

IN THE SUPREME COURT OF THE STATE OF NEVADA

1 WYNN RESORTS LIMITED,

2 Petitioners,

3 vs.

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

11 Respondent,

12 and

13 KAZUO OKADA, UNIVERSAL
14 ENTERTAINMENT CORP.
15 AND ARUZE USA, INC.,

16 Real Parties in Interest.

Case No. _____

Electronically Filed
Mar 30 2016 09:28 a.m.

Tracie K. Lindeman
Clerk of Supreme Court
**APPENDIX IN SUPPORT OF
WYNN RESORTS, LIMITED'S
PETITION FOR WRIT OF
PROHIBITION OR
ALTERNATIVELY, MANDAMUS**

VOLUME III OF VI

17 DATED this 29th day of March, 2016.

18 PISANELLI BICE PLLC

19 By: /s/ Todd L. Bice

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Vargas & Bartlett, Study of Nevada Corporate Law	07/30/1990	I, II	PA000001 – PA000396

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 29th day of March, 2016, 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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/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

1 51. Thus, following Mr. Freeh's presentation, the Wynn Resorts Board deliberated at
2 length and unanimously (except for Mr. Okada) adopted resolutions finding Mr. Okada,
3 Universal, and Aruze USA to each be an "Unsuitable Person" under Wynn Resorts' Second
4 Amended and Restated Articles of Incorporation (the "Articles of Incorporation" or "Articles").

5 52. An "Unsuitable Person" is defined in Article VII of the Articles as any "Person
6 who . . . in the sole discretion of the board of directors of the Corporation, is deemed likely to
7 jeopardize the Corporation's or any Affiliated Company's application for, receipt of approval for,
8 right to the use of, or entitlement to, any Gaming License."

9 53. Having found Mr. Okada, Universal, and Aruze USA unsuitable under the
10 Articles, the Board had an affirmative obligation under the applicable gaming laws and
11 regulations to take action to protect the gaming licenses and approvals of Wynn Resorts and its
12 affiliates. The specific course of action that was available to the Board is set forth in Article VII
13 of the Articles, which provides that following a determination of unsuitability, "[t]he Securities
14 Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person shall be
15 subject to redemption by the Corporation, out of funds legally available therefor, by action of the
16 board of directors, to the extent . . . deemed necessary or advisable by the board of directors. . . ."

17 54. On the basis of these express provisions in the Articles, on February 18, 2012,
18 following Mr. Freeh's presentation and the Board's finding of unsuitability with respect to
19 Mr. Okada, Universal, and Aruze USA, the Board voted to redeem and cancel all of Aruze USA's
20 shares of Wynn Resorts stock. In exchange, as expressly permitted by the Articles, the Board
21 unanimously (except for Mr. Okada) determined to issue to Aruze USA a promissory note with a
22 face value of approximately \$1.936 billion and paying interest at 2% per year as provided for in
23 the Articles.

24 ***Further Evidence of Mr. Okada's Wrongdoing Comes to Light Post-Redemption***

25 55. Following the Board's unsuitability finding and redemption of Aruze USA's
26 shares, further evidence has reportedly come to light revealing the true extent of Mr. Okada's
27 breach of fiduciary duty and lack of disclosure regarding his activities in the Philippines. It has
28 been widely reported in the press that Mr. Okada and his companies are the subject of multiple

1 pending investigations relating to the development of Mr. Okada's project in the Philippines. The
2 FBI, the Nevada Gaming Control Board, and the Philippine Department of Justice, among many
3 other organizations, are reportedly gathering additional evidence that Mr. Okada's companies
4 paid bribes to Philippine gaming regulators at PAGCOR and their associates to facilitate the
5 development of Mr. Okada's casino resort in Manila Bay.

6 56. At the center of the new evidence that has reportedly come to light is Rodolfo
7 Soriano, a former consultant to PAGCOR and a close business associate of former PAGCOR
8 Chairman Genuino. Mr. Freeh's report to the Wynn Resorts Board in February 2012 described
9 Mr. Soriano as a "bag man" for Mr. Genuino. Mr. Soriano is often referred to by his nickname,
10 "Boysie."

11 57. The evidence reportedly uncovered in the ongoing investigations shows that, in or
12 about 2009, Mr. Okada and his companies made a strategic "shift to Boysie" to jumpstart the
13 lagging progress at their Philippine development site. This shift in strategy, it has been reported,
14 involved Okada-controlled companies paying up to \$40 million in bribes to companies controlled
15 by Mr. Soriano in order to secure benefits from PAGCOR and the Arroyo administration that
16 were essential to the viability and profitability of Mr. Okada's project in the Philippines. Of
17 course, the factual circumstances of these transactions were never disclosed to the Wynn Resorts
18 Board despite their unquestionable material effect on the Company's rights and interests.

19 58. News reports indicate that on January 14, 2010, Mr. Okada's company transferred
20 \$10 million to Subic Leisure and Management ("Subic Leisure"), a Soriano-controlled company
21 registered in the British Virgin Islands. Mr. Okada's company transferred an additional
22 \$15 million to Subic Leisure on March 3, 2010, and a further \$10 million to Subic Leisure in or
23 about early May 2010. And, it has been reported that Mr. Okada's company transferred
24 \$5 million to a Hong Kong shell company named People's Technology Holding Ltd., of which
25 Mr. Soriano was the sole shareholder.

26 59. The *Asahi Shimbun*, one of the largest national newspapers in Japan, has reported
27 that these money transfers were reported to senior management at Universal and were approved
28 by its board of directors. According to these *Asahi Shimbun* reports, the money transfers were

1 discussed at a Universal board meeting and expressly approved in a board resolution that
2 Mr. Okada himself signed as the Chairman of Universal. Again, the factual circumstances of
3 these transactions were never disclosed to the Wynn Resorts Board despite their unquestionable
4 material effect on the Company's rights and interests.

5 60. Other news reports indicate that in exchange for these illicit payments, between
6 late 2009 and early 2010, Mr. Okada's companies won concessions on three critical issues related
7 to the Philippine project. In November 2009, PAGCOR, through its then-Chairman Genuino,
8 brokered a land swap that Mr. Okada's company needed to move ahead with construction of its
9 casino resort. Then, in or about February 2010, then-Philippine President Arroyo signed a
10 presidential order that permitted foreign investors such as Mr. Okada to have 100-percent
11 ownership of casinos. Finally, around the same time, the Philippine government approved an
12 application for corporate tax relief by Mr. Okada's company.

13 61. This additional evidence that has reportedly come to light in the ongoing
14 government investigations is entirely consistent with and supplements the findings contained in
15 Mr. Freeh's report to the Wynn Resorts Board, as detailed above. This additional evidence is
16 consistent with Mr. Okada's statements to the Wynn Resorts Board in February 2011, discussed
17 above, regarding Mr. Okada's perspective on anti-corruption laws and regulations and his
18 willingness to pay bribes through intermediaries while doing business in certain Asian countries.
19 Because Mr. Okada engaged in this reported misconduct while he was associated with
20 Wynn Resorts, this additional information further demonstrates Mr. Okada's failure to provide
21 full and fair disclosure to the Board of the factual circumstances surrounding his and his affiliates'
22 business dealings in the Philippines, and further supports Wynn Resorts' claim for breach of
23 fiduciary duty.

24 **FIRST CAUSE OF ACTION**

25 **(Breach of Fiduciary Duty)**

26 **(Wynn Resorts against Mr. Okada)**

27 62. Wynn Resorts repeats and realleges the allegations set forth in Paragraphs 1
28 through 61 above as though fully set forth herein.

1 63. As a director of Wynn Resorts, at all relevant times Mr. Okada owed fiduciary
2 duties to Wynn Resorts under NRS 78.138 and the common law. Those duties included, without
3 limitation: (a) the duty not to engage in conduct that was likely to damage the corporate interests
4 of Wynn Resorts; (b) the duty to act in the best interests of Wynn Resorts, as opposed to
5 advancing his own personal interests; and (c) the duty to make full disclosure to Wynn Resorts
6 and his fellow directors about his business activities in the Philippines and to avoid concealment
7 of his wrongful conduct where the interests of Wynn Resorts were concerned.

8 64. As set forth herein, Mr. Okada violated his fiduciary duties in several material
9 ways during the period of 2008 to the date hereof. These violations of Mr. Okada's duties were
10 intentionally concealed by him, however, and were not discovered by Wynn Resorts until various
11 times after 2010, as set forth in more detail herein. Indeed, the details of Mr. Okada's wrongful
12 conduct are still coming to light today through the ongoing investigative efforts of government
13 and regulatory authorities worldwide.

14 65. Mr. Okada's breaches of fiduciary duty arise from his plan to have entities he
15 personally controls develop and operate a resort casino in the Philippines. Specifically, the
16 breaches occurred when, in furtherance of these plans, Mr. Okada engaged in conduct that was
17 unethical, unlawful, and apparently criminal.

18 66. By engaging in such conduct while he was a director of Wynn Resorts, and indeed
19 while he held the title of Vice Chairman of Wynn Resorts, Mr. Okada directly, knowingly, and
20 intentionally damaged the interests of Wynn Resorts. This is because Wynn Resorts must be
21 licensed as an entity in order to operate in the casino industry in Nevada, Macau, and in other
22 jurisdictions in which Wynn Resorts may seek to operate casino resorts in the future. Such
23 licensure, both existing and prospective, is put at grave risk by unethical, unlawful, and/or
24 criminal conduct by any persons who serve as directors of the regulated entity. By engaging in
25 conduct that could have resulted in risk to Wynn Resorts' existing and prospective licenses,
26 Mr. Okada struck at the heart of Wynn Resorts' corporate interests in clear violation of his duty to
27 protect and advance the interests of Wynn Resorts.

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1 67. Mr. Okada further demonstrated his willingness to damage Wynn Resorts, and his
2 contempt for his fiduciary duties, by concealing his wrongful conduct from Wynn Resorts and by
3 refusing voluntarily to resign and sever his links with Wynn Resorts when requested to do so.
4 This conduct compounded Mr. Okada's other breaches of duty. In particular, despite requests to
5 do so at Board meetings and in conversations with senior executives of Wynn Resorts, Mr. Okada
6 refused to supply information about his activities in the Philippines and indeed refused to confirm
7 even that he had determined to proceed with his Philippine project. In addition, through his
8 counsel, Mr. Okada refused to cooperate with the Company's investigations regarding his
9 activities in the Philippines or to provide any explanation for the troubling evidence that was
10 brought to Mr. Okada and his counsel's attention by Wynn Resorts and its attorneys.

11 68. Rather than providing full and fair disclosure, Mr. Okada purposefully covered his
12 tracks to prevent Wynn Resorts from discovering the extent of his questionable conduct.
13 Mr. Okada knew that if he was forthcoming with the Company and his fellow directors, and did
14 not evade their questions about his business activities in the Philippines, Wynn Resorts would
15 undoubtedly take action to protect itself. Specifically, Mr. Okada did not wish for the
16 Wynn Resorts Board to use its power under Article VII of the Articles of Incorporation to redeem
17 the shares he owned through Aruze USA, nor did Mr. Okada wish for Wynn Resorts to
18 commence the process of removing him as a director by a two-thirds shareholder vote (the only
19 way in which Mr. Okada could be removed against his will under Nevada law). Mr. Okada's lack
20 of candor — when he owed the Company a duty of full and fair disclosure of the factual
21 circumstances surrounding his business dealings in the Philippines — amounted to an
22 independent breach of Mr. Okada's fiduciary duties.

23 69. In addition, Mr. Okada breached his fiduciary duties by refusing, in 2011 and
24 2012, to attend the training sessions that Wynn Resorts arranged for its directors to ensure that
25 they are familiar with Wynn Resorts' duties to be compliant with all applicable laws and
26 regulations, and to avoid corrupt conduct. By repeatedly evading such compliance education
27 without valid excuse, Mr. Okada not only made it more difficult for Wynn Resorts to demonstrate
28

1 the commitment of its Board to compliance, but he also further manifested his position that
2 anti-corruption laws are irrelevant and of no importance to Mr. Okada.

3 70. Mr. Okada's breaches of duty involved intentional misconduct and knowing
4 violations of law.

5 71. As a result of Mr. Okada's violations of his fiduciary duties, Wynn Resorts has
6 suffered harm. In particular, Mr. Okada's violations of duty, once suspected and/or discovered,
7 required Wynn Resorts: (a) to investigate his conduct, including to retain the services of three
8 investigative firms; and (b) to take action pursuant to Nevada law and to Wynn Resorts' Articles
9 to protect the corporation from Mr. Okada's breaches of duty. Wynn Resorts has been damaged
10 by having to incur and pay the costs associated with these efforts to limit and repair the threatened
11 damage to Wynn Resorts caused by Mr. Okada's course of conduct.

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

15 73. In committing the acts herein above alleged, Mr. Okada is guilty of oppression,
16 fraud, and malice toward Wynn Resorts. As such, Wynn Resorts is entitled to recover punitive
17 damages from Mr. Okada for, inter alia, the purpose of deterring him and others similarly situated
18 from engaging in like conduct.

19 74. As a result of the acts and omissions of Mr. Okada, Wynn Resorts has been
20 compelled to hire the services of an attorney for the protection of its interests.

21 **SECOND CAUSE OF ACTION**

22 **(Aiding and Abetting Breach of Fiduciary Duty)**

23 **(Wynn Resorts against Universal and Aruze USA)**

24 75. Wynn Resorts repeats and realleges the allegations set forth in Paragraph 1
25 through 74 above as though fully set forth herein.

26 76. As a director, Mr. Okada owed Wynn Resorts a fiduciary duty of loyalty which, as
27 alleged herein, he breached.

28

1 77. Universal and Aruze USA knowingly participated in Mr. Okada's breaches of
2 fiduciary duty by facilitating and/or actively participating in the unethical, unlawful, and/or
3 criminal conduct described herein, which conduct has threatened to undermine Wynn Resorts'
4 reputation as well as its existing and prospective gaming licenses.

5 78. As a direct and proximate result of Universal's and Aruze USA's acts and
6 omissions in aiding and abetting Mr. Okada's breaches of duty, Wynn Resorts has suffered and
7 will continue to suffer direct, incidental, and consequential damages in an amount to be proven at
8 trial, but in any event, in excess of \$10,000, plus prejudgment interest.

9 79. In committing the acts herein above alleged, Universal and Aruze USA are guilty
10 of oppression, fraud, and malice toward Wynn Resorts. As such, Wynn Resorts is entitled to
11 recover punitive damages from Universal and Aruze USA for, inter alia, the purpose of deterring
12 them and others similarly situated from engaging in like conduct.

13 80. As a result of the acts and omissions of Universal and Aruze USA, Wynn Resorts
14 has been compelled to hire the services of an attorney for the protection of its interests.

15 **THIRD CAUSE OF ACTION**

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

17 **(Wynn Resorts against Mr. Okada, Universal, and Aruze USA)**

18 81. Wynn Resorts repeats and realleges the allegations set forth in paragraphs 1
19 through 80 above as though fully set forth herein.

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

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

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

85. In recognition of the central importance of its gaming license to the affairs of the corporation, the Articles of Incorporation afford the Wynn Resorts Board the “sole discretion” to take certain action to protect the gaming licenses and approvals of Wynn Resorts and its affiliates. Under the Articles, an “‘Unsuitable Person’ shall mean a Person who . . . in the sole discretion of the board of directors of the Corporation, is deemed likely to jeopardize the Corporation’s or any Affiliated Company’s application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License.”

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

87. On February 18, 2012, after receiving Mr. Freeh’s written report and considering his presentation and the advice of expert gaming counsel, the Wynn Resorts Board of Directors deliberated at length and thereafter adopted resolutions that: (a) determined that Mr. Okada, Universal, and Aruze USA were likely to jeopardize Wynn Resorts’ and its affiliated companies’ existing and prospective gaming licenses; (b) deemed Mr. Okada, Universal, and Aruze USA to be “Unsuitable Persons” under the Articles of Incorporation; and (c) redeemed Aruze USA’s

1 shares of Wynn Resorts common stock in exchange for an approximately \$1.936 billion
2 promissory note, in accordance with Article VII of the Articles of Incorporation.

3 88. Aware of the magnitude of his improprieties and what the likely response of any
4 reasonable board of directors of a Nevada gaming company, Mr. Okada attempted, in advance of
5 the February 18, 2012 meeting of the Wynn Resorts Board, to set up a defense by disputing the
6 Board's authority to act upon Mr. Freeh's report.

7 89. In light of the foregoing, Wynn Resorts seeks a judicial declaration that it acted
8 lawfully and in compliance with its Articles, Bylaws, and other governing documents when it
9 made the determination set forth herein.

10 90. NRS 30.130 states that "all persons shall be made parties who have . . . any interest
11 which would be affected by the declaration." Each of Mr. Okada, Universal, and Aruze USA has
12 interests that will be affected by the declaration that Wynn Resorts seeks. Among other
13 examples, given the determination by the Wynn Resorts Board that Mr. Okada, Universal, and
14 Aruze USA are unsuitable persons, none may be shareholders in Wynn Resorts.

15 91. Accordingly, a justiciable controversy has arisen between the parties whose
16 interests are adverse, and the dispute is ripe for adjudication.

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

19 WHEREFORE, Wynn Resorts prays for judgment as follows:

- 20 1. For compensatory and special damages, in excess of \$10,000, in an amount to be
21 determined at trial;
 - 22 2. For a declaration that Wynn Resorts acted lawfully and in full compliance with its
23 Articles of Incorporation, Bylaws, and other governing documents as set forth herein;
 - 24 3. For punitive damages;
 - 25 4. For an award of reasonable costs and attorneys' fees;
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5. For prejudgment and post-judgment interest on the foregoing sums at the highest rate permitted by law; and

6. For any additional relief this Court deems just and proper.

DATED this 22nd day of April 2013.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this ²⁰¹³ day of April, 2013, I caused to be e-mailed and electronically served through the Court's filing system true and correct copies of the foregoing PLAINTIFF WYNN RESORTS, LIMITED'S SECOND AMENDED COMPLAINT properly addressed to the following:

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**Appendix in Support of Wynn Resorts,
Limited's Petition for Writ of
Prohibition or Alternatively,
Mandamus**

PA000506 – PA001193

FILED UNDER SEAL

**Defendants' Motion to
Compel Wynn Resorts,
Limited to Produce
Brownstein Hyatt Documents**