

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 WYNN RESORTS LIMITED,

Case No. _____

3 Petitioners,

Electronically Filed
Jul 20 2015 10:55 a.m.

4 vs.

Tracie K. Lindeman
Clerk of Supreme Court

5 THE EIGHTH JUDICIAL DISTRICT
6 COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE
8 COUNTY OF CLARK; AND THE
9 HONORABLE ELIZABETH
10 GONZALEZ, DISTRICT JUDGE,
11 DEPT. XI,

**APPENDIX IN SUPPORT OF
PETITIONER WYNN RESORTS
LIMITED'S PETITION FOR
WRIT OF PROHIBITION OR
ALTERNATIVELY, MANDAMUS**

9 Respondent,

VOLUME 1 OF 17

10 and

11 KAZUO OKADA, UNIVERSAL
12 ENTERTAINMENT CORP.
13 AND ARUZE USA, INC..

13 Real Parties in Interest.

14
15 DATED this 17th day of July, 2015.

16 PISANELLI BICE PLLC

17
18 By: /s/ Todd L. Bice

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

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

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

22 400 South 7th Street, Suite 300

23 Las Vegas, Nevada 89101

24 *Attorneys for Petitioner Wynn Resorts, Limited*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 17th day of July, 2015, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **APPENDIX IN SUPPORT OF PETITIONER WYNN RESORTS LIMITED'S PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS** properly addressed to the following:

SERVED VIA U.S. MAIL

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

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

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

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

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

SERVED VIA HAND-DELIERY

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

/s/ Cinda Towne
An employee of PISANELLI BICE PLLC

CIVIL COVER SHEET A - 1 2 - 6 5 6 7 1 0 - B

Clark County, Nevada

X I

Case No. _____
(Assigned by Clerk's Office)**I. Party Information**

Plaintiff(s) (name/address/phone):

WYNN RESORTS, LIMITED

Attorney (name/address/phone):

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

Pisanelli Bice, PLLC, 3883 Howard Hughes Parkway, Suite
800, Las Vegas, Nevada 89169; (702) 214-2100

Defendant(s) (name/address/phone):

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

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and
applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

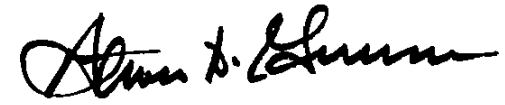
- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

February 18, 2012

Date

/s/ James J. Pisanelli, Esq.

Signature of initiating party or representative



CLERK OF THE COURT

1 **COMP**
James J. Pisanelli, Esq., Bar No. 4027
2 JJP@pisanellibice.com
Todd L. Bice, Esq., Bar No. 4534
3 TLB@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
4 DLS@pisanellibice.com
Jarrod L. Rickard, Esq., Bar No. 10203
5 JLR@pisanellibice.com
PISANELLI BICE PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169
Telephone: 702.214.2100
Facsimile: 702.214.2100
8
Paul K. Rowe, Esq. (*pro hac vice forthcoming*)
9 pkrowe@wlrk.com
Stephen R. DiPrima, Esq. (*pro hac vice forthcoming*)
10 srdirprima@wlrk.com
WACHTELL, LIPTON, ROSEN & KATZ, LLP
11 51 West 52nd Street
New York, NY 10019
12 Telephone: 212.403.1000
Facsimile: 212.403.2000
13
Robert L. Shapiro, Esq. (*pro hac vice forthcoming*)
14 RS@glaserweil.com
GLASER WEIL FINK JACOBS HOWARD
15 **AVCHEN & SHAPIRO, LLP**
10259 Constellation Boulevard, 19th Floor
16 Los Angeles, CA 90067
Telephone: 310.553.3000
17 Facsimile: 310.556.2920
18 **Attorneys for Wynn Resorts, Limited**

DISTRICT COURT

CLARK COUNTY, NEVADA

21 **WYNN RESORTS, LIMITED, , a Nevada**
Corporation,
22
Plaintiff,
23 vs.
24 **KAZUO OKADA, an individual, ARUZE**
USA, INC., a Nevada corporation,
25 **UNIVERSAL ENTERTAINMENT CORP.,**
a Japanese corporation,
26
Defendants.

Case No.: A - 1 2 - 6 5 6 7 1 0 - B

Dept. No.: X I

COMPLAINT

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

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

1 Plaintiff WYNN RESORTS, LIMITED ("Wynn Resorts"), by and through its undersigned
2 counsel, hereby files the above-captioned Complaint:

3 **NATURE OF THE ACTION**

4 This is an action for breach of fiduciary duty and related offenses committed against
5 Wynn Resorts at the hands of one of its directors, Kazuo Okada ("Okada") and his affiliates.
6 Wynn Resorts' Compliance Committee commissioned former Director of the Federal Bureau of
7 Investigation, Louis J. Freeh, to examine Okada's domestic and foreign activities impacting
8 Wynn Resorts. Based upon a multi-month investigation – which culminated with a personal
9 interview that Okada long evaded – Freeh uncovered substantial evidence of gross improprieties
10 by Okada and his agents, as explained in Freeh's report, attached as Exhibit 1. In particular, Freeh
11 presented Wynn Resorts' Board with evidence that Okada had made unlawful payments to foreign
12 gaming regulators who could advance Okada's business interests. Okada surreptitiously undertook
13 these acts despite admonishments that all Directors closely adhere to Company policy, scrupulous
14 business practices/ethics, and the law, both foreign and domestic. The public's confidence in
15 gaming's integrity depends upon strict observance of these principles. Okada's conduct poses a
16 direct assault upon, and a present threat to, Wynn Resorts' reputation for probity, which is central
17 to maintaining its stature in the gaming industry as well as its current and future licensing.

18 **PARTIES AND RELATED PERSONS/ENTITIES**

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

22 2. Wynn Resorts is a world class developer of destination resort casinos.
23 Wynn Resorts owns resort casinos through its wholly owned subsidiary,
24 WYNN LAS VEGAS, LLC ("Wynn Las Vegas") and through WYNN MACAU, LIMITED
25 ("Wynn Macau").

26 3. Wynn Las Vegas operates the Wynn Las Vegas and Encore resort casinos in
27 Las Vegas, Nevada.

1 4. Wynn Macau is a Cayman Islands company, publicly traded on the Hong Kong
2 Stock Exchange (of which Wynn Resorts owns a majority interest). Through its wholly owned
3 subsidiary, WYNN RESORTS (MACAU), S.A., a company organized and existing under the
4 laws of Macau Special Administrative Region of the Peoples Republic of China, Wynn Macau
5 operates the Wynn Macau and Encore at Wynn Macau resort-casinos in Macau.

6 5. Defendant OKADA is and was at all times relevant hereto a citizen of Japan, and a
7 director of Wynn Resorts. Okada serves multiple roles with Wynn Resorts and its affiliated
8 companies (the "Wynn Companies"). He is a member of the Board of Directors for both
9 Wynn Resorts and Wynn Macau and, until February 18, 2012, through UNIVERSAL
10 ENTERTAINMENT CORPORATION ("Universal") and ARUZE USA, controlled a shareholder
11 that had owned approximately 19.66% of Wynn Resorts. From October 2002 up to and until
12 October 2011, Okada also served as Vice Chairman of Wynn Resorts. In these capacities, Okada
13 owed, and continues to owe, fiduciary duties of care, loyalty, and good faith to the
14 Wynn Companies.

15 6. Defendant ARUZE USA, INC. ("ARUZE USA") is and was at all times relevant
16 hereto a corporation organized and existing under the laws of the State of Nevada, and a wholly
17 owned subsidiary of Universal ("Universal"). Until February 18, 2012, ARUZE USA was a
18 19.66% shareholder in Wynn Resorts. Okada serves as director, President, Secretary, and
19 Treasurer of ARUZE USA.

20 7. Defendant UNIVERSAL is a public corporation organized under the laws of
21 Japan, and formerly known as ARUZE Corporation until a November 2009 name change.
22 Universal manufactures and sells pachislot and pachinko machines, and other similar gaming
23 equipment. Universal does business in the State of Nevada, has been issued a manufacturer's
24 license by the Nevada Gaming Commission, and was deemed suitable by the Nevada Gaming
25 Commission as a 100% shareholder in ARUZE USA. Okada is Director, Chairman of the Board
26 and, together with his family members, a 67.9% shareholder in Universal.

27 8. The Wynn Resorts' Board of Directors consists of 12 members, comprised of
28 Stephen A. Wynn ("Mr. Wynn") as Chairman, Okada, Russell Goldsmith, Linda Chen,

1 Dr. Ray R. Irani, former Nevada Governor Robert J. Miller, John A. Moran, Alvin V. Shoemaker,
2 D. Boone Wayson, Elaine P. Wynn, Allan Zeman, and Marc D. Schorr (collectively "Wynn
3 Directors" and/or "Wynn Board").

4 9. Wynn Resorts' Gaming Compliance Committee ("Compliance Committee") is an
5 internal committee chaired by Director Miller and comprised of two additional members, Schorr
6 (director and COO) and John Strzemp (Wynn Resorts' Executive Vice President and Chief
7 Administrative Officer). The Compliance Committee is charged with assuring Wynn Resorts'
8 compliance with all laws and regulations, particularly on gaming laws, regulations, and policies.

9 10. The Honorable Louis J. Freeh, Esq., is a former director of the Federal Bureau of
10 Investigation ("FBI"), having led that agency with distinction from 1993 to 2001. Prior to serving
11 as FBI Director, Freeh was a United States District Court Judge. Today, Freeh is a partner in
12 Freeh Sporkin & Sullivan, LLP – a law firm he founded with two other former federal judges –
13 which specializes in domestic and foreign corporate investigations and compliance.

14 JURISDICTION

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

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

20 GENERAL ALLEGATIONS

21 13. A Nevada gaming license is a privilege. Nevada law imposes comprehensive
22 regulatory requirements upon gaming licensees, including obligations that those associated with
23 the licensee possess the necessary character, qualifications, and integrity to be suitable to hold
24 that privilege so as to not pose a threat to the public interest or the integrity of the regulation and
25 control of gaming. As a Director of Wynn Resorts, Okada is subject to these demanding
26 standards.

27 14. Additionally, all of Wynn Resorts' Directors agreed to be, were, and are subject to
28 Wynn Resorts' Code of Business Conduct and Ethics (the "Code of Conduct"). The Code of

1 Conduct reinforces and enhances Wynn Resorts' commitment to doing business in an ethical
2 manner. The Code of Conduct reflects Wynn Resorts' values, demonstrates ethical leadership,
3 and promotes an environment that upholds its longstanding reputation for integrity, ethical
4 conduct, and trust.

5 15. Forsaking his obligations to maintain the integrity required of a gaming licensee,
6 the Company's Code of Conduct and his other fiduciary duties, Okada committed improper acts
7 that included making payments for the benefit of foreign gaming officials who could advance his
8 personal business interests. He has furthermore elected to compete against Wynn Resorts,
9 undertaking a campaign to convert Wynn Resorts' assets for his own benefit, and that of his
10 affiliates. Wynn Resorts has been compelled to defend against Okada's acts of aggression by,
11 among other things, the initiation of remedial and defensive Board actions and the prosecution of
12 this action.

13 *Okada Enters the Philippine Market*

14 16. By all measures, Okada's abandonment of his duty of loyalty to Wynn Resorts
15 commenced with his plan to develop gaming operations in the Philippines.

16 17. Upon learning of opportunities in the Philippines, Okada approached Mr. Wynn
17 with an idea of creating a casino resort in Manila Bay. Neither Mr. Wynn nor the Board of
18 Directors was willing to pursue such opportunities in the Philippines.

19 18. Undeterred, Okada pressed on with his personal agenda without full disclosure to
20 Mr. Wynn or the Board. In furtherance of his personal scheme, Okada asked that a city ledger
21 account at Wynn Resorts be opened in the name of his company, Universal ("Universal City
22 Ledger"). Upon information and belief, and unbeknownst to Wynn Resorts, Okada sought the
23 city ledger account, in part, to facilitate his pursuit of his personal business interests in the
24 Philippines and to promote the false appearance of an affiliation with Wynn Resorts to his
25 Philippine business contacts.

26 19. Upon information and belief, many doors opened for Okada in the Philippines due
27 to his well-publicized relationship with Mr. Wynn and Wynn Resorts. Wynn Resorts is informed
28 and believes that Okada touted his relationship and affiliation with Wynn Resorts so as to

1 convince others that Wynn Resorts was and/or is somehow affiliated with Universal's desired
2 presence in Manila. All such representations were and are false.

3 20. In 2008, the Philippine Amusement and Gaming Corporation ("PAGCOR"), a
4 100% government-owned and controlled corporation that operates under the direct supervision of
5 the Office of the President of the Philippines and is charged with "[r]egulat[ing], authoriz[ing] and
6 licens[ing] games of chance, games of cards and games of numbers, particularly casino gaming,
7 in the Philippines," awarded four provisional gaming licenses without public bidding. PAGCOR
8 issued one such license to a newly-formed entity that is owned 99% by ARUZE USA, known as
9 Tiger Resort, Leisure and Entertainment Inc. Okada's pursuit and development of that license
10 expressly contradicts Wynn Resorts' requests to Okada not to pursue business in the Philippines.
11 Moreover, Okada's actions to obtain and exploit that license involved violations of his duties to
12 Wynn Resorts.

13 *Initial Examination of Okada's Activities*

14 21. In or around the fall of 2010, Wynn Resorts heard that Okada was continuing to
15 represent to multiple people that he (and/or Universal) and Wynn Resorts were involved in a joint
16 venture together in the Philippines and were pursuing, also as joint venturers, potential
17 opportunities in Japan. Such representations were again false.

18 22. Questioning Okada's actions, in or around January 2011, Wynn Resorts, through
19 its Compliance Committee, commissioned an independent investigation and risk assessment of
20 investing in the gaming industry in the Philippines, which found:

- 21 a. Official corruption in the Philippine gaming industry is "deeply ingrained";
- 22 b. Doubts that newly-elected President Aquino's stated plans for reform would
23 eliminate corruption from the gaming industry;
- 24 c. The country's legal/regulatory frameworks were not closely aligned with
25 American compliance and transparency standards; and
- 26 d. Despite a general refusal by witnesses to discuss Okada's role in the
27 Philippines (many refused to comment), other information created
28

1 reasonable suspicion that persons acting on Okada's behalf had engaged in
2 improprieties.

3 23. Notwithstanding the issues identified by the investigation/assessment, Okada was
4 unrelenting in his appeal to Wynn Resorts. In February 2011, he repeated his oft-uttered request
5 that Mr. Wynn travel to the Philippines to explore investing in Universal's Manila Bay project.

6 24. During the February 24, 2011 meeting of the Board of Directors, following
7 discussion of the Foreign Corrupt Practices Act ("FCPA"), the findings from the independent
8 investigation were relayed to the Board. Mr. Wynn advised the Board that he had been invited by
9 Okada to meet Philippine President Aquino. Okada was present for the Board's discussions. The
10 independent directors (Goldsmith, Irani, Miller, Moran, Shoemaker, Wayson, and Zeman)
11 unanimously advised Wynn Resorts management that involvement in the Philippines was
12 inadvisable and that the meeting should be cancelled. In plain terms, the Board informed Okada
13 that Wynn Resorts would not invest in Universal's Manila Bay project.

14 25. Okada, who had scheduled on his own initiative a meeting between Mr. Wynn and
15 Philippine President Aquino, was embarrassed and angry in having to cancel the arrangements.
16 Again, however, Okada remained undeterred.

17 26. Finally recognizing that Wynn Resorts was not going to provide Okada and
18 Universal with funds or know-how for his Philippine project, Okada nonetheless moved forward
19 with his secret plans to compete against Wynn Resorts by false claims of affiliation and
20 endorsement, among other things.

21 27. Despite knowing the Board's opposition to his plans in the Philippines, Okada
22 proceeded to announce that he and Universal planned to lure high-limit, VIP gamblers from China
23 to its Manila Bay resort-casino, the same customer base as Wynn Macau. In short, Okada was
24 creating a new casino in direct competition with Wynn Macau.

25 28. Universal purportedly intends to construct two casinos and three hotels in Manila
26 by December 2013, intends to open those facilities in early 2014, intends to spend \$2.3 billion on
27 the project, and hopes to turn \$2 billion in sales in its first year of operation. Okada has publicly
28

1 stated his intent to open more casinos in Asia in 2015. On or about January 26, 2012, Universal
2 broke ground on construction of the Manila Bay casino resort.

3 29. To promote his own interests, Okada launched a campaign to misappropriate
4 Wynn Resorts' assets and secrets for his and his affiliates' use. Among other things, Okada
5 arranged to have several people serve as interns at the Wynn Macau property so that Wynn Macau
6 "know how" could be learned and siphoned from Wynn Resorts.

7 *Wynn Resorts Expects Compliance*

8 30. During a July 28, 2011 executive session, the independent directors again
9 discussed Okada's ongoing involvement in the Philippines and expressed concern about probity
10 issues attendant to Okada's involvement and the effect that Okada's actions in the Philippines
11 could have on Wynn Resorts. Of notable concern were Okada's comments at prior Board
12 meetings. Specifically, Okada had relayed his familiarity with local business practices that
13 involved having third parties make payments to government officials rather than someone doing
14 so directly (acts prohibited not only under the Foreign Corrupt Practices Act, but also by Wynn
15 Resorts' Code of Conduct and other policies).

16 31. Following Okada's comments, Wynn Resorts took several steps to reiterate and to
17 ensure awareness of the boundaries of corporate policies and legal restrictions on payments to
18 government officials (among other things). These include the following:

- 19 a. To ensure that all directors, especially Okada, were kept informed about the
20 Foreign Corrupt Practices Act, on August 4, 2011, a notice to the Board
21 was issued for a training on the Foreign Corrupt Practices Act to be held on
22 October 31, 2011, followed by a Board meeting on November 1, 2011.
- 23 b. To further protect Wynn Resorts, on August 5, 2011, all members of the
24 Board of Directors were asked to review: (1) the Code of Business Ethics;
25 and (2) the Policy Regarding Payments to Government Officials, and
26 execute an acknowledgement that they read, understood, and
27 acknowledged the policies. All members of the Board have signed the
28

1 acknowledgement but for one. Despite multiple attempts to follow-up,
2 Okada has still failed to sign.

- 3 c. Attached to the Directors' & Officers' Questionnaire sent to all members of
4 the Board on January 12, 2012 was an acknowledgement form that required
5 the Directors to sign in two places: (1) Page 26 of the questionnaire; and
6 (2) Page 50 on the separate Code of Business Conduct and Ethics
7 Acknowledgement Form that was part of the questionnaire packet. Okada
8 signed and returned the former on the January 27, 2012 deadline but failed
9 to return a signed Code of Business Conduct and Ethics Acknowledgement
10 Form. Okada has still not returned the acknowledgement despite a
11 follow-up request to do so.

12 32. On September 15, 2011, Okada, through his assistant, sent an RSVP that he would
13 attend both the Foreign Corrupt Practices Act training on October 31 and the Board meeting
14 noticed for November 1, 2011. But Okada never attended the training.

15 33. To follow up on issues raised during the July 28, 2011 Board meeting, in early
16 August, Wynn Resorts' Board of Directors also commissioned a second independent investigation
17 into the regulatory and compliance climate in the Philippines. This investigation identified
18 anomalies and improprieties related to Universal's/Okada's dealings in the Philippines.

19 34. On September 27, 2011, the Compliance Committee held a special meeting to
20 discuss the findings of the second independent investigation. Those findings identified a number
21 of concerns regarding Okada's activities, including that he may be: (a) engaging in acts that
22 would render him unsuitable under Nevada gaming regulations, and (b) breaching the fiduciary
23 duties he owed to Wynn Resorts.

24 35. At the direction of the Compliance Committee, Wynn Resorts approached Okada's
25 counsel to discuss the Committee's concerns relative to Okada's conduct and business in the
26 Philippines, and its effect on Wynn Resorts and Okada's duties and responsibilities as a member
27 of Wynn Resorts' Board of Directors. Wynn Resorts' concerns were ill-received.

28

1 36. Over the next month, counsel for Wynn Resorts and Okada engaged in discussions
2 about Wynn Resorts' concerns that Okada's involvement in the Philippines was placing
3 Wynn Resorts and its shareholders at substantial risk.

4 37. Okada designed and executed a strategy to divert attention away from his own
5 misconduct. Okada claimed to need access to certain books and records (*e.g.*, records related to
6 an amendment to a shareholder's agreement between Mr. Wynn, Elaine Wynn, and Okada).
7 Okada's diversionary tactics underscored his need to change the topic from the real issue – his
8 misconduct in the Philippines.

9 38. Okada's game playing continued. On October 25, 2011, days before the
10 long-scheduled Foreign Corrupt Practices Act training, he requested that the training materials be
11 translated into Japanese (despite his previous, long-term practice of translating all materials on his
12 own) and that the date of the training be moved (despite that it had been planned around his
13 previous confirmation). His refusal to attend the training, an event attended by all other Board
14 members, demonstrated a cavalier disregard for his obligations as director of a company in a
15 highly regulated gaming industry. In the end, Okada was the sole Board member who failed to
16 attend the training, with all other directors appearing in person or telephonically.

17 ***Former FBI Director Freeh Investigates***

18 39. On or about October 29, 2011, Wynn Resorts, on behalf of its Compliance
19 Committee, retained Freeh to conduct an independent investigation into Okada and his activities,
20 with a focus on three main areas: (1) whether Okada breached the fiduciary duties owed to
21 Wynn Resorts; (2) whether Okada engaged in conduct that could jeopardize Wynn Resorts'
22 gaming licenses; and (3) whether Okada engaged in any conduct that could violate Wynn Resorts'
23 compliance policy.

24 40. As part of that investigation, Freeh conducted dozens of interviews (including of
25 all independent members of Wynn Resorts' Board of Directors), and reviewed thousands of pages
26 of documents and emails. As of January 1, 2012, there remained only one outstanding item on
27 Freeh's to-do list: interview Okada. Yet, Okada refused to schedule the interview despite Freeh's
28

1 stated willingness to travel on short notice to conduct the interview anywhere in the world to
2 accommodate Okada's schedule.

3 41. With only Okada's interview outstanding, on February 6, 2012, Freeh briefed
4 Wynn Resorts' Compliance Committee.

5 42. Okada finally sat for his interview with Freeh in Tokyo, Japan, on February 15,
6 2012, where Okada was accompanied by United States counsel.

7 43. Freeh announced that he would report his findings to the Board of Directors on
8 February 18, 2012.

9 44. At the February 18, 2012 Board meeting, Freeh made a detailed presentation and
10 provided the Board with copies of his final report, outlining the following improprieties, among
11 others:

- 12 a. The Universal City Ledger account established by Okada revealed
13 36 separate instances, from May 2008 to through June 2011 where Okada
14 or his associates/affiliates made payments exceeding US \$110,000 that
15 directly benefitted senior PAGCOR officials. This included payment for
16 luxury lodging, extravagant dinners, shopping, and cash to spend for,
17 among others, former PAGCOR Chairman Genuino and his family and
18 friends and current PAGCOR Chairman, Cristino Naguiat ("Naguiat").
- 19 b. The Freeh report noted that Okada's conduct constituted *prima facie*
20 evidence of violations of the Foreign Corrupt Practices Act. On one
21 particular occasion, Okada arranged for PAGCOR Chairman Naguiat, his
22 wife, his three children, their nanny, other senior PAGCOR officials, one of
23 whom also brought his family to stay at Wynn Macau. Okada and his
24 associates refused to provide Wynn Macau management with the name of
25 Chairman Naguiat and tried to conceal his identity. At Okada's associates'
26 request and Okada's direction, Chairman Naguiat and his entourage were
27 provided with the most expensive accommodation, food, and star
28 treatment. In addition, Okada's associates asked that each guest be

1 provided a \$5,000 cash advance during their stay. Following the stay,
2 Okada's associates requested Wynn Macau reduce the excessive charges
3 because they feared an investigation and did not want Universal to get in
4 trouble. Wynn Macau refused.

5 c. There is substantial evidence that Okada, his associates and companies may
6 have arranged and manipulated ownership and management of legal
7 entities in the Philippines under his control, in a manner that may have
8 enabled the evasion of Philippine constitutional and statutory requirements.

9 d. Moreover, close associates and consultants of the former PAGCOR
10 administration attained positions as corporate officers, directors and/or
11 nominal shareholders of entities controlled by Okada and, in some cases,
12 served as links between Okada and the former PAGCOR chair.

13 e. There is substantial evidence that the ownership structure of
14 Okada-affiliated, ARUZE USA-owned entities may subject Okada to civil
15 and criminal penalties under Philippine law.

16 f. Despite being repeatedly advised of the strict anti-bribery laws and
17 Wynn Resorts' policies, Okada insists and strongly believes that, when
18 doing business in Asia, he is permitted to provide gifts and things of value
19 to government officials, whether directly or indirectly.

20 g. His conduct is not accidental or based upon a misunderstanding of the law
21 or the policies. Rather, Okada stated his personal rejection of anti-bribery
22 laws and Wynn Resorts' related policies to fellow Wynn Resorts Board
23 members.

24 45. Following Freeh's presentation, the Board deliberated at length and unanimously
25 adopted resolutions finding the Defendants to be Unsuitable Persons under Wynn Resorts' Second
26 Amended and Restated Articles of Incorporation ("Articles of Incorporation" and/or "Articles"),
27 and redeemed ARUZE USA's shares in Wynn Resorts in accordance with the provisions of the
28 Articles

(Wynn Resorts against Okada)

51. The Code of Conduct provides a non-exclusive list of potential conflict scenarios. Included in this list is an express prohibition on financial interests in other businesses: "You may not own a significant interest in any company that competes with [Wynn Resorts]." The Code of Conduct provides that "it is not typically" a conflict if the competing entity "is a publicly traded company *and* you and your family members' only relationship with any such entity is to have an

1 interest of *less than 2%* of the outstanding shares of the [competing] company." (Emphasis
2 added).

3 52. Further, the Code of Conduct precludes outside employment or activities with a
4 competitor. Specifically, "[s]imultaneous employment with or serving as a director of a
5 competitor of [Wynn Resorts] is prohibited, as is any activity that is intended to or that you
6 should reasonably expect to advance a competitor's interests. You may not market products or
7 services in competition with [Wynn Resorts'] current or potential business activities. . . ."

8 53. In addition, the Code of Conduct expressly states that "*[y]ou may not use*
9 *corporate property or information or your position at [Wynn Resorts] for improper personal*
10 *gain, and you may not compete with [Wynn Resorts].*" (Emphasis added.)

11 54. The Code of Conduct also provides as follows:

12 a. With respect to offering gifts and entertainment,

13 i. "Special rules apply in the context of dealing with government
14 officials and employees. See 'Interacting with Government –
15 Prohibition on Gifts to Government Officials and Employees'
16 below."

17 ii. "Giving or receiving any payment or gift in the nature of a bribe or
18 a kickback is absolutely prohibited."

19 iii. "You are prohibited from providing gifts, meals or anything of
20 value to government officials or employees or members of their
21 families in connection with Company business without prior written
22 approval from the Compliance Officer."

23 iv. "The Company's Policy Regarding Payments to Foreign Officials,
24 the U.S. Foreign Corrupt Practices Act (the "FCPA"), and the laws
25 of many other countries prohibit the Company and its officers,
26 employees and agents or other third parties from giving or offering
27 to give money or anything of value, directly or through an
28 intermediary, to a foreign officials, employees of a state-owned

1 company, a foreign political party, a party official or a candidate for
2 political office in order to attempt to influence officials acts or
3 decisions of that person or entity, to obtain or retain business, or to
4 secure any improper advantage."

5 b. With respect to company information and intellectual property:

6 i. "Company assets, including Company time, equipment, materials,
7 resources and proprietary information, must be used for business
8 purposes only."

9 ii. "The Intellectual Property must not be used or reproduced without
10 the consent of the Company and for authorized use in connection
11 with the Company's business. Every effort must be undertaken to
12 protect the Intellectual Property from illegal copying or misuse."

13 55. As a Wynn Resorts director, Okada was bound by the Code of Conduct.

14 56. Further, as a Director, Okada stands as a fiduciary to Wynn Resorts and, therefore,
15 owes a high duty to the Company, including the duty of care, the duty of loyalty, and that he at all
16 times discharged those duties in good faith and with a view to the interests of Wynn Resorts.

17 57. The fiduciary duty of loyalty that Okada owed as a Director required him to
18 maintain, in good faith, the corporation's and its shareholders' best interests over the interests of
19 anyone else, including his own.

20 58. Okada breached his fiduciary duties by engaging in unlawful activities, many of
21 which occurred on Wynn Resorts' properties, and all of which undermine Wynn Resorts'
22 reputation as well as its business and gaming licenses.

23 59. Okada further breached his fiduciary duty of loyalty by, among other things,
24 self-dealing, placing his own interests above those of Wynn Resorts, and using Wynn Resorts'
25 confidential information, trade secrets, and related trademarks for his own benefit and to
26 Wynn Resorts' detriment. Specifically, and among other things, the website of Universal (of
27 which Okada holds a significant interest and serves as Chairman of the Board) states that
28 Universal obtained its purported experience and "know how" in operating top quality facilities

1 and providing services to the high end market through Okada's experience with Wynn Resorts.
2 Universal's website also states that it intends to use its know-how acquired by Okada from his
3 relationship with Wynn Resorts in Universal's Manila Bay casino-resort operation. Universal and
4 Okada expressly admit (and those in the industry indisputably recognize) that a Manila Bay
5 casino-resort will compete with Wynn Macau (in which Wynn Resorts has a significant
6 ownership interest) for gaming customers and resort clientele.

7 60. Okada's acts and/or failures to act constituted breaches of his fiduciary duties.
8 Okada's breaches of duty involved intentional misconduct and knowing violations of the law.

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

12 62. In committing the acts herein above alleged, Okada is guilty of oppression, fraud,
13 and malice toward Wynn Resorts. As such, Wynn Resorts is entitled to recover punitive damages
14 from Okada for the purpose of deterring him and others similarly situated from engaging in like
15 conduct.

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

18 **SECOND CAUSE OF ACTION**

19 **(Aiding & Abetting Breach of Fiduciary Duty)**

20 **(Wynn Resorts against ARUZE USA & Universal)**

21 64. Wynn Resorts repeats and realleges the allegations set forth in Paragraphs 1
22 through 63 above as though fully set forth herein.

23 65. As a director, Okada owed Wynn Resorts a fiduciary duty of loyalty which, as
24 alleged herein, he breached.

25 66. ARUZE USA and Universal knowingly participated in Okada's breach by
26 facilitating the self-dealing and misappropriation of Wynn Resorts' confidential information, trade
27 secrets, and trademarks, and committing unlawful acts that undermine Wynn Resorts' good
28 reputation as well as its business and gaming licenses.

1 67. As a direct and proximate result of ARUZE USA's and Universal's acts and
2 omissions in aiding and abetting Okada's breach of duty, Wynn Resorts has suffered and will
3 continue to suffer direct, incidental and consequential damages in an amount to be proven at trial,
4 but in any event, in excess of \$10,000, plus prejudgment interest.

5 68. In committing the acts herein above alleged, ARUZE USA and Universal are
6 guilty of oppression, fraud, and malice toward Wynn Resorts. As such, Wynn Resorts is entitled
7 to recover punitive damages from ARUZE USA and Universal for the purpose of deterring them
8 and others similarly situated from engaging in like conduct.

9 69. As a result of the acts and omissions of ARUZE USA and Universal, Wynn
10 Resorts has been compelled to hire the services of an attorney for the protection of its interests.

11 **THIRD CAUSE OF ACTION**

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

13 **(Wynn Resorts against Okada, ARUZE USA & Universal)**

14 70. Wynn Resorts repeats and realleges the allegations set forth in Paragraphs 1
15 through 69 above as though fully set forth herein.

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

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

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

1 74. In recognition of the central importance of its gaming license, Wynn Resorts'
2 Articles of Incorporation afford the Board of Directors the "sole discretion" to take certain action
3 to protect the gaming licenses and approvals of Wynn Resorts and its affiliates. Under the
4 Articles of Incorporation, an "'Unsuitable Person' shall mean a Person who . . . in the sole
5 discretion of the board of directors of the Corporation, is deemed likely to jeopardize the
6 Corporation's or any Affiliated Company's application for, receipt of approval for, right to the use
7 of, or entitlement to, any Gaming License." In addition, the Amended and Restated Gaming and
8 Compliance Program defines an "Unsuitable Person" as, among other things, one "that the
9 Company determines is unqualified as a business associate of the Company or its Affiliates based
10 on, without limitation, that person's antecedents, financial practices, financial condition or
11 business probity."

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

21 76. On February 18, 2012, following Freeh's presentation, the Board of Directors
22 deliberated at length and thereafter adopted resolutions that: (1) determined that ARUZE USA,
23 and Universal were likely to jeopardize Wynn Resorts' and its affiliated companies' gaming
24 licenses; (2) deemed Okada, ARUZE USA, and Universal to be unsuitable persons under
25 Wynn Resorts' Articles of Incorporation; and (3) redeemed ARUZE USA's shares in
26 Wynn Resorts for approximately US \$1.936 billion via a promissory note, in accordance with
27 Article VII of the Articles of Incorporation.

28

1 77. Aware of the magnitude of his improprieties and what any reasonable Board of
2 Directors of a Nevada gaming company would have to do, Okada attempted, in advance of the
3 February 18, 2012 Board meeting, to set up a defense by disputing the Board's authority to act
4 upon Freeh's report.

5 78. Accordingly, a justiciable controversy has arisen between the parties whose
6 interests are adverse, and the dispute is ripe for adjudication. Wynn Resorts acted lawfully and in
7 full compliance with its Articles of Incorporation, Bylaws, and other governing documents and is
8 entitled to a declaration from this Court to that effect.

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

11 WHEREFORE, Wynn Resorts prays for judgment as follows:

12 1. For compensatory and special damages, including attorneys' fees, against
13 Defendants in an amount to be determined at trial;

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

16 3. Disgorgement of profits;

17 4. Punitive damages;

18 5. For an award of reasonable costs and attorneys' fees;

19 6. For prejudgment and post-judgment interest on the foregoing sums at the highest
20 rate permitted by law; and

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7. Any additional relief this Court deems just and proper on the evidence presented at trial.

DATED this 18th day of February, 2012.

PISANELLI BICE PLLC

By: 

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

and

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

and

Robert L. Shapiro, Esq. (*pro hac vice forthcoming*)
GLASER WEIL FINK JACOBS HOWARD
AVCHEN & SHAPIRO, LLP
10259 Constellation Boulevard, 19th Floor
Los Angeles, CA 90067

Attorneys for Wynn Resorts, Limited

EXHIBIT 1

REPORT
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I. Introduction

Wynn Resorts, Limited (“Wynn Resorts”), a publicly traded company incorporated in the State of Nevada, on behalf of its Compliance Committee, retained Freeh Sporkin & Sullivan, LLP (“FSS”) on November 2, 2011 to conduct an independent investigation. That independent investigation has been conducted under the sole direction of the Compliance Committee. The purpose of the investigation was to determine whether there is evidence that Mr. Kazuo Okada, a member of the Wynn Resorts Board of Directors, may have: (i) breached his fiduciary duties to Wynn Resorts; (ii) engaged in conduct that potentially could jeopardize the gaming licenses of Wynn Resorts; and/or, (iii) violated the Wynn Resorts compliance policy. Specifically, FSS has been asked to examine Mr. Okada’s efforts in connection with the creation of a gaming establishment in the Republic of the Philippines.

This is the Report to the Compliance Committee Chairman on the results of FSS’ investigation. As set forth with greater detail in the attached appendix, FSS has performed its investigation by interviewing dozens of individuals and by reviewing thousands of documents, electronic emails, corporate and public records.

II. Summary

The investigation has produced substantial evidence that:

1. Despite being advised by the Wynn Resorts Board of Directors and Wynn Resorts attorneys on the strict US anti-bribery laws which govern Wynn Resorts and its board, Mr. Okada strongly believes and asserts that when doing business in Asia, he should be able to provide gifts and things of value to foreign government officials, whether directly or by the use of third party intermediaries or consultants.
2. Mr. Okada, his associates and companies have arranged and designed his corporate gaming business and operations in the Philippines in a manner which appears to contravene Philippine Constitutional provisions and statutes that require 60% ownership by Philippine nationals, as well as a Philippine criminal statute.
3. Mr. Okada, his associates and companies appear to have engaged in a longstanding practice of making payments and gifts to his two (2) chief gaming regulators at the Philippines Amusement and Gaming Corporation (“PAGCOR”), who directly oversee and regulate Mr. Okada’s Provisional Licensing Agreement to operate in that country. Since 2008, Mr. Okada and his associates have made multiple payments to and on behalf of these chief regulators, former PAGCOR Chairman Efraim Genuino and Chairman Cristino Naguiat (his current chief regulator), their families and PAGCOR associates, in an amount exceeding US 110,000. At times, Mr. Okada, his

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associates and companies have consciously taken active measures to conceal both the nature and amount of these payments, which appear to be prima facie violations of the United States Foreign Corrupt Practices Act (“FCPA”). In one such instance in September 2010, Mr. Okada, his associates and companies, paid the expenses for a luxury stay at Wynn Macau by Chairman Naguiat, Chairman Naguiat’s wife, their three children and nanny, along with other senior PAGCOR officials, one of whom also brought his family. Mr. Okada and his staff intentionally attempted to disguise this particular visit by Chairman Naguiat by keeping his identity “Incognito” and attempting to get Wynn Resorts to pay for the excessive costs of the chief regulator’s stay, fearing an investigation. Wynn Resorts rejected the request by Mr. Okada and his associates to disguise and to conceal the actual expenditures made on behalf of Chairman Naguiat.

4. Additionally, Mr. Okada, his associates and companies appear to have engaged in a pattern of such prima facie violations of the FCPA. For example, in 2010 it also is possible that Mr. Okada, his associates and companies made similar payments to a Korean government official who oversees Mr. Okada’s initial gaming investment in that country. Additional investigation is needed to develop and confirm these possible FCPA violations.
5. The prima facie FCPA violations by Mr. Okada, his associates and companies constitute a substantial, ongoing risk to Wynn Resorts and to its Board of Directors, creating regulatory risk, conflicts of interest and potential violations of his fiduciary duty to Wynn Resorts. Finally, Mr. Okada’s documented refusal to receive Wynn Resorts requisite FCPA training provided to other Directors, as well as his failure to sign an acknowledgment of understanding of Wynn Resorts Code of Conduct, increase this risk going forward.
6. Mr. Okada insisted in his interview that all of his gaming efforts in the Philippines prior to the change of the presidential administration in the summer of 2010 were undertaken on behalf of and for the benefit of Steve Wynn and Wynn Resorts. This assertion is contradicted by press releases dating back to 2007 on his website, which announce an independent effort by Universal; his real estate investments; and the ownership of his corporations in the Philippines.
7. (7) Mr. Okada has stated that Universal paid expenses related to then-PAGCOR Chairman Genuino’s trip to Beijing during the 2008 Olympics.

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III. Kazuo Okada's Relevant Corporate Affiliations

A. Wynn Resorts

After an initial public offering which closed in October 2002, Aruze USA, Inc., controlled by Mr. Okada, became a 24.5% shareholder of Wynn Resorts. Mr. Okada's current ownership of Wynn Resorts through his control of Aruze USA, Inc. is 19.66%.

Mr. Okada became a member of the Wynn Resorts Board of Directors on October 21, 2002, and remains on the Board of Directors as of the date of this Report. In the past, Mr. Okada has used the title of Vice Chairman of Wynn Resorts. In October 2011, the Wynn Resorts Board of Directors eliminated the position of Vice Chairman.

As a Director of Wynn Resorts, Mr. Okada is entitled to receive the courtesy of what is called a "City Ledger Account." Such accounts were originally instituted as a result of Sarbanes Oxley's prohibition of extensions of credit, in the form of a personal loan from an issuer to an officer or director. The accounts were funded by deposits from the director or his company. Such an account exists for billing conveniences related to charges incurred at various Wynn Resorts locales. Mr. Okada has availed himself of this courtesy and established such a City Ledger Account.¹ Within Wynn Resorts, this Okada City Ledger Account is referred to either as the "Universal City Ledger Account" or as the "Aruze City Ledger Account." Accordingly, the phrases Universal City Ledger Account and Aruze City Ledger Account will be referred to interchangeably within this report despite the fact that Aruze Corp.'s name was changed to Universal Entertainment Corporation in November of 2009.

Mr. Okada has been found to be suitable by the Nevada Gaming Commission.²

B. Universal Entertainment Corporation of Japan

Mr. Okada currently serves as Director and Chairman of the Board of Universal Entertainment Corporation ("Universal Entertainment"), registered in Tokyo, Japan. Universal Entertainment Corporation is the current trade name of a company which was incorporated in 1969 as Universal Lease Co. Ltd. and which became Aruze Corp. in 1998. Aruze changed its

¹ The initial wire to establish the Aruze Corp. City Ledger Account was dated February 15, 2008.

² Mr. Okada was originally found to be suitable as a shareholder of Aruze Corp. as part of *An Order of Registration* issued jointly by the State Gaming Control Board and the Nevada Gaming Commission on June 4, 2004. On June 5, 2005, in a similar order, the Nevada Commission and the State Gaming Control Board found Aruze Corp. to be (1) suitable as a controlling shareholder of Wynn Resorts, Limited, (2) suitable as the sole shareholder of Aruze USA, Inc., (3) that Aruze USA, Inc. is registered as an intermediary company and is found suitable as a shareholder of Wynn Resorts, Limited, and (4) that Mr. Okada is suitable as a shareholder and controlling shareholder of Aruze Corp. [See Appendix]

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name to Universal Entertainment Corporation in November 2009. Universal is listed on the JASDAQ stock exchange and is engaged in the manufacture and sale of pachinko and gaming machines and related business activities. As of September 2011, Okada Holdings Godokaisha was Universal Entertainment's major shareholder, with 67.90% of the issued shares.

The Nevada Gaming Commission has approved Universal Entertainment's suitability as the 100% shareholder for a subsidiary, Aruze USA, Inc.

C. Aruze USA, Inc.

Aruze USA, Inc. ("Aruze USA") is a wholly owned subsidiary of Universal Entertainment. Aruze USA is a US company and was incorporated in the State of Nevada on June 9, 1999. Mr. Okada is a Director of Aruze USA and serves as its President, Secretary, and Treasurer.

Aruze USA has been found suitable by the Nevada Gaming Commission as a major shareholder of Wynn Resorts.

D. Aruze Gaming America, Inc.

Aruze Gaming America, Inc. is a private company that is 100% personally owned by Mr. Okada. He currently serves as a Director, Secretary, and Treasurer of the company. Aruze Gaming America, Inc. is a US company and was incorporated on February 7, 1983. The company changed its name from Universal Distributing of Nevada, Inc. to Aruze Gaming America, Inc. on January 6, 2006. Aruze Gaming America, Inc. shares a common business address with Aruze USA, Inc. in Las Vegas, Nevada.

E. Business Interests in the Republic of the Philippines

Since 2008, Mr. Okada has been involved with a variety of corporate entities and with various business associates in the creation of a gaming establishment in an area of the Philippines known as Entertainment City Manila.³ In furtherance of this endeavor, Mr. Okada and his associates have procured land and a provisional gaming license in the Philippines. A more detailed review of Mr. Okada's corporate entities and business associates in the Philippines is set forth in Section V(2)(A) below.

F. Business Interests in the Republic of Korea

Mr. Okada has recently pursued development of a casino resort complex in the Incheon Free Economic Zone in the Republic of Korea. A more detailed review of Mr. Okada's activities in Korea is set forth in Section V(4) below.

³ On the Universal Entertainment website (viewed January 30, 2012) this project is referenced as "Manila Bay Resorts." [See Appendix]

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IV. Relevant Legal and Policy Standards

A. FCPA

The United States Foreign Corrupt Practices Act (“FCPA”) contains two primary categories of violations: (i) a books and records provision, and (ii) a bribery provision. Based upon available information, it seems clear that Aruze USA fits the definition of domestic concern⁴ and United States person⁵ provided in the FCPA, and that the FCPA applies both to Aruze USA and to Mr. Okada personally, in his capacity as an officer and director of Aruze USA.

Under the definitions of domestic concern and United States person, the statute applies to a corporation, partnership, unincorporated organization and other enumerated entities that have their principal place of business in the United States or which are organized under the laws of a State of the United States. It also applies to officers and directors of such concerns.⁶

In 1998, the FCPA was amended and added an alternative basis to interstate commerce for jurisdiction. As the United States District Court for the Southern District of New York wrote: “. . . . The amendments expanded FCPA coverage to ‘any person’ -- not just ‘issuers’ or ‘domestic concerns’ [A]ny United States person or entity violating the Act outside of the United States is subject to prosecution, regardless of whether any means of interstate commerce were used. Citing 15 USC 78dd-1, 78dd-2. . . . (Emphasis added.)”⁷

Under this definition, Aruze USA is a covered party under the FCPA.

The FCPA provides that “[i]t shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd-1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)

⁴ 15 U.S.C. 78 dd – 2(a),(h).

⁵ 15 U.S.C. 78 dd – 2(i).

⁶ 15 U.S.C. 78 dd – 2(g).

⁷ *In re Grand Jury Subpoena*, 218 F. Supp. 2d 544, 550 (S.D.N.Y. 2002).

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- (i) influencing any act or decision of such foreign official in his official capacity,
 - (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or
 - (iii) securing any improper advantage; or
- (B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; . . .”⁸

The head of PAGCOR fits within the definition of foreign official as used in the FCPA.

According to PAGCOR’s website, it “is a 100 percent government-owned and controlled corporation that runs under the direct supervision of the Office of the President of the Republic of the Philippines.”⁹ In addition to prescribing mandates to generate revenue for certain government programs and promote tourism in the Philippines, PAGCOR’s charter states that the entity will “...[r]egulate, authorize and license games of chance, games of cards and games of numbers, *particularly casino gaming*, in the Philippines...”¹⁰ (Emphasis added.)

As set forth above, there is still the interstate commerce basis for jurisdiction, but there is also an alternative. The alternative would require the same elements for an offense, but a showing of interstate commerce would not be required. If the interstate commerce basis for jurisdiction were used, the analysis set forth below would be of significance.

With regard to means or instrumentality of interstate commerce, some of the facts referred to in this report pertain to Mr. Okada utilizing the Universal City Ledger Account to confer financial benefits upon Philippine gambling regulators who could affect the business interests of Aruze USA, Inc. in the Philippines. Some of those benefits were conferred at Wynn Macau. The following facts concerning the Universal City Ledger Account, which bear upon use of means or instrumentalities of interstate commerce, were established during the investigation:

- The account is maintained at the corporate offices of Wynn Resorts, Limited in Las Vegas, Nevada where periodic deposits are made from Universal into the Wynn Resorts, Limited operating account at Bank of America in Las Vegas, Nevada to ensure that the amount on deposit remains at or about US 100,000. Bank documents reflect that the deposits are received from a Universal Entertainment account located in Japan.¹¹

⁸ 15 U.S.C. Section 78dd – 2(a).

⁹ <http://www.pagcor.ph/pagcor-faqs-profile.php>, viewed January 18, 2012. [See Appendix]

¹⁰ Ibid., viewed January 18, 2012. [See Appendix]

¹¹ See, e.g. wire transfer documents from Sumitomo Mitsumi Bank to Bank of America. [See Appendix]

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- When charges are incurred at Wynn Macau, Wynn Macau tracks all charges for the Universal City Ledger Account on its books, and then the accounting department transfers the charges to accounting at Wynn Resorts, Limited in Las Vegas via a journal entry. Wynn Macau sends a pdf file to a staff accountant at Wynn Resorts, Limited in Las Vegas with all the backup documentation. Invoices issued by Wynn Resorts, Limited are periodically sent to a Universal Entertainment email address.¹²

B. Nevada Gaming Regulations and Wynn Resorts Policies

The question of whether or not a gaming licensee or licensee applicant is deemed “suitable” in Nevada is answered by reviewing the Nevada Revised Statutes (“NRS”) in conjunction with the regulations promulgated by the Nevada Gaming Commission (“NGC”), which is empowered by the NRS.¹³

1. Legislative Authority

The standard for determining suitability is found in Section 463.170 of the NRS. Paragraph (2) of the NRS 463.170, entitled *Qualifications for license, finding of suitability or approval; regulations*, provides that the person seeking a license or a suitability determination is subject to the following considerations: “[a]n application to receive a license or be found suitable must not be granted unless the Commission is satisfied that the applicant is: (a) A person of good character, honesty and integrity; (b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this State or to the effective regulation and control of gaming. . . .” In addition, paragraph (3) provides in pertinent part “[a] license to operate a gaming establishment or an inter-casino linked system must not be granted unless the applicant has satisfied the Commission that: (a) [t]he applicant has adequate business probity, competence and experience, in gaming or generally. . . .”

The Nevada Gaming Commission Regulations (“Nevada Gaming Regulations”) are also relevant to the conditions placed upon suitability. According to Section 3.080 of the Nevada Gaming Regulations, entitled *Unsuitable affiliates*, “[t]he commission may deny, revoke, suspend, limit, condition or restrict any registration or finding of suitability or application therefor upon the same grounds as it may take such action with respect to licenses, licensees and licensing; without exclusion of any other grounds.” Paragraph (1) of Section 3.090, entitled

¹² In a Wynn Resorts Memorandum to File from the Corporate Accounting department, dated January 10, 2012, the “invoice[s] and all support documentation are emailed to kimiko.okamura@hq.universal-777.com, takashi.usami@hq.universal-777.com and iwayama.hidetsugu@hq.universal-777.com on the 5th of each month for the prior month [sic] activity.” [See Appendix]

¹³ For further advice regarding suitability, please consult directly with David Arraji, Esq. and/or see Memo dated December 9, 2011 from Kate Lowenhar-Fisher, Esq. and Jamie L. Thalgott, Esq. to David Arraji, Esq. re Associations and the Suitability Analysis. [See Appendix]

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Standards for commission action, provides in pertinent part that “[n]o license, registration, finding of suitability, or approval shall be granted unless and until the applicant has satisfied the commission that the applicant: (a) Is a person of good character, honesty, and integrity; (b) Is a person whose background, reputation and associations will not result in adverse publicity for the State of Nevada and its gaming industry; and (c) Has adequate business competence and experience for the role or position for which application is made.”

2. Underlying Corporate Documents of Wynn Resorts

The Second Amended and Restated Articles of Incorporation of Wynn Resorts, Limited (filed September 16, 2002) also provide for standards that seek to define an “Unsuitable Person.” As set forth on page 8 of the Articles of Incorporation, the phrase Unsuitable Person “shall mean a Person who . . . in the sole discretion of the board of directors of the Corporation, is deemed likely to jeopardize the Corporation’s or any Affiliated Company’s application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License.” (Emphasis added.)

Finally, the Amended and Restated Gaming and Compliance Program of Wynn Resorts, Limited (adopted as of July 29, 2010) defines an *Unsuitable person* as a “[p]erson (i) who has been denied licensing or other related approvals by a Gaming Authority on the grounds of unsuitability or who has been determined to be unsuitable to be associated with a gaming enterprise by a Gaming Authority; or (ii) that the Company determines is unqualified as a business associate of the Company or its Affiliates based on, without limitation, that Person’s antecedents, associations, financial practices, financial condition or business probity.”

In the event of a finding of unsuitability, there are provisions within the aforementioned corporate documents that provide for a resolution post determination. Specifically, on page 6 of the Second Amended and Restated Articles of Incorporation of Wynn Resorts, Limited, the Articles state in pertinent part, “[t]he Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person shall be subject to redemption by the Corporation, out of funds legally available therefor, by action of the board of directors, to the extent required by the Gaming Authority making the determination of unsuitability or to the extent deemed necessary or advisable by the board of directors. If a Gaming Authority requires the Corporation, or the board of directors deems it necessary or advisable, to redeem any such Securities, the Corporation shall give a Redemption Notice to the Unsuitable Person or its Affiliate and shall purchase on the Redemption Date the number of shares of the Securities specified in the Redemption Notice for the Price set forth in the Redemption Notice. . . .” The Articles provide further guidance as to the terms of the redemption.

In addition, according to Section 3.6 of the Fourth Amended and Restated Bylaws, effective as of November 13, 2006, the removal of a director is premised upon “. . . the

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affirmative vote of the holders of not less than two-thirds (2/3) of the voting power of the issued and outstanding stock of the Corporation entitled to vote generally in the election of directors (voting as a single class). . . .” Resignation is also listed as an option “upon giving written notice, unless the notice specifies a later time for effectiveness of such resignation, to the chairman of the board, if any, the president or secretary, or in the absence of all of them, any other officer.”

C. Wynn Resorts Code of Business Ethics

Wynn Resorts first adopted a Code of Business Conduct and Ethics on May 4, 2004. The document defines itself as “a statement of policies for the individual and business conduct of the Company’s employees and Directors”¹⁴ There are two sections of the Code that are relevant to this investigation: (i) conflict of interest and (ii) interaction with government officials. The sections are included below for reference purposes.

1. Conflict of Interest:

“A Conflict of interest occurs when your private interests interfere, or even appear to interfere, with the interests of the Company. A conflict situation can arise when you take actions or have interests that make it difficult for you to perform your Company work objectively and effectively. Your obligation to conduct the Company's business in an honest and ethical manner includes the ethical handling of actual, apparent and potential conflicts of interest between personal and business relationships. This includes full disclosure of any actual, apparent or potential conflicts of interest as set forth below.

Special rules apply to executive officers and Directors who engage in conduct that creates an actual, apparent or potential conflict of interest. Before engaging in any such conduct, executive officers and Directors must make full disclosure of all facts and circumstances to the Corporate Secretary, who shall inform and seek the prior approval of the Audit Committee of the Board of Directors.”

2. Interacting with Government:

Prohibition on Gifts to Government Officials and Employees

“Different governments have different laws restricting gifts, including meals, entertainment, transportation and lodging, that may be provided to government officials and government employees. You are prohibited from providing gifts, meals or anything of value to government officials or employees or members of their families in connection with Company business without prior written approval from the Compliance Officer.”

¹⁴ Wynn Resorts Code of Business Conduct and Ethics dated May 4, 2004, page 7. [See Appendix]

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Bribery of Government Officials

"The Company's Policy Regarding Payments to Foreign Officials, the U.S. Foreign Corrupt Practices Act (the "FCPA"), and the laws of many other countries prohibit the Company and its officers, employees and agents from giving or offering to give money or anything of value to a foreign official, a foreign political party, a party official or a candidate for political office in order to influence official acts or decisions of that person or entity, to obtain or retain business, or to secure any improper advantage. Please refer to the Company's Policy Regarding Payments to Foreign Officials for more details regarding prohibited payments to foreign government officials."

Discipline for Violations:

"The Company intends to use every reasonable effort to prevent the occurrence of conduct not in compliance with its Code and to halt any such conduct that may occur as soon as reasonably possible after its discovery. Subject to applicable laws and agreements, Company personnel who violate this Code and other Company policies and procedures may be subject to disciplinary action, up to and including discharge." (Emphasis added.)

The Code has since been revised twice, once in 2009 and then again on November 1, 2011. Although the above sections have been expanded in these later editions, for the purpose of this investigation and the dates in question the substance has remained basically the same and the FCPA has continued to be a point of emphasis.

V. Report of Investigation

1. Mr. Okada's Attitude Toward Wynn Resorts Compliance Requirements

Mr. Okada's prima facie violations of FCPA, involving both his government regulators in the Philippines and possibly in Korea, do not appear to be accidental or based upon a misunderstanding of anti-bribery laws. Conversely, despite being advised by fellow Wynn Resorts Board members and Wynn Resorts counsel that payments and gifts to foreign government officials are strictly prohibited, Mr. Okada has insisted that there is nothing wrong with this practice in Asian countries. Mr. Okada has stated his personal rejection of Wynn Resorts anti-bribery rules and regulations, as well as legal prohibitions against making such payments to government officials, to fellow Wynn Resorts Board members.

In a February 24, 2011 Wynn Resorts Board of Directors ("Board") meeting at which Mr. Okada was present, after a lengthy discussion by the Board of the FCPA,¹⁵ including specifically the Universal project in the Philippines and potential Wynn Resorts' involvement, "[t]he

¹⁵ In an email from Kim Sinatra to Michiaki Tanaka, dated February 26, 2011, Ms. Sinatra referenced a meeting with Mr. Okada in which she furnished FCPA policy and training materials and reiterated the importance of strict compliance with the FCPA. [See Appendix]

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independent members of the board unanimously advised management that any involvement [by Wynn Resorts] in the Philippines under the current circumstances was inadvisable.”¹⁶ During this discussion, Mr. Okada challenged the other board members over statements regarding the impermissibility under the FCPA of giving gifts abroad in return for favorable treatment, and made statements about hiring “third party consultants” to give gifts to officials.¹⁷

One board member recalled Mr. Okada stating that, in Asia, one must follow the local culture, and that is why one should hire “consultants” to give the gifts.¹⁸ This board member understood Mr. Okada to mean that such use of consultants would help avoid prosecution under the FCPA. Another board member who was present recalled Mr. Okada stating that conducting business in the Philippines was all a matter of “hiring the right people” to pay other people.¹⁹ Yet another board member recalled Mr. Okada being “adamant” during the FCPA discussion that it is not corrupt to give “gifts.”²⁰ A board member who participated in the meeting by phone recalled Mr. Okada claiming that, in the Philippines, “business is done in a different manner, and sometimes you have an ‘intermediary’ that will do whatever he has to do,” or words to that effect.²¹ A different board member recalled being “shocked” by the contradiction between two of Mr. Okada’s statements during this discussion.²² Early in the discussion, Mr. Okada explained that there were no longer corruption issues in the Philippines with the new administration. However, Mr. Okada subsequently stated, in effect, that while he himself would not pay bribes, he would “hire someone else” to bribe the necessary person.

Pursuant to a chain of emails reviewed by FSS, commencing with an email on August 4, 2011 from Roxane Peper, Director of Intellectual Property and Corporate Records, to each of the board members (or their representatives), and ending with an email from Ms. Peper to Kevin Tourek, Senior Vice President and Corporate Counsel, on October 26, 2011, the following is clear:²³

- All board members were notified of upcoming FCPA training/board meeting set for October 31 – November 1, 2011 and asked to confirm attendance by August 31, 2011.
- Mr. Okada, through two of his representatives, was emailed at least three (3) separate times before Shinobu Noda, his assistant, sent an email on September 15, 2011 confirming that Mr. Okada would attend.

¹⁶ Minutes of Wynn Resorts Board of Directors meeting, February 24, 2011, p.3. [See Appendix]

¹⁷ Interview of Steve Wynn, November 7, 2011.

¹⁸ Interview of Robert J. Miller, December 16, 2011.

¹⁹ Interview of Alvin V. Shoemaker, December 20, 2011.

²⁰ Interview of Marc D. Schorr, December 20, 2011.

²¹ Interview of Allan Zeman, December 21, 2011.

²² Interview of D. Boone Wayson, December 20, 2011.

²³ See emails from Roxane Peper to Kevin Tourek on October 26, 2011. [See Appendix]

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Subsequent to the confirmation, Ms. Peper received an email from Ms. Noda on October 25, 2011. Ms. Noda stated that the email contained a message to Kim Sinatra, Senior Vice President and General Counsel of Wynn Resorts, from Mr. Okada.²⁴ This part of the message was entirely in Japanese and had to be translated. Mr. Okada asked for the FCPA training materials to be provided in Japanese. He also stated that he would be arriving on “Monday [October 31]”, which was the day the FCPA training was to commence. He asked if the training could be held after the board meeting or rescheduled. Kim Sinatra sent a response to Ms. Noda via email on October 25, 2011 thanking Mr. Okada for the note and stating further that the FCPA training materials had been translated and would be provided to him via email and that Wynn Resorts had made further arrangements to have the FCPA live training translated to Japanese via simultaneous translation.²⁵ She also stated that the date of the training could not be rescheduled because it had been planned around his previous confirmation and that outside counsel was coming to Las Vegas to provide the training.

Mr. Okada failed to attend the training on October 31, 2011. He was the only member of the board not in attendance (all others attended in person or via telephone dial-in as evidenced via a sign-in sheet).²⁶

2. Gaming Establishment in the Philippines

Evidence obtained in the course of the investigation establishes that Mr. Okada, his associates and companies, may have arranged and manipulated the ownership and management of legal entities in the Philippines under his control, in a manner that may have enabled the evasion of Philippine constitutional and statutory requirements. It is also noted that Mr. Okada’s two principal Philippine corporations, Eagle I Landholdings, Inc. and Eagle II Holdco, Inc., which may have been purposefully created to circumvent Philippine constitutional restrictions on foreign ownership of land, appear to be closely intertwined with Rodolfo Soriano, Paolo Bombase and Manuel M. Camacho, who have numerous common ties to former PAGCOR Chairman Efraim Genuino. For example, with regard to Eagle II Holdco, Inc., as late as 2010, Platinum Gaming and Entertainment (“Platinum”) had acquired 60% of its shares. According to a dated filing by Platinum on file with the Philippine SEC, Rodolfo Soriano controlled 20% of Platinum at the time of its incorporation. Mr. Soriano, referred to by attorney Camacho as a “bag man” for then-Chairman Genuino, is a former PAGCOR consultant and respondent in PAGCOR corruption referrals (see page 15 *infra*). Similarly, Paolo Bombase, an officer, director and nominal shareholder of Eagle I Landholding, Inc. and Eagle II Holdco, Inc. has a 1.25% share of Ophiuchus Real Properties Corp. This Ophiuchus entity is 15% owned by a Philippine company named SEAA Corp. In turn, SEAA is the family-controlled company of former PAGCOR Chairman Efraim Genuino. At this time, the significance of this interlocking shareholder link

²⁴ See email from Shinobu Noda to Roxane Peper dated October 25, 2011. [See Appendix]

²⁵ See email from Kim Sinatra to Shinobu Noda dated October 25, 2011. [See Appendix]

²⁶ See FCPA Training Sign-In sheet dated October 31, 2011. [See Appendix]

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between Mr. Okada, his former Philippine gaming regulator, and the regulator's associates is not known.

A. Corporate Links between Mr. Okada's Business Interests and Those of Philippine Government Officials

Close associates and consultants of the former Genuino PAGCOR administration eventually attained positions as corporate officers, directors and/or nominal shareholders in legal entities controlled by Mr. Okada, and, in some cases, served as links between the business interests of Mr. Okada and those of former PAGCOR chairman Efraim Genuino and members of Genuino's immediate family.

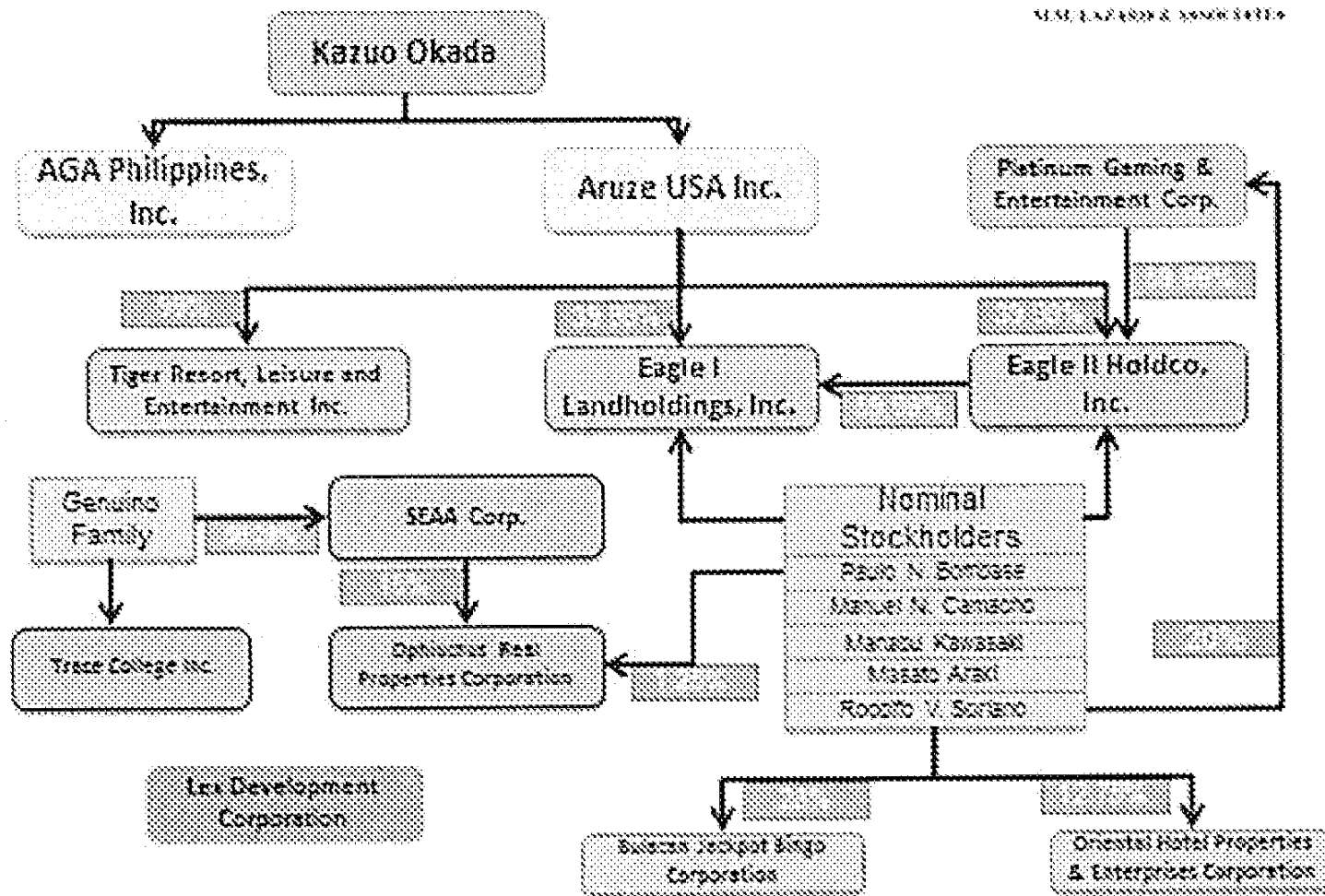
In order to better understand the interrelationships among corporate entities in the Philippines controlled by Mr. Okada and those controlled by PAGCOR officials and their associates, FSS requested the Philippines law firm of M. M. Lazaro & Associates ("Lazaro") to produce a study of this issue.²⁷ Drawing upon official records obtained from the Philippines Securities and Exchange Commission, Lazaro produced an analysis of the relationships created by the ownership and control structures of these entities.²⁸ The chart below, extracted from that analysis, illustrates these relationships in schematic form.

²⁷ Manuel Lazaro was formerly a government corporate counsel with the rank and privileges of a Philippine presiding justice, court of appeals, who FSS retained to assist in the investigation and to advise on certain aspects of Philippine law. [See Appendix]

²⁸ The complete Lazaro PPT is attached to this report. [See Appendix]

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Overview



Tiger Resorts, Leisure and Entertainment, Inc. ("Tiger") was incorporated in the Philippines on June 13, 2008.²⁹ Its primary purpose was stated as:

To acquire, own, maintain, operate and/or manage hotels (city and resort), inns, apartments, private clubs, pension houses, convention halls, lodging houses, restaurants, cocktail bars, and any and all services and facilities related or incident thereto.³⁰

Tiger is predominantly owned by Aruze USA, Inc.³¹ In August 2008, PAGCOR granted Tiger a Provisional Licensing Agreement to operate a gaming establishment in the Entertainment City Manila Zone. An official of the current PAGCOR administration told FSS in December 2011 that PAGCOR was currently reexamining this license.³²

²⁹ Articles of Incorporation of Tiger. [See Appendix]

³⁰ Ibid. [See Appendix]

³¹ GIS of Tiger, 2010. [See Appendix]

³² Combined interview of Jay Daniel R. Santiago and Thadeo Francis P. Hernando, on December 12, 2011. It should be noted that after the interview with Santiago and Hernando, FSS along with its Philippine counsel, for purposes of this investigation, formally requested a copy of the Provisional Licensing Agreement from PAGCOR, as well as other related documents. On the same date that the formal request was made, PAGCOR refused to supply a

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Eagle I Landholdings, Inc. (“Eagle I”) was incorporated in the Philippines on May 16, 2008 with 5 partners of the Philippines law firm Sycip Salazar Gatmaitan (“Sycip”) as the shareholders, directors and officers.³³ By certification on September 5, 2008, the original shareholders were all replaced by, among others, Eagle II Holdco, Inc. (“Eagle II”), with approximately 60% ownership. Eagle II maintained this percentage of ownership of Eagle I through the filing of the latest available General Information Statement (“GIS”) for the year 2010.³⁴ Eagle I’s 2009 GIS, filed September 17, 2009, indicates that Paolo Bombase, Manuel N. Camacho and Rodolfo V. Soriano (whose associations with PAGCOR and Mr. Genuino are explained below) all had become officers/directors and nominal stockholders of Eagle I; they retained this status through the filing of the latest GIS for Eagle I.³⁵ Aruze USA, Inc. first appears as the owner of approximately 40% of Eagle I as of the 2010 GIS, owning the share previously owned by Molly Investments Cooperative UA (“Molly”).³⁶

Eagle II’s filings with the Philippines Securities and Exchange Commission indicate a history similar to that of Eagle I. Incorporated on May 19, 2008 by the same 5 Sycip partners,³⁷ Eagle II reflected the acquisition of approximately 60% of its shares by Platinum Gaming & Entertainment Corp. (“Platinum”) on its GIS filed September 17, 2009, with Platinum owning the same percentage as of the 2010 GIS.³⁸ The same filings reflect the appearance--in 2009 and continuing through the 2010 filing--of Messrs. Camacho, Soriano and Bombase as officers/directors and nominal shareholders. In 2010 Aruze USA, Inc. appears with the 40% shareholding that was attributed to Molly in 2009.³⁹

Platinum was incorporated in the Philippines on November 21, 2001, with a Certificate of Filing of Amended Articles of Incorporation (“AOI”) issued by the Philippines Securities and Exchange Commission on June 10, 2002.⁴⁰ Platinum has no GIS on file with the Philippines Securities and Exchange Commission, and the only corporate document filed besides the Articles of Incorporation is the 2004 Financial Statement. The latest information on file lists Mr.

copy of Tiger’s Provisional Licensing Agreement, saying that they were bound by a non-disclosure clause. That refusal was signed by Francis P. Hernando, who is identified below as a PAGCOR employee, who stayed in Wynn Macau in June 2011 and had US 709.72 of expenses paid for by the Aruze City Ledger account. See Letter of Request and Letter of Refusal. [See Appendix]

³³ Articles of Incorporation of Eagle I. [See Appendix]

³⁴ GIS of Eagle I for years 2009 and 2010. [See Appendix] A GIS is required to be filed on an annual basis according to Section 141 of the Corporation Code of the Philippines. [See Appendix]

³⁵ Ibid. [See Appendix]

³⁶ Ibid. [See Appendix]; FSS has determined Molly to be a wholly owned subsidiary of Aruze Corp. See http://www.universal-777.com/en/ir/ir_lib/material/annual_20081119.pdf, page 32.

³⁷ Articles of Incorporation of Eagle II. [See Appendix]

³⁸ GIS of Eagle II, years 2009-2010. [See Appendix]

³⁹ GIS of Eagle II, 2010. [See Appendix]

⁴⁰ Articles of Incorporation of Platinum, as amended June 10, 2002. [See Appendix]

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Soriano, a former PAGCOR consultant, as a director/officer and a 20% shareholder in Platinum.⁴¹

Messrs. Camacho, Bombase and Soriano are all directly associated with former PAGCOR Chairman Genuino in significant ways. Mr. Camacho is an attorney and a principal of the Manila law firm Camacho & Associates. He was for a time in a law partnership with Mr. Genuino's son, Erwin Genuino.⁴² Mr. Camacho traveled to Japan with Mr. Soriano at then PAGCOR Chairman Genuino's behest, to meet with Mr. Okada and other representatives of Aruze. This meeting resulted in Mr. Camacho's firm replacing Sycip in representing Aruze with respect to the development of the project in Entertainment City Manila.⁴³

Sometime subsequent to this meeting, Aruze wired retainer funds to the bank account of Mr. Camacho's firm, an account controlled jointly by Mr. Camacho and Erwin Genuino. Later, Mr. Camacho discovered that all or most of these funds had been withdrawn by Erwin Genuino. When he questioned this withdrawal, he was eventually told by Mr. Soriano and/or then PAGCOR Chairman Genuino that the funds had been withdrawn to be used as a "cash payoff" to the mayor of the municipality in which the Entertainment City Manila project is located, in order to facilitate approval of the use of some plots of land to build roads needed for Mr. Okada's casino project. Mr. Camacho claims to have had a falling out with Erwin Genuino and Mr. Soriano, and to be involved currently in a lawsuit against Erwin Genuino over the dissolution of their law partnership.⁴⁴ Erwin Genuino is named as a respondent, along with former PAGCOR Chairman Genuino, in two sworn corruption referrals ("PAGCOR Referrals") filed with the Republic of the Philippines Department of Justice ("DOJ") in the summer of 2011 by the current PAGCOR Administration.⁴⁵

Mr. Bombase, also an attorney, is an officer/director and shareholder of Ophiuchus Real Properties Corporation ("Ophiuchus"), incorporated in April 2011.⁴⁶ According to its 2011 GIS, Ophiuchus was 15% owned by SEAA Corporation ("SEAA").⁴⁷ SEAA, which was registered with the Philippine SEC on December 3, 1997, is, according to its 2011 GIS, 100% owned by members of former PAGCOR Chairman Genuino's immediate family.⁴⁸ The Articles of

⁴¹ M. M. Lazaro & Associates, "Aruze Corporations in the Philippines and 'Related' Corporations", p. 18. [See Appendix]

⁴² Interview of M. Camacho, December 13, 2011.

⁴³ In his discussion with FSS, Mr. Camacho referred to the firm only as "Aruze," not further defined.

⁴⁴ Although Mr. Camacho, who is in his seventies, failed to recall some details of his dealings with Mr. Genuino and Mr. Soriano, FSS credits the general account given by him during the December 13, 2011 interview.

⁴⁵ See PAGCOR Referrals. [See Appendix]

⁴⁶ Articles of Incorporation of Ophiuchus. [See Appendix]

⁴⁷ GIS of Ophiuchus, 2011. [See Appendix]

⁴⁸ GIS of SEAA, 2011. [See Appendix]

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Incorporation of Ophiuchus also list Emilio Marcelo as an officer/director and shareholder.⁴⁹ Mr. Marcelo is named as a respondent in the PAGCOR Referrals.⁵⁰

Mr. Soriano is a former PAGCOR consultant, named by Mr. Camacho as a close business associate and “bag man” for Mr. Genuino.⁵¹ Mr. Soriano is also named as a respondent in the PAGCOR Referrals.⁵² As of the latest information filed with the Philippines Securities and Exchange Commission in 2002, Mr. Soriano was a 20% shareholder and an officer/director of Platinum,⁵³ identified above as a 60% shareholder in Eagle II. If Mr. Soriano still held the same stake in Platinum when it acquired its share of Eagle II in 2009, then he became an effective owner of 12% of Eagle II and approximately 7% in Eagle I.

B. Apparent Evasion of Republic of Philippines Legal Requirements

As described in the preceding section, Mr. Okada caused various legal entities to be incorporated in the Philippines, in order to develop his casino resort project there, over time replacing the original incorporating Filipino shareholders with combinations of foreign shareholders affiliated with or controlled by him and associates of then-PAGCOR Chairman Genuino. As discussed below, there are constitutional and statutory requirements in the Republic of the Philippines requiring that purchasers of land be Philippines citizens or Filipino-owned legal entities, and that legal entities conducting business in the Philippines, with certain exceptions, be at least 60% Filipino owned.

In 2008, Eagle I purchased various tracts of land near Manila Bay totaling approximately 30 hectares at a total price of PHP 13,527,637,941.00 (approximately US 314,953,000.00) for the development of the project in Entertainment City Manila.⁵⁴

At FSS’ request, Lazaro prepared an analysis and opinion on the validity of Eagle I’s ownership of these properties, in light of the aforementioned provisions of the Philippines Constitution and applicable statutes.⁵⁵ The analysis included a detailed review of the ownership and capitalization of Eagle I and associated entities described in the preceding section. The following is a summary of pertinent findings of the Lazaro analysis.

⁴⁹ Articles of Incorporation of Ophiuchus. [See Appendix]

⁵⁰ See PAGCOR Referrals. [See Appendix]

⁵¹ Interview of M. Camacho, Dec 13, 2011.

⁵² See PAGCOR Referrals. [See Appendix]

⁵³ Articles of Incorporation of Platinum, as amended June 10, 2002. The 2001 Articles of Incorporation list four (4) additional 20% shareholders, identified as Filipino nationals. Because Platinum has not filed a GIS since 2002, the current ownership and control of Platinum is unknown. [See Appendix]

⁵⁴ Numbered Transfer Certificates of Title (“TCT”) for Eagle I purchase of land tracts in Parañaque City, Philippines, dated August 19, 2008. [See Appendix]

⁵⁵ M. M. Lazaro & Associates. Memo re “Validity of Eagle I’s Ownership of Real Estate Properties” (“Ownership Memo”), Jan 2012. [See Appendix]

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A review of the 2009 Financial Statement of Eagle I disclosed that the funds used to purchase the land tracts appear to have been advanced by Molly.⁵⁶

Platinum, the 59.99% owner of Eagle II, has filed no records with the Philippines Securities and Exchange Commission indicating that its paid-in capital ever increased beyond the original PHP 62,500, despite its amended Articles of Incorporation indicating that its authorized capital stock was increased from the initial PHP 1,000,000.00 to PHP 24,000,000.00.⁵⁷ Nor is it known today what person(s) or entities have controlled Platinum since incorporation in 2001.

The 1987 Constitution of the Philippines requires that only Philippines citizens or corporations with at least 60% of their capital stock owned by Filipinos are qualified to acquire land in the Philippines.⁵⁸ The Philippines Foreign Investment Act further requires that for a corporation to be considered a Philippines national, at least 60% of its capital stock outstanding and entitled to vote must be owned and held by citizens of the Philippines.⁵⁹

Whenever facts or circumstances create doubt as to whether the ownership of 60% of a corporation is truly Filipino, Philippines Securities and Exchange Commission case law has held that a stringent examination of the true ownership of the voting stock of the subject corporation and of the true ownership of the voting stock of all successive layers of corporate ownership should be conducted. The application of this stringent standard is known as the “Grandfather Rule.”⁶⁰

Serious doubts are therefore raised about the actual Filipino equity of Eagle I, because of the appearance that Eagle I and Eagle II were created purposely to “...circumvent the constitutional restriction on foreign ownership of land.”⁶¹ Lazaro bases this assertion on its conclusion that “...Platinum appears to be merely a shell corporation used to satisfy the Filipino equity requirement.”⁶² Application of the Grandfather Rule would therefore be appropriate.

Applying the Grandfather Rule, Lazaro calculates the true percentage of Filipino versus foreign equity in Eagle I as illustrated in the following table:⁶³

⁵⁶ Ibid, p. 2. [See Appendix]

⁵⁷ Ibid, pp. 5-6. [See Appendix]

⁵⁸ Ibid, p. 8. [See Appendix]

⁵⁹ Ibid, pp. 9-10. [See Appendix]

⁶⁰ Ibid, pp. 11-14. [See Appendix]

⁶¹ Ibid, p. 14. [See Appendix]

⁶² Ibid, pp. 14-15. [See Appendix]

⁶³ Ibid, p. 15. [See Appendix]

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Shareholder	Direct	Indirect	Total Filipino investment in Eagle I	Total Foreign investment in Eagle I
Aruze USA	40% of Eagle I	24% (40% of 60% total holdings of Eagle II in Eagle I)		64%
Platinum*		36% (60% of 60% total holdings of Eagle II in Eagle I)	36%	

*As noted above, Platinum has failed to file its annually required GIS with the Philippine SEC since its inception in 2001. The calculations in the above table prepared by Lazaro assume the “best case” scenario (for Platinum), i.e., that it is a truly 100% Filipino-owned corporation. If Platinum’s actual Filipino ownership is less than 100%, then the percentage of Filipino investment in Eagle I would be correspondingly even less than calculated in the table.

Lazaro concludes that “...the foregoing shareholder structure appears to have been formulated by the parties as a legal scheme to justify the qualification of Eagle I to own real estate properties. The scheme employed...gives Aruze USA, Inc....a convenient vehicle to justify its ownership...in circumvention of the constitutional restriction on the foreign ownership of land.”⁶⁴ Lazaro goes on to conclude that the apparent shareholder structuring scheme outlined above may also constitute a violation of Commonwealth Act No. 108, commonly known in the Philippines as the “Anti-Dummy Law.”⁶⁵ If convicted of a violation of this law, stockholders of Platinum and of Aruze USA, Inc. who profited from the scheme would face a sentence of imprisonment of not less than five years nor more than fifteen years.⁶⁶

From the foregoing discussion, there is substantial evidence and credible legal opinion indicating that the ownership structure of Eagle I and Eagle II may subject Mr. Okada, along with his associates and companies, to civil as well as criminal sanctions under Philippine law.

⁶⁴ Ibid, p. 16. [See Appendix]

⁶⁵ Ibid, pp. 16-17. [See Appendix]

⁶⁶ Ibid, p. 17. [See Appendix]

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3. Apparent FCPA Violations Regarding Philippine PAGCOR Officials at Wynn Resort Properties

FSS has reviewed records of the Aruze City Ledger Account, through which Mr. Okada and Universal charge expenses for lodging, entertainment and other incidentals incurred at Wynn Resorts facilities against funds deposited into the account by Universal, and available underlying documentation furnished by Wynn Resorts management. The table below highlights thirty-six (36) separate instances, from May, 2008, through June 2011 (more than a three (3) year period), when Mr. Okada, his associates and companies made payments exceeding US 110,000, which directly benefitted senior PAGCOR officials, including two chairmen and their family members.

Name	Relationship to PAGCOR/Phil. Gov't.	Location(s) and Date(s) of Stay(s)	Total Charged to Aruze City Ledger Account (in US)
Efraim C. Genuino	Former PAGCOR Chairman (February 2001 to June 30, 2010)	WM June 6-9 2010	1,870.64
Cristino L. Naguiat Jr.	PAGCOR Chairman (July 2, 2010 to Present)	WM Sep 22-26 2010	See Suzanne Bangsil ⁶⁷
		WLV Nov 15-20 2010	5,380.86
		WM June 6-10 2011	3,909.80
Dinner (Naguiat Party)	Chairman (PAGCOR)	WM Sep 24 2010 (Hosted by and charged to Kazuo Okada)	1,673.07
Maria Teresa Socorro Naguiat	Wife of PAGCOR Chairman Cristino L. Naguiat Jr.	WM June 6-10 2011	1,039.31
Suzanne Bangsil ⁶⁸	Wife of Rogelio Bangsil, PAGCOR	WM Sep 22-26 2010	50,523.22
Jose Miguel	Husband of former	WLV Nov 12-17	4,642.40

⁶⁷ Chairman Naguiat did not identify himself and Mr. Okada's representatives insisted that his stay there be "Incognito." Accordingly, the bulk of the charges for the trip are reflected on the City Ledger Account as attributable to "Suzanne Bangsil," the wife of Rogelio Bangsil, a senior PAGCOR official and Chairman Naguiat's employee. However, interviews, photo identifications and documentary evidence clearly establish that Chairman Naguiat was the "Incognito" guest and the direct beneficiary of these payments.

⁶⁸ Investigation has in fact determined that Chairman Naguiat was registered as an "Incognito" VIP guest under Suzanne Bangsil's reservation. Therefore, this US 50,523.22 was paid for Chairman Naguiat's benefit.

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"Mike" Arroyo	Philippines President Gloria M. Arroyo (Jan 20 2001 – June 20 2010)	2009	
Imelda Dimaporo	PAGCOR Board Member	WM June 8-10 2010	891.44
Philip Lo	PAGCOR Board Member	WLV April 29 2009 – May 3 2009	1,755.25
Manuel Roxas	PAGCOR Board Member	WLV April 2009 ⁶⁹	253.75
		WLV April 29 2009 – May 3 2009	1,686.95
Susan Vargas	PAGCOR Board Member	WM June 8-10 2010	480.17
Jose Tanjuatco	PAGCOR Board Member (July 19 2010 to Present)	WLV Nov 15-18 2010	2,148.57
Rogelio J. B. Bangsil	Officer in Charge of PAGCOR Gaming Department	WM Sep 24-26 2010	1,149.04
		WM June 6-12 2011	2,955.23
Rodolfo Soriano	PAGCOR Consultant	WM June 3-7 2008	1,186.08
		WLV Nov 12-17 2009	4,228.00
		WM June 7-10 2010	1,104.06
		WM Aug 18 2010	368.06
Olivia Soriano	Relative of Rodolfo Soriano	WLV May 2008	975.55
Anthony F. "Ton" Genuino ⁷⁰	Son of Efraim C. Genuino; Mayor of Los Baños (2010 to Present)	WLV Sep. 2008	2,386.26
		WLV Oct 2008	2,326.49
Rafael Francisco	PAGCOR COO and President	WLV Nov 12-17 2009	4,360.16
		WM June 7-11 2010	935.21

⁶⁹ When the "Dates of Stay" in this table were not readily available, the month and year that the charges were entered in the City Ledger Account are used.

⁷⁰ See PAGCOR Referrals (Anthony Genuino is named as a respondent). [See Appendix]

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Emelio Marcello	PAGCOR Consultant	WLV Nov 12-17 2009	1,181.60
		WM June 7-9 2010	471.51
Carlos Bautista	PAGCOR VP Legal	WM June 6-10 2010	1,049.69
Mario Cornista	PAGCOR Consultant	WM June 7-9 2010	600.02
Rene Figueroa	PAGCOR Executive VP	WM June 7-10 2010	646.76
Ernesto Francisco	PAGCOR Executive Committee and Casino General Manager	WM June 7-10 2010	797.17
Edward King	PAGCOR VP Corporate Communications	WM June 7-10 2010	767.71
Transportation	PAGCOR Delegation	WM Aug 2010	462.42
Jeffrey Opinion	Member of Naguiat Party	WM Sep 24-26 2010	906.61
Ed de Guzman	PAGCOR Executive Committee, A VP Slots	WM Jun 6-12 2011	3,421.79
Gabriel Guzman	Probable relative of Ed de Guzman (had adjoining room)	WM Jun 6-12 2011	1,391.71
(Thadeo) Francis P. Hernando ⁷¹	PAGCOR VP, Licensed Casino Development Dept.	WM Jun 8-10 2011	709.72
TOTAL			110,636.36

The total in the above table represents charges from the Aruze City Ledger Account that are readily identifiable as incurred directly by officials and consultants of PAGCOR,⁷² their family members and close associates, including Jose Miguel Arroyo, the then-First Gentleman of the Republic of the Philippines, husband of Philippine President Gloria Arroyo. Through a review of the Aruze City Ledger Account for statement periods March 2008 through November 2011, FSS has calculated that total charges to the account for that period, attributable to

⁷¹ This is the same PAGCOR official who denied the FSS request for documents in December 2011, including a copy of the Provisional License Agreement. See footnote 31.

⁷² In order to establish the PAGCOR affiliation of some of the individuals listed in this chart, various sources were consulted, including the PAGCOR website, internet news articles and the PAGCOR Referrals.

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PAGCOR officials, employees, consultants, their associates and family members, exceed USD 110,000.⁷³

FSS investigators interviewed members of the Wynn Macau management team, who furnished the following relevant information regarding a visit to that property in September 2010 by then and current PAGCOR Chairman and CEO Cristino L. Naguiat, Jr., his wife, three children, nanny and other PAGCOR officials, whose four-day stay at Wynn Macau was paid for via the Aruze City Ledger Account:

- September 20, 2010: Yoshiyuki Shoji of Universal, in an e-mail to Angela Lai of Wynn Macau, requests reservations for “Rogelio Bangsil (Guest Representative) & Others.” Mr. Shoji requests Encore Suite or “more gorgeous room, such as Villa,” and “the best butler” for unnamed person in group, who is “VIP for Universal.” Mr. Shoji states that guests other than Bangsil should not be registered, that all charges should be posted to Universal’s City Ledger,⁷⁴ and that “Mr. Okada would like them to experience the best accommodations and services at Wynn Macau.”⁷⁵ The communication makes no reference to PAGCOR or the government affiliation of the guests.
- September 20, 2010: In an e-mail to Wynn Macau President Ian Coughlan and others, Ms. Lai informs Mr. Coughlan of the reservation and that checks of websites indicate that Mr. Bangsil is in charge of PAGCOR’s gaming department.⁷⁶
- September 20, 2010: In an e-mail to Mr. Shoji, Ms. Lai advises that Wynn Macau is checking on availability of the requested upgrade and that Macau law requires that all room occupants be registered, and requests that all guest names be furnished in advance of or at the time of registration.⁷⁷
- September 22, 2010: In an e-mail to Wynn Macau President Ian Coughlan, Wynn Macau Senior Vice-President – Legal Jay M. Schall advises Mr. Coughlan of

⁷³ See City Ledger Account. [See Appendix]

⁷⁴ When Mr. Shoji set up the City Ledger Account for Mr. Okada in 2008, he asked whether the customer name and amount paid would be made public. He was advised that such information would not become public. Email response from Kim Sinatra to Shoji, dated February 8, 2008. [See Appendix]

⁷⁵ E-mail from Y. Shoji to A. Lai, September 20, 2010 [See Appendix]; interview of A. Lai, January 4, 2012.

⁷⁶ E-mail from A. Lai to I. Coughlan, September 20, 2011 [See Appendix]; interview of A. Lai, January 4, 2012; interview of I. Coughlan, December 29, 2011. It should be noted that according to an article in Manilatimes.net, published February 2, 2012, Rogelio Bangsil has recently been transferred to the PAGCOR international marketing department after a probe that found the government losing PHP 160 million in government run casinos to a Mr. Liu. [See Appendix]

⁷⁷ E-mail from A. Lai to Y. Shoji, September 20, 2010 [See Appendix]; interview of A. Lai, January 4, 2012.

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PAGCOR's 100% government ownership and of Mr. Bangsil's position there. He writes "Bangsil, the guest of Mr. Okada, is a top five (if not 3) officer."⁷⁸

- September 22, 2010 (14:00): Wynn Macau sends 1 Rolls Royce and 1 Elgrand to the airport, along with Masato Araki, Special Assistant to Mr. Okada; and Kenichiro Watanabe, another Universal associate, to meet arriving party, who arrived on Philippine Airline Flight 352 from Manila. They return with Chairman Cristino L. Naguiat, Rogelio Bangsil and Jeffrey Opinion at 14:45.⁷⁹ Only Mr. Bangsil furnishes his name upon registration. Ms. Lai and Wynn Macau VIP Services Manager Beatrice Yeung thereafter checks PAGCOR website and identifies Chairman Naguiat's name from his picture there.⁸⁰ Ms. Yeung's log and ongoing entries refer to "[I]ncognito (Mr. Naguiat, Cristino L.)."⁸¹
- Chairman Naguiat occupies Villa 81, the most expensive accommodation at Wynn Resorts Macau (about 7,000 square feet in size, which then cost about US 6,000 per day and is mostly reserved for "high rollers").
- September 22, 2010: the Wynn Encore log book reflects "Incognito (Mr. Naguiat) stayed in Villa 81 Master Bedroom 1."⁸²
- September 23, 2010 (10:00): Mr. Araki advises Ms. Yeung that Chairman Naguiat plans to have lunch with Miss Pansy Ho at MGM.⁸³
- September 23, 2010 (14:04): Jay Schall sends an email to Wynn Macau corporate security to check Worldcheck, as a rush job, for Cristino L. Naguiat Jr., Chairman and Chief Executive Officer of PAGCOR.⁸⁴

⁷⁸ E-mail from J. Schall to I. Coughlan, September 22, 2010 [See Appendix]; interview of J. Schall, January 3, 2012; interview of I. Coughlan, December 29, 2011.

⁷⁹ Wynn Macau Manager – Encore Logbook, September 22, 2010. [See Appendix]

⁸⁰ Interviews of Beatrice Yeung, January 4, 2012 and February 1, 2012; interviews of Angela Lai January 4, 2012 and February 2, 2012.

⁸¹ Wynn Macau Manager – Encore Logbook, September 22, 2010. [See Appendix]

⁸² Ibid. [See Appendix] During subsequent visits, Chairman Naguiat was identified as "Naguiat," though he was identified during his initial visit as "incognito." The negative inference to be drawn is an attempt to hide the payment of extremely costly expenses by a corporation connected with a regulated entity. The fact that he had only recently become chairman may have been a factor in his desire to keep his identity secret.

⁸³ Miss Ho is the daughter of Hong-Kong and Macau-based businessman Stanley Ho. Though Nevada gaming regulators found Miss Ho to be a suitable business partner for MGM Mirage, see <http://www.lvrj.com/business/45462797.html>, New Jersey regulators recommended that she be found unsuitable as MGM Mirage's joint venture partner in Macau. See <http://www.newjerseynewsroom.com/state/mgm-mirage-chooses-pansy-ho-over-atlantic-city>. [See Appendix]

⁸⁴ Email from Jay Schall to Peter Barnes of Wynn Macau Corporate Security, dated September 23, 2010. [See Appendix]

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- September 23, 2010: In an e-mail to Ms. Lai, with a copy to Mr. Okada, Mr. Shoji requests that a credit of US 5,000 be extended to each person now staying at the Villa for shopping and gaming, up to a total of US 50,000. According to Mr. Shoji's email, the funds are to be advanced by Wynn Macau and charged to the Universal City Ledger account.⁸⁵
- September 24, 2010 (13:45): MOP 80,000⁸⁶ (approximately US 10,000) is advanced from the Wynn Macau main cage to a Wynn Macau VIP Services employee (no longer employed at Wynn Macau), who in turn hands the money to Masato Araki, special assistant to president of Aruze USA, based upon instructions in the above referenced e-mail to Ms. Lai. The handover of funds is witnessed by Wynn Encore manager Alex Kong. The funds are charged to the Universal City Ledger Account.⁸⁷ MOP 15,000 of this sum is used to pay for a Chanel bag that Chairman Naguiat requested be purchased for his wife.⁸⁸
- September 24, 2010 (Approximately 14:00): Mrs. Naguiat, her three children, Mrs. Bangsil and her daughter arrive at Wynn Macau.
- September 24, 2010 (15:45): Wynn Macau employees meet Mr. Okada and his assistant, Jun Yoshie, at the airport, transport them to Wynn Macau and escort Mr. Okada to room 5688.⁸⁹
- September 24, 2010 (late afternoon): Mr. Coughlan receives a phone message from Mr. Yoshie that Mr. Okada would like to speak to him. Mr. Coughlan proceeds to an area near the Wynn Encore reception desk, where he meets Mr. Yoshie and Mr. Okada. They step into the Cristal Bar to talk, whereupon Mr. Okada, with Mr. Yoshie interpreting into English, tells Mr. Coughlan that the guests [referring to

⁸⁵ E-mail from Y. Shoji to A. Lai, September 23, 2010 [See Appendix]; e-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 24, 2010.

⁸⁶ MOP 80,000 was worth approximately US 9,816 at that time.

⁸⁷ Wynn Macau Manager – Encore Logbook, September 24, 2010 [See Appendix]; Wynn Macau "Miscellaneous Disbursement" record #013014, dated September 24, 2010 [See Appendix]; e-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012; interview of Alex Kong, February 1, 2012.

⁸⁸ Wynn Macau Manager – Encore Logbook, September 24, 2010. [See Appendix]. The Chanel bag was purchased by a Wynn Macau employee as per instructions by Mr. Araki, who works for Mr. Okada. The Wynn Macau employee gave the bag, store receipt and change to Mr. Araki to deliver to Mrs. Naguiat. Later, Mr. Araki stated that Mrs. Naguiat did not like the bag so he would give it to his own wife.

⁸⁹ Wynn Macau Manager – Encore Logbook, September 24, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012.

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Chairman Naguiat's party] are very important to Universal, and that Mr. Okada wants Mr. Coughlan to insure that they are well cared for during their stay.⁹⁰

- September 24, 2010 (17:00): Mr. Okada meets Chairman Naguiat (and approximately thirteen (13)) others in his party) for dinner at Okada Restaurant.⁹¹ Mr. Okada hosts the dinner and the bill for \$1,673.07 is charged to his room.
- September 25, 2010 (05:45): Wynn Macau employees meet Mr. Okada outside his room and escort him to a limousine, which transports him to the Macau Ferry Terminal for 07:00 scheduled ferry departure to Hong Kong International Airport.⁹²
- September 25, 2010: Beatrice Yeung describes in her log book "Movements – Incognito (Mr. Naguiat, Cristino L) / Mr. Bangsil, Rogelio / Mr. Opinion, Jeffrey (Mr. Okada's guests, Villa 81)."⁹³
- September 25, 2010: Mr. Araki requests a second advance of MOP 80,000 for guests in Villa 81. Ms. Yeung accompanies Mr. Araki to the Main Cage and obtains the advance for him.⁹⁴ [This makes a total of MOP 160,000 advanced for the use of Chairman Naguiat and his party and charged to the Universal City Ledger Account per Mr. Okada's orders, as relayed in Mr. Shoji's e-mail.]
- September 26, 2010 (11:10): Mr. Araki departs the Wynn Macau Encore main entrance. He hands Ms. Yeung MOP 4100, returning what he says is the remainder of the two cash advances for Chairman Naguiat's party.⁹⁵
- September 26, 2010 (13:15): Chairman Naguiat's party departs via Wynn Macau limousine to pick up Mrs. Naguiat from shopping and proceeds to the airport.⁹⁶

⁹⁰ Interviews of Ian Coughlan, January 5, 2012 and February 2, 2012.

⁹¹ Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 24, 2010. [See Appendix]

⁹² Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 25, 2010. [See Appendix]

⁹³ Wynn Macau Manager – Encore Logbook, September 25, 2010. [See Appendix]

⁹⁴ Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 25, 2010 [See Appendix]; Wynn Macau "Miscellaneous Disbursement" record #013066, dated September 25, 2010. [See Appendix]

⁹⁵ E-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; Wynn Macau Manager – Encore Logbook, September 26, 2010 [See Appendix]; handwritten and signed note dated "9/26/10" with notation "MOP 4.100". [See Appendix]. The returned funds were equal to approximately US 503.07 returned out of a total of approximately US 19,632 provided.

⁹⁶ Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 26, 2010. [See Appendix]

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- November 10, 2010: Mr. Shoji advises Mr. Coughlan in an e-mail of receipt of Wynn Macau's invoice for the late September 2010 visit, in which the Villa [for Chairman Naguiat] was charged at the amount of MOP 48,000. Mr. Shoji states that "I understand that Mr. Okada explained to you in Macau that they were our business guests and we made reservations for them and all charges are billed to our company. While some of charges [sic] will be reimbursed by them, room charges were planned to be borne by us as ordinary business expenses. Since the amount charged is too much and beyond the ordinary room charge, our company will be put in a very difficult position to give reasonable explanations if we are inquired by someone. I would appreciate if you would reconsider this matter and charge us the original rate (free upgrade to Villa) since the party directly dealing with [sic] on this matter is our company rather than the each [sic] individual guest." (Emphasis added.)⁹⁷
- On or about December 10, 2010: After e-mails and phone messages following Mr. Shoji's September 20, 2010 e-mail, Mr. Coughlan has a phone conversation with Mr. Shoji, in which he advises Mr. Shoji that, after internal Wynn Macau discussions, the final decision was that Wynn Macau would not provide the requested free upgrade for the Villa occupied during the September 2010 visit.⁹⁸

The foregoing recitation of facts surrounding the September 2010 visit of Chairman Naguiat and his party to Wynn Macau demonstrates several significant elements of that visit:

- Mr. Okada considered these guests to be very important to his company.
- An effort was made from the outset to conceal Chairman Naguiat's identity and official status, to the point of not even wanting to advise Wynn Macau management and staff.
- With Mr. Okada's knowledge, Chairman Naguiat and his family were provided with approximately US 20,000 cash to use for gaming and also shopping
- Mr. Okada's representative sought to have Wynn Resorts fund a portion of the expenses incurred by Chairman Naguiat and his party, i.e., the free upgrade to a Villa.

⁹⁷ E-mail from Y. Shoji to I. Coughlan, November 10, 2010 [See Appendix]; interviews of I. Coughlan, December 29, 2011 and January 5, 2012.

⁹⁸ Interviews of I. Coughlan, December 29, 2011 and January 5, 2012; e-mail string between I. Coughlan and Y. Shoji and others, September 20 to December 9, 2010, subject: "Invoice and Statement for September Stay." [See Appendix]

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- Mr. Okada's representative expressed apprehension about Universal being able to justify the level of expenditures in the event of future inquiries.

There is evidence that Mr. Okada personally directed the payments and gifts provided to Chairman Naguiat and his family during their luxury stay at Wynn Macau's most expensive accommodation in September 2010. On October 5, 2010, Mr. Araki sent an email to Wynn Macau in order to arrange for a "second group of PAGCOR" checking into Wynn Macau on October 8, 2010. Clearly referring back to Chairman Naguiat's stay less than two weeks earlier, Mr. Araki writes: "Our Chairman Okada once again instructed us to take care of the group, but not like last time meaning that we will not take care of their room charges and others." (Emphasis added). Mr. Araki, who worked for Mr. Okada and personally supervised Chairman Naguiat's luxury stay at Wynn Macau, appears to confirm Mr. Okada's personal knowledge and control of the payments for Chairman Naguiat.⁹⁹

It is significant to note that the leadership of PAGCOR, which is appointed by the President of the Republic of the Philippines, changed effective June 30, 2010, when Benigno S. Aquino III assumed office as President of the Republic of the Philippines, succeeding Gloria M. Arroyo. Former PAGCOR Chairman Efraim C. Genuino, an Arroyo appointee, left office effective June 30, 2010, and Cristino L. Naguiat, Jr., President Aquino's appointee, assumed the position of Chairman and CEO of PAGCOR on July 2, 2010.

A review of the Aruze City Ledger Account records reveals that, after June 30, 2010, there are no charges attributed to Mr. Genuino or any of his family members who collectively had three (3) separate stays at Wynn resorts (Macau or Las Vegas) while Mr. Genuino was PAGCOR Chairman.¹⁰⁰ Conversely, the Aruze City Ledger Account reflects charges for Chairman Naguiat, his family, and key PAGCOR staff from Chairman Naguiat's "new" administration only after Naguiat became PAGCOR Chairman. This sequence is evidence that the hosting of these persons at Wynn Resorts, and payments made for them through the Aruze City Ledger Account, are solely related to PAGCOR, the Philippines government agency in charge of licensing and regulating Mr. Okada's business interests.

It is also clear that, having already received approval from PAGCOR in 2008 for a Provisional Licensing Agreement to develop a gaming business in the Philippines, Mr. Okada had a strong and continuing motive through 2010 and beyond to maintain favorable relations with the Chairmen and senior officials of PAGCOR. As previously noted, PAGCOR's primary governmental mission is regulating gaming businesses in the Philippines. Mr. Okada's project in Entertainment City Manila was prominently featured in PAGCOR's annual reports for

⁹⁹ Email from Matt Araki to Beatrice Yeung dated October 5, 2010. [See Appendix]

¹⁰⁰ The sole exception identified, Rodolfo Soriano, Jr., is listed on the Aruze City Ledger Account as having a single room charge on August 18, 2010. [See Appendix]

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2008,¹⁰¹ 2009¹⁰² and 2010.¹⁰³ The 2010 Annual report features photos and messages from Chairman Naguiat, and several other members of the new PAGCOR leadership. The 2010 Annual report makes it clear that two of the proponents, Bloomsbury and the SM Consortium, are constructing their resorts and are expected to complete their first phase within 2014. The other two proponents (one of which is Tiger, the provisional licensee for Mr. Okada's casino project) are in the initial design stages and are expected to break ground in 2012.

The continuing coverage of Mr. Okada's Manila Bay Resorts project in PAGCOR's annual reports indicates that PAGCOR's interest in and oversight of this project did not stop with the granting of the Provisional Licensing Agreement in 2008. Indeed, the very nature of the Provisional Licensing Agreement requires continued oversight by PAGCOR officials. As Lazaro advised, the Provisional Licensing Agreement was issued in relation to the "Bagong Nayong Philipino Manila Bay Tourism City" project, which is also referred to as "PAGCOR City." PAGCOR City is envisioned to be a Las Vegas-style gaming and entertainment complex. The project was designed to attract proponents with established experience in the hotel and gaming business. PAGCOR released the "Terms of Reference," which detailed a list of requirements to which project proponents must conform in order to qualify for a PAGCOR license to operate within PAGCOR City.

The "Terms of Reference" section provides, in pertinent part, a mandatory Minimum Investment of US 1 Billion, consisting of both equity and debt, and the submission of an associated Project Implementation Plan within 120 days from signing of the Provisional License and approval by PAGCOR (Paragraph 4, Section II, Terms of Reference). Furthermore, within 30 days of signing of the Provisional License, proponents are required to submit a Performance Assurance Bond in the amount of PHP 100 Million to guarantee the completion of the project (Paragraph 8, Section II, Terms of Reference). Within 15 days of signing of the Provisional License, proponents are also required to open an Escrow Account (with an initial deposit of at least US 100 Million) through which funds for the project will pass. This Escrow Account must maintain a balance of at least US 50 Million. (Paragraph 9, Section II, Terms of Reference).

Specifically, paragraph 13 of the Terms of Reference states the following in relation to achieving a regular, non-provisional, Casino Gaming license:

¹⁰¹ PAGCOR 2008 Annual Report, pp. 12-18, viewed January 25, 2012 at <http://www.pagcor.ph/annual-reports/annual-2008/pagcor-annual-report-2008.html>. [See Appendix]

¹⁰² PAGCOR 2009 Annual Report, pp. 16-19, viewed January 25, 2012 at <http://www.pagcor.ph/annual-reports/annual-2009/pagcor-annual-report-2009.html>. [See Appendix]

¹⁰³ PAGCOR 2010 Annual Report, pp. 24-26, viewed January 25, 2012 at <http://www.pagcor.ph/annual-reports/annual-2010/pagcor-annual-report-2010.html>. [See Appendix]

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“13. Issuance of License

A Provisional License will be issued to the winning proponent effective for the duration of the project development period and shall not exceed the approved completion date of the whole project.

The Regular Casino Gaming License will be issued upon completion of the Project and upon approval by PAGCOR of the report detailing the actual total cost of the Project to ensure the proponent's compliance with the approved project cost based on the Project Implementation Plan. The term of the License shall not exceed the term of PAGCOR as specified in RA 9487.

No sub-license will be issued nor allowed.” (Emphasis added.)

Thus, a Regular Casino Gaming License will be issued by PAGCOR upon (1) completion of the Project and (2) compliance with the approved project cost as approved by PAGCOR, based on the previously submitted Project Implementation Plan, including all other conditions as may be stipulated in the Provisional License Agreement.¹⁰⁴ Clearly, PAGCOR maintains an active regulatory role over gaming businesses after the issuance of a provisional gaming license. An operator who has already been granted a provisional license, therefore, would have a powerful business incentive to maintain favorable relations with PAGCOR's Chairman and senior leadership.¹⁰⁵

Finally, the PAGCOR officials with whom FSS spoke in December 2011 indicated that, upon “taking over” from the Genuino Administration in 2010, they conducted a review of previously granted gaming licenses to ensure that all issuance decisions had been done properly, indicating that the Naguiat Administration was exercising close review in monitoring of all licensees, including Mr. Okada.

¹⁰⁴ See research of Michelle Lazaro as expressed in her email dated January 30, 2012 to Mike McCall; See also “Terms of Reference” that were attached to the email. [See Appendix]

¹⁰⁵ A recent example of the extent of PAGCOR's continuing oversight of gaming operators can be found in the August 2011 issue of *Inside Asian Gaming* magazine. An article therein reported on claims by gaming operator Thunderbird Resorts, Inc. (“Thunderbird”) that PAGCOR had unlawfully attempted to force Thunderbird, through various allegedly selective enforcement actions, to renegotiate the revenue sharing agreement it had signed with the previous PAGCOR leadership under Mr. Genuino. See “Ball of Confusion,” dated August 10, 2011, *Inside Asian Gaming*, online edition, viewed January 26, 2011 at <http://www.asgam.com/features/item/1238-ball-of-confusion.html>. In the September 2011 issue, PAGCOR responded by making reference to various regulatory or enforcement functions it had been carrying out with regard to Thunderbird's casinos, up through the time that the dispute became heated. Among the functions mentioned were “resident monitoring teams” in Thunderbird casinos to “...guarantee the fair conduct of games...” as well as PAGCOR's serving of a notice of closure to Thunderbird in response to the disputed issues. See “Philippines Gaming Regulation—The Untold Story”, dated 23 September 2011, *Inside Asian Gaming*, online edition, viewed January 26, 2011. [See Appendix]. These statements by PAGCOR clearly indicate that PAGCOR maintains active regulatory monitoring of licensed gaming businesses in the Philippines and claims the authority to close down licensed operators.

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Mr. Okada's hosting and payments on behalf of PAGCOR Chairman Naguiat and his family at Wynn Macau, was most likely related to Mr. Okada's business interests in the Philippines, and would therefore constitute a prima facie violation of the FCPA both by Mr. Okada as well as by Aruze USA, Inc.

4. Possible Pattern of FCPA Violations Regarding Korean Government Officials

As stated previously, in recent years, Mr. Okada has been pursuing development of a resort complex in the Incheon Free Economic Zone in the Republic of Korea. Jong Cheol Lee, the Commissioner of the Incheon Free Economic Zone Authority, and apparently an Incheon government official, announced the signing of a Memorandum of Understanding on approximately October 27, 2011, between the Incheon Free Economic Zone ("IFEZ") and Okada Holdings Korea to develop a casino resort near the Incheon International Airport.¹⁰⁶

A review of the Aruze City Ledger Account disclosed charges paid for Jong Cheol Lee and other guests of his party at Wynn Las Vegas and Wynn Macau for the period November 2010 to June 2011. Registration documents provided by Wynn Resorts disclosed annotations for Mr. Lee and three other guests, indicating: "Share with Incheon Free Economic Zone." According to the Aruze City Ledger Account, the following amounts were paid for government Lee and his party:

Name	Relationship to Incheon Free Economic Zone	Location and Date of Stay	Total Charged to Aruze City Ledger Account
Jong Cheol Lee	Commissioner	WLV Nov 16-18 2010	1,597.16
		WM June 2011	1,134.55
Woo Hyeung Lee	Unknown	WLV Nov 16-18 2010	843.89
		WM June 2011	1,083.22
Min Yong Choi	Unknown	WLV Nov 16-18 2010	507.50
Ki Dong Hur	Unknown	WLV Nov 16-18 2010	779.20
TOTAL PAID			5,945.52

These payments made for and on behalf of possible Korean government officials may be part of a continuing pattern by Mr. Okada and his associates to commit prima facie violations of the

¹⁰⁶http://english.visitkorea.or.kr/enu/bs/tour_investment_support/pds/content/cms_view_1516066.jsp?gotoPage=&item=&keyword=, viewed January 14, 2012 [See Appendix]. <http://blog.daum.net/ikoreatimes/60>, viewed January 14, 2012. [See Appendix]

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FCPA. However, further investigation is required in order to determine (i) the nature of Mr. Okada's relationship with these guests; (ii) whether these guests actually had a government affiliation at the time of their 2010 visits to Wynn Las Vegas and Wynn Macau; and, (iii) the status of Mr. Okada's gaming initiative in Korea.

5. Mr. Okada's Continuing Refusal to Receive Wynn Resorts mandated FCPA Orientation Training and to Acknowledge Wynn Resorts Code of Conduct

Mr. Okada's apparent practice and pattern of committing prima facie violations of the FCPA must also be reviewed in the context of his ongoing and likely future conduct as a majority shareholder and director of Wynn Resorts. Since August, 2011, Mr. Okada has failed to make himself available for requisite Wynn Resorts Board of Directors training regarding the FCPA and compliance. Not only has every other board member accepted and received such training, but attempts to accommodate Mr. Okada (including Japanese translation of the FCPA training materials and telephonic availability for the training) have failed.

Moreover, since August 2011, Mr. Okada has also failed even to acknowledge in writing Wynn Resorts Code of Business Ethics and Wynn Resorts Policy regarding Payments to Government Officials. Mr. Okada's continuing failure to perform this requisite review and agreement to comply with Wynn Resorts Ethics and anti-bribery rules and regulations create risk to Wynn Resorts and its board. Such non-compliance by Mr. Okada also suggests that he intends to continue his apparent practice and pattern of making FCPA prohibited payments on a going-forward basis. Any such future conduct would substantially enhance the risks to Wynn Resorts and compromise Mr. Okada's fiduciary duties to Wynn Resorts.

On August 5, 2011, Cheryl Palmer, the executive assistant to Kevin Tourek, sent out an email memorandum on Mr. Tourek's behalf to all board members stating that per compliance policy requirements, all members must acknowledge in writing on an annual basis having reviewed (and agreeing to comply with) two separate documents: (1) the Company's Code of Business Ethics and (2) Policy Regarding Payments to Government Officials.¹⁰⁷ A copy of the form was attached to the email, as was a copy of both the Code and the Policy. The email asked for the executed form to be returned prior to August 26, 2011. All of the members of the board, except for Mr. Okada, returned a signed copy of the acknowledgement. Mr. Okada was reminded, via emails to his representatives on a number of occasions,¹⁰⁸ as well as via a letter from Kevin Tourek, dated November 2, 2011, to provide an executed copy of the

¹⁰⁷ See email from Cheryl Palmer dated August 5, 2011. [See Appendix]

¹⁰⁸ See emails contained in email from Kevin Tourek to Robert Shapiro, Esq., dated October 24, 2011. [See Appendix]

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acknowledgement form no later than November 15, 2011.¹⁰⁹ Mr. Okada failed to meet this deadline and, as of the date of this report, has yet to provide a signed copy of the form.¹¹⁰

In addition to his failure to return the fully executed Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials Acknowledgment Form, which, as previously indicated, was sent out in August of 2011, Mr. Okada has yet to return a secondary acknowledgement form that was attached to the annual Directors' & Officers' Questionnaire ("D&O Questionnaire"). This form was sent out to each member of the board of directors on January 9, 2012, as part of the overall D&O Questionnaire packet.¹¹¹ The packet contained instructions to "sign where indicated by the *sign here tabs*" and asked that the 2012 D&O Questionnaire be returned in its entirety on or before January 27, 2012. The two places that required Mr. Okada's signature were (1) on page 26 of the D/O Questionnaire itself, and (2) on page 50 on the separate Code of Business Conduct and Ethics Acknowledgment Form that was part of the overall D&O Questionnaire packet. Though Mr. Okada returned the signature page (page 26) of the D&O Questionnaire itself on January 27, 2012,¹¹² (which was confirmed to FSS on February 7, 2012), the fact that he has yet to return the separate Code of Business Conduct and Ethics Acknowledgment Form (which he has unequivocally pledged to do by virtue of signing on the signature page of the D&O Questionnaire) is telling and is consistent with his refusal to provide an executed copy of the Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials Acknowledgment Form that was sent to him in August of 2011. Though Wynn Resorts did not send to Mr. Okada the Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials attached to the D & O Questionnaire in Japanese language versions, which they did previously with respect to the code and policy sent out in August of 2011 after a request by Mr. Okada's attorney, Mr. Okada has never previously requested that the D & O Questionnaire itself be translated into Japanese. Mr. Okada was again reminded of his obligation to return the separate Code of Business Conduct and Ethics Acknowledgment Form (page 50 of the D&O Questionnaire packet) in an email from Roxane Peper to Mr. Okada's assistant, Takashi Matsui, on January 31, 2012.¹¹³ A copy of the form was attached to the email for Mr. Okada's convenience. This form remains outstanding.

¹⁰⁹ See letter from Kevin Tourek to Mr. Okada, dated November 2, 2011. [See Appendix]

¹¹⁰ In a letter dated December 1, 2011 to Robert Shapiro, Esq., outside counsel for Wynn Resorts, Gidon Caine, Esq., counsel for Mr. Okada, explained that the reason Mr. Okada did not sign the acknowledgment form was due to the fact that the materials had not been translated into Japanese. As of the date of submission of this Report, Mr. Okada has not yet submitted a signed copy of the acknowledgment form despite being provided with the requested translations, which were attached to a letter sent via email dated December 27, 2011 from Jeffrey Soza to Gidon Caine. [See Appendix]

¹¹¹ See Memorandum from Kim Sinatra to Board of Directors and Officers of Wynn Resorts, Limited, dated January 9, 2012, and 2012 Director's & Officers Questionnaire attached thereto. [See Appendix]

¹¹² See email from Takashi Matsui to Roxane Peper, dated January 27, 2012. [See Appendix]

¹¹³ See email from Roxane Peper to Takashi Matsui, dated January 31, 2012. [See Appendix]

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On February 1, 2012, Barry Brooks, one of Mr. Okada's attorneys, contacted Kevin Tourek, senior vice president and general counsel with Wynn Resorts, via email regarding "address[ing] the request, forwarded to Mr. Okada under cover of a memorandum from Mr. Wynn, that Mr. Okada execute and return to Wynn Resorts, Ltd. ("Wynn Resorts") a form of acknowledgment ("Acknowledgment") in regard to the Wynn Resorts Code of Business Conduct and Ethics (the "Code"). Most importantly, I wanted to emphasize that Mr. Okada agrees, with a deep sense of commitment, with the principles set out in the Code and agrees that it is in the best interest of Wynn Resorts and its shareholders that he, as a director, be a leader in observing and advocating for those principles. Also, and in any case, Mr. Okada believes that the requirements of the Code, and the spirit of those requirements, are keys to the future success of Wynn Resorts."¹¹⁴ In a follow-up phone call to that email, Mr. Brooks and Mr. Tourek discussed the ramifications of Mr. Okada not signing the policy, the possibility of interpretation issues, and concerns over whether Mr. Okada may have any conflict of interest issues. Mr. Brooks also asked for a copy of the D & O Questionnaire.¹¹⁵

6. Mr. Okada, his associates and companies, Universal have pursued independently a casino gambling development in the Philippines since 2008.

FSS interviewed Mr. Okada on February 15, 2012 and the results of that interview are set forth more fully in Section VI.¹¹⁶ In this interview, Mr. Okada asserted that all his efforts in the Philippines prior to the change of presidential administration in the summer of 2010 were undertaken on behalf of and for the benefit of Steve Wynn and Wynn Resorts, and that he only undertook to develop a gaming business in the Philippines independently subsequent to the change of presidential administrations.

On December 20, 2007, Aruze Corp. issued a press release entitled "Business Realignment and Future Business Development." The press release stated the following:

"The Company looks to acquire the licenses necessary to operate a casino resort in the Asian region, including Macau, and to commence operation of a casino resort on its own over the next business year. . . . For this know-how, which is vital from a management perspective, the Company intends to enlist the full cooperation of Wynn Resorts, Limited's Steve Wynn in its future pursuits regarding this project. For the purpose of successfully operating a casino resort in the Asian Region on an independent basis, the Company has received agreement from Steve Wynn that he will supply all necessary support, including active personal exchange with Wynn Resorts, Limited...."¹¹⁷ (Emphasis added.)

¹¹⁴ See email from Barry Brooks to Kevin Tourek, dated February 1, 2012. [See Appendix]

¹¹⁵ See email from Kevin Tourek to Kim Sinatra, dated February 2, 2012. [See Appendix]

¹¹⁶ Statements attributed to Okada during the February 15, 2012 interview are based on FSS' contemporaneous notes.

¹¹⁷ See JASDAQ press release for Aruze Corp., dated December 20, 2007, entitled "Business Realignment and Future Business," available at: http://www.universal-777.com/en/ir/releases/2007/20071220_c.pdf. [See Appendix]

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On April 25, 2008, Aruze Corp. issued another press release entitled “Casino Project in the Philippines.” This press release stated the following:

“As announced in its ‘Business Realignment and Future Business Development’ press release issued December 20, 2007, ARUZE GROUP seeks to commence the operation of a casino resort in the Asian region, which shall be conducted independently by ARUZE CORP. . . . Out of the above mentioned elements, where essential management-based know-how is concerned, the Company intends to proceed with the project under the full guidance of Wynn Resorts, Limited’s Steve Wynn.”¹¹⁸(Emphasis added.)

The press release identifies the location of the planned casino as a plot of land adjacent to “Bagong Nayong Pilipino Manila Bay Tourism City.”

The language in the press releases suggest that Universal’s intentions from the inception of the project were to develop a gaming business independently, and not for the benefit of Steve Wynn or Wynn Resorts.

7. Mr. Okada has stated that Universal paid expenses related to then-PAGCOR Chairman Genuino’s trip to Beijing during the 2008 Olympics.¹¹⁹

Mr. Okada was asked during his interview whether he met then-PAGCOR Chairman Genuino in Beijing during the 2008 Olympics. Mr. Okada stated that Universal’s President Tokuda made the arrangements for Chairman Genuino to travel to the Olympics. Mr. Okada explained that Mr. Tokuda was involved with the setting of the travel itinerary. When Mr. Okada was asked if the travel arrangements were “paid by Universal,” Mr. Okada responded “not 100% perhaps there were people certainly not all but I’m not familiar with the details.” Mr. Okada was then asked “To your knowledge, did Universal pay any of the associated costs of any of the travel of Mr. Genuino?” Mr. Okada answered “I don’t know whether or not the travel expense was paid by them. My understanding is that there was a certain amount of personal monies being spent from the attendees and participants including Chairman Genuino but I do not know details regarding this.” Mr. Okada was then asked “But is it your knowledge that some of those expenses were paid by Universal?” Mr. Okada answered: “Regarding the individual payment of personal monies, whether before or after, it was Universal that put together all of the expenses.”

Mr. Okada then explained that since Mr. Okada was previously invited to “one of the islands in the Philippines so in return well we decided that we would decide to do this in turn so I too would invite them as well. There was a time from where we had that understanding now that I recall. So I may have asked Mr. Tokuda to include this person [Genuino] as well.” The

¹¹⁸ See JASDAQ press release for Aruze Corp., dated April 25, 2008, entitled “Casino Project in the Philippines,” available at: http://www.universal-777.com/en/ir/releases/2008/20080425_c_pr2.pdf. [See Appendix]

¹¹⁹ Attributions from Mr. Okada’s interview are based on FSS contemporaneous notes.

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following question was then asked: “If there was a time that Genuino has invited you to the Philippines and in return for that you may have invited him or had some knowledge that Universal paid some of his expenses when he came to Beijing?” Mr. Okada responded: “I don’t like to be invited more than what is necessary because that would mean that I am vulnerable and I don’t like that. I was told that it was paid for and he insisted so I remember he had to be paid for in this way. So I remember that Mr. Tokuda said he should be included as well. I remember thinking that I had to return this in some way so I may have made that decision based on that memory.” (Emphasis Added).

Later in the interview, Mr. Okada stated that Chairman Genuino appeared to have a “few people” with him at the Olympics and, “I asked my staff why wasn’t he around and then my people said Mr. Genuino had a few people accompany him and he met with them to go shopping and once I heard that I do not recall now but again I don’t have a clear recollection of his whereabouts.”

VI. Summary of Mr. Okada’s February 15, 2012 Interview¹²⁰

Mr. Okada had four lawyers present over the course of the interview, including a Japanese interpreter/associate. Mr. Okada was given a full opportunity to answer all questions. He attended the interview voluntarily and at the end he was asked whether he wanted to explain anything else.

A. Apparent FCPA Violations regarding Philippine PAGCOR officials.

1. Mr. Okada admitted going to Macau on or about September 24 2010 to meet with PAGCOR chairman Naguiat at Wynn Macau. Mr. Araki called Mr. Okada on either September 24 or 23 to advise that Chairman Naguiat was at Wynn Macau.
2. Mr. Okada stated he flew to Macau from Japan for the sole reason of meeting Chairman Naguiat.
3. Mr. Okada stated the purpose of Chairman Naguiat’s visit to Wynn Macau was for business – as a new PAGCOR Chairman, Naguiat wanted to better understand the casino business. Mr. Okada stated that a number of his Universal employees, including Araki, were at Wynn Macau in order to assist Chairman Naguiat in this regard.
4. Mr. Okada stated that when he got to Wynn Macau he asked to see Ian Coughlan, Wynn Macau CEO.
5. Mr. Okada asked to see and met with Ian Coughlan at Wynn Macau but denied telling Coughlan that the guests were Universal VIPs and that they should be treated well.

¹²⁰ Certain sections of the report below are presented in an abbreviated form. See the attached notes of Mr. Okada’s interview for a more expansive description. [See Appendix]

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6. Mr. Okada emphatically denied saying this and related that there is no way he would have said something to that extent regarding special care: “I would have said this is a person with a position with PAGCOR, I would have said be normal and don’t do anything out of the ordinary.”
7. Mr. Okada stated he attended a dinner for approximately ten (10) people at Wynn Macau and that Chairman Naguiat also attended.
8. Mr. Okada stated that either Araki, Shoji or Universal paid for the dinner
9. Mr. Okada said that he did not know whether any other PAGCOR officials attended the dinner.
10. Mr. Okada stated that he and Naguiat did not discuss any business at the dinner which would have been rude.
11. Mr. Okada stated that he believed Naguiat’s wife was present at the dinner but that he was not introduced to her.
12. Mr. Okada stated he left early the next morning.

B. Mr. Okada’s Knowledge of and Response to Chairman Naguiat’s September 2010 stay

1. Mr. Okada stated that sometime after September 2010 he learned from Universal President Tokuda that the cost of Chairman Naguiat’s stay at Wynn Macau exceeded reasonable entertainment expenses.
2. Mr. Okada learned about the excessive September 2010 expenses from Takuda about three or four months after the events when the bills would come up.
3. Mr. Okada stated that he was never told the cost of Chairman Naguiat’s Wynn Macau stay nor did he ask anybody that question.
4. Mr. Okada stated that he understood that Chairman Naguiat had stayed in the most expensive accommodation at Wynn Macau. But he said “I heard later on that he was in one of the more expensive rooms. I heard this in the context of it would be a problem regarding our corporate policy....”
5. Mr. Okada stated that Chairman Naguiat’s wife was present at Wynn Macau. Mr. Okada did not know if his children were present.
6. Mr. Okada stated that he did not know that any cash had been provided to Chairman Naguiat.
7. Mr. Okada stated that he did not know that Universal employees had tried to hide the identity of Chairman Naguiat as a guest.
8. Mr. Okada stated that he did not know how long Chairman Naguiat had stayed at Wynn Macau.
9. Mr. Okada denied seeing two (2) emails from Shoji to Angela Lai at Wynn Macau, dated September 20th and 23rd 2010 respectively, which requested .

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reservations for a Universal VIP guest, “who would not be registered,” and arrangements to provide up to 5,000 US credit for each person staying at Naguiat’s Villa. Mr. Okada explained that although he saw his name in the email cc’s, he would not have seen either email because for the most part he does not use his PC.

10. Mr. Okada stated that internal Universal rules do not permit the payment of cash to government officials. Mr. Okada stated that no stay in the Villa in Wynn Macau could cost US 50,000
11. Mr. Okada stated that internal Universal rules permitted the payment of reasonable entertainment expense for government officials but did not know what amount was permitted.
12. Mr. Okada stated that the cost of Chairman Naguiat’s stay at Wynn Macau caused a “problem” for Universal and that as a result Araki was fired, and Shoji resigned after having been scolded by Mr. Okada.
13. Mr. Okada stated that he did not make any changes at his company or give anyone new instructions as a result of finding out about Naguiat’s stay in September 2010.
14. Mr. Okada said that it was possible that Chairman Naguiat would be billed for the cost of the stay.
15. Mr. Okada said, when he was asked about a reference in a Shoji email to posting all expenses to the Universal City Ledger Account, that he lacked any knowledge of such an account and said “I wonder if the City Ledger is in reference to our internal policy, as long as it is under that ceiling....”

C. Mr. Okada stated that he was aware of only one other guest stay at Wynn Macau that he believed was improperly paid by Universal.

1. Mr. Okada stated only a few weeks ago he learned from President Tokuda that Anthony Genuino, son of former PAGCOR Chairman Genuino, had stayed at Wynn Las Vegas in September of 2008 and that Universal had paid US 2300 for his stay.
2. Mr. Okada stated that Genuino would be sent the bill for this cost
3. Mr. Okada denied any knowledge of other PAGCOR officials staying at Wynn Resorts from 2008 through June 2011 with Universal paying for their expenses.
4. Mr. Okada stated that he had just instructed President Tokuda of Universal to conduct an investigation into Universal’s payment of entertainment expenses.
5. Mr. Okada blamed Shoji as the responsible party for these payments.
6. Mr. Okada stated that he yelled at Shoji for not reporting these matters to him and would have fired Shoji except that Shoji resigned. Mr. Okada stated that Tokuda

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did report these matters and Mr. Okada believed that Shoji was also in a position to know all about what had happened but had failed to report it to him.

7. Mr. Okada stated that Shoji was a trusted employee who had worked closely with him since 2002 and should have reported these matters to him.
8. Mr. Okada stated that they were just starting this investigation and that bills may be sent to certain of these guests for the expenses which Universal paid.
9. Mr. Okada especially blamed Mr. Shoji since he was the head of the company's compliance committee from 2002-2010.
10. Mr. Okada stated that he last met with Chairman Naguiat in the Philippines during January 2012 in order to seek land leasing approval from PAGCOR.
11. Mr. Okada stated that Universal had an expense policy but he didn't know what the amounts were. Mr. Okada stated that he was unfamiliar with the specific details of his compliance policy because he was too high within the company. He left it to others to handle the details of the policies.
12. Mr. Okada was asked a series of questions regarding about a dozen other PAGCOR officials who stayed at Wynn Macau or Wynn Las Vegas during 2010 and 2011 for whom Universal paid their expenses.
13. Mr. Okada denied having authorized any of these payments and said that he would not have authorized such payments if the guests were PAGCOR officials.
14. Mr. Okada stated that on one occasion he met Jose Miguel Arroyo, husband of Former Philippine President Gloria Arroyo, but did not know that Jose Arroyo had stayed at Wynn Las Vegas in November 2009, with Universal paying for his expenses totaling US 4,642.
15. Mr. Okada stated that he met Chairman Naguiat approximately 4 or 5 times since Naguiat's Chairmanship in June 2010 and that these meetings always involved official matters.
16. Mr. Okada stated that he told Tokuda in December of 2011 to investigate these matters.
17. Mr. Okada stated that December was the first time he asked Mr. Tokuda investigate these charges for Universal.
18. Mr. Okada stated further that Shoji was a trusted employee whom he had met with "very frequently." During the time period in September 2010 when Shoji was setting up the Naguiat visit, Shoji told Mr. Okada nothing about Naguiat.

D. Okada statements to the Board of Directors Regarding doing business in Asia

1. Mr. Okada stated that he could not specifically remember attending a Wynn Resorts Board of Directors meeting in February 2011.

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2. Mr. Okada stated that he did not remember attending a Wynn Resorts Board of Directors meeting where bribery was discussed.
3. Mr. Okada denied ever stating to Wynn Resort Directors words to the effect that “it was a matter of hiring the right people and that you must pay other people.” He responded “absolutely not, that’s a lie.”
4. Mr. Okada denied telling fellow board members words to the effect that “you have to follow local customs and that’s why you have consultants.”
5. Mr. Okada also denied ever stating to fellow board members words to the effect “I wouldn’t bribe someone but would have someone else bribe that person.”
6. As to bribing someone in the Philippines, Mr. Okada stated that “there is no need to do that in the Philippines even because we are in the position to invest.”
7. Mr. Okada also denied ever stating words to the effect that “in Asia, it is okay to give gifts to government officials.” His response was “absolutely not.”
8. Mr. Okada stated that he had been a member of the Wynn Resorts Board of Directors since 2005 or 2006. When asked about his duties or responsibilities as a director of Wynn Resorts, Okada stated that he had to “ensure socially just company, there should be no illegal activities, and that I have to help them be successful and grow as a company.”
9. Mr. Okada was asked if he had ever read the Wynn Resorts Code of Conduct to which he responded, “No because it is in English, no I cannot.”
10. Mr. Okada was asked if he had accepted Wynn Resorts Board of Director FCPA training in 2011, to which he replied that he had received some documents but sent them to his lawyers.

E. Doing Business in the Philippines

1. Mr. Okada stated that prior to the new Philippine administration taking over in 2010, his efforts to conduct a gambling business in the Philippines were being done for Wynn Resorts and that he was reporting to Steve Wynn about these activities.
2. Mr. Okada said before the new Philippine administration in 2010 “All of the conversation between myself and Genuino was for the sake of explaining to Mr. Wynn.”
3. Mr. Okada stated that a press release from Aruze Corp. dated April 25, 2008, that announced Aruze would independently operate a casino project in the Philippines, had not been presented to him for approval.
4. Mr. Okada stated that neither Steve Wynn nor Wynn Resorts had invested any money in the Philippine business initiative which he had been conducting since 2008.

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5. Okada stated that Universal had invested between US 300-400 million in 2008 to acquire the land for the Manila Bay project.
6. When asked whether Mr. Wynn or Wynn Resorts invested any money in the US 300-400 million purchase, Mr. Okada stated that “Wynn Resorts had no involvement whatsoever.”
7. Mr. Okada stated that it was only after the new Aquino presidency in June of 2010 that he decided to pursue a Philippine gaming project independently.
8. Mr. Okada stated that this land had been acquired by a company called Eagle I Land Holdings in which Aruze USA had an ownership interest.
9. Mr. Okada stated that at the time of the land acquisition in 2008, Eagle I Land Holdings was 60% owned by Filipino nationals. However, when asked to identify the 60% ownership today, he responded “I know of them I know who they are but I don’t remember their names.”
10. Mr. Okada stated that he was aware of the Philippine legal requirement that land be 60% owned by Filipinos.
11. Mr. Okada stated that neither Tiger or Aruze had a provisional gaming license for the Philippines.
12. Mr. Okada does not know whether a deposit was made by Universal in order to pursue the Filipino gaming initiative.
13. It was his understanding that to get a gaming license in the Philippines you needed to do certain things beforehand and that he asked questions on Wynn’s behalf as to what had to be done.
14. Mr. Okada stated that Platinum Gaming and Entertainment was a Philippine company run by Soriano.
15. Mr. Okada stated that he did not know Paolo Bombase or Manuel Camacho as shareholders of Eagle I and Eagle II.
16. Mr. Okada stated that Masato Araki may have lent his name as a stockholder to Eagle I and Eagle II but that Mr. Okada did not know the details. Mr. Okada stated that he did not know whether Manabu Kawasaki, who was another Universal employee, was a stockholder of Eagle I or Eagle II.

F. Possible Payments by Universal to Korean Government Officials.

Mr. Okada stated that he is interested in the IFEZ for possible investment. Mr. Okada stated that he personally set up arrangements in 2009 or 2010 for a Korean delegation from the IFEZ to visit Las Vegas. According to Mr. Okada, this delegation was led by a Mr. Lee, who was “seconded” to IFEZ by the Korean government. Mr. Okada invited this delegation to see the Venetian.

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Mr. Okada stated that “at the very beginning” he discussed the “issue of expense” and the Korean side said they had to pay for their own expenses as government officials. Mr. Okada stated that the Korean delegation stayed at Wynn Las Vegas and paid for their rooms. When told that Universal in fact paid for the Koreans’ rooms, Mr. Okada stated “It’s possible we paid in advance the first time but then they paid later. I am personally in charge of the Koreans.” When Mr. Okada was then asked if he knew that was done he responded “I am certain it was done.”

Mr. Okada later repeated that the Koreans paid for their own travel. When advised that Universal paid for Commissioner Lee and others to stay at Wynn Macau in 2011, and Wynn Las Vegas in 2010, Mr. Okada stated that “It may have been that we made a temporary payment to be reimbursed later but in any case for Korea all trips must be applied for with the City Hall and they need to get prior approval.”

Mr. Okada later repeated that he did not authorize Universal to pay approximately US 6,000 worth of room charges for Commissioner Lee and other IFEZ officials for stays at Wynn Resorts. When asked if it would be against “Universal’s policy” to pay such travel expenses, Mr. Okada repeated that the Koreans would pay for their own expenses. He added that “Maybe it was the case where Universal made a temporary payment to be reimbursed later and all this would be paid by ‘admin official.’”

G. Mr. Okada Instructs Mr. Tokuda to Conduct an Investigation

Mr. Okada stated that since about 2008-2009, Universal has had both “ordinary” and “extraordinary” rules about paying entertainment expenses regarding government officials. However, he stated that he did not know the “specific details.” Mr. Okada stated that “cash” could not be given but that he did not know the dollar amount limit for providing government officials with meals.

Mr. Okada stated that after learning from Mr. Tokuda about the excessive expenses paid by Universal for Chairman Naguiat’s September 2010 stay at Wynn Macau, Mr. Okada did not take any steps or give instructions to prevent a recurrence. Indeed, Mr. Okada stated his belief that Universal’s corporate policy as it exists today is “plenty on its own.”

Mr. Okada stated that “within the last week or so” he learned from Mr. Tokuda that the son of then-PAGCOR Chairman Genuino stayed at Wynn Las Vegas in 2008 and that Universal had paid US 2,800 for his expenses. Mr. Okada said this was “inexcusable” and that he had given instructions to have him [Genuino] billed directly. Mr. Okada further stated that Mr. Tokuda had found “several more” of these instances but that Mr. Okada did not “know the details.” Mr. Okada stated that in regard to Chairman Naguiat’s stay at Wynn Macau, perhaps an invoice should also be sent to him as the customer.

Mr. Okada stated that “it was just yesterday” that he heard from Tokuda about “these issues being raised.” After being asked what he knew about a list of PAGCOR officials whose

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stays at Wynn Macau and Wynn Las Vegas were paid by Universal from 2008 – 2011, Mr. Okada denied any knowledge of these events. However, Mr. Okada stated that “everything I believe [FSS] mentioned matches with what Mr. Tokuda is investigating right now. And I will have him write a paper that lists all the countermeasures and a progress report and what has been wrapped up and so forth.”

Mr. Okada stated that in approximately December 2011, he “clearly instructed” Mr. Tokuda to conduct an investigation about these matters. At the end of the interview, Mr. Okada stated that “I will look into all the expense that you have asked about and if it is someone who has an existing relationship I will for sure bill that person.”

VII. Conclusions

The investigation has produced substantial evidence that directly relates to Mr. Okada’s suitability under Nevada law as both a major shareholder and director of Wynn Resorts.

Nevada Gaming Commission Regulations regarding individual suitability issues encompass, among other things, a person’s “good character, honesty and integrity,” and whether a person’s “background, reputation and associations will not result in adverse publicity for the State of Nevada and its gaming industry” (Section 3.090 of the NRS). The NRS also require that a covered person satisfy the Commission that such person has “adequate business probity” (Section 463.170, paragraph 3).

Both Aruze USA , a Nevada corporation, and Mr. Okada personally, as a Director, President, Secretary and Treasurer of Aruze Inc., are covered parties under the jurisdiction of the FCPA.

As set forth above, the investigation has produced substantial evidence that Mr. Okada, his associates and companies have apparently been engaging in a longstanding practice and pattern of committing prima facie violations of anti-bribery laws, particularly the FCPA.

The testimonial and documentary evidence appear to prove that, since at least 2008, Mr. Okada, his associates and companies have made over US 110,000 in payments to his chief gaming regulators (2) in the Philippines (PAGCOR), their families and associates. Mr. Okada is building a multi-billion dollar gaming business and operation in the Philippines.

The practice and means of making these payments varied slightly but were regularly and repeatedly arranged in the same manner. For example, between June 2008 and August 2010, former PAGCOR Chairman Efraim Genuino (February 2001 – June 30, 2010), his son and other PAGCOR government officials, were hosted by Mr. Okada, his associates and companies at either Wynn Resorts Las Vegas or Wynn Resorts Macau. Mr. Okada, his associates and companies would arrange and pay thousands of dollars to cover the expenses of Chairman

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Genuino, his son and other then-current PAGCOR officials in his party. These payments were made by Mr. Okada, his associates and companies, using the City Ledger Account, which contained an average balance of US 100,000 funded and replenished by Universal. International money transfers and the facilities of interstate commerce were used to make these payments.

There is substantial evidence to show that Chairman Genuino's June 2010 stay at Wynn Macau was due to the fact that he was then Mr. Okada's principal Philippine gaming regulator. This is also demonstrated by the fact that after Chairman Genuino left his PAGCOR office in June 2010, he and his family were no longer the beneficiaries of such payments at Wynn Resorts facilities.

However, as set forth above in greater detail, Mr. Okada's current chief Philippine gaming regulator, Chairman Cristino Naguiat (July 2, 2010 – present) and his family quickly succeeded Chairman Genuino as the beneficiaries of payments by Universal for stays at Wynn Resorts Las Vegas and Wynn Resorts Macau (September 2010 in Macau; November 2010 in Las Vegas; and June 2011 in Macau, just over seven (7) months ago).

These payments were made using Mr. Okada's City Ledger Account, as was done regarding payments on behalf of the former PAGCOR Chairman. The evidence further suggests that Chairman Naguiat's luxury stays at Wynn Resorts facilities were fully known to Mr. Okada, who actively involved himself in some of the arrangements. For example, Chairman Naguiat's September 22-26, 2010 stay at Wynn Resorts Macau luxury Villa 81, the most expensive accommodation at Wynn Resorts Macau (about 7,000 square feet in size, which then cost about US 6,000 per day), was intended by Mr. Okada and his associates to be kept secret and concealed within Wynn Resorts Macau records. Initially, Mr. Okada's associates arranging for Chairman Naguiat's September 2010 stay at Wynn Resorts Macau purposefully withheld Naguiat's name and had him registered as an "Incognito" VIP guest of Universal, utilizing the named reservation of "Rogelio Bangsil" (another then-senior PAGCOR official). Chairman Naguiat then stayed at the Wynn Resorts Macau for four days, together with his wife, three children and a nanny, without ever once introducing himself to the constantly attending Wynn Resorts Macau VIP service managers.

Mr. Okada's associate, who made this reservation for Chairman Naguiat, requested a "more gorgeous room, such as "Villa" and "the best butler," for this unnamed "VIP for Universal," who turned out to be the chief gaming regulator for the Philippines. The evidence also shows that on September 24, 2010, Mr. Okada personally made clear (via an interpreter) to Ian Coughlan, the Wynn Resorts Macau Executive Director and President, that Chairman Naguiat and his party were important guests and that Mr. Coughlan should make sure that his staff took good care of them. The evidence further shows that on the evening of September 24, 2010, Mr. Okada hosted a dinner at Wynn Macau for Chairman Naguiat (and approximately 13 others). The US 1,673.07 cost of this dinner was charged to Mr. Okada's room.

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The testimonial and documentary evidence also shows that despite deliberate attempts to conceal Chairman Naguiat's identity while a guest at Wynn Resorts Macau in September 2010, hotel staff, acting on their own, soon identified Chairman Naguiat by means of a photo from the PAGCOR website. Their interest in doing so was sparked by the fact that the senior PAGCOR guest known to them, Mr. Bangsil, exercised great deference to Chairman Naguiat, who the staff determined must be the 'boss'. Nevertheless, the VIP service providers continued to refer to Chairman Naguiat only as "sir," thereby following the wishes and directions of Chairman Naguiat and Mr. Okada's associates. The evidence also shows that several weeks after Chairman Naguiat's intended "Incognito" stay at Villa 81, Mr. Okada's associates became concerned about the high cost of Chairman Naguiat's luxury stay at Wynn Resorts Macau. Specifically, Mr. Okada's associate advised Wynn Resorts Macau that the amount being charged for Chairman Naguiat's stay was too much over an ordinary business expense. Mr. Okada's associate then asked if Wynn Resorts Macau "could reconsider the matter [Chairman Naguiat's stay] and charge us [Mr. Okada's company] the original rate [and free upgrade to a Villa] since the party directly dealing with on this matter is our company [Mr. Okada's company] rather than each individual guest [Chairman Naguiat]." Mr. Okada's associate further stated that "since the amount charged [for Chairman Naguiat] is too much beyond the ordinary room charge, our company [Mr. Okada's company] will be put in a very difficult position to give reasonable explanations if we are inquired by someone." (Emphasis added).

Despite Mr. Okada's associate's efforts to have Wynn Resorts Macau reduce these payments and assist in covering up the beneficial amounts received by Chairman Naguiat, Wynn Resorts Macau denied this request.

Mr. Araki's later email ("Our Chairman Okada once again instructed us to take care of the group [PAGCOR], but not like the last time...") to Wynn Macau, dated October 5, 2010, also tends to confirm Mr. Okada's personal knowledge and direction of the payments made on behalf of Chairman Naguiat and his family for their luxury stay at Wynn Macau for September 22-26, 2010.

The evidence also shows that on September 24-25, 2010, Mr. Okada's associates obtained a total of US 20,000 cash from Wynn Resorts Macau's main cage as "cash advances" for Chairman Naguiat, his family and party. This same associate of Mr. Okada returned approximately US 503 of this advance on September 26, 2010 as the remainder from Chairman Naguiat's party. Mr. Okada's City Ledger Account was again used to pay for this advance.

The evidence also shows that the PAGCOR-related payments made by Mr. Okada and his associates are not the result of any misunderstanding of the applicable anti-bribery laws, including the FCPA. Conversely, by his own statements and declarations to fellow Wynn Resorts Board members, Mr. Okada apparently believes that there is nothing wrong with making payments and gifts to government officials when doing business in Asia. When advised by fellow directors and Wynn Resorts lawyers that such payments are bribes strictly prohibited by

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the FCPA and other laws, Mr. Okada responded that third party intermediaries or “consultants” can be used to make the payments.

The best evidence of Mr. Okada’s belief that it is permissible to make payments to government officials is his admission that Universal paid expenses for then-PAGCOR Chairman Genuino’s trip to the 2008 Beijing Olympics. Mr. Okada explained that since Mr. Genuino had previously invited Mr. Okada to “one of the islands in the Philippines,” Mr. Okada and Universal’s President Tokuda in turn had Universal pay for expenses related to Genuino’s trip to Beijing, which Mr. Okada stated was arranged by President Tokuda. This admission by Mr. Okada is consistent with his February 24, 2011 statements to board members that there is nothing wrong with making payments and gifts to government officials.

The evidence about the corporate structures utilized by Mr. Okada and his associates to initiate his multibillion dollar gaming business in the Philippines also appears to demonstrate Mr. Okada’s intent to do business as he desires, regardless of the applicable laws and regulations. FSS’s examination of the corporate documents relating to Mr. Okada’s gaming initiative in the Philippines appears to show that he has used a complex web of corporate structures and companies to evade laws which require Philippine nationals to own 60% interest in all real estate. A separate legal analysis by a Philippine attorney confirms this finding and suggests that Mr. Okada’s Philippine gaming initiative has been set up in violation of applicable law.

Additionally, the preliminary evidence also shows that in connection with Mr. Okada’s efforts to develop a gaming business in IFEZ, Mr. Okada and his associates may be engaging in the same pattern of proscribed payments to government officials. The preliminary evidence shows that in October 2011, Mr. Okada’s company signed a Memorandum of Understanding with IFEZ to develop a casino resort near the Incheon International Airport. Preliminary information indicates that IFEZ is overseen by the Incheon Free Economic Zone Authority, apparently part of the City of Incheon government. Mr. Okada’s City Ledger account reflects that from November 2010 through June 2011, four (4) individuals, including IFEZ Commissioner Jong Cheol Lee, had two stays at Wynn Resorts Las Vegas and Wynn Resorts Macau, where payments totaling US 5,945.52 were made on their behalf through Mr. Okada’s City Ledger account. Preliminary internet research identifies Jong Cheol Lee as the current IFEZ Commissioner, a position he has held since July 2010. It is not clear at this preliminary stage i) whether Mr. Okada’s announced gaming investment and operation within IFEZ has received any gaming licensing, and ii) whether the three (3) guests who accompanied Commissioner Lee were then Korean government officials.

The investigation has established that despite requests by Wynn Resorts since August 2011 that Mr. Okada acknowledge in writing that he has reviewed (and agreed to comply with) Wynn Resort’s “Code of Business Ethics” and “Policy Regarding Payments to Government Officials,” Mr. Okada has failed to do so.

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Finally, Mr. Okada was interviewed by FSS on February 15, 2012 by FSS and was given the opportunity to present his version of the facts. Mr. Okada denied knowledge of Chairman Naguiat staying “incognito” at Wynn Macau in September 2010. He also denied knowledge that Mr. Shoji was actively involved in arranging for Chairman Naguiat’s stay. Although Mr. Shoji’s emails asking that Chairman Naguiat’s identity be kept secret, and that Chairman Naguiat be provided with cash in connection with his visit, were copied directly to Mr. Okada, the latter stated that because he rarely uses his personal computer, he would not have seen such emails. Mr. Okada acknowledged flying to Macau on September 24, 2010 in order to visit Chairman Naguiat but denied telling Ian Coughlan that Chairman Naguiat was an important Universal guest who should be treated well. Conversely, Mr. Okada stated that there is “no way” he would have said something like that, but would have said “be normal and don’t do anything out of the ordinary.” The substantial evidence relating to Chairman Naguiat’s September 2010 stay at Wynn Macau, including emails, Coughlan’s statements, and the facts and reasonable inferences regarding this evidence, cast substantial doubt on Mr. Okada’s credibility.

Mr. Okada also vehemently denied making statements to fellow board members to the effect that doing business in Asia requires and permits bribes to be made to government officials. Mr. Okada’s denials are directly contradicted by many of his fellow board members.

Similarly, Mr. Okada insists that all of his efforts to establish a gambling business in the Philippines prior to 2010 were undertaken solely on behalf of Wynn Resorts. His insistence is largely contradicted by the actions which he undertook. First, Mr. Okada and Universal invested US 300-400 million to buy property in the Manila Bay Entertainment Zone, which was to be used for his gaming operation. Mr. Okada admitted that Wynn Resorts had “no money involved in this investment.” Secondly, Mr. Okada and Universal set up an elaborate corporate structure in order to initiate, and operate in the future, a multimillion dollar casino operation. Wynn Resorts had no participation in any of these corporate initiatives or structures, all of which were controlled by Universal and Mr. Okada. Third, the provisional gaming license, which is required in order to establish a gaming business in the Philippines, was procured by Mr. Okada and his companies, without any relation to Wynn Resorts. Finally, when shown an April 25, 2008 Aruze Corp. press release, which states that the Aruze casino operation will be independently developed by Aruze with the mere intent that Wynn Resorts help guide its project, Mr. Okada denied any knowledge of this press release.

In sum, the substantial evidence developed by this investigation and set forth above, based on witness interviews, public information, documentary and electronic data, provide the Compliance Committee and Board of Directors a factual basis to review Mr. Okada’s continued suitability to be a major shareholder and director of Wynn Resorts.

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

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

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

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Plaintiff,

vs.

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

Defendants.

CASE NO:

NOTICE OF REMOVAL

NOTICE OF REMOVAL, Page 1 of 7

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

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

9
10 **SUMMARY**

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

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

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

PROCEDURAL HISTORY AND BACKGROUND

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

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

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

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

GROUND FOR REMOVAL

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

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

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

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

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

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

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

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

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

14
15 **UNIFORM INTERPRETATION OF THE FCPA**

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

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

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

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

JURISDICTION

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

OTHER PROCEDURAL REQUIREMENTS

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

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

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

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

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

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

11 DATED: March 12, 2012.

12 Respectfully submitted,

13 LIONEL SAWYER & COLLINS

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

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

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

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

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

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

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Plaintiff,

vs.

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

Defendants.

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

Counterclaimants,

vs.

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

**COUNTERCLAIM AND ANSWER
OF ARUZE USA, INC. AND
UNIVERSAL ENTERTAINMENT
CORPORATION**

JURY DEMAND

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

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Counterdefendants.

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COUNTERCLAIM

JURISDICTION AND VENUE

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

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

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

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

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

6. This Counterclaim arises because this purported redemption would:

- (a) violate the express terms of agreements between Wynn Resorts and Aruze USA;
- (b) allow Mr. Wynn and others to profit unjustly from their illegal acts and a process that

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

1 was corrupt and unfair; and (c) subject Aruze USA to an unconscionably punitive remedy
2 based on an unproven pretext.

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

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

25 9. The Wynn Directors breached their fiduciary duties to Wynn Resorts and to
26 Aruze USA in not undertaking a thorough, independent, and objective examination of the
27 law, facts, and evidence before purporting to usurp the role of the gaming authorities in
28 finding Aruze USA "unsuitable." Similarly, they breached their duties by then voting for

1 a wholly unnecessary and improper “redemption” on unconscionable terms. As a result,
2 the Wynn Directors cannot rely on the “business judgment rule,” as they did not act in a
3 fully informed, good faith, and independent manner, and their actions are both contrary to
4 the law and not objectively reasonable.

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

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

20 **PARTIES**

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

27 13. Counterclaimant Universal (f/k/a Aruze Corp.) is a corporation organized
28 and existing under the laws of Japan. Universal manufactures and sells pachislot and

1 pachinko machines. Universal is registered with the Nevada Gaming Commission, and
2 was deemed suitable by the Nevada Gaming Commission as a 100% shareholder of Aruze
3 USA. Mr. Okada is the Chairman of the Board of Universal.

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

8 15. Counterdefendant Stephen A. Wynn is the Chairman of the Board and Chief
9 Executive Officer of Wynn Resorts and is a resident of Nevada. Mr. Wynn owns
10 10,026,708 shares² of the common stock of Wynn Resorts.

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

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

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

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

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

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

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

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

7 23. Counterdefendant Marc D. Schorr is a director and Chief Operating Officer
8 of Wynn Resorts and, on information and belief, is a resident of Nevada. Mr. Schorr owns
9 250,000 shares of the common stock of Wynn Resorts.

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

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

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

GENERAL ALLEGATIONS

I. MR. OKADA AND STEVE WYNN LAUNCH WYNN RESORTS

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

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

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

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

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

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

14 **B. The Stockholders Agreement**

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

20 33. On April 11, 2002, prior to the filing of the Articles of Incorporation for
21 Wynn Resorts, the three owners of LLC interests in Valvino – Mr. Wynn, Aruze USA,
22 and Baron Asset Fund – entered into the Stockholders Agreement, which imposed certain
23 restrictions on the sale of the stock they were to receive in “NewCo,” the entity that would
24 become Wynn Resorts. As described in Wynn Resorts’ prospectus, dated October 29,
25 2002, “the stockholders agreement establishes various rights among Mr. Wynn, Aruze

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

1 USA and Baron Asset Fund with respect to the ownership and management of Wynn
2 Resorts.”

3 34. Notably, the parties to the Stockholders Agreement stated that the terms of
4 that agreement were a condition of transferring their LLC interests in Valvino to Wynn
5 Resorts. Specifically, the Stockholders Agreement stated “as a condition to their
6 willingness to form [Wynn Resorts], either through the contribution of their interests in
7 the LLC or through a different technique, the Stockholders are willing to agree to the
8 matters set forth” in the Stockholders Agreement.

9 35. Wynn Resorts publicly acknowledged the impact of the Stockholders
10 Agreement on the Company and the shareholders, disclosing in Wynn Resorts’ Form S-
11 1/A filed with the SEC on October 7, 2002 that the Stockholders Agreement established
12 “restrictions on the transfer of the shares of Wynn Resorts’ common stock owned by the
13 parties to the stockholders agreement.” In this way, Wynn Resorts – and all other
14 stockholders – were aware that there were limitations written in the Stockholders
15 Agreement on the transferability of the Wynn Resorts stock held by Aruze USA.

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

1 37. Apart from removing Aruze USA from the purview of later-adopted
2 redemption provisions in Wynn Resorts' Articles of Incorporation, the Stockholders
3 Agreement also contained provisions that allowed Mr. Wynn to nominate a bare majority
4 of directors, and Aruze USA to nominate all remaining directors. Although Aruze USA
5 repeatedly tried over the years to nominate directors, Mr. Wynn refused to allow this to
6 happen, instead nominating all of the directors himself to ensure and perpetuate his
7 complete control of the Board.

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

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

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

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

21 **D. The Contribution Agreement**

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

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

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

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

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

16 (emphasis added) (The Contribution Agreement defined the “Stockholders Agreement” as
17 the agreement dated April 11, 2002, and “as it may be amended and/or restated from time
18 to time.”). Accordingly, any attempt by Wynn Resorts to claim that it could unilaterally
19 impose a redemption provision on Aruze USA is contradicted by the express language of
20 Wynn Resorts’ agreements with Aruze USA.

21 **E. After Securing Aruze USA’s Contribution, Steve Wynn Unilaterally**
22 **Amends the Articles of Incorporation**

23 44. After entering into the Contribution Agreement, but before transferring the
24 LLC interests in Valvino, Mr. Wynn secretly and unilaterally changed Wynn Resorts’
25 Articles of Incorporation to include a provision that purportedly allows Wynn Resorts to
26 “redeem” stock held by stockholders under certain circumstances. At this time, Mr. Wynn
27 was the sole stockholder and director of Wynn Resorts.

28 45. Under the Stockholders Agreement, Mr. Wynn had power of attorney to
transfer the LLC interests in Valvino to Wynn Resorts. Although the Contribution
Agreement obligated Mr. Wynn to “as soon as practicable . . . deliver or cause to be
delivered to Holders certificates representing the Common Stock[.]” Mr. Wynn
deliberately delayed the contribution of the LLC interests in Valvino interests to Wynn

1 Resorts. Among other things, this delay meant that, although he had already received
2 Aruze USA's commitment via the Contribution Agreement and the Stockholders
3 Agreement, Mr. Wynn would continue to maintain unilateral control over Wynn Resorts
4 for the period of the delay. This enabled Mr. Wynn to improperly change the Company's
5 Articles of Incorporation in an attempt to achieve Mr. Wynn's own long-term interests at
6 Aruze USA's expense. This deliberate delay, and the intervening acts taken by Mr. Wynn
7 before he fulfilled the terms of the Contribution Agreement, breached Mr. Wynn's
8 fiduciary duties to Aruze USA.

9 46. On September 16, 2002, Mr. Wynn secretly and unilaterally amended Wynn
10 Resorts' Articles of Incorporation. Although this change would purport to fundamentally
11 alter the securities received by Aruze USA, Mr. Wynn made the change unilaterally,
12 without providing notice and affording Aruze USA the opportunity to vote on the changes,
13 as required in order to make the provision enforceable. The language Mr. Wynn
14 unilaterally added to the Articles of Incorporation provided, in pertinent part:

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

19 47. If Mr. Wynn had done what he was bound to do pursuant to the trust and
20 duties placed in him under the Stockholders Agreement and Contribution Agreement, and
21 transferred the LLC interests in Valvino to Wynn Resorts *before* adding the redemption
22 provision, Aruze USA would have had the right under Nevada law to vote on the changes
23 to Wynn Resorts' Articles of Incorporation. On information and belief, Mr. Wynn's
24 actions were a deliberate effort to induce Aruze USA to agree to transfer the LLC interests
25 in Valvino, and then change the nature of the Wynn Resorts stock that Aruze USA would
26 receive in exchange for those interests. Aruze USA relied on the absence of a redemption
27 provision in making its sizable contribution of interests to Wynn Resorts. Although the
28 first acts perpetrated in furtherance of this fraud occurred in 2002, damages only accrued

1 recently, when Wynn Resorts purported to use the redemption provision to redeem Aruze
2 USA's shares in 2012 for a fraction of their true value.

3 **F. Wynn Resorts Goes Public**

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

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

11 50. On April 28, 2005, Wynn Las Vegas opened. It was an instant success. On
12 September 8, 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
14 have been possible without the capital funding, support, and expertise of Aruze USA and
15 Mr. Okada.

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

19 **G. The Close and Trusting Relationship of Steve Wynn and Mr. Okada**

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

24 53. For example, at hearings before the Nevada State Gaming Control Board
25 and Nevada Gaming Commission, on June 4 and 17, 2004, respectively Mr. Wynn
26 affirmed that "Mr. Okada was not only suitable" to receive a gaming license "but he was
27 desirable." Repeatedly referring to Mr. Okada as his "partner," Mr. Wynn said Mr. Okada
28 was "dedicated to the pursuit of excellence."

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

8 55. And, indeed, Mr. Okada trusted Mr. Wynn. Mr. Wynn knew this, and
9 callously and illegally set out to exploit this trust for his advantage.

10 **II. UNIVERSAL DISCLOSES AND ULTIMATELY PURSUES FOREIGN**
11 **DEVELOPMENT PROJECTS**

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

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

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

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

26 59. From that point on, Wynn Resorts and Universal had an agreement.
27 Universal could pursue a project in the Philippines, but at least for the time being, it would
28 not formally be a Wynn Resorts project. On a May 1, 2008 conference call with stock

1 analysts, Mr. Wynn affirmed that Wynn Resorts' Board and management team had
2 longstanding knowledge of and fully supported Universal's project in the Philippines:

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

16 (emphasis added).

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

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

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

In addition to its investment in Wynn Resorts, Limited,
[Universal], has invested in the construction of a hotel casino
resort in the Philippines, which is anticipated to open to the

1 public in 2010. Mr. Okada confirms that, as at the Latest
2 Practicable Date, except for his indirect shareholding interests
3 in Wynn Resorts, Limited through Aruze USA, Inc., neither he
4 nor his associates holds, owns or controls more than 5%
5 voting interests in an entity which, directly or indirectly,
6 carries on, engages, invests, participates or otherwise is
7 interested in any company, business or operation that
8 competes, or is reasonably expected to compete, with the
9 business carried on by us in Macau.

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

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

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

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

21 66. The Philippine government approached Universal as early as 2005 and
22 courted Universal for years. The Philippine government ultimately secured an agreement
23 that Universal would employ significant numbers of local people to work in the casinos,
24 and press reports indicate Universal's project could create as many as 15,000 jobs for
25 Filipinos, and generate billions of dollars in tax revenues for the Philippine government.
26 When Universal delayed the project in the wake of the 2008 financial crisis, the Philippine
27 government again stepped up its efforts to encourage Universal to advance the
28

1 development of its project. While Universal certainly expects the Manila Bay Project to
2 be a “win-win” for the Philippines and Universal, the idea that Universal needed to curry
3 special favor with Philippine government officials is profoundly mistaken.

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

5 67. In March 2009, Mr. Wynn divorced Elaine Wynn. The divorce proved to be
6 damaging to Mr. Wynn’s financial position and standing within Wynn Resorts. By early
7 2010, Mr. Wynn had reached an agreement to split his ownership of Wynn Resorts stock
8 with Elaine Wynn. As a result of the divorce settlement, Aruze USA was now by far
9 Wynn Resorts’ largest stockholder, owning some 24,549,222 shares of Wynn Resorts, or
10 19.66% of the outstanding stock. Mr. Wynn would now own less than half what Aruze
11 USA owned of Wynn Resorts stock. While neither Aruze USA nor Mr. Okada ever made
12 any threats against Mr. Wynn, the possibility loomed that Mr. Wynn could be losing
13 control of Wynn Resorts, as had happened ten years earlier, Mr. Wynn lost control of
14 Mirage Resorts, Inc.

15 68. On January 6, 2010, Mr. Wynn obtained an Amended and Restated
16 Stockholders Agreement. The amended agreement altered the Stockholders Agreement
17 language regarding Aruze USA’s right to nominate directors. Aruze USA could endorse
18 nominees so long as the majority of nominees were endorsed by Mr. Wynn. Although the
19 agreement required Mr. Wynn to support a minority slate of directors proposed by Aruze
20 USA, he never did so. On information and belief, Mr. Wynn obtained the Amended and
21 Restated Stockholders Agreement, with the intention of never supporting any director
22 proposed by Aruze USA. In fact, Mr. Wynn consistently refused efforts to consider Aruze
23 USA directors for the Board, in an effort to continue to monopolize control over Wynn
24 Resorts.

25 69. In addition, the Amended and Restated Stockholders Agreement continued
26 to contain a non-compete clause that prohibited Mr. Okada, Aruze USA, and Universal
27 only from operating casinos in Clark County, Nevada and in Macau, and certain Internet
28 gaming ventures. Neither this version of the Stockholders Agreement, nor any prior or

1 subsequent agreements, contained any prohibition or concerns regarding the Philippines or
2 Korea.

3 70. In January 2010, Mr. Okada indicated that he was willing to move ahead
4 with the amendments provided that Mr. Wynn reciprocated by allowing Aruze USA to sell
5 publicly the same number of shares as Mr. Wynn and Elaine Wynn. In this way, Mr.
6 Okada expected to receive liquidity for Aruze USA whenever Mr. Wynn and Elaine Wynn
7 asked permission to sell or transfer their stock.

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

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

16 72. As illustrated in the photographs, this pre-arranged trip involved meetings
17 with dignitaries and officials and informational presentations on the project.
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73. 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 recent press conferences – 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

74. 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 have also disclosed that Wynn Macau is in the process of seeking to obtain land in Macau and the rights to develop a third casino in the area.

75. At a Board meeting in April, 2011, Mr. Okada objected to and voted against this donation, which appears to be unprecedented in the annals of the University of Macau, and in the history of Wynn Resorts. Mr. Okada objected to the unprecedented size

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

11 76. Notably, for example, the Chancellor of University of Macau is also the
12 head of Macao's government, with ultimate oversight of gaming matters.

13 77. While Wynn Resorts claims to have received a legal opinion sanctioning the
14 unprecedented donation, Wynn Resorts did not provide that legal opinion to Mr. Okada or,
15 on information and belief, to any other members of the board of either Wynn Macau or
16 Wynn Resorts. On information and belief, Mr. Wynn – and potentially others – misled the
17 Wynn Resorts' Board by securing its consent to the donation, without disclosing his
18 personal knowledge of the close connection between University of Macau and officials
19 responsible for regulatory decisions related to Wynn Macau's gaming operations.

20 78. Mr. Okada's opposition to this donation caught the attention of the U.S.
21 Securities and Exchange Commission ("SEC"). According to Wynn Resorts 2011 Form
22 10-K, Wynn Resorts received a letter from the Division of Enforcement of the SEC
23 indicating the SEC has commenced an "informal inquiry" regarding matters in Macau.
24 Mr. Wynn, Ms. Sinatra (Wynn Resorts' General Counsel), and Mr. Miller (head of Wynn
25 Resorts' Compliance Committee) did not take kindly to Mr. Okada's scrutiny of the
26 donation. On information and belief, Mr. Wynn, Ms. Sinatra, and Mr. Miller set out to
27 discredit Mr. Okada, in an effort to distract attention from the problematic Macau
28 donation.

F. Steve Wynn and Kim Sinatra Fraudulently Promise Mr. Okada Financing for the Philippine Project

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

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

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

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

83. Mr. Wynn gave Mr. Okada an explicit personal assurance that financing would occur. Mr. Wynn stated that this proposal would be good for Mr. Okada and good for Wynn Resorts, because it will contribute to the stability of Wynn Resorts. And, based

1 on such assurances, Mr. Okada agreed to financing from Wynn Resorts, rather than selling
2 or otherwise pledging Aruze USA's stock.

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

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

21 86. Later that day, in response to Mr. Tanaka's note and after Mr. Okada had
22 signed the waiver and consent about Elaine Wynn's stock, Ms. Sinatra prepared a draft
23 "Side Letter" to replace the one prepared by Mr. Tanaka. The "Side Letter" prepared by
24 Ms. Sinatra stated that Wynn Resorts would negotiate a loan from Wynn Resorts to Aruze
25 USA secured by Aruze USA's stock "*to the extent compliant with all state and federal*
26 *laws*" (emphasis added). On information and belief, Ms. Sinatra inserted this language
27 because she knew Section 402 of SOX prohibited the loan proposed by Mr. Wynn and
28 agreed to by both Mr. Wynn and Mr. Okada.

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

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

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

23 90. In the same email, Ms. Sinatra then explained that Wynn Resorts was
24 negotiating with Deutsche Bank on a margin loan transaction, with Wynn Resorts acting
25 as a "backstop." She did not dispute that Mr. Okada's consent to the amendment in the
26 Stockholders Agreement was based on Wynn Resorts agreement to continue to pursue
27 financing for a loan to Aruze USA (using Aruze USA's Wynn Resorts shares as
28 collateral). At no point in time did Ms. Sinatra call into question the Philippine project.

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

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

14 103. Ms. Sinatra then brought her threat into stark reality. She stated that the
15 Compliance Committee would meet on October 31, 2011 (in advance of a November 1
16 Board meeting). She told Mr. Okada that she hoped a “resolution” would be reached
17 before those meetings regarding Mr. Okada’s directorship and the voting rights of
18 Aruze USA’s stock, so as to avoid presenting this matter to the Compliance Committee
19 and the Board. Ms. Sinatra’s intent was clear – Wynn Resorts’ compliance procedures
20 were being used to extract a personal benefit for Mr. Wynn.

21 **B. Steve Wynn and Kim Sinatra Try to Intimidate and Threaten Mr.**
22 **Okada, While Hiding Supposed Evidence of Wrongdoing**

23 104. On an October 3, 2011 telephone call, Aruze USA’s counsel asked Ms.
24 Sinatra to provide Aruze USA with a copy of the Compliance Committee’s investigative
25 report regarding Mr. Okada. Ms. Sinatra replied that she would have to check to see if a
26 copy could be provided; in fact, she did not and has never provided a copy of the
27 investigative report to Aruze USA, Mr. Okada, or their counsel.

28 105. On October 4, 2011, Mr. Wynn and Ms. Sinatra met with Mr. Okada and his

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

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

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

- 23 • That the Philippines were so corrupt that no one could possibly do business
24 in that country without violating the FCPA;
- 25 • That "research" showed Mr. Okada owned land without a Philippines
26 partner, and that this violated Philippines law;
- 27 • That the other directors were "convinced" that Mr. Okada's use of his Wynn
28 Resorts business card in other countries had caused a belief that Wynn

- 1 Resorts was involved in the Philippine project and that the Company would
2 not be in this position had he instead used his Universal business card;
- 3 • That Mr. Okada had used the Wynn Resorts' building design and other trade
4 secrets without permission; and
 - 5 • That Mr. Okada had associated with persons who had later been indicted in
6 the Philippines on charges unrelated to the Philippine project.

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

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

20 110. Around this same time, the Chairman of Universal's Compliance Committee
21 also requested a copy of the investigative report through the Chairman of Wynn Resorts'
22 Compliance Committee. This request has been ignored.

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

25 111. On October 13, 2011, Robert L. Shapiro, Esq., an attorney retained by Wynn
26 Resorts, sent a letter to Aruze USA. Without any elaboration, the letter reiterated the
27 same mistaken – and soon to be abandoned – conclusions that Mr. Wynn outlined in the
28 October 4 meeting. Mr. Shapiro also explicitly stated that Universal's Manila Bay project

1 “raises questions” regarding “possible violations of the Foreign Corrupt Practices Act.”
2 The letter again demanded Mr. Okada’s resignation.

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

10 **D. Wynn Resorts Refuses to Allow Mr. Okada and Aruze USA to Review**
11 **Any Supposed “Evidence”**

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

18 **E. The Board Summarily Removes Mr. Okada As Vice-Chairman**

19 114. At the Board’s November 1, 2011 meeting, Mr. Miller presented a report of
20 an alleged investigation by the Compliance Committee into Mr. Okada’s and Universal’s
21 activities in the Philippines. The report disclosed that the Compliance Committee had
22 allegedly conducted one internal and two “independent” investigations into allegations of
23 suitability, conflicts of interest, and possible breaches of fiduciary duties related to
24 acquisition of land for the Philippine project and charitable contributions made by
25 Universal. To date, the contents of these purported investigations have not been presented
26 to Mr. Okada.

27 115. Mr. Miller reported that the Compliance Committee (and not a committee
28 consisting of the independent directors) had retained Freeh Sporkin & Sullivan LLP

1 (“Freeh Sporkin”) as a special investigator to conduct an investigation into the allegations
2 against Mr. Okada. The Board – without debate, deliberation, or allowing Mr. Okada a
3 chance to respond – summarily eliminated Mr. Okada’s position as Vice-Chairman of
4 Board and ratified the decision to hire Freeh Sporkin.

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

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

18 **G. Aruze USA Nominates Directors; But Steve Wynn Refuses to Endorse**
19 **Them Despite His Obligation to Do So**

20 117. To further address the concerns about Wynn Resorts management, on
21 January 18, 2012, pursuant to Section 2(a) of the Stockholders Agreement, Aruze USA
22 submitted a letter to the Nominating and Corporate Governance Committee of the
23 Company designating three individuals as candidates to be considered for nomination as
24 directors of the Company and included in the Company’s proxy statement relating to the
25 Company’s 2012 annual meeting of the stockholders or any stockholder meeting held for
26 the purpose of electing Class I directors. Despite numerous written requests to Mr. Wynn
27 to endorse the slate of directors nominated by Aruze USA, as required by the Stockholders
28 Agreement, Mr. Wynn refused to do so.

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

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

119. While Plaintiffs allege in their Complaint that Mr. Okada “long evaded” his interview (Complaint at 2), the record conclusively contradicts this contention. Freeh Sporkin did not contact Mr. Okada or his counsel about an interview until January 9, 2012, at which time it demanded (not requested) an interview of Mr. Okada during the week of January 30 (*i.e.*, January 30-February 5). On January 15, 2012, four days after Mr. Okada filed his Inspection Action, Freeh Sporkin informed Mr. Okada’s counsel that the “schedule has changed” and pressured Mr. Okada to agree to an interview *before* the week of January 30.

120. On January 19, 2012, Mr. Miller, Chair of Wynn Resorts’ Compliance Committee, wrote directly to Mr. Okada, threatening that if Mr. Okada failed to make himself available for interviews with Freeh Sporkin on January 30 or 31, the Compliance Committee “can only conclude that you have refused participation.” The letter stated that the Compliance Committee originally had a goal of receiving a report by the end of 2011, which was extended to January 15, 2012. In addition to this being the first time anyone shared the Compliance Committee’s purported deadlines with Mr. Okada, these dates are inconsistent with Freeh Sporkin making its initial request to conduct an interview of Mr. Okada that would take place in the first week of February. It proved not to be the first time Mr. Miller was “confused” about the “investigation” that was supposedly operating under his direction.

1 121. Mr. Okada had only recently hired new counsel to assist with the response to
2 the Freeh Sporkin investigation. In order to prepare for the interview, the new counsel
3 requested that the parties seek a mutually convenient date for an interview by February 15,
4 2012. Freeh Sporkin then agreed to schedule the interview on February 15. This
5 undeniable record demolishes any claim that Mr. Okada avoided an interview with Freeh
6 Sporkin, let alone that he “long evaded” an interview.

7 **I. Freeh Sporkin Refuses to Provide Meaningful Information Regarding**
8 **the Investigation to Kazuo Okada**

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

19 123. Freeh Sporkin refused to provide anything more than a statement that it was
20 investigating “all matters related to Mr. Okada’s, Universal’s, and Aruze’s activities in the
21 Philippines and Korea.” This was the first time that Korea was even mentioned as the
22 subject of any investigation by the Company. Again – the basis of Aruze USA’s supposed
23 “unsuitability” kept changing.

24 124. Instead of sharing the topics of the interview with Mr. Okada, Mr. Freeh
25 chose to conduct the interview as an ambush, not unlike the hostile interrogation of a
26 suspected criminal, rather than a respectful and cooperative interview seeking information
27 from a director of Wynn Resorts. If he was afforded the opportunity to do so, Mr. Okada
28 could have helped Mr. Freeh and Freeh Sporkin avoid the public embarrassment of a

1 report that is riddled with factual and legal errors.

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

4 125. On February 15, 2012, Mr. Okada sat for a full-day interview with
5 Mr. Freeh and other lawyers for Freeh Sporkin.

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

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

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

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

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

28 129. Similarly, the Wynn Resorts Complaint states that "Freeh announced that he

1 would report his findings to the Board of Directors on February 18, 2012.” (Compl. at ¶
2 43.)

3 130. Neither statement is true. Mr. Freeh said nothing regarding the date of the
4 completion of his report at the interview, and, in fact, said at the February 15, 2012
5 interview of Mr. Okada that his investigation was not complete and that his report was not
6 complete.

7 131. On February 16, 2012, Mr. Okada’s counsel emailed Mr. Freeh stating:

8 Louis:

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

17 132. In response, on February 17, 2012, Mr. Freeh offered two options to Mr.
18 Okada’s counsel:

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

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

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

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

29 ...

30 I also note that Mr. Okada’s litigation against Wynn Resorts
31 has now predicated an SEC inquiry and no doubt drawn the
32 proper attention of other regulatory agencies. Consequently,
33 the Compliance Committee has given me instructions to
34 conclude my report with all deliberate speed.

35 ...

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

3 Best regards,

4 Louie

(emphasis added.)

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

7 Louis:

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

(emphasis added.)

21 134. Mr. Freeh responded "Thanks Tom and safe travels."

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

24 Just to confirm, I will now deliver my report to the
25 Compliance Committee having completed my investigation
26 regarding the matters under inquiry. It is my understanding
27 that the Compliance Committee will thereafter provide all of
28 the Directors, including Mr. Okada, with a copy of the report.
As we both stated, Mr. Okada can then submit any responses
to the report which will be considered and evaluated.
However, the report I am submitting is not a 'draft' subject to
being finalized after Mr. Okada provides any response. Rather
this is akin to a final brief being submitted with the
opportunity for a response to be made.

1 Please let me know if you have any questions.

2 Best regards

3 Louie

4 136. Perhaps unbeknownst to Mr. Freeh, this statement would prove to be
5 misleading. As it turned out, Wynn Resorts would refuse to give Mr. Okada a copy of the
6 Freeh Sporkin report and then purported to redeem Aruze USA's stock (at a nearly \$1
7 billion discount) *on the day the other Wynn Directors received the report*, without giving
8 Mr. Okada any reasonable opportunity to respond.

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

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

22 138. On February 15, 2012, scant hours after the completion of Mr. Freeh's
23 interview of Mr. Okada, Wynn Resorts noticed a special meeting of its Board. The
24 meeting was set for Saturday, February 18, 2012, at 9:00 a.m. in Las Vegas – which is
25 2:00 a.m. Sunday morning in Japan. Although the notice for the Board meeting went out
26 immediately following the conclusion of the interview of Mr. Okada, and was scheduled
27 to occur a mere three days after the interview, Mr. Wynn and Ms. Sinatra included on the
28 agenda a review of the Freeh Sporkin report.

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

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

8 **IV. WYNN RESORTS' UNFOUNDED AND UNPRECEDENTED**
9 **REDEMPTION OF MORE THAN \$2.7 BILLION OF ARUZE USA'S**
10 **SHARES**

11 **A. The Board Hurriedly Meets and Rushes to Redeem Aruze USA's Stock**

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

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

23 142. When it came time for the meeting, at 2:00 a.m. on Sunday morning, Mr.
24 Okada sat ready to participate by telephone. Mr. Wynn yelled at Mr. Okada's counsel
25 when he introduced himself. Mr. Wynn also said that Mr. Okada's counsel could not be
26 present to advise Mr. Okada even though counsel made clear that he would not address the
27 meeting. (At the threat of having Mr. Okada's telephone connection to the meeting
28 severed, Mr. Okada's counsel had to sit outside the room while the meeting went on,

1 despite Wynn Resorts having a battery of lawyers from multiple law firms present on its
2 end of the line.) Mr. Wynn and a company lawyer informed Mr. Okada that – despite
3 prior assurances that Mr. Okada would receive a copy of the Freeh Sporkin report along
4 with the other directors – he would not receive a copy of the report unless both he and his
5 legal counsel signed a nondisclosure agreement. The nondisclosure agreement would
6 have arguably precluded Mr. Okada from using the report in legal proceedings. Mr.
7 Okada did not sign the nondisclosure agreement.

8 143. As alleged in detail below, a few hours after demanding that Mr. Okada sign
9 the nondisclosure agreement claiming confidentiality, Wynn Resorts would leak a copy of
10 the Freeh Sporkin report to the *Wall Street Journal* and would itself attach a copy to its
11 Complaint in this action.

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

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

25 146. At some point, someone at Wynn Resorts hung up the telephone, cutting Mr.
26 Okada off from the meeting. Mr. Okada waited to be reconnected, staying up until the sun
27 rose in Asia, all the while not knowing whether the Board had resolved anything following
28 the presentation by Mr. Freeh. Ms. Sinatra later claimed that cutting off the telephone

1 connection to Mr. Okada was a “misunderstanding.” No other contact was made with Mr.
2 Okada.

3 147. At 4:45 am ET on February 19, 2012, Aruze USA’s counsel received
4 correspondence, containing a notice of determination of unsuitability and a purported
5 redemption notice. In the redemption notice, the Company stated that it would redeem
6 Aruze USA’s stock for a note of approximately \$1.936 billion, a discount of exactly 30%
7 off the value measured by the stock market’s valuation of the stock based on the prior
8 day’s closing price.

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

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

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

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

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

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

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

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

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

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

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

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

10 **D. Even if Aruze USA Was Subject to the Redemption Provision (Which it**
11 **is Not), the Unilateral Blanket 30% Discount that Wynn Resorts**
12 **Applied to the Stock is Erroneous**

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

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

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

11 160. Mr. Wynn called on Mr. Moelis' loyalty in this case. Despite the fact that at
 12 least some of the stock was exempted from the Stockholders Agreement, Moelis
 13 discounted Aruze USA's more than \$2.7 billion shares of Wynn Resorts stock by a round
 14 30%.

15 **E. The Timing of the Redemption Suggests Wynn Resorts Traded on**
 16 **Inside Information**

17 161. On March 2, 2012, Wynn Resorts released two Form 8-Ks.

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

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

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

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

26 163. If true, such a land concession would be a significant positive development
27 for Wynn Resorts. In fact, Wynn Resorts' stock immediately spiked 6% on this news.
28 Shortly, thereafter, Wynn Resorts issued a corrective Form 8-K:

On March 2, 2012, a Current Report regarding the gazetting of
the Cotai Land Concession Contract on Form 8-K (the "Land
Concession 8-K") was filed by mistake by the Company's
agent. The filing was not authorized by the Company. The
Cotai Land Concession Contract has not been gazetted. The
purpose of this filing is to retract the Land Concession 8-K in
its entirety.

164. Wynn Resorts blamed a clerical error at its outside law firm for the
accidental filing of the detailed Form 8-K. To the extent any positive developments in
Macau (or elsewhere in Wynn Resorts operational sphere) was imminent and known, and
to the extent redemption happened, Wynn Resorts and its directors traded on inside
information when it allegedly purchased Aruze USA's stock.

CLAIMS FOR RELIEF

COUNT I

Declaratory Relief

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

165. Aruze USA and Universal reassert and reallege Paragraphs 4 through 164 above as if set forth in full below.

166. Aruze USA and Universal seek a judicial declaration that the purported redemption of Aruze USA's shares is void *ab initio*, and that Aruze USA is the owner of 24,549,222 shares or 19.66% of the total outstanding common stock of Wynn Resorts, with all rights and privileges appurtenant thereto (including, but not limited to, payment of dividends and voting rights). This declaration is appropriate because, as alleged above: (1) the redemption provision in the Articles of Incorporation is inapplicable to the Wynn Resorts stock owned by Aruze USA because Aruze USA entered into the Contribution Agreement, which prevented any further restrictions without agreement of the parties, before the enactment of the redemption provision, and Wynn Directors' acts were *ultra vires*; (2) the redemption provision in the Articles of Incorporation is inconsistent with Nevada law and public policy, and thus void; (3) the Stockholders Agreement bars redemption of the Wynn Resorts stock owned by Aruze USA; (4) the Board lacked a sufficient basis for a finding of "unsuitability" or for redemption; and/or, (5) the redemption provision as written and as applied is unconscionable.

167. In addition or alternatively, Aruze USA and Universal seek a judicial declaration that the redemption provision in Wynn Resorts' Articles of Incorporation is invalid as a matter of law because it is impermissibly vague, contrary to law and public policy, and/or unconscionable. This declaration is appropriate because, among other things, Nevada gaming regulators are given the authority under the laws of Nevada to make determinations regarding "suitability." The redemption provision in Wynn Resorts' Articles of Incorporation purportedly relied on here by the Wynn Directors improperly

1 and illegally usurps that authority. Furthermore, if and when Nevada gaming regulators
2 were to make such a determination, redemption that simply replaces equity with debt is
3 ineffective to effect a disassociation; it, therefore, would not comply with Nevada law.

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

11 169. In addition or alternatively, Aruze USA and Universal seek a judicial
12 declaration that the Board resolution to redeem Aruze USA’s shares was procedurally
13 and/or substantively defective, and contrary to law and public policy. As alleged in detail
14 above, this declaration is appropriate because (1) the Stockholders Agreement bars
15 redemption of the Wynn Resorts stock owned by Aruze USA; (2) the redemption
16 provision in the Articles of Incorporation is inapplicable to the Wynn Resorts stock owned
17 by Aruze USA because Aruze USA entered into the Contribution Agreement, which
18 prevented any further restrictions without agreement of the parties, before the enactment
19 of the redemption provision, and Wynn Directors’ acts were *ultra vires*; (3) the Board
20 lacked a sufficient basis for a finding of “unsuitability” or redemption and made its
21 findings without a thorough and complete review of relevant law, facts, and evidence; (4)
22 the redemption provision in the Articles of Incorporation is inconsistent with Nevada law
23 and public policy, and thus void; and, (5) the redemption provision, as written and as
24 applied, is unconscionable.

25 170. Alternatively, to the extent that redemption is not otherwise barred, Aruze
26 USA and Universal seek a judicial declaration that the form and amount of compensation
27 paid for Aruze USA’s shares was improper and/or inadequate and that Aruze USA is
28 entitled to cash in an amount equivalent to at least the closing price of the stock on

1 February 17, 2012. As alleged in detail above, this declaration is appropriate because
2 simply converting Wynn Resorts' largest shareholder to Wynn Resorts' largest creditor
3 serves no valid legal purpose. Furthermore, the valuation by Moelis was not objective,
4 independent, or the product of sound financial analysis, and, among other things, did not
5 consider material non-public information available to Wynn Resorts that would militate in
6 favor of a higher valuation, did not account for the premium that would be applied to such
7 a large block of shares, and did not consider the extent to which transfer restrictions were
8 not valid as to Aruze USA.

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

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

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

22 COUNT II

23 **Permanent Prohibitory Injunction**

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

25 174. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
26 forth in full below.

27 175. Aruze USA seeks a permanent injunction enjoining and restraining Wynn
28

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

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

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

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

20 179. 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
22 from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or
23 about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA did
24 not and could not reasonably have discovered earlier the facts giving rise to this claim.

25 180. 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
27 said services performed and to be performed in a sum to be determined.
28

COUNT III

Permanent Mandatory Injunction

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

181. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

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

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

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

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

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

187. 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.

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

COUNT IV

**Breach of Contract in Connection with Wynn Resorts' Involuntary Redemption
(By Aruze USA Against Wynn Resorts)**

189. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

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

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

192. Aruze USA's purchase of Wynn Resorts' shares under the Contribution Agreement did not impose any condition of redemption on Aruze USA, and therefore Wynn Resorts had no right to redeem Aruze USA's shares under the Agreement.

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

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

Wynn.

195. Aruze USA has been damaged in an amount greater than \$10,000.

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

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

COUNT V

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

198. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

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

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

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

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

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

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

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

206. Aruze USA has been damaged in an amount greater than \$100,000.

207. 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.

208. 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 VI

Breach of Fiduciary Duty

(By Aruze USA Against the Wynn Directors)

209. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below:

1 210. Directors of a corporation owe a fiduciary duty to the corporation and to its
2 shareholders, including a duty of care and a duty of loyalty toward the corporation and
3 each shareholder.

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

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

10 213. The Wynn Directors abused their discretion in finding Aruze USA,
11 Universal, and Mr. Okada "unsuitable" and resolving to have the Company cause the
12 purported redemption of Aruze USA's shares of Wynn Resorts' stock. The outcome of
13 the Compliance Committee's "investigation" was already determined prior to engaging a
14 supposedly "independent" investigator, which then openly acted as an advocate against
15 Aruze USA, Universal, and Mr. Okada rather than providing an objective, balanced, and
16 fully informed review of the facts and law. Despite the fact that Freeh Sporkin informed
17 the Board that further investigation would be required with respect to matters
18 encompassed by its report, and despite assurances that Aruze USA, Mr. Okada, and
19 Universal would be permitted to respond substantively to the report, the Wynn Directors
20 deprived them of an opportunity to understand and to present any information to address
21 the allegations against them prior to the vote on redemption.

22 214. On information and belief, the Wynn Directors acted at the direction of Mr.
23 Wynn and abandoned their own independence and objectivity in evaluating the
24 allegations. The Wynn Directors failed to conduct a fair, comprehensive, and thoughtful
25 investigation, and failed to ensure that they were properly and adequately informed before
26 acting.

27 215. Wynn Resorts, at the direction of Mr. Wynn, conducted an "investigation"
28 that was hurried, incomplete, one-sided, and unfair to Aruze USA, with a result that was

1 preordained by Mr. Wynn and his cohorts before the “investigator” was even hired. Aruze
2 USA was not given an opportunity to review the allegations against it or rebut or address
3 any findings of improper conduct or any other supposed basis for redemption. The entire
4 process was tainted by the desire to serve Mr. Wynn’s pretextual goals of removing Aruze
5 USA as the largest single shareholder of the Company, silencing Mr. Okada, and
6 consolidating and maintaining Mr. Wynn’s control over Wynn Resorts. Such actions do
7 not withstand any standard of fundamental fairness or due process.

8 216. Further, the purported redemption was voted on by persons with
9 irreconcilable conflicts of interest, including breaches of the duty of loyalty, the duty of
10 care, and the duty of good faith.

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

14 218. Harm will result if relief is not granted because Aruze USA’s more than
15 \$2.7 billion equity stake in Wynn Resorts will be instantaneously and irreversibly
16 damaged by the Company’s purported action to convert Aruze USA’s substantial
17 ownership interest into a wholly subordinated ten-year promissory note in a principal
18 amount 30% less than the fair market value of the stock, and paying a mere 2% percent
19 interest, without providing Aruze USA any voting rights or rights to dividends.

20 219. As a further direct and proximate result of the wrongful conduct by the
21 Wynn Directors, as alleged herein, Aruze USA was and continues to be damaged in an
22 amount in excess of \$100,000 to be proven at trial.

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

28 221. It has been necessary for Aruze USA to retain the services of attorneys to

1 prosecute this action, and Aruze USA is entitled to an award of the reasonable value of
2 said services performed and to be performed in a sum to be determined.

3
4 **COUNT VII**

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

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

7 222. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
8 forth in full below.

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

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

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

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

COUNT VIII

Conversion

(By Aruze USA Against Wynn Resorts)

227. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

228. Wynn Resorts lacked a proper and sufficient basis to find that the allegations in the Freeh Sporkin report against Aruze USA, Mr. Okada, and Universal were activities that “were likely to jeopardize [the Company’s] or any Affiliated Company’s . . . right to the use of, or entitlement to any Gaming License.”

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

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

231. 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.

232. Wynn Resorts converted Aruze USA stock, damaging Plaintiff in an amount excess of \$100,000.

233. 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.

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

COUNT IX

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

(By Aruze USA Against Steve Wynn And Kim Sinatra)

235. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

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

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

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

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

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

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

- 21 a. On or about June 11, 2002, Mr. Wynn obtained Aruze USA's signature
22 on the Contribution Agreement under false pretenses;
- 23 b. On or about May 16, 2011, Mr. Wynn obtained under false pretenses
24 Aruze USA's signature on a document entitled "Waiver, Consent and
25 Limited Release," relating to the transfer of Elaine Wynn's shares;
- 26 c. On or about February 18, 2012, Mr. Wynn purportedly caused Wynn
27 Resorts to redeem Aruze USA's shares of Wynn Resorts stock (*i.e.*, the
28 forced sale) through an ongoing fraudulent and deceptive scheme in

1 violation of N.R.S. § 90.570; and,

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

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

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

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

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

13 244. As a direct and proximate result of Mr. Wynn's and Ms. Sinatra's violations
14 of N.R.S. § 207.400(1)(b), (c), and (j), Aruze USA has suffered and continues to suffer
15 injuries to its property, most notably the fraudulent purported redemption of Aruze USA's
16 shares held in Wynn Resorts stock. Those shares, with a stock market value of more than
17 \$2.7 billion, were purportedly redeemed for a 10-year, \$1.9 billion promissory note.

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

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

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

COUNT X

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

248. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

249. 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.

250. 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 Wynn Resorts was not legally permitted to enter into such a lending transaction pursuant to the restrictions in Section 402 of SOX. As alleged above, Mr. Wynn and Ms. Sinatra engaged in this wrongful conduct for the purpose of maintaining Mr. Wynn's control over Wynn Resorts after Mr. Wynn's shares in the Company were split with Elaine Wynn following their divorce, and keeping alive the opportunity to later have Wynn Resorts seek to redeem Aruze USA's shares at a discount.

251. Furthermore, 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 regarding the immediate need for Elaine Wynn to transfer her shares under the Stockholders Agreement. On information and belief, Mr. Wynn and Ms. Sinatra knew or were without a sufficient basis to make those material statements

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

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

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

13 254. As a further direct and proximate result of the wrongful conduct by Wynn
14 Resorts, Mr. Wynn, and Ms. Sinatra, as alleged herein, Aruze USA was and continues to
15 be damaged in an amount in excess of \$100,000 to be proven at trial.

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

20 256. 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
22 from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or
23 about September 30, 2012.

24 257. Aruze USA brings this claim within the relevant statute of limitations under
25 Nevada law, having discovered facts giving rise to this claim on or about September 30,
26 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not
27 reasonably have discovered earlier the facts giving rise to this claim.

28 258. It has been necessary for Aruze USA to retain the services of attorneys to

1 prosecute this action, and Aruze USA is entitled to an award of the reasonable value of
2 said services performed and to be performed in a sum to be determined.

3
4 **COUNT XI**

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

7 259. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
8 forth in full below.

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

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

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

22 263. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made the false statements or
23 omissions of fact alleged herein with the intent to induce Aruze USA's to consent to
24 Elaine Wynn's transfer of shares under the Stockholders Agreement without selling or
25 pledging its own shares in a manner that would reduce Mr. Wynn's control over those
26 shares. Furthermore, Wynn Resorts, Mr. Wynn, and Ms. Sinatra made the false
27 statements of fact alleged herein with the intent of gaining their own financial advantage
28 to the disadvantage of Aruze USA, including, but not limited to, the opportunity to seek to

1 have Wynn Resorts redeem Aruze USA's shares at a discount.

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

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

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

16 267. Aruze USA has suffered and continues to suffer economic and non-
17 economic losses because of Wynn Resorts, Mr. Wynn, and Ms. Sinatra false statements of
18 fact. The amount of losses will be determined according to proof at trial, but damages are
19 in an amount in excess of \$100,000.

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

24 269. Aruze USA brings this claim within the relevant statute of limitations under
25 Nevada law, having discovered facts giving rise to this claim on or about September 30,
26 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not
27 reasonably have discovered earlier the facts giving rise to this claim.

28 270. It has been necessary for Aruze USA to retain the services of attorneys to

1 prosecute this action, and Aruze USA is entitled to an award of the reasonable value of
2 said services performed and to be performed in a sum to be determined.

3
4 **COUNT XII**

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

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

7 271. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
8 forth in full below.

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

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

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

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

23 276. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made false and misleading
24 statements and omissions of material facts to Aruze USA. Specifically, on or about May
25 16, 2011, and for months thereafter, Mr. Wynn and Ms. Sinatra made false and misleading
26 statements and omissions concerning Wynn Resorts' ability to loan money to Aruze USA,
27 which Wynn Resorts, Mr. Wynn, and Ms. Sinatra agreed would be backed by shares of
28 Wynn Resorts stock held by Aruze USA.

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

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

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

19 280. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra knew
20 that Aruze USA intended to rely on this information as a reason for Aruze USA to consent
21 to Elaine Wynn's transfer of shares under the Stockholders Agreement. On information
22 and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra further knew and intended that, in
23 reliance on these misrepresentations, Aruze USA would relinquish its own opportunity to
24 liquidate its own shares of Wynn Resorts stock to fund Universal's project in the
25 Philippines or seek other financing. Therefore, Aruze USA relied on the fact that Wynn
26 Resorts was a committed lender to the project at the expense of pursuing other financing
27 options.

28 281. As a further direct and proximate result of the wrongful conduct by Wynn

1 Resorts, Mr. Wynn, and Ms. Sinatra, as alleged herein, Aruze USA was and continues to
2 be damaged in an amount in excess of \$100,000 to be proven at trial.

3 282. 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,
5 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not
6 reasonably have discovered earlier the facts giving rise to this claim.

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

11 284. 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
13 said services performed and to be performed in a sum to be determined.

14
15 **COUNT XIII**

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

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

18 285. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
19 forth in full below.

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

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

28 288. Prior to causing the contribution to occur, on or about September 16, 2002,

1 Mr. Wynn filed amended Articles of Incorporation that included the redemption provision.
2 On information and belief, Mr. Wynn deliberately delayed in causing the contribution in
3 order to allow Mr. Wynn to amend the Articles of Incorporation without affording Aruze
4 USA a shareholder vote as would have been required pursuant to N.R.S. § 78.390. At the
5 time of the amendment, Mr. Wynn was the sole stockholder of Wynn Resorts.

6 289. On or about September 28, 2002, over three months after Aruze USA
7 entered into the Contribution Agreement, and twelve days after Mr. Wynn amended the
8 Articles of Incorporation, Mr. Wynn caused the contribution of Aruze USA's LLC
9 interests in Valvino to Wynn Resorts in exchange for Wynn Resorts common stock.

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

17 291. The misrepresentations and concealment of facts alleged herein were
18 material because, had Wynn Resorts and Mr. Wynn provided Aruze USA with truthful
19 and correct information, Aruze USA would not have entered into the Contribution
20 Agreement.

21 292. Wynn Resorts and Mr. Wynn knew the misrepresentations and concealment
22 of facts alleged herein were false, or alternatively, made misrepresentations of facts with
23 reckless disregard for whether those representations were true.

24 293. Wynn Resorts and Mr. Wynn made the misrepresentations and concealed
25 facts as set forth herein with the intent to induce Aruze USA's to enter into the
26 Contribution Agreement. Furthermore, Wynn Resorts and Mr. Wynn made the
27 misrepresentations and concealment of facts alleged herein with the intent of gaining their
28 own financial advantage to the disadvantage of Aruze USA.

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

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

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

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

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

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

26
27
28

COUNT XIV

Negligent Misrepresentation in Connection with the Contribution Agreement

(By Aruze USA Against Wynn Resorts and Steve Wynn)

300. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

301. 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.

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

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

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

305. In entering into the Contribution Agreement, Wynn Resorts and Mr. Wynn made materially false representations and/or omissions to Aruze USA regarding Wynn Resorts' stockholder obligations under Articles of Incorporation. Mr. Wynn and Wynn Resorts misrepresented and/or failed to disclose that Wynn Resorts' Articles of Incorporation would seek to impose substantial financial risk to Aruze USA by providing

1 Wynn Resorts' Board (which was controlled by Mr. Wynn) purported discretion to
2 redeem Aruze USA's stock on potentially onerous terms.

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

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

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

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

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

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

25 312. Aruze USA brings this claim within the relevant statute of limitations under
26 Nevada law, having discovered facts giving rise to this claim, including injury arising
27 from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or
28 about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA did

1 not and could not reasonably have discovered earlier the facts giving rise to this claim.

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

5
6 **COUNT XV**

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

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

9 314. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
10 forth in full below.

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

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

16 317. Aruze USA has designated three nominees for election to the Board. If the
17 stockholders of the Company elect the Aruze USA director candidates, the resulting Board
18 shall be comprised of at least nine (9) of the directors nominated by Mr. Wynn, a clear
19 majority.

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

24 319. Mr. Wynn has materially breached the Stockholders Agreement without
25 justification and has frustrated the essential purpose of the Stockholders Agreement.

26 320. The Stockholders Agreement provides that each of the parties to it
27 recognizes and acknowledges that a breach by any party of any covenants or agreements
28 contained in the Agreement will cause the other parties to sustain damages for which they

1 would not have an adequate remedy at law for money damages, and therefore each of the
2 parties agrees that in the event of any such breach the parties shall be entitled to
3 appropriate equitable relief.

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

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

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

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

20
21 **COUNT XVI**

22 **Breach of Covenant of Good Faith and Fair Dealing in Stockholders Agreement**
23 **(By Aruze USA Against Steve Wynn)**

24 325. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
25 forth in full below.

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

28 327. Aruze USA and Mr. Wynn are parties to the Stockholders Agreement,

1 between Mr. Wynn, Elaine Wynn, and Aruze USA.

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

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

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

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

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

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

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

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

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

7
8 **COUNT XVII**

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

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

12 336. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
13 forth in full below.

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

18 338. Since at least the beginning of 2011, Wynn Resorts and Mr. Wynn have
19 committed a series of manipulative or deceptive acts in furtherance of a device, scheme,
20 and/or artifice to defraud Aruze USA, which they knew or deliberately disregarded would
21 perpetrate a fraud.

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

- 25 • Undertaking a series of acts in 2011 to prevent Aruze USA from selling or
26 pledging its securities, including acts by Mr. Wynn and Ms. Sinatra
27 dissuading Aruze USA from selling or pledging its shares of Wynn Resorts
28 and holding out a false promise of financing by Wynn Resorts, while

1 knowing that Wynn Resorts was secretly investigating Mr. Okada to create a
2 pretext for redemption;

- 3 • Causing a redemption based on the Freeh Sporkin report, which among
4 other things:
- 5 • was incomplete;
 - 6 • contained false and misleading statements;
 - 7 • failed to address or include exculpatory facts and evidence;
 - 8 • relied upon an inaccurate and incomplete understanding the FCPA;
 - 9 and,
 - 10 • relied upon an inaccurate and incomplete understanding of Philippine
11 law and related facts.
- 12 • Causing a redemption without evidence of any bona fide jeopardy to any
13 Wynn Resorts gaming license;
- 14 • Causing a redemption in the absence of a finding by the Nevada Gaming
15 Commission, or any other gaming regulator, that Aruze USA or its affiliates
16 is unsuitable;
- 17 • Causing Aruze USA not to apply for injunctive relief prior to the Board's
18 consideration of redemption, by falsely representing through Mr. Freeh that
19 Aruze USA and Mr. Okada would have an opportunity to review the Freeh
20 Sporkin report and present responsive facts and evidence;
- 21 • Excluding Mr. Okada and his counsel from Wynn Resorts' Board meetings
22 discussing redemption;
- 23 • Denying Aruze USA access to investigative materials, by falsely invoking
24 attorney-client privilege;
- 25 • Falsely invoking "confidentiality" in an attempt to get Aruze USA to sign
26 away legal rights in exchange for reviewing the Freeh Sporkin report;
- 27 • Setting a redemption price for Aruze USA's shares of Wynn Resorts stock
28 that was not the product of independent assessment;

- 1 • Setting a redemption price that does not reflect, among other things, fair
- 2 value and that failed to consider:
- 3 • the lack of applicability of the Stockholders Agreement to a
- 4 redemption;
- 5 • developments in Cotai and other positive inside information; and,
- 6 • a premium for the volume of stock transacted.

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

1 unprecedented nature of the determination and the utter lack of any bona fide jeopardy to
2 Wynn Resorts' gaming licenses.

3 341. The determinations of unsuitability and subsequent redemption were aided
4 by actions deliberately calculated to prevent an application for injunctive relief or other
5 steps by Aruze USA to intervene and prevent a redemption, including but not limited to:
6 (1) false promises that Aruze USA, Mr. Okada, and Universal would have an opportunity
7 to respond, (2) false assertions of privilege, (3) exclusion of English speaking persons and
8 counsel from Board proceedings (so that Aruze USA could understand the proceedings
9 and/or respond appropriately or effectively), and (4) false assertions of confidentiality and
10 imposing onerous waivers of legal rights in order to see documents that were not
11 confidential because they were leaked to the *Wall Street Journal* and filed in Court at or
12 about the time Mr. Wynn and Wynn Resorts' asserted they were confidential. Finally,
13 Wynn Resorts and Mr. Wynn conspired to ensure that the redemption price was set well
14 below fair value, by relying on one biased appraisal that relied centrally on an incorrect
15 premise of the enforceability of the restraint of sale in the Stockholders Agreement and
16 failed to account for inside information available to Mr. Wynn and Wynn Resorts.

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

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

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

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

COUNT XVIII

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

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

(By Aruze USA Against Wynn Resorts and Steve Wynn)

346. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

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

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

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

- Undertaking a series of acts in 2011 to prevent Aruze USA from selling or pledging its securities, including acts by Mr. Wynn and Ms. Sinatra

1 dissuading Aruze USA from selling or pledging its shares of Wynn Resorts
2 and holding out a false promise of financing by Wynn Resorts, while
3 knowing that Wynn Resorts was secretly investigating Mr. Okada to create a
4 pretext for redemption;

- 5 • Causing a redemption based on the Freeh Sporkin report, which, among
6 other things:
 - 7 • was incomplete;
 - 8 • contained false and misleading statements;
 - 9 • failed to address or include exculpatory facts and evidence;
 - 10 • relied upon an inaccurate and incomplete understanding the FCPA;
 - 11 and,
 - 12 • relied upon an inaccurate and incomplete understanding of Philippine
13 law and related facts.
- 14 • Causing a redemption without evidence of any bona fide jeopardy to any
15 Wynn Resorts gaming license;
- 16 • Causing a redemption in the absence of a finding by the Nevada Gaming
17 Commission, or any other gaming regulator, that Aruze USA or its affiliates
18 is unsuitable;
- 19 • Causing Aruze USA not to apply for injunctive relief prior to the Board's
20 consideration of redemption, by falsely representing through Mr. Freeh that
21 Aruze USA and Mr. Okada would have an opportunity to review the Freeh
22 Sporkin report and present responsive facts and evidence;
- 23 • Excluding Mr. Okada and his counsel from Wynn Resorts' Board meetings
24 discussing redemption;
- 25 • Denying Aruze USA access to investigative materials, by falsely invoking
26 attorney-client privilege;
- 27 • Falsely invoking "confidentiality" in an attempt to get Aruze USA to sign
28 away legal rights in exchange for reviewing the Freeh Sporkin report;

- 1 • Setting a redemption price for Aruze USA's shares of Wynn Resorts stock
- 2 that was not the product of independent assessment;
- 3 • Setting a redemption price that does not reflect, among other things, fair
- 4 value and that failed to consider:
- 5 • the lack of applicability of the Stockholders Agreement to a
- 6 redemption;
- 7 • developments in Cotai and other positive inside information; and,
- 8 • a premium for the volume of stock transacted.

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

1 or consider obvious exculpatory evidence; (2) provide any reasonable opportunity for
2 Aruze USA, Mr. Okada, and Universal to respond to the allegations; or (3) consider the
3 unprecedented nature of the determination and the utter lack of any bona fide jeopardy to
4 Wynn Resorts' gaming licenses.

5 351. The determinations of unsuitability and subsequent redemption were aided
6 by actions deliberately calculated to prevent an application for injunctive relief or other
7 steps by Aruze USA to intervene and prevent a redemption, including but not limited to:
8 (1) false promises that Aruze USA, Mr. Okada, and Universal would have an opportunity
9 to respond, (2) false assertions of privilege, (3) exclusion of English speaking persons and
10 counsel from Board proceedings (so that Aruze USA could understand the proceedings
11 and/or respond appropriately or effectively), and (4) false assertions of confidentiality and
12 imposing onerous waivers of legal rights in order to see documents that were not
13 confidential because they were leaked to the *Wall Street Journal* and filed in Court at or
14 about the time Mr. Wynn and Wynn Resorts' asserted they were confidential. Finally,
15 Wynn Resorts and Mr. Wynn conspired to ensure that the redemption price was set well
16 below fair value, by relying on one biased appraisal that relied centrally on an incorrect
17 premise of the enforceability of the restraint of sale in the Stockholders Agreement and
18 failed to account for inside information available to Mr. Wynn and Wynn Resorts.

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

22 353. Under the "forced seller" or "fundamental change" doctrine, reliance is not
23 an element of a scheme liability claim alleging an involuntary sale, such as the purported
24 redemption in this case. The forced seller doctrine provides a cause of action under the
25 federal securities laws, because Aruze USA was forced by Wynn Resorts and Mr. Wynn
26 to convert its stock for money or other consideration, and/or because Aruze USA was
27 forced by Wynn Resorts and Mr. Wynn to fundamentally change the nature of its
28 investments as part of the fraudulent scheme. No volitional act was necessary by

1 Aruze USA to complete the transaction – and, in fact, Aruze USA did not want the sale to
2 occur.

3 354. As a direct consequence of the wrongful conduct of Wynn Resorts and
4 Mr. Wynn, Aruze USA suffered injury that resulted in the sale of its stock for more than
5 \$1 billion below fair value.

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

11
12 **COUNT XIX**

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

14 **and SEC Rule 10b-5(b) Promulgated Thereunder**

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

16 356. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
17 forth in full below.

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

22 358. Furthermore, this claim under SEC Rule 10b-5(b) is made in the alternative
23 to the prior claims under Rule 10b-5(a) and Rule 10b-5(c). While Aruze USA believes the
24 allegations are more properly brought under Rule 10b-5(a) and Rule 10b-5(c) because the
25 claims encompass conduct beyond mere misrepresentations and/or omissions, Aruze USA
26 makes this alternate claim under Rule 10b-5(b) to the extent a Court might find certain
27 allegations of wrongdoing are misstatements or omissions, and not: (i) devices, schemes,
28 or artifices under Rule 10b-5(a); (ii) acts, practices, of courses of business under Rule 10b-

1 5(c); or (iii) fraudulent statements that sound under Rule 10b-5(a) or (c) because they were
2 intended to deceive third parties in furtherance of a scheme to defraud Aruze USA.

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

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

- 10 • Making false statements by Mr. Wynn and Ms. Sinatra to dissuade Aruze
11 USA from selling or pledging its shares of Wynn Resorts and holding out a
12 false promise of financing by Wynn Resorts, while knowing that Wynn
13 Resorts was secretly investigating Mr. Okada to create a pretext for
14 redemption;
- 15 • Causing a redemption based on the Freeh Sporkin report, which, as alleged
16 in detail above, contained numerous false and misleading statements, and
17 omitted to state numerous facts material facts necessary in order to make the
18 statements made, in light of the circumstances under which they were made,
19 not misleading;
- 20 • Making untrue statements that Mr. Okada and Aruze USA would have an
21 opportunity to review the Freeh Sporkin report and present responsive facts
22 and evidence, with the intent of inducing Aruze USA not to apply for
23 injunctive relief prior to the Board’s consideration of redemption;
- 24 • Making false statements invoking attorney-client privilege to deny
25 Aruze USA access to investigative materials and impede Aruze USA’s
26 ability to present arguments against and/or enjoin the redemption;
- 27 • Making false statements claiming that the Freeh Sporkin report was
28 “confidential” in an attempt to (i) delay Aruze USA’s access to the report

- 1 and thereby impede Aruze USA's ability to argue against the Board's action
2 and/or seek injunctive relief prior to redemption, and (ii) deceive Aruze
3 USA into signing away legal rights in exchange for reviewing the report;
- 4 • Making false statements regarding the "fair value" or market value of Aruze
5 USA's shares in Wynn Resorts that failed to account for:
 - 6 • the lack of applicability of the Stockholders Agreement to a
7 redemption;
 - 8 • developments in Cotai and other positive inside information; and,
 - 9 • a premium for the volume of stock transacted;
 - 10 • Making false statements that Aruze USA, Universal Entertainment, and Mr.
11 Okada are unsuitable; and
 - 12 • Making false statements that there was any bona fide jeopardy to Wynn
13 Resorts gaming license.

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

1 362. In order to bring this to fruition, Wynn Resorts and Mr. Wynn fashioned a
2 rushed and wholly inadequate determination that Aruze USA, Mr. Okada, and Universal
3 were “unsuitable.” This determination necessarily depended on misrepresentations and
4 omissions regarding the facts and law. The misrepresentations concern facts resulting
5 from an incomplete investigation that omitted to include obvious exculpatory evidence
6 and false statements regarding purported jeopardy to Wynn Resorts’ gaming licenses.
7 The determinations of unsuitability and subsequent redemption were enabled by
8 misrepresentations and omissions, including but not limited to false promises that Aruze
9 USA, Mr. Okada, and Universal would have an opportunity to respond, false assertions of
10 privilege, and false assertions of confidentiality. Finally, Wynn Resorts and Mr. Wynn
11 misrepresented the fair value of the securities by relying on one biased appraisal that
12 failed to account for inside information available to Mr. Wynn and Wynn Resorts and
13 other relevant factors, including the lack of enforceability of the Stockholders Agreement.

14 363. In the absence of the wrongful conduct of Wynn Resorts and Mr. Wynn, no
15 redemption would have occurred, let alone a redemption of Aruze USA’s shares in Wynn
16 Resorts at a price well below fair value or market value.

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

26 365. As a direct consequence of the wrongful conduct of Wynn Resorts and
27 Mr. Wynn, Aruze USA suffered losses that resulted in the sale of its stock for more than
28 \$1 billion below fair value.

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

COUNT XX

**Claim for Violations of Section 20(a) of the Securities Exchange Act of 1934
and SEC Rule 10b-5 Promulgated Thereunder**

(By Aruze USA Against Steve Wynn)

367. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

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

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

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

PRAYER FOR RELIEF

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

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

**ANSWER OF DEFENDANTS ARUZE USA, INC. AND UNIVERSAL
ENTERTAINMENT CORPORATION TO THE COMPLAINT**

Each of Aruze USA, Inc. and Universal (collectively referred hereafter as “Defendants”) hereby answers the allegations (the “Answer”) in the Complaint of Wynn Resorts in the above captioned action. Except as to those allegations that are expressly admitted in this Answer, all allegations in the Complaint, including any Headings, Footnotes, Tables and Exhibits, are hereby denied.

Defendants respond to the Paragraph captioned “Nature Of The Action” as follows:

This Paragraph asserts legal argument and conclusions to which no responsive pleading is required. To the extent any response is required, Defendants admit that Plaintiff has brought a lawsuit that purports to assert a claim for, among other things, breach of fiduciary duty, but deny that Plaintiff is entitled to any relief. To the extent Defendants have not otherwise responded to the allegations in the Paragraph captioned “Nature of the Action,” the allegations are denied.

Defendants respond to the enumerated paragraphs of the Complaint as follows:

1. Defendants admit the allegations contained in Paragraph 1 of the Complaint.
2. Defendants admit that Wynn Resorts is a developer of resort casinos. Defendants further admit that Wynn Resorts owns casinos through its wholly owned subsidiaries, Wynn Las Vegas, LLC and Wynn Macau, Limited. Except as so expressly admitted, Defendants deny each and every allegation contained in Paragraph 2 of the Complaint.
3. Defendants admit the allegations contained in Paragraph 3 of the Complaint.
4. Defendants admit the allegations contained in Paragraph 4 of the Complaint.
5. Defendants admit that Kazuo Okada (“Mr. Okada”) was and is a citizen of Japan. Defendants further admit that Mr. Okada is a member of the Board of Directors of Wynn Resorts and, from October 2002 through October 2011, Mr. Okada served as Vice

1 Chairman of Wynn Resorts. Defendants deny that Aruze USA ceased to be a shareholder
2 of Wynn Resorts on February 18, 2012. Defendants further aver that Aruze USA
3 continues to own and control approximately 19.66% of the common stock of Wynn
4 Resorts. Except as so expressly admitted and averred, Defendants deny each and every
5 allegation contained in Paragraph 5 of the Complaint.

6 6. Defendants admit that Aruze USA, Inc. is a corporation organized and
7 existing under the Laws of the State of Nevada, and is a wholly owned subsidiary of
8 Universal. Defendants further admit that Mr. Okada serves as a director, President,
9 Secretary, and Treasurer of Aruze USA. Except as so expressly admitted, Defendants
10 deny each and every allegation contained in Paragraph 6 of the Complaint.

11 7. Defendants admit the allegations contained in Paragraph 7 of the Complaint.

12 8. Defendants admit the allegations contained in Paragraph 8 of the Complaint.

13 9. Defendants admit that Wynn Resorts' Gaming Compliance Committee is an
14 internal committee chaired by Robert Miller and comprised of two additional members,
15 Marc Schorr and John Strzemp. Defendants further admit that Mr. Schorr is a director of
16 Wynn Resorts and its Chief Operating Officer. Defendants further admit that Mr.
17 Strzemp is Wynn Resorts' Executive Vice President and Chief Administrative Officer.
18 Defendants aver that the duties of Wynn Resorts' Compliance Committee as described in
19 Wynn Resorts' public filings speak for themselves, and deny any allegations in Paragraph
20 9 inconsistent therewith. Except as so expressly admitted and averred, Defendants deny
21 each and every allegation contained in Paragraph 9 of the Complaint.

22 10. Defendants admit, on information and belief, that Louis J. Freeh was the
23 director of the Federal Bureau of Investigation from 1993 to 2001 and that, before joining
24 the Federal Bureau of Investigation, Mr. Freeh was a United States District Court Judge.
25 Except as so expressly admitted, Defendants are without knowledge or information
26 sufficient to form a belief as to the truth of the remaining allegations, and Defendants
27 therefore deny each and every allegation contained in Paragraph 10 of the Complaint.

28 11. Defendants aver that the allegations contained in Paragraph 11 assert legal

1 conclusions and, therefore, no responsive pleading is required. To the extent any response
2 is required, Defendants deny each and every allegation in Paragraph 11 of the Complaint.

3 12. Defendants aver that the allegations contained in Paragraph 12 assert legal
4 conclusions and, therefore, no response is required. To the extent that this case were in the
5 Nevada state court, Defendants admit that it would be properly assigned to the Business
6 Docket. Except as so expressly admitted, Defendants deny each and every allegation in
7 Paragraph 12 of the Complaint.

8 13. The allegations contained in Paragraph 13 assert legal conclusions and,
9 therefore, no responsive pleading is required. To the extent that a response is required,
10 Defendants admit that, as a director of Wynn Resorts, Mr. Okada is subject to certain
11 Nevada gaming laws and regulations. Defendants further aver that the applicable laws,
12 rules and regulations speak for themselves, and Defendants deny any allegations in
13 Paragraph 13 inconsistent therewith. Except as so expressly admitted, Defendants deny
14 each and every allegation in Paragraph 13 of the Complaint.

15 14. Defendants admit that, on information and belief, Wynn Resorts recently
16 promulgated a Code of Business Conduct and Ethics (the "Code of Conduct"). Except as
17 so expressly admitted, Defendants deny each and every allegation contained in
18 Paragraph 14 of the Complaint.

19 15. Defendants deny each and every allegation contained in Paragraph 15 of the
20 Complaint.

21 16. Defendants deny each and every allegation contained in Paragraph 16 of the
22 Complaint.

23 17. Defendants admit that Mr. Okada discussed a development project in the
24 Philippines with Mr. Wynn. Except as so expressly admitted, Defendants deny each and
25 every allegation contained in Paragraph 17 of the Complaint.

26 18. Defendants admit that Universal maintains a city ledger at Wynn Resorts.
27 Except as so expressly admitted, Defendants deny each and every allegation contained in
28 Paragraph 18 of the Complaint.

1 19. Defendants deny each and every allegation contained in Paragraph 19 of the
2 Complaint.

3 20. Defendants aver that the laws, rules, and regulations governing the
4 Philippine Amusement and Gaming Corporation speak for themselves, and deny any
5 allegations contained in Paragraph 20 inconsistent therewith. Defendants aver that the
6 document titled "Provisional License," in connection with Tiger Resort, Leisure and
7 Entertainment, Inc., speaks for itself and Defendants deny any allegations contained in
8 Paragraph 20 inconsistent therewith. To the extent not so specifically averred and
9 admitted, Defendants deny each and every allegation contained in Paragraph 20 of the
10 Complaint.

11 21. Defendants are without knowledge or information sufficient to form a belief
12 as to the truthfulness of the allegations concerning what Wynn Resorts heard and these
13 allegations are, therefore, denied. Defendants deny each and every allegation contained in
14 Paragraph 21 of the Complaint.

15 22. Defendants are without knowledge or information sufficient to form a belief
16 as to the truthfulness of the allegations concerning Plaintiff's purported conduct of an
17 investigation and these allegations are, therefore, denied. Defendants deny each and every
18 allegation contained in Paragraph 22 of the Complaint.

19 23. Defendants admit that from time to time Mr. Okada and Mr. Wynn
20 discussed traveling to the Philippines. Except as so expressly admitted, Defendants deny
21 each and every allegation contained in Paragraph 23 of the Complaint.

22 24. Defendants admit that the Wynn Resorts' Board of Directors met on
23 February 24, 2011. Defendants further admit that Mr. Okada attended the meeting.
24 Defendants are without knowledge or information sufficient to form a belief as to the
25 truthfulness of the allegations concerning any Board discussions contained in Paragraph
26 24 and these allegations are, therefore, denied. Except as so expressly admitted,
27 Defendants deny each and every allegation contained in Paragraph 24 of the Complaint.

28 25. Defendants deny each and every allegation contained in Paragraph 25 of

1 the Complaint.

2 26. Defendants deny each and every allegation contained in Paragraph 26 of the
3 Complaint.

4 27. To the extent the allegations contained in Paragraph 27 refer to public
5 statements, such statements speak for themselves and Defendants deny each and every
6 allegation contained in Paragraph 27 inconsistent therewith. Defendants deny each and
7 every allegation contained in Paragraph 27 of the Complaint.

8 28. Defendants admit that on January 26, 2012, Universal held a
9 groundbreaking ceremony for its development project in the Philippines. Defendants
10 further aver that to the extent the allegations contained in Paragraph 28 refer to public
11 statements, such statements speak for themselves and Defendants deny each and every
12 allegation contained in Paragraph 28 inconsistent therewith. Except as so expressly
13 admitted, Defendants deny each and every allegation contained in Paragraph 28 of the
14 Complaint.

15 29. Defendants deny each and every allegation contained in Paragraph 29 of the
16 Complaint.

17 30. Defendants are without knowledge or information sufficient to form a belief
18 as to the truthfulness of the allegations concerning the purported meeting on July 28,
19 2011, and these allegations are, therefore, denied. Defendants deny each and every
20 allegation contained in Paragraph 30 of the Complaint.

21 31. Defendants admit that Wynn Resorts' Board of Directors held a meeting on
22 October 31, 2011 and November 1, 2011. Defendants further admit that Mr. Okada
23 received what is purported to be a version of the Wynn Resorts Code of Business Conduct
24 and Ethics and a version of a purported policy regarding payments to government
25 officials. Defendants are without knowledge or information sufficient to form a belief as
26 to the truthfulness of the allegations contained in Paragraph 31 concerning notice, and
27 these allegations are, therefore, denied. Defendants aver that Mr. Okada raised questions,
28 through counsel, regarding a version of the Code of Business Conduct and Ethics, and the

1 purported policy regarding payment to government officials he received and hereby
2 denies any allegations inconsistent therewith. Except as so expressly admitted and
3 averred, Defendants deny each and every allegation contained in Paragraph 31 of the
4 Complaint.

5 32. Defendants admit that Mr. Okada's assistant sent an email on September 15,
6 2011 stating that Mr. Okada intended to attend the two day Wynn Resorts Board meeting
7 on October 31, 2011 and November 1, 2011. Except as so expressly admitted, Defendants
8 deny each and every allegation contained in Paragraph 32 of the Complaint.

9 33. Defendants are without knowledge or information sufficient to form a belief
10 as to the truthfulness of the allegations concerning Plaintiff's purported conduct of an
11 investigation and these allegations are, therefore, denied. Defendants deny each and every
12 allegation contained in Paragraph 33 of the Complaint.

13 34. Defendants are without knowledge or information sufficient to form a belief
14 as to the truthfulness of the allegations concerning the Compliance Committee's purported
15 special meeting and these allegations are, therefore, denied. Defendants deny each and
16 every allegation contained in Paragraph 34 of the Complaint.

17 35. Defendants admit that on September 30, 2011, a meeting was held to discuss
18 Wynn Resorts' agreement to provide financing for Aruze USA. Defendants are without
19 information or belief as to the truthfulness of the allegations contained in Paragraph 35
20 concerning the Compliance Committee's concerns and these allegations are, therefore,
21 denied. Except as so expressly admitted, Defendants deny each and every allegation
22 contained in Paragraph 35 of the Complaint.

23 36. Defendants admit that counsel for Plaintiff and Mr. Okada communicated
24 during the month of October 2011. Defendants are without information or belief
25 sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph
26 36 concerning the Wynn Resorts' concerns and these allegations are, therefore, denied.
27 Except as so expressly admitted, Defendants deny each and every allegation contained in
28 Paragraph 36 of the Complaint.

1 37. Defendants admit that Mr. Okada made requests to inspect the books and
2 records of Plaintiff. Except as so expressly admitted, Defendants deny each and every
3 allegation contained in Paragraph 37 of the Complaint.

4 38. Defendants admit that Mr. Okada requested that the training materials be
5 translated to Japanese. Defendants aver that he further requested the training be moved
6 until after the Board meeting on November 1, 2011, or rescheduled, because he could not
7 otherwise attend. Except as so expressly admitted and averred, Defendants deny each and
8 every allegations contained in Paragraph 38 of the Complaint.

9 39. Defendants are without knowledge or information sufficient to form a belief
10 as to the truthfulness of the allegations concerning Plaintiff's purported retention of Mr.
11 Freeh on October 29, 2011, and these allegations are, therefore, denied. Defendants deny
12 each and every allegation contained in Paragraph 39 of the Complaint.

13 40. Defendants are without knowledge or information sufficient to form a belief
14 as to the truthfulness of the allegations contained in Paragraph 40 concerning Mr. Freeh's
15 interviews of Plaintiff's Board of Directors and review of any materials, and these
16 allegations are, therefore, denied. Defendants deny each and every allegation contained in
17 Paragraph 40 of the Complaint.

18 41. Defendants are without knowledge or information sufficient to form a belief
19 as to the truthfulness of the allegations contained in Paragraph 41 concerning a purported
20 briefing of the Compliance Committee on February 6, 2012, and these allegations are,
21 therefore, denied. Defendants deny each and every allegation contained in Paragraph 41
22 of the Complaint.

23 42. Defendants admit that Mr. Okada participated in a full-day interview with
24 Mr. Freeh and his associates in Tokyo, Japan on February 15, 2012. Defendants admit
25 that Mr. Okada was accompanied by counsel during the interview. Except as so expressly
26 admitted, Defendants deny each and every allegation contained in Paragraph 42 of the
27 Complaint.

28 43. Defendants deny each and every allegation contained in Paragraph 43 of the

1 Complaint.

2 44. Defendants admit that Mr. Freeh made a presentation to Wynn Resorts'
3 Board of Directors on February 18, 2012. Except as so expressly admitted, Defendants
4 deny each and every allegation contained in Paragraph 44 of the Complaint.

5 45. Defendants are without knowledge or information sufficient to form a belief
6 as to the truthfulness of the allegations contained in Paragraph 45 concerning the Board's
7 deliberations and the allegations are, therefore, denied. Defendants deny each and every
8 allegation contained in Paragraph 45 of the Complaint.

9 46. Defendants deny each and every allegation contained in Paragraph 46 of the
10 Complaint.

11 47. In response to Paragraph 47, Defendants incorporate herein each and every
12 prior admission, denial, or other response to the allegations contained in Paragraphs 1
13 through and including 46 of the Complaint as if fully set forth herein.

14 48. Defendants deny each and every allegation contained in Paragraph 48 of the
15 Complaint.

16 49. Defendants deny each and every allegation contained in Paragraph 49 of the
17 Complaint.

18 50. Defendants deny each and every allegation contained in Paragraph 50 of the
19 Complaint.

20 51. Defendants deny each and every allegation contained in Paragraph 51 of the
21 Complaint.

22 52. Defendants deny each and every allegation contained in Paragraph 52 in the
23 Complaint.

24 53. Defendants deny each and every allegation contained in Paragraph 53 in the
25 Complaint.

26 54. Defendants deny each and every allegation contained in Paragraph 54 of the
27 Complaint.

28 55. Defendants deny each and every allegation contained in Paragraph 55 of the

1 Complaint.

2 56. Defendants admit that Mr. Okada is a director of Wynn Resorts, and as such
3 owes certain fiduciary duties to the Company and its shareholders to the extent they exist
4 under Nevada law and hereby denies any allegations contained in Paragraph 56 that are
5 inconsistent therewith. Except as so expressly admitted, Defendants deny each and every
6 allegation contained in Paragraph 56 of the Complaint.

7 57. Defendants admit that Mr. Okada is a director of Wynn Resorts. Defendants
8 aver that the allegations contained in Paragraph 57 assert legal conclusions to which no
9 responsive pleading is required. To the extent a response is required, Defendants admit
10 that Mr. Okada owes certain fiduciary duties to the Company and its shareholders to the
11 extent they exist under Nevada law and hereby denies any allegations contained in
12 Paragraph 57 that are inconsistent therewith. Except as so expressly admitted, Defendants
13 deny each and every allegation contained in Paragraph 57 of the Complaint.

14 58. Defendants deny each and every allegation contained in Paragraph 58 of the
15 Complaint.

16 59. Defendants deny each and every allegation contained in Paragraph 59 of the
17 Complaint.

18 60. Defendants deny each and every allegation contained in Paragraph 60 of the
19 Complaint.

20 61. Defendants deny each and every allegation contained in Paragraph 61 of the
21 Complaint.

22 62. Defendants deny each and every allegation contained in Paragraph 62 of the
23 Complaint.

24 63. Defendants deny each and every allegation contained in Paragraph 63 of the
25 Complaint.

26 64. In response to Paragraph 64, Defendants incorporate herein each and every
27 prior admission, denial, or other response to the allegations contained in Paragraphs 1
28 through and including 63 of the Complaint as if fully set forth herein.

1 65. Defendants admit that Mr. Okada is a director of Wynn Resorts. Defendants
2 aver that the allegations contained in Paragraph 65 assert a legal conclusion to which no
3 responsive pleading is required. To the extent a response is required, Defendants admit
4 that Mr. Okada owes certain fiduciary duties to the Company to the extent they exist
5 under Nevada law and hereby denies any allegations contained in Paragraph 65 that are
6 inconsistent therewith. Except as so expressly admitted, Defendants deny each and every
7 allegation contained in Paragraph 65 of the Complaint.

8 66. Defendants deny each and every allegation contained in Paragraph 66 of the
9 Complaint.

10 67. Defendants deny each and every allegation contained in Paragraph 67 of the
11 Complaint.

12 68. Defendants deny each and every allegation contained in Paragraph 68 of the
13 Complaint.

14 69. Defendants deny each and every allegation contained in Paragraph 69 of the
15 Complaint.

16 70. In response to Paragraph 70, Defendants incorporate herein each and every
17 prior admission, denial, or other response to the allegations contained in Paragraphs 1
18 through and including 69 of the Complaint as if fully set forth herein.

19 71. Defendants aver that the Nevada Gaming Regulations speak for themselves
20 and Defendants deny any allegations contained in Paragraph 71 of the Complaint
21 inconsistent therewith. Except as so expressly averred, Defendants deny each and every
22 allegation contained in Paragraph 71 of the Complaint.

23 72. Defendants aver that the Nevada Gaming Regulations speak for themselves
24 and Defendants deny any allegations contained in Paragraph 72 of the Complaint
25 inconsistent therewith. Except as so expressly averred, Defendants deny each and every
26 allegation contained in Paragraph 72 of the Complaint.

27 73. Defendants aver that the Nevada Gaming Regulations speak for themselves
28 and Defendants deny any allegations contained in Paragraph 73 of the Complaint

1 inconsistent therewith. Except as so expressly averred, Defendants deny each and every
2 allegation contained in Paragraph 73 of the Complaint.

3 74. Defendants aver that to the extent the allegations contained in Paragraph 74
4 refer to publicly filed documents, such documents speak for themselves and Defendants
5 deny any allegations contained in Paragraph 74 inconsistent therewith. Except as so
6 expressly averred, Defendants deny each and every allegation contained in Paragraph 74
7 of the Complaint.

8 75. Defendants aver that to the extent the allegations contained in Paragraph 75
9 refer to publicly filed documents, such documents speak for themselves and Defendants
10 deny any allegations contained in Paragraph 75 inconsistent therewith. Except as so
11 expressly averred, Defendants deny each and every allegation contained in Paragraph 75
12 of the Complaint.

13 76. Defendants are without knowledge or information sufficient to form a belief
14 as to the truthfulness of the allegations concerning what took place following Freeh's
15 presentation to the Wynn Resorts Board of Directors and these allegations are, therefore,
16 denied. Defendants deny each and every allegation contained in Paragraph 76 of the
17 Complaint.

18 77. Defendants deny each and every allegation contained in Paragraph 77 of the
19 Complaint.

20 78. Defendants deny each and every allegation contained in Paragraph 78 of the
21 Complaint.

22 79. Defendants deny each and every allegation contained in Paragraph 79 of the
23 Complaint.

24

25 **ANSWER TO PRAYER FOR RELIEF**

26 WHEREFORE, denying any basis exists to grant Plaintiff relief, Defendants
27 pray:

28 a. Plaintiff take nothing;

- 1 b. For a judgment dismissing the Complaint in its entirety with prejudice;
2 and,
3 c. The Court award to Defendants such additional relief as it deems
4 appropriate.

5
6 **AFFIRMATIVE DEFENSES**

7 Without undertaking any burden of proof not otherwise assigned to them by
8 law, Defendants, and each of them, assert the following separate and affirmative defenses:

9
10 **FIRST AFFIRMATIVE DEFENSE**

11 **(No Injury)**

12 Plaintiff's purported claims are barred in whole or in part because Plaintiff
13 has not sustained any cognizable injury.

14
15 **SECOND AFFIRMATIVE DEFENSE**

16 **(Failure to State a Claim)**

17 Plaintiff's purported claims are barred in whole or in part because the
18 Complaint, and each and every purported claim for relief alleged therein, fails to allege
19 facts sufficient to state a claim upon which relief may be granted.

20
21 **THIRD AFFIRMATIVE DEFENSE**

22 **(No Breach)**

23 Plaintiff's purported claims are barred in whole or in part because
24 Defendants did not breach any fiduciary duties to Wynn Resorts.

25
26 **FOURTH AFFIRMATIVE DEFENSE**

27 **(Standing)**

28 Plaintiff's purported claims are barred in whole or in part because Plaintiff

1 lacks standing to assert some or all of its claims.

2
3 **FIFTH AFFIRMATIVE DEFENSE**

4 **(Statute of Limitations)**

5 Plaintiff's purported claims are barred in whole or in part because of any
6 applicable statute of limitations.

7
8 **SIXTH AFFIRMATIVE DEFENSE**

9 **(Contributory Negligence)**

10 Plaintiff's purported claims are barred in whole or in part by its own actions,
11 omissions, negligence, and/or malfeasance.

12
13 **SEVENTH AFFIRMATIVE DEFENSE**

14 **(Comparative Negligence)**

15 Plaintiff's purported claims are barred in whole or in part because Plaintiff's
16 damages, if any, were caused or contributed to by Plaintiff's own negligence, and such
17 negligence was greater than any negligence, which is expressly denied, on the part of
18 Defendants.

19
20 **EIGHTH AFFIRMATIVE DEFENSE**

21 **(Superseding Cause)**

22 Plaintiff's purported claims are barred in whole or in part because Plaintiff's
23 alleged damages, if any, were the result of one or more intervening or superseding causes
24 or caused by the acts and/or failures to act of persons and/or entities other than
25 Defendants, and were not the result of any act or omission on the part of Defendants.

NINTH AFFIRMATIVE DEFENSE

(Good Faith)

Plaintiffs' claims are barred in whole or in part because Defendants at all times acted in good faith and did not directly or indirectly induce any act or acts constituting a cause of action arising under any law.

TENTH AFFIRMATIVE DEFENSE

(Speculative Damages)

Plaintiffs' damages claims are barred in whole or in part because they are speculative in nature and/or not otherwise recoverable under the law.

ELEVENTH AFFIRMATIVE DEFENSE

(No Causation)

Plaintiff's purported claims are barred in whole or in part because of a lack of causation. Plaintiff has not suffered any injury or harm as a result of any actions or omissions of Defendants.

TWELFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiff's purported claims are barred due to its failure to mitigate its damages.

THIRTEENTH AFFIRMATIVE DEFENSE

(Breach of Fiduciary Duty by Wynn Resorts' Board)

Plaintiff's purported claims are barred because the Board of Wynn Resorts breached its fiduciary duties in connection with its purported redemption of Aruze USA's shares of Wynn Resorts stock, and therefore the purported redemption was illegal and improper.

FOURTEENTH AFFIRMATIVE DEFENSE

(Improper Taking)

Plaintiff's purported claims are barred because the actions of the Board of Wynn Resorts were taken in violation of the Articles of Incorporation of Wynn Resorts.

FIFTEENTH AFFIRMATIVE DEFENSE

(Violation of Nevada and U.S. Law)

Plaintiff's purported claims are barred because the actions of the Board of Wynn Resorts were taken in violation of Nevada gaming regulations, Nevada state law, the Constitution of the State of Nevada, and the laws arising under the U.S. Constitution.

SIXTEENTH AFFIRMATIVE DEFENSE

(Lack of Subject Matter Jurisdiction)

Plaintiff's purported claims are barred because and to the extent that this Court lacks subject matter jurisdiction to resolve certain matters and claims alleged in the Complaint.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Fraudulent Inducement)

Plaintiff's declaratory relief claim is barred in whole or in part because Plaintiff and Steve Wynn fraudulently induced Aruze USA to acquire shares in Wynn Resorts by and through Plaintiff's and Steve Wynn's conduct of intentionally failing to inform Aruze USA that Plaintiff and Steve Wynn would unilaterally amend Plaintiff's Articles of Incorporation to include the shareholder redemption provision that Plaintiff now seeks to enforce against Aruze USA.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Limitation on Liability)

Plaintiff's purported claims are barred in whole or in part because and to the extent that Defendants' liability, if any, is limited by Wynn Resorts' Articles of Incorporation, Bylaws, and N.R.S. § 78.138.

NINETEENTH AFFIRMATIVE DEFENSE

(Insufficient Pleadings)

Plaintiff's purported claims are barred in whole or in part because the Complaint fails to state the alleged claims with sufficient particularity to allow Defendants to respond with and to ascertain what other defenses may exist.

TWENTIETH AFFIRMATIVE DEFENSE

(Assumption of Risk)

Plaintiff's purported claims are barred in whole or in part because Plaintiff is not entitled to recover from Defendant because Plaintiff knew or should have known the risks associated with the conduct alleged in the Complaint.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(License)

Plaintiff's purported claims are barred in whole or in part because Plaintiff authorized Defendant's alleged wrongdoing.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiff's purported claims are barred in whole or in part because it has "unclean hands."

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff's purported claims are barred in whole or in part because or based on the doctrine of estoppel.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiff's purported claims are barred in whole or in part based on the doctrine of laches.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff's purported claims are barred in whole or in part because the Plaintiff has waived its right to seek damages.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Acquiescence)

Plaintiff's purported claims are barred in whole or in part because the Plaintiff has acquiesced to Defendants' actions.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Ratification)

Plaintiff's purported claims barred in whole or in part because the Plaintiff has ratified Defendants' actions.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Res Judicata)

Plaintiff's purported claims are barred in whole or in part because of the

1 doctrine of res judicata.

2
3 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

4 **(Unconscionability)**

5 Plaintiff's purported claims are barred in whole or in part because the
6 scheme of redemption as set forth in the Wynn Resorts Articles of Incorporation and as
7 executed by Wynn Resorts was and is unlawfully unconscionable.

8
9 **THIRTIETH AFFIRMATIVE DEFENSE**

10 **(Contrary to Public Policy)**

11 Plaintiff's purported claims are barred in whole or in part because the
12 scheme of redemption as set forth in the Wynn Resorts Articles of Incorporation and as
13 executed by Wynn Resorts was and is contrary to public policy.

14
15 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

16 **(Illegal Penalty)**

17 Plaintiff's purported claims are barred in whole or in part because
18 redemption is an illegal and unenforceable penalty.

19
20 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

21 **(Unlawful Forfeiture)**

22 Plaintiff's purported claims are barred in whole or in part because
23 redemption is an unlawful forfeiture.

24
25 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

26 **(Reserve All Rights)**

27 Defendants hereby reserve and assert all affirmative defenses available
28 under federal law and under any applicable state law. Defendants presently have

1 insufficient knowledge or information upon which to form a belief as to whether they may
2 have other, as yet unstated, affirmative defenses available. Therefore, Defendants reserve
3 the right to assert additional affirmative defenses in the event that discovery indicates that
4 it would be appropriate. Additionally, Defendants adopt by reference any applicable
5 defense asserted by any other defendant not expressly pleaded herein to the extent he may
6 share that defense.

7
8 **JURY DEMAND**

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

11 DATED: March 12, 2012.

Respectfully submitted,

12 LIONEL SAWYER & COLLINS

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

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

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

** Pro hac vice application forthcoming*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

WYNN RESORTS, LIMITED,)	
)	
Plaintiff,)	2:12-CV-0400-LRH-PAL
)	
v.)	
)	<u>ORDER</u>
KAZUO OKADA; et al.,)	
)	
Defendants.)	
_____)	

Before the court is plaintiff Wynn Resorts, Limited's ("Wynn") request for attorney's fees. Doc. #107.¹ Also before the court is defendant Azure USA, Inc.'s ("Azure") notice of intent to not sever counterclaims. Doc. #106.

I. Facts and Background

Plaintiff Wynn is a Nevada corporation in the business of owning and operating casino resorts. On February 19, 2012, Wynn filed the underlying complaint in state court alleging three causes of action: (1) breach of fiduciary duty; (2) aiding and abetting a breach of fiduciary duty; and (3) declaratory judgment. Doc. #1, Exhibit A.

On March 12, 2012, defendants Aruze and Universal Entertainment Corp. ("Universal") removed the underlying complaint to federal court on the basis of federal question jurisdiction.

¹ Refers to the court's docket number.

Doc. #1. Removing defendants contended that Wynn's complaint involved a resolution of a substantial federal question, namely the scope and interpretation of the Foreign Corrupt Practices Act of 1977 ("FCPA"), 15 U.S.C. §§ 78dd-1, *et seq. Id.*

In response, Wynn filed a motion to remand (Doc. #43) which, after a hearing on the motion, was granted by the court (Doc. #102). Along with remanding the action, the court granted plaintiff Wynn leave to seek attorney's fees related to the motion to remand. *See* Doc. #100. Thereafter, Wynn filed the present request for attorney's fees in the amount of \$148,583.00. Doc. #107.

II. Discussion

A. Awarding Attorney's Fees

An order remanding a case to state court may include an award of attorney's fees. 28 U.S.C. § 1447(c). A district court has wide discretion to grant attorney's fees. *Moore v. Permanent Medical Group*, 981 F.2d 443, 446 (9th Cir. 1992). Generally, fees may be awarded when removal, "while fairly supportable, was wrong as a matter of law." *Balcorta v. Twentieth Century-Fox Film Corp.*, 208 F.3d 1102, 1106 n.6 (9th Cir. 1999).

In its request, Wynn contends that an award of attorney's fees on remand is appropriate because defendants did not have a reasonable basis to remove the state law complaint to federal court. In opposition, defendants contend that attorney's fees should not be awarded because they had an objectively reasonable basis for removal, namely that the underlying conduct for the complaint is that defendant Kazuo Okada ("Okada") engaged in unlawful activities with foreign government officials at Wynn properties in violation of the FCPA.

On June 21, 2012, the court heard argument on Wynn's motion to remand. *See* Doc. ##100, 102. At the hearing, the court found that Wynn's complaint only alleged state law claims that were "not dependent upon whether or not, in fact, the Federal Corrupt Practices Act was violated," and that Wynn's claims, "in fact, do not implicate a significant federal issue." Doc. #100, p.33:21-34:3.

1 Further, the court found that “a federal question [was] not clear in any respect.” Doc. #100,
2 p.40:11-12. Thus, based on the findings of the court at the hearing and the moving documents in
3 this matter, the court finds that removing defendants did not have an objectively reasonable basis to
4 remove this action to federal court. Therefore, the court finds that an award of attorney’s fees on
5 remand is appropriate.

6 **B. Amount of Attorney’s Fees**

7 In determining the reasonableness of a request for attorney’s fees, a court considers several
8 factors including: (1) the reputation and skill of counsel; (2) the financial terms of the client fee
9 arrangement; (3) the nature and extent of work performed and results obtained; and (4) awards in
10 similar cases. *See, e.g.,* LR 54-16(b)(3); *Resurrection Bay Conservation Alliance v. City of Seward*
11 *Alaska*, 640 F. 3d 1087, 1095 (9th Cir. 2011).

12 Here, Wynn requests \$148,583.00 in attorney’s fees for work performed relating to the
13 motion to remand. *See* Doc. #107. In support of its motion, Wynn has complied with the applicable
14 provisions of Local Rule 54-16 by providing an itemization and description of the work performed
15 as well as a summary of the fees charged and the time and labor required.² The court has reviewed
16 the documents and pleadings on file in this matter and finds that Wynn’s request for \$148,583.00 is
17 reasonable based on the questions presented, the number of documents required for review, the
18 length of the motions, the number of hours worked, and the quality of counsel. Therefore, the court
19 shall grant Wynn’s motion for attorney’s fees.

20 ///

21
22 ² Attached as Exhibit A is the declaration of Wynn’s counsel James J. Pisanelli, Esq. (“Pisanelli”), a
23 partner at the firm Pisanelli Bice PLLC (“Pisanelli Bice”) who worked on the motion to remand. *See* Doc. #107,
Exhibit A, Pisanelli Decl. In his declaration, Pisanelli provides an itemized summary of all work performed by
Pisanelli Bice on the motion to remand. *Id.*

24 Attached as Exhibit B is the declaration of Wynn’s counsel Paul K. Rowe, Esq. (“Rowe”), an attorney
25 at Wachtell, Lipton, Rosen & Katz (“WLRK”) who also worked on the motion to remand and associated
documents. *See* Doc. #107, Exhibit B, Rowe Decl. In his declaration, Rowe provides an itemized summary of
all work performed by WLRK on the motion to remand. *Id.*

1 **C. Notice of Non-Severance**

2 At the end of the court's June 21, 2012 hearing, defendants requested an opportunity to
3 brief the issue of severing their counterclaims to allow this court to retain federal jurisdiction over
4 part of this action. *See* Doc. #102. However, defendants have since filed a notice to the court
5 declining to sever its counterclaims, and instead expressing their intent file a separate federal
6 securities action. *See* Doc. #106. Therefore, the court finds that there is now no remaining issues
7 before the court concerning remand. Accordingly, this action shall now be remanded to state court
8 in its entirety.

9
10 IT IS THEREFORE ORDERED that plaintiff's request for attorney's fees (Doc. #107) is
11 GRANTED. The clerk of court shall enter an award of attorney's fees in favor of plaintiff and
12 against defendant in the amount of \$148,583.00.

13 IT IS FURTHER ORDERED that this action, 2:12-cv-0400, is REMANDED in its entirety.

14 IT IS SO ORDERED.

15 DATED this 21st day of August, 2012.



16
17
18 _____
LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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1 0009
2 LIONEL SAWYER & COLLINS
3 Samuel S. Lionel (SBN 1766)
4 Paul R. Hejmanowski (SBN 94)
5 Charles H. McCrea, Jr. (SBN 104)
6 1700 Bank of America Plaza
7 300 South Fourth Street
8 Las Vegas, Nevada 89101
9 Telephone: (702) 383-8888
10 Facsimile: (702) 383-8845

11 William F. Sullivan*
12 Thomas A. Zaccaro*
13 Howard M. Privette*
14 John S. Durrant*
15 PAUL HASTINGS LLP
16 515 South Flower Street, 25th Floor
17 Los Angeles, CA 90071
18 Telephone: (213) 683-6000
19 Facsimile: (213) 683-0705

20 Linda Chatman Thomsen*
21 Paul Spagnoletti*
22 Greg D. Andres*
23 DAVIS POLK & WARDWELL LLP
24 450 Lexington Avenue
25 New York, NY 10017
26 Telephone: (212) 450-4000
27 Facsimile: (212) 701-5800

28 Attorneys for Defendants and Counterclaimants
ARUZE USA, INC. and UNIVERSAL ENTERTAINMENT
CORPORATION
**pro hac vice application pending*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Plaintiff,

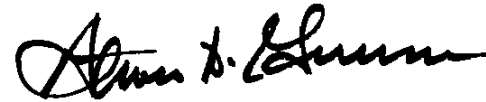
vs.

KAZUO OKADA, an individual, et al.,

Defendants.

AND ALL RELATED CLAIMS.

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CLERK OF THE COURT

CASE NO: A-12-656710-B

DEPT. NO: XI

**ARUZE USA, INC. AND UNIVERSAL ENTERTAINMENT CORP.'S
NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION**

1 COME NOW Defendants and Counterclaimants, ARUZE USA, INC. ("Aruze
2 USA") and UNIVERSAL ENTERTAINMENT CORPORATION ("Universal"), by and through
3 their attorneys of record, LIONEL SAWYER & COLLINS, PAUL HASTINGS LLP, and
4 DAVIS POLK & WARDWELL LLP, to respectfully move this Court to issue a preliminary
5 injunction, pursuant to Section 33.010 of the Nevada Revised Statutes and Nevada Rule of Civil
6 Procedure 65, that:
7

- 8 • Prohibits¹ Plaintiff and Counterdefendant WYNN RESORTS, LIMITED ("Wynn
9 Resorts") and its officers, directors, agents, employees, attorneys, or anyone else acting on
10 its behalf from barring or preventing Aruze USA from exercising its right to vote its
11 24,549,222 shares of common stock of Wynn Resorts, including at Wynn Resorts' 2012
12 Annual Meeting of Stockholders (the "Annual Meeting") that will be held on
13 November 2, 2012, absent a final determination on the merits in this case; and,
14
15 • Prohibits Wynn Resorts and its officers, directors, agents, employees, attorneys, or anyone
16 else acting on its behalf from acting in any other manner to deprive Aruze USA of any of
17 its rights as a stockholder of Wynn Resorts, including proposing new directors for
18 consideration at the Annual Meeting that will be held on November 2, 2012, absent a final
19 determination on the merits in this case.
20
21

22 This Motion is based on this Notice and Motion, the accompanying Memorandum
23 of Points and Authorities, the Affidavit of Howard M. Privette filed concurrently herewith, all
24 pleadings and papers on file in this action, and such evidence or oral argument as may be
25 presented at the hearing on this Motion.
26

27 ¹ In the alternative, Aruze USA seeks a mandatory injunction of the same effect as the prohibitory
28 relief set forth herein.

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NOTICE OF MOTION

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that the foregoing motion will be heard before the above-captioned Court on the 2nd day of October, 2012, at 8 : 30 AM a.m./p.m., or as soon thereafter as counsel may be heard.

DATED: August 31, 2012 Respectfully Submitted,

LIONEL SAWYER & COLLINS

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

William F. Sullivan*
Thomas A. Zaccaro*
Howard M. Privette*
John S. Durrant*
PAUL HASTINGS LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071

Linda Chatman Thomsen*
Paul Spagnoletti*
Greg D. Andres*
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017
Attorneys for Defendants and Counterclaimants
ARUZE USA, INC. and UNIVERSAL
ENTERTAINMENT CORPORATION
* *pro hac vice application pending*

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1 **I. INTRODUCTION**

2 This Motion seeks an order enjoining Wynn Resorts, Limited (“Wynn Resorts” or
3 the “Company”) from infringing on the fundamental rights of Aruze USA, Inc. (“Aruze USA”) as
4 a stockholder of Wynn Resorts – including its right to vote regarding corporate matters and its
5 right to nominate directors – until this Court makes a final determination on the merits of this
6 case. This relief is necessary because the Wynn Resorts Board of Directors (the “Board”)
7 purports to have forcibly redeemed Aruze USA’s almost 20% ownership interest in Wynn
8 Resorts, seeking to disenfranchise Aruze USA with respect to critical upcoming stockholder votes
9 and to silence Kazuo Okada as the lone voice of dissent against Steve Wynn on the Board. These
10 actions by Wynn Resorts directly contravene both the Company’s contractual obligations to
11 Aruze USA and the Board’s fiduciary duties.

12 Wynn Resorts seeks to justify its action by claiming that Aruze USA’s continued
13 ownership of the Company’s stock would put Wynn Resorts in imminent danger of losing its
14 gaming licenses. Wynn Resorts has claimed the Board acted solely on the basis of allegations –
15 contained in an incomplete and fundamentally flawed “report” commissioned by Wynn Resorts
16 (the “Freeh Report”) – that Aruze USA’s parent, Universal Entertainment Corp. (“Universal”),
17 had paid for travel and entertainment expenses on behalf of foreign gaming officials. Aruze USA
18 and Universal categorically deny any wrongdoing, but more to the point, nothing that they have
19 been accused of doing could pose a legitimate and imminent danger to Wynn Resorts’ gaming
20 licenses. Indeed, one Board member who voted in favor of the redemption has admitted in court
21 filings that Wynn Resorts was not in imminent danger of losing any gaming licenses, and
22 therefore this was not a basis for the redemption. These allegations are mere pretext for actions
23 taken to oust a dissenting Board member and entrench and enrich Steve Wynn, the Board, and the
24 management of Wynn Resorts.

25 A special Board meeting was hurriedly put together on February 18, 2012, called
26 on only three days’ notice and held in the middle of the night in Asia. There, Mr. Wynn caused
27 the Board to declare Mr. Okada, Aruze USA and Universal to be “unsuitable.” At Mr. Wynn’s
28 urging, the Board then voted to forcibly take Aruze USA’s stock in exchange for a ten-year note

1 at an arbitrary 30% discount to the then-current stock market price, an amount nearly \$1
2 billion less than the value Wynn Resorts itself had given Aruze USA's shares in a recent court
3 filing. In one fell swoop, Mr. Wynn and his Board thus acted to quell dissent and consolidate
4 power at Wynn Resorts by disenfranchising the Company's largest shareholder.

5 First, the Board did not have authority to redeem Aruze USA's shares because the
6 provision of the Company's Articles of Incorporation covering redemption does not apply to
7 Aruze USA. Aruze USA acquired its shares in Wynn Resorts before Wynn Resorts became a
8 publicly-traded company. This was accomplished through a Contribution Agreement that set
9 forth the terms governing Aruze USA's investment in the Company. Wynn Resorts expressly
10 acknowledged in the Contribution Agreement that no restrictions – other than those reflected in
11 then-existing agreements among the parties – would apply to the stock issued to Aruze USA.
12 Wynn Resorts further agreed that the existing restrictions could be altered only with Aruze USA's
13 express written consent. The redemption restriction upon which the Board relied to redeem
14 Aruze USA's stock, however, was added to the Articles of Incorporation through the unilateral
15 action of Mr. Wynn. Aruze USA never agreed that such restrictions would govern its shares.

16 Second, the Board breached its fiduciary duties when it abruptly redeemed Aruze
17 USA's shares on a pretext. The Board directed Aruze USA's shares to be redeemed in exchange
18 for a 10-year promissory note, an action that could not serve the Board's stated purpose of
19 safeguarding Wynn Resorts' gaming license. Under Nevada law, if the Nevada Gaming
20 Commission ("Nevada Commission") orders the disassociation of an "unsuitable" person or
21 entity from a licensed gaming enterprise, the unsuitable person or entity is precluded not only
22 from holding stock, but also from holding the gaming company's *debt*. Accordingly, the Board's
23 resolution to exchange Aruze USA's stock for a 10-year note utterly fails to solve the supposed
24 "suitability" problem purportedly underlying its decision to act. Instead, if permitted to stand, the
25 Board's action would serve only to disenfranchise Aruze USA by preventing it from voting its
26 almost 20% ownership interest in the Company, and from presenting proposals for consideration
27 at the Company's 2012 Annual Meeting of Stockholders (the "Annual Meeting") – including
28 proposals for the nomination of independent directors to help break Mr. Wynn's stranglehold on

1 the Company.

2 Following the purported redemption of Aruze USA's stock, Wynn Resorts filed a
3 preliminary proxy statement announcing that a special stockholder meeting would be held for the
4 sole purpose of obtaining shareholders' approval to remove Mr. Okada from the Board. Though
5 that special stockholder meeting and the Annual Meeting have been delayed without explanation,
6 Wynn Resorts has finally announced that it will hold the Annual Meeting on November 2, 2012.²
7 A preliminary injunction that blocks Wynn Resorts from preventing Aruze USA from exercising
8 its rights as a stockholder until the conclusion of this litigation is the only way to avoid
9 irreparable harm to Aruze USA.

10 Aruze USA satisfies all of the criteria required for a preliminary injunction to
11 issue. First, the interference with Aruze USA's right to vote, and with its rights to submit
12 stockholder proposals,³ cannot be remedied with monetary damages. Second, after a hearing on
13 the merits, this Court is likely to find the Board's purported redemption of Aruze USA's shares to
14 be void *ab initio*. Third, the balance of the hardships and the public interest strongly favors Aruze
15 USA, which is faced with the complete loss of its stockholder rights, while Wynn Resorts faces
16 no comparable harm from the requested relief.

17 For all these reasons, and as set forth in greater detail below, Aruze USA
18 respectfully requests that the Court grant this Motion and enjoin Wynn Resorts from depriving
19 Aruze USA of its rights as a stockholder until there is a final determination on the merits of this
20 case.⁴

21 ² Pursuant to Nevada law, Wynn Resorts must hold the Annual Meeting no later than 18 months
22 after its previous annual meeting – on or before November 17, 2012. See Hilton Hotels Corp. v.
23 ITT Corp., 962 F. Supp. 1309, 1310 (D. Nev. 1997) (“annual meetings for Nevada corporations
24 are contemplated to occur no later than eighteen months after the last such meeting”). Wynn
Resorts' last annual meeting was held on May 17, 2011. (See Privette Aff. at ¶ 11, Ex. K at 21
(Wynn Resorts Amended Annual Report (Form 10-K/A) (Apr. 30, 2012)).)

25 ³ Specifically, as discussed *infra*, Aruze USA respectfully requests that the Court permit Aruze
26 USA to present its proposed slate of directors to the Company's shareholders and that the
proposed slate be voted on by the shareholders (including Aruze USA) at the Annual Meeting.

27 ⁴ Aruze USA's Amended Counterclaim raises additional claims and defenses in connection with
28 the purported redemption of Aruze USA's shares of Wynn Resorts stock. Aruze USA reserves its
right to pursue those additional claims and defenses in this litigation.

1 **II. BACKGROUND**

2 **A. The Formation and Ownership Structure of Wynn Resorts**

3 In April 2000, a Nevada limited liability company named Valvino Lamore, LLC
4 (“Valvino”) was created for the purpose of pursuing a possible new resort and casino in Las
5 Vegas. (Affidavit of Howard M. Privette filed concurrently herewith (“Privette Aff.”) at ¶ 1, Ex.
6 A (Amended and Restated Operating Agreement).) Valvino first acquired the old Desert Inn
7 property on the Las Vegas Strip. Then, after discussions between Mr. Wynn and Mr. Okada, the
8 indirect principal shareholder of Aruze USA, Aruze USA made a contribution of \$260 million in
9 cash to Valvino in exchange for 50% of the membership interests in Valvino, effective October 3,
10 2000. (*Id.*) This contribution was the seed capital that allowed for the development of what is
11 now Wynn Resorts.⁵ (*Id.*)

12 In mid-2002, after some progress on the development of the new resort, the owners
13 of Valvino entered into a written Contribution Agreement by which they agreed to contribute
14 their Valvino ownership interests in exchange for stock issued by a new corporate entity, to be
15 called “Wynn Resorts, Limited.” (*Id.* at ¶ 3, Ex. C.) In light of Aruze USA’s large ownership
16 interest in the new entity, Mr. Okada became a member of Wynn Resorts’ Board and, ultimately,
17 was named Vice Chairman in October 2002. Mr. Okada maintained these positions after Wynn
18 Resorts became a publicly-traded company. (*See* Wynn Resorts’ Compl. at ¶ 5.)

19 On October 25, 2002, Wynn Resorts conducted an initial public offering (“IPO”)
20 of its common shares at \$13 per share, and its shares started trading on NASDAQ. (*See* Privette
21 Aff. at ¶ 5, Ex. E at 8; *see also id.* at ¶ 17, Ex. Q at 3.) Following Wynn Resorts’ IPO, Mr. Wynn
22 and Aruze USA each held approximately equal ownership interests in the Company. (*Id.* at ¶ 4,
23 Ex. D (April 21, 2003 Wynn Resorts’ Preliminary Proxy Statement).) Ultimately, these interests
24 each amounted to about 20% of the then-outstanding common stock in Wynn Resorts. (Wynn
25 Resorts’ Compl. at ¶¶ 5-6; Privette Aff. at ¶ 5, Ex. E at 8-9.)

26 The relative ownership of Wynn Resorts changed in 2010 when Mr. Wynn and his

27 ⁵ In April 2002, Aruze USA made two additional contributions totaling \$120 million to Valvino.
28 (*Id.* at ¶ 2, Ex. B at 2 (Third Amendment to the Amended and Restated Operating Agreement).)

1 wife, Elaine, divorced. The divorce effectively split Mr. Wynn's stockholding, with about half of
2 his shares in Wynn Resorts going to his ex-wife. (Id. at ¶ 5, Ex. E.) This meant that Aruze USA,
3 led by Mr. Okada, now owned the largest single stake in Wynn Resorts. In fact, Aruze USA held
4 more than twice as much stock as Mr. Wynn following his divorce. (See id.)

5
6 **B. After Mr. Okada Questions Wynn Resorts' Massive Donation to Macau**
7 **University, Mr. Wynn and the Board Seek to Disenfranchise Aruze USA and**
8 **Silence Mr. Okada by Redeeming Aruze USA's Shares**

9 In early 2011, Mr. Okada questioned Mr. Wynn's proposal that Wynn Resorts'
10 affiliate in Macau make a \$135 million "donation" to the University of Macau Development
11 Foundation. Not satisfied with the explanations given by Mr. Wynn for this unprecedented gift,
12 Mr. Okada voted against the donation. He was the sole director on the Board to do so.
13 Subsequently, Mr. Okada continued to request more information about the donation, culminating
14 in a formal demand made in late 2011 to inspect Wynn Resorts' books and records regarding the
15 donation. Wynn Resorts ultimately forced Mr. Okada to go to court to vindicate his rights as a
16 director to have access to such information. (See Okada v. Wynn Resorts, Ltd., No. A-12-65422-
17 B, Department XI (Nev. Dist. Ct. Clark Cnty. filed Jan. 11, 2012) (the "Inspection Action").)⁶

18 As Mr. Okada continued to press his questions regarding the Macau donation, Mr.
19 Wynn began an increasingly punitive series of steps intended to restore and maintain his own
20 unopposed control over Wynn Resorts. After secretly initiating a supposed internal
21 "investigation" into Universal's long-standing, established plans to develop a resort and casino in
22 the Philippines, and without providing Mr. Okada any factual basis for any allegations of
23 wrongdoing, Mr. Wynn demanded that Mr. Okada resign as Vice Chairman of Wynn Resorts and
24 as a director of Wynn Resorts and Wynn Macau. (See Privette Aff. at ¶ 9, Ex. I at 3 (Wynn
25 Resorts Proxy Statement (Schedule 14A) (Mar. 7, 2012).) When Mr. Okada refused, in October
26 2011, Mr. Wynn persuaded the Board to eliminate the position of Vice Chairman. (See Privette

27 ⁶ At a hearing on February 9, 2012, the Court ordered Wynn Resorts to comply with Mr. Okada's
28 requests. Wynn Resorts continues to refuse to provide Mr. Okada any documentation regarding
the ongoing business affairs of the company.

1 Aff. at ¶ 17, Ex. Q at 3 (Freeh Report).)

2 Historically, Wynn Resorts has conducted the annual meeting each year in the
3 spring. At the annual meeting, stockholders vote on directors to fill the number of seats that come
4 up for election in a given year, as well as any other proposals that the Board or other stockholders
5 bring forward for consideration. Anticipating that the Annual Meeting of stockholders would be
6 held, as usual, in the spring of 2012, Aruze USA submitted a letter to the Nominating and
7 Corporate Governance Committee of Wynn Resorts on January 18, 2012, designating three
8 individuals as candidates to be considered for nomination as directors of the Company. (Id. at ¶
9 14, Ex. N.) Each of these individuals is highly qualified and, significantly, has no prior
10 connection to Mr. Wynn. Pursuant to the terms of a Stockholders Agreement with Mr. Wynn,
11 Aruze USA also requested that Mr. Wynn fulfill his obligation to endorse the slate of directors
12 nominated by Aruze USA. (Id. at ¶ 15, Ex. O.) Mr. Wynn refused to do so. (Id. at ¶ 16, Ex. P.)⁷

13 With the Inspection Action pending in Nevada state court, and with Aruze USA
14 seeking to bring its concerns about the corporate governance of Wynn Resorts before all of the
15 Company's stockholders at the Annual Meeting, Mr. Wynn and the Board accelerated their
16 efforts to rid themselves of Mr. Okada and Aruze USA. On January 19, 2012, counterdefendant
17 Robert Miller, Chair of Wynn Resorts' Compliance Committee, demanded that Mr. Okada make
18 himself available for an interview, threatening that if he did not do so, the Compliance Committee
19 could "only conclude that [Mr. Okada] refused participation." Mr. Okada's counsel repeatedly
20 requested information about the subject matter of the interview so Mr. Okada could prepare and
21 be ready to provide information and documents that could help the interviewers (and the Board)
22 understand the facts concerning whatever topics and issues they wanted to discuss with

23
24 ⁷ Pursuant to the Stockholders Agreement, Mr. Wynn agreed to endorse a slate of directors that
25 includes nominees approved by Aruze USA and to vote his shares and the shares of Ms. Wynn in
26 favor of such nominees. (See Privette Aff. at ¶ 7, Ex. G at 5 (Stockholders Agreement at § 2(a)).) Yet, Elaine Wynn has admitted that "Mr. Wynn indicated at the time behind the scenes that he
27 had no intention of supporting the Aruze slate and did not endorse it." (E. Wynn Answer, ¶ 121.)
28 In other words, Mr. Wynn determined, before ever receiving the Freeh Report, that he was not
going to recognize Aruze USA's rights as a shareholder and its rights under the Stockholders Agreement.

1 Mr. Okada. In response, counsel was told simply that the inquiry might cover “all matters related
2 to Mr. Okada’s, Universal’s, and Aruze’s activities in the Philippines and Korea.” After the
3 interview concluded, Mr. Okada and Universal offered to gather and provide further information
4 and documents about the specific matters discussed at the interview. Mr. Okada was told that he
5 would be given an opportunity to do so, but instead concluded his pretextual investigation and
6 finalized his purportedly objective report without so much as a further communication with Mr.
7 Okada or his counsel. Not surprisingly, having ignored the possibility of evidence to the
8 contrary, the Freeh Report reached several unsubstantiated and inaccurate conclusions regarding
9 the conduct of Universal, Aruze USA, and Mr. Okada.

10 Mr. Wynn then rushed the Board into action. On February 15, 2012, just a few
11 hours after the interview of Mr. Okada had concluded in Tokyo, Wynn Resorts delivered a notice
12 of a special meeting of the Board to take place in Las Vegas on the morning of Saturday,
13 February 18, 2012. (See Wynn Resorts’ Compl. at ¶ 43.) Despite the fact that it was after
14 midnight in Asia, Mr. Okada tried to participate in the meeting via teleconference, but the feed
15 was controlled and repeatedly cut off by Wynn Resorts. Relying on the hastily prepared and pre-
16 ordained conclusions of the Freeh Report, Wynn Resorts claims that at that meeting, the Board
17 made a determination of “unsuitability” under the Company’s Articles of Incorporation, and then
18 voted to redeem Aruze USA’s shares.⁸ (Privette Aff. at ¶ 8, Ex. H (Wynn Resorts Press Release
19 (Feb. 19, 2012).) Taking only a few hours to make this momentous decision, and without
20 permitting Mr. Okada the opportunity to read or address the allegations against him, the Board
21 purportedly decided to redeem Aruze USA’s shares in exchange for a 10-year note paying 2%
22 annual interest on a face amount of approximately \$1.936 billion, a discount of exactly 30% off

23 ⁸ Nevada has created an independent agency, the Nevada Gaming Commission (the “Nevada
24 Commission”), to regulate the gaming industry. Under Nevada law, “[t]he sole responsibility for
25 [gaming] licensing is vested exclusively in the [Gaming C]ommission.” State v. Rosenthal, 93
26 Nev. 36, 42, 559 P.2d 830, 834 (1977). To this end, the Nevada Commission makes
27 determinations regarding the suitability and unsuitability of persons affiliated with gaming
28 companies. Nevada regulations governing the gaming industry also provide for a rigorous
enforcement mechanism. See Nev. Rev. Stat. § 463.310(1)-(2). Under this carefully constructed
regime, a licensee or affiliated person is ensured basic due process rights. The process employed
by the Board in this case, however, had none of these basic protections.

1 the stock market valuation of the stock based on the prior day's closing price. This valuation was
2 imposed despite the fact that Wynn Resorts had asserted in a court filing weeks earlier that Aruze
3 USA's stock was worth approximately \$2.9 billion. (See *id.* at ¶ 18, Ex. R at 5 (Respondent's
4 Opposition to Petition for Writ of Mandamus).) Wynn Resorts then initiated this lawsuit,
5 accusing Mr. Okada of breaching his fiduciary duties to the Company and seeking a declaration
6 that the purported redemption of Aruze USA's shares was proper.

7 On March 7, 2012, Wynn Resorts filed a preliminary proxy statement with the U.S.
8 Securities and Exchange Commission proposing a special meeting of the Company's stockholders
9 to vote to remove Mr. Okada as a director. (*Id.* at ¶ 9, Ex. I at 1, 3-4.)⁹ Since that time, however,
10 Wynn Resorts took no further action to set a date for such a meeting, until on August 24, 2012,
11 Wynn Resorts announced that it will hold the Annual Meeting on November 2, 2012 (18 months
12 after the date of the 2011 annual meeting). (See Privette Aff. at ¶ 20, Ex. T (Wynn Resorts Form
13 8-K (Aug. 24, 2012).)

14 **III. ARGUMENT**

15 **A. Legal Standard for Granting a Preliminary Injunction**

16 In Nevada, "[a] preliminary injunction is available when the moving party can
17 demonstrate that the nonmoving party's conduct, if allowed to continue, will cause irreparable
18 harm for which compensatory relief is inadequate and that the moving party has a reasonable
19 likelihood of success on the merits."¹⁰ *Finkel v. Cashman Prof'l, Inc.*, 128 Nev. Adv. Op. 6, 270

20
21 ⁹ A shareholder vote would be required to remove Mr. Okada as a director of Wynn Resorts. See
22 Nev. Rev. Stat. § 78.335(1).

23 ¹⁰ Nev. Rev. Stat. § 33.010 provides that an injunction may be granted:

- 24 1. When it shall appear ... that the plaintiff is entitled to the relief demanded, and such
25 relief or any part thereof consists in restraining the commission or continuance of the act
26 complained of, either for a limited period or perpetually.
- 27 2. When it shall appear ... that the commission or continuance of some act, during the
28 litigation, would produce great or irreparable injury to the plaintiff.
3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is
about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's
rights respecting the subject of the action, and tending to render the judgment ineffectual.

1 P.3d 1259, 1262 (2012) (citing Boulder Oaks Cmty. Ass'n v. B&J Andrews, 125 Nev. 397, 403,
2 215 P.3d 27, 31 (2009)). "[C]ourts also weigh the potential hardships to the relative parties and
3 others, and the public interest." Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't,
4 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). The decision to grant a preliminary injunction lies
5 within the district court's discretion. Boulder Oaks, 125 Nev. at 403, 215 P.3d at 31.

6 A preliminary injunction should issue here because Aruze USA will suffer
7 irreparable harm if Wynn Resorts is permitted to conduct stockholder votes at the Annual
8 Meeting without permitting Aruze USA the opportunity to vote its shares. Furthermore, Aruze
9 USA is likely to succeed on the merits of its claim that Wynn Resorts' purported redemption of
10 Aruze USA's shares was improper, and both the balance of the equities and public policy
11 considerations strongly militate in favor of ensuring the protection of stockholder rights against
12 the encroachment of an overreaching board of directors. In addition, the limited nature of the
13 relief – maintaining the status quo by preventing the elimination of Aruze USA's stockholder
14 rights – weighs in favor of granting this Motion.¹¹

15 After the Annual Meeting was noticed for November 2, Aruze USA submitted to
16 the General Counsel and Secretary of Wynn Resorts notice of its intent to nominate certain
17 individuals for election to the Board at the Annual Meeting. Aruze USA respectfully requests
18 that the relief provided by the Court on this Motion include an order that Aruze USA's proposed
19 slate of directors be presented to the Company's shareholders and voted on (including by Aruze
20 USA as shareholder) at the Annual Meeting.

21 **B. Aruze USA Will Suffer Irreparable Harm Absent Preliminary Relief**

22 No legal remedy will be able to compensate for the harm that would flow from
23

24 ¹¹ Aruze USA initially filed a preliminary injunction – in substantially similar form to the instant
25 Motion – in federal court on June 14, 2012. At this time, Aruze USA is not seeking a temporary
26 restraining order because it understands that the relief sought herein can be granted within the
27 time it would take to resolve the Motion. Further, Aruze USA believes that this approach will
28 avoid burdening the Court with duplicative motions. Specifically, Aruze USA believes that this
Court's determination, through this Motion, that Aruze USA is entitled to shareholder rights
pending a final determination on the merits logically precedes a determination that Aruze USA is
entitled to nominate a slate of directors.

1 allowing Wynn Resorts to deny Aruze USA's rights as a stockholder, including its right to cast
2 votes critical to the future of the Company, notice stockholder proposals, wage a proxy contest, or
3 nominate its own directors.

4 Wynn Resorts announced that it will hold the Annual Meeting on November 2,
5 2012. (See Privette Aff. at ¶ 20, Ex. T (Wynn Resorts Form 8-K (Aug. 24, 2012).) If the
6 stockholder meeting is allowed to proceed without recognizing Aruze USA's rights as a
7 stockholder, no post-decision relief will be adequate to compensate Aruze USA for its inability to
8 vote (including votes for election of directors), notice stockholder proposals, wage a proxy
9 contest, or nominate a slate of directors in connection with the meeting. See, e.g., EMAK
10 Worldwide, Inc. v. Kurz, No. 512, 2011, 2012 WL 1319771, at *3 (Del. Apr. 17, 2012)
11 ("Shareholder voting rights are sacrosanct. The fundamental governance right possessed by
12 shareholders is the ability to vote for the directors the shareholder wants to oversee the firm.")
13 (citation omitted).

14 There can be no dispute that the "denial or frustration" of a stockholder's ability to
15 vote its shares constitutes irreparable injury. Shoen v. AMERCO, 885 F. Supp. 1332, 1352 (D.
16 Nev. 1994) (applying Nevada law to a Nevada corporation), vacated pursuant to settlement, No.
17 CV-N-94-475-ECR, 1995 WL 936692 (D. Nev. Feb. 10, 1995); see also Beztak Co. v. Bank One
18 Columbus, N.A., 811 F. Supp. 274, 283-84 (E.D. Mich. 1992); ER Holdings, Inc. v. Norton Co.,
19 735 F. Supp. 1094, 1101-02 (D. Mass. 1990); Danaher Corp. v. Chicago Pneumatic Tool Co.,
20 Nos. 86 Civ. 3499 & 3638 (PNL), 1986 WL 7001, at *14 (S.D.N.Y. June 19, 1986); Treco, Inc. v.
21 Land of Lincoln Sav. & Loan, 572 F. Supp. 1447, 1450 (N.D. Ill. 1983), aff'd, 749 F.2d 374 (7th
22 Cir. 1984). "Courts have consistently found that corporate management subjects shareholders to
23 irreparable harm by denying them the right to vote their shares[.]" Int'l Banknote Co. v. Muller,
24 713 F. Supp. 612, 623 (S.D.N.Y. 1989). Standing alone, the disenfranchisement of Aruze USA
25 constitutes more than sufficient irreparable harm to merit a preliminary injunction in this case.

26 Absent preliminary relief, Aruze USA will be irreparably harmed if Wynn Resorts
27 is able to deny Aruze USA's right to offer stockholder proposals or wage a proxy contest. See
28 Sherwood v. Ngon, No. 7106-VCP, 2011 WL 6355209, at *9, 15 (Del. Ch. Dec. 20, 2011)

1 (granting a temporary restraining order and finding irreparable harm because, in part, the
2 plaintiffs could not “conduct an effective proxy contest” absent injunctive relief); Schnell v.
3 Chris-Craft Indus., Inc., 285 A.2d 437, 439 (Del. 1971).¹²

4 Moreover, unless this Motion is granted, Aruze USA will suffer irreparable harm
5 because it will be deprived of its right to nominate directors. A stockholder’s right to nominate
6 and elect directors is the primary method by which it may exert influence upon the conduct and
7 affairs of the entity in which it has invested. For this reason, courts have consistently held that
8 the denial of a right to nominate directors constitutes irreparable harm. See, e.g., Hubbard v.
9 Hollywood Park Realty Enters., No. 11779, 1991 WL 3151, at *5 (Del. Ch. Jan. 14, 1991) (“The
10 shareholders’ right to vote includes the right to nominate a contesting slate.”); Int’l Banknote Co.,
11 713 F. Supp. at 623 (“Courts have consistently found that corporate management subjects
12 shareholders to irreparable harm by denying them the right to vote their shares or unnecessarily
13 frustrating them in their attempt to obtain representation on the board of directors”).

14 The harms that would be suffered by Aruze USA if it is unable to exercise its rights
15 as a stockholder at the upcoming stockholder meeting(s) are quintessential examples of the kinds
16 of harm that a preliminary injunction is designed to prevent.

17 C. **Aruze USA is Likely to Succeed on the Merits Regarding the Invalidity of the**
18 **Purported Redemption of Its Shares**

19 In addition to the irreparable harm that would be imposed on Aruze USA if Wynn
20 Resorts were permitted to conduct the Annual Meeting without recognizing Aruze USA’s
21 ownership rights, Aruze USA is likely to succeed on the merits of its argument regarding the
22 invalidity of the purported redemption. This is because the express contractual provisions make
23 the redemption restriction inapplicable to Aruze USA and because the primary purpose of the
24

25 ¹² “Because the powers of corporate directors are determined by state law[,] it is the law of the
26 state of incorporation that is controlling.” Shoen, 885 F. Supp. at 1341 n.20 (alteration in
27 original) (internal quotation marks omitted). Wynn Resorts is a Nevada corporation. (See Wynn
28 Resorts’ Compl. at ¶ 1.) Where there is no Nevada precedent on point, courts have looked to the
Delaware Supreme Court and the Delaware Courts of Chancery as persuasive authorities on
questions of corporation law. Shoen, 885 F. Supp. at 1341 n.20.

1 redemption was to disenfranchise Aruze USA.

2 **1. The Redemption Was Improper Because the Redemption Restriction**
3 **Does Not Apply to Aruze USA's Shares**

4 The Board's attempt to use the redemption provision of the Articles of
5 Incorporation against Aruze USA is improper because that provision cannot be applied to Aruze
6 USA's shares. A corporation's articles of incorporation form the equivalent of a contract between
7 a stockholder and the corporation. See O'Connor v. N. Truckee Ditch Co., 17 Nev. 245 (1883)
8 (holding that the certificate of incorporation forms an agreement between the stockholders and the
9 corporation); Schram v. Smith, 97 F.2d 662, 664 (9th Cir. 1938) (finding Arizona contract law
10 principles applied to articles of incorporation); see also Benihana of Tokyo, Inc. v. Benihana,
11 Inc., 906 A.2d 114, 120 (Del. 2006) ("It is settled law that certificates of incorporation are
12 contracts, subject to the general rules of contract and statutory construction").

13 This, however, does not mean that all aspects of a corporation's articles of
14 incorporation must apply uniformly to all stockholders. Because the articles form an agreement
15 between the corporation and its stockholders, the corporation is free to negotiate different terms
16 with particular stockholders. See Nev. Rev. Stat. § 78.242(2) (stockholders and corporations may
17 enter into private agreements regarding restrictions on shares); see also Darnet Realty Assocs.,
18 LLC v. 136 East 56th Street Owners, Inc., 153 F.3d 21, 28 (2d Cir. 1998) (recognizing that a
19 corporation's agreement with a stockholder may supersede the company's articles of
20 incorporation if reflected by the intent of the agreement).¹³ That is precisely what happened in
21 this case. The redemption restriction in Wynn Resorts' Articles of Incorporation does not govern
22 the shares held by Aruze USA.

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26 ¹³ See also Bagdon v. Bridgestone/Firestone, Inc., 916 F.2d 379, 383 (7th Cir. 1990) ("Investors
27 may strike agreements between themselves on many subjects, under many bodies of law . . .").
28 Indeed, Wynn Resorts' Articles of Incorporation themselves expressly permit the waiver of the
redemption provisions "in any instance" where the Board determines such a waiver would be in
the best interest of the Company. (See Privette Aff. at ¶ 19, Ex. S at 19.)

1 (a) **Aruze USA's Investment in Wynn Resorts Is Controlled By the**
2 **Terms of the Contribution Agreement**

3 In 2002, Aruze USA and the other owners of Valvino decided to form a
4 corporation that could pursue a public offering of securities to help develop the new Wynn resort
5 and casino properties, to be known as "Wynn Resorts, Limited." (See Privette Aff. at ¶¶ 1-3.)
6 On April 11, 2002, prior to the filing of the Articles of Incorporation for Wynn Resorts, Mr.
7 Wynn and Aruze USA entered into the Stockholders Agreement, which imposed certain
8 restrictions on the sale of the stock they were to receive in "NewCo," the entity that would
9 become Wynn Resorts. (Id. at ¶ 6, Ex. F (April 11, 2002 Stockholders Agreement).) On June 3,
10 2002, Mr. Wynn, on behalf of Wynn Resorts, caused the filing of the Company's initial Articles
11 of Incorporation. Notably, **the Articles of Incorporation did not include any restriction**
12 **establishing Wynn Resorts' purported right to redeem shares held by "Unsuitable**
13 **Person[s]."** (Privette Aff. at ¶ 12, Ex. L (June 3, 2002 Articles of Incorporation of Wynn
14 Resorts).)

15 At this point, however, Wynn Resorts was still effectively a legal shell. In
16 particular, the owners of Valvino still had to decide on what terms they would transfer their LLC
17 membership interests to the new entity. Accordingly, on June 11, 2002, Wynn Resorts, Mr.
18 Wynn, Aruze USA and another Valvino member entered into the Contribution Agreement, the
19 critical controlling document that establishes the terms by which the Valvino members agreed to
20 contribute their membership interests to Wynn Resorts in exchange for the shares of common
21 stock of Wynn Resorts. (Id. at ¶ 3, Ex. C at 2 (June 11, 2002 Contribution Agreement).) In short,
22 the Contribution Agreement establishes the terms by which Aruze USA agreed to invest in Wynn
23 Resorts, including any restrictions that would apply to the Wynn Resorts' stock that Aruze USA
24 would be acquiring.

25 (b) **The Contribution Agreement Precludes Any Restrictions on**
26 **Aruze USA's Shares of Wynn Resorts' Stock Unless Aruze USA**
Authorizes the Restriction in Writing

27 The Contribution Agreement makes clear that any restrictions on the shares to be
28 provided to Aruze USA are limited to those that were set forth in the parties' various written

1 agreements as they existed at the time they entered into the Contribution Agreement. The
2 Contribution Agreement's integration clause states:

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

13 (Id., Ex. C at 4 (emphasis added).) At the time that the Contribution Agreement was entered into
14 between Aruze USA and Wynn Resorts, there was no redemption restriction applicable to Wynn
15 Resorts' common stock under the Articles of Incorporation. See Brunzell v. Woodbury, 85 Nev.
16 29, 33, 449 P.2d 158, 160 (1969) ("When the parties have deliberately put their agreement in
17 writing, in such language as imports a legal consideration, it is conclusively presumed that the
18 whole engagement and the extent and manner of their undertaking is there expressed").

19 Furthermore, the Contribution Agreement establishes that Wynn Resorts could not
20 later change or add to the restrictions on Aruze USA's rights with respect to the stock without
21 obtaining Aruze USA's written consent:

22 Amendment and Waiver. **This Agreement may not be modified or**
23 **amended except by an instrument in writing signed by the**
24 **Corporation and all the Holders. No waiver of any provision of**
25 **this Agreement or of any rights or obligations of any party under**
26 **this Agreement shall be effective unless in writing and signed by**
27 **the party or parties waiving compliance, and shall be effective only**
28 **in the specific instance and for the specific purpose stated in that**
29 **writing.**

30 (Privette Aff. at ¶ 3, Ex. C at 3 (emphasis added).) Yet, shortly after the parties entered into the
31 Contribution Agreement, but before Aruze USA received its common stock of Wynn Resorts, Mr.
32 Wynn unilaterally amended Wynn Resorts' Articles of Incorporation to include the provision that
33 purports to give the Board authority to redeem the shares of "unsuitable" stockholders. At the

1 time, Mr. Wynn was the sole stockholder and director of Wynn Resorts and therefore was the
2 only stockholder who voted on the amendment to the Articles of Incorporation. (Id. at ¶ 13, Ex.
3 M (September 10, 2002 Amended and Restated Articles of Incorporation).) In light of the
4 Contribution Agreement, however, Mr. Wynn's unilateral change to Wynn Resorts' Articles of
5 Incorporation never has applied to the shares issued to Aruze USA.

6 Wynn Resorts' invocation of the redemption restriction undermines the purpose
7 and contradicts the terms of the Contribution Agreement. In exchange for Aruze USA's
8 membership interests in Valvino, Aruze USA was to receive the common stock of Wynn Resorts
9 with certain rights and restrictions attached to that common stock as specified in the Contribution
10 Agreement. Wynn Resorts now claims that it could ignore the terms of the Contribution
11 Agreement. It apparently believes it could provide Aruze USA with more restrictive common
12 stock than Aruze USA bargained for when exchanging Aruze USA's LLC interests in Valvino.

13 Under the plain terms of the Contribution Agreement, such a unilateral act by
14 Wynn Resorts is not permitted. Wynn Resorts never asked for or received written authorization
15 from Aruze USA to add the redemption restriction on its Wynn Resorts' stock. As a result,
16 pursuant to the Contribution Agreement, the redemption restriction that Mr. Wynn added to
17 Wynn Resorts' Articles of Incorporation – while it may apply to other Wynn Resorts stockholders
18 – does not and cannot apply to Aruze USA's shares of Wynn Resorts stock by virtue of the
19 binding agreement with Wynn Resorts. See Ringle v. Bruton, 120 Nev. 82, 93, 86 P.3d 1032,
20 1039 (2004) (“[W]hen a contract is clear, unambiguous, and complete, its terms must be given
21 their plain meaning and the contract must be enforced as written; the court may not admit any
22 other evidence of the parties' intent because the contract expresses their intent.”); Ellison v.
23 California State Auto. Ass'n, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990) (“It has long been the
24 policy in Nevada that absent some countervailing reason, contracts will be construed from the
25 written language and enforced as written”). Consequently, the Board never had the right to
26 redeem Aruze USA's shares, and that purported redemption is void *ab initio*.

1 2. **The Purported Redemption of Aruze USA's Shares Constituted a**
2 **Breach of the Board's Fiduciary Duties Because The Primary Purpose**
3 **of the Redemption of Aruze USA's Shares Was to Interfere with the**
 Effectiveness of a Stockholder Vote

4 Because the Board's attempt to exchange Aruze USA's shares for debt entirely
5 failed to achieve its supposed objective – elimination of the potential for scrutiny of Wynn
6 Resorts by the Nevada Commission – the only effect of the redemption was to deprive Aruze
7 USA of its rights as a stockholder of Wynn Resorts. These ineffective actions are not entitled to
8 the protection of the business judgment rule, a presumption which does not apply when directors
9 act “for the *primary purpose* of interfering with the effectiveness of a stockholder vote[.]” Shoen,
10 885 F. Supp. at 1341. Under these circumstances, “the board bears ‘the heavy burden of
11 demonstrating a compelling justification’” for its action. Id. (quoting Blasius Indus. v. Atlas
12 Corp., 564 A.2d 651, 661 (Del. Ch. 1998).) The Board simply cannot do so here. When
13 analyzing whether a board's actions were taken primarily to disenfranchise a stockholder, Courts
14 have examined circumstantial evidence and considered factors including the timing of the board
15 action and the stated purpose of the action. See Hilton Hotels Corp. v. ITT Corp., 978 F. Supp
16 1342, 1349 (D. Nev. 1997) (granting permanent injunctive relief where board action threatened
17 the stockholder franchise). In this case, the only plausible inference to be drawn from these
18 factors is that the Board acted for the purpose of interfering with Aruze USA's voting rights as a
19 means of retaliation for Mr. Okada's dissenting vote on the Macau payment.

20 While the Board suggested that it acted to redeem the shares of Aruze USA so as to
21 insulate the Company from an entity it deemed “unsuitable,” the redemption in reality did no such
22 thing. To complete the redemption, Wynn Resorts issued a promissory note for more than \$1.9
23 billion to Aruze USA, transforming Aruze USA from the Company's largest stockholder to its
24 largest holder of debt securities. See Nev. Rev. Stat. § 463.643(9).¹⁴ Yet Nevada law is clear that
25 the Nevada Commission may investigate a gaming licensee because of an affiliation with an

26 ¹⁴ The Nevada statute defines “debt security” to mean “any instrument generally recognized as a
27 corporate security representing money owed and reflected as debt on the financial statement of a
28 publicly traded corporation, including, but not limited to, bonds, notes and debentures.” Nev.
Rev. Stat. § 463.643(9).

1 unsuitable stockholder *or debtholder*. Nev. Rev. Stat. § 463.643(7) (any “unsuitable” person
2 “shall not hold directly or indirectly” a “voting security” or a “debt security”). Thus, the
3 redemption was legally incapable of achieving its stated purpose because it merely converted
4 Wynn Resorts’ largest stockholder into its largest debtholder.

5 The tremendous haste with which the Board acted to redeem Aruze USA’s shares
6 only confirms that the Board’s true motive was to strip its largest stockholder of its voting
7 franchise. There was no emergency. Only days after receiving a report alleging improper
8 conduct by Aruze USA, Universal, and Mr. Okada,¹⁵ and without allowing any of the subjects to
9 respond to the allegations, the Board voted to exercise the redemption restriction against Aruze
10 USA. To explain its highly unusual action, the Board made reference to the Company’s
11 obligations as a Nevada gaming licensee. (See Privette Aff. at ¶ 8, Ex. H (Wynn Resorts Press
12 Release (Feb. 19, 2012).) No law or regulation in Nevada, however, requires or even encourages
13 gaming companies to redeem stock prior to a determination of unsuitability by the Nevada
14 Commission. Regardless, the Company’s gaming licenses never faced an imminent risk.

15 By advancing its own premature “judgment” as to a question of suitability, the
16 Board disregarded the well-established procedures and authority of the Nevada Commission for
17 no apparent reason. Universal complied with its reporting requirements to the State Gaming
18 Control Board (the “Nevada Board”) and provided information to the Nevada Board regarding the
19 Philippines project. The Nevada Commission, which has the sole power to grant and withdraw
20 gaming licenses, has in place a well-established process for investigating and removing so-called
21 “unsuitable persons” from positions of potential influence within the gaming industry – **before**
22 any affiliates of these “unsuitable persons” are threatened with loss of their gaming licenses.
23 Nev. Rev. Stat. § 463.310(1)-(2). Under this regime, a licensee or affiliated person possesses
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25 ¹⁵ That report, flawed and incomplete as it is, comprised the sole basis for the Board’s actions.
26 The Board is therefore limited to defending its actions solely by reference to the report. Aruze
27 USA and Universal dispute the allegations contained in the report, and look forward to addressing
28 those allegations at trial. Because it is not necessary for the Court to resolve those allegations as
part of this Motion, however, Aruze USA and Universal have not addressed those allegations
here.

1 basic due process rights. The Nevada Board files a complaint that the Nevada Commission
2 serves on the licensee and to which the licensee can respond. Id. at § 463.310(2)(b). A licensee
3 has the right to be heard and to receive and produce discovery prior to a determination by the
4 Commission. Id. at §§ 463.3125-3145; Nev. Gaming Comm’n Reg. § 7.070, et seq.

5 Even if the Nevada Commission were to issue a determination of unsuitability, it
6 would then “serve[] notice” to the licensee “that a person is unsuitable to be a stockholder or to
7 have any other relationship or involvement . . .” with the corporation. Nev. Gaming Comm’n
8 Reg. 16.440(2). Only if the licensee then “fail[ed] to pursue all lawful efforts to require [the]
9 unsuitable person to relinquish his voting securities . . .” could its gaming license *potentially* be in
10 any jeopardy whatsoever. Id. at 16.440(2)(d). Plainly, there was no need for the Board to act so
11 precipitously to address a perceived risk of Aruze USA’s unsuitability in this case – especially
12 where the Board’s actions so obviously failed to achieve that objective as a matter of law.

13 In view of the above, the only plausible explanation for the Board’s redemption
14 decision is that it was meant to deny Aruze USA’s stockholder franchise in plain violation of the
15 Board’s fiduciary duties. See Wis. Inv. Bd. v. Peerless Sys. Corp., No. 17637, 2000 WL
16 1805376, at *13 (Del. Ch. Dec. 4, 2000) (“The fiduciary duty of loyalty between a board of
17 directors and the shareholders of a corporation is always implicated where the board seeks to
18 thwart the action of the company’s shareholders”). In fact, Elaine Wynn’s Answer to Aruze
19 USA’s Counterclaim admits “that Wynn Resorts and its affiliates have not lost, and *have not*
20 *been threatened with the loss of, a gaming license, and that she did not understand the*
21 *redemption to be based on such a loss or threatened loss.*” (E. Wynn Answer, ¶ 161 (emphasis
22 added.) There is an obvious motive for the Board’s conduct: the disenfranchisement of Aruze
23 USA would facilitate the Board’s efforts to remove Mr. Okada as a director and dissenting voice
24 of the corporation. (See Privette Aff. at ¶ 9, Ex. I at 1, 3-4 (Wynn Resorts Ltd., Preliminary
25 Proxy (Form PRE 14A) (March 7, 2012)).) With Aruze USA’s 20% percent stake in the
26 Company sidelined, Wynn Resorts will be better positioned to achieve the supermajority vote
27 required to remove Mr. Okada from the Board and further empower Wynn. If Aruze USA were
28 eliminated as a stockholder, Mr. Wynn could further concentrate his control of the Company. See

1 Petty v. Penntech Papers, Inc., 347 A.2d 140, 143 (Del. Ch. 1975) (issuing a temporary
2 restraining order to prevent a “technically” permissible, selective redemption where it appeared
3 that the planned redemption might be directed toward maintaining management in control); Am.
4 Gen. Corp. v. Unitrin, Inc., No. Civ. A. 13699, 1994 WL 512537, at *6 (Del. Ch. Aug. 26, 1994)
5 (noting that Petty illustrates a court’s “willingness, upon a proper showing, to enjoin a
6 corporation from repurchasing its own stock if the repurchase would allegedly improperly
7 perpetuate the control of current management: . . .”).

8 To date the Board has offered no justification, let alone the required “compelling
9 justification,” to defend its decision to interfere with the stockholder franchise. See Shoen, 885 F.
10 Supp. at 1341. Accordingly, Aruze USA is likely to prevail on the merits of its breach of
11 fiduciary duty claim as to the propriety of the redemption, and the preliminary injunction should
12 issue.

13 **D. The Balance of Hardships Favors Aruze USA**

14 Wynn Resorts’ refusal to allow Aruze USA to exercise its rights as a stockholder
15 constitutes a significant hardship for Aruze USA that cannot be remedied through a post-
16 resolution award of damages. Meanwhile, Wynn Resorts faces no hardship if an injunction were
17 to be issued. Accordingly, the balance of the equities is squarely in favor of the grant of a
18 preliminary injunction.¹⁶

19 **1. Extensive Authority Favors Granting Preliminary Relief When a**
20 **Company Attempts to Deprive Stockholders of the Right to Vote**

21 Where a company attempts to deprive a stockholder of its fundamental right to
22 participate meaningfully in corporate elections, the balance of the equities weighs heavily in the
23 stockholder’s favor. See Hubbard, 1991 WL 3151, at *13 (holding that the “policy underlying
24 the shareholders’ fundamental right to exercise their franchise significantly outweighs the policies
25 favoring the continued enforcement of [a disputed directorial action]” and noting that “[t]he harm

26 ¹⁶ In addition, basic principles of corporate law dictate that “[t]he power granted by a provision
27 in articles of incorporation permitting the board of directors to call outstanding common stock for
28 retirement must not be exercised oppressively for the purpose of discriminating against a single
stockholder or group of stockholders.” 18A Am. Jur. 2d Corporations, § 456 (2004).

1 caused to shareholders from enforcing [a disputed provision] will greatly outweigh its benefits”);
2 see also Int’l Banknote Co., 713 F. Supp. at 628 (granting stockholders’ preliminary injunction to
3 stop the enforcement of a bylaw impairing stockholders’ right to vote and unnecessarily
4 frustrating them in attempt to obtain representation on the board of directors).¹⁷

5 A grant of injunctive relief is the appropriate equitable remedy in cases where a
6 stockholder is facing deprivation of its voting rights. See Shoen, 885 F. Supp. at 1352 (finding
7 that the balance of the hardships weighs in the plaintiff’s favor in the grant of a preliminary
8 injunction barring the defendant from holding its annual meeting) (internal citation omitted); see
9 also David P. Simonetti Rollover IRA v. Margolis, No. 3694-VCN, 2008 WL 5048692, at *13
10 (Del. Ch. June 27, 2008). Courts in Nevada have not hesitated to grant injunctive relief in cases
11 where corporate control contests implicate stockholder franchise issues. See Hilton Hotels Corp.,
12 978 F. Supp. at 1351.

13 **2. Wynn Resorts Would Suffer No Comparable Hardship From the**
14 **Grant of a Preliminary Injunction**

15 In contrast to the severe and irreparable harm Aruze USA faces, Wynn Resorts
16 would suffer no comparable injury if it were precluded from stifling Aruze USA’s rights as a
17 stockholder. Any claim that Wynn Resorts faces a hardship because the suspension of the
18 redemption would imperil the Company’s gaming licenses is simply not credible. As detailed
19 above, by making Aruze USA a debtholder, the redemption failed to insulate Wynn Resorts from
20 Aruze USA; as such, an injunction that forestalls the effects of the redemption will have no
21 impact whatsoever on the Company’s stated purpose for its redemption decision. Further, there is
22 no imminent threat of harm to the Company from its ongoing affiliation with Aruze USA – no
23 order has issued finding Aruze USA to be an unsuitable affiliate for a company with a gaming
24 license. Other potential claims for hardship would be similarly unavailing. See, e.g., ODS
25 Techs., L.P. v. Marshall, 832 A.2d 1254, 1263 (Del. Ch. 2003) (“[I]t is axiomatic that enjoining a
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27 ¹⁷ Courts have long recognized that the right to vote in a corporate election is as crucial to the
28 legitimacy of corporate governance as is the right to vote in civil elections is to democratic civil
governance. See, e.g., Durkin v. Nat’l Bank of Olyphant, 772 F.2d 55, 59 (3rd Cir. 1985).

1 shareholder meeting may affect the price of a company's stock. But this concern . . . is
2 insufficient to allow a tainted shareholder vote to proceed").

3 **3. Wynn Resorts' Wrongdoing Also Tips the Balance of Hardships in**
4 **Aruze USA's Favor**

5 Lastly, any alleged injury attendant to the grant of a preliminary injunction here is
6 a consequence of Wynn Resorts' own wrongdoing. The Board wrongfully attempted to
7 disenfranchise Aruze USA and by its actions has violated the Stockholders Agreement,
8 Contribution Agreement, and Nevada law by purporting to redeem Aruze USA's shares via the
9 redemption restriction. Courts find that the balance of the equities undoubtedly tips in the favor
10 of the moving party where the preliminary injunction is the result of the defending party's own
11 wrongdoing. See La. Mun. Police Emps. Ret. Sys. v. Crawford, Nos. 2635-N & 2663-N, 2007
12 WL 625006, at *1 (Del. Ch. Feb. 13, 2007) ("[I]n considering the balance of equities between
13 plaintiffs and defendants, it is relevant to note that any wounds to defendants are entirely self-
14 inflicted"). Had Wynn Resorts not employed pretextual and hyperbolic justifications to embark
15 upon an extraordinary course of action, it would not be facing whatever "harm" it now alleges it
16 will suffer. In sum, there is no question that the balance of the hardships here counsels in favor of
17 the grant of preliminary injunctive relief.

18 **E. A Preliminary Injunction Would Serve the Public Interest**

19 The public interest weighs heavily in favor of the relief sought here. Courts across
20 the country have recognized universally that "interference with shareholder voting is an
21 especially serious matter . . . because it undercuts a primary justification for allowing directors to
22 rely on their judgment" Shoen, 885 F. Supp. at 1340; see also Treco, Inc., 572 F. Supp. at
23 1450 ("[P]laintiffs' attempt to obtain representation on Lincoln's Board furthers the legitimate
24 public interests of corporate democracy and participation by shareholders in the management of
25 corporations which they have an interest"); Beztak Co., 811 F. Supp. at 283-84; ER Holdings,
26 Inc., 735 F. Supp. at 1101-02; Danaher Corp., 1986 WL 7001, at *14. In other words, "[t]he
27 shareholder franchise is the ideological underpinning upon which the legitimacy of directorial
28 power rests." Blasius, 564 A.2d at 659. The directors of Wynn Resorts abused their power by

1 interfering with the stockholder franchise, and the public has an interest in preventing the harm
2 that Aruze USA would suffer as a result.

3 Further, the public interest weighs in favor of granting preliminary relief because
4 the Board's stated purpose for the purported redemption clearly was nothing more than pretext.
5 Deception and manipulation of stockholders by the officers and directors of public companies is
6 condemned by Nevada law. In this case, where the Board's stated justification was not its actual
7 motivation for the decision to redeem Aruze USA's shares, the public interest favors holding the
8 Board accountable before irreparable harm results.

9 **F. A Preliminary Injunction Will Preserve the Status Quo**

10 A preliminary injunction is not an adjudication on the merits. This preliminary
11 injunction seeks to preserve the status quo and prevent irreparable loss of rights before judgment.
12 Dixon v. Thatcher, 103 Nev. 414, 415 (1987); see also Textile Unlimited, Inc. v. A. BMH & Co.,
13 240 F.3d 781, 786 (9th Cir. 2001). Maintaining the status quo allows Aruze USA to continue as a
14 stockholder of Wynn Resorts as it has been since the formation of Wynn Resorts. If Aruze USA
15 is not allowed to vote or otherwise is precluded from exercising its rights as a stockholder, the
16 status quo will be fundamentally altered. Therefore, a preliminary injunction should be issued
17 that maintains Aruze USA's rights as a stockholder until a final determination on the merits.

18 **IV. CONCLUSION**

19 For the foregoing reasons, Aruze USA respectfully requests that the Court grant its
20 Motion for Preliminary Injunction and enjoin Wynn Resorts from infringing upon Aruze USA's
21 stockholder rights until the Court enters a final judgment in this action.
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DATED: August 31, 2012

Respectfully Submitted,

LIONEL SAWYER & COLLINS

By: /s/ Charles H. McCrea, Jr.
Charles H. McCrea, Jr. (SBN 104)

Samuel S. Lionel (SBN 1766)
Paul R. Hejmanowski (SBN 94)
1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

William F. Sullivan*
Thomas A. Zaccaro*
Howard M. Privette*
John S. Durrant*
PAUL HASTINGS LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071

Linda Chatman Thomsen*
Paul Spagnoletti*
Greg D. Andres*
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017

Attorneys for Defendants and Counterclaimants
ARUZE USA, INC. and UNIVERSAL
ENTERTAINMENT CORPORATION
** pro hac vice application pending*

1 **CERTIFICATE OF SERVICE**

2
3 Pursuant to Nevada Rule of Civil Procedure 5(b), I hereby certify that I am an employee
4 of LIONEL SAWYER & COLLINS and that on this 31st day of August, 2012, I caused the
5 document ARUZE USA, INC. AND UNIVERSAL ENTERTAINMENT CORP.'S NOTICE OF
6 MOTION AND MOTION FOR PRELIMINARY INJUNCTION to be served as follows:
7

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

11 James J. Pisanelli, Esq.
12 Todd L. Bice, Esq.
13 Debra Spinelli, Esq.
14 Jarrod L. Richard, Esq.
15 PISANELLI BICEP LLC
16 3883 Howard Hughes Pkwy, Ste. 800
17 Las Vegas, NV 89169

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

23 Donald J. Campbell, Esq.
24 J. Colby Williams, Esq.
25 CAMPBELL & WILLIAMS
26 700 S. 7th Street
27 Las Vegas, NV 89101
28 *Attorneys for Counterdefendant/Crossdefendant Stephen A. Wynn*

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

☐ to be hand delivered to:

and/or

☐ by the Court's ECF System through Wiznet.

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

1 **AFFT**
2 LIONEL SAWYER & COLLINS
3 Samuel S. Lionel, Nev. Bar No. 1766
4 Paul R. Hejmanowski, Nev. Bar No. 94
5 Charles H. McCrea, Jr., Nev. Bar No. 104
6 1700 Bank of America Plaza
7 300 South Fourth Street
8 Las Vegas, Nevada 89101
9 Telephone: (702) 383-8888
10 Facsimile: (702) 383-8845
11
12 William F. Sullivan*
13 Thomas A. Zaccaro*
14 Howard M. Privette*
15 John S. Durrant*
16 PAUL HASTINGS LLP
17 515 South Flower Street, 25th Floor
18 Los Angeles, CA 90071
19 Telephone: (213) 683-6000
20 Facsimile: (213) 683-0705
21
22 Linda Chatman Thomsen*
23 Paul Spagnoletti*
24 Greg D. Andres*
25 DAVIS POLK & WARDWELL LLP
26 450 Lexington Avenue
27 New York, NY 10017
28 Telephone: (212) 450-4000
29 Facsimile: (212) 701-5800
30
31 Attorneys for Defendants and Counterclaimants
32 ARUZE USA, INC. and UNIVERSAL ENTERTAINMENT
33 CORPORATION
34 **pro hac vice application pending*

35 **DISTRICT COURT**
36 **CLARK COUNTY, NEVADA**

37 WYNN RESORTS, LIMITED, a Nevada
38 Corporation,
39
40 Plaintiff,
41 vs.
42 KAZUO OKADA, an individual, et al.,
43
44 Defendants.

45 AND ALL RELATED CLAIMS.

CASE NO: A-12-656710-B

DEPT. NO: XI

1 **AFFIDAVIT OF HOWARD M. PRIVETTE IN SUPPORT OF ARUZE USA, INC. AND**
2 **UNIVERSAL ENTERTAINMENT CORPORATION'S MOTION FOR PRELIMINARY**
3 **INJUNCTION**

4 I, HOWARD M. PRIVETTE, declare as follows:

5 I am an attorney at law, licensed to practice before the courts of the State of
6 California with pending *pro hac vice* admission to practice before this Court. I am a partner in
7 the law firm of Paul Hastings LLP, counsel for Defendants and Counterclaimants Aruze USA,
8 Inc. ("Aruze USA") and Universal Entertainment Corporation ("Universal"). I provide this
9 affidavit in support of Aruze USA and Universal's Motion for Preliminary Injunction
10 concurrently filed herewith. I have personal knowledge of the following facts, and if called upon
11 to do so, I could and would testify competently to the matters set forth herein.

12 1. Attached hereto as Exhibit "A" is a true and correct copy of the document
13 entitled Amended and Restated Operating Agreement of Valvino Lamore, LLC dated October 3,
14 2000, which was publicly filed with the U.S. Securities and Exchange Commission ("SEC") on
15 September 18, 2002 as Exhibit 10.33 to Wynn Resorts' Amendment No. 3 to Form S-1
16 Registration Statement. This document was obtained by my office from the EDGAR website
17 publicly maintained by the SEC.

18 2. Attached hereto as Exhibit "B" is a true and correct copy of the document
19 entitled Third Amendment to the Amended and Restated Operating Agreement of Valvino
20 Lamore dated April 11, 2002, which was publicly filed with the SEC on September 18, 2002 as
21 Exhibit 10.36 to Wynn Resorts' Amendment No. 3 to Form S-1 Registration Statement. This
22 document was obtained by my office from the EDGAR website publicly maintained by the SEC.

23 3. Attached hereto as Exhibit "C" is a true and correct copy of the document
24 entitled Contribution Agreement dated June 2002, which was publicly filed with the SEC on
25 August 20, 2002 as Exhibit 10.17 to Wynn Resorts' Amendment No. 1 to Form S-1 Registration
26 Statement. This document was obtained by my office from the EDGAR website publicly
27 maintained by the SEC.

- 1 4. Attached hereto as Exhibit "D" is a true and correct copy of Wynn Resorts'
2 Schedule 14A Information Statement, which was publicly filed with the SEC on April 21, 2003
3 and was obtained by my office from the EDGAR website publicly maintained by the SEC.
- 4 5. Attached hereto as Exhibit "E" is a true and correct copy of the document
5 entitled Schedule 13D/A filed on behalf of Aruze USA, Universal, and Mr. Kazuo Okada, which
6 was publicly filed with the SEC on January 6, 2010 and was obtained by my office from the
7 EDGAR website publicly maintained by the SEC.
- 8 6. Attached hereto as Exhibit "F" is a true and correct copy of the document
9 entitled Stockholders Agreement dated April 11, 2002, which was publicly filed with the SEC on
10 June 17, 2002 as Exhibit 10.10 to Wynn Resorts' Form S-1 Registration Statement. This
11 document was obtained by my office from the EDGAR website publicly maintained by the SEC.
- 12 7. Attached hereto as Exhibit "G" is a true and correct copy of the document
13 entitled Amended and Restated Stockholders Agreement dated January 6, 2010, which was
14 publicly filed with the SEC on January 6, 2010 as Exhibit 7 to the Schedule 13D/A filed on behalf
15 of Mr. Stephen A Wynn and Ms. Elaine P. Wynn. This document was obtained by my office
16 from the EDGAR website publicly maintained by the SEC.
- 17 8. Attached hereto as Exhibit "H" is a true and correct copy of a Wynn
18 Resorts press release, dated February 19, 2012, entitled "Wynn Resorts Board Concludes Year-
19 Long Investigation of Kazuo Okada after Receiving Freeh Report Detailing Numerous Apparent
20 Violations of U.S. Anti-Corruption Laws." This document was attached as Exhibit 99.1 to Wynn
21 Resorts' Form 8-K, which was publicly filed with the SEC on February 21, 2012 and was
22 obtained by my office from the EDGAR website publicly maintained by the SEC.
- 23 9. Attached hereto as Exhibit "I" is a true and correct copy of Wynn Resorts,
24 Limited's Schedule 14A Proxy Statement, which was publicly filed with the SEC on March 7,
25 2012 and was obtained by my office from the EDGAR website publicly maintained by the SEC.
- 26 10. Attached hereto as Exhibit "J" is a true and correct copy of Wynn Resorts,
27 Limited's Fourth Amended and Restated Bylaws dated November 13, 2006, which was obtained
28 by my office from Wynn Resorts' website.

1 11. Attached hereto as Exhibit "K" is a true and correct copy of relevant
2 excerpts of Wynn Resorts' 2011 Amended Form 10-K, which was filed with the SEC on April
3 30, 2012 and was obtained by my office from the EDGAR website publicly maintained by the
4 SEC.

5 12. Attached hereto as Exhibit "L" is a true and correct copy of the Articles of
6 Incorporation of Wynn Resorts, Limited dated June 3, 2002, which was publicly filed with the
7 SEC on June 17, 2002 as Exhibit 3.1 to Wynn Resorts' Form S-1 Registration Statement. This
8 document was obtained by my office from the EDGAR website publicly maintained by the SEC.

9 13. Attached hereto as Exhibit "M" is a true and correct copy of the Amended
10 and Restated Articles of Incorporation of Wynn Resorts which was filed with the Nevada
11 Secretary of State on September 10, 2002 and was obtained by my office from the Nevada
12 Secretary of State.

13 14. Attached hereto as Exhibit "N" is a true and correct partially redacted copy
14 of a January 18, 2012 letter sent to the Nominating and Corporate Governance Committee of the
15 Wynn Resorts Board of Directors on behalf of Aruze USA.

16 15. Attached hereto as Exhibit "O" is a true and correct partially redacted copy
17 of a January 18, 2012 letter sent to Mr. Wynn on behalf of Aruze USA.

18 16. Attached hereto as Exhibit "P" is a true and correct copy of a letter dated
19 February 8, 2012, received by Aruze USA from Mr. Wynn concerning the nomination of
20 qualified candidates to serve as independent directors of Wynn Resorts.

21 17. Attached hereto as Exhibit "Q" is a true and correct copy of Exhibit 1 to
22 the Complaint filed by Wynn Resorts in the District Court of Clark County, Nevada on February
23 19, 2012.

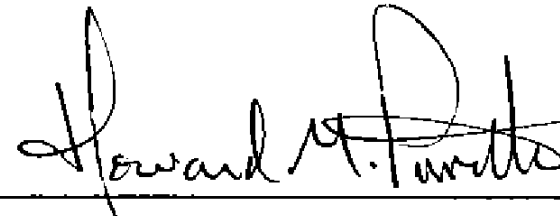
24 18. Attached hereto as Exhibit "R" is a true and correct copy of the document
25 entitled "Respondent's Opposition to Petition for a Writ of Mandamus," filed on behalf of Wynn
26 Resorts in the District Court of Clark County, Nevada on January 27, 2012, in Case No. A-12-
27 654522-B.

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1 19. Attached hereto as Exhibit "S" is a true and correct copy of the Second
2 Amended and Restated Articles of Incorporation of Wynn Resorts dated September 16, 2002,
3 which was publicly filed with the SEC on October 7, 2002 as Exhibit 3.1 to Wynn Resorts' Form
4 S-1 Registration Statement. This document was obtained by my office from the EDGAR website
5 publicly maintained by the SEC.

6 20. Attached hereto as Exhibit "T" is a true and correct copy of Wynn Resorts,
7 Limited's Form 8-K, which was filed with the SEC on August 24, 2012 and was obtained by my
8 office from the EDGAR website publicly maintained by the SEC.

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10 I affirm under penalty of perjury under the laws of the State of Nevada that the
11 foregoing is true and correct to the best of my knowledge and belief. This affidavit is executed on
12 August 30, 2012, at Los Angeles, California.

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15 Howard M. Privette
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EXHIBIT “A”

EX-10.33 11 a2088833zex-10_33.htm EXHIBIT 10.33

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 10.33

**AMENDED AND RESTATED
OPERATING AGREEMENT**

OF

VALVINO LAMORE, LLC
a Nevada limited-liability company

THE SECURITIES REPRESENTED BY THIS DOCUMENT HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, 15 U.S.C. 15b *ET SEQ.*, AS AMENDED (THE "FEDERAL ACT"), OR REGISTERED WITH OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE (THE "STATE ACTS"), IN RELIANCE UPON ONE OR MORE EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE FEDERAL ACT AND THE STATE ACTS. NO SALE OR OTHER TRANSFER OF THESE SECURITIES OR ANY INTEREST THEREIN TO, OR RECEIPT OF ANY CONSIDERATION THEREFOR, MAY BE MADE IF THE PROPOSED SALE OR OTHER TRANSFER OF THESE SECURITIES AFFECTS THE AVAILABILITY TO THE COMPANY OF SUCH EXEMPTIONS FROM REGISTRATION AND QUALIFICATION, AND ANY SUCH PROPOSED SALE OR OTHER TRANSFER MUST BE IN COMPLIANCE WITH ALL APPLICABLE FEDERAL AND STATE SECURITIES LAWS. THEREFORE, MEMBERS MAY NOT BE ABLE TO LIQUIDATE THEIR INVESTMENTS AND THESE SECURITIES MAY NOT BE READILY ACCEPTED AS COLLATERAL FOR A LOAN.

**AMENDED AND RESTATED
OPERATING AGREEMENT**

OF

VALVINO LAMORE, LLC
a Nevada limited liability company

This Amended and Restated Operating Agreement (the "Agreement") is made and entered into at Las Vegas, Nevada, as of the 3rd day of October, 2000, by and between each of the Members listed on Schedule I hereto and who are signatories hereof (the "Members") of Valvino Lamore, LLC, a Nevada limited liability company (the "Company"). In consideration of the mutual covenants herein contained and for other good and valuable consideration, the Members, with reference to the recitals set forth below, agree as follows:

RECITALS

- A. On April 21, 2000, the Company was organized pursuant to the provisions of the Act (as defined below);
- B. Prior to the date hereof, Wynn has made certain contributions to the capital of the Company in exchange for a 100% interest in the Company and has been admitted as a Member of the Company;
- C. Wynn and the Company entered into an Operating Agreement, dated June 1, 2000, as amended on June 5, 2000, setting forth their agreement as to the relationship between the Company and its sole Member at the time;
- D. Aruze USA, Inc. now desires to make the Capital Contribution set forth opposite its name on Schedule I in exchange for an interest in the Company (as herein described) and to be admitted as a Member of the Company; and
- E. The Members desire by this Agreement to set forth their agreement as to the relationship between the Company and the Members, and among the Members themselves, and as to the conduct of the business and the internal affairs of the

Company.

THEREFORE, in consideration of the mutual covenants, agreements and promises made herein, the parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

Act. "Act" shall mean Chapter 86 of the NRS.

Adjusted Capital Account Deficit. "Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts that such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5);

(b) Credit to such Capital Account the amount of the deductions and losses referable to any outstanding recourse liabilities of the Company owed to or guaranteed by such Member (or a related person within the meaning of Regulations Section 1.752-4(b)) to the extent that no other Member bears any economic risk of loss and the amount of the deductions and losses referable to such Member's share (determined in accordance with the Member's Percentage Interest) of

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outstanding recourse liabilities owed by the Company to non-Members to the extent that no Member bears any economic risk of loss; and

(c) Debit to such Capital Account the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

Affiliate. "Affiliate" means with respect to a specified Person, any other Person who or which is (a) directly or indirectly controlling, controlled by or under common control with the specified Person, or (b) any member, stockholder, director, officer, manager, or comparable principal of, or relative or spouse of, the specified Person. For purposes of this definition, "control", "controlling", "controlled" mean the right to exercise, directly or indirectly, more than fifty percent of the voting power of the stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

Agreement. "Agreement" means this Amended and Restated Operating Agreement, as amended from time to time.

Aircraft. "Aircraft" means that certain Gulfstream III owned by Kevyn, LLC with FAA registration number N711SW and serial number 311.

Articles. "Articles" means the Articles of Organization of the Company as filed with the Secretary of State of Nevada, as amended from time to time.

Aruze. "Aruze" means Aruze USA, Inc., a Nevada corporation, and a wholly owned subsidiary of Aruze Parent.

Aruze Parent. "Aruze Parent" means Aruze Corp., a Japanese public corporation, of which Kazuo Okada is President and, together with his family members, an 80% shareholder.

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

Board Chairman. "Board Chairman" shall have the meaning assigned to that term in Section 8.7(e).

Board of Representatives, Board. "Board of Representatives" or "Board" shall mean the board of the Company (with the authority specifically described in this Agreement and subject to the powers of the Managing Member), as chosen by the Members pursuant to this Agreement.

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Capital Account. "Capital Account" means, with respect to any Member, the capital account maintained for such Member in accordance with this Agreement.

Capital Contribution. "Capital Contribution" means the total amount of cash and the agreed fair market value (net of liabilities) of any property contributed at any time to the capital of the Company by a Member.

Cause. "Cause" shall mean deliberate malfeasance or fraud.

Code. "Code" means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding United States federal tax statute enacted after the date of this Agreement. A reference to a specific section of the Code refers not only to such specific section but also to any corresponding provision of any United States federal tax statute enacted after the date of this Agreement, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Agreement containing such reference.

Common Shares. "Common Shares" means Shares with the right to one (1) vote per share and with the other rights and obligations as set forth in this Agreement.

Company Minimum Gain. "Company Minimum Gain" has the meaning ascribed to the term "Partnership Minimum Gain" in Regulations Section 1.704-2(d).

Company. "Company" means Valvino Lamore, LLC, a Nevada limited liability company.

Covered Person. "Covered Person" means (a) a Member or Managing Member, (b) any officer or employee of the Company, (c) any other Person designated by the Managing Member as a Covered Person, or (d) any Person who was, at the time of the act or omission in question, a Person described in any of the preceding clauses (a) through (c).

Depreciation. "Depreciation" means, for each Fiscal Year, an amount equal to the federal income tax depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year

is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managing Member.

Exchange Act. "Exchange Act" means the Securities Exchange Act of 1934, as amended.

Fiscal Year. "Fiscal Year" means the Company's fiscal year, which shall be the calendar year, or any portion of such period for which the Company is required to allocate Profits, Losses, or other items of Company income, gain, loss, or deduction pursuant hereto.

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

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

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thereunder, as amended from time to time, and the Clark County Code, as amended from time to time.

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

Gaming Problem. "Gaming Problem" means any circumstances such that any Member, manager, officer or employee of the Company or any Member, or any Affiliate of any such Person, is deemed likely, in the sole and absolute discretion of the Managing Member (or with respect to the Managing Member, the reasonable determination of the Board), based on verifiable information or information received from any Gaming Authority or otherwise, to preclude or materially delay, impede or impair the ability of the Company or any subsidiary of the Company to obtain or retain any Gaming Licenses, or such as may result in the imposition of materially burdensome terms and conditions on any such Gaming License.

Gross Asset Value. "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member (or a former member) to the Company shall be the gross fair market value of such asset, as determined by the contributing Person and the Managing Member;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Managing Member, as of the following times: (a) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (b) the distribution by the Company to a Member of more than a *de minimis* amount of Property as consideration for an interest in the Company; and (c) the liquidation of the Company within the meaning of Regulations Section 1.704-1 (b)(2)(i)(g); provided, however, that adjustments pursuant to clauses (a) and (b) above shall be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company.

(c) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Managing Member; and

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted federal income tax basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only

to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m) and subparagraph (f) of the definition of Profits and Losses; provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (d) to the extent that the Managing Member determines that an adjustment pursuant to subparagraph (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraph (a), subparagraph (b), or subparagraph (d) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

Independent Qualified Appraiser. "Independent Qualified Appraiser" means an independent outside qualified appraiser appointed by the Managing Member to determine the fair market value of

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certain Shares or an Interest in the Company, or the Company itself, in all cases considering the Company as a going concern. Any determination by an Independent Qualified Appraiser regarding the fair market value of the Company or an Interest shall be binding upon all parties.

Interest. "Interest" means the entire ownership interest of a Member in the Company at any time, including the right of such Member to any and all benefits to which a Member may be entitled as provided under the Act and this Agreement and including the Percentage Interest and the ownership interest in respect of Shares of such Member.

Majority. "Majority" means the Member or Members owning an aggregate of greater than fifty percent (50%) of all Voting Interests.

Managing Member. "Managing Member" means the Member who shall act as the manager (as defined in the Act) of the Company, with the rights and powers as described in this Agreement. The Managing Member shall be Wynn, or the Person thereafter appointed pursuant to this Agreement, to manage the Company.

Member. "Member" means each Person who executes a counterpart of this Agreement as a member of the Company, or who is later admitted to the Company as a member (as a new member, or a transferee of a member, successor or assign) in accordance with the Act and this Agreement (so long as such Person holds an Interest in the Company).

Member Nonrecourse Debt. "Member Nonrecourse Debt" has the meaning ascribed to the term "Partner Nonrecourse Debt" in Regulations Section 1.704-2(b)(4).

Member Nonrecourse Debt Minimum Gain. "Member Nonrecourse Debt Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

Member Nonrecourse Deductions. "Member Nonrecourse Deductions" means items of Company loss, deduction, or Code Section 705(a)(2)(B) expenditures that are attributable to Member Nonrecourse Debt or to other liabilities of the Company owed to or guaranteed by a Member (or a related person within the meaning of Regulations Section 1.752-4(b)) to the extent that no other Member bears the economic risk of loss.

Nonrecourse Deductions. "Nonrecourse Deductions" has the meaning set forth in Regulations Section 1.704-2(b)(1).

Nonrecourse Liability. "Nonrecourse Liability" has the meaning set forth in Regulations Section 1.704-2(b)(3).

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

Okada. "Okada" means Kazuo Okada.

Percentage Interest. "Percentage Interest" means, with respect to a specified Member, the percentage computed by

dividing the number of Common Shares held by such Member by the Total Common Shares. Any adjustment to the Percentage Interest of a Member shall be reflected in an amendment to Schedule I.

Permitted Transferee. "Permitted Transferee" means, (i) Okada; (ii) an immediate family member of Okada or Wynn; (iii) a revocable, inter vivos trust of which Okada or Wynn or a family member of Okada or Wynn is trustee or Okada or Wynn or a family member of Okada or Wynn is a beneficiary; (iv) another Member or an entity wholly-owned by such Member; or (v) the Managing Member.

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Person. "Person" means a natural person, any form of business or social organization and any other non-governmental legal entity including, but not limited to, a corporation; partnership; association; trust; unincorporated organization; estate or limited-liability company.

Profits and Losses. "Profits" and "Losses" mean, for each Fiscal Year, an amount equal to the Company's taxable income or loss for such Fiscal Year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted as a result of the application of Regulations Section 1.704-1(b)(2)(iv)(e) or Regulations Section 1.704-1(b)(2)(iv)(f), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation in accordance with the definition of Depreciation provided herein;

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) Notwithstanding any other provision of this definition, any items that are specially allocated pursuant to Section 4.3 or 4.4 hereof shall not be taken into account in computing Profits or Losses (the amounts of the items of Company income, gain, loss, or deduction available to be specially allocated pursuant to any provision of this Agreement shall be determined by applying rules analogous to those set forth in subparagraph (a) through subparagraph (f) of this definition).

The foregoing definition of Profits and Losses is intended to comply with the provisions of Regulations Section 1.704-1(b) and shall be interpreted consistently therewith. In the event the Managing Member determines that it is prudent to modify the manner in which Profits and Losses are computed in order to comply with such Regulations, the Managing Member may make such modification.

Prohibited Transferee. "Prohibited Transferee" means (a) any owner, operator, or manager of, or Person primarily engaged in the business of owning or operating, a hotel, casino, or an internet gaming site, (b) any "non-profit" or "not-for-profit" corporation, association, trust, fund, foundation or other similar entity organized and operated exclusively for charitable purposes that qualifies as a tax-exempt

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entity under federal and state tax law or corresponding foreign law, (c) any federal, state, local or foreign governmental agency, instrumentality or similar entity, (d) any Person that has been convicted of a felony, (e) any Person regularly engaged in or affiliated with the production or distribution of alcoholic beverages, or (f) any Unsuitable Person.

Project. "Project" means the mixed-use development, including hotels and casinos and related businesses, to be developed on the Real Property by Wynn Resorts and including the Internet gaming business to be owned and operated by Worldwide Wynn.

Property. "Property" means all real and personal property acquired by the Company and any improvements thereto, including without limitation, the Real Property, and shall include both tangible and intangible property.

Real Property. "Real Property" means that certain real property located in Clark County, Nevada, listed by APN on Schedule II hereto, and commonly described as the approximately 211 acre site of the former Desert Inn Resort and Casino, bounded by Las Vegas Boulevard South to the west, Paradise Road to the east, Sands Avenue to the South and Desert Inn Road to the north.

Records Office. "Records Office" means an office of the Company in Nevada, which may but need not be a place of its business, at which it shall keep all records identified in NRS Section 86.241, except that none of the lists required to be maintained pursuant to NRS Section 86.241 need be maintained in alphabetical order, nor shall the Company be required to maintain at its Records Office copies of powers of attorney except those relating to the execution of the Articles and this Agreement.

Regulations. "Regulations" means the regulations currently in force from time to time as final or temporary that have been issued by the U.S. Department of the Treasury pursuant to its authority under the Code. If a word or phrase is defined in this Agreement by cross-referencing the Regulations, then to the extent the context of this Agreement and the Regulations require, the term "Member" shall be substituted in the Regulations for the term "partner", the term "Company" shall be substituted in the Regulations for the term "partnership", and other similar conforming changes shall be deemed to have been made for purposes of applying the Regulations.

Reorganization. "Reorganization" shall mean the merger or conversion of the Company, or a sale or other disposition of all or substantially all of the assets of the Company, or sale or other disposition of authorized but unissued Shares or Interests, or other transaction pursuant to which, in each case, a Person or Persons acquire all or substantially all of the assets or Shares of or Interests in the Company in a single or series of related transactions, including, without limitation, a merger or conversion of the Company into a corporation or other entity, whether or not such corporation or other entity; provided, however, that a Reorganization shall not include any acts of the Managing Member under Section 8.2, including, but not limited to Section 8.2(l).

Secretary of State. "Secretary of State" means the office of the Nevada Secretary of State.

Securities Act. "Securities Act" means the Securities Act of 1933, or any similar federal statute, and the rules and regulations of the Securities and Exchange Commission thereunder, all as shall be in effect at the time.

Shares. "Shares" means a share of an Interest in the Company held by a Member as reflected on Schedule I hereto. Any adjustment to the number of Shares owned by a Member shall be reflected in an amendment to Schedule I.

Total Common Shares. "Total Common Shares" means the total number of all issued and outstanding Common Shares.

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

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

Voting Interest. "Voting Interest" means, with respect to a specified Member, that percentage determined by dividing (i) the total number of votes of the Common Shares held by such Member, by (ii) the total number of votes of all of the issued and outstanding Common Shares.

Wynn. "Wynn" means Stephen A. Wynn.

Wynn Resorts. "Wynn Resorts" means Wynn Resorts, LLC, a Nevada limited liability company, which will be a wholly-owned subsidiary of the Company.

Worldwide Wynn. "Worldwide Wynn" means Worldwide Wynn, LLC, a Nevada limited liability company, which will be a wholly-owned subsidiary of the Company.

ARTICLE II.

INTRODUCTORY MATTERS

2.1. *Formation.* Pursuant to the Act, the Company has been formed as a Nevada limited liability company under the laws of the State of Nevada. To the extent that the rights or obligations of any Member or the Managing Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

2.2. *Name.* The name of the Company shall be "Valvino Lamore, LLC." The business and affairs of the Company may be conducted under that name or any other name that the Managing Member deems appropriate or advisable.

2.3. *Records Office.* The Company shall continuously maintain in the state of Nevada a Records Office. As of the date hereof, the Records Office shall be 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109. The Records Office may be changed to another location within the State of Nevada as the Managing Member may from time to time determine.

2.4. *Other Offices.* The Company may establish and maintain other offices at any time and at any place or places as the Managing Member may designate or as the business of the Company may require.

2.5. *Resident Agent and Registered Office.* The resident agent of the Company for service of process shall be as set forth in the Articles or as changed by the Managing Member from time to time. Company shall have as its registered office in the state of Nevada the street address of its resident agent.

2.6. *Purpose.* The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for

which limited liability companies may be formed under the Act and engaging in any and all activities necessary or incidental

to the foregoing, including, without limitation, owning, developing, constructing, financing and operating the Project and related businesses.

2.7. Powers of the Company. The Company shall have the power and authority to take any and all actions necessary, appropriate, advisable, convenient or incidental to or for the furtherance of the purpose set forth in Section 2.6, including, but not limited to, the power and authority to:

- (a) Sue and be sued, complain and defend, in its name;
- (b) Purchase, take, receive, lease or otherwise acquire own, hold, improve, use and otherwise deal in and with real or personal property, or an interest in it, wherever situated;
- (c) Sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;
- (d) Lend money to and otherwise assist its Members;
- (e) Purchase, take, receive, subscribe for and otherwise acquire, own, hold, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with shares, members' interests or other interests in or obligations of domestic or foreign limited-liability companies, domestic or foreign corporations, joint ventures or similar associations, general or limited partnerships or natural persons, or direct or indirect obligations of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality of it;
- (f) Make contracts (including without limitation, contracts with any Member, manager or Affiliate that are necessary to, in connection with, convenient to, or incidental to the accomplishment of the purpose of the Company) and guarantees and incur liabilities, borrow money at such rates of interest as the Company may determine, issue its notes, bonds and other obligations and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income;
- (g) Lend, invest and reinvest its money and take and hold real property and personal property for the payment of money so loaned or invested;
- (h) Conduct its business, carry on its operations and have and exercise the powers granted by the Act in any state, territory, district or possession of the United States or in any foreign country;
- (i) Appoint managers and agents, define their duties and fix their compensation;
- (j) Cease its activities and surrender its articles of organization;
- (k) Exercise all powers necessary or convenient to effect any of the purposes for which the Company is organized; and
- (l) Hold a Gaming License.

2.8. No State Law Partnership. The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal, state and local tax purposes (as provided in Section 9.9), and this Agreement shall not be construed to suggest otherwise.

ARTICLE III.

INTERESTS AND CAPITAL ACCOUNTS

3.1. *Member's Interest.* The Interest held by each Member shall for all purposes be personal property. A Member shall not have an interest in specific Property, including any assets or property contributed to the Company by such Member as part of any Capital Contribution.

3.2. *Authorized Shares.* There shall be authorized a total of 500,000 Shares, 200,000 of which are hereby designated Common Shares. The designations, voting powers, preferences, limitations, restrictions and rights of the remaining 300,000 Shares shall hereinafter be prescribed by the Board. Each of the Common Shares shall have identical rights in all respects except as specifically set forth in this Agreement. The holders of Common Shares shall have rights to an allocation of Profits and Losses and to any distributions as may be authorized under this Agreement.

3.3. Intentionally deleted.

3.4. *Capital.* The Members agree that the aggregate net value of the Company (i.e., the aggregate gross value of the Company's assets minus the aggregate amount, or absolute value, of its liabilities) immediately prior to the date of this Agreement (i.e., immediately prior to any Capital Contribution by Aruze pursuant to this Section 3.4 and any distribution to Wynn pursuant to Section 5.2) was three hundred sixty-two million three hundred forty thousand six hundred twenty-five dollars (\$362,340,625). As of the date of this Agreement, Aruze is contributing to the capital of the Company cash in the amount of two hundred sixty million dollars (\$260,000,000). The Capital Accounts of the Members immediately following such Capital Contribution by Aruze and the distribution to Wynn pursuant to Section 5.2 shall be as set forth on Schedule I attached hereto.

3.5. *Capital Accounts.* The Company shall establish an individual Capital Account for each Member. The Company shall determine and maintain each Capital Account in accordance with Regulations Section 1.704-1(b)(2)(iv) and, in pursuance thereof, the provisions of this Article III shall apply.

3.6. *General Rules for Adjustment of Capital Accounts.*

(a) To each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's allocated share of Profits and any items in the nature of income or gain that are specially allocated pursuant to Section 4.3 or 4.4 hereof, and the amount of any Company liabilities assumed by such Member or which are secured by any property distributed to such Member;

(b) To each Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any property distributed to such Member pursuant to any provision of this Agreement, such Member's allocated share of Losses and any items in the nature of expenses or losses that are specially allocated pursuant to Section 4.3 or 4.4 hereof, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company;

(c) In the event all or a portion of a Interest in the Company is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest; and

(d) In determining the amount of any liability for purposes of subparagraphs (a) and (b) of this Section, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

3.7. *Intent to Comply with Regulations.* The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations

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Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Managing Member determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Regulations, the Managing Member may make such modification.

3.8. *Rights With Respect to Capital; Interest.* No Member shall have the right to withdraw or receive any return of such Member's Capital Contribution, and no Capital Contribution must be returned in the form of property other than cash

except as specifically provided herein. No interest shall be paid or credited to the Members on their Capital Accounts or upon any undistributed profits left on deposit with the Company.

ARTICLE IV.

ALLOCATIONS OF PROFITS AND LOSSES

4.1. *Allocations of Profits.* After giving effect to the special allocations set forth in Sections 4.3 and 4.4 herein, Profits for any Fiscal Year shall be allocated to the Members in the following order of priority:

(a) *Chargeback to the Extent of Losses.* First, Profits shall be allocated to each Member to the extent of and in the reverse order of the aggregate amount of Losses previously allocated to such Member pursuant to Section 4.2 (b), with respect to which Profits have not been previously allocated pursuant to this subsection.

(b) *Other Profits.* Second, except as provided in subparagraph (a) of this Section, Profits shall be allocated in accordance with the Members' Percentage Interests.

4.2. *Allocations of Losses.* After giving effect to the special allocations set forth in Sections 4.3 and 4.4 herein, Losses for any Fiscal Year shall be allocated to the Members as follows:

(a) *Chargeback to the Extent of Profits.* First, except as provided in subparagraph (c), Losses shall be allocated to each Member to the extent of the aggregate amount of Profits previously allocated to such Member pursuant to Section 4.1(b), with respect to which Losses have not been previously allocated pursuant to this subsection.

(b) *Other Losses.* Second, except as provided in Sections 4.2(a) and 4.2(c), Losses shall be allocated in accordance with the Members' Percentage Interests.

(c) *Adjusted Capital Account Deficit.* An allocation of Losses under Section 4.2(a) or Section 4.2(b) hereof shall not be made to the extent it would create or increase an Adjusted Capital Account Deficit for a Member or Members at the end of any Fiscal Year. Any Losses not allocated because of the preceding sentence shall be allocated to the other Member or Members in proportion to such Member's or Members' respective Percentage Interests; provided, however, that to the extent such allocation would create or increase an Adjusted Capital Account Deficit for another Member or Members at the end of any Fiscal Year, such allocation shall be made to the remaining Member or Members in proportion to the respective Percentage Interests of such Member or Members.

4.3. *Special Allocations.* The following special allocations shall be made in the following order:

(a) *Minimum Gain Chargeback.* Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding any other provision of this Article IV, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(g)(2). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto.

The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f)(6) and 1.704-2(j)(2). This Section 4.3(a) is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) *Member Minimum Gain Chargeback.* Except as otherwise provided in Regulation Section 1.704-2(i)(4), notwithstanding any other provision of this Article IV, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of

the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt (which share shall be determined in accordance with Regulations Section 1.704-2(i)(5)) shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to that portion of such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4) and 1.704-2(j)(2). This Section 4.3(b) is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) *Qualified Income Offset.* In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6) or any other event creates an Adjusted Capital Account Deficit, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 4.3(c) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article IV have been tentatively made as if this Section 4.3(c) were not in the Agreement.

(d) *Nonrecourse Deductions Referable to Liabilities Owed to Non-Members.* Any Nonrecourse Deductions for any Fiscal Year and any other deductions or losses for any Fiscal Year referable to a liability owed by the Company to a Person other than a Member to the extent that no Member bears the economic risk of loss shall be specially allocated to the Members in accordance with their Percentage Interests.

(e) *Member Nonrecourse Deductions.* Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt or other liability to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i) and Regulations Section 1.704-1(b).

(f) *Section 754 Adjustments.* To the extent an adjustment to the adjusted federal income tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with Regulations Section 1.704-1(b)(2)(iv)(m).

4.4. *Curative Allocations.* The allocations set forth in Sections 4.2(c) and 4.3 hereof (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with

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other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 4.4. Therefore, notwithstanding any other provision of this Article IV (other than the Regulatory Allocations), the Managing Member shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, a Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to Sections 4.1(a), 4.1(b), 4.2(a), and 4.2(b). In exercising its discretion under this Section 4.4, the Managing Member shall take into account any future Regulatory Allocations under Sections 4.3(a) and 4.3(b) that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 4.3(d) and 4.3(e).

4.5. *Fees to Members or Affiliates.* Notwithstanding the provisions of Section 4.1 or 4.2, in the event that any fees, interest or other amounts paid to any Member or any Affiliate thereof pursuant to this Agreement or otherwise, and deducted by the Company in reliance on Code Sections 707(a) and/or 707(c), are disallowed as deductions to the Company on its federal income tax return and are treated as distributions, there shall be allocated to the Member to which or to whom (or to whose Affiliate) such fees, interest, or other amounts were paid, prior to the allocations pursuant to Section 4.1 or 4.2, an amount of gross income for the Fiscal Year equal to the amount of such fees, interest, or other amounts that are treated as

distributions, and in connection therewith the Managing Member may make such other adjustments it determines to be appropriate to effectuate the allocation provisions hereof.

4.6. *Other Allocation Rules.*

(a) *Allocation of Items Included in Profits and Losses.* Whenever a proportionate part of the Profits or Losses is allocated to a Member, every item of income, gain, loss, or deduction entering into the computation of such Profits or Losses shall be credited or charged, as the case may be, to such Member in the same proportion.

(b) *Allocations in Respect of a Transferred Membership Interest.* If any Membership Interest is transferred, or is increased or decreased by reason of the admission of a new Member or otherwise, during any Fiscal Year of the Company, each item of income, gain, loss, deduction, or credit of the Company for such Fiscal Year shall be allocated among the Members, as determined by the Managing Member in accordance with any method permitted by Code Section 706(d) and the Regulations promulgated thereunder in order to take into account the Members' varying interests in the Company during such Fiscal Year.

4.7. *Tax Allocations.*

(a) *Code Section 704(c).* The allocations specified in this Agreement shall govern the allocation of items to the Members for Code Section 704(b) book purposes, and the allocation of items to the Members for tax purposes shall be in accordance with such book allocations, except that solely for tax purposes and notwithstanding any other provision of this Article IV:

(1) In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall be allocated among the Members (including Members who succeed to the Membership Interest of any other Members or former members of the Company) so as to take account of any variation between the adjusted federal income tax basis of such property to the Company and its initial Gross Asset Value.

(2) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (b) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between

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the adjusted federal income tax basis of such asset and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(3) The allocations described in (1) and (2) above shall be made using the "traditional method" described in Regulations Section 1.704-3(b).

(b) *Tax Credits.* Tax credits, if any, shall be allocated among the Members in proportion to their Percentage Interests.

(c) *Excess Nonrecourse Liabilities.* Solely for purposes of determining a Member's share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), the Members' interests in Company profits are in proportion to their Percentage Interests.

4.8. *Obligations of Members to Report Consistently.* The Members are aware of the income tax consequences of the allocations specifically set forth in this Article IV and hereby agree to be bound by such allocations in reporting their shares of Company income and loss for income tax purposes.

4.9. *Federal Income Tax.* It is the intent of the Company and its Members that the Company will be governed by the applicable provisions of Subchapter K of Chapter 1 of the Code.

ARTICLE V.
DISTRIBUTIONS

5.1. Distributions by the Company to Members.

(a) *In General.* Prior to the occurrence of any event specified in Section 10.1, and subject to applicable law and any limitations contained elsewhere in this Agreement, the Managing Member may, from time to time, make distributions in cash from the Company to the Members in the following order and priority:

(1) First, to Members pro rata in accordance with the respective amounts of their initial Capital Accounts as shown on Schedule I, without adjustment for subsequent allocations of Profits or Losses or otherwise, until each Member has received an aggregate amount of distributions pursuant to this Subsection 5.1(a)(1) equal to the amount of such initial Capital Account; and

(2) Second, to Members pro rata in accordance with their respective Percentage Interests.

(b) *Tax Distributions.* Notwithstanding Section 5.1(a), prior to the occurrence of any event specified in Section 10.1, and subject to applicable law and any limitations contained elsewhere in this Agreement, if the cumulative net taxable income of the Company from the date of this Agreement through the end of any taxable year exceeds the cumulative net tax losses of the Company for the same period (all as determined for federal income tax purposes), then the Managing Member shall, with respect to such taxable year, use reasonable efforts to cause the Company to distribute to each Member cash in an amount equal to such Member's Tax Amount for such taxable year no later than ninety (90) days, or otherwise as soon as practicable, after the end of such taxable year. Distributions in respect of the Members' Tax Amounts shall be made to the Members pro rata in proportion to their respective Tax Amounts. "Tax Amount" means, with respect to each Member for each taxable year, an amount equal to the product of (i) the highest marginal federal individual income tax rate for such taxable year on ordinary income (such rate is 39.6% as of the date of this Agreement), as such rate may be adjusted by the Managing Member in its discretion to take into account any preferential rate applicable on capital gains, and (ii) the net taxable income (as determined for federal income tax purposes), if any, of such Member attributable to its allocations from the Company for such taxable year.

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(c) *Advances or Drawings.* Distributions of money and property may be treated as advances or drawings of money or property against a Member's distributive share of income and as current distributions made on the last day of the Company's taxable year with respect to such Member.

(d) *Distributees; Liability for Distributions.* All distributions made pursuant to this Section 5.1 shall be made only to the Persons who, according to the books and records of the Company, hold the Membership Interests in respect of which such distributions are made on the actual date of distribution. Neither the Company nor any Managing Member or officer shall incur any liability for making distributions in accordance with this Section 5.1.

5.2. Reimbursement of Preformation Expenditures. As soon as practicable after the date of this Agreement, and notwithstanding anything to the contrary expressed or implied herein, the Managing Member shall distribute from the Company to Wynn cash in the amount of seventy million dollars (\$70 million) to reimburse Wynn for certain preformation capital expenditures pursuant to Regulations Section 1.707-4(d).

5.3. Form of Distributions. A Member, regardless of the nature of the Member's Capital Contributions, has no right to demand and receive any distribution from the Company in any form other than money. No Member may be compelled to accept from the Company a distribution of any asset in kind in lieu of a proportionate distribution of money being made to other Members.

5.4. Return of Distributions. Except for distributions made in violation of the Act or this Agreement, or as otherwise required by law, no Member shall be obligated to return any distribution to the Company or pay the amount of any

distribution for the account of the Company or to any creditor of the Company.

5.5. *Limitation on Distributions.* Notwithstanding any provision to the contrary in this Agreement, the Company shall not be required to make a distribution to any Member on account of such Member's interest in the Company if such distribution would violate the Act or other applicable law or would cause a breach or default under any agreement or instrument to which the Company is a party or by which it or the Property is bound.

5.6. *Withholding.* Any tax required to be withheld with respect to any Member under Section 1446 or other provisions of the Code, or under the law of any state or other jurisdiction, shall be treated for all purposes of this Agreement as determined by the Managing Member either (i) as a distribution of cash to be charged against current or future distributions to which such Member would otherwise have been entitled, or (ii) as a demand loan to such Member bearing interest at a rate per annum equal to the rate of interest then announced by Bank of America NT SA as its prime commercial lending rate plus 200 basis points.

ARTICLE VI

MEMBERS

6.1. *Limitation of Liability.* No Members shall be individually liable under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the Company or any other Member, except as provided by law or in an agreement signed by the Member to be charged. No Member shall be required to loan any funds to the Company, nor shall any Member be required to make any contribution to the Company, nor shall any Member be subject to any liability to the Company, the other Members, or any third party, as a result of a Member's negative Capital Account balance. However, nothing in this Agreement shall prevent a Member from making secured or unsecured loans to the Company by agreement with the Company.

6.2. *Compensation of Members.* The Company shall have authority to pay to any Member a reasonable salary for said Member's services to the Company. It is understood that the salary paid to

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any Member under the provisions of this Section shall be determined without regard to the income of the Company and shall be considered as an operating expense of the Company and shall be deducted as an expense item in determining Profits and Losses.

6.3. *Action by the Members.* Unless otherwise required by this Agreement, actions and consents of the Members may be communicated or reflected orally, electronically or in writing, and no action need be taken at a formal meeting. All actions of the Members shall be taken by the Members in proportion to their Voting Interests at the time of the action taken. Except as otherwise specifically provided herein, the Members may approve a matter or take any action by the vote of the Members at a meeting at which a quorum is present, in person or by proxy, or without a meeting by written consent as provided in Section 6.10 below. The vote or written consent of a Majority shall be required to approve any matter or to take any action at any meeting of Members at which a quorum is present, unless a greater or lesser vote is provided for by this Agreement or required by the Act. Except as provided in this Section 6.3, Members shall not have the authority to bind the Company by virtue of their status or in their capacity as Members.

6.4. *Members Approval.* The following actions shall require the approval of a Majority:

- (a) any voluntary dissolution or liquidation of the Company;
- (b) the sale of all or substantially all of the Property;
- (c) the Reorganization of the Company;

(d) the creation of any lien, mortgage, pledge or other security interest on the assets of the Company securing indebtedness of any third party which is not for the benefit of the business carried on by the Company; and

(e) the commencement of a Bankruptcy by the Company.

6.5. *Designation of Board Chairman; Appointment of the Managing Member.* The designation of the Board representative who will be the Board Chairman shall be made by Wynn so long as Wynn holds an Interest. If Wynn no longer holds an Interest, then the successor to Wynn's Interest (or if there is more than one successor, the successor designated by Wynn) shall designate the Board representative who will be the Board Chairman. If Wynn resigns as the Managing Member, Wynn shall appoint another Managing Member or another manager (who need not be a Member) to exercise all of the powers of the Managing Member hereunder.

6.6. *Meetings of Members.* Meetings of the Members for any purpose may be called at any time by the Managing Member or by one or more Members holding in the aggregate more than a twenty-five percent (25%) Voting Interest. Except in special cases where other express provision is made by the NRS, written notice of each meeting, signed by the Managing Member or by a Member, shall be given to each Member. All notices shall be sent in accordance with Section 14.2 below to each Member not less than ten (10) nor more than sixty (60) calendar days before each meeting, and shall specify the place, date and time of such meeting, as well as the purpose or purposes for which the meeting is called.

6.7. *Place of Meetings.* The meetings of the Members shall be held at the Records Office, unless the Managing Member calls the meeting and designates another location, which other location shall be designated in the notice of the meeting.

6.8. *Adjourned Meetings And Notice Thereof.* Any Members' meeting, whether or not a quorum is present, may be adjourned from time to time by the vote of a Majority, present in person or represented by proxy, but in the absence of a quorum no other business may be transacted at any such meeting. Other than by announcement at the meeting at which such adjournment is taken, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned

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meeting. However, when any Members' meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

6.9. *Waiver of Notice.* The transactions carried out at any meeting of the Members, however called and noticed or wherever held, shall be as valid as though had at a meeting regularly called and noticed if (a) all of the Members are present at the meeting, or (b) a quorum of the Members is present and if, either before or after the meeting, each of the Members not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof, which waiver, consent or approval shall be filed with the other records of the Company or made a part of the minutes of the meeting; provided, that no Member attending such a meeting without notice protests prior to the meeting or at its commencement that notice was not given to such Member.

6.10. *Action By Written Consent.* Any action which may be taken at a meeting of Members may be taken by the Members without a meeting if authorized by the written consent of the requisite Voting Interests. Whenever action is taken by written consent, a meeting of Members need not be called nor notice of meeting given. The written consent may be executed in one or more counterparts and by facsimile, and each such consent so executed shall be deemed an original.

6.11. *Telephonic Meetings.* Members may participate in a meeting of the Members by means of a telephone conference or similar method of communication by which all individuals participating in the meeting can hear each other. Participation in a meeting pursuant to this Section 6.11 constitutes presence in person at the meeting.

6.12. *Quorum.* A Majority, represented in person or by proxy, shall constitute a quorum for the transaction of business.

ARTICLE VII

TRANSFERS OF INTERESTS AND ADMISSION OF NEW MEMBERS

7.1. *Resignation.* Subject to applicable law, a Member may not resign from the Company before the dissolution and winding up of the Company. No Member shall have any right to demand a return of that Member's Capital Contribution prior to dissolution of the Company.

7.2. *Transfers of Interests.*

(a) Shares may be Transferred only as provided in this Agreement and any attempt to Transfer other than as provided in this Agreement shall be null and void and of no effect whatsoever. If a Member Transfers any of its Common Shares to any Person pursuant to this Article VII, in addition to any other requirements under this Agreement, no such Transfer shall be effective unless and until the proposed transferee (i) notifies the Company in writing of such Transfer, and (ii) agrees in writing to be bound by the terms and provisions and to assume all obligations of the transferor and to be subject to all restrictions to which the transferor was and is subject under the Articles and this Agreement; provided, however, the admission of the transferee as a Member shall not release the transferor from liability to the Company under this section. Any new Member shall pay any reasonable expenses in connection with admission as such, including costs associated with any approval required by the Gaming Laws.

(b) Subject to Section 7.2(a) above, a Member may Transfer its Common Shares, or any part thereof, at any time to a Permitted Transferee, and shall not be required to comply with the procedures set forth in Section 7.4 or 7.6 in respect of such Transfers.

(c) Notwithstanding any other provision of this Agreement (except as expressly provided in Section 12.3), no Interest may be transferred to a Prohibited Transferee.

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7.3. *Admission of New Members.* Other than the admission of a new Member by the Managing Member pursuant to Section 8.2(l) or the admission of a successor to Wynn under Section 14.17, any Person who is not a Prohibited Transferee may be admitted to membership in the Company upon the consent of a Majority and such Person shall be issued such Shares for such consideration as the Managing Member shall determine, subject to the terms and conditions of this Agreement; provided, however, that any transferee who is a Permitted Transferee shall be admitted as a Member of the Company. A new Member shall not be admitted into the Company until the Capital Contribution required of such Person has been made, and such Person agrees in writing to be bound by the terms and provisions and to assume all obligations of and to be subject to all restrictions under the Articles and this Agreement. Upon admission the new Member shall have all rights and duties of a Member. The new Member must pay any reasonable expenses in connection with admission as a new Member, including costs associated with obtaining any approvals required by the Gaming Laws.

7.4. *Right of First Refusal.*

(a) Any Member (a "Transferor") who wishes to Transfer any or all of its Common Shares (the "Offered Shares") to any Person other than a Permitted Transferee and who receives a bona fide offer from any Person (the "Offeror") who is not a Prohibited Transferee for the purchase of all or any portion of such Member's Common Shares shall, prior to accepting such offer, provide written notice (the "Notice of Offer") thereof to each other Member holding Common Shares, which notice shall set forth the terms and conditions of the offer so received, including the purchase price and the identity of the Offeror. Following the delivery to the other Members of the Notice of Offer, each other Member may purchase that percentage of the Offered Shares which is equal to the Total Common Shares (excluding the Offered Shares) owned by each such Member ("Applicable Percentage") during a fifteen-day Refusal Period on the terms set forth in the Notice of Offer. To the extent any Member shall fail to purchase its Applicable Percentage prior to the expiration of the Refusal Period, the Accepting Members may purchase such Shares on a pro rata basis in proportion to the number of Common Shares owned by each of them (and the foregoing procedure shall be repeated in respect of any Shares not purchased until all Accepting Members have had an opportunity to purchase any remaining Shares).

(b) Subject to Section 7.2, if all or any of the Offered Shares shall remain unsold after completion of the procedures set forth in Sections 7.4(a), the Transferor may sell such remaining Offered Shares to the Offeror within six months of the completion of such procedures on terms no more favorable than those set forth in the Notice of

Offer; *provided* that the Offeror is not a Prohibited Transferee. To the extent any of the Offered Shares are not sold in accordance with the foregoing, the Members shall continue to have a right of first refusal under this Section 7.4 with respect to any Transfers to any Person which are subsequently proposed by such Transferor.

(c) The closing of a purchase by a Member under this Section 7.4 shall occur within ten days after the end of the Refusal Period or at such later date when all approvals required by the Gaming Laws are obtained (such approvals to be obtained as soon as is reasonably practicable). At such closing the Transferor and the relevant Accepting Member (and any or all other Members, as may be required) shall execute an assignment and assumption agreement and any other instruments and documents as may be reasonably required by such Member to effectuate the transfer of such Shares free and clear of any liens, claims or encumbrances, other than as specifically permitted hereunder. Any Transfer to any Person which does not comply with the provisions of this Section 7.4, other than a Transfer expressly provided for in the other provisions of this Agreement, shall be null and void of no effect whatsoever.

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7.5. Intentionally deleted.

7.6. *Restrictions on Transfer of Ownership Interests in Members.*

(a) Except for a Transfer to a Permitted Transferee, any Transfer or issuance of an ownership interest in any holder of Common Shares or in any entity that directly or indirectly owns a majority ownership interest in a holder of Common Shares (an "Upstream Ownership Interest") shall be prohibited unless in compliance with the procedures and requirements set forth in this Section 7.6.

(b) The Common Shares that would be indirectly transferred by the transfer of the Upstream Ownership Interest shall be referred to as the "Indirect Transfer Shares". If any holder of an Upstream Ownership Interest (an "Upstream Transferor") intends to Transfer all or any part of its Upstream Ownership Interest pursuant to a bona fide offer received from any Person, prior to accepting such offer the Upstream Transferor shall provide written notice thereof to the Company, which notice shall set forth the terms and conditions of the offer so received, including the purchase price and the identity of the Upstream Offeror. If the Upstream Transferor does not provide such notice, the Member holding the Indirect Transfer Shares shall provide such notice to the Company promptly upon learning that such transaction will occur or has occurred. Within 15 days following receipt of such notice by the Company, or if later, within 30 days of the Company learning that the Transfer of the Upstream Ownership Interest has occurred, the Managing Member may by notice to the Member holding the Indirect Transfer Shares elect to obtain an appraisal by an Independent Qualified Appraiser of the fair market value of the Indirect Transfer Shares. Within 15 days following receipt by the Company of the results of the appraisal, the Managing Member may elect by notice to the Member holding the Indirect Transfer Shares to have the Company purchase all or part of the Indirect Transfer Shares at a per share price equal to the fair market value of the Indirect Transfer Shares divided by the total number of the Indirect Transfer Shares. If the Company does not elect to purchase all of the Indirect Transfer Shares, the Company shall within the same period provide notice to each Member other than the Member holding the Indirect Transfer Shares of the number of Indirect Transfer Shares available for purchase and the per share price. Each such other Member may purchase the percentage of the Indirect Transfer Shares available for purchase equal to such holder's Percentage Interest (determined for this purpose by excluding the Indirect Transfer Shares) at the same per share price during a 15-day period following receipt of notice from the Company. To the extent Member shall determine not to purchase all the Indirect Transfer Shares available to that Member, the other Members exercising the right to purchase the Indirect Transfer Shares may purchase additional Indirect Transfer Shares on a pro rata basis in proportion to their Percentage Interests.

(c) The closing of a purchase of Indirect Transfer Shares by the Company or by a Member under this Section 7.6 shall occur within 10 days following the expiration of the last period during which the Company or a Member might elect to purchase any of the Indirect Transfer Shares, or at such later date when all approvals required by the Gaming Laws are obtained (such approvals to be obtained as soon as is reasonably practicable).

7.7. *Further Restriction on Transfer of Interest.* In addition to the other restrictions set forth in this Agreement, no Member may Transfer all or any part of its Shares, if the Shares to be Transferred when added to the total of all other Shares Transferred in the preceding twelve months, would result in the termination of the Company under Code Section 708, if such termination will result in adverse tax consequences to the non-transferring Members.