2. *There is no "waiver" of the privilege over any of the documents on the Freeh privilege log because Wynn Resorts will not rely on those documents at trial.*

The Okada Parties argue that Wynn Resorts waived its privilege over all of Freeh's documents, including communications with Wynn Resorts, because Wynn Resorts has relied on them in this litigation. (Mot. 18.) To support this position, the Okada Parties rely on a quote from *Wardleigh* that states, "where a party injects part of a communication as evidence, ***fairness demands*** that the opposing party be allowed to examine the whole picture." (Mot. 18 (quoting *Wardleigh*, 111 Nev. at 354, 891 P.2d at 1186) (emphasis added).)

This chosen citation is misleading. *Wardleigh*'s holding focuses not on fairness, but rather relatedness: "waiver occurs when the holder of the privilege ***pleads a claim or defense in such a way that eventually he or she will be forced to draw upon the privileged communication at trial in order to prevail.***" *Id.* at 1186 (emphasis added); *Molina v. State*, 120 Nev. 185, 194 n.26, 87 P.3d 533, 539 n.26 (2004) (noting *Wardleigh*'s holding). Put another way, "[f]airness should not simply dictate that because pleadings raise issues implicating a privileged communication, the privilege regarding those issues is waived. Rather, fairness should dictate that where litigants raise issues ***that will compel the litigants to necessarily rely upon privileged information at trial*** to defend those issues, the privilege as it relates only to those issues should be waived." *Wardleigh*, 111 Nev. at 355, 891 P.2d at 1187 (emphasis added).

At issue here is the Wynn Resorts board's exercise of its business judgment. Pursuant to NRS 78.138, the board is "***presumed*** to act in good faith, on an informed basis and with a view to the interests of the corporation." NRS 78.138(3) (emphasis added). In performing their duties,

> "directors and officers ***are entitled to rely on information, opinions, reports, books of account or statements,*** including financial statements and other financial data, that are ***prepared or presented by:*** (a) ***One or more directors, officers or employees*** of the corporation reasonably believed to be reliable and competent in the matters prepared or presented; (b) ***Counsel***, public accountants, financial advisers, valuation advisers, investment bankers or other persons as to matters reasonably believed to be within the preparer's or presenter's professional or expert competence; ***or*** (c) ***A committee on which the director or officer relying thereon does not serve***, established in accordance with NRS 78.125, as to matters within the committee's designated authority and matters on which the committee is reasonably believed to merit confidence , . . .

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(*Id.* (emphasis added).) The only caveat to this reliance that comes with a presumption of good faith and informed basis is that "a director or officer is not entitled to rely on such information, opinions, reports, books of account or statements ***if the director or officer has knowledge concerning the matter in question that would cause reliance thereon to be unwarranted.***" (*Id.* (emphasis added).)

As the facts above demonstrate, Okada had over a year to tell his fellow directors about his activities in the Philippines so that perhaps there would be a reason for any single voting director to think that the any fact in the Freeh Report was unreliable; he did not and time and time again refused to do so. Okada had the ability to attend and participate in the FCPA training with his fellow directors; he chose not to do so. Okada was given the option and opportunity to continue to conduct his business in the Philippines without jeopardizing Wynn Resorts in the process; he did not do so. The Okada Parties provided the voting board members with no information.

The board was entitled to and did rely on the facts that Freeh presented to it at February 18, 2012 board meeting. Freeh's presentation of the facts at the board meeting and his report presented to and considered by the board on February 18, 2012 comprise the universe of facts the board was presented with to exercise their business judgment and deem the Okada Parties unsuitable. Okada may want to go behind the business judgment rule to attack or nitpick at Freeh Sporkin's investigation or analysis -- all of which happened outside of the February 18, 2012 board meeting -- but it has no relevance to whether the board's business judgment is entitled to the presumption afforded under Nevada law.[12] Simply, what Freeh knew or did not know does not

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[12] A matter of discovery irony, in their Motion, the Okada Parties describe what they see as the failure of Freeh Sporkin's process (Mot. 6), by mimicking the conclusions of David Chertoff, who was hired by the Okada Parties to "assess" the Freeh Report. The Okada Parties widely distributed Chertoff's report publicly, but failed to disclose it in this action. They even went so far as to object to Rule 34 requests related to Chertoff's "assessment" as non-discoverable and irrelevant despite that Aruze's NRCP 30(b)(6) reviewed it to prepare for his deposition *and* it is referenced in Aruze's written responses to some of the NRCP 30(b)(6) topics.

This is the same discovery strategy the Okada Parties have employed to date related to the Post-Redemption documents. The Okada Parties fight desperately for any and all documents that

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matter. The facts that board heard and considered on February 18, 2011 when it exercised its business judgment is what is at issue in this case. Wynn Resorts will rely only on the facts presented at the Board meeting to demonstrate it properly exercised its business judgment.

Wynn Resorts will not be "forced" to draw upon any of the 6,000 Freeh Documents logged in the Freeh privilege log at trial, and there can be no implied waiver under *Wardleigh*. By extension, this argument cannot serve as the basis for finding that Wynn Resorts waived the attorney-client privilege.

3. "Fairness" does not warrant production of the Freeh Documents because the Okada Parties made no effort to show why they cannot obtain them elsewhere.

The Okada Parties' contorted reading of *Wardleigh* suggests that "fairness" can be excised from "necessity" and represent an independent criteria to determine whether a party waived the attorney-client privilege. (Mot. 18-20.) Although a plain reading of *Wardleigh* dispels this notion, to the degree fairness is relevant at all, it weighs against production here.

First, the Okada Parties claim they need the Freeh Documents because Freeh's decisions are at the heart of the case, and discovery into the matter will be wide-ranging and burdensome. (*See* Mot. 18-20.) The Okada Parties' claim that use of ordinary channels of discovery will be burdensome restates a fact that everyone knows: this is a large, complex case, for which the parties have committed substantial resources in the discovery process. But as the U.S. Supreme Court noted in *Upjohn*, "considerations of convenience do not overcome the policies served by the attorney-client privilege." *Upjohn*, at 395. Stated differently, "[d]iscovery was hardly intended to enable a learned profession to perform its functions . . . on wits borrowed from the adversary." *Hickman v. Taylor*, 329 U.S. at 516 (Jackson, J., concurring). The fact the Okada Parties may be confronting obstacles in this complex litigation is no excuse for abandoning or eviscerating Wynn Resorts' privilege.

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show what everyone else may know about their misconduct, but they fail to produce the same information in their possession, custody, and control.

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C. Freeh's Documents are Protected by the Work Product Doctrine, and There Has Been No Waiver Nor Showing of Substantial Need.

The Okada Parties contend that the Freeh Documents (some or all, it is not clear): (1) are not protectable work product; and, (2) even if they are, Wynn Resorts waived the privilege; or (3) the Okada Parties can show (but certainly have not shown) a substantial need to discover them. (Mot. 20-24.) The Okada parties are mistaken once again.

Nevada's work product doctrine provides:

> a party may obtain discovery of documents and tangible things otherwise discoverable . . . and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, ***the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.***

NRCP 26(b)(3) (emphasis added). By its plain terms, the doctrine protects more than work performed by a party's attorney. *See Wardleigh*, 111 Nev. at 357-58, 891 P.2d at 1188. Documents created in the ordinary course of business are not entitled to work product protection; and an attorney's presence does not automatically operate to protect an otherwise discoverable document. *See Columbia/HCA Healthcare Corp. v. Eighth Jud. Dist. Ct.*, 113 Nev. 521, 526-27, 936 P.2d 844, 848 (1997). The overwhelming majority of courts determine whether the work-product doctrine applies on a ***document-by-document basis***, extending protection if "in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation." Charles Alan Wright, Arthur R. Miller, and Richard L. Marcus, 8 Federal Practice & Procedure § 2024; *F.T.C. v. Boehringer Ingelheim Pharms., Inc.*, 778 F.3d 142, 149 D.C. Cir. 2015) (quoting 8 Federal Practice & Procedure § 2024); *U.S. v. Adlman*, 134 F.3d 1194, 1202 (2d Cir. 1998) (same); *Martin v. Bally's Park Place Hotel & Casino*, 983 F.2d 1252, 1258 (3d Cir. 1993) (same); *Simin*

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v. G.D. Searle & Co., 816 F.2d 397, 401 (8th Cir. 1987) (same); *Binks Mfg. Co. v. Nat'l Presto Indus., Inc.*, 709 F.2d 1109, 1119 (7th Cir. 1983) (same).

1. The work product doctrine applies because the Freeh Documents were created in anticipation of litigation.

As with the Okada Parties' argument against application of the attorney-client privilege, their work product argument focuses on the belief that Freeh Sporkin's services were business-related, or that litigation was not a realistic possibility. (*See* Mot. 20-23.) Applying the work-product doctrine in the corporate context takes into account the blurred line between "business" and "legal" purposes in the modern business world; as such, documents created for a business purpose, but which analyze issues that could relate to litigation, have been found protectable. *See Adlman*, 134 F.3d at 1201 (citing, *e.g.*, *Woolworth*). Courts consider whether the challenged materials were "prepared because of some articulable claim, *likely* to lead to litigation." *Hollinger Intern., Inc. v. Hollinger, Inc.*, 230 F.R.D. 508, 512-13 (N.D. Ill. 2005) (emphasis in original) (quotation omitted).[13] Taking into account the "reality of impending litigation" can involve nothing more than retention of a law firm when the relevant corporate actors knew this step would make litigation and regulatory action all but certain. *See Woolworth*, 1996 WL 306576, at *3. As *Woolworth* put it: "[a]pplying a distinction between 'anticipation of litigation' and 'business purposes' is in this case artificial, unrealistic, and the line between is here essentially blurred to oblivion." *Id.*

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[13] The Okada Parties' Motion relies heavily on *In re Kidder Peabody Securities Litigation*, 168 F.R.D. 459 (S.D.N.Y. 1996), for the proposition that dual-purpose documents do not warrant work product protection. (*See* Mot. 21-22.) However, the Motion fails to mention that *Kidder*'s work-product test – that the document must have been created "principally or exclusively to assist in litigation" – was later expressly rejected by the Second Circuit. *See Adlman*, 134 F.3d at 1198 n.3. Similarly, the Okada Parties cite *In re Leslie Fay Companies, Inc. Securities Litigation*, 161 F.R.D. 274, 281 (S.D.N.Y. 1995), which considered whether a document was produced "primarily" in anticipation of litigation – a standard also likely discredited after *Adlman*. The Okada Parties also cite *In re Royal Ahold N.V. Securities & ERISA Litigation*, 230 F.R.D. 433 (D. Md. 2005), a case which follows the already-distinguished out-of-circuit precedent in *Martin Marietta*, and for which a determination on the applicability of work-product was not even made until after an *in camera* review. *Id.* at 436-37. Finally, the Okada Parties' citation to *In re OM Securities Litigation*, 226 F.R.D. 579, 587 (N.D. Ohio 2005), is inapposite because in that case, privilege determinations were made only after *in camera* review – a process Okada apparently never even mentioned

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Based on the facts already presented, it is clear that Wynn Resorts' purpose in retaining Freeh Sporkin was made in anticipation of litigation, and that the Compliance Committee directed Freeh's efforts to explore an articulable legal claim. Before Wynn Resorts hired Freeh Sporkin, it had already conducted two independent investigations into Okada's Philippine dealings, asked Okada to state his intentions regarding the Philippines, and received Okada's astonishing opinions about his view towards state and federal regulatory compliance. On November 1, 2011, Wynn Resorts and the Wynn Resorts Compliance Committee retained Freeh Sporkin, and [redacted] (Ex. 14 to Mot. at 4.) Okada was informed that after Freeh submitted his report, a special meeting of the board would be convened to determine the appropriate action to be taken in consideration of his findings. (*Id.*) Also on November 1, 2011, the board voted to remove Okada from serving as Vice chairman of the board. (*Id.* at 5.)

Set in this context, Wynn Resorts was clearly alarmed at Okada's continued conduct, and was contemplating possible regulatory action at the time it retained Freeh Sporkin; it told Okada the same. A contrary bright-line ruling between business and litigation would be both artificial and unrealistic.

2. Wynn Resorts did not waive the protections of the work product doctrine.

The Okada Parties alternatively argue that if the work product doctrine applies to any of Freeh Sporkin's documents, then Wynn Resorts waived the protection when it "injected" the Freeh Report into litigation and publicly disclosed it. (Mot. 18.) The arguments made above in connection with attorney-client privilege are equally applicable here; for like the "treacherous path" a court walks when determining whether corporate communications qualify for attorney-client privilege, work product waiver in the context of corporate investigations has been characterized as "complex." *Hollinger Intern. Inc.*, 230 F.R.D. at 516. The answer here is simple: for reasons already stated, no waiver occurred.

The Okada Parties make the additional argument that Wynn Resorts waived work product protection because by placing Freeh's findings in the public domain, they made "testimonial" use

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of the same. (Mot. 19-20 (quoting *Lisle v. State*, 113Nev. 679, 941 P.2d 459, 470-71 (1997), *overruled on other grounds*, *Middleton v. State*. 114 Nev. 1089, 968 P.2d 296 (1998).)[14] Even if this "testimonial" wavier applies outside of the criminal context, which the Nevada Supreme Court has never considered,[15] the Okada Parties' sweeping generalizations make it impossible to determine whether any portion of Freeh's documents are properly "testimonial" in nature. Because the Okada Parties fail to show how circulation of the Report relates to production of any of the Freeh Documents, they are not entitled to production of the same on a "testimonial" basis.

3. The Okada Parties cannot show a substantial need for any non-opinion work product.

To the degree any of Freeh's work product does not represent an attorney's mental impressions, conclusions, judgments, or legal theories,[16] the Okada Parties claim that they have a substantial need for it. Apparently, the Okada Parties believe that "the central issue in this case is the validity of Freeh's findings that Okada bribed government officials and engaged in other misconduct," and the only way the Okada Parties can fairly defend themselves is to have access to "documents not cited and the documents that demonstrate how [Freeh] reached his findings, including materials related to the interview he conducted and relied on throughout the Report." (Mot. at 24.) This is not only a misstatement of this case, but also of the law of waiver.

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[14] The Okada Parties also cite the already-distinguished *Martin Marietta* case. (Mot. 20.)

[15] *See Flores v. State*, 121 Nev. 706, 120 P.3d 1170, 1178-79 (2005) (considering Sixth Amendment challenge).

[16] Commonly, courts distinguish between opinion and non-opinion work product. Opinion work product is material reflecting an attorney's mental impressions, conclusions, judgments, or legal theories, non-opinion work product is everything else. *Hickman v. Taylor*, 329 U.S. 495, 510 (1947); *Holmgren v. State Farm Mut. Auto Ins. Co.*, 976 F.2d 573, 577 (9th Cir. 1992); *Phillips*, 290 F.R.D. at 634 (citing, *e.g.*, *Holmgren*). Courts of appeals afford near-absolute protection for opinion work product. *E.g.*, *Leviton Mfg. Co., Inc. v. Univ. Sec. Instruments, Inc.*, 606 F.3d 1353, 1365 (Fed. Cir. 2010); *United Kingdom v. United States*, 238 F.3d 1312, 1322 (11th Cir. 2001); *In re Green Grand Jury Proceedings*, 492 F.3d 976, 980 (8th Cir. 2007). Clearly, opinion work product "cannot be disclosed simply on a showing of substantial need and inability to obtain the equivalent without undue hardship," but requires "a far stronger showing of necessity and unavailability." *Upjohn*, 449 U.S. at 401-02. The Okada Parties concede they cannot meet this heightened standard. (*See* Mot. 23 (noting they "would still be entitled to discovery the non-opinion portions of Mr. Freeh's documents by showing that they have a 'substantial need' for the materials").)

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As discussed above, the board exercised its business judgment on February 18, 2011, and did so based upon the facts in the Freeh Report and Freeh's presentation that day. There is no evidentiary value in arguing or seeking to attack the Freeh Report. Rather, to overcome the business judgment rule presumption, the Okada Parties may only seek to prove that any voting director had knowledge that made his or her reliance on the Freeh Report unreasonable.

Moreover, as the Nevada Supreme Court instructs, "[a] mere assertion of [substantial] need will not suffice" to warrant production of work-product material. *Wardleigh*, 111 Nev. at 358, 891 P.2d at 1188. Instead, the Okada Parties "must also show that they cannot obtain the documents or tangible evidence, or the substantial equivalent thereof, without undue hardship. The burden of showing undue hardship rests with the party seeking to discover the information." *Id.* This showing applies either to persons with information who are known and those who are unknown, and the fact the number of persons with information is large is of no consequence. *See id.* at 1189-90. There is no undue hardship where persons who might have information had not been deposed. *See id.* at 1189.

The Okada Parties fail to show that the information sought in the Freeh Documents is unavailable from other sources. Tellingly, the Okada Parties consciously overlook the fact that they will most likely be looking for information related to Freeh's interviews with Japanese nationals. Over the past several months the Court has granted it six letters rogatory for five Japanese nationals, which request, *inter alia*, information regarding whether the witness (1) ever met with Judge Freeh, and (2) describing the communication. (*See* Appendix of Exhibits Reference in Universal Entertainment Corp.'s and Aruze USA Inc.'s Motion for Issuance of Requests to Japan for International Judicial Assistance (Letters Rogatory), at 7.) Thus, it is likely the individuals subject to the Letters Rogatory ***will*** be questioned (in a forum where Nevada's discovery protections will not govern), and it is likewise clear that the Okada Parties believe these individuals have information related to Freeh's investigation. Yet, the Okada Parties incongruously claim they cannot learn anything about Freeh's investigation without the Freeh Documents.

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The Okada Parties have no substantial need, and they demonstrated no such need. They just want Freeh's documents, and that is not enough for waiver.

D. Alternatively, Okada's Motion Should Be Denied Because Okada Failed to Comply with EDCR 2.34.

In an alternative to reaching the motion on the merits, the Court can conclude that Okada's motion is premature. The Okada Parties concede that "[t]***he discussion as to objections to specific entries is ongoing***; resolution of these objections . . . will take substantial time due to the document-by-document nature of the issues." ((Mot 17 n.12; Ex 1 to Mot. ¶ 15.) Further, although the Okada Parties stated their belief that third parties appeared on the Freeh privilege log, they provided no log entry numbers or list of names of the purported third parties. (Ex. A, Spinelli Decl. ¶ 9.) The Okada Parties' arguments require more specific review of log entries on a document by document basis. *See, e.g.*, *Las Vegas Sands*, 331 P.3d at 914 n.17; *Wardleigh*, 111 Nev at 351-52, 891 P.2d at 1184. And, the Okada Parties have not done the work to meet their burden that any specific entries warrant challenge much less a generally disfavored in camera review. *Diamond State Ins. Co.*, 157 F.R.D. at 700; *Klunzinger v. I.R.S.*, 27 F. Supp. 2d 1015, 1028 (W.D. Mich. 1998) (noting that *in camera* review is "more appropriate where the documents withheld are brief and limited in number"). The motion is thus premature. The same is true for their work product challenge.[17]

IV. CONCLUSION

The Okada Parties are attempting to ease their own discovery burden by rushing to the Court under the auspices of obtaining "guidance" to obtain determinations on privilege and waiver which are underserved and premature. In so doing, they foist an unpalatable choice on the Court: make a premature advisory decision on several questions of law, or wade through

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[17] The Wynn Parties recognize that an affidavit is generally necessary to demonstrate a specific document was prepared in anticipate of litigation but, without knowing which documents the are being challenged, any affidavit would be nothing more than a broad sweeping assertion that normally has no validity. As of now, the log provides that same representation. If and when the Okada Parties seek to challenge a work product assertion over one or even a group of documents, following a meet and confer, the Wynn Parties will do as the law requires to try to demonstrate the protection on a document by document basis.

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6,000 Privilege Log documents to determine what documents, if any, are privileged. The Court should reject this false choice, and conclude that the time for these decisions has not come.

The Okada Parties' Motion must be denied because: (1) there was and is an attorney client relationship between Wynn Resorts and Freeh Sporkin; (2) Wynn Resorts did not waive the privilege; (3) Freeh Sporkin's mental impressions and notes are protected work product; (4) there was no waiver by Wynn Resorts; and (5) the Okada Parties did not demonstrate substantial need.

DATED this 9th day of October, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 9th day of October, 2015, I caused to be **electronically served through the Court's filing system** true and correct copies of the foregoing **WYNN RESORTS, LIMITED'S OPPOSITION TO DEFENDANTS' MOTION TO COMPEL WYNN RESORTS, LIMITED TO PRODUCE FREEH DOCUMENTS** to the following:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS, LIMITED,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GOFF GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

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

Real Parties in Interest.

Supreme Court No. 68439

District Court Case No. A-13-656710-B

REAL PARTIES' ANSWER TO PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons or entities as described in Nev. R. App. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

The undersigned counsel of record certifies that the following are persons or entities as described in Nev. R. App. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Defendant and Counterclaimant Aruze USA, Inc. is a wholly owned subsidiary of Defendant and Counterclaimant Universal Entertainment Corporation ("UEC"). UEC is traded on the Tokyo Stock Exchange JASDAQ (standard). UEC's parent company is Okada Holdings Limited. No publicly held

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corporation holds 10% or more of the stock of UEC. Defendant Kazuo Okada is an individual.

DATED this 14th day of October 2015.

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Real Parties in Interest Aruze USA, Inc., Universal Entertainment Corporation and Kazuo Okada (the "Aruze Parties") respectfully submit this Answer to the Petition for Writ of Prohibition or Alternatively, Mandamus ("Pet.") filed by Petitioner Wynn Resorts, Ltd. ("WRL") on July 20, 2015.

I. INTRODUCTION AND RELIEF SOUGHT

WRL asks this Court to do something it has never done before: issue a writ to review the relevance of corporate business records sought in discovery. This Court is not a "super discovery commissioner," and so it has repeatedly held that discovery orders are generally not subject to extraordinary writ review. WRL contends that this case fits within a narrow exception to this principle for "blanket discovery orders without regard to relevance," but it fails to acknowledge that ***all three cases that have applied the "blanket orders" exception have done so to prevent the disclosure of an individual's personal and private tax or medical information. This Court has never applied the "blanket orders" exception in the context of corporate business records.***

The purpose of the "blanket orders" exception is not to prevent the disclosure of any irrelevant information in discovery; rather, it is to prevent only those disclosures that would irreparably violate an individual's significant personal privacy interests. Applying the exception to ordinary corporate business records as WRL demands would severely undermine fundamental principles of broad

discovery and deference to the district courts on discovery matters. It would expand the limited right of appeal that this Court has consistently applied, inevitably leading to a flood of writ petitions challenging relevancy determinations in discovery orders in other business cases, thus slowing the orderly administration of justice. Moreover, writ review is unnecessary because WRL will not suffer irreparable harm by complying with the District Court's order, unlike individuals facing the release of personal tax or medical information. Were there any harm at all, which WRL has not come close to establishing, it can be addressed on an ordinary post-judgment appeal.

Even if the District Court's order was appropriate for extraordinary review, it can only be overturned if it was a "clear abuse of discretion." Far from it, the District Court's ruling was solidly grounded in the facts and based on a simple and straightforward theory of relevance, which the Aruze Parties presented at length in their briefing on the motion to compel below. The record demonstrates that the District Court carefully considered the relevancy of the discovery requests, queried the Aruze Parties on the relevance of particular requests, and properly exercised its discretion to grant the Aruze Parties' motion to compel.

WRL repeatedly asserts that the documents at issue are irrelevant, but these ***mere assertions*** are nowhere supported by any argument or explanation directly rebutting the Aruze Parties' theory – and they are directly contrary to the District

Court's findings. WRL's disagreement with the District Court's decision is not a basis to further delay the discovery process and undermine the District Court's authority to supervise discovery in this large and complex case.

The relevancy of document discovery requests regarding corporate business records is an issue that should be left to the sound discretion of the District Court. Its judgment here was reasonable, in accord with the broad scope of pretrial discovery, and should not be second-guessed by this Court. WRL simply does not want to produce potentially damaging documents, but it has no legal justification to refuse. Its tactics have already delayed production of the documents by nearly a year; any further delay will cause the Aruze Parties irreparable harm given that depositions in this complex case have already begun.

In sum, WRL's Petition should be denied so that the Aruze Parties can obtain the discovery they need on issues central to their case without further delay.

II. COUNTER-STATEMENT OF ISSUES PRESENTED

1. Is a discovery order subject to writ review under the "blanket orders" exception when it does not threaten the disclosure of an individual's private personal tax or medical information?

2. Did the District Court clearly abuse its discretion by agreeing with the theory of relevance set forth in the Aruze Parties' motion to compel?

III. COUNTER-STATEMENT OF FACTS

WRL offers a one-sided and misleading account of the facts, frequently presenting the very issues in dispute as though they have been established in its favor. But on a writ petition, all factual issues should be resolved in the manner most favorable to the District Court's order. *Williams v. Eighth Judicial Dist. Court*, 127 Nev. Adv. Rep. 45, 262 P.3d 360, 365 (2011) ("In the context of a writ petition, this court gives deference to the district court's findings of fact, but reviews questions of law de novo."). The following facts are drawn from the Aruze Parties' motion to compel, which the District Court granted.

More than a decade ago, Mr. Wynn and Mr. Okada partnered to found WRL, which soon became one of the most successful gaming companies in the world, with highly profitable casino resorts in Las Vegas and Macau. Mr. Okada provided the seed money, and Mr. Wynn provided his expertise in the gaming industry as the Chairman and CEO. Vol. XI PA 1911. Several years later, however, Mr. Wynn became determined to remove Mr. Okada from the company. First, Mr. Wynn lost half his stock in a divorce, leaving Aruze as WRL's largest shareholder by far and Mr. Wynn fearful of repeating his experience at Mirage Resorts, Inc., where he had been forced out of his position as CEO following a stock takeover by a rival. *Id.* Then, Mr. Okada began taking a more active role in

WRL's affairs, notably challenging the propriety of certain suspicious conduct by Mr. Wynn in Macau. Vol. XI PA 1914–15.

At a WRL Board meeting held in April 2011, Mr. Wynn announced that the company would "donate" ***$135 million*** to the University of Macau Development Foundation, an opaque organization not actually affiliated with the University but connected to key figures in the Macau government. *Id.* Mr. Okada was the only director who opposed, or even questioned, this "donation." *Id.* It is particularly relevant that just a few months after making the donation WRL received a highly lucrative license to build a new casino on the "Cotai Strip" in Macau – a license it had been seeking unsuccessfully for at least five years. Vol. XI PA 1918.

Importantly, it was only ***after*** Mr. Okada challenged Mr. Wynn's conduct at the April 2011 Board meeting that WRL began suggesting that Mr. Okada had engaged in improper conduct. Vol. XI PA 1911.[1] Thereafter, the relationship

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[1] WRL argues that "the Okada Parties admitted it was not until Wynn Resorts began looking into Okada's activities that he self-servingly developed his purported 'suspicions' of Wynn Resorts' conduct." Pet. at 10. This is false, and it was proven false in the District Court. In its opposition to the motion to compel, WRL claimed that "[b]y the time Mr. Okada objected to the Macau pledge in April 2011, the board of directors had already received reports on two investigations that were *prompted by suitability concerns* arising from Mr. Okada's business activities in the Philippines." Vol. XIV PA 1301 (emphasis added). But in their reply brief, the Aruze Parties demonstrated that this was not true:

> The two investigations that WRL relies on were not, as WRL contends, 'prompted by suitability concerns' about Mr. Okada. They were, instead, assessments as to whether or not WRL

between Mr. Wynn and Mr. Okada deteriorated rapidly. Vol. XVII PA 3843–44. Mr. Okada, acting in his capacity as a director, began pressing for more information about WRL's efforts to obtain the Cotai license and certain other activities in Macau – activities that he had never before had reason to question, or even know about. Vol. XI PA 1915. The company rebuffed his requests, and in January 2012 Mr. Okada filed a lawsuit under the "books and records" provisions of Nevada's corporation law seeking access to the information. *Id.* By doing so, he made public his allegations of wrongdoing against Mr. Wynn.

> should invest in Mr. Okada's then-nascent casino project in the Philippines. WRL did not begin attacking Mr. Okada's suitability until later, after he challenged Mr. Wynn's $135 million 'donation' at the April 2011 Board meeting.

Vol. XVII PA 3842. The Aruze Parties went on to describe in detail the evidence supporting their position, which consisted of documents produced by WRL and its investigator in discovery. Vol. XVII PA 3842–52. Among other things, they noted that the investigator's retention letter stated that the purpose of its assignment was to "'help [WRL] to determine [its] level of engagement in the . . . Filipino gaming industry.'" Vol. XVII PA 3843. The motion also noted that WRL had attached four of the five reports by the investigator, none of which addressed Mr. Okada's suitability. But the fifth report, which WRL omitted from its opposition brief, stated that "[s]ources were *not aware of corruption* in Mr. Okada's company, Universal/Aruze, or personal or corporate business dealings." Vol. XVII PA 3843. WRL is so determined to bury this fifth report, which undermines its position, that it has also failed to provide it to this Court now, even though it was attached to the Aruze Parties' reply brief below. Vol. XVII 3860; *see also* Vol. III SA 499–534. In any event, by granting the motion to compel, the District Court necessarily agreed with the Aruze Parties on this issue, and this Court should defer to that factual finding.

Mr. Wynn realized that Mr. Okada not only posed a threat to Mr. Wynn's control of the company that bears his name, but that Mr. Okada also threatened to expose serious wrongdoing in Macau by Mr. Wynn and his associates. Therefore, in an effort to remove Mr. Okada preemptively, WRL commissioned an investigation of Mr. Okada by former FBI Director Louis J. Freeh. Vol. XI PA 1911. Mr. Freeh's investigation was shoddy – the conclusions predetermined, the evidence lacking, and the process exceedingly unfair. *Id.* Nevertheless, Mr. Freeh delivered exactly what his client wanted – allegations of wrongdoing by Mr. Okada that gave the company an excuse to get rid of him. Within hours of the completion of Mr. Freeh's report, the WRL Board held a meeting and, without any critical inquiry or corroboration of the report, voted to "redeem" Aruze's shares. *Id.*

Moreover, the Board decided to impose a steep discount to the stock market price of the shares. Eliminating a large block of shares for less than their true value made all of the remaining shares in the company more valuable, which meant that each member of the Board reaped a significant financial windfall from these maneuvers. Vol. I SA 22. Mr. Wynn himself saw the value of his personal holdings increase by more than $58 million as a result of "redeeming" Aruze's shares. *Id.*

Immediately after the redemption – at 2:00 a.m. on a Sunday – WRL filed the underlying lawsuit, seeking judicial ratification of its actions, and the Aruze

Parties then filed an Answer and Counterclaim. *See* Vol. I PA 1, 77. The Aruze Parties' basic theory of the case, spelled out in detail in the motion to compel, is that the accusations against Mr. Okada were a mere ***pretext***, designed to remove the biggest threat to Mr. Wynn's control, to prevent further inquiry into Mr. Wynn's suspicious business dealings in Macau, and to exact retribution against Mr. Okada for daring to challenge Mr. Wynn. Vol. XI PA 1911–12. The Aruze Parties also claim that the Board vastly under-valued Aruze's WRL stock in several ways, including by failing to take into account positive nonpublic information about the company's future business prospects, thus failing to pay "fair value" for the redeemed shares as required. Vol. XI PA 1920. The document requests at issue on the motion to compel seek information specifically related to these areas of dispute.[2]

[2] WRL's complaints about the number of discovery requests are misplaced and misleading. The majority of those requests are duplicative and directed to each of the twelve individual counter-defendants in his or her individual capacity; the Aruze Parties were careful to note that those individuals need only search for documents in their personal possession. Vol. VIII PA 2709. Another group of document requests was necessitated when the Aruze Parties discovered that WRL had engaged in a long-running and improper "corporate espionage" campaign in which WRL officers, including its General Counsel, met secretly with current and former employees of the Aruze Parties to obtain confidential and privileged information. Vol. I SA 171–178. The District Court ordered WRL to respond to discovery requests about those incidents on an expedited basis. Vol. X PA 3884.

IV. REASONS WHY THE WRIT SHOULD NOT ISSUE

A. Writ Review is Unwarranted

Writs of prohibition and mandamus are ***extraordinary*** remedies, and the burden is on WRL to demonstrate that such extraordinary relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Discovery disputes over document productions are particularly ill-suited to writ review because of the disruptive effect that such review can have on the discovery process, particularly in complex cases like this one, and the necessarily broad discretion district courts have to manage discovery. Thus, "extraordinary writs are generally not available to review discovery orders." *Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. Adv. Op. 15, 252 P.3d 676, 678 (2011).[3]

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[3] WRL's Petition says *nothing whatsoever* about the District Court's broad discretion on discovery matters. When the shoe was on the other foot on Mr. Okada's recent writ petition, however, WRL saw it differently:

> Okada is merely displeased with the District Court's handling of discovery and invites this Court to take away the District Court's broad discretion in discovery to issue a ruling that Okada would prefer. . . . Accepting Okada's invitation shall render extraordinary relief ordinary. Those who feel aggrieved by the district court's handling of discovery will be encouraged to seek writ relief at every opportunity. The overall effect will be further delays, continuances, exorbitant increases in the costs of litigation, and frustrations with the judicial system in general.

Vol. II SA 420. Mr. Okada, on the other hand, has been consistent. Even when challenging the District Court's order regarding his deposition, he clearly acknowledged its discretion: "[T]here is no dispute that the district court has discretion to manage discovery issues, including this one. The issue presented is

Writ relief is generally not necessary for discovery orders because any errors can be corrected on post-judgment appeal. "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. Op. 21, 348 P.3d 675, 677 (2015); *see also 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.").

The discovery order at issue here is a routine and discretionary document production order that can be challenged in an appeal from an adverse final judgment. Indeed, the order only requires WRL to produce certain non-privileged documents in discovery. If WRL is right that the documents are irrelevant, they should not be admitted at trial; if they are, then WRL will have grounds for an appeal. Thus, WRL has an adequate appellate remedy.

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whether the district court abused its discretion by failing to apply the correct legal principles that should guide its discretion." Vol. II SA 450.

In addition, writ review of routine discovery orders frustrates and delays the progress of discovery. In this case, the Aruze Parties first sought these documents in Rule 34 requests more than a year ago. Vol. VII PA 1514. When meet-and-confer efforts proved unsuccessful, they filed a motion to compel nearly six months ago, in April 2015. Vol. XI PA 1908. The motion was granted more than four months ago, on June 4. Vol. X PA 3924. Had the documents been produced within a reasonable time thereafter, the Aruze Parties would have had them in plenty of time for depositions. Because of this writ petition, however, the Aruze Parties do not have these critical documents even as depositions have now begun.

As WRL argued in opposing Mr. Okada's writ petition, "interference with timely discovery through [a stay issued by this Court] rewards the noncompliant party. They can buy time to stave off their own discovery obligations but continue to enlist the discovery process for their own benefit." Vol. II SA 420. That is exactly what WRL seeks to do here. Indeed, the Aruze Parties have been prejudiced by this delay because crucial depositions have already commenced, with more to come in the near future as required by the District Court's scheduling order.

WRL's main contention is that this Court's intervention in the midst of discovery is necessary to protect it from disclosing documents that it considers irrelevant. But the discovery rules specifically contemplate the disclosure of

irrelevant information, as long as it is reasonably calculated to lead to the discovery of admissible evidence. NRCP 26(b)(1). Thus, in nearly all cases, the mere disclosure of irrelevant documents does not constitute harm at all, much less the type of harm that warrants extraordinary writ relief.

This Court has identified two specific and limited situations where the mere act of disclosure is so harmful that a different approach is warranted:

> Generally, extraordinary writs are not available to review discovery orders. ***Writs have issued to prevent improper discovery in two situations where disclosure would cause irreparable injury***. Mandamus has been granted when the trial court issues blanket discovery orders without regard to relevance. Relief has also been given when the discovery order requires disclosure of privileged information. However, this court has denied the writ when petitioner only claimed, as in this case, that there was no right to the discovery ordered by the district court.

Clark Cnty. Liquor & Gambling Licensing Bd. v. Clark, 102 Nev. 654, 659-60, 730 P.2d 443, 447 (1986) (emphasis added; citations omitted).

WRL argues that this case fits within the exception for "blanket discovery orders without regard to relevance." But the only cases to ever apply this "blanket orders" exception have done so when the discovery order threatened the disclosure of an individual's private tax or medical records. *Schlatter v. Eighth Judicial Dist. Court*, 93 Nev. 189, 192, 561 P.2d 1342, 1343-44 (1977) (overturning district court order that "permitted carte blanche discovery of all information contained in [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.").

When a discovery order requires disclosure of an individual's private tax or medical information, writ review is necessary because such information raises unique personal privacy concerns that make the mere act of disclosure both significantly harmful and impossible to remedy after the fact. *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 . . . ."); *Hetter*, 110 Nev. 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.").[4]

[4] The same concerns about the irreparable harm of disclosure also underlie the other exception identified in *Clark County*, for orders requiring disclosure of privileged information. *Wardleigh v. Second Judicial Dist. Court*, 111 Nev. 345, 350-51, 891 P.2d 1180, 1183-84 (1995) ("If improper discovery were allowed, the assertedly privileged information would irretrievably lose its confidential and privileged quality and petitioners would have no effective remedy, even by a later appeal.").

However, those privacy concerns simply do not apply to the corporate business records at issue in this case. Disclosing those documents will not change their legal status or be an invasion of anyone's privacy.[5] Thus, this Court has never applied the "blanket orders" exception in the context of corporate business records, and it should not do so here. Instead, the usual rule against writ review of routine discovery orders should control.

WRL also claims in passing that writ review of a discovery order "is appropriate when an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction." Pet. at 13 (quotation omitted). But both cases that WRL cites for this point involved disputes over the scope of Nevada's news shield statute.[6] Obviously, issues affecting the freedom of the press actually raise important public policy issues, whereas WRL's self-serving

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[5] There are safeguards in place to protect any personal financial information contained in documents exchanged in discovery in this action. The Protective Order that governs discovery in this action explicitly allows the redaction of personal financial information. *See* Vol. I SA 2–3 ("Confidential Information shall also include sensitive personal information that is otherwise not publicly available, such as . . . tax records; and other similar personal financial information."). The District Court's order does not override these protections.

[6] *Aspen Fin. Servs.*, 129 Nev. Adv. Op. 93, 313 P.3d at 878 ("Here, the challenged order focuses on the parameters of Nevada's news shield statute, raising issues that have not yet been addressed by this court."); *Diaz v. Eighth Judicial Dist. Court*, 116 Nev. 88, 93, 993 P.2d 50, 54 (2000) ("We conclude that this writ petition raises an issue of first impression that implicates a matter of public importance: Whether a journalist waives the protection of the news shield statute with respect to the contents of an article that has been published.").

effort to withhold its business records from discovery does not. Thus, these cases provide no basis for writ review of the routine discovery order at issue.

B. The District Court Did Not "Clearly Abuse Its Discretion"

If this Court considers WRL's Petition on the merits, it can only disturb the District Court's ruling if the court "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). Discovery matters in particular are committed to the sound discretion of the district courts. *MGM Grand, Inc. v. Eighth Judicial Dist. Court*, 107 Nev. 65, 70, 807 P.2d 201, 204 (1991) (*quoting Hahn v. Yackley*, 84 Nev. 49, 54, 436 P.2d 215, 218 (1968)) ("'[T]here is wide discretion in the trial court to control the conduct of pretrial discovery . . . .'").[7] Far from a clear abuse of discretion, the District Court's decision was absolutely correct.

1. The Document Requests are Reasonably Calculated to Lead to the Discovery of Admissible Evidence

Nevada affords litigants broad access to information in pre-trial discovery. *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

[7] When it opposed Mr. Okada's writ petition, WRL argued that the District Court in this case is entitled to even more latitude on discovery matters than most: "Business court judges often preside over large and complex cases. They hear all matters in their cases, including substantive and discovery-related issues. For this reason, among others, they are better positioned than most to exercise the broad discretion afforded to district courts to manage and rule on discovery-related issues." Vol. II SA 419

is relevant to the subject matter involved in the pending action. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." NRCP 26(b)(1). When there is a dispute over whether a discovery request is reasonably calculated to lead to the discovery of admissible evidence, the burden is on the party resisting discovery. *F.T.C. v. AMG Servs., Inc.*, 291 F.R.D. 544, 553 (D. Nev. 2013).

WRL repeatedly asserts that the document requests at issue are irrelevant, but it never explains why. Most of the requests at issue, and the focus of the parties' briefing below, pertain to WRL's conduct in Macau. In the motion to compel, the Aruze Parties demonstrated that WRL had engaged in several specific transactions that were suspicious in light of large, unexplained payments made to parties connected to key officials in Macau's government.[8]

The Aruze Parties' pretext theory is simply that after Mr. Okada and Mr. Wynn had a falling out (primarily but not only due to Mr. Okada's objection to the

[8] As just one example, the Aruze Parties noted a $50 million payment by WRL to an entity owned by a close associate of the head of Macau's government. WRL initially described the payment as being necessary to obtain rights to a parcel of land, but after the redemption the *Wall Street Journal* reported that the entity had never owned the land, raising the possibility that the $50 million payment was a bribe. Vol. XIII PA 2462. The Aruze Parties have requested WRL's documents relating to this transaction; if the reports are confirmed, then the company would have had a strong motive to keep Mr. Okada from learning about the discrepancy regarding the land ownership.

$135 million donation in Macau), Mr. Okada began asking questions and demanding information about these transactions. Mr. Wynn realized that Mr. Okada could uncover the truth about WRL's misconduct, and so Mr. Wynn and his associates created a pretextual basis to redeem Aruze's shares and preemptively remove Mr. Okada. This limited Mr. Okada's access to corporate information, damaged him financially, and challenged his credibility.

The Aruze Parties have identified several specific transactions that appear, based on the information known to date, to be extremely suspicious. Thus, there is a more than plausible inference to be drawn that WRL sought to silence Mr. Okada before he learned the truth about the company's activities, and the District Court so concluded in exercising its discretion over discovery.[9]

[9] WRL cites several cases in which courts have rejected discovery requests that they deemed to be "fishing expeditions." Pet. at 14. Here, however, the District Court did not believe that the Aruze Parties were engaged in a fishing expedition, and this Court should defer to that judgment. WRL argues that "while much of discovery is a fishing expedition of sorts, the rules of civil procedure allow the Courts to determine the pond, the type of lure, and how long the parties can leave their lines in the water." *Id.* at 17 (quoting *Myers v. Prudential Ins. Co. of Am.*, 581 F. Supp. 2d 904, 913 (E.D. Tenn. 2008). That is true – but, as in *Myers*, it is the trial courts, not the appellate courts, that are best-positioned to make those judgments. Indeed, WRL cites only one case in which an appellate court reversed a trial court's decision to allow discovery, and in that case the trial court had made a threshold legal error regarding the scope of the claims. *Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1326 (Fed. Cir. 1990) (disallowing discovery that was only relevant to a claim not adequately alleged in the complaint).

Moreover, WRL alleged in its operative complaint that Mr. Okada's accusations of misconduct by Mr. Wynn "are baseless, and they are designed to divert attention away from Mr. Okada's own misconduct and breaches of fiduciary duty." Vol. VI PA 1384. The District Court's discovery order was necessary to allow Mr. Okada to defend against this allegation, including by showing that the $135 million donation described above was made to obtain valuable government benefits – namely, the Cotai license. *Supra* at 5.

The very purpose of discovery is to allow litigants to obtain information not otherwise available to them. *In re Perez*, 749 F.3d 849, 856 (9th Cir. 2014) (*quoting Hickman v. Taylor*, 329 U.S. 495, 501 (1947)) ("Most often, it is after the commencement of litigation that 'parties . . . obtain the fullest possible knowledge of the issues and facts' of their case."). Thus, courts routinely allow parties to take discovery that "*may* result in a more complete picture of the events." *Lacey v. Maricopa Cnty.*, 649 F.3d 1118, 1130 (9th Cir. 2011), *rev'd in part on other grounds* 693 F.3d 896 (9th Cir. 2012) (en banc) (emphasis added); *see also Smith v. J.P. Morgan Chase Bank*, 2013 WL 129395, at *4 (D. Nev. Jan. 9, 2013) (granting discovery where a "deposition *may* lead to the discovery of admissible evidence that *may* support or refute plaintiff's surviving claims") (emphasis added).

The Aruze Parties have offered a straightforward theory, based on known facts, that may explain the actions by WRL that are at the very heart of this case. Given the broad scope of discovery, nothing more is required for them to be entitled to obtain any evidence in WRL's possession that would support (or undermine) that theory.[10]

In addition to its claim that the document requests are not relevant, WRL also claims that the District Court failed to even consider the issue of relevance. Pet. at 1 (claiming that the order was "untethered to any concept of relevancy"); *id.*

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[10] WRL misleads this Court by selectively editing a quotation from one of the cases it cites. In *E.I. du Pont De Nemours & Co. v. Phillips Petroleum Co.*, 24 F.R.D. 416 (D. Del. 1959), the court wrote as follows:

> The plaintiff, however, resists producing records of interdepartmental communications and internal decisions made by its officers and agents. I can see nothing to support this part of the request except a hope that the defendant might find something which will help its case. *If it could be made to appear to me that there was any substantial foundation for such hope, the question would be different.* I realize that 'fishing expedition' is no longer a ground of objection to discovery. But, on the other hand, unless the Court requires the moving party to show that there is something more than a mere possibility that relevant evidence exists, the only appropriate order would be one requiring the party to turn over every scrap of paper in its files as well as the contents of its waste baskets.

Id. at 423 (emphasis added). In its brief, ***WRL replaced the italicized sentence with an ellipsis, thus making the quotation appear more favorable than it actually is***. Pet. at 14. Here, unlike in *du Pont*, the Aruze Parties seek specific information, not every scrap of paper in WRL's files, and they have indeed demonstrated a "substantial foundation" for their belief that the discovery requests are reasonably calculated to lead to the discovery of admissible evidence.

at 13 (the order "gives no regard to relevance"). Once again, WRL's assertions are contradicted by the actual record.

Relevance was the primary issue debated by the parties below. Each side devoted the majority of their briefs to that question – the first argument section in the motion to compel, which spanned eight pages, was entitled "Evidence of the Wynn Parties' Improprieties in Macau is Relevant." Vol. XI PA 1914–25. The first argument section in WRL's opposition, which spanned nine pages, was entitled "the additional Macau documents are not relevant." Vol. XIV PA 3099–3108. In the reply brief, the Aruze Parties began by stating that "[t]he 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." Vol. XVII PA 3841.

At the hearing on the motion, relevance was the only issue addressed in any depth. The District Court even asked counsel for the Aruze Parties to explain the relevance of a subset of the requests, demonstrating its focus on the issue. Vol. X PA 3902–3904; 3920–3922. Satisfied with the answer, the District Court granted the motion. Vol. X PA 3924. Then, months later, during a hearing on WRL's motion to extend the stay of the ruling, the District Court confirmed that its ruling was based on relevance: "Because the issues of suitability are *central to the resolution of this case*, I'm going to deny the request for stay." Vol. II SA 491

(emphasis added). In sum, WRL's claim that the District Court's order "gives no regard to relevance" is demonstrably incorrect.

WRL also claims that the District Court failed to give individualized consideration to the requests at issue. Pet. at 11. This is incorrect; as noted above, the District Court specifically asked about the relevance of particular requests. Moreover, WRL itself chose to address the requests in categories rather than individually. The Aruze Parties had appended to the motion to compel a lengthy chart in which they provided individualized reasons why ***each and every one*** of their document requests was reasonably calculated to lead to the discovery of admissible evidence. Vol. XIII PA 2568. WRL chose not to respond to the chart or offer its own request-by-request arguments, instead merely grouping the requests into "several other categories." Vol. XIV PA 1309. WRL cannot now complain that the District Court followed WRL's own approach.

At the end of the day, WRL's real complaint is that the District Court made the wrong judgment as to whether the document requests are reasonably calculated to lead to the discovery of admissible evidence. But the authority to make that judgment lies with the District Court – not WRL or even this Court. The District Court acted conscientiously, based on detailed information and argument, and made a reasonable decision well within its broad discretion. This Court should respect the District Court's judgment.

2. Nevada and Macau Gaming Regulations Do Not Bar Discovery

WRL criticizes the District Court for "[giving] no consideration" to the impact of Nevada's gaming regulations on the discovery requests. Pet. at 22. But the reason the District Court did not consider these regulations is that WRL did not ask it to do so. The only mention of this issue in WRL's 24-page opposition to the motion to compel came in a one sentence footnote buried near the end. Vol. XIV PA 3114. Further, WRL's counsel did not raise the issue at all during the hearing. Vol. IX–X PA 3861–3948.

By failing to argue this issue in any meaningful way before the District Court, WRL has waived it for purposes of appeal. *Kahn v. Dodds (In re AMERCO Derivative Litig.)*, 127 Nev. Adv. Op. 17 n.6, 252 P.3d 681, 697 n.6 (2011) ("[W]e decline to address an issue raised for the first time on appeal."); *Juneau v. Intel Corp.*, 127 P.3d 548, 552 (N.M. 2006) (holding that "a passing reference in a footnote" was insufficient to preserve an issue for appeal); *Crank v. Utah Judicial Council*, 20 P.3d 307, 319 n.17 (Utah 2001) (holding that an argument "merely mentioned . . . in a footnote" was not "adequately brief[ed]" before the lower court and "does not suffice to preserve an issue for appeal").

Even if this Court were to consider this issue on the merits, there is no basis for extraordinary writ relief. The District Court's order requires production of only non-privileged documents. If WRL believes that individual responsive documents

are privileged, it must claim privilege on a document-by-document basis as required by law. *See Paul v. Health Plan of Nevada, Inc.*, 2014 WL 1246399, at *4 (Nev. Dist. Ct. Feb. 12, 2014) (*quoting* Moore's Federal Practice, 26.90 (Mathew Bender 3rd ed. 2013)) ("'A blanket assertion of privilege is insufficient. Rather, the applicable privilege must be claimed for each document withheld.'"). To the extent that individual documents are only confidential, but not privileged, they will be adequately protected by the protective order entered by the District Court.[11]

The analysis is similar with respect to Macau's gaming law, known as Law 16/2001. WRL complains that the District Court "gave no consideration" to Law 16/2001. Pet. at 22. Once again, however, WRL has waived this issue. It did not say a single word (not even in a footnote) about Law 16/2001 to the District Court, either in briefing or in argument. Even if Law 16/2001 was properly before this Court, WRL's unofficial and unverified translation suggests that it applies only to the "bidding process" and the "tender." Pet. at 22. Although these terms are not

[11] NRS 463.120, upon which WRL relies for the first time in this Court, applies to the records of the Nevada Gaming Control Board and the Nevada Gaming Commission. To the extent that any confidentiality or privilege attaches, those privileges or rights to confidentiality belong to the Board and Commission. NRS 463.120(4) (covered information "may not be otherwise revealed without specific authorization by the Board or Commission"); 463.120(5) (investigative reports may be revealed "with specific authorization and waiver of the privilege by the Board or Commission"). Nothing in this statute grants any express privilege to WRL to withhold its own records.

defined, many of the document requests at issue appear to be unrelated to those processes, and WRL does not say otherwise.[12]

In any event, this Court has been clear that "the mere presence of a foreign international privacy statute itself does not preclude Nevada courts from ordering foreign parties to comply with Nevada discovery rules." *Las Vegas Sands Corp. v. Eighth Judicial Dist. Court*, 130 Nev. Adv. Op. 61, 331 P.3d 876, 880 (2014). Thus, the District Court's order was not a clear abuse of discretion.[13]

V. CONCLUSION

For the foregoing reasons, the Aruze Parties respectfully request that WRL's Petition be denied. The Aruze Parties further request that the Court expedite its

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[12] WRL did address a different Macanese law, the Macau Personal Data Privacy Act ("MPDPA"), before the District Court. As WRL acknowledges, however, these are different laws – Law 16/2001 is specific to gaming licensees, while the MPDPA applies more generally. Pet. at 23 n.11. WRL makes no argument to this Court about the MPDPA, nor could it because it told the District Court that the MPDPA was "an issue for another day." Vol. XIV PA 3109.

[13] WRL complains that the District Court's order unfairly requires its subsidiary, non-party Wynn Resorts, Macau ("WRM"), to produce documents. Pet. at 24 (stating that the District Court's order "sweeps this third party into the mix"). Again, WRL's position here is inconsistent with its position below. In response to the Aruze Parties' argument that WRM's documents were within WRL's "control" for purposes of NRCP 34, WRL told the District Court that, subject to the MPDPA, WRM's documents "will be produced and/or disclosed by Wynn Resorts." Vol. XIV PA 3109.

ruling to avoid further prejudice to their preparations for upcoming depositions.

DATED this 14th day of October, 2015.

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **REAL PARTIES' ANSWER TO PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 14th day of October, 2015.

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VERIFICATION

I, Robert J. Cassity, declare:

1. I am an attorney with Holland & Hart LLP, counsel of record for Petitioner-Defendant Kazuo Okada.

2. I verify that I have read the foregoing **REAL PARTIES' ANSWER TO PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS**; that the same is true to my own knowledge, except for matters therein stated on information and belief, and as to those matters, I believe them to be true.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of October, 2015, in Clark County, Nevada.

Robert J. Cassity, Esq.

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of Holland & Hart LLP, that in accordance therewith, I caused a copy of **REAL PARTIES' ANSWER TO PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS** to be served as indicated below, on the date and to the addressee(s) shown below:

VIA U.S. MAIL ON October 14, 2015

Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

VIA ELECTRONIC AND U.S. MAIL ON October 14, 2015

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DATED this 14th day of October, 2015

By: _____
An Employee of Holland & Hart

HOLLAND & HART LLP

File No. SD-142

BEFORE THE NEVADA GAMING COMMISSION

AND THE NEVADA GAMING CONTROL BOARD

In the Matter of

UNIVERSAL ENTERTAINMENT CORPORATION (fka Aruze Corp.)

(Registration)

SIXTH REVISED ORDER OF REGISTRATION

THIS MATTER came on regularly for hearing before the Nevada Gaming Control Board ("Board") on January 6, 2016, and before the Nevada Gaming Commission ("Commission") on January 21, 2016, at Las Vegas, Nevada; and

THE BOARD AND COMMISSION having considered all information pertinent hereto;

IT IS HEREBY ORDERED BY THE NEVADA GAMING COMMISSION UPON THE RECOMMENDATION OF THE NEVADA GAMING CONTROL BOARD:

1. THAT the following applications, as amended and supplemented, have been filed:

a. The applications of Universal Entertainment Corporation for (i) approval to pledge the equity securities of Aruze USA, Inc.to Madison Pacific Trust Limited, as Collateral Agent, in conjunction with a note purchase agreement, and (ii) an amendment to its Order of Registration.

2. THAT the Fifth Revised Order of Registration of Universal Entertainment Corporation, dated March 18, 2010, is hereby amended and restated, in its entirety by this Sixth Revised Order of Registration.

3. THAT Universal Entertainment Corporation, a Japanese corporation, is registered as a publicly traded corporation, is found suitable, pursuant to NGC Regulation 16.400, as a controlling shareholder of Wynn Resorts, Limited, and is found suitable as the sole shareholder of Aruze USA, Inc.

4. THAT Universal Entertainment Corporation is licensed as a manufacturer, subject to such conditions or limitations that may be imposed by the Commission.

5. THAT Aruze USA, Inc. is registered as an intermediary company and is found suitable as a shareholder of Wynn Resorts, Limited.

6. THAT Kazuo Okada and Tomohiro Okada are each found suitable, pursuant to NRS 463.643 and NGC Regulation 16.400 as shareholders and controlling shareholders of Universal Entertainment Corporation.

7. THAT Universal Entertainment Corporation is granted approval, pursuant to NRS 463.510(1) and NGC Regulations 15.585.7-2 and 8.030, to pledge the equity securities of Aruze USA, Inc. to Madison Pacific Trust Limited, as Collateral Agent, in conjunction with a Note Purchase Agreement dated August 17, 2015, provided that:

a. This approval is pursuant to the Guarantee and Collateral Agreement with Madison Pacific Trust Limited dated August 17, 2015 ("Pledge Agreement");

b. The prior approval of the Commission must be obtained before any foreclosure or transfer of the possessory security interest in such equity securities (except back to Universal Entertainment Corporation) and before any other resort to the collateral or other enforcement of the security interest in such equity securities may occur; and

c. Pursuant to NGC Regulations 15.510.1-3 and 8.030(4)(a), the stock certificates of Aruze USA, Inc., evidencing said pledge of the equity securities must at all times remain physically at the offices of the Collateral Agent in Hong Kong or within the State of Nevada at a location designated to the Board and must be made available for inspection by agents or employees of the Board immediately upon request during normal business hours.

8. THAT the Pledge Agreement shall not be amended without the prior administrative approval of the Chairman of the Board or his designee. Such administrative approval may not be granted regarding amendments to the Pledge Agreement that increase or change the equity securities that are the subject of the pledge or that change the identity of the Collateral Agent.

9. THAT in addition to the requirements imposed by NRS 463.639(2), Universal Entertainment Corporation shall, pursuant to NRS 463.639(2), provide the Board, within 10 days of receipt, a true copy of all statements regarding ownership of Universal Entertainment Corporation securities filed pursuant to The Securities and Exchange Law of 1948 of Japan, as amended.

10. THAT in addition to the requirements of NGC Regulation 16.330, and pursuant to NGC Regulation 16.330(6), Universal Entertainment Corporation shall provide to the Board the following:

a. A copy of all material documents filed by Universal Entertainment Corporation with the Securities Bureau of Japan's Ministry of Finance, the Japanese Securities Dealers Association ("JSDA"), and any other foreign governmental agency, or any national or regional securities exchange, which regulates the sale of its securities. These material documents include, but are not limited to, filings which are similar in nature and purpose to those filed by a domestic publicly traded corporation with the Securities and Exchange Commission ("SEC"), such as registration statements, proxy statements, information statements, annual and quarterly reports to stockholders, statements reflecting beneficial ownership, or any report involving insider trading, self-dealing, related third party transactions, fraud, market manipulations, short-swing profits, or margin accounts, which such documents may be filed pursuant to The Securities and Exchange Law of 1948 of Japan, as amended, the JSDA exchange standards, or other applicable statutes, regulations, or listing rules;

b. A copy of all press releases issued by Universal Entertainment Corporation or a licensed subsidiary thereof, faxed or e-mailed to the Corporate Securities Section - Investigations Division in Carson City, Nevada, at or before the time of release;

c. Within 10 days of receipt, a true copy of all material documents received by Universal Entertainment Corporation from any national or regional securities exchange. In addition, Universal Entertainment Corporation shall immediately advise the Board of any inquiries or investigations undertaken by any national or regional securities exchange or any other such agency which regulates the sale of Universal Entertainment Corporation's securities;

d. Within 5 calendar days of a request (oral or written) by the Board and/or the Corporate Securities Division, any additional information which may be required to effectively and adequately investigate, monitor, and regulate the business and gaming activities of Universal Entertainment Corporation, and its subsidiaries and any affiliated entities;

e. Within five (5) calendar days of the event, a report of any event that would be reportable by a domestic publicly traded corporation to the SEC on a Form 8-K; and

f. Within five (5) calendar days of notification of such an action, a report of any action filed by any governmental authority against Universal Entertainment Corporation, its subsidiaries or affiliates.

11. THAT if Universal Entertainment Corporation conducts an offering of securities that is a "public offering" pursuant to Article 4 and Chapter II of The Securities and Exchange Law of 1948 of Japan, as amended, and if the securities or the proceeds from the sale thereof are intended to be used for any of the purposes set forth in NGC Regulation 16.110(2), then Universal Entertainment Corporation shall comply with the provisions of NGC Regulations 16.100, 16.110, 16.115, 16.125, 16.130, and 16.140, as applicable.

12. THAT before any proxy or information statement, or similar such document, required pursuant to The Securities and Exchange Law of 1948 of Japan, as amended, or

required by any other statutes, regulations, rules or standards, is sent to the holders of the voting securities of Universal Entertainment Corporation, which includes a discussion of the nature and scope of, and procedures under, the Nevada Gaming Control Act (the "Act") and the Commission Regulations (the "Regulations"), such proxy statement or information statement must be approved by the Board. A proxy statement or information statement is deemed to have been approved if it has been filed with the Board for at least 10 days and the Board has not issued a stop order during such period.

13. THAT Universal Entertainment Corporation shall not issue securities in the form of Bearer Bonds that are convertible into voting securities if as a result of the exercise of all conversions of such bonds, the holders thereof would own greater than 10% of the then outstanding voting securities of Universal Entertainment Corporation without the prior approval of the Commission upon the recommendation of the Board.

14. THAT, pursuant to NRS 463.643(5), Universal Entertainment Corporation shall, at least annually, notify its security holders that any person who, individually or in association with others, has acquired, directly or indirectly, beneficial ownership of more than 5% of any class of Universal Entertainment Corporation's voting securities, such person is required to notify the Board in writing, within 10 days of knowledge of such acquisition. If Universal Entertainment Corporation becomes aware that any person, individually or in association with others, has acquired, directly or indirectly, beneficial ownership of more than 5% of any class of its voting securities, Universal Entertainment Corporation shall notify the Board in writing, within 10 days of knowledge of such acquisition.

15. THAT, pursuant to NRS 463.643(5), any person who, individually or in association with others, has acquired, directly or indirectly, beneficial ownership of more than 10% of any class of voting securities of Universal Entertainment Corporation, must apply to the Commission for a finding of suitability within 30 days after the Chairman of the Board mails written notice.

16. THAT Universal Entertainment Corporation shall, within 6 months of the effective date of this Order of Registration, and at least annually thereafter, notify its security holders of the nature and scope of, and procedures under, the Act and Regulations, in a written form approved by the Chairman of the Board or his designee.

17. THAT within 6 months from the effective date of this Order of Registration, Universal Entertainment Corporation shall take the necessary actions to ensure the ability of the Board and the Commission to enforce the provisions of NGC Regulation 16.440(2).

18. THAT any and all documents (which includes, but is not limited to, securities filings, company reports, letters, memoranda, correspondence, and press releases) filed with the Board or the Commission by Universal Entertainment Corporation, or any of its subsidiaries, shall be in the English language. If original documents required to be filed with the Board are in the Japanese language, such documents shall include a translation into the English language, and upon the request of the Board, certain such documents must be accompanied by a certification by a nationally recognized independent public accounting firm, or other independent person or entity acceptable to the Board, that the English translation is true and correct. If Universal Entertainment Corporation is unable to meet the required deadlines to file the documents, solely as a result of the inability to translate such documents, a written request shall be made to the Deputy Chief of the Investigations Division responsible for the Corporate Securities Section ("Deputy Chief") requesting an extension of time. Such request shall include a reasonable estimate of the time at which the documents will be provided to the Board. The Deputy Chief or his designee shall have the authority to either administratively approve or deny such request.

19. THAT Universal Entertainment Corporation shall establish and maintain a gaming compliance program for the purpose of, at a minimum, performing due diligence, determining the suitability of relationships with other entities and individuals, and to review and ensure compliance by Universal Entertainment Corporation, its subsidiaries and any affiliated

entities, with the Act, as amended, the Regulations, as amended, and the laws and regulations of any other jurisdiction in which Universal Entertainment Corporation, its subsidiaries and any affiliated entities, may conduct gaming operations. The gaming compliance program, and amendments thereto, and the members of the gaming compliance committee, one such member who shall be independent and knowledgeable of the Act and Regulations, shall be administratively reviewed and approved by the Chairman of the Board or his designee. Universal Entertainment Corporation shall amend the gaming compliance program, or any element thereof, and perform such duties as may be requested or assigned by the Chairman of the Board or his designee, relating to a review of activities relevant to the continuing qualifications of Universal Entertainment Corporation under the provisions of the Act and Regulations.

20. THAT Universal Entertainment Corporation shall maintain an officer or key employee who shall be fluent in the English and Japanese languages and have actual authority to bind Universal Entertainment Corporation as the contact between the Board, Universal Entertainment Corporation, and any subsidiaries or affiliates. Such individual shall be administratively approved by the Chairman of the Board or his designee and have the primary responsibility to monitor and report to the Board, Universal Entertainment Corporation's compliance with the Act, Regulations and this Order of Registration.

21. THAT Universal Entertainment Corporation shall fund and maintain with the Board a revolving fund in the amount of $50,000 for the purpose of funding investigative reviews by the Board for compliance with the terms of this Order of Registration and any amendments thereto. Without limiting the foregoing, the Board shall have the right, without notice, to draw upon the funds of said account for the payment of costs and expenses incurred by the Board and its staff in the surveillance, monitoring, and investigative review of all activities of Universal Entertainment Corporation its subsidiaries and any affiliated entities.

22. THAT, pursuant to NRS 463.625, Universal Entertainment Corporation is exempted from compliance with NRS 463.585 through 463.615, inclusive, and shall instead comply with NRS 463.635, 463.637, 463.639(1)(a) and (2), and NRS 463.641 through 463.645, inclusive, and all other provisions of the Act that apply to publicly traded corporations registered with the Commission.

23. THAT Universal Entertainment Corporation is exempted from NGC Regulation 15 and, pursuant to NGC Regulation 16.450, is exempted from NGC Regulation 16.100(1) and (2), and shall instead comply with the provisions of NGC Regulation 16 and all other Regulations that apply to publicly traded corporations registered with the Commission.

24. THAT the Commission hereby expressly finds that: (i) pursuant to NRS 463.627(2), the business activities of Universal Entertainment Corporation are regulated in a manner which will prevent those activities from posing any threat to the control of gaming in the State of Nevada, and (ii) Universal Entertainment Corporation is regulated in a manner which protects its investors and the State of Nevada and that the Japanese regulatory system complies with the factors set forth in NRS 463.633.

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25. THAT the Commission hereby expressly finds that the exemptions and conditions herein are consistent with the State policy set forth in NRS 463.0129 and 463.489.

ENTERED at Las Vegas, Nevada, this 21st day of January 2016.

FOR THE COMMISSION:

Tony Alamo, M.D., Chairman

Submitted by:

Marc Warren, Deputy Chief
Investigations Division
Corporate Securities Section

APPROVED AS TO FORM:

ADAM PAUL LAXALT
ATTORNEY GENERAL

By_____
Deputy Attorney General

CERTIFICATE OF MAILING

I hereby certify that I am employed by the Nevada Gaming Control Board as an Administrative Assistant to Marie Bell, the Executive Secretary of the Nevada Gaming Commission and the Nevada Gaming Control Board, and that on the date shown below I deposited for mailing at Carson City, Nevada, a true copy of the attached **ORDER OF REGISTRATION** addressed to:

UNIVERSAL ENTERTAINMENT CORPORATION (PTC)
C/O SCOTT SCHERER, ESQ
377 SOUTH NEVADA STREET
CARSON CITY NV 89703

I further certify that I forwarded a copy to the Investigations Division and the Records & Research Services department.

DATED: January 30th, 2016.

Dawn Michel

Dawn Michel, Administrative Assistant

NEVADA GAMING COMMISSION
1919 COLLEGE PARKWAY
CARSON CITY, NV 89702
(775) 684-7750

DISTRICT COURT
CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada corporation,
Plaintiff,
vs.
KAZUO OKADA, an individual; ARUZE USA, INC., a Nevada corporation; and UNIVERSAL ENTERTAINMENT CORP., a Japanese corporation,
Defendants.
AND ALL RELATED CLAIMS

Case No. A-12-656710-B
Dept. No. XI

VIDEOTAPED DEPOSITION OF ALVIN V. SHOEMAKER
VOLUME I
(Pages 1 to 234)
Taken at the Law Offices of:
Holland & Hart
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Thursday, January 28, 2016
9:29 a.m.

Reported By: Gale Salerno, RMR, CCR No. 542
Job No. J0274477

APPEARANCES:
For Wynn Resorts, Limited; 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:

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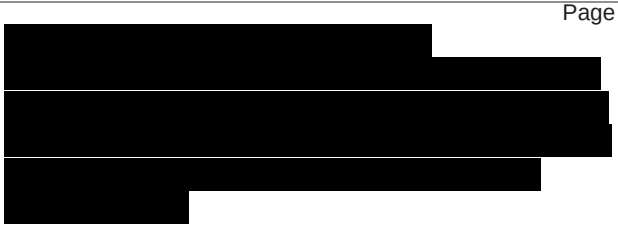
Also Present:
MR. ANDREW JONES, Videographer
KIM SINATRA, ESQUIRE, Wynn Resorts

INDEX

EXHIBITS



Q. When you were in Indian Wells, how far in advance was that of the board meeting? So the board meeting was on a Saturday. When did you get the call in California?

A. I don't know. I'm only a couple hours away, so I just drove over. But I can't tell you exactly when it was. I don't know.

Q. Was it two days in advance or --

A. Well, I would be speculating. But I mean, it was a week in advance? I don't know. But it was not -- it wasn't a month in advance, that I can say.

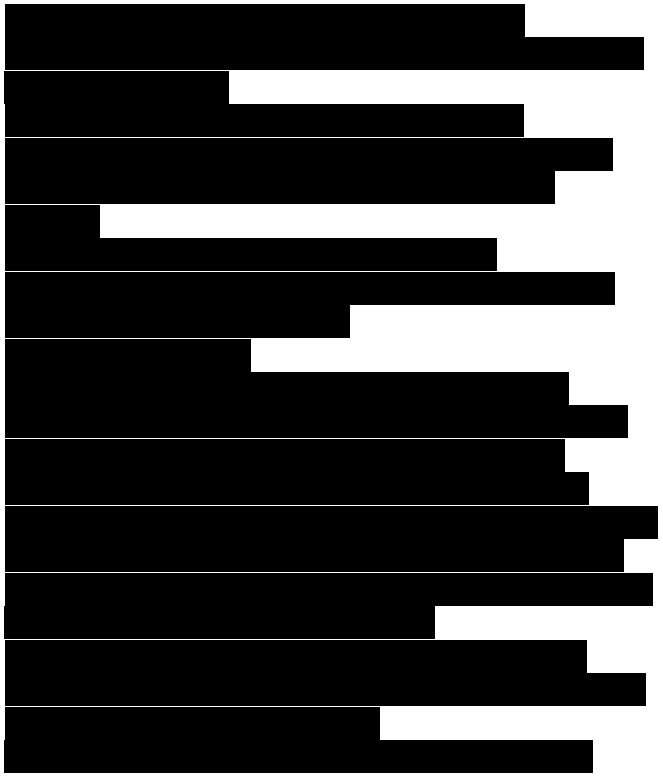
Q. And who informed you about the meeting?

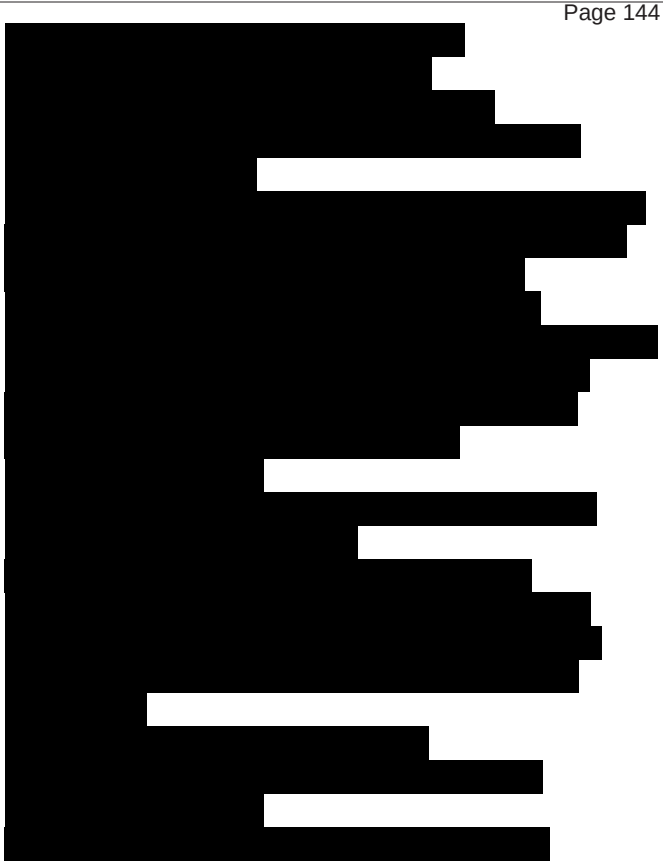
A. It was probably Roxy. That's one of her assistants. Called me and said we have to have the meeting and explained, you know. And it doesn't come unexpected, because we had all this going, so I was not surprised to get it.

Q. So you knew at some point the Freeh investigation would end and you would be hearing from

Mr. Freeh; is that right?

A. That's right.





CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON

* * * * *

I, ALVIN V. SHOEMAKER, deponent herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

_____

ALVIN V. SHOEMAKER
Deponent

CERTIFICATE OF REPORTER

STATE OF NEVADA)
SS:
COUNTY OF CLARK)

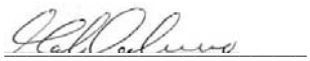
I, GALE SALERNO, a certified court reporter, do hereby certify:

That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said proceedings were taken before me at the time and place therein set forth and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision; and that transcript review was requested pursuant to NRCP 30(e.)

I further certify that I am neither counsel for nor related to any party to said proceedings, and that I am not anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 31st day of January, 2016.



GALE SALERNO, RMR, CCR #542

DISTRICT COURT
CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada corporation,
Plaintiff,
vs.
KAZUO OKADA, an individual; ARUZE USA, INC., a Nevada corporation; and UNIVERSAL ENTERTAINMENT CORP., a Japanese corporation,
Defendants.
AND ALL RELATED CLAIMS

Case No. A-12-656710-B
Dept. No. XI

VIDEOTAPED DEPOSITION OF ROBERT J. MILLER
VOLUME II
(Pages 211 to 437)
Taken at the Law Offices of:
Holland & Hart
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Wednesday, February 10, 2016
9:05 a.m.

Reported By: Gale Salerno, RMR, CCR No. 542
Job No. J0247349

APPEARANCES:
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Also Present:
MR. ANDREW JONES, Videographer
KIM SINATRA, ESQUIRE, Wynn Resorts

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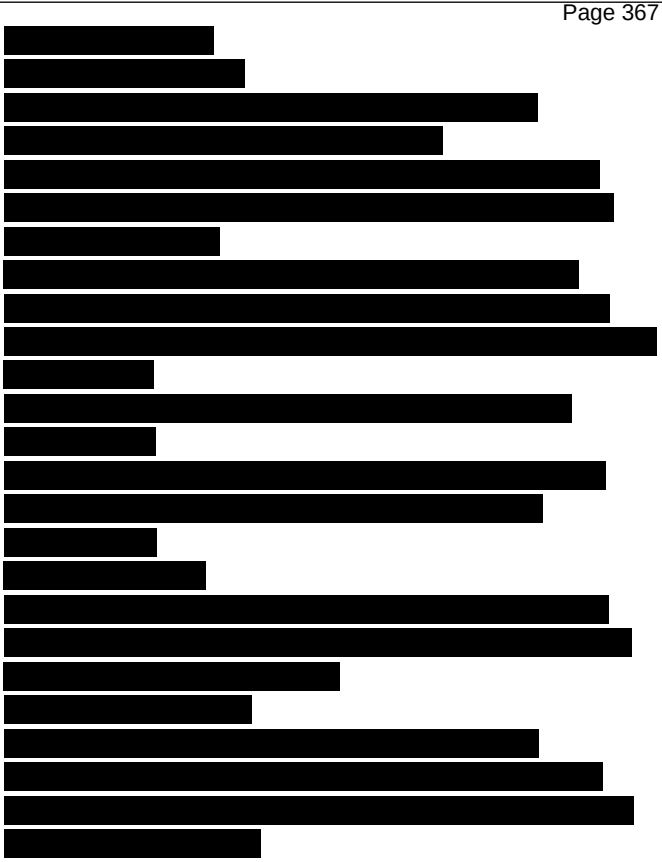

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We have an official record and we have a videotaped record that will show that I think you're actually badgering Governor Miller. He did answer your questions, and we got through it, and hopefully we won't have to do that again.

MR. QUINN: That's what makes ball games.

MR. PISANELLI: That's right.

THE VIDEOGRAPHER: We are off the record at 4:51.

(The videotaped deposition was adjourned at 4:51 p.m.)

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON

* * * * *

I, ROBERT J. MILLER, deponent herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

_____

ROBERT J. MILLER
Deponent
Volume II

CERTIFICATE OF REPORTER

STATE OF NEVADA)
SS:
COUNTY OF CLARK)

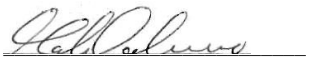
I, GALE SALERNO, a certified court reporter, do hereby certify:

That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said proceedings were taken before me at the time and place therein set forth and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision; and that transcript review was requested pursuant to NRCP 30(e.)

I further certify that I am neither counsel for nor related to any party to said proceedings, and that I am not anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 14th day of February, 2016.



GALE SALERNO, RMR, CCR #542

HIGHLY CONFIDENTIAL FOR 30 DAYS

DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada corporation,

Plaintiff,

vs. CASE NO. A-12-656710-B

DEPT. NO. XI

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

Defendants.

AND ALL RELATED CLAIMS.

VIDEOTAPED DEPOSITION OF

D. BOONE WAYSON

VOLUME I

Tuesday, February 16, 2016

9:13 a.m.

9555 Hillwood Drive, Second Floor

Las Vegas, Nevada

Judith Payne Kelly, RMR, CCR-539

APPEARANCES OF COUNSEL

For Wynn Resorts, Limited; 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:

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Also Present:

KIM SINATRA, Esq., Wynn Resorts
TOM BURTNEY, Videographer

INDEX OF EXAMINATION

INDEX TO EXHIBITS

[redacted]

[redacted]

MR. PISANELLI: Objection. Mischaracterizes the witness's testimony.

[redacted]

MR. PISANELLI: Hold on. Objection again. Mischaracterizes the witness's testimony, vague, and now calling for a legal conclusion.

[redacted]

[redacted]

MR. PISANELLI: Objection. Mischaracterizes the witness's testimony.

[redacted]

[redacted]

MR. PISANELLI: Objection. Calls for a legal conclusion.

[redacted]

MR. PISANELLI: Same objection. Lack of foundation.

[redacted]

MR. PISANELLI: When counsel asks you questions about the board discussions, he's not asking you to disclose what lawyers may have said to you during that meeting, only what you were saying amongst yourselves, to the extent you weren't repeating that legal advice.

[redacted]

25 Q. During your time on The Mirage Resorts or MGM

1 Mirage board, did either company have a similar
2 redemption provision in its articles?
3 MR. PISANELLI: Objection. Lack of
4 foundation.
5 A. I don't remember. I don't know, anyway.
6 Q. (By Mr. Marcus) So you don't recall whether
7 either of those companies had a similar provision?
8 A. No.

11 MR. PISANELLI: Objection. Vague.

[redacted]

Q. And do you know who Brownstein Hyatt is, the law firm?
A. I'm aware that they're a law firm here locally.

Q. When did you become aware that Brownstein Hyatt was doing work for Wynn Resorts in connection with this matter, the Okada matter?
A. Again, what was the name again? David who?
Q. Arrajj.
A. I think I know him from New Jersey. Is that possible?
MR. PISANELLI: You do.
THE WITNESS: Okay. All right. So I know him. I don't know when they started doing work in this matter. I don't recall.

[redacted]

MR. PISANELLI: Objection. Calls for speculation, lack of foundation.

[redacted]

[redacted]

MR. PISANELLI: Objection. Calls for speculation, assumes facts not in evidence.

[redacted]

[redacted]

MR. PISANELLI: Objection. Mischaracterizes the witness's testimony.

[redacted]

MR. PISANELLI: Be careful not to disclose the lawyers' advice.

[redacted]

about how we handle that note and what we do with that note is coming from accountants.

Q. So you're not --

[redacted]

Q. So just so we're clear, is what you're saying, that you have knowledge from inside accountants that you're not answering based on Mr. Pisanelli's instruction? Is that what you're saying?

MR. PISANELLI: Objection. Mischaracterizes the witness's testimony.

A. No. No, that's not what I'm saying.

Q. (By Mr. Marcus) So can you just say that again for me, Mr. Wayson, so I'm clear.

My question was, do you know how investigations by the U.S. government into the Aruze parties affects the fair value of the redemption?

MR. PISANELLI: Objection. Assumes facts not in evidence, vague as to the term "fair value." The same precaution not to disclose attorney or accountant advice.

A. No.

[redacted]

[redacted]

MR. PISANELLI: Objection. Vague, assumes facts not in evidence, lack of foundation.

[redacted]

MR. PISANELLI: Objection.

[redacted]

MR. PISANELLI: Lack of foundation.

[redacted]

MR. PISANELLI: Objection. Lack of foundation.

A. I believe it does, yes.

[redacted]

MR. PISANELLI: Objection. Assumes facts not in evidence.

[redacted]

MR. MARCUS: Okay. So I'm going to pass this witness, Mr. Wayson, to Mr. Zeller. Thank you for your time.

Subject to any future documents that may be produced in this litigation relevant to you, Mr. Wayson, we're going to reserve our rights -- our rights -- excuse me -- to recall you and question you about those. But now, thank you for being here and we appreciate it.

MR. PISANELLI: Brad, did you mark this? I don't remember.

MR. MARCUS: I started -- well, you said I couldn't ask about it, so --

MR. PISANELLI: Okay. I just didn't remember whether it was marked as next in order.

THE VIDEOGRAPHER: This concludes today's deposition of D. Boone Way -- I'm sorry -- D. Boone Wayson. We're off the record at 6:52 p.m.

(Whereupon, the deposition adjourned at 6:52 p.m.)

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Judith Payne Kelly, a Certified Court Reporter licensed by the State of Nevada, do hereby certify that I reported the deposition of D. BOONE WAYSON, commencing on Tuesday, February 16, 2016, at 9:13 a.m.

Prior to being deposed, the witness was duly sworn by me to testify to the truth; and I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes; and that a review of the transcript was requested.

I further certify that I am not a relative, employee or independent contractor of counsel or of any party involved in the proceeding, nor a person financially interested in the proceeding, nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 22nd day of February, 2016.

Judith Payne Kelly

Judith Payne Kelly, RMR, CCR No. 539

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

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

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

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

COUNT X

Negligent Misrepresentation in Connection with Financing for Aruze USA

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

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

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

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

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

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

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

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

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

265. Aruze USA has suffered and continues to suffer economic and non-economic losses because of Wynn Resorts', Mr. Wynn's, and Ms. Sinatra's false statements of fact. The

amount of losses will be determined according to proof at trial, but damages are in an amount in excess of $10,000.

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

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

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

COUNT XI

Civil Conspiracy in Connection with Financing for Aruze USA

(By Aruze USA Against Steve Wynn and Kimmarie Sinatra)

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

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

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

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

273. On information and belief, Ms. Sinatra and Mr. Wynn agreed to persuade Aruze USA to permit Elaine Wynn to transfer her shares without permitting Aruze USA to transfer or

pledge any shares to anyone outside the control of Mr. Wynn. In fact, upon receiving an email from Aruze USA's representative on July 13, 2011 permitting the immediate transfer of Elaine Wynn's shares, Ms. Sinatra expressed happiness for Mr. Wynn, stating, "Thank you very much for this. I'm sure Mr. Wynn will be happy about the clarification."

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

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

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

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

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

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

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

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

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

COUNT XII

Promissory Estoppel in Connection with Financing for Aruze USA

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

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

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

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

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

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

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

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

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

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

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

COUNT XIII

Fraud/Fraud in the Inducement of the Stockholders Agreement

(By Aruze USA Against Steve Wynn)

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

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

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

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

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

298. Mr. Wynn intentionally made materially false and/or misleading representations to Aruze USA regarding Wynn Resorts' stockholder obligations under the Articles of Incorporation to induce Aruze USA to enter into the Stockholders Agreement. The Stockholders Agreement expressly provided that Aruze USA would have the sole power of disposition of its stock in Wynn Resorts and there were to be no other provisions regarding the disposition of Aruze USA's stock, voluntarily or involuntary. Mr. Wynn misrepresented and/or failed to disclose that Wynn

Resorts' amended Articles of Incorporation would seek to impose substantial financial risk on Aruze USA's shares of Wynn Resorts stock by providing Wynn Resorts' Board – which was controlled by Mr. Wynn – purported discretion to redeem Aruze USA's stock on potentially onerous terms.

299. The misrepresentations and concealment of facts alleged herein were material.

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

301. Wynn Resorts and Mr. Wynn made the misrepresentations and concealed facts as set forth herein with the intent to induce Aruze USA to enter into the Stockholder Agreement. Furthermore, Mr. Wynn made the misrepresentations and concealment of facts alleged herein with the intent of gaining his own financial advantage to the disadvantage of Aruze USA.

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

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

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

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

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

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

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

COUNT XIV

Negligent Misrepresentation in Connection with the Stockholders Agreement

(By Aruze USA Against Steve Wynn)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT XV

Breach of Contract in Connection with the Stockholders Agreement

(By Aruze USA Against Steve Wynn)

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

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

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

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

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

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

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

332. Further, the breaches by Mr. Wynn have frustrated the entire purpose of the Stockholders Agreement, and have instead served to further entrench Mr. Wynn's control over the Company to the detriment of the other parties to the Agreement.

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

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

COUNT XVI

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

(By Aruze USA Against Steve Wynn)

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

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

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

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

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

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

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

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

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

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

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

COUNT XVII

Breach of Fiduciary Duty

(By Aruze USA Against Steve Wynn)

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

347. In the alternative, to the extent the Court finds that the redemption provision in the Articles of Incorporation applies to Aruze USA's shares, Aruze USA asserts the claim of breach

of fiduciary duty against Steve Wynn. Aruze USA thus brings this claim in the alternative to Aruze USA's claims that assert the purported redemption by Wynn Resorts is void *ab initio*.

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

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

350. Mr. Wynn's act of unilaterally amending the Articles of Incorporation demonstrated that Mr. Wynn possessed a conflict of interest in his dual roles of sole shareholder in Wynn Resorts and attorney-in-fact and agent of Aruze USA. If applied to Aruze USA, the redemption provision would violate the Stockholders Agreement and impose substantial financial risk on Aruze USA's shares of Wynn Resorts stock by providing Wynn Resorts' Board – which was controlled by Mr. Wynn – purported discretion to redeem Aruze USA's stock on potentially onerous terms. Despite the conflict of interest, Mr. Wynn included the redemption provision in the Articles of Incorporation to the detriment of Aruze USA in breach of his fiduciary duties as attorney-in-fact to Aruze USA. Further, as Aruze USA's attorney-in-fact, Mr. Wynn had a duty to inform Aruze USA that the redemption provision could be used against Aruze USA. In violation of this duty, Mr. Wynn not only failed to inform Aruze USA of this risk, but, on information and belief, his attorneys represented to Aruze USA's attorneys that such a redemption provision would ***not*** apply to Aruze USA's shares.

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

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

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

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

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

COUNT XVIII

Tortious Interference of Contract

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

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

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

358. On or about February 18, 2012, Wynn Resorts purportedly redeemed Aruze USA's Wynn Resort shares for 30% less than the market value of the shares as measured by the closing

price of Wynn Resort's stock on the Friday prior to the Saturday Board meeting. Wynn Resorts announced that it arrived at the 30% discounted value because of the existence of the Stockholders Agreement.

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

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

361. To the extent the Court finds that the redemption of Aruze USA's stock actually occurred, Wynn Resorts, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Boone Wayson, and Allan Zeman intentionally and tortiously interfered with contractual relations, which resulted in injury to Aruze USA.

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

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

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

COUNT XIX

Unconscionability/Reformation of Promissory Note

(By Aruze USA Against Wynn Resorts)

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

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

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

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

369. The promissory note is unconscionably vague, ambiguous, and oppressive.

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

371. Wynn Resorts received a grossly one-sided windfall by forcibly redeeming $2.9 billion of securities at a deep discount, transforming equity into a 2 percent per annum debt instrument that Aruze USA may not transfer, retaining the ability to issue additional debt at any

time and provide any new lender priority rights above Aruze USA's note, and removing voting and other rights from Aruze USA.

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

PRAYER FOR RELIEF

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

a. For general damages in an amount in excess of $10,000;

b. For consequential damages;

c. For treble and statutory damages;

d. For punitive damages three times the amount of compensatory damages awarded;

e. For disgorgement of profits;

f. For constructive trust and unjust enrichment;

g. For preliminary and/or permanent injunctive relief;

h. For declaratory relief;

i. For reformation of the promissory note;

j. For costs and expenses of this action, prejudgment and post-judgment interest, and reasonable attorneys' fees incurred herein; and

k. Any and all such other and further equitable and legal relief as this Court deems just and proper.

JURY DEMAND

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

Dated: November 26, 2013

LIONEL SAWYER & COLLINS
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CHARLES H. McCREA, JR. (SBN 104)
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By _____
Charles H. McCrea, Jr.

Attorneys for Defendants and Counterclaimants
ARUZE USA, INC. and UNIVERSAL
ENTERTAINMENT CORP.

CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), I hereby certify that I am an employee of LIONEL SAWYER & COLLINS and that on this 26th day of November, 2013, I caused documents entitled FOURTH AMENDED COUNTERCLAIM OF ARUZE USA, INC. AND UNIVERSAL ENTERTAINMENT CORP. to be served as follows:

[ ] by depositing same for mailing in the United States Mail, in a sealed envelope addressed to:

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

[ ] to be hand delivered to:

and/or

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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 OPPOSITION TO THE OKADA PARTIES' MOTION TO COMPEL SUPPLEMENTAL RESPONSES TO THEIR SECOND AND THIRD SETS OF REQUESTS FOR PRODUCTION

Hearing Date: June 4, 2015

Hearing Time: 8:30 a.m.

Wynn Resorts, Limited ("Wynn Resorts" or the "Company"), through its undersigned counsel, respectfully submits this Opposition to the Motion to Compel (the "Motion") filed by Kazuo Okada, Universal Entertainment Corp. ("Universal"), and Aruze USA, Inc. ("Aruze") (collectively, the "Okada Parties").

I. PRELIMINARY STATEMENT

The Okada Parties are desperate to shift the focus of this lawsuit away from their own serious misconduct in bribing Philippine gaming officials to pave the way for Kazuo Okada's billion-dollar casino-resort project in that country. The Okada Parties know that the evidence of their wrongdoing is overwhelming and that it was more than sufficient to support the decision made by the Wynn Resorts board of directors in February 2012 to deem the Okada Parties "unsuitable persons" under the Wynn Resorts' Articles of Incorporation and redeem the shares controlled by Mr. Okada. So rather than making any serious attempt to rebut the findings in the report prepared for the board by former FBI director Louis Freeh or otherwise challenge the board's decision on the merits, the Okada Parties have set out to inject confusion and delay into these proceedings—and to increase the burden and expense for Wynn Resorts—by serving hundreds upon hundreds of overbroad and often irrelevant document demands, addressing a host of issues that do not bear even the faintest connection to the board's unsuitability determination or the share redemption. At issue on this motion to compel are 80 of the Okada Parties' improper demands.

As the central focus of the Motion, the Okada Parties contend that they are entitled to virtually unlimited discovery into Wynn Resorts' business activities in Macau, stretching all the way back to the formation of Wynn Resorts (Macau), S.A. ("Wynn Macau") almost 15 years ago. But the *only* relevance of Macau to this lawsuit is the fact that Mr. Okada and his associates chose to bribe Philippine gaming officials by secretly providing them with lavish accommodations and luxurious gifts at the Wynn Macau in September 2010, and Wynn Resorts has long-since agreed to produce its non-privileged documents relating to that clandestine visit. Except in this very narrow respect, Macau is irrelevant to this lawsuit, and the Okada Parties'

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demand for the production of an additional 42 categories of documents related to Wynn Resorts' Macau business is entirely unwarranted.

In attempting to describe how these additional documents are supposedly relevant, the Okada Parties claim that certain Macau-related transactions that Wynn Resorts disclosed in its public SEC filings were "suspicious" and "potentially" indicative of "corrupt activities in Macau," and argue that *if* these transactions were indeed improper, the board of directors "may have feared that Mr. Okada" would "rais[e] questions" about the Company's "dealings in Macau." (Mot. at 10, 12, 14.) From this, the Okada Parties speculate that the board of directors might have "forced Mr. Okada out to protect themselves from Mr. Okada's inquiries," and "not because Mr. Okada was actually unsuitable." (*Id.* at 11.)

This chain of conjecture breaks apart at every link. To begin with, it is beyond dispute that Wynn Resorts developed concerns about Mr. Okada's suitability and began investigating his business activities in the Philippines in 2010, several months *before* Mr. Okada first raised any concerns about Macau. (*See* pp 18-19, *infra*.) The timeline thus belies the Okada Parties' speculation about a possible ulterior motive for the redemption. Simply put, the claim that Mr. Okada objected to the board's pledge to donate $135 million to the University of Macau in April 2011, and only then did Wynn Resorts scramble to manufacture concerns about his suitability, is pure fiction.

Beyond this, the Okada Parties' proclaimed suspicions about Wynn Resorts' activities in Macau are entirely unfounded. Although the Macau transactions that the Okada Parties identify generally occurred many years ago and have been matters of public record for quite some time, not one of the regulatory or investigative bodies that oversees Wynn Resorts has ever found that the Company engaged in misconduct in Macau: not the Nevada Gaming Control Board; not the Securities and Exchange Commission; and not the Department of Justice.

Tellingly, before this litigation was filed, Mr. Okada himself never raised concerns about any of the transactions discussed in the Motion (apart from the Macau pledge). While the Okada Parties now argue that the Macau transactions were "questionable" on their face (Mot. at 11), they concede that Mr. Okada, a director at all relevant times, never questioned the propriety of these

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transactions prior to the redemption. Mr. Okada's silence at the time further refutes the Okada Parties' speculation that the board might have been worried that Mr. Okada would "continue pulling the thread" in Macau (Mot. at 8); not only was there nothing nefarious to discover in Macau, but Mr. Okada had never demonstrated any interest in looking there in the first place. For all of these reasons, and the further reasons discussed below, the Okada Parties are not entitled to *any* of the additional Macau-related discovery that they seek.

Nor are the Okada Parties entitled to further discovery on any of the other issues raised in their Motion. Most notably, the contention that Wynn Resorts "ignored multiple red flags as to the suitability of various individuals other than Mr. Okada" (Mot. at 9), and that therefore the Okada Parties should be entitled to broad discovery into suitability investigations focused on *other* persons, is entirely without merit. Not only is the underlying accusation unfounded—indeed, it is principally based on the Okada Parties' baseless speculation about the Macau transactions discussed above—but the requested documents would be irrelevant in any event. The issues to be tried are focused on the Okada Parties and their misconduct; allegations about other parties, other transactions, and other compliance matters have nothing to do with this case.

What remains of the Motion are a jumble of irrelevant discovery demands that serve no purpose other than to distract from the critical issue to be adjudicated—namely, the board's business judgment in finding the Okada Parties to be "unsuitable persons" under its Articles and determining to redeem all of the shares controlled by Mr. Okada. The Okada Parties' motion should be denied as to these requests as well for the reasons discussed below.

II. BACKGROUND

To date, the Okada Parties have served three sets of voluminous document requests on Wynn Resorts, containing a total of 315 individual requests, and they recently supplemented their discovery demands by serving similarly broad and voluminous document demands on all twelve of the individual counterdefendants. Wynn Resorts has previously committed to producing documents in response to all or part of 192 of the Okada Parties' individual requests.

Now that the Court has resolved the parties' issues relating to the appropriate protocol for technology-assisted review, Wynn Resorts is moving forward with its document review, which

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has involved the collection of millions of records—located both in the United States and Macau—at considerable expense to the Company. Wynn Resorts has committed to produce its responsive and discoverable documents in rolling productions, with a targeted end date of August 31, 2015.

Nonetheless, the Okada Parties are dissatisfied with Wynn Resorts' document discovery commitments. By this Motion, the Okada Parties challenge Wynn Resorts' objections to 80 of their individual requests, which requests are spread across their second and third sets of document demands (served on August 8 and September 19, 2014, respectively).

The individual requests at issue concern irrelevant matters, are exceedingly broad in scope, and generally go back 15 years to March 1, 2000. For example, Request No. 89 seeks "All documents concerning Stephen A. Wynn, Wynn Macau, or WRL's obtaining the Macau land interest and license, including but not limited to any Communications with consultants, finders, bankers, lobbyists, middlemen, or intermediaries of any type." (Mot. Ex. 2. at Ex. Page 25.)[1] Request No. 235, meanwhile, seeks "All Documents concerning any instance where Stephen A. Wynn and/or WRL were accused by former business partners of prematurely or improperly terminating a business relationship related to the Development of Casino Resorts, excluding the present matter." (Mot. Ex. 2 at Ex. Page 52.) And Request No. 240 seeks "All Documents concerning any Investigation conducted by WRL's Gaming Compliance Committee pursuant to the requirement . . . that it 'investigate senior officers, directors, and key employees to protect WRL from being associated [with] any unsuitable persons.'" (Mot. Ex. 2 at Ex. Page 53.)

Although the parties have met and conferred about the requests at issue on multiple occasions, the Okada Parties have demonstrated no willingness to narrow their demands in any meaningful way. Evidently the Okada Parties' strategic approach to discovery, and to this litigation in general, will be to introduce as much burden, expense, delay, and confusion to the proceedings as possible—as the Motion itself clearly demonstrates.

[1] Citations to "Mot. Ex." refer to exhibits to the Okada Parties' Motion to Compel.

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III. ARGUMENT

A. Governing Law.

Nevada's discovery rules may be permissive, but they are not limitless. Indeed, it has long been the law of Nevada that discovery cannot proceed unfettered and unmoored from the relevant issues in the case. *See, e.g.*, *Schlatter* v. *Eighth Judicial Dist. Court*, 93 Nev. 189, 192, 561 P.2d 1342, 1343-44 (1977) (holding that "carte blanche discovery . . . without regard to relevancy" exceeds the jurisdiction of the district court). Among other checks on discovery, litigants are not permitted to subject their adversaries to overly broad document requests in the hope that they *might* lead to admissible evidence. *See, e.g.*, *Karol* v. *Med-Trans*, 2012 WL 2339333, at *2 (E.D. Cal. June 19, 2012) (party cannot "explore matter which does not presently appear germane on the theory that it might conceivably become so") (quoting *Food Lion* v. *United Food & Comm'l Workers Union*, 103 F.3d 1007, 1012–1013 (D.C. Cir. 1997)).

Consistent with these familiar principles, courts around the country have routinely struck down as "not permissible" discovery demands "based on pure speculation and conjecture." *E.g.*, *Bristol* v. *Trudon*, 2014 WL 1390808, at *4 (D. Conn. Apr. 9, 2014). "[I]f the inquiry is based on the party's mere suspicion or speculation," then the "requested information is not relevant to the 'subject matter involved' in the pending action." *Micro Motion, Inc.* v. *Kane Steel Co.*, 894 F.2d 1318, 1326 (Fed. Cir. 1990). Accordingly, a document demand "fall[s] outside the permissible bounds of discovery" when it is made solely "on the basis that [it] *might* substantiate a theory." *In re Alliance Pharm. Sec. Litig.*, 1995 WL 51189, at *1 (S.D.N.Y. Feb. 9, 1995) (emphasis in original).

B. Wynn Resorts Properly Objected to the Okada Parties' Requests Seeking Additional Macau Documents.

1. The additional Macau documents are not relevant.

None of the categories of additional Macau documents that the Okada Parties seek in the Motion are "relevant to the subject matter involved in the pending action"; these documents, therefore, are not discoverable. NRCP 26(b)(1). To the extent that any Macau-related documents are even marginally relevant to this litigation, Wynn Resorts has already agreed to produce them.

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Most notably, the Company has agreed to produce non-privileged documents related to the visit by senior PAGCOR officials to the Wynn Macau in September 2010 that was arranged in secret by the Okada Parties;[2] as well as documents related to Wynn Macau's $135 million charitable donation to the University of Macau, including documents concerning Mr. Okada's vote against the donation.[3]

The Okada Parties now seek an order compelling the production of four additional categories of Macau-related documents: (i) "documents relating to the formation of WRM and its acquisition of the original gaming license," a license that was granted in 2002 (Mot. at 11 & n.6 (identifying Request Nos. 89, 114, 123-24, 126, and 249)); (ii) "all documents relating to the Cotai land concession," a concession that Wynn Resorts applied for in 2005 (*id.* at 11 & n.9 (identifying Request Nos. 114, 118, 120, 122, 125, 127-49, 152, 166-67, 205-06, 249-50, 259-266, and 269-77)); (iii) documents related to Wynn Macau's sale of a subconcession in 2006 (*id.* at 14-15 & n.15 (identifying Request Nos. 114, 118-20, 122, 125, and 278)); and (iv) "documents relating to any investigations by governing agencies, or communications between WRL/WRM and government agencies, relating to any of the foregoing matters in Macau," (*id.* at 15 & n.16 (identifying Request Nos. 114, 118, 124, 125, 139, 142-43, 152, 249, 250, and 269)).

a. The baseless ulterior motive theory of relevance.

According to the Okada Parties, each of these categories of additional Macau documents is relevant for the same principal reason. Their theory is that years before the February 2012 redemption, Wynn Resorts entered into certain transactions in Macau that were "suspicious" or "questionable," and that the board of directors "may have feared that Mr. Okada . . . would have raised questions" about these transactions if they had not redeemed the shares he controlled. (Mot. at 5, 11, 14.) The directors, they speculate, may have "forced Mr. Okada out to protect

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[2] *See, e.g.*, Ex. 1, Wynn Resorts, Limited's Responses and Objections to Defendants' First Request for Production of Documents, Response to Request No. 15.

[3] *See, e.g.*, Mot. Ex. 2 at Ex. Pages 35-39; Mot. Ex. 4 at 167-68, 170-83 (Responses to Request Nos. 150-51, 153-65); Mot. Ex. 5 at Ex. Pages 273-74 (Responses to Request No. 257); Ex. 1 (Response to Request Nos. 4, 5.)

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themselves from [his] inquiries into the questionable payments in Macau, not because [he] was actually unsuitable." (*Id.* at 11.) For this reason, the Okada Parties claim that they are entitled to broad discovery into all of Wynn Resorts' business activities in Macau going back to the early 2000s, so that they can determine whether the redemption "was actually a self-serving effort to prevent [Mr. Okada] from blowing the whistle on the Wynn Parties' potentially corrupt activities." (*Id.* at 10.)

This argument fails for many reasons. *First*, the timeline of events eviscerates the ulterior motive theory upon which the Okada Parties' claim of relevance depends. According to their telling, there was a "breakdown of the relationship . . . in April 2011, when Mr. Okada challenged Mr. Wynn" about the proposed charitable donation to the University of Macau, and "the entire effort to force Mr. Okada out of the company was a mere pretext," "designed . . . to prevent further inquiry into Mr. Wynn's suspicious business dealings in Macau." (Mot. at 5, 7.) Not so. By the time Mr. Okada objected to the Macau pledge in April 2011, the board of directors had already received reports on two investigations that were prompted by suitability concerns arising from Mr. Okada's business activities in the Philippines. Management conducted the first investigation and presented its report to the board, including Mr. Okada, in July 2010 (Ex. 2 (July 2010 report)). The second investigation was conducted by an outside firm, The Arkin Group, and management presented the findings of that report to the board, including Mr. Okada, in February 2011 (Ex. 3 (February 2011 report)).

The fact that the supposedly "suspicious" Macau transactions predated these investigations is beside the point. As discussed below, Wynn Resorts publicly disclosed the particulars of these Macau transactions in its public SEC filings, and no one—and particularly not Mr. Okada—raised any questions or concerns at the time. Thus, it was only after the board of directors brought its concerns about Mr. Okada's suitability to the attention of Mr. Okada that Mr. Okada first raised a concern about the Macau pledge, and not the other way around.

Second, the Okada Parties' supposition that Wynn Resorts might have been engaged in "serious wrongdoing" in Macau (Mot. at 4) amounts to nothing more than wild speculation and is indeed utterly baseless. Wynn Resorts operates in the heavily regulated gaming industry, and the

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Company is therefore subject to constant oversight from governmental agencies around the world. Wynn Resorts is also a publicly traded corporation that is required to provide its stockholders with a wealth of information in public SEC filings, and a number of these filings specifically discussed the Macau transactions that the Okada Parties now characterize as "suspicious." And yet, none of the governmental entities that regulate Wynn Resorts and oversee its conduct have found that the Company acted improperly in connection with any of the transactions discussed in the Motion.

To the contrary, when, at Mr. Okada's urging, the Nevada Gaming Control Board and the SEC investigated the $135 million charitable pledge to the University of Macau, each closed their investigation without any finding of wrongdoing by Wynn Resorts or Wynn Macau. (*See* Ex. 4 (Wynn Resorts 07/08/2013 Form 8-K) (SEC investigation); Ex. 5 (Wynn Resorts 02/04/13 Schedule 14A) (NGCB investigation).) The outcomes of these investigations demonstrate the falsity of the Okada Parties' speculation that the Wynn Resorts board was likely "desperate . . . to stop Mr. Okada's inquiry into the donation." (Mot. at 12.) The Macau pledge has been found to have been entirely proper.

The Okada Parties' attacks on the other Macau transactions discussed in the Motion are unsupported and unsupportable as well:

Valvino Reimbursement. The first allegedly "improper payment[]" (Mot. at 10) cited by the Okada Parties is a 2001 expense reimbursement from Wynn Resorts' predecessor entity, Valvino Lamore, LLC ("Valvino"), to an individual named Francis So. The Okada Parties claim that Mr. So was reimbursed "tens of thousands of dollars in expenses incurred in entertaining an official delegation of the Macau Government" in San Francisco (*id.*), but the document upon which they rely contradicts that claim. In fact, Mr. So's expense report shows that out of the total amount that he was reimbursed by Valvino ($12,516.15), only $1750.00 was allocated to "entertaining" government officials, whom Mr. So hosted at a lunch and then a dinner. (Mot. Ex. 33 at Ex. Pages 597, 602.) The balance of the reimbursement to Mr. So related to his own personal airfare from Hong Kong and six nights of lodging in San Francisco. (Mot. Ex. 33

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at Ex. Page 598.) The Okada Parties' claim that "tens of thousands of dollars" were spent on government officials from Macau and then reimbursed to Mr. So is thus demonstrably false.

Minority Exchange. The Okada Parties also question the propriety of certain transactions in which a group of Macau residents and related entities, led by Wong Chi Seng,[4] exchanged minority interests in two Macau entities—including the operating subsidiary, Wynn Macau—for a total of 1,333,333 shares of Wynn Resorts common stock that were promptly sold in a public offering. (Mot. at 10; Mot. Ex. 13 at Ex. Pages 412-13.) Once again, the Okada Parties resort to speculation and innuendo to try to manufacture doubt about the legitimacy of these transactions. They state, without explanation or support, that these Macau investors were "linked to Edmund Ho," and that any gains on the investments "likely benefitt[ed] senior Macau government officials." (Mot. at 10.) But there was nothing untoward about the original investments in 2002 or the subsequent exchange transactions in 2004, as Wynn Resorts' public disclosures, including the SEC filings submitted with the Motion, make clear.

Indeed, Mr. Wong's investment in Wynn Macau was *required* under applicable Macau law. As Wynn Resorts publicly disclosed in connection with its 2002 initial public offering, Macau law provides that foreign gaming operators must "have an executive director who is a Macau resident and holds at least 10% of the voting shares and capital" of the company. (Ex. 6, Wynn Resorts 8/20/2002 Form S-1/A at 115.) Both before and after the minority exchange transaction was consummated, Mr. Wong satisfied both prongs of this requirement. (*See id.* at 96; Mot. Ex. 13 at Ex. Page 413.)

Wynn Resorts was also transparent about its reason for entering into the minority exchange transactions. As the Company disclosed publicly at the time, apart from Mr. Wong's retained right to "nominal preferential annual dividends and capital distributions," the consequence of the exchange transactions was that "Wynn Resorts [would] indirectly own all other economic interests" in Wynn Macau's operating subsidiary. (Ex. 7, WRL 9/2/2004

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[4] The Okada Parties dub the Macau residents who invested in the Macau entities the "Kwan Investors," but that is not the most appropriate terminology. In fact, Mr. Wong's investment in the Macau entities was significantly greater than Mr. Kwan's investment, as demonstrated by their relative share allocations in the exchange. (*See* Mot. Ex. 13 at Ex. Pages 412-13.)

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Form 8-K.) While the Okada Parties attempt to portray the exchange transactions as a giveaway to the Macau investors, the fact is that Wynn Resorts' decision to buy out Mr. Wong's 10% stake in Wynn Macau in exchange for $50 million worth of stock has proven incredibly profitable for the Company and its stockholders: Today, Mr. Wong's 10% economic interest in Wynn Macau would be worth many multiples of the price that the Company paid to acquire that interest in 2006.

Tien Chiao Buyout. In February 2006, Wynn Resorts disclosed that an affiliate had submitted an application to the Macau government for a land concession in the Cotai area of Macau, which contemplated the development of "three casino resort hotels and a non-gaming hotel/residential property known as a Taiwanese Guest House." (Ex. 8, WRL 2/24/2006 Form 8-K.) Thereafter, in August 2008, Wynn Resorts disclosed that its Macau affiliates had "entered into an agreement with an unrelated third party to make a one-time payment in the amount of US$50 million in consideration of the unrelated third party's relinquishment of certain rights with respect to a portion of . . . [the] land in the Cotai area of Macau," which payment was to be made within 15 days of the official gazetting of Wynn Resorts' rights to the land. (Ex. 9, Wynn Resorts 8/1/2008 Form 8-K.) Wynn Resorts' public filings later identified the "unrelated third party" as Tien Chiao Entertainment and Investment Company Limited ("Tien Chiao"). (Ex. 10, Wynn Resorts 9/11/2009 Form 8-K at 55).[5]

Wynn Resorts' payment obligation to Tien Chiao has thus been a matter of public knowledge for more than six years, and during that time, no government entity has accused the Company of any wrongdoing with respect to the buyout. That is not the least bit surprising, as the buyout was properly documented with appropriate anti-corruption representations and promptly disclosed to the investing public. While it is true that the Macau Commission Against

[5] Wynn Resorts' land rights in Cotai were published in the official gazette on May 2, 2012, following which the Company timely satisfied its payment obligation to Tien Chiao. (Ex. 11, Wynn Resorts 5/2/2012 Form 8-K.)

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Corruption is in the process of investigating the Tien Chiao transaction, Wynn Resorts is cooperating with that investigation and does not anticipate any adverse findings.[6]

Macau Subconcession. The Okada Parties also attempt to raise questions about the Company's sale, in 2006, of a Macau subconcession to Publishing & Broadcasting, Ltd. for $900 million (Mot. at 14-15; *see* Mot. Ex. 15 at Ex. Page 446), but their theory does not make sense. As the Okada Parties acknowledge, the subconcession payment benefitted Wynn Resorts and its public stockholders—*including Mr. Okada himself*—not the Macau government or anyone allegedly connected to the Macau government. There thus can be no question of bribery. The Okada Parties instead question the "exorbitant price" that the Company received for the subconcession, but they make no effort to explain why the Wynn Resorts board would have been remotely worried that Mr. Okada would "raise[] questions" about the price that the Company received. (Mot. at 14.) Quite obviously, Wynn Resorts was able to secure a higher price for its subconcession than its competitors did for theirs by waiting to sell until the Company's subconcession was the only one available.

In sum, there is no legitimate foundation for the Okada Parties' professed suspicions about the Valvino reimbursement, the minority exchange, the Tien Chiao buyout, or the Macau subconcession—only "speculation and conjecture." *Bristol*, 2014 WL 1390808, at *4.

Third, the Okada Parties have made no showing that any of the directors who determined the Okada Parties to be unsuitable persons and authorized the share redemption had reason to believe that any of the Macau transactions described above were somehow improper. But in order for their ulterior motive theory to have any credence whatsoever, that is exactly what the

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[6] The *Wall Street Journal* has reported that this review of the Tien Chiao transaction was "prompted by statements made on a . . . website run by the International Union of Operating Engineers." (Mot. Ex. 29 at Ex. Page 560-61), an organization driven entirely by its own self-interest. According to the IUOE's "Cotai Land Deal" website, "[t]he IUOE's local union affiliate in Las Vegas . . . is supporting an organizing drive by employees of Wynn and Encore casinos, both of which are owned by Wynn Resorts, the parent company of Wynn Macau." (*See* Ex. 12 (screen capture from www.cotailanddeal.com/about.html).) This is not the first time that the IUOE has operated a purported "research website" to advance a hidden agenda: During 2012, the IUOE launched and then promptly shuttered a website called "CasinoLeaks-Macau.com," which had "promised to release information on organized crime in Macau's gaming industry." (Ex. 13.) One target of the prior IUOE website was MGM Resorts, which issued a statement when it closed criticizing the site's "misrepresentation of the truth." (*Id.*)

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Okada Parties would need to prove. Absent director knowledge that the Company had engaged in wrongdoing (and to be clear, Wynn Resorts vigorously disputes that any wrongdoing occurred), there would have been no reason for the board to worry that Mr. Okada might ask questions about Macau.

At all relevant times, a substantial majority of the Company's directors were outside directors with no day-to-day operational responsibility. Accordingly, there is no reason to believe that any wrongdoing in Macau would have been apparent to Wynn Resorts' U.S.-based board. And while the Okada Parties argue that these Macau transactions should have raised "red flags" (Mot. at 10), that argument is sharply contradicted by Mr. Okada's own actions at the time. The Macau transactions were publicly disclosed and well-known to the board of directors—*including Mr. Okada himself*—but Mr. Okada never raised a question about any of them until very recently. That fact alone speaks volumes about the merit, or lack thereof, of the Okada Parties' claim that Wynn Resorts might have had something to hide in Macau.

Finally, even assuming, *arguendo*, that the board of directors was concerned about the possibility that Mr. Okada would continue "pulling the thread" in Macau (Mot. 8), there has been no showing that redeeming the shares the Mr. Okada controlled could prevent him from doing so. Indeed, history shows that the redemption and subsequent removal of Mr. Okada from the board has had the opposite effect: Ever since the Company took these steps to terminate its associations with Mr. Okada, the Okada Parties have publicly and aggressively attacked Wynn Resorts by trying to manufacture concerns about Macau transactions that happened many years ago, and while Mr. Okada was a director—without any concerns having been raised by him prior to the redemption.[7]

b. The baseless valuation claim theory of relevance

The Okada Parties advance a second relevance theory as to a subset of the additional Macau documents that they have demanded—namely, "documents relating to the Cotai land concession." (Mot. at 13.) According to the Motion, the Okada Parties will seek to prove that, at

[7] For all of these same reasons, the Okada Parties are not entitled to discovery of Wynn Resorts' communications with government entities about any of the supposedly "suspicious" Macau transactions. (*See* Mot. at 15.)

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the time of the share redemption, Wynn Resorts "knew, but had not disclosed, that the valuable Cotai land concession was about to be finalized and approved," and therefore the redemption price failed to reflect the "fair value" of the Company's shares at the time. (*Id.*) Once again, this theory of relevance is unfounded and thus cannot support the Okada Parties' broad discovery demands.

Months before the share redemption, on September 11, 2011, Wynn Resorts publicly disclosed that it had received approval for the Cotai land concession. (Ex. 14, Wynn Resorts 9/11/2011 Form 8-K), and that news had therefore been factored into the Company's public share price by the time the board of directors determined the "fair value" of the shares to be redeemed. That very same disclosure also made clear that an additional, confirmatory action was required with respect to the concession award—namely, the Macau government needed to publicly register the concession in the official gazette. (*Id.*) This "gazetting" did not occur until May 2, 2012, and when it did, Wynn Resorts immediately disclosed the development. (Ex. 11, Wynn Resorts 5/2/2012 Form 8-K.)

The only "evidence" that the Okada Parties offer to support their allegation that this gazetting occurred earlier than May 2, 2012 is an unauthorized SEC filing that was made by the Company's outside law firm on March 2, 2012—and then immediately retracted. (Mot. Ex. 21; Mot. Ex. 22.) Within hours, the outside law firm issued a press release acknowledging its error (Ex. 15 ("We learned earlier today that a clerk in our filing department inadvertently made an unauthorized filing with respect to Wynn Resorts Ltd. We apologize that this mistake occurred.")), and the Company publicly "retract[ed]" the unauthorized filing (Mot. Ex. 22 at Ex. Page 513 ("On March 2, 2012, a Current Report regarding the gazetting of the Cotai Land Concession Contract on Form 8-K (the 'Land Concession 8-K') was filed by mistake by the Company's agent. The filing was not authorized by the Company. The Cotai Land Concession Contract has not been gazetted. The purpose of this filing is to retract the Land Concession 8-K in its entirety".))

Indeed, the erroneous nature of the March 2, 2012 filing is readily apparent from the face of the document itself. The filing states that "[t]he Land Concession contract was published in

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the official gazette of Macau . . . on January [•] 2012"—*i.e.*, the date reported for the publication of the concession was *blank*. (Mot. Ex. 21 at Ex. Page 500.) Plainly, this was a draft filing that had been prepared with a placeholder date so that Wynn Resorts could promptly disclose the gazetting to its stockholders as soon as that event occurred. The unauthorized SEC filing thus provides no support at all for the Okada Parties' accusation that Wynn Resorts was sitting on material information.[8]

2. The requests are overbroad and unduly burdensome.

In addition to being irrelevant, the Macau-related document requests at issue on this Motion are hopelessly overbroad and unduly burdensome. This is plain from even a cursory review of the disputed requests themselves, which generally go back 15 years, and which seek documents having nothing to do with the Macau transactions discussed in the Motion. For this additional reason, the Court should deny the Okada Parties' demand for the production of additional Macau documents. *See, e.g.*, *Striegel* v. *Am. Family Mut. Ins. Co.*, 2014 WL 6473597 (D. Nev. Nov. 18, 2014) (denying "overbroad" requests for irrelevant information as a "fishing expedition"); *HM Electronics, Inc.* v. *R.F. Technologies, Inc.*, 2014 WL 7183493, at *13 (S.D. Cal. Dec. 15, 2014) (denying overbroad discovery requests that would result in "dumping a massive, partially cumulative, and largely irrelevant document production on Defendant's doorstep").

3. Macau's data privacy laws apply.

The Okada Parties also take issue with the possibility that Wynn Resorts will in the future withhold or redact documents located in Macau in order to comply with Macau's data privacy laws. (Mot. at 15-17.) Wynn Resorts takes its discovery obligations seriously, and it does not intend to withhold or redact any such documents except where Macau's data privacy laws truly apply. Thus, contrary to the Okada Parties' suggestion, if a relevant, non-privileged document

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[8] The Okada Parties' claim that the "market took notice" of the unauthorized filing, and that the Company's share price increased by 4% as a response, is a misleading half-truth. (Mot. at 13 & n.12.) Although there was a minor stock price increase on the day of the original filing—which may very well have been attributable to other factors in any case—the Company's share price declined during the next day of trading and closed at a price lower than the opening price on the day of the erroneous filing. (Ex. 16.)

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that was created in Macau "has already been disseminated outside of Macau" (*id.* at 16), it will be produced (*see, e.g.*, Mot. Ex. 4 at Ex. Pages 99-100 (Wynn Resorts objecting to Request No. 166 "to the extent [it] seeks documents from Wynn Macau that reside only in Macau" that "contain[] personal information of third parties protected by the Macau Personal Data Privacy Act")).[9]

As the Nevada Supreme Court recently made clear, while the "presence of a foreign international privacy statute" does not "preclude" discovery of foreign materials in the Nevada courts, it remains "well within the district court's discretion to account for such a foreign law" when "deciding whether to limit discovery." *Las Vegas Sands Corp.* v. *Eighth Judicial Dist. Court*, 331 P.3d 876, 880 & n.4, 130 Nev. Adv. Op. 61 (2014). Wynn Resorts submits that this case—in which the supposed relevance of the documents to be found in Macau is highly speculative and disconnected in all events from the core issues—will prove to be one in which the Court should exercise its discretion and decline to enter an order that would command the Company to violate Macau law. But that is an issue for another day, when there is a concrete dispute about particular documents that Wynn Resorts has withheld or redacted in order to comply with Macau's data privacy laws.[10]

C. Wynn Resorts Properly Objected to the Other Categories of Requests at Issue.

In addition to their improper requests for additional Macau documents, the Okada Parties seek to compel the production of several other categories of documents. These requests, too, are

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[9] The Okada Parties are mistaken in claiming that Wynn Resorts has refused to produce any documents in the possession of Wynn Macau. (*See* Mot. at 17-18.) The Company has interposed an objection to any document requests that seek the production of documents from non-party Wynn Macau, and the Okada Parties have, in fact, circumvented the proper channels to seek these documents. Nevertheless, Wynn Macau's documents are being reviewed for production in this action, and subject to Macau's data privacy laws, will be produced and/or disclosed by Wynn Resorts in this action.

[10] The Okada Parties' claim without basis that Wynn Resorts is "seeking to use the MPDPA as both a sword and a shield," citing a small fine that was imposed on the Company for transferring guest information outside of Macau in connection with the Freeh investigation. (Mot. at 16.) Wynn Resorts has never intentionally violated Macau's data privacy laws, nor would the Company invoke those laws as a basis to withhold any documents that already exist outside of Macau.

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irrelevant and improper, and they are calculated to advance the Okada Parties' strategic objective of distracting attention away from their own wrongful conduct.

1. ***Documents relating to the suitability of third parties.***

The Okada Parties are demanding the production of documents in response to nine broad requests concerning suitability reviews that have nothing to do with the Okada Parties and are thus irrelevant to the subject matter of this litigation. As the Motion describes them, the requests in this category seek (i) all "documents regarding any suitability investigations conducted by the Compliance Committee [of the Wynn Resorts board], or suitability concerns raised by regulatory authorities." (Mot. at 19 & n.19 (identifying Request Nos. 230-234, 240-242, and 289)) and (ii) all documents regarding "specific persons who should have raised suitability concerns," (Mot. 19 & n.20 (identifying Request Nos. 230-234, 289). According to them, the Okada Parties hope that these documents will support a claim that Wynn Resorts' commitment to compliance and the protection of its gaming licenses "is a sham because WRL routinely associated with potentially unsuitable persons without any investigation by the Compliance Committee." (Mot. at 19.)[11]

The Okada Parties' accusation that Wynn Resorts knowingly associated with unsuitable persons is categorically false. It also makes no sense, because associating with unsuitable persons would jeopardize Wynn Resorts' most critical corporate asset: its gaming licenses. Nowhere does the Motion even attempt to explain why Wynn Resorts, or the Compliance Committee of the board of directors in particular, would carelessly disregard the Company's regulatory obligations and thus place at risk the viability of the corporate enterprise.

Moreover, the Motion provides no credible support for the Okada Parties' claim that Wynn Resorts has a recurring problem with unsuitable associations. Once again, the Okada Parties place significant weight on transactions that took place years ago in Macau; they assert, without any basis whatsoever, that "WRL did not conduct any suitability investigations" with respect to these supposedly "questionable" transactions. (Mot. at 11.) As discussed above,

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[11] Wynn Resorts has agreed to produce some documents in response to the requests in this category—namely, documents that relate to the compliance fallout from the Okada Parties' misconduct. (*See* Mot. Ex. 4 at Ex. Pages 241-45 (Responses to Request Nos. 230-34).)

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however, the Okada Parties' suspicions about these transactions are ill-founded and are belied by the absence of any adverse regulatory action being taken against the Company in connection therewith. (*See* pp. 8-14, *supra*.) Just as the Okada Parties' conjecture about these transactions does not support a demand for broad discovery about Wynn Resorts' business dealings in Macau, so too does it fail to support a demand for broad discovery into the Company's suitability compliance efforts.

Apart from the allegations about these Macau transactions, the Okada Parties' "evidence" supporting their accusation that Wynn Resorts has a problem with unsuitable associations is exceedingly weak. They first cite a press release from the Office of the Attorney General of Massachusetts discussing an alleged fraud that was committed *against* Wynn Resorts in connection with a real estate transaction. (Mot. Ex. 26 at Ex. Page 539 (reporting on indictment for "role in concealing *from* Wynn Resorts and Massachusetts gaming regulators the financial interests of . . . a convicted felon") (emphasis added).) There is no suggestion in the press release that Wynn Resorts engaged in any wrongdoing; nor is there any hint that the Company sought to maintain a relationship with the wrongdoers once their fraud was revealed. Absent that, the incident does nothing to support the Okada Parties' theory that Wynn Resorts is willing to deal with unsuitable persons.

The Okada Parties also rely on a 22-year-old report that Steve Wynn's brother, Kenneth, had received a one-year gaming license suspension following allegations of a minor drug offense. (Mot. Ex. 9 at Ex. Pages 366-67.) Missing from the Motion, however, is any showing that this isolated incident makes Mr. Wynn's brother unsuitable today. Also missing from Motion is any evidence that Kenneth Wynn has an ongoing affiliation with Wynn Resorts; in fact, Kenneth Wynn has not held a position at the Company for many years.

In addition to being unconnected to a sound theory of relevance, the nine suitability-related requests at issue on the Motion are overly broad and unduly burdensome. Given the heavily regulated industry in which Wynn Resorts operates, and the number of government entities that oversee its business in multiple jurisdictions, gathering 15 years' worth

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of suitability-related documents would be a massive undertaking. For this reason as well, the discovery requests in this category are improper.

2. Board materials addressing unrelated matters.

The Motion also seeks to compel the production of all "materials sent to each Board member prior to each meeting" of the Wynn Resorts board from 2002 to the present—without regard to subject matter. (Mot. at 20 & n.21 (identifying Request Nos. 283, 284 & 294).)[12] The Okada Parties are pressing this demand notwithstanding their admission that "some of the information covered in the Board packages may have no bearing on this lawsuit." (*Id.*. at 21.) Not surprisingly, many of the Wynn Resorts board meetings held in the past 13 years concerned unrelated matters that have nothing to do with this litigation, and the Company has understandably refused to produce board materials from meetings at which no relevant issues were discussed. Conversely, to the extent that particular board materials contain information that is responsive to an appropriate request, the Company will produce those materials subject to appropriate redactions.

The Okada Parties insist that they are entitled to *all* board materials, regardless of subject matter, because, in their view, "access to Board materials is key to understanding what happened and why" (Mot. at 20), but the Motion cites no relevant authority for the proposition that board documents are special and must be turned over regardless of their substance.[13] The Okada Parties also argue that they should be entitled to unlimited discovery into irrelevant board matters in light of their conclusory allegation that "the Board was dominated and controlled by Mr. Wynn." (Mot. at 21 (citing FAC ¶ 39).) If the Okada Parties have a specific board decision in mind that

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[12] The Okada Parties' reference to Request No. 284—which seeks "[a]ll agendas, presentations, reports, notes, and minutes [c]oncerning each meeting of any Committee of the WRL Board," (Mot. Ex. 3 at Ex. Page 76)—is puzzling. The Motion states that the "parties are continuing to discuss the degree to which materials relating to the various Committees of the Board should be produced," contains no arguments about committee materials, and seeks no relief with respect to the Okada Parties' demand for committee materials. (Mot. at 20 & n.22.)

[13] *Amalgamated Bank* v. *UICI*, 2005 WL 1377432 (Del. Ch. June 2, 2005), which is the only case that the Motion cites on this point (at p. 21), does not support the Okada Parties' position. *Amalgamated Bank* was decided under Delaware's special "books and records" statute, 8 Del. C. § 220(b), which affords stockholders of Delaware corporation with broad rights to access corporate records, including board materials. There is no analogous provision in the Nevada statutes.

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supposedly demonstrates Mr. Wynn's domination of his fellow directors, they should serve a proper document request targeting specific board materials, and the Company will consider that request. There is, however, no basis for the Okada Parties to demand unfettered access to board materials so that they can fish for evidence that they hope will support their boilerplate allegation.

3. Communications with regulators and investigators about Mr. Okada.

The Motion next addresses the Okada Parties' demand for any communications between Wynn Resorts and "government agencies, including the FBI, the NGCB and the Philippine Department of Justice, concerning the [Okada] Parties" and their affiliates, as well as any "internal WRL documents about [such] communications." (Mot. at 18 & n.18 (citing Request No. 215).) The purpose of this demand is obvious: The Okada Parties are trying to open a window into ongoing criminal and regulatory investigations in which they are the targets in order to gain an undue strategic advantage in those proceedings. The Court should not permit the Okada Parties to abuse the civil discovery process in this way. *See, e.g., Oppenheimer Fund, Inc.* v. *Sanders*, 437 U.S. 340, 352 n.17 (1978) ("[W]hen the purpose of a discovery request is to gather information for use in proceedings other than the pending suit, discovery is properly denied."); *In re Refco Sec. Litig.*, 759 F.Supp.2d 342, 345 (S.D.N.Y. 2011) (denying discovery where the requesting party "offer[ed] a series of tenuous arguments for . . . relevance" that were "intended to obscure the bald fact that the true purpose" of the request was to "bolster" the party's position in another proceeding).

Trying to mask their improper purpose, the Okada Parties argue that the government communications they have demanded will "bear on whether WRL's allegations of wrongdoing . . . have any merit" and "show whether WRL was trying to 'drum up' support for its campaign against Mr. Okada." (Mot. at 19.) But the Motion's one and only sentence addressing the supposed relevance of these documents fails to explain why the propriety of the Okada Parties' actions should be determined by reference to communications between Wynn Resorts and government investigators and regulators—as opposed to the Okada Parties' own documents and communications reflecting what they said and did. Nor does the Motion explain why evidence showing that Wynn Resorts cooperated with the ongoing criminal and regulatory investigations

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would be germane to this lawsuit. Indeed, given the serious nature of the misconduct in which the Okada Parties engaged, and Wynn Resorts' obligation as the holder of a permissive gaming license to cooperate with its regulators, it would be surprising if the Company were *not* cooperating with these investigations.[14]

4. Additional discovery regarding the formation of Wynn Resorts is irrelevant.

The Okada Parties also ask the Court to compel the production of documents "regarding the early relationship between Mr. Wynn and Mr. Okada and the formation of WRL." (Mot. at 21 & n.23 (identifying Request Nos. 82, 86, 90 & 93).) But in making this request, they strikingly fail to acknowledge that Wynn Resorts has already agreed to produce multiple categories of documents relating to the formation of Valvino and the events that preceded Wynn Resorts' initial public offering. For example, the Company has agreed to produce "[d]ocuments concerning personal meetings between Mr. Okada and Stephen A. Wynn in which they planned to or did discuss a potential business relationship/partnership or the business/partnership agreements;" "[c]ommunications with the [Okada] Parties concerning the Third Amended Operating Agreement [of Valvino], including but not limited to the redemption provisions"; "[c]ommunications with banks, investors, or other third parties concerning the necessity of the Third Amended Operating Agreement" and its "redemption provisions"; "[d]ocuments concerning the creation and use [by Mr. Wynn] of the power of attorney contained in the Third Amendment to the Operating Agreement"; and "[d]ocuments concerning the incorporation, IPO, or other structuring or organization of WRL." (Mot. Ex. 4 at Ex. Pages 93, 101-02, 104, 111 (Responses to Request Nos. 81, 91-92, 94 & 101).)

The Motion ignores the discovery commitments Wynn Resorts has made in this area, and thus does not even begin to explain why additional discovery regarding the formation and operation of Valvino is remotely necessary. The Okada Parties argue that "information that was

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[14] The Okada Parties' demand for Wynn Resorts' communications with the Nevada Gaming Control Board and the Nevada Gaming Commission is improper for the additional reason that it conflicts with the presumption of confidentiality that attaches to such communications. *See* NRS 463.120(5) & 463.3407(3)(a).

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(or was not) supplied to and/or relied on by Mr. Okada when he entered into the Stockholders Agreement" is relevant to certain of their claims (Mot. at 22), but even accepting that proposition as true, it provides no support for the Motion. None of the Valvino-related requests at issue have anything to do with information that was provided to Mr. Okada during the Valvino negotiations; that issue is addressed by other document requests propounded by the Okada Parties, and, as noted, the Company has agreed to produce non-privileged documents responsive to those requests.[15]

The Okada Parties also contend that "documents regarding the vetting and selection of members of Valvino who later became Directors of WRL, and the granting and exercise of their stock rights and options" are relevant to their allegation that Mr. Wynn dominates and controls the Company's board of directors. (Mot. at 22.) This argument is unavailing. The former director to whom the Okada Parties are referring, John Moran, was never a member of Valvino and never received any "rights" or "options" with respect to that entity—and the Okada Parties have made no claim to the contrary. Regardless of whether Mr. Moran was ever contemplating an investment in Valvino, the fact that no such investment was made is fatal to the Okada Parties' theory of relevance.

5. Documents regarding Mr. Wynn's unrelated, prior business arrangements are irrelevant.

The Motion also addresses the Okada Parties' demand for "documents relating to other instances in which Mr. Wynn terminated business relationships." (Mot. at 22 n.24 (identifying Request Nos. 235, 236, 238 & and 239).) The Okada Parties claim that such documents are "reasonably calculated to lead to the discovery of evidence that would be admissible to show that Mr. Wynn's treatment of Mr. Okada was consistent with his *modus operandi*" of "forcing partners out of his companies whenever serious conflicts arise." (*Id.* at 22-23.)

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[15] The Valvino-related requests at issue on the Motion seek the identities of certain third-party advisors (Request No. 82); documents concerning the addition of a new member to Valvino post-formation (Request No. 86); documents concerning the potential admission of other members (Request No. 90); and documents concerning actions taken by Mr. Wynn under a particular provision of the Operating Agreement (Request No. 93). (Mot. Ex. 3 at Ex. Pages 24-25.)

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The entire basis for the Okada Parties' claim that Mr. Wynn has such a *modus operandi* is a news report describing Mr. Wynn's departure from his former company following its sale. (Mot. at 22 (citing Mot. Ex. 10).) That news report does not remotely support the proposition for which it is cited. Because the core premise of their theory of relevance as to these documents is entirely speculative, the Okada Parties are not entitled to discovery related to Mr. Wynn's prior, unrelated business relationships.[16]

D. <u>The Okada Parties are Not Entitled to Recover Their Expenses</u>.

In all events, the Court should not award the Okada Parties their expenses in bringing the Motion because Wynn Resorts' objections and opposition were substantially justified. *See* NRCP 37(a)(4)(A) (an award of expenses is not available to a prevailing movant on a motion to compel where "the opposing party's nondisclosure, response or objection was substantially justified, or [where] other circumstances make an award of expenses unjust").

Wynn Resorts has endeavored in good faith to provide reasonable and appropriate discovery in response to the Okada Parties' 315 document demands. The Company has agreed to produce documents in response to 192 of the Okada Parties' requests, and it expects to produce many additional documents over the next several months. Notwithstanding this effort, the Okada Parties insisted on burdening this Court with a discovery motion addressed to 80 overly broad requests for documents bearing no connection to the actual issues in this case. Accordingly, Wynn Resorts' opposition was "substantially justified," and the Okada Parties' should not be awarded their expenses. Indeed, if any award is proper, it is *Wynn Resorts* that should be reimbursed for its expenses in having to oppose the Motion. *See* NRCP 37(a)(4)(B) (expenses incurred in opposing a motion to compel may be awarded unless the court finds the motion was "substantially justified or that other circumstances make an award of expenses unjust").

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[16] The Okada Parties attach significance to Wynn Resorts' response to Request No. 237, which seeks documents concerning "pending or threatened litigation against Stephen A. Wynn and/or WRL concerning the termination of business relationships related to casino development." (Mot. at 22 n.24.) The Company's prior response that request was made in error and will be corrected in forthcoming amended responses to the Okada Parties' second set of document requests. As the amended response will make clear, Request No. 237 is objectionable for the reasons stated herein.

IV. CONCLUSION

For all of the reasons stated herein, the Motion should be denied, and Wynn Resorts should be reimbursed its expenses incurred in opposing the Motion.

DATED this 19th day of May, 2015.

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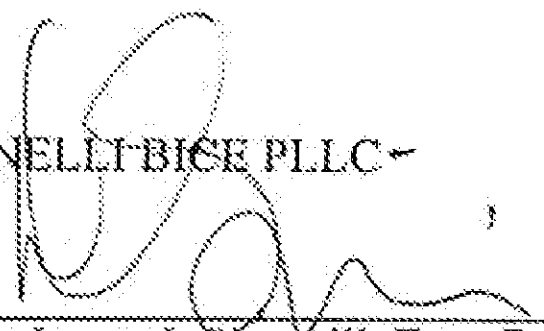
By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 19th day of May, 2015, I caused to be **electronically served through the Court's filing system** true and correct copies of the foregoing **WYNN RESORTS, LIMITED'S OPPOSITION TO THE OKADA PARTIES' MOTION TO COMPEL SUPPLEMENTAL RESPONSES TO THEIR SECOND AND THIRD SETS OF REQUESTS FOR PRODUCTION** to the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada Corporation, Plaintiff, vs. KAZUO OKADA, an individual, ARUZE USA, INC., a Nevada corporation, and UNIVERSAL ENTERTAINMENT CORP., a Japanese corporation. Defendants. AND ALL RELATED CLAIMS	Case No.: A-13-678658-B Dept. No.: XI **WYNN RESORTS, LIMITED'S OPPOSITION TO DEFENDANTS' MOTION TO COMPEL WYNN RESORTS, LIMITED TO PRODUCE FREEH DOCUMENTS** Hearing Date: October 15, 2015 Hearing Time: 8:30 a.m.

I. INTRODUCTION

On February 18, 2012, the Wynn Resorts board of directors unanimously exercised its business judgment, and (1) determined that the Okada Parties were unsuitable persons under the Wynn Resorts Articles of Incorporation, and (2) redeemed the Wynn Resorts shares held by Aruze USA, Inc. Pursuant to NRS 78.138, the board's business decisions are ***presumed*** to have been done in good faith, on an informed basis, and to be in the company's best interest.

The Wynn Resorts board of directors interacted with their then-fellow director for over a year about the business climate and corruption in the Philippines, Okada's activities in the Philippines, and the Foreign Corrupt Practices Act. Okada was less than candid, evasive even, and made statements about bribery through intermediaries that rightly alarmed his fellow directors. The concerns intensified as the facts evolved, and the authorized investigations moved from internal to external with more specific foci. Eventually, at the end of October 2011, with Okada's full knowledge but over his dissent, Wynn Resorts, on behalf of the Wynn Resorts Compliance Committee, engaged the law firm of Freeh Sporkin & Sullivan ("Freeh Sporkin" or "FSS") to provide legal services that included an investigation into and analysis of Okada's activities in the Philippines. Okada knew that the Wynn Resorts board was going to receive a report from Freeh Sporkin and then determine how to protect the Company's interests.

Okada could have cooperated as he said he would, but he did not. He moved to offense, launching a writ proceeding purporting to act as a concerned director. He manufactured an argument about his dissent related to Wynn Macau's donation to the University of Macau, claiming to be concerned about the FCPA, as he asked for books and records that related to Aruze USA's investment and shares (*i.e.*, the writ proceeding was exposed to be brought on behalf of a shareholder; not a concerned director). And Okada delayed his interview with Freeh until he no longer could, and then cried foul.

On February 18, 2012, the Wynn Resorts board heard an oral presentation by Louis J. Freeh, and received a copy of the Freeh Report. The board listened to Freeh's presentation and received legal advice from two outside attorneys who specialize in gaming law who advised the Board on Nevada-specific law and regulations on the issue of suitability. The board adjourned,

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read the Freeh Report in full, and then reconvened. The meeting lasted into the evening, when the board exercised its business judgment and deemed the Okada Parties unsuitable under the Articles and redeemed Aruze USA's shares.

Via their motion, the Okada Parties seek every single document identified on Wynn Resorts' privilege log associated with Freeh Sporkin's response to the Okada Parties' subpoena duces tecum. They claim the reason they want these documents is because they want to prove that "Freeh got it wrong." This desired exercise has no evidentiary value because the board is entitled to a presumption that it exercised its business judgment in good faith. It is also insufficient to overcome a statutory privilege.

The Okada Parties' claim to entitlement is based on the desperate and unsupportable argument that there is not (and never was) any attorney client relationship between Wynn Resorts and Freeh Sporkin. This argument is meritless, both facially and substantively.

The Okada Parties also argue waiver, claiming that because Wynn Resorts attached the 47-page Freeh Report to its Complaint, Wynn Resorts waived ***any*** privilege it had with Freeh Sporkin related to Okada. The Okada Parties fail to mention, indeed purposefully ignore, the business judgment rule and its central role in this case. To be clear, the facts the board relied upon to exercise its business judgment are in the Freeh Report (which this Court determined includes the Appendix). Wynn Resorts, therefore, disclosed the Freeh Report so as to make transparent the ***evidence*** it considered in exercising its business judgment on February 18, 2012. As a matter of law and fact, the good faith disclosure of discoverable ***facts*** does not constitute a waiver of privileged matters.[1]

Finally, the Okada Parties' claim that none of Freeh Sporkin's mental impressions, notes, and the like during its representation of Wynn Resorts constitutes protectable work product. The flaws in the broad net cast by the Okada Parties are numerous. Suffice it to say, the Okada

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[1] While the Okada Parties may be entitled discovery related to the voting directors' "knowledge concerning the matter in question that would cause reliance thereon to be unwarranted," *see* NRS 78.138(3), what the voting board members ***did not know*** when they exercised their business judgment is neither discoverable nor relevant.

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Parties' desire for protected mental impressions that did not inform the Board's exercise of its business judgment does not constitute "substantial need" to overcome the work product doctrine.

II. STATEMENT OF FACTS

A. The Events that Lead Up to the Board's February 18, 2012 Determinations.

In or around 2008, Okada publicly stated his intention to develop a casino resort in the Philippines and repeatedly tried, in the years that followed, to persuade Wynn Resorts and/or Stephen A. Wynn to join him in his venture. (Ex. 23 to Mot., Miller Aff. ¶ 6.) Wynn Resorts and Mr. Wynn repeatedly declined, but that did not stop Okada from trying to associate Wynn Resorts and Mr. Wynn with his project. In fact, in June 2010, Okada asked Mr. Wynn, who was travelling to Las Vegas from Macau, to make an unscheduled stop in Manila. (Second Am. Compl. ("SAC"). ¶¶ 21-22.) Mr. Wynn was met by press, public officials, and signs that "Welcome[d] to the Philippines Chairman Steve Wynn." (*Id.*) Because of the oddity of the trip and the unexpected press, Wynn Resorts management conducted an internal investigation on the Philippines' general business climate, and presented a report to the board in July 2010. The result: the Wynn Resorts board became aware that the United States government identified the Philippines as one of the "[c]ountries most affected by bribery." (*Id.* ¶¶ 23-24.)

At this same July 2010 meeting, the board asked Okada about his business dealings in the Philippines, and he responded evasively. (*Id.* ¶ 25.) Not coincidentally, at the same time, the then-newly-elected Philippine President was investigating the "midnight deals" that occurred in the last weeks before the government handover. A reported beneficiary of the "midnight deals" was none other than Okada, who reportedly received a special exemption from the former PAGCOR chairman that allowing Okada to take title to land to build his casino. (*Id.* ¶¶ 26-27.) In September 2010, the Okada Parties arranged for the then-Chairman of PAGCOR, Christino Naguiat, as well as his family, friends, and business associates to stay at Wynn Macau, receive cash for gaming and shopping and expensive gifts. (Ex. 16 to Mot., at WYNN00011255.)[2]

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[2] Yes, these charges are some of the thirty-plus that appear in the Freeh Report, but Aruze USA [redacted]

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In early 2011, Wynn Resorts hired the Arkin Group LLC ("Arkin") to further examine the risks associated with doing business in the Philippines, as well as Okada's activities in that country. (SAC ¶ 30; Ex. 23 to Mot., Miller Aff. ¶ 7.) On February 24, 2011, the Wynn Resorts board discussed Arkin's report and related FCPA issues at a board meeting. (*Id.* ¶ 34; Ex. 23 to Mot., Miller Aff. ¶ 8; Ex. C, WRL Board Meeting Minutes, Feb. 24, 2011.) The board demanded that the Company not get involved in the Philippines, and insisted that Mr. Wynn cancel his trip to the Philippines to meet with President Acquino, a trip Okada arranged. (Ex. 23 to Mot., Miller Aff. ¶ 8; Ex. B WRL Board Meeting Minutes, Feb. 24, 2011.) Needless to say, Okada was displeased, and expressed his displeasure. He also made several comments to his fellow directors that he personally rejected Wynn Resorts' anti-bribery rules and regulations, as well as legal prohibitions against making such payments to government officials. (Ex. 23 to Mot., Miller Aff. ¶ 10.) Okada also stated that bribes to government officials was a common business practice in certain Asian countries, and that the important thing was to channel such illegal payments through third parties. (*Id.*) Two days after the February 24, 2011 board meeting, Wynn Resorts' general counsel and secretary to its board, Kimmarie Sinatra, confirmed that she provided a copy of the Wynn Resorts policy regarding the FCPA as well as FCPA training materials to Michiaki Tanaka, the intermediary to Okada at the time, for delivery to Okada. (Ex. D, Feb. 26, 2011 E-mail from K. Sinatra to M. Tanaka.)[3]

After all of this back and forth regarding corruption in the Philippines and the FCPA, the Wynn Resorts board held a routine board meeting on April 18, 2011. (*See* Ex. E, Aff. of Stephen A. Wynn (without attachments), dated Sept. 20, 2012, ¶ 4.) During this meeting, the board considered and voted on the donation to the University of Macau Development Foundation. (Ex. F, WRL Board Meeting Minutes, April 18, 2011.) All of the directors except Okada voted unanimously in favor of the donation, as did all members of the Wynn Macau Limited board.

[redacted] (Ex. B, Dep. Tr. of Aruze USA, Inc.'s NRCP 30(b)(6) witness, Oct. 6, 2015, 208:9-210:6)

[3] This e-mail is included in the Freeh Appendix, which was produced per Court order. *See infra* note 5.

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(*Id.*; Ex. G, WML Board Meeting Minutes, April 18, 2011.) Although Okada voted against the donation, it was not for any concern about the FCPA or legality of the donation; rather, Okada objected that the pledge was for too long a period of time.[4]

At the July 28, 2011 Wynn Resorts board meeting, the issue of Okada's business activities in the Philippines came up again. (Ex. 11 to Mot., WRL Board Meeting Minutes, July 28, 2011.) Okada confirmed that he was proceeding with his Philippines project despite the board's previous advice that Wynn Resorts should not have any involvement, direct or indirect, in the Philippines. (*Id.*; Ex. 23 to Mot., Miller Aff. ¶¶ 8, 11.) This raised concerns about how Okada's involvement in the Philippines may affect Wynn Resorts. (Ex. 23 to Mot., Miller Aff. ¶ 11.) The Compliance Committee decided to further investigate its concerns by retaining Archfield Limited ("Archfield"). (Ex. H, Archfield Reports.)

On September 27, 2011, Archfield delivered a report that stated: (1) a Philippine gaming license had been granted to Okada even though Okada did not have a Philippine business partner, in violation of applicable law; and (2) there were reports that Efraim C. Genuino, former Chairman of Philippine Amusement and Gaming Corporation ("PAGCOR") had paved the way for Okada to own the land on which he planned to build his casino, which contravened the Philippine policy on foreign investment. (*Id.*)

Several days later, Wynn Resorts' management met Okada and his attorneys, and informed him that his alleged activities in the Philippines posed substantial risks for Wynn Resorts. While

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[4] This timeline is demonstrably different from that offered by the Okada Parties in their Motion. Instead, they describe – without any evidence – a purported "deteriorat[ion]" in the relationship between Mr. Wynn and Okada in or around January 2010, when Mr. and Ms. Wynn resolved their divorce and the shares they jointly owned were divided between them. (Mot. 8:1-2.) The Okada Parties then conveniently jump a year and a half, from January 2010 to April 2011, when Okada voted against the donation to the University of Macau. (*Id.* 8:5-6.) Not surprisingly, enormous details of Okada's corrupt and suspicions actions occurred and emerged during this hole in Okada's time line.

More specifically, the Okada Parties attempt to argue that the board's concerns that lead to redemption of Aruze USA's shares were all "pretext," yet they purposefully omit the many discussions regarding corruption in the Philippines, investigations related to the Philippine business climate, and Okada's statements about bribery in Asia being commonplace and his personal rejection of Wynn Resorts' related policies – all of which took place during that time period.

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Okada disagreed, he failed to provide any substantive response and continued to engage in a flagrant disregard for the Wynn Resorts training and policies related to the FCPA. (SAC ¶ 40.) For instance, despite being aware of the Board training on the FCPA, Okada was the sole director who failed to participate in the October 31, 2011 mandatory FCPA training. (Ex. 23 to Mot. ¶ 13.) Okada also refused to return an executed version of the Wynn Resorts code of conduct and business ethics. On November 1, 2011, and based upon this pattern of conduct, the Wynn Resorts Board voted to remove Okada from his Vice Chairmanship on the board. (Ex. 14 to Mot., WRL Board Meeting Minutes, Nov. 1, 2011.)

Wynn Resorts, on behalf of the Compliance Committee, thereafter retained the law firm of Freeh Sporkin, which confirmed the engagement in writing. (Ex. 13 to Mot., FSS Engagement Ltr., p.1.) The engagement letter is addressed to "[redacted] (*Id.*) The re: line for the engagement letter explicitly states "[redacted] (*Id.*) The first line of the letter states that [redacted] (*Id.*) The letter proceeds to confirm that "[redacted] The 7-page letter has many more references to the legal services Freeh Sporkin was engaged to perform for Wynn Resorts and even

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[5] Although not an issue that the Okada Parties seek to resolve through the instant Motion, they do allude in a footnote – intended to imply Wynn Resorts over-asserted its privilege – that "many" of the privilege log entries reflect communications with people outside the privilege. (Mot. 17 n.12.) Although a list of these purported third parties has still not been provided to the Wynn Parties following the September 4, 2015 telephonic meet and confer, the Okada Parties did state their position that if an attorney-client relationship existed with Freeh Sporkin, it was between Freeh Sporkin and the Wynn Resorts Compliance Committee only, therefore the involvement of anyone other than the three-member compliance committee would break the privilege. (Ex. A, Spinelli Decl. ¶ 9.) Without getting into the many different ways this analysis is wrong, one point in particular cannot go unsaid: the engagement letter demonstrates that the [redacted] (Ex. 13 to Mot. p. 1.) The privilege protection thus extends beyond the three-member Compliance Committee.

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explicitly states that '[redacted] (Ex. 13 to Mot., 1, 5.) Clearly, this was the intent not only of Freeh Sporkin, but also of Wynn Resorts and the Compliance Committee, the clients who engaged the law firm.

Okada was well aware of Wynn Resorts' retention of Freeh Sporkin, and tried to persuade the Company not to retain the firm. (Ex. 23 to Mot. ¶ 15.) He was made aware that Freeh Sporkin was to gather documents and conduct interviews. (*Id.*) In their Motion, the Okada Parties make much ado that Okada was not interviewed until the end of the near three-month investigation, but ignore that Okada refused to make himself available for an interview in the weeks before the interview finally took place. (*Id.* ¶ 19.) When Okada finally consented to an interview with counsel present, the interview confirmed the information Freeh Sporkin had gathered during the prior months. The Freeh Report provided an account of the interview, and the interview notes are included in the Appendix to the Freeh Report. (Ex. I, FSS Okada Interview Notes.)[6] After the Freeh Report was completed, Okada was provided with a copy of it and an opportunity to respond to its conclusions. (Ex. 16 to Mot., at Ex. A.) Okada refused to provide any information in response. After interviewing Okada, Judge Freeh submitted his Report to the Compliance Committee.

B. <u>The February 18, 2012 Board Meeting and the Board's Exercise of its Business Judgment.</u>

On February 18, 2012, Louis J. Freeh was introduced to the board by Compliance Committee Chairman, former Governor Robert J. Miller. Miller reminded the board about the

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[6] Wynn Resorts produced the Appendix to the Freeh Report ("Freeh Appendix") on February 22, 2013, per this Court's February 21, 2013 order. As the Court will recall, the Okada Parties would not agree to an extension of time for Wynn Resorts to serve objections and responses to their first requests for production of documents. The Court granted Wynn Resorts a 30-day extension but ordered Wynn Resorts to produce the Freeh Appendix five days after a protective order was entered but before Wynn Resorts' objections to the Rule 34 requests were due. (Feb. 21, 2013 order, on file.) Wynn Resorts followed this Court's order and produced the Freeh Appendix on February 22, 2013.

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prior investigations into the Philippines, the inquiries to and denials from Okada, and stated that [redacted] (Ex. 16, WRL Board Meeting Minutes, Feb. 18, 2012, at WYNN00011219.) The board, including Okada, thereafter heard the presentation by Louis J. Freeh. In the exercise of his business judgment, [redacted] (*Id.*) The meeting was adjourned and each director who signed the non-disclosure agreement (all but Okada) was given a copy of the Freeh Report to review. (*Id.* at WYNN00011221.)

The board subsequently reconvened two hours later. [redacted] (*Id.*) The board received legal advice from two outside Nevada attorneys specializing in gaming law. They separately advised the board on Nevada-specific law and regulations on the issue of suitability. (*Id.*) The board further deliberated, and unanimously exercised its business judgment when they deemed the Okada Parties unsuitable under the Articles. (*Id.* at WYNN00011222-29.)

Wynn Resorts then commenced this legal action against the Okada Parties, seeking a judicial declaration that the Company "acted lawfully and in compliance with its Articles, Bylaws, and other governing documents," and asserting fiduciary duty claims. Like many business court litigants in ordinary contract disputes, Wynn Resorts attached a copy of the Freeh Report to its complaint to provide the facts that the board considered before it exercised its business judgment under NRS 78.138 to deem the Okada Parties unsuitable, to redeem Aruze USA's shares, and to commence legal action.[7]

C. <u>The Okada Parties Serve Subpoenas Duces Tecum on Freeh Sporkin.</u>

After nearly a year of pleading-stage motion practice, discovery began. The Okada Parties served Rule 34 requests for production on Wynn Resorts on or about January 2, 2013. (Ex. 2 to

[7] Wynn Resorts also disclosed the Freeh Report in its mandatory Form 8-K and 10-K public filings with the Securities and Exchange Commission.

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Mot.) Wynn Resorts served its objections and initial responses on March 19, 2013 (after more motion practice due to the Okada Parties' refusal to a 30-day extension to respond to what was then-75 requests), stating that discovery is continuing and the responses would be supplemented. (Ex. 3 to Mot.) The Okada Parties went on to serve three more rounds of written discovery on the Company, and largely duplicative discovery on each of the individual defendants. During this process, the parties agreed to a rolling production of documents and responses (but for the fourth set, for which the Okada Parties sought and received expedited production). The parties also agreed that rather than identify specific documents responsive to each and all of the individual requests (nearly 1000 propounded by the Okada Parties, and many of which were duplicative or overlapping), each would provide the other with roughly ten categories, under which responsive documents would be produced. Wynn Resorts has proceeded and will continue to proceed accordingly.[8] (Ex. A, Spinelli Decl. ¶ 2.)

On February 26, 2013, the Okada Parties served Freeh Sporkin and Pepper Hamilton (the law firm with which Freeh Sporkin merged) with subpoenas duces tecum. (Ex. 4 to Mot.; Ex. 5 to Mot.) Following the lifting of the discovery stay, and meet and confer discussions in which Wynn Resorts was not involved, Freeh Sporkin provided Wynn Resorts with documents it had gathered and identified as responsive to the subpoenas. Wynn Resorts thereafter began its privilege review. (Ex. A, Spinelli Decl. ¶ 3.) Consistent with its March 13, 2015 Status Memorandum, Wynn Resorts served a privilege log related to the Freeh documents on June 11, 2015. (Ex. J, WRL's Privilege Log for Documents Produced by Pepper Hamilton LLP Pursuant to Subpoena Duces Tecum; Ex. A, Spinelli Decl. ¶ 4; *see also* Wynn Parties' Status Memorandum, dated March 13, 2015, on file.) The privilege log contained an itemized description of the 6,000 entries in compliance with Nevada law. The log included Bates ranges for each entry, the date, the author, all recipients of the e-mails (to, from and bcc), privilege type

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[8] Therefore, the Motion's reference to the March 19, 2013 response is incomplete and inaccurate.

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(withheld or redacted), privilege designation (attorney-client, work product, etc.), and privilege subject (the subject matter of the communication). (*See* Ex. 10 to Mot.)[9]

Five days later, on June 16, 2015, Wynn Resorts served an amended privilege log. (Ex. K, WRL's Amended Privilege Log for Documents Produced by Pepper Hamilton LLP Pursuant to Subpoena Duces Tecum (cover document only).) The amendment was only to (1) identify the documents on the log in chronological order; and (2) to correct one entry on the log. (*Id.*) Thereafter, when compiling the list of people included in the Freeh privilege log, Wynn Resorts identified a few third parties who inadvertently had been included in the log. (Ex. A, Spinelli Decl. ¶ 6.) Therefore, on August 17, 2015, Wynn Resorts served a second amended privilege log related to the Freeh documents, which simply eliminated 5 documents from the log served two months prior.[10] (*Id.*; Ex. 10 to Mot.)

The parties engaged in a telephonic meet and confer on September 4, 2015, during which a number of issues were discussed, including the Okada Parties' position that there never was any attorney-client privilege between Wynn Resorts and Freeh Sporkin and, if there was, the privilege was waived by attaching the Freeh Report to the complaint. (Ex. A, Spinelli Decl. ¶ 8.) Needless to say, the parties were unable to agree on privilege and/or waiver. (*Id.*)

III. ARGUMENT

A. The Freeh Documents Are Protected by the Attorney-Client Privilege.

The Okada Parties claim that there is not and never was an attorney-client privilege relationship between Wynn Resorts and Freeh Sporkin because: (1) the Freeh Sporkin law firm

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[9] In their Motion, the Okada Parties criticize the entries in the subject matter column for being too vague. The parties discussed this briefly during the September 4, 2015. (Ex. A, Spinelli Decl. ¶ 10.) Wynn Resorts explained that the difference between "regarding Freeh investigation" and "regarding Okada matter" in the subject matter descriptions was timing. (*Id.*) Specifically, communications pre-dating the February 18, 2012 board meeting relate to the Freeh investigation, and communications post-dating the February 18, 2012 board meeting relate to the Okada matter. (*Id.*) Wynn Resorts also stated that a more detailed description would more often reveal work product and/or be inefficient but the parties agreed to reconnect on the issue following receipt of a written letter from the Okada Parties, which has yet to be received. (*Id.*)

[10] After service, the Okada Parties asked why the number of pages on the privilege log increased despite only the release of documents, and the Wynn Parties confirmed it was a result of formatting changes only. (Ex. A, Spinelli Decl. ¶ 7.)

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was tasked with mere fact-gathering to be used by other attorneys; (2) Freeh Sporkin's four-month international investigation and 47-page report represented business and not legal advice; and (3) Freeh Sporkin's "independent investigation" runs contrary to the concept of advocacy for which privilege is customarily extended. (*See* Mot. 17-20, 24-25.) The Okada Parties are wrong on all three fronts.

Nevada's attorney-client privilege law is a statutory entitlement:

> A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications:
>
> 1. Between the client or the client's representative and the client's lawyer or the representative of the client's lawyer.
>
> 2. Between the client's lawyer and the lawyer's representative.
>
> 3. Made for the purpose of facilitating the rendition of professional legal services to the client, by the client or the client's lawyer to a lawyer representing another in a matter of common interest.

NRS 49.095. "Representative of the client" means a person having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client. NRS 49.075. "Representative of the lawyer" means a person employed by the lawyer to assist in the rendition of professional legal services. NRS 49.085. A communication is confidential under Nevada law if "it is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." NRS 49.055. The Nevada Supreme Court has found that "statutory privileges should be construed narrowly, according to the "plain meaning of [their] words." *Rodgers v. State*, 127 Nev. Adv. Op. 25, 255 P.3d 1264, 1267 (2011) (citation omitted).

The attorney-client privilege "rests on the theory that encouraging clients to make full disclosure to their attorneys enables the latter to act more effectively, justly, and expeditiously, a benefit out-weighing the risks posed to truth-finding." *Haynes v. State*, 103 Nev. 309, 317, 739 P.2d 497, 502 (1987). It protects only communications, not facts; "thus, relevant facts known by a corporate employee of any status in the corporation would be discoverable even if such facts were related to the corporate attorney as part of the employee's communication with counsel."

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Wardleigh v. Second Jud. Dist. Ct., 111 Nev. 345, 352, 891 P.2d 1180, 1184 (1995). However, "the privilege exists to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice." *Upjohn Co. v. United States*, 449 U.S. 383, 390 (1981); *see also Wardleigh*, 111 Nev. at 352, 891 P.2d at 1184. "Not surprisingly, difficulties arise in attempting to apply the attorney-client privilege in a corporate setting." *Wardleigh*, 891 P.2d at 1184. "A corporation's current management controls the privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications." *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 69, 331 P.3d 905, 914 (2014).

The party seeking to assert the privilege bears the burden of showing it is applicable. *McNair v. Eighth Jud. Dist. Ct.*, 1100 Nev. 1285, 1289, 885 P.2d 576, 579 (1994). The burden is on the party asserting the privilege to establish all the elements of the privilege," *United States v. Martin,* 278 F.3d 988, 999–1000 (9th Cir. 2002), including establishment of the attorney-client relationship and the privileged nature of the communication. *United States v. Bauer,* 132 F.3d 504, 507 (9th Cir.1997). To do this, the party asserting privilege "must identify specific communications and the grounds supporting the privilege as to each piece of evidence over which privilege is asserted." *Martin,* 278 F.3d at 1000. Thus, the burden is usually demonstrated by submitting a privilege log. *Diamond State Ins. Co. v. Rebel Oil Co., Inc.*, 157 F.R.D. 691, 698 (D. Nev. 1994); *see also Alboum v. Koe, M.D., Discovery Commissioner Opinion # 10 (November, 2001)*, at 11, *available at* http://nvbar.org/sites/default/files/OPINION%2010.pdf. A privilege log should identify "(a) the attorney and client involved, (b) the nature of the document, (c) all persons or entities shown on the document to have received or sent the document, (d) all persons or entities known to have been furnished the documents or informed of its substance, and (e) the date the document was generated, prepared, or dated." *Diamond State*, 157 F.R.D. at 698.

The trial court's privilege inquiry "focuses on the nature of the subject matter sought in discovery and requires a finding that the subject matter embodies the type of information intended to fall within the privilege." *Wardleigh*, 111 Nev. at 352, 891 P.2d at 1184 (citing *Upjohn*, 449 U.S. at 390). Where parties are unable to agree on whether documents are privileged, the district

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court is obligated to evaluate privilege on a document-by-document basis, "evaluat[ing] each of [the] objections and determin[ing] the factual and legal validity of [the] assertions of privilege." *Las Vegas Sands*, 331 P.3d at 914 n.17; *see Tutor Perini Bldg. Corp. v. Eighth Jud. Dist. Ct.*, No. 61863, 2013 WL 3488142, at *1 (Nev. July 8, 2013) (unpublished).

1. Freeh's legal services went beyond fact-gathering.

The Okada Parties contend the Freeh Documents are not privileged because Wynn Resorts hired Freeh Sporkin as an investigator to collect information to be used by other attorneys. (Mot. 17, 24-25.) The documents tell a different story.

Wynn Resorts, on behalf of the Compliance Committee, retained the law firm of Freeh Sporkin, and Freeh and his team of attorney colleagues, to perform legal services from the outset. On November 1, 2011, the Compliance Committee resolved to hire Judge Freeh, [redacted] (Ex. 14 to Mot. at Ex. B, Wynn Resorts Board Meeting Minutes, Nov. 1, 2011 (emphasis added).) Freeh Sporkin shared the same understanding, as reflected in the "engagement letter for legal services." In the Freeh Sporkin engagement letter, Freeh states that [redacted] (Ex. 13 to Mot. 1, 5.) The engagement letter repeatedly states that the [redacted] *Id.* at 5, 7.)

The Okada Parties contend that Wynn Resorts' hiring of an additional pair of attorneys, both with expertise in gaming law, somehow divests Freeh Sporkin of its attorney-client relationship with Wynn Resorts. This argument is also at odds with reality. Hiring more than one attorney or more than one law firm to perform discrete legal tasks related to a single matter is commonplace; both the Okada Parties and Wynn Resorts are doing so in litigating this case. Hiring experts in a specific field is also commonplace; indeed, retaining experts on Nevada

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gaming law to discuss Nevada-specific gaming law was the responsible thing for the Wynn Resorts board to do when it was assessing the facts and how those facts applied to Nevada law and Wynn Resorts' governing documents (which were designed to comply with Nevada gaming regulations) ***before*** deciding whether the Okada Parties were "unsuitable persons" under the Articles.

Even if the Court is inclined to adopt the Okada Parties' unrealistic view on the scope of the attorney-client privilege, Nevada statutory law still protects Freeh's investigation. *See* NRS 49.095 (protecting confidential communication made for the purpose of "facilitating the rendition of professional services"). In considering the scope of "professional services," the Ninth Circuit, among other Circuit Courts of Appeal, has reasoned that investigatory advice qualifies as rendering legal services because "fact-finding which pertains to legal advice counts as 'professional legal services.'" *United States v. Rowe*, 96 F.3d 1294, 1297 (9th Cir. 1996) (citing *In re Woolworth Corp. Secs. Class Action Litig.*, No. 94 CIV 2217, 1996 WL 306576 (S.D.N.Y. June 7, 1996). Moreover, "communications made by and to non-attorneys serving as agents of attorneys in internal investigations are routinely protected by the attorney-client privilege." *In re Kelogg Brown & Root, Inc.*, 756 F.3d 754, 758 (D.C. Cir. 2014).

For any of these reasons, Freeh Sporkin provided legal advice to Wynn Resorts, and the attorney-client privilege protect applies to the communications exchanged between them made for the purpose of receiving legal advice.

2. Freeh's "independence" has no bearing on the existence of an attorney-client relationship.

The Okada Parties next argue that the "independent" nature of Freeh Sporkin's work "is inconsistent with the confidential nature of the attorney-client relationship." (Mot. 25.) Again, the documents contradict the Okada Parties' argument. Wynn Resorts' Compliance Committee resolved that [redacted] (Ex. 13 to Mot. at 1.)

Legally, the Okada Parties muster only a single unpublished federal trial court case from Indiana, which mentions in passing that "[t]he term 'independent' suggests that the investigator

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would not be working on behalf of either party, but rather would be neutral." *Wartell v. Purdue Univ.*, No. 1:13-cv-00099, 2014 WL 3687233, at *5 (N.D. Ind. July 24, 2014). Quibbles over nomenclature do not ordinarily occupy the Nevada Supreme Court; but it is worth noting that in Nevada, "independent" is apparently not a magic word that strips an attorney of his or her advocacy role. *See Lane v. Second Jud. Dist. Ct.*, 104 Nev. 427, 760 P.2d 1245 (1988) (permitting the trial court to appoint "an independent attorney to conduct an investigation to determine whether the case should be resubmitted to the grand jury"). Nor would this absolutist interpretation of "independence" square with the realities of corporate governance: "[i]t is not at all uncommon for a business entity to respond to charges of wrongdoing by preparing or commissioning from counsel or other experts a report on the allegations which is then disseminated to its shareholders, employees and the general public." *Konikoff v. Prudential Ins. Co. of Am.*, 234 F.3d 92, 102 (2d Cir. 2000).

Retention of outside counsel to conduct an internal investigation and provide legal conclusions is good corporate governance. Whether retained counsel functions "independently" is beside the point of whether legal efforts should be protected under the attorney-client privilege. The facts show that [redacted] (Ex. 13 to Mot. at 1.) Freeh Sporkin's engagement letter demonstrates that the law firm was engaged to perform legal services for Wynn Resorts. Wynn Resorts intended and expected to have an attorney-client relationship with Freeh Sporkin, and acted accordingly. Thus, that Freeh Sporkin's "independence" for purpose of performing legal services is not a proper basis to disregard Wynn Resorts' expectation and fact of privilege.

B. Wynn Resorts Did Not Waive the Attorney-Client Privilege With Respect to the Freeh Documents.

As they must, the Okada Parties argue that Wynn Resorts waived the attorney client privilege afforded its communications with Freeh Sporkin. Specifically, the Okada Parties claim that the Company impliedly waived the privilege by: (1) attaching the Freeh Report to the complaint and its federally required public filings; (2) putting itself in a position to have to rely on

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the Freeh Report at trial; and (3) creating a situation where fairness requires disclosure.[11] But, Wynn Resorts did not waive its privilege, expressly or impliedly, on these or any other set of acts.

"A person upon whom these rules confer a privilege against disclosure of a confidential matter waives the privilege if the person or the person's predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter." NRS 49.385. The doctrine judicial doctrine of implied waiver reflects the oft-cited rule "the attorney-client privilege was intended as a shield, not a sword." *Wardleigh*, 111 Nev. at 354, 891 P.2d at 1186 (quotation omitted). For waiver of the privilege to be implied, the purportedly privileged disclosure must constitute a "significant part of the communication." *Manley v. State*, 115 Nev. 114, 120, 979 P.2d 703, 707 (1999) (quotation omitted). As with a determination of privilege itself, the waiver inquiry is fact-intensive and hinges "on the content of ***individual*** documents, and whether the [party] placed such . . . document[s] at issue." *Las Vegas Sands*, 331 P.3d at 911 n.10.

It is true that "where a party seeks an advantage in litigation by revealing part of a privileged communication, the party shall be deemed to have waived the entire attorney-client privilege as it relates to the subject matter of that which was partially disclosed." *Wardleigh*, 111 Nev. at 354, 891 P.2d at 1186. This is because while privilege in some instances may serve to suppress the truth, there is no "privilege to garble it." *Id.* Thus, a party may waive its privilege by affirmatively pleading a claim or defense that places at-issue the subject matter of privileged material. *Id.*

But, there are critical limitations to the implied waiver doctrine that apply here. Contrary to the Okada Parties' perspective on the law of implied waiver, fairness does ***not*** "simply dictate that because pleadings raise issues implicating a privileged communication, the privilege regarding those issues is waived." Rather, and more precisely, where a party raises an issue that

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[11] At the outset, it is valuable to restate the scope of the Okada Parties' privilege challenge. Neither the Freeh Report itself, nor the Appendix to the Freeh Report, is presently at issue. Instead, the Okada Parties seek any notes or communications Freeh Sporkin made/had during the course of their representation of Wynn Resorts – effectively, all of Freeh Sporkin's documents without any limitation. (*See* Mot. 18.)

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will require them to "***necessarily rely upon*** privileged information at trial to defend those issues, the privilege as it relates ***only*** to those issues should be waived." *Wardleigh*, 111 Nev. at 356, 891 P.2d at 1187 (emphasis added).

1. Wynn Resorts did not waive its privilege by attaching the Freeh Report to the complaint or to SEC filings.

The disclosure of the Freeh Report – as an exhibit to the complaint or in Wynn Resorts' SEC filings, does not constitute a waiver. Numerous courts, including the seminal *Upjohn* case, have found that public disclosure of internal investigations was not significant enough to constitute a waiver of any remaining documents. *See id.* This reflects the modern corporate reality that compliance work represents a sizable amount of corporate activity. *See In re Kellogg*, 756 F.3d at 758 (finding that the attorney-client privilege applies to compliance-related activities). Elaborating from *Upjohn*, courts have reasoned that ***mere publication of a finalized corporate investigation does not result in waiver of all documents related to the report.*** For example, in *In re Woolworth Corp. Securities Class Action Litigation*, a federal trial court reasoned that waiver was inappropriate because the opposing party remained free to depose the individuals who had been interviewed to ascertain facts "not sufficiently set forth in the Report." *Woolworth* reasoned that disclosure of such reports "might well discourage corporations from taking the responsible step of employing outside counsel to conduct an investigation when wrongdoing is suspected." *Id.* at *2. "For shareholders to obtain the benefits of investigative reports of the type at issue here, these corporate decisionmakers [sic] must know that the integrity of communications made to independent counsel will be preserved." *Id.*

Disclosure of behind-the-scenes details of internal investigations would, as pointed out in *Woolworth*, have a chilling effect on the investigation process because Freeh's investigation has required the participation of numerous disinterested third parties, who provided information on sensitive topics. Providing legal advice in the corporate context is already a "treacherous path." *Ruehle*, 583 F.3d at 601. Ruling that Wynn Resorts waived the privilege here would make it unnecessarily difficult for publicly traded companies and gaming licensees like Wynn Resorts to

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responsibly and fairly investigate acts of alleged corporate wrongdoing by retaining outside counsel.

The Okada Parties claim that "Courts have repeatedly held that a company that chooses to disclose the results of an internal investigation thereby waives the attorney-client privilege for all matters relating to that subject matter." (Mot.19.) In support of their contentions, the Okada Parties cite two federal criminal law cases above the line: *United States v. Ruehle*, 583 F.3d 600 (9th Cir. 2009), a case which applied the "strict" privilege rules of federal common law, and *In re Martin Marietta Corp.*, 856 F.2d 619 (4th Cir. 1988), a widely distinguished case. Neither of these cases properly reflects Nevada law.

In *Ruehle*, the court found that a company waived the attorney-client privilege for information because the corporation *knew* that "all factual information" would eventually be disclosed to the corporation's independent auditors. *See* 583 F.3d at 610. Here, the November 1, 2011, Compliance Committee Report explicitly conditioned disclosure of Freeh's report to third parties only if "advisable." (Ex. 14 to Mot., at Ex. B at 1-2.) Moreover, *Ruehle* notes that to properly assert privilege, the claimant was required to "distinguish which particular statements should be afforded the privilege," and "made no effort to do so." *Id.* at 612. Wynn Resorts' Privilege Log plainly constitutes sufficient effort.

Okada's citation to *In re Martin Marietta* is even further from the mark. In that case – which over a dozen state and federal courts have called into question – the Fourth Circuit acknowledged that "if a client communicates information to his attorney with the understanding that the information will be revealed to others, that information as well as 'the details underlying the data which was to be published will not enjoy the privilege." 856 F.2d at 623 (internal quotation marks omitted)). As articulated in the above-the-line discussion, *Martin Marietta*'s one-size-fits-all interpretation of waiver fails to reflect Nevada's more nuanced approach to waiver.

The Okada Parties appear to argue that Wynn Resorts' use of privileged material in ***any*** forum, for ***any*** purpose, gives them ***carte blanche*** to uncover each and every otherwise privileged document "related" to the investigation. This would include information related to Wynn Resorts'

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routine regulatory filings – such as the Form 10-K and 8-K documents it is ***required*** to file annually with the Securities and Exchange Commission to maintain its status as a publicly traded company. Given Okada's open contempt for the American anti-bribery laws, it is unsurprising that the Okada Parties characterize Wynn Resorts' compliance with federal securities regulation as a "public[ ] attack." (Mot.18.) Regardless of Okada's personal misgivings and misunderstandings, Wynn Resorts should not have to choose between its corporate existence and gaming license, and its ability to seek confidential legal advice.

Even assuming that Wynn Resorts erred by attaching the Freeh Report to its complaint, attaching finished legal documents to a pleading does not "garble" the truth and require production of all related privileged communications. If this were so, then the truth is equally "garbled" each time a business court litigant in a contract dispute attaches to a complaint a copy of the finalized contract his or her attorney drafted, yet withholds confidential communications between the drafting attorney and her client. Such confidential communications may provide valuable insight into the signatory's intentions related to a disputed term; but wholesale disclosure of privileged work would also erode the principle that "encouraging clients to make full disclosure to their attorneys enables the latter to act more effectively, justly, and expeditiously." *Haynes*, 739 P.2d at 502.

Finally, the Okada Parties make no effort to show which documents from the 6,000-item Freeh privilege log are sufficiently "related" to the Freeh Report to indicate that waiver has occurred. Again, determination of whether a document qualifies as privileged ***must*** be made on a document-by-document basis. *Las Vegas Sands*, 331 P.3d at 914 n.10. By extension, determining waiver depends on whether a particular document is "related" to the subject matter of the document for which privilege has been waived. *See Scott*, 126 P.3d at 1239-40. Without any direction from the Okada Parties regarding whether any particular document on the Freeh privilege log is "related," the Court is constrained in its ability to make this determination.

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IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS, LIMITED,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GOFF GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

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

Real Parties in Interest.

Supreme Court No. 70050

District Court Case No. A-12-656710-B

SUPPLEMENTAL APPENDIX TO REAL PARTIES' ANSWER TO PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS

VOLUME 1
RA 001-196

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of Morris Law Group, that in accordance therewith, I caused a copy of **SUPPLEMENTAL APPENDIX TO REAL PARTIES' ANSWER TO PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS** to be served as indicated below, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY ON June 17, 2016

Judge Elizabeth Gonzalez
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DATED this 16th day of June, 2016

By: /s/ PATRICIA FERRUGIA

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DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada corporation. Plaintiff. vs. KAZUO OKADA, an individual, et al.,. Defendants.	Case No. A-12-656710-B Dept. No: XI ELECTRONIC FILING CASE **FOURTH AMENDED COUNTERCLAIM OF ARUZE USA, INC. AND UNIVERSAL ENTERTAINMENT CORP.**
AND ALL RELATED CLAIMS.	

COUNTERCLAIM

JURISDICTION AND VENUE

1. Counterdefendants Wynn Resorts, Limited ("Wynn Resorts" or the "Company"), Stephen A. Wynn ("Mr. Wynn" or "Steve Wynn"), Kimmarie Sinatra, Linda Chen, Ray R. Irani, Russell Goldsmith, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, D. Boone Wayson, Elaine P. Wynn, and Allan Zeman (collectively, "Wynn Parties") have each individually and in concert with one another, caused the acts and events alleged herein within the State of Nevada and all are subject to the jurisdiction of this Court. Venue is also proper in this Court.

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

NATURE OF THE ACTION

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

4. Among other things, Wynn Resorts purported to redeem the shares at a flat 30% discount to the most recent market price. Aruze USA's interests, valued by the market at more than $2.7 billion and by Wynn Resorts at $2.9 billion three weeks prior to the redemption, would be forcibly purchased in exchange for a non-transferable promissory note to pay approximately $1.9 billion in a single "balloon payment" 10 years from now. So Wynn Resorts raced to court, electronically filing a complaint at 2:14 a.m. on a Sunday morning – even before giving notice to

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[1] The Wynn Resorts' Board of Directors (the "Board"), other than Kazuo Okada ("Kazuo Okada" and "Mr. Okada"), were Steve Wynn, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Boone Wayson, Elaine P. Wynn, and Allan Zeman (collectively, the "Wynn Directors") during the events underlying the claims raised in this Counterclaim.

Aruze USA of the purported redemption. Wynn Resorts apparently thought that its position as the named "plaintiff" would help obfuscate the issues and distract the court from the claims of wrongdoing sure to be filed against it by Aruze USA and Counterclaimant Universal Entertainment Corporation ("Universal" and collectively with Aruze USA, "Counterclaimants"). Wynn Resorts' cynical tactics are unavailing. Based on the facts and the law, it is clear that it is Counterclaimants who have been grievously damaged in this case, and any suggestion to the contrary is entirely without credibility.

5. This Counterclaim arises because this purported redemption would: (a) violate the express terms of agreements between Mr. Wynn, Elaine Wynn and Aruze USA; (b) allow Mr. Wynn and others to profit unjustly from their illegal acts and a process that was corrupt and unfair; and (c) subject Aruze USA to an unconscionably punitive remedy based on an unproven pretext.

6. To be clear at the outset, Aruze USA disputes that any redemption has occurred. Among other things, even if the redemption provision in the Company's Second Amended Articles of Incorporation ("Articles of Incorporation") was legally enforceable (which it is not), Aruze USA's stock has never been subject to the redemption provision in the Company's Articles of Incorporation, because Aruze USA entered into a Stockholders Agreement before the Articles of Incorporation were amended and filed, which preclude any redemption of Aruze USA's stock. Specifically, Mr. Wynn covenanted that Aruze USA shall be the "record and Beneficial owner" of its common shares in Wynn Resorts and "shall have the ***sole power of disposition*** [and] ***sole power of conversion***..." of the shares "with no material limitations, qualification or restrictions on such rights...." (Emphasis added.) Aruze USA and Mr. Wynn entered into the Stockholders Agreement ***before*** Mr. Wynn unilaterally amended the Articles of Incorporation of Wynn Resorts to provide a discretionary right to redeem shareholders' stock. Elaine Wynn later became a party to the Stockholders Agreement and likewise covenanted that Aruze USA shall have the "sole power of disposition [and] sole power of conversion" of its shares in Wynn Resorts. Aruze USA never agreed in writing to the redemption rights in the Articles of Incorporation, as would be

required to amend the "sole powers of disposition" set forth in the Stockholders Agreement. The right of redemption thus does not apply to Aruze USA's shares.

7. Moreover, even if the Articles of Incorporation allowed the redemption of Aruze USA's interests in Wynn Resorts (which they do not), Steve Wynn and Elaine Wynn are not excused from breaching the express terms of the Stockholders Agreement by voting for the redemption in violation of Aruze USA's "sole right of disposition and sole right of conversion" and are liable for all damages caused by their breach. Likewise, by voting in favor of and giving effect to the redemption of Aruze USA's shares, Wynn Resorts and the other individual directors of Wynn Resorts tortiously interfered with the Stockholders Agreement and are thereby liable for all damages proximately caused by their interference, including for any losses incurred by Aruze USA as a result of the unprecedented $1 billion discount Wynn Resorts purported to apply to Aruze USA's shares.

8. The redemption of Aruze USA's shares is also invalid and unlawful because there was no legitimate factual or legal basis to invoke the redemption provision in this case. Wynn Resorts undertook a secret investigation, hiding the subjects of the investigation from Aruze USA by erroneously invoking attorney-client privilege and confidentiality, even after Wynn Resorts had leaked a "report" of the investigation to the *Wall Street Journal*. Wynn Resorts refused Aruze USA any reasonable opportunity to respond prior to redeeming Aruze USA's interests, despite prior written promises to do so. If Wynn Resorts had provided the opportunity, it would be clear why redemption is unwarranted.

9. The Wynn Directors breached their fiduciary duties to Wynn Resorts and to Aruze USA in not undertaking a thorough, independent, and objective examination of the law, facts, and evidence before purporting to usurp the role of the gaming authorities in finding Aruze USA "unsuitable." Similarly, they breached their duties by then voting for a wholly unnecessary and improper "redemption" on unconscionable terms. As a result, the Wynn Directors cannot rely on the "business judgment rule," as they did not act in a fully informed, good faith, and independent manner, and their actions are both contrary to the law and not objectively reasonable.

10. Mr. Wynn, Kimmarie Sinatra and Wynn Resorts later used the secret and one-sided investigative report to try and extort Aruze USA into selling its approximately $3 billion stake in Wynn Resorts to Mr. Wynn at a significant discount.

11. In addition to the lack of any legal basis for Wynn Resorts' actions, Aruze USA sues because Wynn Resorts, for all its accomplishments, is not a corporation in any ordinary sense. Rather, Wynn Resorts' flamboyant Chairman, Mr. Wynn, has run Wynn Resorts as a personal business, packing the Board with friends who do his personal bidding, and paying key executives exorbitant amounts for their loyalty.

12. The wrongful acts complained of here cannot be countenanced, and the purported taking of Aruze USA's property cannot stand.

PARTIES

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

14. Counterclaimant Universal (f/k/a Aruze Corp.) is a corporation organized and existing under the laws of Japan. Universal manufactures and sells pachislot and pachinko machines. Universal is registered with the Nevada Gaming Commission, and has been deemed suitable by the Nevada Gaming Commission as a 100% shareholder of Aruze USA. Mr. Okada is the Chairman of the Board of Universal.

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

16. Counterdefendant Steve Wynn is the Chairman of the Board and Chief Executive Officer of Wynn Resorts and is a resident of Nevada. Mr. Wynn owns 10,026,708 shares of the common stock of Wynn Resorts.[2]

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

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

19. Counterdefendant Linda Chen was a director of Wynn Resorts and, on information and belief, is a resident of Macau. Ms. Chen owns 265,000 shares of the common stock of Wynn Resorts. Ms. Chen stepped down as a director of Wynn Resorts on December 13, 2012.

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

21. Counterdefendant Russell Goldsmith was a director of Wynn Resorts and, on information and belief, is a resident of California. Mr. Goldsmith owns 40,000 shares of the common stock of Wynn Resorts. Mr. Goldsmith stepped down as a director of Wynn Resorts on December 13, 2012.

22. Counterdefendant Robert J. Miller is a director and Chair of the Gaming Compliance Committee of Wynn Resorts and, on information and belief, is a resident of Nevada. Mr. Miller owns 20,500 shares of the common stock of Wynn Resorts.

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

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

24. Counterdefendant Marc D. Schorr was a director and Chief Operating Officer of Wynn Resorts and, on information and belief, is a resident of Nevada. Mr. Schorr owns 250,000 shares of the common stock of Wynn Resorts. Mr. Schorr stepped down as a director of Wynn Resorts on December 13, 2012.

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

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

27. Counterdefendant Allan Zeman was a director of Wynn Resorts and, on information and belief, is a resident of Macau. Mr. Zeman owns 30,500 shares of the common stock of Wynn Resorts. Mr. Zeman stepped down as a director of Wynn Resorts on December 13, 2012.

GENERAL ALLEGATIONS

II. KAZUO OKADA AND STEVE WYNN LAUNCH WYNN RESORTS

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

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

29. Humiliated by his public ouster, Mr. Wynn was anxious to re-enter the casino business and rebuild his reputation and standing in Las Vegas. He purchased the old Desert Inn

casino and had plans to build a new casino on the site – it was to be a monument to himself, called "Wynn." But Mr. Wynn lacked the capital to fund the development of the casino, so he undertook an extensive search for investors. Having recently been forced out of Mirage Resorts, Inc., however, he was shunned by other sources of capital; Mr. Wynn eventually called on Universal, Aruze USA, and Mr. Okada to become the means for Mr. Wynn to get back on his feet.

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

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

32. In April 2002, Aruze USA made two additional contributions totaling $120 million to Valvino. Mr. Wynn told Mr. Okada that $30 million was related to Macau, but Mr. Wynn did not explain to Mr. Okada how Mr. Wynn actually spent the money. 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. There are also serious questions about the use of the other $90 million Aruze USA contributed.

B. The Stockholders Agreement

33. In 2002, all three owners of LLC interests in Valvino – Mr. Wynn, Aruze USA, and Baron Asset Fund[3] – understood that the Wynn organization was planning to go public as Wynn Resorts. This required a series of legal steps by which the owners' interests in Valvino were converted into shares of a newly formed corporation, "Wynn Resorts, Limited," that could then sell additional shares to the public.

34. On April 11, 2002, prior to the filing of the Articles of Incorporation for Wynn Resorts, Mr. Wynn, Aruze USA, and Baron Asset Fund entered into the Stockholders Agreement, which imposed certain restrictions on the sale of the stock they were to receive in "NewCo," the entity that would become Wynn Resorts. As described in Wynn Resorts' prospectus, dated October 29, 2002, "the stockholders agreement establishes various rights among Mr. Wynn, Aruze USA and Baron Asset Fund with respect to the ownership and management of Wynn Resorts."

35. Notably, the parties to the Stockholders Agreement stated that the terms of that agreement were a condition of transferring their LLC interests in Valvino to Wynn Resorts. The Stockholders Agreement stated "as a condition to their willingness to form [Wynn Resorts], either through the contribution of their interests in the LLC or through a different technique, the Stockholders are willing to agree to the matters set forth" in the Stockholders Agreement.

36. Under the Stockholders Agreement, Steve Wynn, Baron Asset Fund, and Aruze USA each warranted and covenanted that "[t]he Stockholder shall be the record and Beneficial Owner of all of the Shares" of Wynn Resorts' common stock, and "shall have the ***sole power of disposition*** [and] ***sole power of conversion***…" of the shares "with no material limitations, qualification or restrictions on such rights…." except as provided for under applicable securities laws and the agreement. (Emphasis added.) The Stockholders Agreement "may not be amended, changed, supplemented, waived or otherwise modified or terminated, except upon the execution

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

and delivery of a written agreement executed by the parties...." As described in further detail below, Elaine Wynn made this same covenant to Aruze USA when she became a party to the Amended and Restated Stockholders Agreement in 2010.

37. Wynn Resorts publicly acknowledged the impact of the Stockholders Agreement on the Company and the shareholders. The Wynn Resorts share certificates issued to Aruze USA on September 24, 2002, bear the following express, written legend, in bold and all caps: "**THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A STOCKHOLDERS AGREEMENT DATED AS OF APRIL 11, 2002**...." Additionally, in a Form S-1/A filed with the SEC on October 7, 2002, Wynn Resorts disclosed that the Stockholders Agreement established "restrictions on the transfer of the shares of Wynn Resorts' common stock owned by the parties to the stockholders agreement." In this way, Wynn Resorts – and all other stockholders – were aware that there were limitations written in the Stockholders Agreement on the transferability of the Wynn Resorts' stock held by Aruze USA.

38. The Stockholders Agreement removed Aruze USA from the purview of later-adopted redemption provisions in Wynn Resorts' Articles of Incorporation, as confirmed by, on information and belief, Wynn Resorts' own attorneys ***before*** the redemption provisions were added to the Articles of Incorporation.

39. In addition to restricting the power of disposition and conversion of all stock distributed pursuant to the Stockholders Agreement, the Stockholders Agreement also contained a voting agreement, granting Mr. Wynn the right to nominate a bare majority of directors, and Aruze USA the right to nominate all remaining directors. Each Stockholder covenanted to vote all of their shares in favor of the directors nominated by Mr. Wynn and Aruze USA. Pursuant to this voting agreement, Aruze USA repeatedly tried over the years to nominate directors to the Board of Directors of Wynn Resorts. Each time, Mr. Wynn refused to endorse and vote his shares in favor of Aruze USA's proposed directors, instead nominating all of the directors himself to ensure and perpetuate his complete control of the Board. Finally, the Stockholders Agreement

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

C. Wynn Resorts' Original Articles of Incorporation

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

41. Echoing a false statement made in a February 19, 2012 Wynn Resorts press release, Matt Maddox, Wynn Resorts' Chief Financial Officer and Treasurer, erroneously stated in a conference call with investors on February 21, 2012, that the redemption provision in the Articles of Incorporation had "been there since the Company's inception."

D. The Contribution Agreement

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

43. On June 10, 2002, Mr. Wynn, Aruze USA, Baron Asset Fund, Wynn Resorts and the Kenneth R. Wynn Family Trust entered into the Contribution Agreement (the "Contribution Agreement"), by which they agreed to contribute all of the Valvino membership interests to Wynn Resorts in exchange for the capital stock of Wynn Resorts. The Wynn Resorts' stock acquired by Aruze USA was subject to the provisions of the Stockholders Agreement.

44. Wynn Resorts further agreed that the existing restrictions could be altered only with Aruze USA's express written consent. The Contribution Agreement stated: "This Agreement may *not be modified or amended* except by an instrument in *writing* signed by the corporation and all of the Holders." (Emphasis added).

E. After Securing Aruze USA's Contribution, Steve Wynn Unilaterally Amends the Articles of Incorporation

45. After entering into the Contribution Agreement, but before transferring the LLC interests in Valvino, Mr. Wynn unilaterally changed Wynn Resorts' Articles of Incorporation to include a restriction that purportedly allows Wynn Resorts to "redeem" stock held by Wynn Resorts' stockholders. At this time, Mr. Wynn was the sole stockholder and director of Wynn Resorts. It was not until 2012, however, that Mr. Wynn and Wynn Resorts attempted to apply this redemption restriction to Aruze USA's shares, even though the Stockholders Agreement precluded Wynn Resorts from unilaterally adding restrictions to the shares.

46. Under the Stockholders Agreement, Mr. Wynn had power of attorney to transfer the LLC interests in Valvino to Wynn Resorts. Although the Contribution Agreement obligated Mr. Wynn to "as soon as practicable … deliver or cause to be delivered to Holders certificates representing the Common Stock[,]" Mr. Wynn delayed the contribution of the LLC interests in Valvino to Wynn Resorts. On information and belief, the final closing condition under the Contribution Agreement was met by July 9, 2002. Nevertheless, Mr. Wynn's delay meant that, although he had already received Aruze USA's commitment via the Contribution Agreement and the Stockholders Agreement, Mr. Wynn would continue to maintain unilateral control over Wynn Resorts for the period of the delay. This enabled Mr. Wynn to improperly change the Company's Articles of Incorporation in an apparent attempt to achieve Mr. Wynn's own long-term interests at Aruze USA's expense. Through this deliberate delay, and the intervening acts taken by Mr. Wynn before he fulfilled the terms of the Contribution Agreement, Mr. Wynn breached his fiduciary duties to Aruze USA as the attorney-in-fact of Aruze USA under the Stockholders Agreement and Contribution Agreement, as well as a director and officer of Wynn Resorts.

47. On September 10, 2002, Mr. Wynn amended Wynn Resorts' Articles of Incorporation. Although this change would purport to alter the securities received by Aruze USA, Mr. Wynn made the change unilaterally, without affording Aruze USA the opportunity to vote on the changes, let alone expressly consent in writing to the added restrictions as required in

the Stockholders Agreement and Contribution Agreement, in order to make the provision enforceable. The language Mr. Wynn unilaterally added to the Articles of Incorporation provided a ***discretionary*** right of redemption, which the Board of Directors had the right to waive whenever a waiver "would be in the best interests of the Corporation." That provision provided, in pertinent part:

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

48. If Mr. Wynn had done what he was bound to do pursuant to the trust and duties placed in him under the Stockholders Agreement and Contribution Agreement, and transferred the LLC interests in Valvino to Wynn Resorts ***before*** adding the redemption restriction, Aruze USA would have had the right under Nevada law to vote on the changes to Wynn Resorts' Articles of Incorporation.

49. Years later, in February 2012, Mr. Wynn, Elaine Wynn, the individual directors, and Wynn Resorts improperly applied the redemption provision to Aruze USA's stock and acted to redeem Aruze USA's shares, thereby breaching and tortiously interfering with the Stockholders Agreement. Prior to Wynn Resorts' improper attempt to apply the redemption restriction to Aruze USA's stock, Aruze USA was not and could not have been aware that Wynn Resorts would ever attempt to apply the discretionary redemption provision against Aruze USA because the Stockholders Agreement, which predated the amended Articles of Incorporation, gave the sole power of disposition and conversion of Aruze USA's stock to Aruze USA, precluding any right of redemption by the Wynn Resorts. Indeed, on information and belief, counsel for Mr. Wynn informed Aruze USA's counsel in or around June 2002, that any redemption restriction, if later added to the Articles of Incorporation through an amendment, would ***not*** to apply to Aruze USA's shares.

50. Thus, although the first acts perpetrated in furtherance of this fraud occurred in 2002, the misconduct did not cause harm until recently, when Wynn Resorts purported to use the redemption provision to redeem Aruze USA's shares in 2012 for a fraction of their true value.

F. Wynn Resorts Goes Public

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

52. On October 25, 2002, Wynn Resorts conducted an initial public offering ("IPO") on NASDAQ at $13 per share. At this time, Mr. Okada and Mr. Wynn each owned about 30% of the outstanding stock. Aruze USA contributed an additional $72.5 million to Wynn Resorts by purchasing stock through the IPO, and also invested $2.5 million in bonds issued by two Company subsidiaries, raising its total investment to $455 million. Shortly thereafter, Mr. Okada became Vice Chairman of Wynn Resorts' Board.

53. On April 28, 2005, Wynn Las Vegas opened. It was an instant success. On September 10, 2006, Wynn Resorts opened in Macau. "Encore" hotels followed in both locations. Again, each property has been very successful. None of this success would have been possible without the capital funding, support, and expertise of Aruze USA and Mr. Okada.

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

G. The Close and Trusting Relationship of Steve Wynn and Kazuo Okada

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

56. For example, at hearings before the Nevada State Gaming Control Board and Nevada Gaming Commission, on June 4 and 17, 2004, respectively, Mr. Wynn affirmed that

"Mr. Okada was not only suitable" to receive a gaming license "but he was desirable." Repeatedly referring to Mr. Okada as his "partner," Mr. Wynn said Mr. Okada was "dedicated to the pursuit of excellence."

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

58. In recognition of this trust and in "the spirit of friendship and cooperation that exists between [Steve] Wynn and Mr. Kazuo Okada . . ." on November 8, 2006, Mr. Wynn caused Aruze USA to enter into an Amendment to the Stockholders Agreement, which purports to contain a mutual restriction on the sale of stock without the other party's written consent, with all other relevant terms of the Stockholders Agreement remaining unchanged.

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

III. UNIVERSAL DISCLOSES AND ULTIMATELY PURSUES FOREIGN DEVELOPMENT PROJECTS

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

60. Universal and Mr. Okada first began exploring the possibility of acquiring and developing land in the Philippines in 2007, with one possible option for development being a casino and hotel resort. Although the initial discussions were preliminary, Mr. Okada brought the opportunity immediately to Mr. Wynn, hoping that Wynn Resorts might be interested in undertaking the project. Mr. Wynn told Mr. Okada that Wynn Resorts was not interested at that time in pursuing a project in the Philippines. However, Mr. Wynn voiced no concerns at all with

Universal's pursuit of the project. Mr. Okada thereafter kept Mr. Wynn fully informed of the project's progress.

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

62. On April 25, 2008, Universal announced its planned casino project in the Philippines. While the plans were preliminary, they took shape in the months to come.

63. From that point on, Wynn Resorts and Universal had an agreement. Universal could pursue a project in the Philippines, but at least for the time being, it would not formally be a Wynn Resorts project. On a May 1, 2008 conference call with stock analysts, Mr. Wynn affirmed that Wynn Resorts' Board and management team had longstanding knowledge of and fully supported Universal's project in the Philippines:

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

(Emphasis added).

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

65. As a further example of Wynn Resorts' knowledge and approval of Universal and Aruze USA's activities in the Philippines, on April 4, 2008, Kevin Tourek, a member of Wynn Resorts' Compliance Committee, emailed Frank Schreck, the then-head of Universal's Compliance Committee. The email was regarding Universal's investment in the Philippines.

Mr. Tourek confirmed that – so long as Universal was in compliance with the laws of the Philippines – the investment would not be something that would concern Nevada regulators or Wynn Resorts.

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

> In addition to its investment in Wynn Resorts, Limited, [Universal] has invested in the construction of a hotel casino resort in the Philippines, which is anticipated to open to the public in 2010. Mr. Okada confirms that, as at the Latest Practicable Date, except for his indirect shareholding interests in Wynn Resorts, Limited through Aruze USA, Inc., neither he nor his associates holds, owns or controls more than 5% voting interests in an entity which, directly or indirectly, carries on, engages, invests, participates or otherwise is interested in any company, business or operation that competes, or is reasonably expected to compete, with the business carried on by us in Macau.

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

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

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

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

70. The Philippine government approached Universal as early as 2006 and courted Universal for years. The Philippine government ultimately secured an agreement that Universal

would employ significant numbers of local people to work in the casinos. Press reports estimated that Universal's project and surrounding development could create as many as 250,000 jobs for Filipinos, and generate billions of dollars in tax revenues for the Philippine government. When Universal delayed the project in the wake of the 2008 financial crisis, the Philippine government again stepped up its efforts to encourage Universal to advance the development of its project. While Universal certainly expects the Manila Bay Project to be a "win-win" for the Philippines and Universal, the idea that Universal needed to curry special favor with Philippine government officials is profoundly mistaken.

C. Steve Wynn and Elaine Wynn Divorce

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

72. On January 6, 2010, Mr. Wynn obtained an Amended and Restated Stockholders Agreement ("Amended Stockholders Agreement,") which made Elaine Wynn a party to the Stockholders Agreement. The Amended Stockholders Agreement carried forward the covenant of all the Stockholders that the "Stockholder shall be the record and Beneficial Owner" of all Wynn Resorts common shares and "shall have ***the sole power of disposition*** [and] ***sole power of conversion***" of the shares "with no material limitations, qualifications, or restrictions on such rights" except under applicable securities laws and the terms of the Stockholders Agreement. (Emphasis added.)

73. The amended agreement also altered the Stockholders Agreement language regarding Aruze USA's right to nominate directors. Aruze USA could endorse nominees so long as the majority of nominees were endorsed by Mr. Wynn. Although the agreement required Mr. Wynn to support a minority slate of directors proposed by Aruze USA, he never did so. On information and belief, Mr. Wynn obtained the Amended and Restated Stockholders Agreement, with the intention of never supporting any director proposed by Aruze USA. In fact, Mr. Wynn consistently refused efforts to consider Aruze USA directors for the Board, in an effort to continue to monopolize control over Wynn Resorts. [ADD EXAMPLES FROM CLIENT]

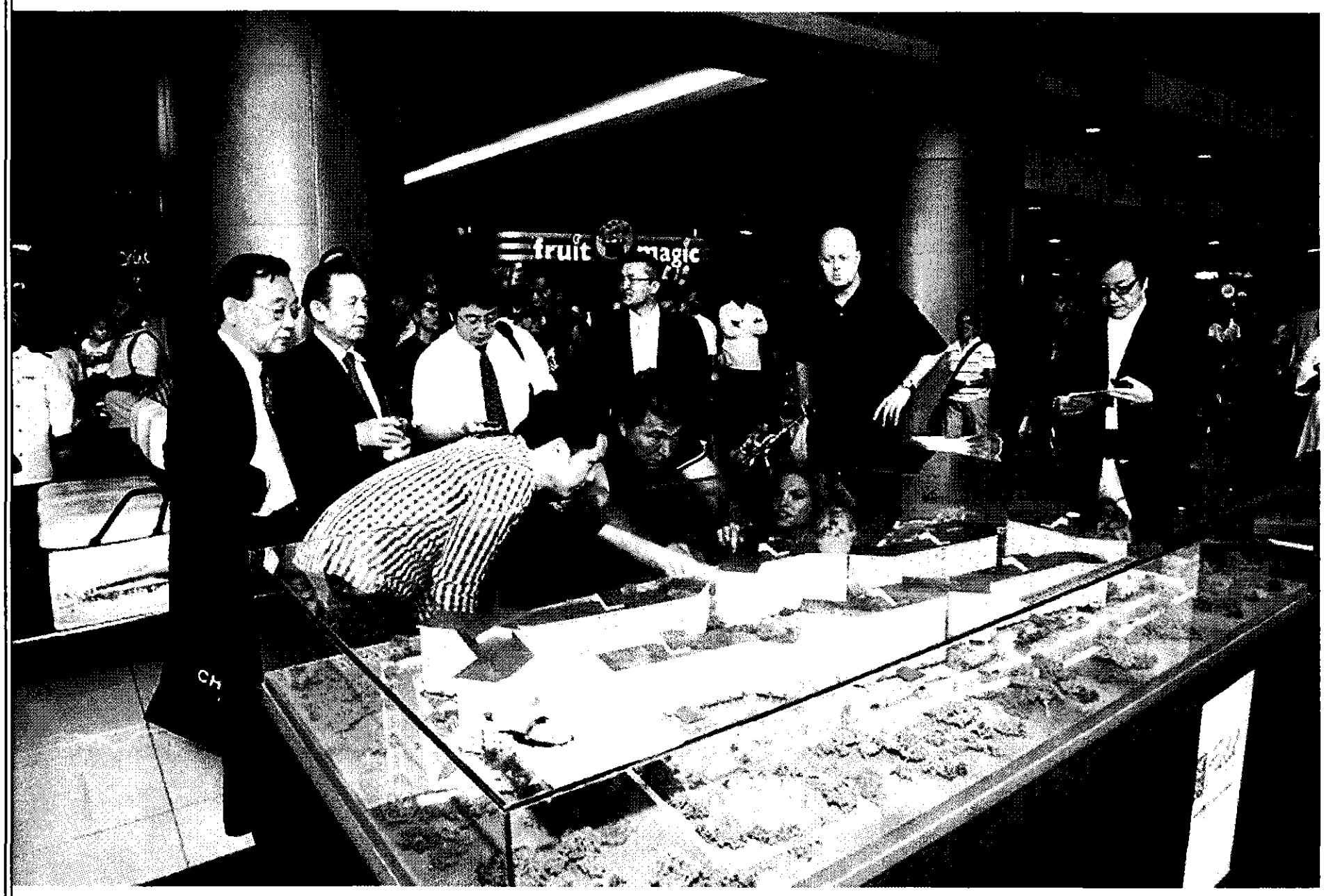
74. In addition, the Amended and Restated Stockholders Agreement continued to contain a non-compete clause that prohibited Mr. Okada, Aruze USA, and Universal only from operating casinos in Clark County, Nevada and in Macau, and certain Internet gaming ventures. Neither this version of the Stockholders Agreement, nor any prior or subsequent agreements, contained any prohibition or concerns regarding the Philippines or Korea.

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

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

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

77. As illustrated in the photographs, this pre-arranged trip involved meetings with dignitaries and officials and informational presentations on the project.



78. Mr. Wynn never formally committed Wynn Resorts to the Manila Bay project, but was clearly interested in pursuing the opportunity. The idea – promulgated by Mr. Wynn in press conferences following the purported redemption – that Mr. Okada and Universal were off "doing their own thing" unbeknownst to anyone at Wynn Resorts, is not true.

E. Over Kazuo Okada's Objection, Wynn Resorts Makes an Unprecedented $135 Million Donation For Wynn Macau

79. In May 2011, Wynn Macau pledged to donate HK$1 billion (about $135 million) to the University of Macau Development Foundation. This contribution consisted of a $25 million contribution made in May 2011, and a commitment for additional donations of $10 million each year for the calendar years 2012 through 2022 inclusive. Suspiciously, Wynn Macau's current gaming concession covers essentially the same 10-year period expiring in

June 2022. Wynn Macau and Wynn Resorts also disclosed that Wynn Macau was in the process of seeking to obtain land in Macau and the rights to develop a third casino in the area.

80. At a Board meeting in April, 2011, Mr. Okada objected to and voted against this donation, which appears to be unprecedented in the annals of the University of Macau, and in the history of Wynn Resorts. Mr. Okada objected to the unprecedented size and duration of the commitment. It was unclear how the University of Macau would use the funds. Mr. Okada wondered why a wealthy university that sits on government land and largely caters to non-Macau residents might need or want such a large donation. Mr. Okada, who is himself a significant philanthropist, wondered whether such a donation actually benefits the people who live in Macau. He was concerned about the lack of deliberation of the boards of Wynn Resorts and Wynn Macau (the donation was approved at a joint meeting in Macau of the two boards), and that pending approvals in Macau related to a new development in Cotai, and the coincidence of the date of the donation and the term of Wynn Macau's gaming license in Macau, might make it appear that Wynn Macau and Wynn Resorts were paying for benefits.

81. Notably, for example, the Chancellor of the University of Macau is also the head of Macau's government, with ultimate oversight of gaming matters. The only other charitable donation Wynn Resorts has disclosed in SEC filings in its history was a $10 million Ming dynasty vase donated to the Macau Museum in 2006—the same year in which Wynn Resorts first applied for a land concession on the Cotai Strip in Macau.

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

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

F. Steve Wynn and Kimmarie Sinatra Fraudulently Promise Kazuo Okada Financing for the Philippine Project

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

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

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

87. Mr. Wynn suggested that instead of having Aruze USA pledge its shares, he had "good answers to solve [Mr. Okada's] … requests." Mr. Wynn suggested that Wynn Resorts would make a loan to Aruze USA. Mr. Wynn told Mr. Okada that this was better than Aruze

USA liquidating its stock (which could have hurt Wynn Resorts' stock value), and much better than a bank loan because a bank: (1) would set a credit line of only 50% of the market value of Aruze USA's stock; (2) would require additional guarantees if the market value of Aruze USA's stock decreases; and (3) could require forfeiture of Aruze USA's stock if there was any delay in payment.

88. Mr. Wynn gave Mr. Okada an explicit personal assurance that financing would occur. Mr. Wynn stated that this proposal would be good for Mr. Okada and good for Wynn Resorts, because it will contribute to the stability of Wynn Resorts. And, based on such assurances, Mr. Okada agreed to financing from Wynn Resorts, rather than pledging Aruze USA's stock.

89. Unbeknownst to Mr. Okada, Universal, or Aruze USA at the time, Mr. Wynn was simultaneously orchestrating Wynn Resorts' "investigation" to have Mr. Okada, Aruze USA, and Universal deemed unsuitable. Indeed, Wynn Resorts has publicly asserted that it began its "investigation" into the Philippines as early as February 2011, well before Mr. Okada proposed to pledge Aruze USA's shares of Wynn Resorts' stock. Through his assurances, however, Mr. Wynn took deliberate steps to keep Aruze USA, Universal, and Mr. Okada associated with Wynn Resorts. If Wynn Resorts and Mr. Wynn were truly concerned with any risk that Aruze USA, Universal, and Mr. Okada supposedly posed to their gaming licenses, they would have allowed Aruze USA to liquidate its position. Instead, to perpetrate the fraudulent scheme, and seek to forcibly redeem Aruze USA's shares at a vast discount under extremely oppressive terms, Mr. Wynn instead misled Aruze USA into not liquidating its shares.

90. Ms. Sinatra was present at the meeting, and participated in this fraudulent scheme. On information and belief, Ms. Sinatra is a highly sophisticated and knowledgeable attorney, and is one of the highest-paid general counsels in the United States. Toward the end of the meeting, Ms. Sinatra stated that draft loan agreements would be provided to Aruze USA within 10 days to support the agreement reached between Mr. Okada and Mr. Wynn. Neither Mr. Wynn nor Ms. Sinatra said anything about internal or external limitations on loans to directors and officers.

For example, neither of them made any mention of Section 402 of the Sarbanes-Oxley Act ("SOX"). Unlike Japanese law that has no such prohibition, on information and belief, Ms. Sinatra believed Section 402 barred any loan to Aruze USA by Wynn Resorts. On information and belief, at the time of this meeting, Ms. Sinatra was intimately familiar with SOX and Section 402, having overseen the implementation of SOX compliance policies at Wynn Resorts that specifically addressed prohibitions on loans to officers and directors.

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

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

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

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

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

96. In the same email, Ms. Sinatra then explained that Wynn Resorts was negotiating with Deutsche Bank on a margin loan transaction, with Wynn Resorts acting as a "backstop." Ms. Sinatra suggested holding a telephone conference with Aruze USA's counsel to discuss the proposed transaction further. She did not dispute that Mr. Okada's consent to the amendment in the Stockholders Agreement was based on Wynn Resorts' agreement to continue to pursue financing for a loan to Aruze USA (using Aruze USA's Wynn Resorts shares as collateral). At no point in time did Ms. Sinatra call into question the Philippine project.

97. On July 15, 2011, Ms. Sinatra and Aruze USA's counsel held a telephone conference to discuss the proposed financing from Deutsche Bank. Ms. Sinatra provided background information on the state of the negotiations, and explained that Deutsche Bank was considering a margin loan of $800 million to Aruze USA. She stated that Deutsche Bank expected that they would be able to provide draft documentation within two to three weeks, and that the loan would be proposed to the Wynn Resorts Compliance Committee thereafter.

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

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

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

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

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

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

IV. STEVE WYNN DIRECTS WYNN RESORTS TO CONDUCT A PRETEXTUAL INVESTIGATION FOR THE PURPOSE OF REDEEMING ARUZE USA'S SHARES

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

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

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

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

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

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

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

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

110. Ms. Sinatra then brought her threat into stark relief. She stated that the Compliance Committee would meet on October 31, 2011 (in advance of a November 1 Board meeting). She told Mr. Okada's counsel that she hoped a "resolution" would be reached before those meetings regarding Mr. Okada's directorship and the voting rights of Aruze USA's stock, so as to avoid presenting this matter to the Compliance Committee and the Board. Ms. Sinatra's threat was clear: if Aruze USA did not agree to sell its shares in Wynn Resorts to Mr. Wynn or pledge its shares – subject to both a voting trust that would allow Mr. Wynn to vote the shares and to a right of first refusal for Mr. Wynn to purchase the shares – then Ms. Sinatra and Mr. Wynn would, as officers of Wynn Resorts, (a) inform the Board of alleged concerns regarding Universal's and Mr. Okada's project in the Philippines, and (b) request that the Board redeem Aruze USA's shares in Wynn Resorts on the basis of yet undisclosed investigative "findings" that Defendants had not been allowed to review or permitted any opportunity to rebut.

B. Steve Wynn and Kimmarie Sinatra Try to Intimidate and Threaten Kazuo Okada While Hiding Supposed Evidence of Wrongdoing

111. On an October 3, 2011 telephone call, Aruze USA's counsel asked Ms. Sinatra to provide Aruze USA with a copy of the Compliance Committee's investigative report regarding

Mr. Okada. Ms. Sinatra replied that she would have to check to see if a copy could be provided; in fact, she did not and has never provided a copy of the investigative report to Aruze USA, Mr. Okada, or their counsel.

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

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

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

- That the Philippines were so corrupt that no one could possibly do business in that country without violating the FCPA;

- That "research" showed Mr. Okada owned land without a Philippines partner, and that this violated Philippines law;
- That the other directors were "convinced" that Mr. Okada's use of his Wynn Resorts business card in other countries had caused a belief that Wynn Resorts was involved in the Philippine project and that the Company would not be in this position had he instead used his Universal business card;
- That Mr. Okada had used the Wynn Resorts building design and other trade secrets without permission; and
- That Mr. Okada had associated with persons who had later been indicted in the Philippines on charges unrelated to the Philippine project.

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

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

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

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

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

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

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

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

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

121. At the Board's November 1, 2011 meeting, Mr. Miller presented an oral report of an alleged investigation by the Compliance Committee into Mr. Okada's and Universal's activities in the Philippines. The report disclosed that the Compliance Committee had allegedly conducted one internal and two "independent" investigations into allegations of suitability,

conflicts of interest, and possible breaches of fiduciary duties related to acquisition of land for the Philippine project and charitable contributions made by Universal. To date, the contents of these purported investigations have not been presented to Mr. Okada.

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

F. Kazuo Okada Seeks More Information Regarding Wynn Macau

123. The vehemence of the actions by Mr. Wynn, Ms. Sinatra, Mr. Miller, and the Board against Mr. Okada is highly suspicious. After all, Mr. Okada had raised concerns about the donation to the University of Macau before Wynn Resorts had raised any type of unsuitability allegations against Mr. Okada and before anyone associated with Wynn Resorts even mentioned the word "redemption" to him. Mr. Okada made several requests for access to Wynn Resorts' books and records for information relating to the donation made by Wynn Resorts to the University of Macau, all of which were denied without a valid basis. In the state court of Nevada, Mr. Okada even filed a petition for a writ of mandamus on January 11, 2012 to compel Wynn Resorts to grant him access to Wynn Resorts' books and records. *Okada v. Wynn Resorts, Ltd.*, case number A-12-65422-B, Department XI (the "Inspection Action"). At a hearing on February 9, 2012, the Court ordered Wynn Resorts to comply with Mr. Okada's reasonable requests. In an order dated October 12, 2012, the Court further ordered that Wynn Resorts produce to Mr. Okada documentation regarding expenditures advanced directly or indirectly by Mr. Wynn in pursuit of gaming concessions in Macau.

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

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

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

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

126. Freeh Sporkin did not contact Mr. Okada or his counsel about an interview until January 9, 2012, at which time it demanded (not requested) an interview of Mr. Okada during the week of January 30 (*i.e.*, January 30-February 5). On January 15, 2012, four days after Mr. Okada filed his Inspection Action, Freeh Sporkin informed Mr. Okada's counsel that the "schedule has changed" and pressured Mr. Okada to agree to an interview *before* the week of January 30.

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

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

128. Mr. Okada had only recently hired new counsel to assist with the response to the Freeh Sporkin investigation. In order to prepare for the interview, the new counsel requested that the parties seek a mutually convenient date for an interview by February 15, 2012. Freeh Sporkin then agreed to schedule the interview on February 15th.

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

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

130. Freeh Sporkin refused to provide anything more than a statement that it was investigating "all matters related to Mr. Okada's, Universal's, and Aruze's activities in the Philippines and Korea." This was the first time that Korea was even mentioned as the subject of

any investigation by the Company. Again – the basis of Aruze USA's supposed "unsuitability" kept changing.

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

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

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

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

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

K. Wynn Resorts Allows No Opportunity for A Reasonable Response

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

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

136. Similarly, the Wynn Resorts Seconded Amended Complaint states that "Freeh advised Mr. Okada and his counsel that he would be reporting his findings to the Wynn Resorts Board on February 18, 2012...." (SAC at ¶ 47.)

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

138. On February 16, 2012, Mr. Okada's counsel emailed Mr. Freeh stating:

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

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

> Joel Friedman called you about 900a today (PT) and left a message for you to call a well as an email.
>
> I can suggest two possibilities in response to your letter:
>
> First, that you provide me as soon as possible, and no later than 600p PacT today, with a proffer of what Mr. Okada and Universal wish to submit for additional consideration. Your very able firm has represented Mr. Okada now for several weeks and you know the principal areas of our investigation based on Wednesday's interview. So I would expect you can make such a proffer.

> *Secondly, Mr. Okada will have the opportunity to respond to my report after he receives a copy, along with the other Wynn Resorts' directors. I will certainly consider and evaluate whatever information may be provided.*
>
> ...
>
> I also note that Mr. Okada's litigation against Wynn Resorts has now predicated an SEC inquiry and no doubt drawn the proper attention of other regulatory agencies. Consequently, the Compliance Committee has given me instructions to conclude my report with all deliberate speed.
>
> ...
>
> Anyway, I have a great deal of respect for you and believe the above alternatives allow for a fair resolution at this stage.
>
> Best regards.
>
> Louie

(Emphasis added.)

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

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

(Emphasis added.)

141. Mr. Freeh responded "Thanks Tom and safe travels."

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

> Just to confirm, I will now deliver my report to the Compliance Committee having completed my investigation regarding the matters under inquiry. It is my understanding that the Compliance Committee will thereafter provide all of the Directors, including

> Mr. Okada, with a copy of the report. As we both stated, Mr. Okada can then submit any responses to the report which will be considered and evaluated. However, the report I am submitting is not a 'draft' subject to being finalized after Mr. Okada provides any response. Rather this is akin to a final brief being submitted with the opportunity for a response to be made.
>
> Please let me know if you have any questions.
>
> Best regards
>
> Louie

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

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

L. Steve Wynn Hurriedly Schedules Board of Directors Meeting

145. On February 15, 2012, scant hours after the completion of Mr. Freeh's interview of Mr. Okada, Wynn Resorts noticed a special meeting of its Board. The meeting was set for Saturday, February 18, 2012, at 9:00 a.m. in Las Vegas – which is 2:00 a.m. Sunday morning in Japan. Although the notice for the Board meeting went out immediately following the conclusion

of the interview of Mr. Okada, and was scheduled to occur a mere three days after the interview, Mr. Wynn and Ms. Sinatra included on the agenda a review of the Freeh Sporkin report.

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

146. Following the interview, Mr. Wynn communicated to Aruze USA through intermediaries that, instead of having the Board consider the Freeh Sporkin report, Mr. Wynn would be willing to buy Aruze USA's stock for his benefit at a significant discount off of the fair value of the shares. Mr. Wynn, through his intermediaries stated that in exchange for Aruze USA selling its stock to Mr. Wynn, Mr. Wynn would ensure that the Freeh Sporkin report would not be disclosed. A sale to Mr. Wynn was presented as an alternative to the public embarrassment and regulatory issues attendant to possible disclosure of the Freeh Sporkin report. Aruze USA did not accede to these demands, ultimately causing Wynn Resorts, Mr. Wynn, and Ms. Sinatra to make good on their threats and commence a systematic process of defaming Mr. Okada, Aruze USA, and Universal and precipitating the redemption Aruze USA's shares at a $1 billion discount off the fair value of the shares.

147. On information and belief, this is not the first time Mr. Wynn has attempted to co-opt state gaming regulations to consolidate his ownership and control over a gaming company. According to published reports, in 1980, Mr. Wynn forced out the second largest shareholder of the Golden Nugget, Inc., Mr. Edward Doumani. Mr. Doumani was also a board member, and had expressed concerns about Mr. Wynn's practices as CEO of the Golden Nugget. Mr. Wynn eventually strong-armed Mr. Doumani into selling his stake by threatening to instigate an investigation of Mr. Doumani, contending that his continued association with the company caused a risk to a potential gaming license in Atlantic City. Three decades later, Mr. Wynn attempted the same scam, only this time Aruze USA refused to accede to Mr. Wynn's demand to sell him its stock on the cheap.

V. WYNN RESORTS' UNFOUNDED AND UNPRECEDENTED REDEMPTION OF MORE THAN $2.9 BILLION OF ARUZE USA'S SHARES

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

148. In a letter to Aruze USA's counsel dated December 15, 2011, Mr. Shapiro asserted that Aruze USA's shares were worth approximately $2.7 billion.

149. Hardly a month later (and a mere 22 days before purporting to redeem the shares), on January 27, 2012, Wynn Resorts filed its opposition papers in response to Mr. Okada's Petition for a Writ of Mandamus. In that court filing, Wynn Resorts declared that Aruze USA's holdings were worth *more* than $2.7 billion, stating that Aruze USA's shares are "valued at approximately $2.9 billion[.]" In the 22 days following Wynn Resorts' $2.9 billion valuation of Aruze USA's stock, Aruze USA's stock was not sold, transferred, or further encumbered by any additional restrictions.

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

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

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

152. When it came time for the meeting, at 2:00 a.m. on Sunday morning, Mr. Okada sat ready to participate by telephone. Mr. Wynn yelled at Mr. Okada's counsel when he

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

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

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

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

156. At some point, someone at Wynn Resorts hung up the telephone, cutting Mr. Okada off from the meeting. Mr. Okada waited to be reconnected, staying up until the sun

rose in Asia, all the while not knowing whether the Board had resolved anything following the presentation by Mr. Freeh. Ms. Sinatra later claimed that cutting off the telephone connection to Mr. Okada was a "misunderstanding." No other contact was made with Mr. Okada.

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

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

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

160. Despite repeated requests to Ms. Sinatra and Mr. Shapiro, Mr. Okada's counsel only obtained a copy of the "confidential" report when it sent a messenger to court on February 21, 2012, the first court day following the weekend Board meeting. Wynn Resorts refused to provide the Freeh Sporkin report's exhibits to Mr. Okada or Aruze USA until ordered to do so by this Court.

C. Aruze USA Disputes That Redemption Has Occurred

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

Stockholders Agreement, which predates the amended Articles of Incorporation purporting to grant Wynn Resorts a right of redemption.

D. The Board Redeems on False Premises

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

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

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

165. Third, Wynn Resorts' Articles of Incorporation profess that the Company can redeem where a person "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 [a] application for, [b] receipt of approval for, [c] right to the use of, or [d] entitlement, to any Gaming License." Subsections [a] and [b] do not apply because, on information and belief, at the time of redemption Wynn Resorts had no present plan to apply for a license and was not awaiting approval of any pending application. So, even under the standards of the Articles of Incorporation, Wynn Resorts could only seek redemption upon a showing that Aruze USA's stock ownership was "likely to jeopardize" Wynn Resorts' "right to the use of, or entitlement to" its existing gaming licenses.

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

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

E. Even if Aruze USA Were Subject to the Redemption Provision (Which it is Not), the Wynn Parties are Still Liable for Breaching and/or Tortiously Interfering with the Stockholders Agreement and Amended Stockholders Agreement.

167. Even if Aruze USA were subject to the redemption provision, which it is not, the Wynn Parties are not excused from breaching and/or tortiously interfering with the Stockholders Agreement when they purported to redeem Aruze USA's shares. Steve Wynn was bound by the terms of the Stockholders Agreement before he unilaterally amended the Articles of Incorporation to include a purported redemption right. The remainder of the Wynn Parties also knew or reasonably should have known that Aruze USA's shares were subject to the limitations of the Shareholders Agreement and Amended Shareholders Agreement when they purported to utilize their discretionary authority under the Articles of Incorporation to redeem Aruze USA's shares. Thus, even if the redemption provision of the Articles of Incorporation applies to Aruze USA, the Wynn Parties are liable for all harm caused to Aruze USA as a result of the redemption.

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

168. According to a press release dated February 19, 2012, Wynn Resorts issued a note in the amount of $1.936 billion to Aruze USA. This amount is exactly 30% less than the market value of Aruze USA's stock as measured by the closing price of Wynn Resorts' stock on the Friday prior to the Saturday Board meeting. According to its press release, Wynn Resorts arrived at this value because "it engaged an independent financial advisor to assist in the fair value calculation and concluded that a discount to the current trading price was appropriate because of restrictions on most of the shares which are subject to the terms of an existing stockholder agreement." The irony here is rich, because the Stockholders Agreement, by its terms, either precludes the redemption of Aruze USA's stock altogether or, alternately, the transfer restrictions are not binding on Aruze USA as a result of Steve Wynn's and Elaine Wynn's breach of the Stockholders Agreement (by voting in favor of the redemption of Aruze USA's shares and by Steve Wynn's failure to vote in favor of directors nominated by Aruze USA). The transfer restrictions are also invalid and unenforceable to the extent that they constitute an illegal restraint on alienability. Thus, the restrictions in the Stockholders Agreement could not legitimately impact the value of Aruze USA's shares so as to support a discount against the market price.

169. The February 19, 2012 Wynn Resorts press release also falsely stated that the redemption process in the Articles of Incorporation had "been [in place] since the Company's inception." This is untrue, as Mr. Wynn unilaterally *amended* the Articles of Incorporation to include the purported redemption language months *after Wynn Resorts was created*, and nearly 90 days after Aruze USA agreed to invest in Wynn Resorts and committed its interests in Valvino to Wynn Resorts. Wynn Resorts and Mr. Wynn thus sought to continue their fraudulent scheme by publishing a false basis under which Wynn Resorts purported to have the authority to redeem Aruze USA's shares of Wynn Resorts' stock.

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

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

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

173. The terms of the note are unreasonable and one-sided in the extreme, completely lacking reasonable and customary terms used to protect and preserve the interests of the note holder. Among other things, the amount of compensation paid for Aruze USA's shares do not reflect the "fair value" of the shares under the Articles of Incorporation and/or under governing law. Additionally, the hastily issued, ten-year $1.936 billion promissory note is unsecured and fully subordinated, not merely to current outstanding Wynn Resorts debt, but potentially to all future debt Wynn Resorts may incur, and pays a mere 2% interest per annum. In contrast, for example, less than a month after the purported redemption, Wynn Resorts issued $900 million aggregate principal amount in collateralized notes paying 5.375% interest. Moreover, though Nevada gaming regulations do not permit an "unsuitable" person from holding debt of a publicly-traded licensee, by its terms the note sent to Aruze USA is not even transferable. Wynn Resorts

prepared the promissory note without any input from Mr. Okada, or any representative at Aruze USA, forcibly imposing an unsecured, non-transferrable, non-voting, un-marketable, severely discounted and oppressive debt instrument on its largest shareholder.

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

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

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

> As previously disclosed … Wynn Macau, Limited ("WML"), an indirect subsidiary of the Registrant with ordinary shares of its common stock listed on The Stock Exchange of Hong Kong Limited, announced that Palo Real Estate Company Limited ("Palo") and Wynn Resorts (Macau) S.A. ("Wynn Macau"), each an indirect subsidiary of the Registrant, formally accepted the terms and conditions of a land concession contract (the "Land Concession Contract") from the government (the "Macau Government") of the Macau Special Administrative Region of the People's Republic of China ("Macau") in respect of approximately 51 acres of land in the Cotai area of Macau (the "Cotai Land"). The Land Concession Contract permits Palo and Wynn Macau to develop a resort containing a five-star hotel, gaming areas, retail, entertainment. food and beverage, spa and convention offerings on the Cotai Land.
>
> The Land Concession Contract was published in the official gazette of Macau (the "Gazette") on January [•] 2012. Effective from such publication date, Palo will lease the Cotai Land from the Macau Government for an initial term of 25 years with the right to renew the Land Concession Contract for additional successive periods, subject to applicable legislation. The Land Concession Contract also requires that Wynn Macau, as a gaming concessionaire, operate and manage gaming operations on the Cotai Land. In addition, as previously disclosed in the Registrant's filings with the Commission, on August 1, 2008, Palo and certain affiliates of the Registrant entered into an agreement (the "Agreement") with an unrelated third party to make a one-time payment in the amount of US $50 million in consideration of the latter's relinquishment of certain rights in and to any future development on the Cotai Land. The Agreement provides that such payment be made within 15 days after the publication of the Land Concession Contract in the Gazette.
>
> The foregoing description of the Land Concession Contract is qualified in its entirety by reference to the full English translation of the Land Concession Contract (originally published in the Gazette

in traditional Chinese and Portuguese), which is filed as Exhibit 10.1 hereto and incorporated herein by reference. Dollar amounts in the Land Concession Contract refer to Macau Patacas.

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

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

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

CLAIMS FOR RELIEF

COUNT I

Declaratory Relief

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

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

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

Aruze USA because Aruze USA entered into the Stockholders Agreement, which prevented any further restrictions without agreement of the parties and vested in Aruze USA the "sole power of disposition" of its shares, before the enactment of the redemption provision; (2) the redemption provision in the Articles of Incorporation is inconsistent with Nevada law and public policy, and thus void; (3) the Board lacked a sufficient basis for a finding of "unsuitability" or for redemption; and/or, (4) the redemption provision as written and as applied is unconscionable.

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

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

183. In addition or alternatively, Aruze USA and Universal seek a judicial declaration that the Board resolution to redeem Aruze USA's shares was procedurally and/or substantively defective, and contrary to law and public policy. As alleged in detail above, this declaration is appropriate because (1) the Stockholders Agreement, executed before the redemption provision

was added to the Articles of Incorporation, prevented any further restrictions on Aruze USA's shares without agreement of the parties and vested in Aruze USA the "sole power of disposition" of its shares; (2) the Board lacked a sufficient basis for a finding of "unsuitability" or redemption and made its findings without a thorough and complete review of relevant law, facts, and evidence; (3) the redemption provision in the Articles of Incorporation is inconsistent with Nevada law and public policy, and thus void; and, (4) the redemption provision, as written and as applied, is unconscionable.

184. Alternatively, to the extent that redemption is not otherwise barred, Aruze USA and Universal seek a judicial declaration that the form and amount of compensation paid for Aruze USA's shares was improper and/or inadequate and that Aruze USA is entitled to cash in an amount equivalent to at least the closing price of the stock on February 17, 2012. Indeed, Wynn Resorts asserted in a court filing dated January 27, 2012, that "[w]ith holdings valued at approximately $2.9 billion, Aruze is one of Wynn's largest shareholders." As alleged in detail above, this declaration is appropriate because simply converting Wynn Resorts' largest shareholder to Wynn Resorts' largest creditor serves no valid legal purpose. Furthermore, the discount applied to Aruze USA's shares based on the transfer restrictions of the Stockholder Agreement is invalid because of Steve Wynn's and Elaine Wynn's prior breach of the Stockholders Agreement. Moreover, the amount and form of compensation paid for Aruze USA's shares does not represent the "fair value" of the shares under the Articles of Incorporation and governing law. The "fair value" of the Aruze USA's stock at the time of the redemption should not have included any discount for the transfer restrictions or lack of marketability of Aruze USA's stock. In addition, the valuation by Moelis was not objective, independent, or the product of sound financial analysis, and, among other things, did not consider material non-public information available to Wynn Resorts that would militate in favor of a higher valuation, did not account for the premium that would be applied to such a large block of shares, and did not consider the extent to which transfer restrictions were not valid as to Aruze USA.

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

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

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

COUNT II

Permanent Prohibitory Injunction

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

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

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

190. For the reasons alleged above, the purported redemption is invalid as a matter of law and violated applicable contracts, and/or depends on provisions of contracts that are unenforceable as a matter of law. Even if there were a potentially valid legal mechanism to

redeem Aruze USA's stock, which there is not, redemption would be inappropriate in this case because the Board lacked sufficient basis to find Aruze USA or any of its affiliates or employees "unsuitable."

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

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

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

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

COUNT III

Permanent Mandatory Injunction

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

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

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

well as the value of Aruze USA's stock, and all dividends and other rights and privileges accruing to the shares.

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

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

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

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

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

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

COUNT IV

Breach of Contract in Connection with Wynn Resorts' Involuntary Redemption

(By Aruze USA Against Steve Wynn and Elaine Wynn)

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

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

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

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

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

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

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

COUNT V

Breach of Articles of Incorporation/Breach of Contract in Connection with Wynn Resorts' Discounting Method of Involuntary Redemption

(By Aruze USA Against Wynn Resorts)

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

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

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

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

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

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

216. Among other things, although known to Wynn Resorts, Wynn Resorts did not take into account material non-public information concerning positive developments for Wynn Resorts regarding the Cotai land concession in Macau, as well as other positive non-public information, when redeeming Aruze USA's shares for far less than the value of the shares. Furthermore,

Wynn Resorts' unilateral valuation did not account for the premium that would be applied to such a large block of shares.

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

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

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

COUNT VI

Breach of Fiduciary Duty

(By Aruze USA Against the Wynn Directors)

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

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

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

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

224. The Wynn Directors abused their discretion in finding Aruze USA, Universal, and Mr. Okada "unsuitable" and resolving to have the Company cause the purported redemption of

Aruze USA's shares of Wynn Resorts' stock. The outcome of the Compliance Committee's "investigation" was already determined prior to engaging a supposedly "independent" investigator, which then openly acted as an advocate against Aruze USA, Universal, and Mr. Okada rather than providing an objective, balanced, and fully informed review of the facts and law. Despite the fact that Freeh Sporkin informed the Board that further investigation would be required with respect to matters encompassed by its report, and despite assurances that Aruze USA, Mr. Okada, and Universal would be permitted to respond substantively to the report, the Wynn Directors deprived them of an opportunity to understand and to present any information to address the allegations against them prior to the vote on redemption.

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

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

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

228. Through their acts, the Wynn Directors have acted in a manner that seeks to deprive Aruze USA alone from its right to vote its shares, receive dividends, elect directors, and

to utilize other privileges incident to controlling the largest single block of shares in a publicly traded company.

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

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

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

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

COUNT VII

Imposition of a Constructive Trust and Unjust Enrichment

(By Aruze USA Against Wynn Resorts)

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

234. By engaging the in the wrongful conduct alleged herein, Wynn Resorts purportedly redeemed Aruze USA's stock in exchange for a wholly subordinated, unsecured ten-year promissory note in a principal amount at least 30% less than the fair value of Aruze USA's

stock, and paying a mere 2% interest, without providing Aruze USA any voting rights, rights to dividends, or the right to transfer the note.

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

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

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

COUNT VIII

Conversion

(By Aruze USA Against Wynn Resorts)

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

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

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

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

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

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

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

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

COUNT IX

Fraud/Fraudulent Misrepresentation in Connection with Financing for Aruze USA

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

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

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

248. Mr. Wynn and Ms. Sinatra, acting in their individual capacity and as agents of Wynn Resorts, made these false and misleading statements and omissions knowingly or without sufficient basis of information because they believed Wynn Resorts was not permitted to enter

into such a lending transaction pursuant to the restrictions in Section 402 of SOX. As alleged above, Mr. Wynn and Ms. Sinatra engaged in this wrongful conduct for the purpose of maintaining Mr. Wynn's control over Wynn Resorts after Mr. Wynn's shares in the Company were split with Elaine Wynn following their divorce, and keeping alive the opportunity to later have Wynn Resorts seek to redeem Aruze USA's shares at a discount.

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

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

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

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