IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS LIMITED, Petitioners, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. XI, Respondent, and KAZUO OKADA, UNIVERSAL ENTERTAINMENT CORP. AND ARUZE USA, INC.. Real Parties in Interest.	Case No. _____ **APPENDIX IN SUPPORT OF PETITIONER WYNN RESORTS LIMITED'S PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS** **VOLUME 10 OF 17**

DATED this 17th day of July, 2015.

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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:

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

THE COURT: Thank you.

MR. KRAKOFF: Thank you, Your Honor.

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

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

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

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

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

Ms. Spinelli.

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

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

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

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

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

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

five times.

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

THE COURT: It is a separate --

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

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

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

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

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

THE COURT: -- and I said no.

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

THE COURT: Perhaps.

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

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

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

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

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

THE COURT: That's right.

MR. PISANELLI: Okay.

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

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

Mr. Peek.

MR. PEEK: Thank you, Your Honor.

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

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

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

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

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

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

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

MR. PEEK: Correct.

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

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

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

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

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

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

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

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

THE COURT: Thank you for the explanation.

MR. PEEK: Thank you.

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

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

THE COURT: I am.

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

THE COURT: Four categories.

MR. PEEK: -- four categories.

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

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

through -- held by Aruze USA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

we do know that there were.

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

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

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

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

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

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

We certainly do know, Your Honor, that the

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

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

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

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

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

argument that we make.

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

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

THE COURT: Always.

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

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

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

MR. PEEK: As to the formation?

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

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

redemption. Did that unilaterally.

THE COURT: But how does that relate to WRM?

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

THE COURT: Yes. The formation --

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

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

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

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

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

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

discovery in this case.

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

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

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

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

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

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

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

So to argue when you have three large firms managing

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

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

THE COURT: Thank you.

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

MR. PISANELLI: Whatever Your Honor wants to do.

THE COURT: -- compared to Mr. Peek?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Pause in the proceedings)

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Thank you.

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

MR. PEEK: Thank you, Your Honor.

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

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

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

THE COURT: I didn't do the question.

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

THE COURT: Land interests and license.

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

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

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

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

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

THE COURT: Correct.

MR. PEEK: So --

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

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

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

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

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

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

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

This is not a motion for summary judgment. This is

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

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

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

Wynn board dominated by Steve Wynn. Thank you.

THE COURT: Thank you.

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

Anything else?

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

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

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

THE COURT: I understand, Mr. Pisanelli.

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

THE COURT: I understand.

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

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

THE COURT: Fifteen minutes.

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

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

(Pause in the proceedings)

MR. CAMPBELL: May I approach, Your Honor?

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

MR. CAMPBELL: Good.

(Pause in the proceedings)

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

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

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

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

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

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

MR. KRAKOFF: Understood.

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

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

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

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

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

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

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

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

In terms of location and the presumption --

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

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

plaintiff that comes --

THE COURT: No. This is a defendant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Thank you.

Mr. Pisanelli.

MR. PISANELLI: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

THE COURT: Unless there's an objection.

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

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

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

So can I ask you guys a question.

MR. PISANELLI: Of course.

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

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

THE COURT: Okay.

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

THE COURT: Okay.

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

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

Anything else?

Anything else, Mr. Krakoff?

MR. KRAKOFF: No.

THE COURT: Okay. Here's what --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: I understand, Mr. Urga.

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

THE COURT: I understand.

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

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

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

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

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

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

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

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

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

THE COURT: I got that part.

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

THE COURT: Uh-huh.

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

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

THE COURT: Okay. Anything else?

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

Anything else?

MR. PEEK: Your Honor, I --

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

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

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

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

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

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

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

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

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

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

THE COURT: Mr. Urga's case?

MR. CAMPBELL: Yes, Your Honor.

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

MR. CAMPBELL: Yeah. And --

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

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

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

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

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

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

When is your vacation, Mr. Peek?

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

THE COURT: Okay. So this is after that.

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

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

What? Anything else? Anything else? All right.

MR. PISANELLI: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 11:41 A.M.

* * * * *

CERTIFICATION

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

AFFIRMATION

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

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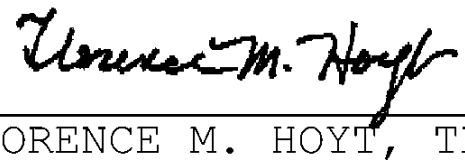
Las Vegas, Nevada 89146



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DISTRICT COURT
CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada corporation, Plaintiff, v. KAZUO OKADA, an individual, ARUZE USA, INC., a Nevada corporation, and UNIVERSAL ENTERTAINMENT CORP., a Japanese corporation, Defendants. AND ALL RELATED CLAIMS.	CASE NO.: A-12-656710-B DEPT. NO.: XI **NOTICE OF ENTRY OF ORDER GRANTING THE ARUZE PARTIES' MOTION TO COMPEL SUPPLEMENTAL RESPONSES TO THEIR SECOND AND THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO WYNN RESORTS, LIMITED** Electronic Filing Case

PLEASE TAKE NOTICE that an Order Granting the Aruze Parties' Motion to Compel Supplemental Responses to Their Second and Third Set of Requests for Production of Documents to Wynn Resorts, Limited was entered on the 22nd day of June 2015. A copy is attached.

DATED this 24th day of June 2015.

By */s/ Robert J. Cassity*
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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June 2015, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING THE ARUZE PARTIES' MOTION TO COMPEL SUPPLEMENTAL RESPONSES TO THEIR SECOND AND THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO WYNN RESORTS, LIMITED** was served by the following method(s):

☒ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

Please see the attached E-Service Master List

☐ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

☐ Email: by electronically delivering a copy via email to the following e-mail addresses:

Valerie Larsen
An Employee of Holland & Hart LLP

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E-Service Master List
For Case
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DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada corporation, Plaintiff, v. KAZUO OKADA, an individual, ARUZE USA, INC., a Nevada corporation, and UNIVERSAL ENTERTAINMENT CORP., a Japanese corporation, Defendants. AND ALL RELATED CLAIMS.	CASE NO.: A-12-656710-B DEPT. NO.: XI **ORDER GRANTING THE ARUZE PARTIES' MOTION TO COMPEL SUPPLEMENTAL RESPONSES TO THEIR SECOND AND THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO WYNN RESORTS, LIMITED** Electronic Filing Case Hearing Date: June 4, 2015 Hearing Time: 8:30 a.m.

The Aruze Parties' Motion to Compel Supplemental Responses to Their Second and Third Set of Requests for Production of Documents to Wynn Resorts, Limited (the "Motion"), filed on April 28, 2015, came before this Court for hearing on June 4, 2015 at 8:30 a.m. James J. Pisanelli, Esq. and Debra L. Spinelli, Esq. of Pisanelli Bice PLLC and Robert L. Shapiro, Esq. of Glaser Weil Fink Howard Avchen & Shapiro, LLP appeared on behalf of Plaintiff/Counterdefendant Wynn Resorts, Limited and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman (the "Wynn Parties"). Donald J. Campbell, Esq. and J. Colby Williams, Esq., of Campbell & Williams, appeared on behalf of Counterdefendant/Cross-defendant Stephen A. Wynn ("Mr. Wynn"). William R. Urga, Esq., of Jolley Urga Woodbury & Little, and Jeffrey Wu, Esq. of Munger, Tolles & Olson LLP appeared on behalf of Counterdefendant/Counterclaimant/Cross-claimant Elaine P. Wynn ("Ms. Wynn"). J. Stephen Peek, Esq. and Robert J. Cassity, Esq. of Holland & Hart LLP, and David S. Krakoff, Esq. and Adam Miller, Esq. of BuckleySandler LLP, appeared on behalf of Defendant Kazuo Okada and Defendant/Counterclaimant/Counter-defendant Aruze USA, Inc. ("Aruze USA") and Defendant/Counterclaimant Universal Entertainment Corp. ("Universal") (the "Aruze Parties").

The Court, having considered the Motion, the Opposition filed by the Wynn Parties, and the Reply filed by the Aruze Parties, as well as the arguments of counsel presented at the hearing, and good cause appearing,

IT IS HEREBY ORDERED that the Aruze Parties' Motion is GRANTED as follows:

The Wynn Parties shall produce all non-privileged documents responsive to the Aruze Parties' Requests No. 82, 86, 89, 90, 93, 114, 118-120, 122-149, 152, 166-167, 205-206, 215,

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230-234, 235, 236, 238, 239, 240-242, 249-250, 259-266, 269-278, 283, 289, and 294.

DATED this 19th day of June, 2015.

THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

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DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada Corporation,

Plaintiff,

vs.

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

Defendants.

AND RELATED CLAIMS

Case No.: A-12-656710-B

Dept. No.: XI

WYNN RESORTS, LIMITED'S MOTION TO STAY PENDING PETITION FOR WRIT OF PROHIBITION ON AN ORDER SHORTENING TIME

Hearing Date:

Hearing Time:

Respectfully, the Court's Order Granting the Okada Parties'[1] Motion to Compel Supplemental Responses to their Second and Third Set of Requests for Production of Documents is vastly overbroad and permits discovery into wide swaths of irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence. The eighty (out of then-300-plus) document requests to which Wynn Resorts, Limited ("Wynn Resorts") objected amount to nothing more than a witch-hunt for imagined improprieties through every company document since the formation of Wynn Resorts (Macau), S.A. ("Wynn Macau"). In addition to being grossly burdensome, the eighty requests are untethered to fact, relevance, or reality. A party is not entitled to demand oppressive discovery based upon naked speculation, suspicion, or an amorphous claim of "pretext." While Wynn Macau – a non-party – may possess some documents that are discoverable in this action, the subject matters that the Okada Parties seek to explore unfettered have nothing to do with this lawsuit, or the Okada Parties' unsuitability, other than the fact that Okada and his accomplices chose Wynn Macau as the location to bribe Philippine officials. The Court's ruling constitutes a blanket discovery order into irrelevant and non-discoverable documents and information. Consequently, this Court should stay its Order pending Wynn Resorts' writ petition to the Nevada Supreme Court.

This Motion is made and based Nevada Rule of Appellate Procedure 8(a), EDCR 2.26, the attached Memorandum of Points and Authorities, the pleadings and papers on file herein, and any argument this Honorable Court allows at any hearing of this matter.

DATED this 1st day of July, 2015.

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[1] Kazuo Okada, Universal Entertainment Corp. ("Universal"), and Aruze USA, Inc. ("Aruze") are collectively referred to herein as the "Okada Parties."

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ORDER SHORTENING TIME

Before this Court is the Request for an Order Shortening Time accompanied by the Declaration of counsel. Good cause appearing, the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 8 day of July, 2015, at 8 a.m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **WYNN RESORTS, LIMITED'S MOTION TO STAY PENDING PETITION FOR WRIT OF PROHIBITION ON AN ORDER SHORTENING TIME** on for hearing.

DATED: July 1, 2015

DISTRICT COURT JUDGE

Respectfully submitted by:

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By: /s/ As Revised 6/30

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DECLARATION OF DEBRA L. SPINELLI, ESQ

I, DEBRA L. SPINELLI, Esq., being first duly sworn, hereby declare as follows:

1. I am one of the attorneys representing Plaintiff Wynn Resorts, Limited ("Wynn Resorts") in above-entitled action. I make this Declaration in support of Wynn Resorts' Motion to Stay Pending Writ of Prohibition on an Order Shortening time. ("Wynn Resorts' Motion"). I have personal knowledge of the facts stated herein and I am competent to testify to those facts.

2. On April 28, 2015, the Okada Parties filed a Motion to Compel Supplemental Responses to their Second and Third Set of Requests for Production of Documents to Wynn Resorts (the "Motion"). Wynn Resorts opposed the Okada Parties' Motion arguing, among other things, that eighty out of more than three hundred requests for production of documents did not seek documents relevant to the subject matter involved in this litigation and were not reasonably calculated to lead to the discovery of admissible evidence. The discovery requests are also unduly burdensome and grossly overbroad.

3. Over Wynn Resorts' protestations, the Court granted the Motion on June 4, 2015. The Court entered its Order granting the Motion on June 22, 2015. Notice of Entry of the Order was filed on June 24, 2015.

4. Respectfully, the Court's Order constitutes a blanket discovery order into irrelevant and non-discoverable information and documentation. Accordingly, Wynn Resorts intends to seek relief from the Nevada Supreme Court. Pursuant to Nevada Rule of Appellate Procedure 8(a), Wynn Resorts is required to first seek a stay from this Court.

5. Due to the complexity in engaging in multi-national document review and production, the Okada Parties' overly broad, cumbersome, duplicative, and confusing discovery requests from various counsel left the task of figuring out the maze to Wynn Resorts. In light of the ongoing efforts by Wynn Resorts to engage in good faith and thorough document review and production in response to the other 200-plus discovery requests propounded by the Okada Parties (not to mention to discovery propounded on the other individual Wynn Resorts

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counterdefendants), Wynn Resorts asks for this matter to be heard on shortened time. Therefore, good cause exists to hear Wynn Resorts' Motion on an order shortening time.

6. Presently, there is a hearing on Okada's Motion to Stay Deposition and of Order Denying Motion for Protective Order scheduled for July 8, 2015 at 8:30 a.m. Wynn Resorts respectfully requests that this Motion be heard at the same time.

I certify that the foregoing Motion is not brought for any improper purpose.

Dated this 1st day of July, 2015.

/s/ Debra L. Spinelli
DEBRA L. SPINELLI, ESQ.

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I. ARGUMENT

Nevada Rule of Appellate Procedure 8(a) generally requires a party seeking a stay to first move in the district court before requesting relief from the Nevada Supreme Court. This rule applies to writ petitions. *Hansen v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). When considering a stay, courts weigh a number of factors: (1) whether the object of the writ petition will be defeated if the stay is denied; (2) whether petitioner will suffer irreparable injury if the stay is denied; (3) whether the real party in interest will suffer irreparable harm if a stay is granted; and (4) whether petitioner is likely to prevail on the merits of the writ petition. NRAP 8(c). No single factor is dispositive and, if one or two factors are especially strong, they may counterbalance other weak factors." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).

A. Wynn Resorts is Likely to Prevail on the Merits of Its Writ Petition.

Although discovery orders are not typically reviewable by writ, the Nevada Supreme Court has recognized two exceptions: "***blanket discovery orders with no regard to relevance***, and discovery orders compelling disclosure of privileged information." *Valley Health Sys., LLC v. Eighth Judicial Dist. Court of State ex rel. Cnty. of Clark*, 127 Nev. Adv. Op. 15, 252 P.3d 676, 679 (2011) (emphasis added). An extraordinary writ will issue where a court allows carte blanche discovery without regard for relevancy. *Schlatter v. Eighth Judicial Dist. Court In & For Clark Cnty.*, 93 Nev. 189, 192, 561 P.2d 1342, 1343-44 (1977).[2] A court cannot condone discovery into issues or documents that are neither relevant nor lead to the discovery of admissible evidence. *Id.* at 192, 561 P.2d at 1344.

Here, the Court granted the Okada Parties' demand for documents on a series of issues and topics that the Okada Parties wish to look into because they are fishing for something, anything they can find that they can argue is similar to the bad acts of the Okada Parties that are the subject of this business judgment rule case. The Okada Parties seek discovery on these topics despite that they are not "relevant to the subject matter involved in the pending action" or "reasonably

[2] Disagreed with on other grounds by *Wardleigh v. Second Judicial Dist. Court In & For Cnty. of Washoe*, 111 Nev. 345, 350, 891 P.2d 1180, 1183 (1995).

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calculated to lead to the discovery of admissible evidence" in this action. NRCP 26(b)(1). Despite Wynn Resorts' detailed objections to each of the eighty requests,[3] the Okada Parties utterly failed to explain any coherent theory of discoverability or relevance beyond speculation and conjecture about ***possible*** wrongdoing that maybe Okada would have looked into one day in the future (but he had not, had no reason, and still has no reason to do so).

Unsubstantiated suspicion does not open the door to discovery, let alone imposing onerous discovery obligations. *Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1326 (Fed. Cir. 1990) ("[R]equested information is not relevant to 'subject matter involved' in the pending action if the inquiry is based on the party's mere suspicion or speculation."); *Bristol v. Trudon*, No. 3:13-CV 911 JBA, 2014 WL 1390808, at *4 (D. Conn. Apr. 9, 2014) ("The law is well-established that discovery requests that are based on pure speculation and conjecture are not permissible . . . .") (internal quotations omitted).

The requests' lack of discoverability is underscored by the Court's failure to identify the specific relevancy for each of the disputed requests. *See Clark v. Second Judicial Dist. Court*, 101 Nev. 58, 64, 692 P.2d 512, 516 (1985)[4] ("The district court exceeded its jurisdiction under our ruling in *Schlatter* in ordering the production of the decedent's entire tax returns ***without specifying the items requested and the relevancy thereof***.") (emphasis added). Blanket discovery orders without specifying the relevancy of each request, (especially such overly broad requests that essentially seek all of the records of two different publicly traded gaming companies – one of which is not even a party to this case) or detailing how each request will lead to the discovery of admissible evidence, constitutes error. *Id.* Therefore, Wynn Resorts has a likelihood of success on the merits of its writ petition and this factor weighs in favor of entering a stay. *See Hansen*, 116 Nev. at 659, 6 P.3d at 987 (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)) ("[A] movant does not always have to show a probability of success on the merits, the movant must

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[3] Wynn Resorts incorporates all of the points and authorities set forth in its Opposition to the Okada Parties' Motion to Compel Supplemental Responses to Their Second and Third Sets of Requests for Production.

[4] *See supra* note 2.

'present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.'").

B. Wynn Resorts Will Suffer Irreparable Harm and the Object of the Writ Petition Will be Defeated if a Stay is Denied.

The next two factors can be considered together. "Although irreparable or serious harm remains part of the stay analysis, this factor will not generally play a significant role in the decision whether to issue a stay." *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39. Nonetheless, the forced disclosure of irrelevant documents constitutes irreparable harm because the disclosure is irretrievable once made. *Schlatter*, 93 Nev. at 193, 561 P.2d at 1344. Following production, a party is effectively deprived of any remedy from the Court's ruling. *Id.*

In this case, Wynn Resorts seeks a writ of prohibition precluding the blanket discovery order, and relieving Wynn Resorts of the obligation to respond to the eighty objectionable requests. As discussed, the Okada Parties' discovery requests lack any discoverability, relevancy or connection to admissible evidence; and none was articulated. Wynn Resorts (and non-party Wynn Macau) will suffer irreparable harm if it is required to review and produce what is essentially all of its documents from even before its creation. Indeed, the Okada Parties' requests seek all documents related to Wynn Resorts' incorporation, public offering, any business deals it ever entered into, any business deal it ever decided to not enter into, any possible location anywhere in the world where Wynn Resorts contemplated developing a casino, all documents related to the idea, development, and operation of Wynn Macau, the Wynn Macau public offering, every contract that Wynn Macau entered into or did not enter into, and, most dramatically for any Nevada gaming licensee, all documents related to any – any – investigation, inquiry, audit, query or application related to licensure, suitability, and self-reporting to protect its Nevada gaming license and to comply with Nevada law and gaming regulations. And this is not even all of the subject matters included in the 80 requests that this Court compelled in a blanket order. *Compare Clark Cnty. Liquor & Gaming Licensing Bd. v. Clark*, 102 Nev. 654, 660, 730 P.2d 443, 447 (1986) (denying writ where party sought "specific non-confidential data [that was] directly relevant . . . .").

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Wynn Resorts cannot remediate the irreparable harm caused by compelled wholesale production of an enormous amount of irrelevant hard and electronic documents across two continents. Once the Okada Parties are allowed to start an unwarranted fishing expedition into Wynn Resorts' affairs, there is no ability to make them stop.

C. <u>The Okada Parties Will Not Suffer Any Harm if a Stay is Granted</u>.

In contrast, the Okada Parties will not suffer any irreparable harm if a stay is entered pending Wynn Resorts' writ petition. Aside from the eighty disputed requests, Wynn Resorts has already agreed to produce any documents from Macau that are actually relevant and calculated to lead to the discovery of admissible evidence, and is doing its very best to complete its rolling production of documents by August 31, 2015. The Okada Parties have never represented to this Court when they anticipate their production will be complete. Moreover, this matter is not set for trial until 2017. All other discovery can continue while the Nevada Supreme Court reviews the scope and propriety of the Court's blanket discovery Order on the eighty requests without affecting the trial date.

II. CONCLUSION

The relevant factors militate in favor of entering a stay pending Wynn Resorts' writ petition. The Court has approved blanket discovery into millions of irrelevant documents that have no bearing on any issues in this litigation. The Nevada Supreme Court is likely to issue a writ to stop such roving discovery as it has on prior occasions. In the absence of a stay, Wynn Resorts will suffer irreparable harm of reviewing and producing droves of irrelevant documents, most of which belong to a foreign non-party (who must follow specific procedures mandated by the laws of the country in which it is located to produce relevant documents in a case to which it is not a party), at an exorbitant, near unfathomable cost that is simply *not* proportional, and the object of the writ petition will be defeated.[5] Finally, the Okada Parties will

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[5] The Okada Parties have argued a few times now that costs should not dictate discovery in this case, and that the parties have the money to spend. While this argument appears to be invoked against Wynn Resorts and forgotten when the Okada Parties are trying to stop discovery into their misconduct – the very issue at the center of this case – a lack of discoverability and a fishing expedition by the Okada Parties is not something that the law requires any litigant to bear; and most certainly not in response to a blanket discovery order. In the current world of ESI, and the breadth of the Okada Parties' 80 requests that are the subject of the Court's blanket discovery

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not suffer any irreparable harm from the entry of a stay. Indeed, they are asking for their own stay of discovery that the Wynn Parties seek – the deposition of Mr. Okada. Therefore, a stay should be entered pending Wynn Resorts' petition for a writ of mandamus or prohibition to the Nevada Supreme Court.

DATED this 1st day of July, 2015.

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Order, the exorbitant costs – in the form of time, money, and effort – of proceeding to review and produce what ultimately may be (and are likely to be) immaterial, non-relevant, and non-discoverable documents in two countries is not something that any litigant, rich or poor, person or entity, should be forced to bear. *See Larsen v. Coldwell Banker Real Estate Corp.*, No. SACV 10-00401-AG, 2012 WL 359466, at **7-8 (C.D. Cal. Feb. 2, 2012) (holding the Sedona Principles require proportionality, and the burden and expense of additional ESI productions can be unreasonable).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 1st day of July, 2015, I caused to be **electronically served through the Court's filing system** true and correct copies of the foregoing **WYNN RESORTS, LIMITED'S MOTION TO STAY PENDING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION ON AN ORDER SHORTENING TIME** to the following:

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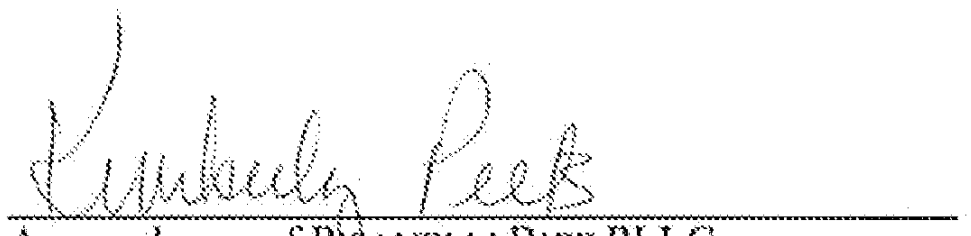

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DISTRICT COURT
CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada corporation, Plaintiff, v. KAZUO OKADA, an individual, ARUZE USA, INC., a Nevada corporation, and UNIVERSAL ENTERTAINMENT CORP., a Japanese corporation, Defendants.	CASE NO.: A-12-656710-B DEP'T NO.: XI **ARUZE PARTIES' OPPOSITION TO WYNN RESORTS, LIMITED'S MOTION TO STAY PENDING PETITION FOR WRIT OF PROHIBITION ON AN ORDER SHORTENING TIME** Electronic Filing Case Hearing Date: July 8, 2015 Hearing Time: 8:30 a.m.
AND ALL RELATED CLAIMS.	

Defendant Kazuo Okada and Defendants and Counterclaimants Aruze USA, Inc. and Universal Entertainment Corp. (collectively, the "Aruze Parties") respectfully submit this Opposition to Wynn Resorts, Limited's ("WRL") Motion to Stay Pending Petition for Writ of Prohibition on an Order Shortening Time ("Mot."), filed on July 1, 2015.

I. INTRODUCTION

WRL's motion is a thinly-veiled attempt to delay producing documents that will show the company's misconduct in Macau. The Supreme Court is highly unlikely to grant the promised – but not filed – writ petition, which will seek extraordinary relief to challenge a routine discovery order that was well within this Court's discretion and that does not threaten any irreparable harm. Indeed, we are unaware of the Supreme Court ever granting a writ petition in similar circumstances, and WRL has not cited any such case. A stay would serve only to unnecessarily delay the discovery process, including the depositions that will follow WRL's document production.[1]

II. WRL'S PETITION IS NOT LIKELY TO SUCCEED ON THE MERITS

WRL's writ petition is unlikely to succeed on the merits because it challenges a routine order to produce documents – the type of discovery order that the Supreme Court has repeatedly held is not appropriate for extraordinary writ relief. And even if the Supreme Court does decide to consider WRL's petition, this Court's Order was well within its discretion and is highly unlikely to be reversed.

A. The Supreme Court is Unlikely to Consider the Writ Petition

"The law reserves extraordinary writ relief for situations where there is not a plain, speedy and adequate remedy in the ordinary course of law. Because most discovery rulings can be adequately reviewed on appeal from the eventual final judgment, extraordinary writs generally are not available to review discovery orders." *Mitchell v. Eighth Judicial Dist. Court*, 131 Nev. Adv.

[1] The Court granted the motion to compel during the hearing held on June 4, 2015 – more than a month ago. The order formalizing that ruling was entered on June 22, 2015 – more than two weeks ago. Nevertheless, for unexplained reasons, WRL still has not filed its writ petition.

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Op. 21, 348 P.3d 675, 677 (2015); *Aspen Fin. Servs. Inc. v. Eighth Judicial Dist. Court*, 129 Nev. Adv. Op. 93, 313 P.3d 875, 878 (2013) ("Extraordinary relief is generally unavailable to review discovery orders because such orders may be challenged in an appeal from an adverse final judgment.").

WRL contends that this case fits within a narrow exception to the rule against writ review of discovery issues for "blanket discovery orders with no regard to relevance." Mot. at 7. However, WRL mischaracterizes this exception because the cases that established it concerned the disclosure of a natural person's tax returns and/or private medical information. *See Schlatter v. Eighth Judicial Dist. Court*, 93 Nev. 189, 192, 561 P.2d 1342, 1343–44 (1977) ("[The district court's order] permitted carte blanche discovery of all information contained in these [tax and medical] materials without regard to relevancy. Our discovery rules provide no basis for such an invasion into a litigant's private affairs merely because redress is sought for personal injury."); *Clark v. Second Judicial Dist. Court*, 101 Nev. 58, 64, 692 P.2d 512, 516 (1985) ("The district court exceeded its jurisdiction under our ruling in *Schlatter* in ordering the production of the decedent's entire tax returns without specifying the items requested and the relevancy thereof.").

As *Schlatter* recognized, tax and medical information raise unique privacy concerns that warrant special protection in discovery – none of which are applicable here. *See Hetter v. Eighth Judicial Dist. Court*, 110 Nev. 513, 519, 874 P.2d 762, 765-66 (1994) ("[B]ecause of the policy considerations of protecting taxpayer privacy and encouraging the filing of full and accurate tax returns, both state and federal courts have subjected discovery requests for income tax returns to a heightened scrutiny."); *id.* at 515, 874 P.2d at 763 ("This discovery order seeks to intrude into one of the most private areas of a person's existence – his relationship with his doctor."). The corporate business records at issue in this case do not come anywhere near the limited exception for personal privacy concerns.

The limited *Schlatter/Clark* exception for orders that threaten the disclosure of truly private personal information makes sense because the purpose of writ relief is to prevent irreparable harm. *See Vanguard Piping Sys., Inc. v. Eighth Judicial Dist. Court*, 129 Nev. Adv. Op. 63, 309 P.3d 1017, 1019 (2013) ("[T]his court typically will not exercise its discretion to

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review a pretrial discovery order unless the order could result in irreparable prejudice."). Similarly, orders requiring the disclosure of privileged information warrant writ review because disclosure of such information would cause irreparable harm by destroying the privilege. *See Wardleigh v. Second Judicial Dist. Court*, 111 Nev. 345, 350-51, 891 P.2d 1180, 1184-85 (1995) ("If improper discovery were allowed, the assertedly privileged information would irretrievably lose its confidential and privileged quality. . . ."). However, orders requiring the disclosure of documents that a party claims to be irrelevant do not raise the same concerns. *See Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. Adv. Op. 15, 252 P.3d 676, 679 (2011) (considering writ petitioner's claim that the discovery order would lead to disclosure of privileged information, but not the claim that it would lead to disclosure of irrelevant information).[2] Indeed, if discovery disputes over relevancy were subject to writ review, then nearly every case would feature writ petitions.

Moreover, this Court's Order was not a "blanket order with no regard to relevance." The problem with the discovery orders that gave rise to that exception was that the district courts ordered full disclosure of a type of record (tax records and/or medical files) without regard to the contents of those records. *See Schlatter*, 93 Nev. at 191–92, 561 P.2d at 1343 (district court ordered disclosure of "all records in [petitioner's] medical history without limitation" and petitioner's "entire income tax returns for 1972-74"); *Clark*, 101 Nev. at 64, 692 P.2d at 516 (district court ordered the production of the "decedent's entire tax returns without specifying the items requested and the relevancy thereof").[3]

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[2] As explained below, the Order in this case does not threaten WRL with irreparable harm. *See infra* at 6.

[3] Contrary to WRL's suggestion, there is no requirement that the Court undertake the highly inefficient exercise of providing a detailed explanation of its reasoning with respect to *each* of the document requests at issue. Such an explanation was required in *Schlatter* and *Clark* precisely because those orders failed to consider the contents of the documents that were being requested. That only further illustrates how different *Schlatter* and *Clark* are from this case, where the entire focus of the motion to compel was whether or not the substance of the documents being requested was relevant or reasonably calculated to lead to the discovery of admissible evidence.

This Court did not make the same mistake of acting "without regard to relevance." Indeed, relevance was the essence of the Court's decision. The entire focus of the motion to compel was whether or not the Aruze Parties had articulated a sufficient theory of relevance as to each of the document requests at issue. *See* Aruze Parties' Reply in Support of Mot. to Compel at 3 ("The parties are in agreement that this motion turns on whether the document requests at issue are reasonably calculated to lead to the discovery of admissible evidence."). The Aruze Parties offered detailed explanations, based on known facts, to explain why each group of document requests was reasonably calculated to lead to the discovery of admissible evidence.[4] Just because WRL disagrees with the Court's decision does not mean that the Court acted "without regard to relevance."

B. The Supreme Court is Unlikely to Reverse This Court's Order

Even if the Supreme Court does elect to consider WRL's petition, it is highly unlikely to reverse this Court's Order granting the motion to compel. The Supreme Court would apply a deferential standard of review, reversing only if the Court "has clearly abused its discretion." *Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 128 Nev. Adv. Op. 21, 276 P.3d 246, 249 (2012). In fact, the Court carefully and deliberately considered the legal issues and exercised its discretion appropriately in addressing a routine motion to compel the production of documents that are clearly relevant to the Aruze Parties' claims and defenses.

This Court in no way abused its discretion in granting the motion to compel. Nevada permits broad pretrial discovery. *See Palmer v. Pioneer Inn Assocs., Ltd.*, 118 Nev. 943, 952, 59 P.3d 1237, 1243 (2002). Parties "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." NRCP 26(b)(1). The

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[4] During the hearing, the Court specifically asked counsel for the Aruze Parties about the relevance of particular Requests for Production, further demonstrating that the Court fully and carefully considered the key question of relevance in exercising its discretion. *See* Tr. at 42 ("Requests Number 89, 114, 123 through 124, 126, and 249. I understand the other issues that are categorized, but that particular group, tell me how that relates or could lead to the discovery –"). Counsel answered the Court's questions by demonstrating that the requests at issue were reasonably calculated to lead to the discovery of admissible evidence, and so the Court granted the motion to compel. *See id.* at 60–62, 64.

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relevancy requirement "has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (cited with approval by *Esplanade Nev. LLC v. Eighth Judicial Dist. Court*, 2013 Nev. Unpub. Lexis 160, at *3 (Feb. 6, 2013)).

The documents at issue here fit comfortably within these parameters. The Aruze Parties will not rehash their briefing on these points,[5] but note that the cases and arguments WRL relies upon in its motion for a stay are the same as those it relied upon in its unsuccessful opposition to the motion to compel. They are as unavailing now as they were then. *Compare* Mot. at 8 *with* Opp'n to Mot. to Compel at 6.

WRL cites *Micro Motion, Inc. v. Kane Steel Co.* for the proposition that information is not relevant "if the inquiry is based on the party's mere suspicion or speculation," Mot. at 8, but it fails to inform the Court that this quotation represented merely "one extreme" of the discovery spectrum as described by the court in that case. *See Micro Motion*, 894 F.2d 1318, 1326 (Fed. Cir. 1990). The court's other extreme – and one much closer to the facts here – is that "[c]learly discovery is allowed to flesh out a pattern of facts already known to a party relating to an issue necessarily in the case." *Id.* WRL also relies on *Bristol v. Trudon*, 2014 WL 1390808 (D. Conn. Apr. 9, 2014), in which the court denied discovery into a potential claim not alleged in the plaintiff's complaint. *See id.* at *4 ("[D]iscovery may not be used as a fishing expedition to discover additional instances of wrongdoing beyond those already alleged.").

Here, by contrast, the discovery sought clearly relates to an issue at the heart of this case – Mr. Wynn's motivation for expelling Mr. Okada from the company. The Aruze Parties have articulated a specific and plausible theory, based on known facts, that Mr. Okada was forced out of WRL because Mr. Wynn grew concerned that Mr. Okada would expose the company's improprieties in Macau. WRL's position is essentially that the discovery will not substantiate the Aruze Parties' pretext theory. That may or may not turn out to be true, but there can be no doubt

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[5] The Aruze Parties incorporate by reference all of the points and authorities contained in their motion to compel and their reply in support of the motion to compel.

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that the issue (Mr. Wynn's motivation for the redemption) is relevant. Put another way, if the discovery requests do produce documents consistent with the Aruze Parties' pretext theory, such documents would obviously be relevant, or at least likely to lead to the discovery of admissible evidence. No more is required.[6]

III. WRL WILL NOT SUFFER IRREPARABLE HARM WITHOUT A STAY AND THE BALANCE OF EQUITIES WEIGHS AGAINST A STAY

Contrary to WRL's suggestion, Mot. at 9, the petitioner generally must demonstrate that it will suffer irreparable harm without a stay. *See Vanguard Piping*, 129 Nev. Adv. Op. 63, 309 P.3d at 1019 ("[T]his court typically will not exercise discretion to review a pretrial discovery order unless the order could result in irreparable prejudice."). Here, WRL asserts that it "will suffer irreparable harm if it is required to review and produce what is essentially all of its documents." Mot. at 9. It later claims that such efforts will impose "an exorbitant, near unfathomable cost." *Id.* at 10. This is based on an overstatement of the scope of the discovery requests at issue.

In any event, the Supreme Court has specifically held, in two cases WRL relied upon, that litigation costs do not constitute irreparable harm. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004) ("We have previously explained that ***litigation costs, even if potentially substantial, are not irreparable harm***.") (emphasis added); *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 658, 6 P.3d 982, 986–87 (2000) (rejecting stay motion where petitioner disputed court's jurisdiction because "the expense of lengthy and time-

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[6] The Supreme Court has held that a movant need not show a likelihood of success on the merits, if it can "present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay." *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000). Here, however, WRL satisfies none of these criteria. It does not present a substantial case on the merits because its likelihood of success is so low. The balance of equities does not "weigh heavily in favor of granting the stay" because it will suffer no irreparable harm, as explained in Section III below. And the question presented is not a "serious legal question" – this is a routine discovery order where the Court determined, based on the unique facts and circumstances of this case, that the document requests are reasonably calculated to lead to the discovery of admissible evidence. Nothing about this ruling is likely to affect any other cases.

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consuming discovery, trial preparation, and trial . . . while potentially substantial, are neither irreparable nor serious").

Moreover, WRL's only claim is that the information at issue is irrelevant, not that it is privileged or that it raises the sort of personal privacy concerns present in *Schlatter* and *Clark*. An unwarranted disclosure of irrelevant information is not nearly as harmful as an unwarranted disclosure of privileged information or private medical or tax records. *See supra* at 2. Any irrelevant documents will simply be inadmissible at trial, and their confidentiality will be assured by the Court's Protective Order. Therefore, WRL will not suffer irreparable harm without a stay.

However, a stay will needlessly delay this litigation, which is already more than three years old and facing further delays with respect to WRL's production of documents that the Court has ordered it to produce due to WRL's insistence on using a flawed predictive coding process without the necessary transparency. A stay will have ripple effects through the whole discovery process by delaying any depositions that require these documents.

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IV. CONCLUSION

Because WRL's writ petition is unlikely to succeed and the Court's order granting the motion to compel will not cause WRL irreparable harm, WRL's motion for a stay should be denied.

DATED this 7th day of July, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of July 2015, a true and correct copy of the foregoing **ARUZE PARTIES' OPPOSITION TO WYNN RESORTS, LIMITED'S MOTION TO STAY PENDING PETITION FOR WRIT OF PROHIBITION ON AN ORDER SHORTENING TIME** was served by the following method(s):

☒ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

Please see the attached E-Service Master List

☐ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

☐ Facsimile: by faxing a copy to the following numbers referenced below:

An Employee of Holland & Hart LLP

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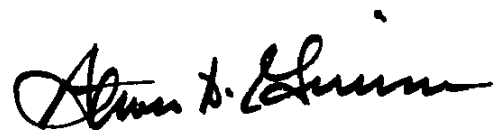


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

WEDNESDAY, JULY 8, 2015

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

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

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ. DEBRA SPINELLI, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. ROBERT CASSITY, ESQ. ADAM MILLER, ESQ. WILLIAM R. URGA, ESQ. COLBY WILLIAMS, ESQ.

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

(Court was called to order)

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

Good morning.

MR. PISANELLI: Good morning, Your Honor.

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

MR. CASSITY: Yes, Your Honor.

THE COURT: Okay.

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

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

THE COURT: Really.

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

THE COURT: Interesting.

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

MR. PEEK: Jacobs is also set for --

THE COURT: Together.

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

at 1:30.

THE COURT: Interesting.

MR. PEEK: Pardon?

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

MR. PEEK: I did, Your Honor. It was very --

(Off-record colloquy)

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

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

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

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

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

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

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

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

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

MR. PEEK: Your Honor --

MR. PISANELLI: Thank you, Your Honor.

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

THE COURT: Yes.

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

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

MR. PEEK: Your Honor --

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

MR. PISANELLI: We can talk --

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

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

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

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

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

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

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

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

MR. PEEK: To just September 1st.

THE COURT: Correct.

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

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

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

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

permits in this case. And so I fully --

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

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

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

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

THE COURT: No.

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

THE COURT: No.

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

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

MR. PISANELLI: Okay.

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

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

MR. PISANELLI: Yeah. The exact sequencing --

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

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

Mr. Peek, would you like to finish.

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

THE COURT: Probably. You're here --

MR. PEEK: -- on a status conference?

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

weeks.

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

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

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

MR. PEEK: Thank you.

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

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

THE COURT: Correct.

MR. PEEK: Okay.

THE COURT: Only the issues that were subject to the

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

MR. PEEK: You did.

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

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

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

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

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

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

MR. URGA: No.

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

(Off-record colloquy)

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

THE PROCEEDINGS CONCLUDED AT 8:50 A.M.

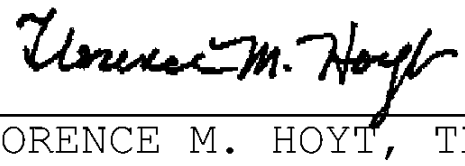
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



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