh Sporkin report's exhibits to Mr. Okada or Aruze USA until ordered  
12 to do so by this Court.

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

14           160. In public statements, representatives of Wynn Resorts have claimed redemption is  
15 complete and that the securities formerly held by Aruze USA have been cancelled. Aruze USA  
16 disputes that this has happened. Among other reasons, as explained elsewhere in this  
17 Counterclaim, the purported redemption is void *ab initio* because it is in violation of the  
18 Stockholders Agreement, which predates the amended Articles of Incorporation purporting to  
19 grant Wynn Resorts a right of redemption.

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

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

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

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

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

13           165.    No such showing was made in the rushed Freeh Sporkin report. In fact, in the  
14 gaming industry, any impact on the right to use or entitlement to a gaming license requires action  
15 by the cognizant gaming authority. No gaming authority has found Aruze USA, Universal, or  
16 Mr. Okada to be “unsuitable.” Furthermore, association with an “unsuitable” person would only  
17 conceivably create a problem for a gaming license *after* that person has been found by a gaming  
18 authority to be unsuitable. Even then, such concerns can be addressed via a voting trust or  
19 orderly sale of shares. If Wynn Resorts’ true aim was to disassociate itself from Aruze USA in  
20 order to protect its interests, it failed miserably. Even if the redemption were effective, Aruze  
21 USA would now be Wynn Resorts’ largest holder of debt – a circumstance which would be  
22 impermissible under Nevada law if Aruze USA were truly “unsuitable.” Under the  
23 circumstances, it is obvious that the supposed redemption of Aruze USA’s shares was simply a  
24 pretext to seek to quiet a potential dissident shareholder and director, increase the relative  
25 ownership interests of the Board members by virtue of their shareholdings in Wynn Resorts, and  
26 to enhance and maintain Mr. Wynn’s personal control over Wynn Resorts.

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

5           166.   Even if Aruze USA were subject to the redemption provision, which it is not, the  
6   Wynn Parties are not excused from breaching and/or tortiously interfering with the Stockholders  
7   Agreement when they purported to redeem Aruze USA's shares. Steve Wynn was bound by the  
8   terms of the Stockholders Agreement before he unilaterally amended the Articles of Incorporation  
9   to include a purported redemption right. The remainder of the Wynn Parties also knew or  
10   reasonably should have known that Aruze USA's shares were subject to the limitations of the  
11   Shareholders Agreement and Amended Shareholders Agreement when they purported to utilize  
12   their discretionary authority under the Articles of Incorporation to redeem Aruze USA's shares.  
13   Thus, even if the redemption provision of the Articles of Incorporation applies to Aruze USA, the  
14   Wynn Parties are liable for all harm caused to Aruze USA as a result of the redemption.

15           **F.       Even if Aruze USA Was Subject to the Redemption Provision (Which it is**  
16                               **Not), the Unilateral Blanket 30% Discount that Wynn Resorts Applied to the**  
17                               **Stock is Erroneous and the Promissory Note is Unconscionably Vague,**  
18                               **Ambiguous, and Oppressive**

19           167.   According to a press release dated February 19, 2012, Wynn Resorts issued a note  
20   in the amount of \$1.936 billion to Aruze USA. This amount is exactly 30% less than the market  
21   value of Aruze USA's stock as measured by the closing price of Wynn Resorts' stock on the  
22   Friday prior to the Saturday Board meeting. According to its press release, Wynn Resorts arrived  
23   at this value because "it engaged an independent financial advisor to assist in the fair value  
24   calculation and concluded that a discount to the current trading price was appropriate because of  
25   restrictions on most of the shares which are subject to the terms of an existing stockholder  
26   agreement." The irony here is rich, because the Stockholders Agreement, by its terms, either  
27   precludes the redemption of Aruze USA's stock altogether or, alternately, the transfer restrictions  
28   are not binding on Aruze USA as a result of Steve Wynn's and Elaine Wynn's breach of the



1 Stockholders Agreement (by voting in favor of the redemption of Aruze USA's shares and by  
2 Steve Wynn's failure to vote in favor of directors nominated by Aruze USA). The transfer  
3 restrictions are also invalid and unenforceable to the extent that they constitute an illegal restraint  
4 on alienability. Thus, the restrictions in the Stockholders Agreement could not legitimately  
5 impact the value of Aruze USA's shares so as to support a discount against the market price.

6 168. The February 19, 2012 Wynn Resorts press release also falsely stated that the  
7 redemption process in the Articles of Incorporation had "been [in place] since the Company's  
8 inception." This is untrue, as Mr. Wynn unilaterally *amended* the Articles of Incorporation to  
9 include the purported redemption language months *after Wynn Resorts was created*, and nearly  
10 90 days after Aruze USA agreed to invest in Wynn Resorts and committed its interests in Valvino  
11 to Wynn Resorts. Wynn Resorts and Mr. Wynn thus sought to continue their fraudulent scheme  
12 by publishing a false basis under which Wynn Resorts purported to have the authority to redeem  
13 Aruze USA's shares of Wynn Resorts' stock.

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

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

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