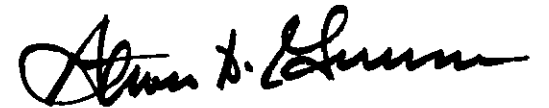


EXHIBIT E

EXHIBIT E



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Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman

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

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART DEFENDANTS'
MOTION TO COMPEL WYNN
RESORTS, LIMITED TO PRODUCE
BROWNSTEIN HYATT DOCUMENTS**

Date of Hearing: March 8, 2016

Time of Hearing: 8:00 a.m.

PLEASE TAKE NOTICE that an "Order Granting in Part Defendants' Motion to Compel Wynn Resorts, Limited to Produce Brownstein Hyatt Documents" was entered in the above-captioned matter on March 24, 2016, a true and correct copy of which is attached hereto.

DATED this 24th day of March 2016

PISANELLI BICE PLLC

By: /s/ Debra L. Spinelli
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Shoemaker, Kimmarie Sinatra, D. Boone Wayson,
and Allan Zeman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 24th day of March 2016, I caused to be **electronically served through the Court's filing system** true and correct copies of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART DEFENDANTS' MOTION TO COMPEL WYNN RESORTS, LIMITED TO PRODUCE BROWNSTEIN HYATT DOCUMENTS** to the following:

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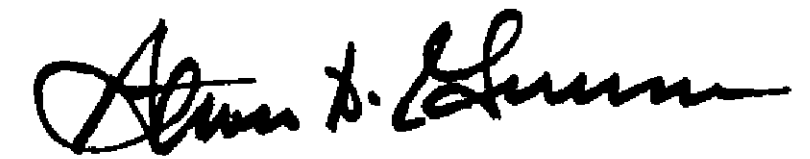
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DISTRICT COURT

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-12-656710-B
Dept. No.: XI

**ORDER GRANTING IN PART
DEFENDANTS' MOTION TO COMPEL
WYNN RESORTS, LIMITED TO
PRODUCE BROWNSTEIN HYATT
DOCUMENTS**

Date of Hearing: March 8, 2016

Time of Hearing 8:00 a.m

1 Defendant Kazuo Okada and Defendants/Counterclaimants Aruze USA, Inc.
2 ("Aruze USA") and Universal Entertainment Corp. ("UEC," and collectively, the "Aruze
3 Parties") filed its Motion to Compel Wynn Resorts, Limited to Produce Brownstein Hyatt
4 Documents ("Motion to Compel") and its Motion to Redact Defendants' Motion to Compel
5 Wynn Resorts, Limited to Produce Brownstein Hyatt Documents and to Seal Exhibits 2, 4-6,
6 10-12, 14, 15 and 17 ("Motion to Redact") on March 3, 2016, which came before this Court for
7 hearing on March 8, 2016. James J. Pisanelli, Esq. and Debra L. Spinelli, Esq., of PISANELLI
8 BICE PLLC, appeared on behalf of Plaintiff/Counterdefendant Wynn Resorts, Limited ("Wynn
9 Resorts") and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller,
10 John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and
11 Allan Zeman (the "Wynn Parties"). J. Colby Williams, Esq. of Campbell & Williams, appeared
12 on behalf of Counterdefendant/Cross-defendant Stephen A. Wynn ("Mr. Wynn"). William R.
13 Urga, of Jolley Urga Woodbury & Little, appeared on behalf of
14 Counterdefendant/Counterclaimant/Cross-claimant Elaine P. Wynn ("Ms. Wynn"). And, J.
15 Stephen Peek, Esq. and Robert J. Cassity, Esq., of Holland & Hart appeared on behalf of the
16 Aruze Parties. Adam Miller, Esq., of BuckleySandler LLP, appeared by telephone on behalf of
17 the Aruze Parties.

18 The Court having considered the Motions, the Opposition filed by the Wynn Parties, as
19 well as the arguments of counsel presented at the hearing, and good cause appearing therefor,

20 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion to Compel
21 is GRANTED, IN PART. By asserting the Business Judgment Rule as a defense, the members of
22 the Board of Directors of Wynn Resorts have put at issue certain advice they received from
23 Brownstein Hyatt. Therefore, Wynn Resorts shall produce all Brownstein Hyatt documents or
24 other information provided by Brownstein Hyatt which was given to the Board of Directors (or
25 any subcommittee of its members) for consideration of the issues of: (1) whether the Aruze
26 Parties were unsuitable, (2) whether Aruze USA's shares should be redeemed, (3) the steps to be
27 taken to redeem, and/or 4) the Board's responsibilities as a gaming licensee with respect to the
28

1 Aruze Parties. The Court does not make any determination regarding the application of the
2 business judgment rule for purposes of any claims or defenses in this case.

3 IT IS FURTHER ORDERED that this Order is STAYED for 15 days from the date of the
4 hearing, until March 23, 2016. Absent agreement of the parties or further order of this Court, the
5 documents and information described above must be produced no later than March 24, 2016.


6 IT IS FURTHER ORDERED that the hearing on the Defendants' Motion to Redact is
7 hereby continued until March 18, 2016, so that Plaintiff can provide an explanation regarding
8 whether Exhibit 2, the Brownstein Hyatt Privilege Log (Exhibit of the Defendant's Motion to
9 Compel), should be sealed.

10 IT IS SO ORDERED.

11 DATED this 24th day of March 2016.

12 
13 DISTRICT COURT JUDGE

14 PISANELLI BICE PLLC

15 By  #742
16 for
17 James J. Pisanelli, Esq., Bar No. 4027
18 Todd L. Bice, Esq., Bar No. 4534
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21 Russell Goldsmith, Ray R. Irani, Robert J. Miller,
22 John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
23 Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman
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EXHIBIT D

EXHIBIT D



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Alvin D. Quinn

CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

WYNN RESORTS LIMITED .

Plaintiff .

vs. .

KAZUO OKADA, et al. .

Defendants .

.

CASE NO. A-656710

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION TO DISMISS SECOND AMENDED COUNTERCLAIM

TUESDAY, NOVEMBER 13, 2012

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

RECEIVED

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CLERK OF THE COURT

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APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.

FOR THE DEFENDANTS:

CHARLES H. McCREA, JR., ESQ.

SAMUEL S. LIONEL, ESQ.

PAUL SPAGNOLETTI, ESQ.

HOWARD M. PRIVETTE, II, ESQ.

WILLIAM R. URGAS, ESQ.

MARK B. HELM, ESQ.

DONALD JUDE CAMPBELL, ESQ.

1 LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 13, 2012, 9:27 A.M.

2 (Court was called to order)

3 THE COURT: Wynn Resorts versus Okada.

4 Oh. We brought boards?

5 MR. McCREA: We did.

6 MR. PISANELLI: That suggests a lack of brevity, if
7 anything, Your Honor.

8 MR. CAMPBELL: I object to that, Your Honor.

9 (Pause in the proceedings)

10 THE COURT: Mr. Pisanelli, if you can start.

11 MR. PISANELLI: Good morning, Your Honor. James
12 Pisanelli on behalf of Wynn Resorts and the board of
13 directors, with the exclusion of Mr. Okada and the Wynns.

14 MR. CAMPBELL: Donald Jude Campbell on behalf of
15 Stephen Wynn.

16 MR. URGAS: William Urga on behalf of Mrs. Wynn.

17 MR. HELM: Mark Helm on behalf of Mrs. Wynn.

18 MR. PRIVETTE: Good morning, Your Honor. Howard
19 Privette of Paul Hastings on behalf of Aruze USA, Inc., and
20 Universal Entertainment Corporation.

21 MR. McCREA: Charles McCrea on behalf of Aruze USA
22 and Universal Entertainment.

23 MR. SPAGNOLETTI: Paul Spagnoletti from Davis Polk
24 on behalf of Aruze and Universal.

25 MR. LIONEL: Sam Lionel for Aruze and International

1 [sic].

2 MR. PISANELLI: Thank you, Your Honor.

3 Your Honor, admittedly, it's rare and complex
4 commercial litigation that an entire complaint fails to pass
5 scrutiny under Rule 12. But I will say this. It is equally
6 rare that a counterclaim so obviously designed to intimidate
7 and retaliate, rather than offer a concise statement of a
8 claim. By way of comparison to what we're talking about here,
9 Wynn initiated this action with a 20-page complaint with
10 79 paragraphs, concise, to the point about what its grievances
11 were.

12 In response this retaliatory pleading is 79 pages
13 long and just shy of 400 paragraphs. Four hundred. Now,
14 these are not concise statements of legitimate claims.
15 Instead, we spend lots of time talking about Mr. Wynn's career
16 prior to meeting Mr. Okada, an attempt to smear him to Your
17 Honor or to the press, more likely. We see allegations about
18 the Wynns' divorce, we see allegations and personal attacks on
19 this highly distinguished and decorated, I will say, board of
20 directors, referring to them in so many words as puppets,
21 starting with the former governor of this state and other
22 distinguished members. We even see a substantial amount of
23 time in this counterclaim attacking Mr. Wynn and his general
24 counsel as racketeers. Racketeers is what this counterclaim
25 is about.

1 So the point is this, that when a pleading is used
2 for an ulterior purpose, here be it a bargaining tool, a
3 weapon to exact revenge -- I'm not sure which it is, maybe
4 both, maybe just a PR campaign -- then the timing is right for
5 the heavy hand of this Court to come in and say to Mr. Okada
6 and his company, Aruze, and his battery of lawyers that the
7 answer is no, this will not be permitted and will not be
8 permitted in this courtroom.

9 So let me talk about the claims for just a few
10 minutes. I promise you I'm not going to regurgitate
11 everything that's in this extensive briefing. I will tell
12 you, however, in putting together a presentation where I, like
13 some of the other lawyers before you today, have and had a
14 goal of being brief, and I'm committed to maintaining that
15 objective --

16 THE COURT: It never happens.

17 MR. PISANELLI: It will happen. It's all relative,
18 but it will happen.

19 So the challenge I have, we have 18 claims and
20 nearly 400 paragraphs, one of these claims being as flawed as
21 the next. So where do we begin? It made sense to me to begin
22 at the most egregious point. And why not? Rather than go
23 chronologically or numerically, let's show just what was going
24 on when the architects of this counterclaim was putting it
25 together and what their real objective was. And when we

1 filter through those -- that lens we see just how flawed this
2 counterclaim is. And that, of course, from our perspective
3 anyway, starts at Count 9, the RICO claim.

4 We have a statutory scheme at federal level that was
5 enacted in I think 1970 or around that time, designed to help
6 battle organized crime. Specifically, if you research RICO,
7 you even see the word Mafia coming up. That's what RICO was
8 intended to do, both on the civil side and the criminal side.
9 And what we have in this case, a case about the redemption of
10 stock from a now dissident director, who has been found
11 unsuitable, is charges of racketeering and Mafia type of
12 behavior in a counterclaim. If it wasn't such a serious
13 charge for a gaming licensee, it would be a laughable
14 exercise. But it's not laughable at all.

15 So let's talk about the flaws that we've pointed out
16 in our brief which just cannot be corrected. This is not an
17 opportunity where Mr. Okada and his team and his company
18 should be given a fourth opportunity to amend, because these
19 types of claims can't be fixed. And in looking at any type of
20 racketeering charge of course we're going to have to look for
21 these predicate crimes. What are the crimes that Ms. Sinatra
22 and Mr. Wynn are alleged to have committed?

23 Well, it can't be the securities fraud that they
24 touch upon, because we know that this was a redemption, this
25 was a contract-based exchange, it wasn't an arm's-length

1 transaction, it wasn't the sale as we see is anticipated by
2 90.570. That provision under Nevada law is very clear that it
3 governs fraud carried out, quote, "in connection with an offer
4 to sell, sale, offer to purchase, or purchase of a security."
5 This is none of those things. We don't have any allegations
6 to show that this is any of these things. This is a contract
7 where the parties agreed that in the event the board of
8 directors found today, tomorrow, or 10 years after it was
9 enacted that Mr. Okada or anyone holding shares at Wynn
10 Resorts was found at the sole discretion of the Wynn board of
11 directors to be unsuitable, then the contract said, we will
12 exchange value, you will give your shares, and we will give
13 you either cash or a promissory note in exchange. It was not
14 an arm's-length sale where fraud and the Nevada law was
15 intended to protect people from unsavory type of behavior.
16 This was a contract.

17 Now, in creative lawyering we see counsel going in
18 their opposition outside of the state of Nevada for a forced
19 contract sale doctrine, which has never been recognized here
20 in Nevada. And, more important than that, even if we were to
21 now expand the law under 90.570, my point I think should be
22 reiterated that this isn't a forced sale, this was a contract
23 that was entered into 10-plus years ago where the parties
24 agreed under certain circumstances we are going to exchange
25 positions. And that's what happened. Mr. Okada went from the

1 equity side to the debt side because that's what he agreed to
2 a long time ago. He was not being forced to sell a thing.

3 Now, perhaps the best example of the abusive nature
4 of this particular count is attempt to take the -- what I'll
5 characterize as the -- to cram the square peg of the false
6 pretenses crimes in Nevada under Chapter 205 and put them into
7 the square holes of this RICO claim. And this, of course,
8 focuses upon the allegations and the circumstances where Mr.
9 Okada claims to have been duped by Ms. Sinatra and Mr. Wynn
10 because they said they were going to give him a loan which
11 would have loosened up or improved his liquidity perhaps in
12 connection with what he wanted to do in the Philippines. Who
13 cares what he wanted to do with it? But he says he wanted to
14 be more liquid and there was promises that he would get a
15 loan. That loan, of course, would have potentially been
16 unlawful, and it never ultimately happened. But the point is
17 this. We're talking about RICO here, racketeering, Mafia-
18 related charges. And what they're saying is that Mr. Wynn and
19 Ms. Sinatra obtained property under false pretenses and/or
20 obtained signatures under false pretenses.

21 But let's just assume for the sake of discussion
22 only that they had actually alleged something that's false,
23 right, that there was going to be a promise of a loan and the
24 loan never came into fruition. The question that has to be
25 asked for RICO purposes is, in determining whether there are

1 crimes being alleged is was there actually harm. There
2 actually has to be harm to a victim for a crime to have
3 occurred.

4 And what happened with this loan? Mr. Okada found
5 himself in the very unremarkable position of having exactly
6 what he had at the beginning of the discussions about a loan.
7 He had a stockholders agreement that he had entered into which
8 restricted his ability to sell and therefore restricted the
9 liquidity of his holdings. That's exactly where he started.
10 He claims and alleges to have had communications about a loan,
11 the loan didn't occur, and he found himself full circle
12 exactly where he started. He didn't lose a thing. He didn't
13 gain a thing, he didn't lose a thing. You cannot possibly
14 find that Ms. Sinatra or Mr. Wynn were committing a crime.
15 Under the circumstances as pled Mr. Okada found himself right
16 where he started. He still had his rights to challenge the
17 stockholders agreement if he thought that it was subject to a
18 challenge for the past 12 years, and he found himself, of
19 course, with the same liquidity, whether it be a good problem
20 or a bad problem, that he had. There was no crime.

21 The point is this. From a RICO analysis there's
22 nothing that they have alleged in this complaint that Steve
23 Wynn or Kim Sinatra did that was illegal. It's just that
24 simple. There's nothing that they've alleged to establish
25 that he was harmed.

1 THE COURT: Hold on a second. Someone's calling us.

2 MR. PISANELLI: Maybe it's Mr. Okada.

3 (Pause in the proceedings)

4 THE COURT: All right, Mr. Pisanelli.

5 MR. PISANELLI: [Unintelligible], Your Honor. Thank
6 you.

7 Now, without any harm and without any crime there's
8 nothing alleged that supports the application of the organized
9 crime statute designed to do something very, very different
10 than manage a case where parties disagree about corporate
11 governance.

12 Now, this lack of harm is important, and it's one of
13 the reasons I started at the RICO statute, because it does
14 have a carryover effect and a theme that defeats several of
15 the claims that -- I was going to say Mr. Okada, but Aruze has
16 set forth. With a lack of harm and no crime, so, too, must
17 Count 10 fail, so, too, must Count 11 and 12. These are all
18 the claims, fraudulent misrepresentation, negligent
19 misrepresentation, civil conspiracy, all having to do with the
20 loan, the loan that never occurred, as is the promissory
21 estoppel of Count 13.

22 So if Your Honor agrees with us that there is not
23 sufficient allegations of crimes and the types of wrong that
24 have to support a RICO claim -- and again, the reason I
25 started here is five of the claims on that flaw alone are

1 lost.

2 So let me take a moment now to talk about the other
3 personal attacks and retaliatory claims. And that's, of
4 course, against the board of directors. We start here
5 primarily with this Count 6, the breach of fiduciary duties.
6 Now, this is a big problem through the motion for Aruze,
7 because Rule 9(b) is the downfall. This is not simply a
8 notice pleading obligation; this is an obligation on their
9 part to plead with particularity, not simple conclusions about
10 they had a lack of loyalty, not simple conclusions about they
11 didn't exercise due care. It has to be particularly pled, and
12 that is because in order to allege a claim for breach of
13 fiduciary duty and overcome Nevada's business judgment rule
14 they have to plead fraud or the equivalent under 78.138(7).

15 Now, simple application of the business judgment
16 rule and looking at what it is that they pled again tells us
17 that this breach of fiduciary duty claim and the related ones
18 fail. In order to overcome our business judgment rule, they
19 tried it in preliminary injunction stage and they're trying
20 again here, they say, first of all it doesn't apply to
21 redemptions. And I'll be honest with you on this one, Your
22 Honor. This one had me scratching my head. The business
23 judgment rule tells us, 78.138(3), that this -- it applies to
24 actions in deciding upon matters of business. This was a
25 board of directors charged by their allegations with

1 considering to exercise Article 7 of the articles of
2 incorporation -- Section 7 of the articles of incorporation to
3 determine whether Mr. Okada is unsuitable and therefore
4 whether his shares should be redeemed. That goes to the very
5 heart of what this board of directors is charged with doing,
6 protecting this company and protecting its gaming licenses.
7 How we can get to the conclusion as Aruze does that the
8 business judgment rule doesn't apply to redemptions is lost on
9 me, and it's certainly not supported by any particularized
10 allegations in this complaint.

11 Now, they also say that it's not appropriate for
12 Rule 12, that the business judgment rule is always an issue of
13 fact, I'm assuming, or it's something that you have to take
14 their conclusory allegations. And, of course, the Amerco
15 decision from our Supreme Court here tells us that that's just
16 simply not true. Here the Supreme Court applied Rule 9(b) to
17 allegations at the pleading stage and dismissed claims similar
18 to those that we have here. So we do know that this type of
19 behavior is ripe for a 12(b) analysis.

20 Now, what we see from a pleading perspective, as
21 thin as these pleadings are from Aruze, is allegations
22 concerning a duty of care and duty of loyalty. On the duty of
23 care they say that the redemption process was rushed and
24 therefore the business judgment rule should be stripped away.
25 Now, again, this is one of those allegations that crumbles

1 under the weight of what they alleged. In their complaint at
2 paragraphs 118 and 128 through 130 they tell us about just how
3 careful the board of directors was. They tell us of how three
4 separate investigations of Mr. Okada occurred about his
5 dealings in the Philippines or related to his project in the
6 Philippines. They tell us in the second amended complaint
7 that Judge Free investigated this matter for over three and a
8 half months. These are their allegations, not ours. And so
9 you can't have it both ways and say in a conclusory manner
10 you're rushed therefore no business judgment rule, but, by the
11 way, maybe accidentally they are pleading with particularity
12 just how very careful this board of directors was. If they
13 want to overcome the very strong presumption of the business
14 judgment rule, we need something much, much, much more
15 specific than this.

16 They also say, in order to skirt the rule, the
17 business judgment rule, that the board was not entitled to
18 rely upon Judge Free and his report because, they say, it had
19 defects. They say it was wrong, it missed some things or it
20 just stated some things that were incorrect. But that misses
21 the point. They can't just simply say it was wrong in a
22 conclusion and therefore the board loses its protections.
23 They have to plead specifically that the board was aware, it
24 had knowledge of facts that would cause reliance to be
25 unwarranted. And that's under 78.138(2). In other words, a

1 state of mind type of allegation and evidence that this board
2 knew that Judge Free was sloppy, that Judge Free missed
3 things, that Judge Free was just rushing through his work.
4 None of those allegations are true in the first place, and
5 certainly there's nothing in the second amended complaint that
6 tells us that this board of directors knew that there was a
7 problem with the Judge Free report.

8 And then finally, on part of this Claim 6, they have
9 to allege with particularity a lack of loyalty. Again, they
10 say that they have pled around the presumed loyalty of the
11 board because they alleged in a conclusory fashion that Steve
12 Wynn coerced the board and that the board acted after Mr.
13 Okada dissented on the University of Macau donation. And once
14 again, Rule 9 governs this issue. And when you look for
15 coercion, the allegations of actual coercion that you're
16 obligated to accept as true, you don't find any. Because
17 they're not there. And the Macau pledge, again, is an
18 inconsistency throughout the second amended complaint that
19 can't be cured, because they can't say that the board had no
20 loyalty and was acting in retaliation of the Macau dissent,
21 because they say in paragraphs 141, 151, and 153 that the
22 Macau -- they say the inverse about the Macau issue. They
23 don't say that he was redeemed or found unsuitable because of
24 the Macau pledge. They said he was redeemed and found
25 unsuitable in those paragraphs because of Judge Free. And

1 Judge Free never mentions the Macau pledge. So you can't have
2 it both ways. In other words, this is inconsistent and
3 somewhat reckless pleading that certainly never comes close to
4 a Rule 9(b) standard.

5 To overcome this very strong statutory presumption,
6 Your Honor, the second amended complaint had to contain
7 allegations that directors were materially self interested and
8 personally benefitted. It's an obligation in order to
9 overcome it, and they have to plead that with particularity.
10 And the best that we ever see is that they had stock, that
11 they owned stock and they claim this benefitted them. But, of
12 course, the law from here and Delaware and everywhere tells us
13 that that's not enough, simply because they held stock isn't
14 enough to say that they had a conflict of interest or that
15 they had breached their loyalty.

16 Now, failure to plead around this business judgment
17 rule, another reason why I put it in the forefront to
18 highlight, Your Honor, is because it also works to defeat a
19 series of other claims, including Count 5; Count 6, which we
20 just went through; Counts 7; 8; and 18 all of which attack --
21 the latter three, I should say, attack the terms of the note
22 as being improper and bad business judgment.

23 So finally, Your Honor, and I think I'm on the cusp
24 of still being brief, a word about Claims 4, 14, and 15.
25 These all center around a counterclaim that the articles of

1 incorporation don't apply to his shares.

2 Now, 4 is the breach of contract, Steve Wynn
3 promised they wouldn't; Count 14 is the fraud in the
4 inducement in connection with the contribution agreement; and
5 Count 15 is the negligent misrepresentation. All of these
6 seem to say at their heart -- their crux is that Mr. Okada was
7 entitled to a safe harbor, everyone else in this company was
8 subject to redemption except him. I can't help but point out
9 the irony that the evidence in this case has already shown in
10 the injunction stage and otherwise, that Article 7 was put in
11 the -- Section 7 was put in article -- the articles of
12 incorporation because of Mr. Okada from a gaming perspective
13 and a financing perspective. But he comes in in this reckless
14 counterclaim alleging that he was the only person entitled to
15 this safe harbor.

16 And here is the big problem. The articles of
17 incorporation were amended in September in 2002. So a decade
18 has passed since this occurred, and there is no statute of
19 limitations anywhere that is going to save Mr. Okada and Aruze
20 in particular from this problem. He does not ever allege --
21 and I say "he," but it does not ever allege that it didn't
22 know about the articles of incorporation, it never alleges
23 that it was somehow secreted from him that Section 7 could
24 work against him. In fact, in their second amended complaint
25 they acknowledge themselves at paragraph 317 that the articles

1 of incorporation, Section 7 redemption, imposed upon Aruze
2 substantial risk that he could be redeemed. This new argument
3 about waiver that came in only in the opposition, my answer to
4 that is so what. Paragraph 317 tells us that they knew and
5 they allege in this complaint that there was -- in his mind
6 he started with no risk of redemption, he concedes in
7 paragraph 317 that there was a risk of redemption because the
8 board of directors might not follow its waiver rights and let
9 him have the safe harbor, and they conclude in paragraph 317
10 that that means a substantial risk.

11 Well, if that's what they are pleading, they have
12 pled themselves into a statute of limitations problem. They
13 were aware that there was something substantially different
14 from absolute protection to something short of it, the risk
15 the waiver -- the "substantial risk," their words, that the
16 waiver would not be imposed and the statute of limitations
17 would result in Claims 4, 14, and 15 all being dismissed.

18 Counts 1, 2, and 3 are remedies and not claims, and
19 we have now covered in what I will stand by a brief
20 presentation of 18 counts, unless you have any questions.

21 THE COURT: No. Thank you.

22 MR. PISANELLI: Thank you.

23 MR. PRIVETTE: Good morning, Your Honor. Howard
24 Privette. It's unfortunate that the first time I stand before
25 you I may not be as brief this morning as Mr. Pisanelli. But

1 I will try my best.

2 A couple threshold matters I'd like to clarify
3 before I really get into the meat. One of the
4 counterdefendants in this case, Elaine Wynn, has already
5 answered the second amended counterclaim that's the subject of
6 this motion. In addition, she has her own cross-complaint
7 concerning that stockholders agreement that Mr. Pisanelli
8 discussed. That has been answered, and that is also at issue
9 in this case. Bottom line is this motion doesn't properly
10 cover Ms. Wynn in the case is an issue with respect to her.

11 With respect to the other counterdefendants, while
12 they didn't answer any of the prior versions of the
13 counterclaim, they also didn't make any of the substantive
14 factual arguments before -- when they were over in Federal
15 Court. They brought a motion to dismiss the original
16 counterclaim, but the thrust of that motion was solely about
17 the jurisdiction of the Court in taking on certain federal
18 claims, federal securities claims that had been alleged in the
19 original counterclaim. They had I think one page, one and a
20 half pages addressing a very short version of the statute of
21 limitations argument that Mr. Pisanelli just made.

22 So we amended at that point to address the very
23 short version of the statute of limitations issue. And then
24 when this case was remanded and came back to this Court we
25 amended again by agreement to take out those federal

1 securities claims because they have exclusive federal
2 jurisdiction. Point being is, Your Honor, this was the first
3 time that we've had the opportunity to address the legal
4 effect of the facts that we had alleged in the counterclaim.
5 There are plenty more facts that we could have pled, could
6 plead. In fact, Mr. Pisanelli today and in his reply papers
7 actually chided us for addressing some of those facts,
8 including facts that came from his own declaration, from
9 documents in his own declaration. The point of it is we think
10 that those are facts and evidence in great detail that should
11 be addressed through discovery and trial and not through
12 apparently an invitation to try to amend the counterclaim
13 again. We think this counterclaim is factually sufficient and
14 it's time to go forward with this case.

15 Let me also say that this motion took us by surprise
16 in large part because some of the first claims that are made
17 in the counterclaim are mirror images of components of the
18 complaint that Wynn Resorts originally filed in this case. In
19 their motion they argue that the first few claims are
20 insufficient because they're titled as claims for declaratory
21 or injunctive relief. But when Wynn Resorts filed this
22 lawsuit the very first claim they filed was a claim for
23 declaratory relief. And by the way, when I say that they
24 filed a lawsuit, it was Wynn Resorts, not the board of
25 directors.

1 And so what does Wynn Resorts seek a declaration
2 about in this case? Whether Wynn Resorts acted lawfully and
3 in full compliance of its articles of incorporation, bylaws,
4 and other governing documents in purporting to redeem the
5 shares held by Aruze. Now, our declaratory relief claim is
6 more detailed than that. It identifies some issues that are
7 not specifically called out in Wynn Resorts' declaratory
8 relief claim. But we're in agreement that this lawsuit
9 present a justiciable controversy between Wynn Resorts and
10 Aruze USA concerning the propriety of Wynn Resorts' attempt to
11 redeem a stock. So it's somewhat bewildering that they try to
12 move to dismiss what is in large part the mirror image of
13 their own claim. And if this is because we titled it, just as
14 they did, a claim for declaratory relief, then the Court can
15 simply just look past the title and see that, for example, in
16 the first claim for relief we're stating in essence, among
17 other things, a breach of contract claim where we allege in
18 paragraph 177 of the second amended counterclaim that the
19 redemption was contrary to the articles of incorporation for a
20 number of reasons, including lack of proper factual and legal
21 foundation.

22 I'll get to the lack of legal foundation in a
23 moment. But what I'd really like to do and spend the time on
24 today is getting to the heart of the matter and the facts of
25 the case. The counterclaim lays out in great detail, Your

1 Honor, a scheme orchestrated by Steve Wynn to eliminate
2 dissent and consolidate power at Wynn Resorts. This was done
3 by trying to take away Aruze USA's shares and by silencing a
4 dissident director, Kazuo Okada.

5 Your Honor, we have some of this in our complaint.
6 We didn't feel it was necessary to go in great detail, but
7 Steve Wynn's history of having bruising and losing battles for
8 corporate control accompanied by allegations of poor corporate
9 governance by Steve Wynn and those around him, these are all
10 well-known facts. We mentioned them in passing. We don't
11 think it was really necessary to put a lot more of that into
12 our counterclaim.

13 Most pertinently, long before this case arose Steve
14 Wynn had a history of using alleged gaming issues to force out
15 troublesome shareholders and directors who dared to challenge
16 him. In the counterclaim we have allegations citing the
17 example of how Mr. Wynn forced out the then second largest
18 shareholder of the Golden Nugget, who'd expressed corporate
19 governance concerns about Steven Wynn. And what Steve Wynn is
20 said to have done, he accomplished the forcing out of this
21 dissenter by forcing him to sell his stake in the Golden
22 Nugget by threatening investigation into gaming issues. Mr.
23 Wynn tried to do exactly the same thing in this case with Mr.
24 Okada, but Mr. Okada refused to be bullied. And so that's
25 when Mr. Wynn put this plan into motion.

1 So it's critical to understand, Your Honor, that
2 while Mr. Pisanelli and others would have you believe that the
3 critical moment in this case was February 18th, 2012, when the
4 board of directors voted for that redemption, our belief is
5 that's not really the critical moment in this case. That vote
6 on February 18th was just a preordained event. It was a
7 product of a carefully orchestrated plan to try to discredit
8 Mr. Okada, and it culminated in what was basically a show
9 trial along the lines of what they used to do in the Soviet
10 Union. And it's just simply an outrage that it occurred here
11 in the context of a public company in the United States.

12 No, Your Honor, the critical moment in this case
13 occurred with the vote of the board of directors in April
14 2011. That's when Mr. Okada openly questioned Mr. Wynn's
15 demand that the board approve an unprecedented \$135 million
16 donation to an organization related to the University of Macau
17 and related to a number of powerful political players in
18 Macau. You see, at that same time Wynn Resorts was trying to
19 obtain land in Macau and obtain a gaming concession to develop
20 a new casino to go along with the wildly profitable operation
21 it already has there. So this proposed gift from Wynn was
22 unprecedented in the annals of the Macau University, which is
23 a wealthy university sitting on government land in one of the
24 richest parts of the world. So there are serious questions
25 about the use of that much money, especially when the proposed

1 donation was to be made in annual installments over a period
2 suspiciously coinciding with the exact length of the
3 concession sought by Wynn Resorts.

4 There's no dispute in this case, shockingly, Your
5 Honor, that despite the fact that even the SEC saw enough to
6 open an investigation into the matter, Mr. Okada was the only
7 board member to raise any questions about this donation and
8 the only board member to vote against it. The crux of the
9 counterclaim, Your Honor, is that it's no coincidence that Mr.
10 Okada is the only board member shut out of deliberations and
11 decision making in Wynn Resorts and that Wynn Resorts seized
12 Aruze USA's shares. The facts alleged in the counterclaim
13 explain this in great detail, and this is even without the
14 benefit of discovery. We could obviously put more facts in,
15 but we just don't think that that's necessary at this time.

16 So, Your Honor, the pretext for these punitive
17 actions taken against Mr. Okada and Aruze is that Mr. Okada's
18 parent corporation, Universal Entertainment, is building a
19 resort and casino in the Philippines. As set forth in the
20 complaint filed by Wynn Resorts, the contention is that Mr.
21 Okada breached his fiduciary duties to Wynn Resorts by
22 building a competing casino in the Philippines. Before
23 commissioning this so-called Freeh report to try to dig up
24 some dirt, in October 2011 Mr. Wynn demanded that Mr. Okada
25 resign from the Wynn Resorts board, arguing that the

1 Philippines are so corrupt that no business can be done there
2 without some form of bribery. When Mr. Okada refused to
3 resign from the board, Mr. Wynn just went to the rest of the
4 board and had them eliminate the vice chairman position at the
5 next board meeting. This was before they even hired Mr.
6 Freeh.

7 So the one thing among many that's really curious
8 about all this is the fact that Mr. Wynn and the board of
9 directors knew all about Universal's plans for the Philippines
10 for years and had never expressed any concern.

11 So in consideration of time let me just in a few of
12 the factual illustrations that are alleged in the
13 counterclaim. Obviously there's much more, both currently in
14 the counterclaim and more that we could amend in if need be.
15 So let me go to my first board here.

16 MR. PISANELLI: I haven't seen these boards.

17 THE COURT: You're welcome to move wherever would be
18 workable.

19 MR. PISANELLI: Thank you.

20 THE COURT: Mr. McCrea is going to give you a copy.

21 MR. PRIVETTE: Your Honor, if I may approach, I have
22 copies for the Court, if that would be helpful.

23 THE COURT: Thank you.

24 Billie Jo can mark this as Court's Exhibit 1.

25 MR. PRIVETTE: So, Your Honor, this is a quote from

1 our counterclaim. This is one of the allegations, one of the
2 many allegations we have. And this is a statement made by
3 Steve Wynn in a May 1st, 2008, conference call with stock
4 analysts. And I won't read the whole thing about how he loves
5 Kazuo Okada, he is a partner and my friend. But the
6 italicized version is where it really gets important here.
7 And there was a question being asked by the Philippines. And
8 what Mr. Wynn says there is, "This is something that Kazuo
9 Okada and his company has done on its own initiative. He
10 consults me and has discussed it with me extensively, and I've
11 given him my own personal thoughts on the subject and advice.
12 And to the extent that he comes to me for any more advice or
13 input, all of us here at the company will be glad to give him
14 our opinions. But that's short of saying that this is a Wynn
15 Resorts project."

16 Clear, Your Honor, the Universal project in the
17 Philippines was well known to Steve Wynn, the board, and Wynn
18 Resorts, and Steve Wynn was telling people publicly that he
19 knew about it, was being consulted about it, and was helping
20 his friend and partner Kazuo Okada. So to come back years
21 later, only after the Macau issue came up, and start accusing
22 Mr. Okada of breaching his fiduciary duties to the company by
23 setting up a competing institution is just ludicrous.

24 And it gets even better, Your Honor. Going to my
25 second board, this is a series of photographs, Your Honor,

1 that again are in the counterclaim. We actually have these
2 nice color pictures in the counterclaim. And what these
3 represent are photographs taken on June 14th, 2010, when Steve
4 Wynn visited the Philippines with Mr. Okada. And what you see
5 here in the first photograph is a sign that was set up,
6 "Welcome to the Philippines Chairman Steve Wynn," with the
7 Wynn logo underneath it.

8 The second photograph shows Mr. Wynn sitting dead
9 center in a meeting, smoking a cigar, and looking at plans for
10 the building of this resort.

11 The next photograph, here's a picture of Mr. Wynn
12 with his arm around Mr. Okada, standing in front of a board
13 that has the logos of Wynn, Aruze, and Universal in
14 [inaudible]. This is the Philippine casino organization.

15 So these pictures were taken in June of 2010. They
16 say a picture is worth a thousand words. Here's three
17 thousand words. Is there any indication here of a concern
18 about competing against Wynn Resorts? Absolutely not. Is
19 there any concern here about corruption, that you could not
20 set foot in this country without concerns about corruption?
21 Obviously not.

22 In addition, some of the allegations made against
23 Mr. Okada when Mr. Wynn demanded that he resign from the board
24 went so far as to say something like, you're going around Asia
25 and handing out business cards with -- saying that you're the

1 vice chairman of Wynn Resorts, this is confusing people with
2 the idea that somehow Wynn Resorts has something to do with
3 this and that's a problem with your fiduciary duties with the
4 company. But here we have the chairman of Wynn Resorts
5 himself in the Philippines, standing in front of boards with
6 the Wynn Logo.

7 In fact, with respect to this idea that you couldn't
8 possibly do business at all in the Philippines without running
9 into corruption another question to ask is why hasn't Steve
10 Wynn initiated investigations of other members of the board of
11 directors who are also doing business in the Philippines.
12 That's never been mentioned. There's been no investigation.
13 There never was here, either, Your Honor, until after the
14 Macau vote.

15 So when Steve Wynn went to the board and asked them
16 to remove Mr. Okada from his vice chairmanship there's another
17 telling event that happened just before that, and that is,
18 being tired of being stonewalled by Mr. Wynn and the
19 management of Wynn Resorts in his request for more information
20 about Macau, in October of 2010 Mr. Okada had his lawyers make
21 a formal demand that Wynn Resorts allow Mr. Okada to inspect
22 relevant records. As the Court is aware, that demand was
23 summarily denied. So eventually, in January 2010 -- or, I'm
24 sorry, 2012, Mr. Okada actually had to file suit in this court
25 in an effort to vindicate his rights and responsibilities in

1 that matter.

2 So now let's talk about that, quote, "investigation"
3 by Mr. Freeh. As we allege in the counterclaim, Mr. Okada
4 repeated requested information about the focus of the
5 investigation so that he could assist in gathering relevant
6 information and documents. Those requests were rebuffed at
7 every turn. However, on January 8th, 2012, the Freeh firm
8 contacted Mr. Okada to set up an interview during the first
9 week of February. Before that could be scheduled, though, on
10 January 15th Mr. Okada was informed that the schedule had
11 changed, that the interview now needed to be done before
12 January 30th. What happened to change the schedule, one might
13 ask. Well, on January 11th Mr. Okada had filed his mandamus
14 action seeking documents about Macau. On January 19th Mr.
15 Miller himself got into the act, sending a letter demanding
16 that Mr. Okada make himself available on January 30 or 31st,
17 threatening that if he didn't Wynn Resorts would deem him as
18 having refused participation. By the way, the day before Mr.
19 Miller sent that letter Aruze USA had sent a letter to Wynn
20 Resorts designating three highly qualified individuals as
21 candidates for the Wynn board of directors to stand for
22 election at the company's 2012 annual meeting.

23 And as we know from Elaine Wynn's answer to the
24 counterclaim, Mr. Wynn had stated behind the scenes that he
25 had no intention of ever endorsing those candidates even

1 though he's contractually obligated to do so under the
2 parties' stockholders agreement.

3 Eventually, Your Honor, the Freeh firm agreed to
4 interview Mr. Okada on February 15th, 2012, in Tokyo. Several
5 times prior to that interview Mr. Okada's counsel asked for
6 information concerning the topics to be covered so that Mr.
7 Okada could gather relevant information and be ready to
8 provide that information and any relevant documents in
9 conjunction with the interview. All these requests were
10 rejected.

11 So Mr. Freeh conducted his interview by ambush on
12 February 15th. At that interview Mr. Okada answered all of
13 the questions to the best of his ability, oftentimes noting
14 that he would have to consult with people within his
15 organization to assemble the facts concerning what he was
16 asking about, such as entertainment expenses supposedly
17 incurred overseas. And at the end of the interview Mr. Okada
18 specifically stated that he would be happy to provide that
19 information and would try to do so as soon as he could.

20 Now, Your Honor, I'd appreciate it if you'd bear
21 with me a minute, because I think the events immediately
22 following this interview bear close scrutiny, and a lot
23 happened very, very fast. And I'll go through some boards
24 about this.

25 First, again, this was all taken from our

1 counterclaim. There are a series of emails between Louis
2 Freeh and Mr. Okada's counsel that occurred after this
3 interview. And here's the first one. And it was February
4 16th. So this is the day after the interview. "Louis, I hope
5 you had a good trip back to the U.S. Following your interview
6 we understand you'll be drafting a report. I'm writing to
7 request an opportunity for Mr. Okada and Universal to submit
8 additional material for your consideration prior to the
9 submission of your report. Please let me know as soon as you
10 are able if you'll allow us to do so."

11 Here's the response from Mr. Freeh. "I can suggest
12 two possibilities in response to your letter. First, that you
13 provide me as soon as possible with a proffer of what Mr.
14 Okada and Universal wish to submit for additional
15 consideration. Secondly, Mr. Okada will have the opportunity
16 to respond to my report after he receives a copy, along with
17 the other Wynn Resorts directors. I will certainly consider
18 and evaluate whatever information may be provided."

19 This is a very interesting statement. "I also note
20 that Mr. Okada's litigation against the Wynn Resorts," that's
21 the mandamus proceeding about Macau, "has now predicated an
22 SEC inquiry and no doubt drawn the proper attention of other
23 regulator agencies. Consequently, the compliance committee
24 has given me instructions to conclude my report with all
25 deliberate speed."

1 Your Honor, this is what we've been saying all
2 along. Here's an acknowledgement of exactly what we're
3 saying. Mr. Freeh's report, this whole process was brought in
4 response to Mr. Okada raising questions about Macau and was
5 being forced forward at high speed because the Wynn Resorts
6 board and Mr. Wynn concerned about what was happening about
7 Macau. They wanted to silence Mr. Okada.

8 So the email traffic continued. And a response to
9 that was, from Mr. Okada's counsel, "Louis, thanks for your
10 response. Under the circumstances I think it makes the most
11 sense for Mr. Okada, UE, and Aruze USA, and our firm to review
12 your report and to use it to focus our efforts in providing
13 you additional information. So we accept the second of the
14 two proposals in your letter and expect that the opportunity
15 to respond will include an opportunity for our law firm to
16 work with Mr. Okada, UE, and Aruze USA in order to be able to
17 respond in a complete and helpful fashion."

18 Mr. Freeh's immediate response to that, "Thanks,
19 Tom. And safe travels." That was February 17th, Your Honor.

20 So two hours later, later in the day, February 17th,
21 this was Friday, the day before the board meeting about the
22 redemption, later Mr. Freeh sends another email. "Just to
23 confirm, I will now deliver my report, having completed my
24 investigation. It is my understanding that the compliance
25 committee will thereafter provide all the directors, including

1 Mr. Okada, with a copy of the report. As we've both stated,
2 Mr. Okada can then submit any responses to the report, which
3 will be considered and evaluated. However, the report I am
4 submitting is not a draft subject to being finalized; rather,
5 this is akin to a final brief being submitted with the
6 opportunity for a response to be made." A brief, Your Honor,
7 not an objective investigatory report, an opening brief.

8 So while those emails were going back and forth, on
9 that same Friday, the 17th, I believe it was -- this is in our
10 counterclaim -- Mr. Wynn contacts Mr. Okada through
11 intermediaries and says that he would be willing to call off
12 the board meeting if Mr. Okada agrees to have Aruze USA sell
13 its shares to Mr. Wynn at a substantial discount. So, Your
14 Honor, this is just a rerun of exactly what had happened with
15 the Golden Nugget years before. But, unlike that other guy,
16 Mr. Okada refused to give in to this kind of arm twisting.

17 So this board meeting, which, by the way, I'd left
18 that out in my timeline here, that board meeting was called
19 within hours after that interview ended in Tokyo. It was
20 clearly in advance, it was planned that the moment that that
21 interview ended, basically get confirmation from Louis Freeh
22 the interview was done, send out the notice of this board
23 meeting on two or three days' notice.

24 So that meeting goes forward on the 18th at
25 2:00 a.m. in Asia, where Mr. Okada tried to participate by

1 telephone. Contrary to all those previous promises, Mr. Okada
2 was not provided a copy of the report, this opening brief by
3 Mr. Freeh. He was told, Mr. Okada was, that he would have to
4 first sign a confidentiality agreement that would severely
5 restrict any use of the document, including possible use in
6 litigation. So Mr. Okada declined to sign it.

7 But, as with so much in this case, that was a
8 subterfuge, proven by the fact that Wynn Resorts turned around
9 within 24 hours and provided copies of that very same report
10 to members of the press shortly after the board meeting had
11 concluded. And to this day Wynn Resorts is still -- has still
12 refused to provide a full copy of that report to Mr. Okada.

13 So the actual board meeting itself started off with
14 Mr. Wynn screaming at Mr. Okada's counsel when Mr. Okada's
15 counsel tried to introduce himself, threatening to cut off
16 telephone feed to Mr. Okada unless counsel left the room,
17 despite the fact that Wynn supposedly, we're told, has lawyers
18 from at least three to four law firms surrounding him, plus
19 Ms. Sinatra. Perhaps even worse, Wynn refused to allow
20 sequential translation of the meeting where the speaker
21 speaks, translation is done, and then continues. Instead,
22 Wynn insisted that Okada make do with simultaneous translation
23 with a woefully inadequate translator provided by Wynn.

24 As the Court is aware from reviewing the transcript
25 of the deposition that was taken in the mandamus proceeding,

1 even at that deposition, which started with four professional
2 translator and sequential translation, there were significant
3 problems in allowing the parties to understand what other. So
4 now imagine an overseas telephone connection with a bunch of
5 people talking in English where the translator tried to give a
6 running account of what's being said. At best Mr. Okada
7 caught snatches of the conversation here and there, and that
8 was even when Wynn wasn't cutting off the line from time to
9 time.

10 So after Mr. Freeh gives a short oral summary of his
11 report, the board asks Mr. Okada, do you have anything to say.
12 And what he had to say was, I don't understand what was just
13 said, I don't understand what just happened so I'm only really
14 going to be able to address this report, this opening brief
15 after I and my counsel are able to review it and digest it,
16 and then we'll give a response. And he specifically requested
17 the board not take any action until he was afforded that
18 promised opportunity to respond. Not long after that the line
19 went dead. And though Mr. Okada waited around in Asia in the
20 middle of the night to be reconnected, no effort to do so was
21 made by Wynn Resorts. Ms. Sinatra later said that cutting him
22 off was just a misunderstanding.

23 So Mr. Okada didn't hear anything more until
24 10:45 p.m. that night, Pacific time, when his counsel received
25 correspondence with the purported redemption notice

1 accompanied by a lengthy, detailed 10-year note with
2 exceptionally onerous terms. The face value of that note
3 reflected a 30 percent discount, about a billion-dollar
4 discount from the stock market valuation of the stock. This
5 despite the fact that Wynn Resorts had filed papers with this
6 Court just a couple weeks before stating the value of that
7 stock was that market price.

8 In addition, a few hours after that redemption
9 notice went out in the middle of a Saturday night Wynn Resorts
10 electronically filed its complaint in this action in this
11 court. A few hours after that the press started reporting on
12 the matter, including information obtained from the copies of
13 the Freeh report leaked by Wynn Resorts. Obviously, this
14 whole operation had been planned long in advance and was
15 carefully orchestrated. They weren't hearing to wait from Mr.
16 Okada [sic], they weren't looking for a full and objective
17 report of the facts, they weren't even waiting to get a final
18 report from Mr. Freeh. It had been clear for months what
19 Steve Wynn wanted, and he wanted Mr. Okada gone.

20 So the board followed his demands and allowed the
21 company to seize the stock of its largest stockholder at a
22 huge arbitrary discount. Now, who benefitted from this
23 action? Most significantly Mr. Wynn did. But so did all of
24 the members of the board. As alleged in the counterclaim,
25 every single director owns a fairly large block of Wynn

1 Resorts shares. In fact, by eliminating the 20 percent,
2 approximately, owned by Aruze USA, every director's percentage
3 share of the company increased proportionately, as reflected
4 by immediate spike in the stock price in the days following
5 the redemption. So each one of them was rewarded immediately
6 with an increase in the market value of their shares, plus a
7 proportionately larger claim to the generous dividends
8 traditionally paid out by the company. Indeed, I would say
9 it's no coincidence that just a couple weeks after this Court
10 denied our preliminary injunction motion the board voted to
11 have the company immediately distribute an \$8-a-share special
12 dividend to shareholders of record and double the regular
13 dividend rate starting next year.

14 Now, with Aruze USA out of the picture, Mr. Wynn is
15 once again the largest shareholder of the company. And by
16 trying to force Elaine Wynn to remain part of the stockholders
17 agreement that was originally between Mr. Wynn and Aruze USA
18 he's trying to keep voting control over almost twice as many
19 shares as he owns.

20 Now, Your Honor, in their reply papers and earlier
21 today the counterdefendants took issue with this Primedia case
22 that we cited for the proposition the business judgment rule
23 doesn't apply to redemptions like this one. And before -- but
24 before I go there, it's telling that in the reply Wynn Resorts
25 offered zero authority for the idea that they have that the

1 business judgment rule somehow covers all of our claims,
2 including the claims solely against Wynn Resorts. Of course
3 they can't find any authority for that proposition, because it
4 makes no sense. If you follow their logic, what they're
5 basically saying is that anytime a board of directors makes a
6 decision and the company executes on it then the company
7 itself is immune from liability to business partners,
8 competitors, shareholders, employees, or whoever else might
9 have been harmed by that decision. I mean, that would be a
10 nifty result U.S. corporations can now just breach contracts,
11 commit torts, break laws, and generally wreak havoc with
12 impunity so long as they can hide behind a board resolution.
13 But, of course, that's not the law. We've provided multiple
14 authorities saying so, and they offered nothing in response.

15 The point of the business judgment rule is that the
16 board of directors can make bad decisions, wrong decisions,
17 injurious decisions, but not be held personally liable if they
18 act in good faith and otherwise discharge their fiduciary
19 duties.

20 So let's go back to Primerica [sic]. The point of
21 that case is that the business judgment rule does not apply
22 even to a direct breach of fiduciary duty claim against the
23 directors themselves in a redemption case like this one. In
24 their reply they argue that Primerica is inapposite because
25 there what happened was the redemption was actually in favor

1 of a large shareholder. The allegation was that the
2 redemption was done at a premium price and paid -- these too
3 much was paid to this large shareholder who had connections
4 with members of the board of directors. And so basically the
5 concept was that they were taking money from the other
6 shareholders and giving it through this beneficial premium to
7 the large shareholder.

8 This case is really just the flip side of that. As
9 we've seen, the single largest beneficiary of the redemption
10 is Steve Wynn, both monetarily and with respect to control of
11 the corporation. And with this redemption, with a 30 percent
12 discount from market and using a 10-year note instead of cash,
13 this action took at least a billion dollars of value, and
14 likely much, much more, from Aruze and essentially
15 redistributed it to other shareholders. And this included
16 most prominently Mr. Wynn and Elaine Wynn, but also every
17 other member of the board.

18 Furthermore, Your Honor, there can be little dispute
19 that this board is not disinterested, because they are
20 beholden to Mr. Wynn. Simply the facts that we've gone over
21 already make that clear. But let's look at some other
22 aspects. And I'm about to finish up with my boards. So what
23 I'm going to do, Your Honor, is I'm going to go through each
24 member of the board of directors and talk about why they're
25 not disinterested in this decision.

1 First there's Steve Wynn. And I don't know there's
2 really much more to say about him. But I would also say, for
3 each one of these we list out -- and these are allegations
4 with respect to at least the shares that are in our
5 counterclaim --

6 MR. PISANELLI: Your Honor, I'm sorry to interrupt,
7 but what was given to me does not have the citations of all
8 this information to the second amended complaint. If Counsel
9 could provide it to me, I'd appreciate it.

10 THE COURT: It doesn't have it on the bottom of the
11 board, either.

12 MR. PRIVETTE: Okay. With respect to --

13 MR. PISANELLI: I take it, then, it's not in the
14 second amended complaint.

15 MR. PRIVETTE: Not all of it is. And I was going to
16 get to that.

17 With respect to -- with respect to the shares it is
18 alleged in the second amended complaint -- counterclaim -- and
19 what I would say about when we get to each one of those
20 points, Your Honor, that take just that \$8 special dividend
21 they just voted for themselves and multiply it out and see how
22 much money they just gave themselves. So for Steve Wynn he's
23 got \$80 million from that little vote alone. And you can just
24 go through and do those calculations. But what we'll see is
25 every single members of the board of directors -- and this is

1 public information. To the extent it wasn't in our
2 counterclaim, we got all this from SEC filings from Wynn
3 Resorts or other public sources. Obviously, if you want us to
4 put it in an amended counterclaim, we can do so.

5 THE COURT: Please don't talk to counsel. Your
6 comments should be directed to me.

7 MR. PRIVETTE: Yes, Your Honor. So we could -- we
8 could easily do that. We could put all this in the
9 counterclaim, and more. But what I wanted to do is illustrate
10 this issue for the Court. And so Steve Wynn and Elaine Wynn,
11 we've gone through them. Allan Zeman, he owns a number of
12 shares. He also has a longstanding personal friendship with
13 Steve Wynn. Linda Chen, she's the executive director and COO
14 of Wynn Macau. She's the president of Wynn International
15 Marketing. Her total compensation from Wynn over the last
16 years has been in the range of \$6 million. She personally
17 owns 295,000 shares of Wynn Resorts. Again, multiplied by 8,
18 that's a nice little bonus there. In 2010 Wynn Resorts
19 purchased a \$5.4 million home in Macau for her use. In 2011
20 Wynn Resorts granted her a \$10 million cash retention award
21 which vests in full in 2021. She's worked for Steve Wynn for
22 over 20 years, including positions at Mirage, Bellagio, MGM
23 Mirage. Quote from Steve Wynn, "She has been a member of my
24 family in the most personal sense, virtually one of my own
25 daughters." Linda's husband works at Wynn Macau, makes over

1 half a million dollar in 2010. And another point here is
2 allowing Mr. Okada to nominate board directors like he tried
3 to do before that February 18th board meeting, before the
4 redemption, allowing Mr. Okada to nominate board directors
5 threatens her position on the board because she was one of the
6 ones he was going to put a candidate against.

7 Marc Schorr, COO of Wynn Resorts. He's an employee
8 of Mr. Wynn. He's also a director of Wynn Macau, total
9 compensation running the line of \$8 million a year. He
10 personally owns 250,000 shares of Wynn Resorts, a million-
11 dollar dividend there. Close personal friend of Steve Wynn.
12 He was part of the 2011 wedding party. He's worked for Steve
13 Wynn for almost 30 years, including Golden Nugget, Treasure
14 Island, Mirage. His son has worked at Wynn Resorts and at
15 Wynn Macau. Again, his seat was up this year. If Mr. Okada
16 had been allowed to nominate directors prior to -- or Aruze
17 had been allowed to nominate directors prior to the
18 redemption, his seat was at risk.

19 Robert Miller, compensation from Wynn Resorts
20 running in the range of 378,000 to 468,000 over the last
21 couple years, personally owns 22,000 shares of Wynn Resorts,
22 longstanding friendship with Steve Wynn of nearly 40 years.
23 In 1997, while governor, Mr. Miller cut short a vacation in
24 Florida to come back to testify in a libel case brought by
25 Steve, testifying that he was a 23-year friend of Wynn's.

1 Steve Wynn played a significant role in the political career,
2 including reportedly donating \$70,000 to the 1994 reelection
3 campaign.

4 John Moran. Recent compensation three hundred and
5 \$400,000 a year, personally owns 190,500 shares of Wynn
6 Resorts. Longstanding and close personal relationship with
7 Steve Wynn, engaged in a longstanding philanthropic venture
8 with Steve Wynn. Steve Wynn serves on the advisory board of
9 the Moran Eye Center, and Steve Wynn donated a million dollars
10 to help create Center for Inherited Retinal Disease. Also has
11 close political ties. When Mr. Moran was finance chair of the
12 Gold campaign, Steve Wynn made personal donations himself and
13 also hosted an exclusive fundraiser that raised \$500,000.

14 D. Boone Wayson, compensation from Wynn Resorts over
15 the last couple years three hundred and forty-two to \$432,000.
16 Personally owns over 90,000 shares of Wynn Resorts. There's
17 also an even longer-standing relationship between his family
18 and Mr. Wynn's family, going back to when their fathers
19 operated a bingo hall back in the 1960s in Maryland, where
20 Steve worked. Wayson's brother, sister, and niece have worked
21 for Mr. Wynn. He has a longstanding professional relationship
22 himself with Steve Wynn, with the Gold Nugget, MGM Resorts,
23 MGM Mirage.

24 Last one. These are a little bit shorter.

25 Mr. Goldsmith. There's his compensation, stock

1 ownership, he also has a longstanding friendship with Steve
2 Wynn since the 1970s.

3 Mr. Shoemaker and Mr. Irani, their income, their
4 ownership of shares.

5 So the point of this, Your Honor, is there can be
6 absolutely no doubt that the majority of this board, if not
7 every member of this board, is beholden to Mr. Wynn. They
8 were not disinterested in this transaction, both by their own
9 personal ownership of shares and their close personal ties
10 with Steve Wynn.

11 So under the circumstances, Your Honor, I think we
12 fall specifically into the holding of the Primerica case, and
13 the business judgment rule could not possibly apply to this
14 redemption. In addition -- and I'll go quickly -- you know
15 from our prior briefing in this case that given our
16 allegations, our factual allegations and inferences that the
17 real point of this redemption was to silence and
18 disenfranchise a shareholder that under the Blasius and Hilton
19 Hotels cases that the business judgment rule does not apply.
20 And obviously, even if it did, we believe we've alleged more
21 than sufficient facts to overcome the business judgment rule.

22 And again I'll touch briefly on it. The Court is
23 aware of our legal argument with respect to the contribution
24 agreement. Again, Mr. Pisanelli today I think misinterpreted
25 what the allegations are there. The point here is that -- and

1 it's clear that Nevada state law allows a corporation like
2 Wynn resorts to enter into one-on-one contracts with a single
3 shareholders with a different set of restrictions on the
4 shares than with other shareholders. It's clear from the face
5 of Nevada law. But, even more importantly, the articles of
6 incorporation, the redemption provision that they cite to you,
7 allows for that, as well. The provision -- and this is where
8 he chided us in his reply for pointing out what was in his
9 declaration, that the articles allow a waiver and basically
10 opting out of that redemption provision for specific
11 shareholders in specific circumstances. And, Your Honor, our
12 -- the whole point we make here is that's exactly what
13 happened. The contribution agreement on its face says that
14 there could be no restrictions on Aruze USA's shares except
15 those that existed at the time -- and this redemption
16 provision did not exist at the time -- and those that Aruze
17 USA specifically agreed to in writing. Aruze USA never agreed
18 in writing that that redemption provision would ever apply to
19 it. So we believe as a legal matter there is absolutely no
20 legal right for the board to even exercise that redemption
21 provision with respect to Aruze.

22 And with respect to the statute of limitations the
23 point is that just because the company subsequently put the
24 redemption provision in the articles didn't mean it applied to
25 Aruze USA shares. They had a preexisting contract that said

1 it wouldn't. So when it came in, obviously that's a provision
2 that could apply to other shareholders. Every other
3 shareholder doesn't have their own agreement, but obviously it
4 doesn't apply to Aruze USA. We have an agreement that says it
5 wouldn't. So when that provision was inserted in the articles
6 there was no reason to believe that there'd been a breach of
7 any contract, there wasn't any concern at the time, because it
8 just didn't apply. It was a nothing event for Aruze.

9 The breach, when it occurred, was when the board,
10 despite the preexisting agreement and the contribution
11 agreement, attempted to assert the redemption provision
12 against Aruze's shares. That was the breach, not putting the
13 articles -- in putting the provision in the articles.

14 So let me change gears a little bit -- and I'm about
15 to finish up, Your Honor; I'm sure you'll be happy for that --
16 and deal with this sort of case within the case. And that is
17 the set of claims pertaining to the fraud perpetrated in
18 relation to a promise that Wynn Resorts would loan money to
19 Aruze secured by its shares.

20 First off, this episode actually answers the
21 question of if Steve Wynn was retaliating for Mr. Okada's
22 actions taken with respect to Macau in April 2011, why didn't
23 he actually start taking action until October 2011. And the
24 answer is he couldn't put the plot fully in motion because he
25 still needed something from Mr. Okada. The genesis of this is

1 the divorce between Steve and Elaine Wynn. At that time Steve
2 had to give over half of his Wynn Resorts shares to Elaine,
3 though he was able to bring her into the existing stockholders
4 agreement between Mr. Wynn and Aruze USA, which, among other
5 things, purports to put restrictions on the sale or transfer
6 of their shares. That occurred back in January 2010. This
7 amendment, by the way, also acknowledged that Steve Wynn and
8 Aruze had previously agreed that each could sell two million
9 shares free and clear of any restrictions in the agreement.
10 That's important, Your Honor, because at least in part this
11 30 percent -- at least the pretext for this 30 percent
12 discount was that all your shares were tied up by the
13 stockholders agreement. Well, on its face at least two
14 million clearly were not, and so that just shows again that
15 this was just an arbitrary decision and had no basis in
16 reality.

17 But going back to this incident with respect to
18 Elaine Wynn's shares, as we allege in the counterclaim, when
19 Elaine was brought into the stockholders agreement the parties
20 had an understanding that if additional shares were going to
21 be sold by Steve or Elaine in the future, that Aruze would
22 also be able to sell the same amount. So now, in late April
23 2011, which is actually close in time to the board meeting
24 where Mr. Okada questioned Macau, Mr. Wynn remarried. Fewer
25 than three weeks later Mr. Wynn and Ms. Sinatra met with Mr.

1 Okada in Macau. Mr. Wynn at that meeting told Mr. Okada that
2 Elaine Wynn was very angry about his remarriage, and so he,
3 Mr. Wynn, had an urgent need to obtain Aruze's consent to
4 having Elaine Wynn sell her stock. He couldn't do it under
5 the stockholders agreement without Aruze's consent.

6 Mr. Okada expressed sympathy for Elaine Wynn's
7 position, but also noted he was in need of liquidity, too, for
8 some of his shares for financing purposes. So in response
9 Steve Wynn proposed that Wynn Resorts would provide a loan
10 against the shares and personally assured that this loan would
11 be made. But Mr. Wynn said, but your consent for Elaine can't
12 wait, I need your consent today. Ms. Sinatra was at the
13 meeting. She spoke up and promised to have draft loan
14 agreement to Aruze within 10 days. Based on these promises
15 Mr. Okada signed Mr. Wynn's prepared consent to allow Elaine
16 Wynn to sell the shares. At the same time they prepared a
17 handwritten letter memorializing the agreement by Steve Wynn
18 to implement a financing strategy by which Aruze could borrow
19 money from Wynn Resorts backed by its shares.

20 Within 24 hours, though, Ms. Sinatra sent a revised
21 version of the side letter, purporting to limit the agreement
22 to provide the loan, including within it a clause that it
23 would be provided, the loan, only to the extent that it would
24 be compliant with state and federal laws. So only weeks
25 later, on June 9th, 2011, after a flurry of email traffic with

1 Aruze's counsel trying to renegotiate the side letter that was
2 already signed, Ms. Sinatra brought up Section 402 of the
3 Sarbanes Oxley law. So later in June Ms. Sinatra informs
4 Aruze's counsel that Wynn Resorts was working instead with
5 Deutsche Bank on a margin loan backstopped by Wynn Resorts.
6 And this continues and continues. The ten days for the loan
7 documents is continued and continued for weeks and weeks into
8 July, and so this ten days has become three months, and then
9 becomes four months. And in late Sinatra Ms. -- in late
10 September Ms. Sinatra spoke with Aruze's counsel and noted her
11 belief that the proceeds of the loan were to be used for the
12 Philippines project and out of the blue now announces that the
13 Wynn Resorts compliance committee would be meeting to discuss
14 the Philippines.

15 Suffice to say, Wynn Resorts never did provide the
16 financing that Mr. Wynn promised in exchange for Aruze's
17 consent. But, more importantly, we believe that the facts
18 support the conclusion that Mr. Wynn and Ms. Sinatra never
19 intended to follow through on the promises they made in May
20 2011 to induce Mr. Okada's consent on Elaine Wynn's shares.

21 In response they make only one argument, that no
22 injury could have resulted from this fraudulent behavior
23 because of the restrictions of the stockholder agreement. But
24 even assuming that those restrictions are legally valid, which
25 is highly questionable, indeed, that's part of the

1 counterclaim by Elaine Wynn, the point is that the parties had
2 an understanding that Aruze USA would be permitted to attain
3 liquidity for its shares in equivalent amounts as the Wynns
4 might be allowed to do so. The fraud occurred when Mr. Wynn
5 was asking Aruze USA to provide something of great value to
6 him. He needed something from Aruze, and that was the
7 agreement to allow Ms. Wynn to sell the shares. And in
8 exchange he promised a loan. This was a new negotiation,
9 essentially you can even look at it as a form of renegotiation
10 of the stockholders agreement. He promised something for
11 something of value. Mr. Okada provided that thing of value
12 and never got what was promised in return. And we believe the
13 allegations show that this was done in a fraudulent manner.
14 In fact, they don't even dispute the fraudulent -- claims of
15 fraud; they're only disputing this idea of injury.

16 And with respect to injury we clearly put forth in
17 the counterclaim that by failing to provide liquidity it
18 injured Aruze's ability and Universal's ability to get
19 financing for projects around the world, and it also allowed
20 Steve Wynn to follow through a few months later and have all
21 those shares redeemed by the company at a discount.

22 So I'll just finish up really quickly. Mr.
23 Pisanelli made some arguments about this couldn't be
24 securities fraud. And I'm glad that he actually calls the
25 redemption a redemption today, because in their opening motion

1 they didn't, they used a different word. And the reason for
2 that we think is, if you just look in the dictionary,
3 "redemption" means to buy back or repurchase. So this clearly
4 falls within the definition of the type of transaction covered
5 by the securities rules and laws. And with respect to the
6 allegations of fraud, as I said, we believe that we've alleged
7 them in more than sufficient detail. If there's anything that
8 the Court believes needs to be put forth in more detail, we
9 could amend. But, again, we think that it's time for this
10 case to go forward in discovery and to trial, and we stand
11 ready to do so.

12 THE COURT: Thank you.

13 First, the Court is not taking judicial notice of
14 any of the cases that have been submitted by the parties which
15 are unpublished decisions.

16 Here the Court has made a determination that this is
17 not a forced sale, but instead is a contractual agreement
18 between shareholders in a highly regulated industry. For that
19 reason I'm granting the motion as to the ninth claim for
20 relief with respect to the RICO claim.

21 I note that the breach of fiduciary duty claim, the
22 sixth claim for relief, does not allege demand futility.
23 However, I will take notice based on my own history with this
24 case and given the litigation status between the parties that
25 a demand would have been futile upon the board at the point in

1 time when these events were occurring.

2 For that reason I am not granting any of the other
3 issues. I understand there are factual issues that exist.
4 However, based upon the pleadings, which is what I must
5 determine at this stage of the game, the counterclaim as
6 currently amended is well pled, with the exception of the
7 ninth claim for relief.

8 I agree that the first through the third claims are
9 remedies. But because of the nature of remedies, I'm going to
10 leave them in place as remedies, but they will not be causes
11 of action that will go to a jury ever. Plus they're
12 equitable.

13 Anybody got any questions? Goodbye.

14 MR. PISANELLI: Thank you, Your Honor.

15 MR. McCREA: Thank you, Your Honor.

16 THE PROCEEDINGS CONCLUDED AT 10:45 A.M.

17 * * * * *

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CERTIFICATION

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

AFFIRMATION

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

**FLORENCE HOYT
Las Vegas, Nevada 89146**

Florence M. Hoyt

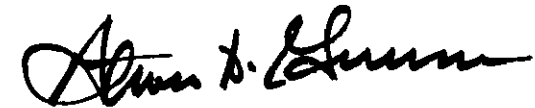
FLORENCE HOYT, TRANSCRIBER

11/16/12

DATE

EXHIBIT C

EXHIBIT C



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DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada
corporation,

Plaintiff,
v.

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

Defendants.

AND ALL RELATED CLAIMS.

CASE NO.: A-12-656710-B
DEPT. NO.: XI

**ORDER LIFTING STAY OF
DISCOVERY**

Electronic Filing Case

The Court having executed the Stipulation and Order for Entry of Permanent Injunction,
and good cause appearing,

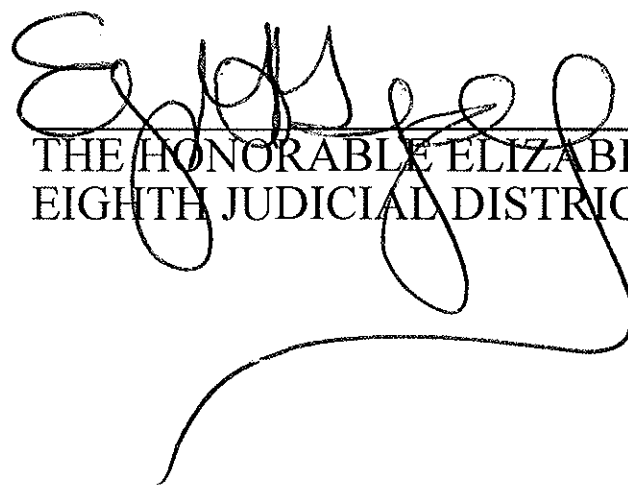
1 IT IS HEREBY ORDERED that the stay of discovery entered on June 23, 2016, as
2 subsequently modified by the Court, is lifted effective as of Monday, March 27, 2017.
3 Discovery will proceed according to the *3rd Amended Business Court Scheduling Order and*
4 *Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call*, filed March 2, 2017.

5 IT IS FURTHER ORDERED that this Order does not affect any stay entered by the
6 Nevada Supreme Court with respect to any writ petition pending before that Court.

7 IT IS FURTHER ORDERED that, based upon the parties' Stipulation and Order
8 Regarding NRCP 41(e), filed August 19, 2016, the period during which this action must be
9 brought to trial for purposes of NRCP 41(e) is extended by the number of days from June 23,
10 2016 until March 27, 2017, or until May 27, 2018.

11 IT IS SO ORDERED.

12 DATED this 27 day of March 2017.

13
14 
15 THE HONORABLE ELIZABETH GONZALEZ
16 EIGHTH JUDICIAL DISTRICT COURT
17 JW

17 Respectfully submitted by:

18 

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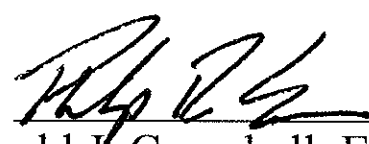
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15 *J. Miller, John A. Moran, Marc Schorr, Alvin*
16 *V. Shoemaker, Kimmarie Sinatra, D. Boone*
17 *Wayson, and Allan Zeman*

18 By: _____

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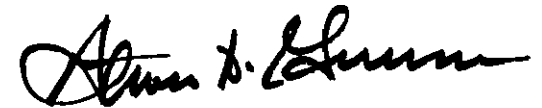
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EXHIBIT B

EXHIBIT B



CLERK OF THE COURT

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15 Russell Goldsmith, Ray R. Irani, Robert J. Miller,

John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,

16 Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 WYNN RESORTS, LIMITED, a Nevada
20 Corporation,

Plaintiff,

21 vs.

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

Defendants.

25
26 AND RELATED CLAIMS
27
28

Case No.: A-12-656710-B

Dept. No.: XI

**STIPULATION AND ORDER
REGARDING NRCP 41(e)**

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

1 WHEREAS, on May 2, 2013, the Court stayed discovery in this action. That stay
2 remained in place for 186 days, until November 4, 2013 ("First Stay");

3 WHEREAS, on June 23, 2016, this Court stayed discovery in this action ("Second
4 Stay"). The Second Stay will expire upon the Court's resolution of Wynn Resorts' Motion to
5 Disqualify Quinn Emanuel and For Orders Requiring Turnover of Privileged Matter, Injunctive
6 Relief, and Other Appropriate Relief on an Order Shortening Time;

7 NOW THEREFORE, the undersigned parties, by and through their respective
8 undersigned counsel (collectively, the "Parties," and individually, "Party"), hereby agree and
9 stipulate as follows, subject to the approval of the Court:

10 1. The Parties hereby stipulate and agree that the First Stay and the Second Stay
11 constitute "period[s] during which the parties [were/]are prevented from bringing this action to
12 trial," *Boren v. City of N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 405 (1982), and therefore,
13 should not be computed in determining the five-year period of NRCP 41(e).

14 2. Each Party specifically agrees to extend the period of time during which this
15 action must be brought to trial for purposes of NRCP 41(e) for a length of time equal to the
16 duration of the First Stay. As a result, the expiration of such period is extended from February
17 19, 2017 to August 23, 2017.

18 3. Each Party also specifically agrees and acknowledges that the Second Stay will
19 extend the period during which this action must be brought to trial for purposes of NRCP 41(e)
20 beyond August 23, 2017. The length of the Second Stay, however, is presently unknown and
21 therefore the exact number of days by which 41(e) shall be extended as a result of the Second
22 Stay is presently unknown and cannot be determined. The Parties thus hereby stipulate and
23 agree that upon expiration of the Second Stay, the Parties shall confer on the exact computation
24 of days from the date the stay was ordered on June 23, 2016 to the date the stay is lifted (to be
25 determined by the Court) and agree to extend the period of time during which this action must
26 be brought to trial for purposes of NRCP 41(e) for a length of time beyond August 23, 2017
27 equal to this computed number of days.
28

1 4. Each Party specifically agrees to irrevocably waive any argument that the time
2 period during which this action must be brought to trial for purposes of NRCP 41(e) shall
3 include the time periods of the First Stay and the Second Stay.

4 5. The Parties hereby stipulate and agree that the remaining deadlines as of June 23,
5 2016 in the Stipulation and Order to Extend Discovery Deadlines and Regarding Expert
6 Disclosures ("Scheduling Order"), dated April 16, 2016, are vacated. Upon expiration of the
7 Second Stay, the Parties shall promptly meet-and-confer in good faith and submit a revised
8 scheduling order rescheduling the remaining deadlines subject to the Court's approval or, if no
9 such agreement can be reached, then the Court shall reschedule the remaining deadlines.

10 6. Upon the expiration of the Second Stay, deadlines for responses to written or oral
11 discovery that would have expired on or after June 23, 2016 shall be extended by a number of
12 days equal to the number of days that the Second Stay was in place (*i.e.*, if a party had 20 days
13 left to respond to written discovery, that party will have 20 days to respond to the discovery once
14 the stay is lifted), or to a date that is fifteen (15) calendar days after the date the Second Stay
15 expires, whichever date is later. To the extent that any of the new deadlines fall on a non-
16 business day, the deadline shall be extended to the next business day. Upon the expiration of the
17 Second Stay, the parties shall meet-and-confer in good faith regarding any necessary
18 adjustments to the overall schedule or any specific deadlines.

19 7. The Parties further stipulate and agree that the action has been "brought to trial"
20 for purposes of NRCP 41(e) when jury selection begins or in the event of a nonjury trial when a
21 witness, brought in good faith and with personal knowledge of facts relevant to the case, is
22 sworn in and testifies.

23 ///

24 ///

25 ///

26 ///

27

28

8. The Parties disclaim any agreements regarding the subject of this stipulation other than as specifically set forth herein.

DATED this 18th day of August, 2016.

PISANELLI BICE PLLC

By:

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DATED this _____ day of August _____, 2016.

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Attorneys for Stephen A. Wynn

DATED this _____ day of August, 2016.

HOLLAND & HART LLP

By:

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Attorneys for Kazuo Okada, Aruze USA, Inc., and Universal Entertainment Corp.

DATED this _____ day of August _____, 2016.

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Attorneys for Elaine P. Wynn

8. The Parties disclaim any agreements regarding the subject of this stipulation other than as specifically set forth herein.

DATED this _____ day of August, 2016.

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By:

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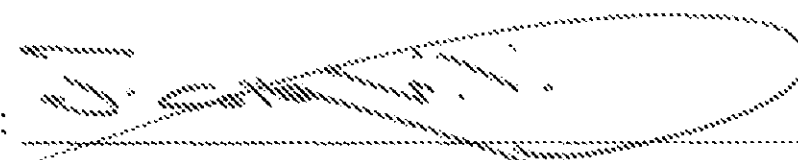
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DATED this _____ day of August, 2016.

HOLLAND & HART LLP

By:

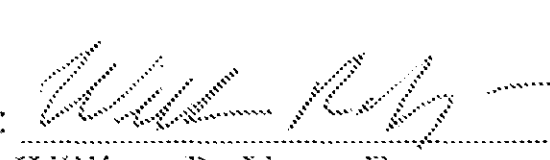
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DATED this 15th day of August, 2016.

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Attorneys for Elaine P. Wynn

8. The Parties disclaim any agreements regarding the subject of this stipulation other than as specifically set forth herein.

DATED this _____ day of August, 2016.

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By: _____

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DATED this _____ day of August _____, 2016.

By: _____

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DATED this 17th day of August, 2016.

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DATED this _____ day of August _____, 2016.

By: _____

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CASE: Wynn Resorts, Limited v. Okada et al.
TITLE: Stipulation and Order Regarding NRCP 41(e)

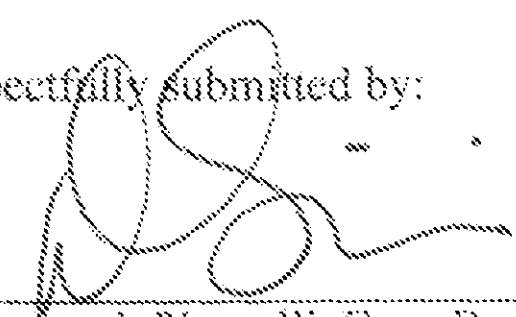
ORDER

IT IS SO ORDERED.

This 19th day of August, 2016.


THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

By: 

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EXHIBIT A

EXHIBIT A

1 **REQT**
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22 and Counterclaimants ARUZE USA, INC. and UNIVERSAL
23 ENTERTAINMENT CORPORATION

24 **DISTRICT COURT**
25 **CLARK COUNTY, NEVADA**

26 WYNN RESORTS, LIMITED, a Nevada
27 Corporation,

28 Plaintiff,

vs.

KAZUO OKADA, an individual, et al.,

Defendants.

CASE NO: A-12-656710-B

DEPT. NO: XI

ELECTRONIC FILING CASE

AND ALL RELATED CLAIMS.

29 **DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF**
30 **DOCUMENTS TO WYNN RESORTS, LIMITED**

DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS OF WYNN RESORTS, LIMITED

1 **PROPOUNDING PARTY:** DEFENDANT KAZUO OKADA AND DEFENDANTS AND
2 COUNTERCLAIMANTS ARUZE USA, INC. AND
3 UNIVERSAL ENTERTAINMENT CORPORATION

4 **RESPONDING PARTY:** PLAINTIFF AND COUNTERDEFENDANT WYNN
5 RESORTS, LIMITED

6 **SET NO.:** ONE

7 Pursuant to NEV. R. CIV. P. 34, Defendant KAZUO OKADA and Defendants and
8 Counterclaimants ARUZE USA, INC. and UNIVERSAL ENTERTAINMENT CORPORATION
9 hereby request that Plaintiff and Counterdefendant WYNN RESORTS, LIMITED produce the
10 following documents and things for inspection and copying in this First Set of Requests for
11 Production of Documents (the "Requests"). Such production shall be made within thirty (30)
12 days of service, at Lionel Sawyer & Collins, 1700 Bank of America Plaza, 300 South Fourth
13 Street, Las Vegas, Nevada 89101. The documents and things subject to these Requests shall
14 remain available to Defendants' counsel until such inspection and copying can be reasonably
15 completed.

16 **DEFINITIONS**

17 Unless otherwise specifically stated in the body of a particular Request, the
18 following terms and phrases in the Requests shall have the following meaning:

19 1. The term "Articles of Incorporation" refers to Wynn Resorts' Articles of
20 Incorporation and all amendments, including but not limited to the first Articles of Incorporation
21 dated June 3, 2002 and the Second Amended and Restated Articles of Incorporation dated
22 September 16, 2002.

23 2. The term "Aruze" refers to Aruze USA, Inc., and its predecessors,
24 successors, parents, subsidiaries, divisions and affiliates, and each of their respective current and
25 former officers, directors, agents, attorneys, accountants, employees, representatives, partners,
26 and other persons occupying similar positions or performing similar functions, and all other
27 persons acting or purporting to act on its behalf or under its control.

1 3. The term "Bylaws" refers to Wynn Resorts' Bylaws and all amendments,
2 including but not limited to the first Bylaws of Wynn Resorts, Limited dated June 14, 2002, the
3 Second Amended and Restated Bylaws, the Third Amended and Restated Bylaws effective as of
4 September 23, 2002 (and as amended on October 21, 2002), the Fourth Amended and Restated
5 Bylaws effective as of November 13, 2006, and the Fifth Amended and Restated Bylaws effective
6 as of November 2, 2012.

7 4. The term "China" refers to People's Republic of China, including but not
8 limited to Macau.

9 5. The term "Communication(s)" means the transmission of information by
10 any medium, including, without limitation, orally, by personal meeting, in writing, by telephone,
11 letter, telegraph, teleconference, facsimile, telex, telecopy, wire, radio, television, electronic mail,
12 magnetic tape, floppy disk, diagram, graph, chart, drawing, or posting or other display on the
13 Internet or the World Wide Web.

14 6. The term "Complaint" refers to the Amended Complaint filed in this action
15 on October 29, 2012.

16 7. The term "concerning" shall mean, without limitation, anything that, in
17 whole or in part, contains, constitutes, compromises, deals with, describes, evidences, embodies,
18 reflects, refers to, relates to, mentions, defines, bears upon, pertains directly or indirectly to,
19 discusses, alludes to, responds to, mentions, memorializes, records, comments upon, analyzes,
20 explains, summarizes, or is in any other way relevant to the particular subject matter identified.

21 8. The term "Contribution Agreement" refers to the to the Contribution
22 Agreement between Wynn Resorts, Wynn, Aruze, Baron Asset Fund and the Kenneth R. Wynn
23 Family Trust dated June 11, 2002.

24 9. The term "Cotai" refers to the Cotai area of Macau.

25 10. The term "Counterclaim" refers to the Second Amended Counterclaim of
26 Aruze USA, Inc. and Universal Entertainment Corp. filed in this action on September 12, 2012

27 11. The term "Counterdefendants" refers to Wynn, Kimmarré Sinatra, Linda
28 Chen, Ray R. Irani, Russell Goldsmith, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin

1 V. Shoemaker, Boone Wayson, Elaine P. Wynn, Allan Zeman, individually and collectively, and
2 each person's agents, representatives, associates, attorneys, and all other persons acting or
3 purporting to act on each person's behalf or under each person's control.

4 12. The term "Defendants" refers to Okada, Aruze, and Universal.

5 13. The term "document(s)" includes, but is not limited to, any
6 Communications, any written, typed, printed, recorded or graphic matter, however produced or
7 reproduced, of any type or description, regardless of origin or location, including but not limited
8 to all correspondence, minutes, records, tables, charts, analyses, graphs, regulations, investigation
9 results, microfiche or microfilm, training materials, electronic records, electronic logs, schedules,
10 reports, audits, guidelines, policies, protocols, reviews, assessments, budgets, standing order
11 directives, post orders, manuals, memoranda, notes, lists, logs, notations, contact sheets, calendar
12 and diary entries, letters (sent or received), telegrams, faxes, telexes, messages (including but not
13 limited to reports of telephone conversations and conferences), studies, rosters, schedules,
14 booklets, circulars, bulletins, instructions, papers, files, minutes, emails, summaries, bulletins,
15 questionnaires, contracts, memoranda or agreements, requests for proposals or responses to
16 requests for proposals, assignments, licenses, ledgers, books of account, orders, invoices,
17 statements, bills, checks, vouchers, notebooks, receipts, acknowledgments, data processing cards,
18 computer generated matter, photographs, photographic negatives, phonograph records, tape
19 recordings, evaluations, video recordings, wire recordings, discs, other mechanical recording
20 transcripts or logs of any such recordings, all other data compilations from which information can
21 be obtained, or translated if necessary, and any other tangible thing of a similar nature. Each
22 Request for a document or documents shall be deemed to call for the production of the original
23 document or documents to the extent that they are in or subject to, directly or indirectly, the
24 control of the party to whom these Requests for Production are directed. In addition, each
25 Request should be considered as including but not limited to all copies and, to the extent
26 applicable, preliminary drafts of documents that differ in any respect from the original or final
27 draft or from each other (e.g., by reason of differences in form or content or by reason of
28

1 handwritten notes or comments having been added to one copy of a document but not on the
2 original or other copies thereof).

3 14. The term "FCPA" refers to the Foreign Corrupt Practices Act of 1977, 15
4 U.S.C. § 78dd-1, *et seq.*

5 15. The term "Freeh Report" refers to the report prepared by Freeh Sporkin &
6 Sullivan, LLP (n/k/a Pepper Hamilton LLP) under the direction of Wynn Resorts' Compliance
7 Committee, attached as Exhibit 1 to Wynn Resorts' Complaint, and

8 16. The term "Freeh Sporkin" refers to Freeh Sporkin & Sullivan LLP (n/k/a
9 Pepper Hamilton LLP), including but not limited to its predecessors, successors, parents,
10 subsidiaries, divisions and affiliates, and each of their respective current and former partners
11 (including but not limited to Louis J. Freeh), employees, representatives, agents, attorneys,
12 accountants, and other persons occupying similar positions or performing similar functions, and
13 all other persons acting or purporting to act on its behalf or under its control.

14 17. The term "Government Official" refers to any officer or employee of a
15 government or any department, agency, or instrumentality thereof, or of a public international
16 organization, or any person acting in an official capacity for or on behalf of any such government
17 or department, agency, or instrumentality, or for or on behalf of any such public international
18 organization.

19 18. The term "public international organization" means (i) an organization that
20 is designated by Executive order pursuant to section 288 of title 22 of the United States Code; or
21 (ii) any other international organization that is designated by the President by Executive order for
22 the purposes of this section, effective as of the date of publication of such order in the Federal
23 Register.

24 19. The term "Investigation(s)" includes but is not limited to any research,
25 examination, review, study, assessment, analysis, diligence, or inquiry into the matter stated in the
26 Request, whether formal or informal.

27 20. The term "Korea" refers to the Republic of Korea, including but not limited
28 to the Incheon Free Economic Zone.

1 21. The term "Macau" or "Macao" refers to the Macau special administrative
2 region of the People's Republic of China, including but not limited to the Macau Peninsula itself,
3 Cotai, and the islands of Taipa and Coloane.

4 22. The term "Okada" refers to Kazuo Okada, and his agents, representatives,
5 associates, attorneys, and all other persons acting or purporting to act on his behalf or under his
6 control.

7 23. The term "PAGCOR" refers to the Philippine Amusement and Gaming
8 Corporation.

9 24. The term "Person(s)" shall mean any natural person or any business, legal,
10 or governmental entity or association. References to any person or entity shall include that
11 person or entity and its officers, directors, employees, partners, agents, representatives, corporate
12 parents, predecessors, successors, subsidiaries, and affiliates.

13 25. The term "Philippines" refers to Republic of the Philippines.

14 26. The terms "Policy" or "Policies" refers to policies, procedures, regulations,
15 guidelines, manuals, processes, directives, rules, regulations, and post orders.

16 27. The term "Stockholders Agreement" refers to any and all agreements
17 entered into by shareholders of Wynn Resorts stock, as amended, including but not limited to the
18 Stockholders Agreement, dated April 11, 2002, by and among Wynn, Aruze, and Baron Asset
19 Fund; the Waiver and Consent, dated July 31, 2009, by and among Wynn, Baron Investment
20 Funds Trust, and Aruze; the Amendment to Stockholders Agreement, dated November 8, 2008,
21 by and among Wynn and Aruze; the Waiver and Consent, dated August 13, 2009, by and among
22 Wynn and Aruze; the Amended and Restated Stockholders Agreement, dated January 6, 2010, by
23 and among Wynn, Elaine P. Wynn, and Aruze; the Waiver and Consent, dated November 24,
24 2010 by and among Wynn, Elaine P. Wynn, and Aruze; and the Waiver and Consent, dated
25 December 15, 2010, by and among Wynn, Elaine P. Wynn, and Aruze.

26 28. "United States Attorney's Office" shall refer to the United States
27 Attorney's Office, as well as any present or former employees, agents, independent contractors,
28 attorneys, or other persons acting on the United States Attorney's behalf.

1 29. The term "Universal" refers to Universal Entertainment Corporation, and
2 its predecessors, successors, parents, subsidiaries, divisions and affiliates, and each of their
3 respective current and former officers, directors, agents, attorneys, accountants, employees,
4 representatives, partners, and other persons occupying similar positions or performing similar
5 functions, and all other persons acting or purporting to act on its behalf or under its control.

6 30. The term "Wynn" refers to Stephen A. Wynn, and his agents,
7 representatives, associates, attorneys, and all other persons acting or purporting to act on his
8 behalf or under his control.

9 31. The term "Wynn Board" refers to the Wynn Resorts' Board of Directors
10 consisting of Wynn, Okada, Linda Chen, Ray R. Irani, Russell Goldsmith, Robert J. Miller, John
11 A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Boone Wayson, Elaine P. Wynn, Allan Zeman,
12 individually and collectively, and each person's agents, representatives, associates, attorneys, and
13 all other persons acting or purporting to act on each person's behalf or under each person's
14 control.

15 32. The term "Wynn Las Vegas" refers to Wynn Las Vegas, L.L.C., and its
16 predecessors, successors, parents, subsidiaries, divisions and affiliates, and each of their
17 respective current and former officers, directors, agents, attorneys, accountants, employees,
18 representatives, partners, and other persons occupying similar positions or performing similar
19 functions, and all other persons acting or purporting to act on its behalf or under its control.

20 33. The term "Wynn Macau" refers to Wynn Macau, Limited, and its
21 predecessors, successors, parents, subsidiaries, divisions and affiliates, and each of their
22 respective current and former officers, directors, agents, attorneys, accountants, employees,
23 representatives, partners, and other persons occupying similar positions or performing similar
24 functions, and all other persons acting or purporting to act on its behalf or under its control.

25 34. The terms "Wynn Resorts," "You" and "Your" refer to Plaintiff and
26 Counterdefendant Wynn Resorts, Limited, and its predecessors, successors, parents, subsidiaries,
27 committees, subcommittees, divisions and affiliates, and each of their respective current and
28 former officers, directors, agents, attorneys, accountants, employees, representatives, partners,

1 and other persons occupying similar positions or performing similar functions, and all other
2 persons acting or purporting to act on its behalf or under its control, including but not limited to
3 Wynn Macau and Wynn Las Vegas.

4 INSTRUCTIONS

5 1. Each Request calls for (1) the production of documents in Your possession,
6 custody, or control; or (2) in the possession, custody, or control of another, other than Defendants,
7 if You have the ability or right to obtain originals or copies of such documents, whether or not
8 such right or ability has been exercised.

9 2. If You withhold any document, whether in whole or in part, as a result of
10 some claimed limitation, including but not limited to a claim of privilege, You must supply a list
11 of the documents being withheld, indicating as to each: (a) the author, sender, writer, addressor
12 or initiator; (b) all addressees, recipients and intended recipients, including but not limited to any
13 blind copies indicated; (c) the date created or transmitted; (d) the subject matter and subject
14 matter indicated on the document, if any; and (e) the claimed grounds for nonproduction.

15 3. Whenever a document is not produced in full or is produced in redacted
16 form, so indicate on the document and state with particularity the reason or reasons it is not being
17 produced in full and describe those portions of the document which are not being produced.

18 4. Unless otherwise indicated, the document Requests herein call for
19 documents that were dated or created, or came into your possession, custody or control at any
20 time during the period from March 1, 2000 to the present.

21 5. Defendants reserve their rights to serve supplemental requests for
22 documents as necessary.

23 6. The Requests below are continuing in nature. If, after making Your initial
24 production and inspection, You obtain or become aware of any further documents responsive to
25 these Requests, You are requested to produce such additional documents to Defendants.

26 7. It is not necessary to provide multiple copies of completely identical
27 documents that are responsive to more than one Request. In the event that a document responsive
28

1 to a given Request is being produced in response to another Request, You may produce only one
2 copy of the document.

3 8. In order to bring within the scope of these Requests all information that
4 might otherwise be construed to be outside of their scope, the following rules of construction
5 apply: (a) the singular shall include the plural and vice versa; (b) the connectives "and" and "or"
6 shall be construed either disjunctively or conjunctively as necessary to bring within the scope of
7 the Request all responses that might otherwise be construed to be outside its scope; (c) the terms
8 "any," "all" and "each" shall be read to mean any, all, each, and every; (d) the present term shall
9 be construed to include the past term and vice versa; (e) "on or about" when used in conjunction
10 with a specified date means the period beginning two weeks before and ending two weeks after
11 the specified date; and (f) references to employees, officers, directors or agents shall include both
12 current and former employees, officers, directors and agents.

13 9. You are to produce each document requested herein in its entirety, without
14 deletion or excision, and shall include all attachments, appendices, exhibits, lists, schedules, or
15 other documents at any time affixed thereto, regardless of whether You consider the entire
16 document to be relevant or responsive to the Requests. A request for documents shall be deemed
17 to include a request for any or all transmittal sheets, cover letters, exhibits, enclosures, or
18 attachments to the documents, in addition to the document itself, without abbreviation or
19 expurgation.

20 10. The documents requested herein shall be produced as they are kept in the
21 usual course of business, or shall be organized and labeled to correspond to each document
22 request herein. All documents that are physically attached to each other when located for
23 production shall be left so attached. Documents that are segregated or separated from other
24 documents, whether by use of binders, files, subfiles, or by dividers, tabs, or any other method,
25 shall be left so segregated or separated. All labels or other forms of identification contained,
26 placed, attached, or appended on or to any binders, files, subfiles, dividers, or tabs shall be
27 produced.
28

11. If any document requested herein that was formerly in your possession, custody or control has been destroyed, discarded, or otherwise lost, the document shall be identified by stating: (a) the nature of the document, the number of pages, its subject matter and its contents, including but not limited to any attachments or appendices; (b) the author of the document and all persons to whom it was sent, including but not limited to cover copies or blind copies; (c) the date on which the document was prepared or transmitted; (d) the date on which the document was lost, discarded, or destroyed; (e) the person who authorized and carried out the destruction; and (f) the name of any custodian of any existing copies of the document. If no documents or things exist that are responsive to a particular paragraph of these requests, so state in writing.

12. Each document request shall be construed independently and without reference to other requests.

13. All electronically stored information ("ESI") and any other document produced in electronic format, including but not limited to any hard copy documents copied and produced in electronic format, shall be produced in the "Requested Production Format" attached as Appendix A.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All documents from April 21, 2000 to present concerning Wynn's and Wynn Resorts' business plans and activities in Macau, including but not limited to all documents concerning:

- A. The development of casino resorts in Macau;
- B. The obtaining of any governmental approvals, gaming licenses, and/or concession contracts, for the operation of any casino resort in Macau;
- C. Wynn Resorts (Macau), S.A.'s business plans and activities in Macau, from its establishment on October 17, 2001, through and until Wynn contributed his interests in Wynn Resorts (Macau), S.A. to the capital of Valvino Lamore, LLC on or about April 11, 2002;

- 1 D. The acquisition or potential acquisition of land rights in Macau, including
2 but not limited to the Land Concession Contract included as exhibit 10.1 to
3 Wynn Resorts' Form 8-K filing on May 2, 2012;
- 4 E. The payment of \$50 million to Tien Chiao Entertainment & Investment Co.
5 Ltd. by Palo Real Estate Company Limited as disclosed in exhibit 99.1 to
6 Wynn Resorts' Form 8-K filing on September 11, 2009, including but not
7 limited to all documents concerning: (i) all public disclosure made or
8 considered concerning this payment and (ii) all agreements between Wynn
9 Resorts and Tien Chiao Entertainment & Investment Co. Ltd.;
- 10 F. Any communications with Tien Chiao Entertainment & Investment Co.
11 Ltd. and/or Palo Real Estate Company Limited, including but not limited to
12 any communications with any owners, principals, agents, or affiliates of
13 Tien Chiao Entertainment & Investment Co. Ltd. and/or Palo Real Estate
14 Company Limited;
- 15 G. Business plans or activities in Macau concerning Tien Chiao Entertainment
16 & Investment Co. Ltd. and/or Palo Real Estate Company Limited;
- 17 H. Any consultants engaged by Wynn Resorts, Wynn Resorts (Macau), or any
18 of their affiliates engaged or otherwise consulted in connection with
19 business plans and activities in Macau;
- 20 I. All due diligence, assessments, investigations, and analyses concerning
21 business plans and activities in Macau; and,
- 22 J. All donations considered and/or made in China, including but not limited
23 to China's special administrative regions, Macau and Hong Kong.

24 **REQUEST FOR PRODUCTION NO. 2:**

25 All documents from April 21, 2000 to present concerning the "Macau Interest" and
26 the "Macau Reimbursement Amount," as those terms are used in the Third Amended and
27 Restated Operating Agreement of Valvino Lamore, LLC dated April 11, 2002, including but not
28 limited to all documents concerning the valuation of the "Macau Interest" and the "Macau

1 Reimbursement Amount”.

2 **REQUEST FOR PRODUCTION NO. 3:**

3 All documents from April 21, 2000 to present concerning any Government
4 Official of China and/or Macau, including but not limited to all documents concerning any
5 payment, benefit, or gift provided to any such official, directly or indirectly, including any
6 provision or payment of meals, lodging, travel, or anything else for any Government Official of
7 China and/or Macau.

8 **REQUEST FOR PRODUCTION NO. 4:**

9 All documents concerning Wynn Macau's May 2011 pledge to donate to the
10 University of Macau Development Foundation, including but not limited to all documents
11 concerning:

- 12 A. The beneficiaries, directly or indirectly, of the donation;
- 13 B. All due diligence, assessments, investigations, and analyses concerning the
14 donation conducted by Wynn Resorts or any other individual or entity;
- 15 C. All notes, reports, communications, or other materials by, with, or
16 otherwise involving members of the Wynn Board;
- 17 D. All legal opinions and FCPA analysis relating to the donation, including
18 but not limited to advice provided by Gibson, Dunn & Crutcher LLP.; and
- 19 E. Okada's objections to the donation, including but not limited to Okada's
20 objection to the donation during the April 2011 Wynn Board meeting
21 referenced in Paragraph 76 of the Counterclaim.

22 **REQUEST FOR PRODUCTION NO. 5:**

23 All documents from April 21, 2000 to present concerning donations made by
24 Wynn Resorts, Wynn Macau and/or Wynn Las Vegas to any charitable organization.

25 **REQUEST FOR PRODUCTION NO. 6:**

26 All documents from April 21, 2000 to present concerning, including but not
27 limited to all communications with, Chu Sai Cheong, Jose Vai Chi "Cliff" Cheong, John
28 Crawford, Li Tai Foon, Edmund Ho, Ho Ho, Lawrence Ho, Stanley Ho, Wilson Kwan, Yany

1 Kwan, Darryl "Dax" Turok, and Chi Seng Wong, and each person's agents, representatives,
2 associates, attorneys, and all other persons acting or purporting to act on each person's behalf or
3 under each person's control.

4 **REQUEST FOR PRODUCTION NO. 7:**

5 All documents from April 21, 2000 to present concerning the Cotai Land
6 Development Co. Ltd., Companhia de Entretenimento e Investimento Chinese Limitada, Palo
7 Real Estate Development Co. Ltd., Wynn Cotai Holding Co., Ltd., Cotai Partner, Ltd., and Tien
8 Chiao Entertainment & Investment Co. Ltd., and each entity's predecessors, successors, parents,
9 subsidiaries, divisions or affiliates, and their respective current and former owners, shareholders,
10 members, officers, directors, agents, attorneys, accountants, employees, partners, or other persons
11 occupying similar positions or performing similar functions, and all other persons acting or
12 purporting to act on each entity's behalf or under each entity's control.

13 **REQUEST FOR PRODUCTION NO. 8:**

14 All documents from April 21, 2000 to present concerning Wynn's visits to China,
15 including but not limited to all documents concerning:

- 16 A. Any visits initially planned, but later cancelled or postponed; and/or
17 B. Any use of Wynn Resorts' corporate plane or Wynn's private plane.

18 **REQUEST FOR PRODUCTION NO. 9:**

19 All documents concerning the financial contributions made by Aruze to Wynn
20 Resorts and/or Valvino Lamore, LLC, including but not limited to all documents concerning the
21 manner in which Wynn, Wynn Resorts, or Valvino Lamore, LLC spent the \$120 million
22 contributed by Aruze to Valvino Lamore, LLC in April 2002.

23 **REQUEST FOR PRODUCTION NO. 10:**

24 All documents concerning the financial contributions of Baron Asset Fund to
25 Wynn Resorts and/or Valvino Lamore, LLC.

26 **REQUEST FOR PRODUCTION NO. 11:**

27 All books and records for Wynn Resorts and/or Valvino Lamore, LLC for the
28 years 2000 to 2002.

1 **REQUEST FOR PRODUCTION NO. 12:**

2 All documents concerning any resolution to preclude Wynn or Wynn Resorts from
3 developing casino projects in the Philippines by the House of Representatives of the Philippines
4 or any other Government Official of the Philippines.

5 **REQUEST FOR PRODUCTION NO. 13:**

6 All documents concerning Defendants' business plans and activities in the
7 Philippines, including but not limited to all documents concerning:

- 8 A. The development of casino resorts in the Philippines;
9 B. Communications involving Wynn Resorts regarding contractors or other
10 construction workers in the Philippines;
11 C. The obtaining of any Philippines governmental approvals, gaming licenses,
12 and/or concession contracts, for the operation of any casino in the
13 Philippines;
14 D. The acquisition or potential acquisition of land rights in the Philippines;
15 and,
16 E. All communications involving Defendants, Wynn Resorts, or
17 Counterdefendants concerning Defendants' business plans and activities in
18 the Philippines, including but not limited to Wynn's May 1, 2008
19 conference call to stock analysts that is referenced in Paragraph 60 of
20 Defendants' Counterclaim.

21 **REQUEST FOR PRODUCTION NO. 14:**

22 All documents concerning Wynn's visits to the Philippines from 2000 to the
23 present, including but not limited to all documents concerning:

- 24 A. Wynn's visit to the Philippines in 2010 referenced in Paragraphs 72 to 74
25 of Defendants' Counterclaim;
26 B. Any visits initially planned, but later cancelled or postponed, including but
27 not limited to a meeting with the President of the Philippines, Benigno
28 Aquino III; or

1 C. Any use of Wynn Resorts' corporate plane or Wynn's private plane.

2 **REQUEST FOR PRODUCTION NO. 15:**

3 All documents concerning any payments, benefits, and gifts allegedly made by
4 Defendants to former or current members of PAGCOR, including but not limited to all documents
5 concerning:

6 A. All visits allegedly made to Wynn Macau and Wynn Las Vegas by former
7 or current persons associated or affiliated with PAGCOR, including all
8 alleged expenses incurred by any such officials, including any guests
9 accompanying the officials, during any such visits;

10 B. The authorization of alleged payments, benefits, or gifts to former or
11 current PAGCOR employees and officials;

12 C. Any disciplinary action taken against any former or current employee of
13 Wynn Resorts, Wynn Macau, or Wynn Las Vegas for alleged payments,
14 benefits, and gifts provided to former or current PAGCOR employees and
15 officials; and

16 D. All receipts or records of expenses incurred and/or amounts paid by any
17 person affiliated with PAGCOR at Wynn Resorts properties, including but
18 not limited to Wynn Macau properties.

19 **REQUEST FOR PRODUCTION NO. 16:**

20 All documents concerning all city ledger accounts kept by Wynn Resorts, Wynn
21 Macau, and Wynn Las Vegas, including but not limited to all documents concerning:

22 A. All statements for the Universal City Ledger Account, Aruze City Ledger
23 Account, or any other city ledger account associated with Defendants;

24 B. The 36 alleged instances of payments, benefits, and gifts provided to
25 Philippine Government Officials alleged in Paragraph 52(b) of the
26 Complaint and pages 20 through 22 of the Freeh Report, including but not
27 limited to all receipts or records of all charges incurred by the alleged
28 beneficiaries listed in the Freeh Report;

- 1 C. All payments, benefits, and gifts allegedly provided to Korean Government
2 Officials at Wynn Macau and Wynn Las Vegas, as alleged in pages 31 and
3 32 in the Freeh Report;
4 D. All deposits made by any of the Defendants to an account controlled by
5 Wynn Resorts for city ledger accounts associated with Defendants;
6 E. All expenses charged to the Universal City Ledger Account, Aruze City
7 Ledger Account, or any other city ledger account associated with any of the
8 Defendants;
9 F. All invoices sent by Wynn Resorts to any of the Defendants concerning
10 city ledger accounts associated with Defendants;
11 G. All statements for city ledger accounts for Wynn, Wynn Resorts, or any
12 Counterdefendant;
13 H. All policies at Wynn Resorts, Wynn Macau and Wynn Las Vegas
14 concerning city ledger accounts, including but not limited to restrictions on
15 payments made from such accounts, oversight over city ledger accounts,
16 monitoring of irregularities with respect to city ledger accounts, and
17 invoices provided to account holders;
18 I. Wynn Resorts' Memorandum to File referenced in the Freeh Report in
19 footnote 12; and,
20 J. Invoices provided to account holders.

21 **REQUEST FOR PRODUCTION NO. 17:**

22 All documents from 2005 to the present concerning charges for lodging in each of
23 the hotel rooms at Wynn Las Vegas and Wynn Macau allegedly occupied by any of the PACGOR
24 officials named in the Freeh Report, including but not limited to:

- 25 A. all records, financial statements, and/or logs of charges incurred by guests
26 in those hotel rooms;
27 B. rates of the hotel rooms at issue at the time any charges were incurred; and
28 C. amount paid by guests for the hotel rooms.

1 **REQUEST FOR PRODUCTION NO. 18:**

2 All documents concerning Defendants' business plans and activities in the Incheon
3 Free Economic Zone in Korea.

4 **REQUEST FOR PRODUCTION NO. 19:**

5 All documents concerning any payments, benefits, or gifts allegedly made by
6 Defendants to Government Officials of Korea, including but not limited to all documents
7 concerning:

- 8 A. All visits allegedly made to Wynn Macau and Wynn Las Vegas by Korean
9 Government Officials, including all alleged expenses incurred by any such
10 officials during any such visits;
11 B. Any authorization of alleged payments, benefits, and gifts to Korean
12 Government Officials;
13 C. Any disciplinary actions taken against any former or current employee of
14 Wynn Resorts, Wynn Macau, or Wynn Las Vegas for alleged payments,
15 benefits, and gifts provided to any Korean Government Official; and
16 D. All receipts or records of expenses incurred by any Korean Government
17 Official at Wynn Resort properties.

18 **REQUEST FOR PRODUCTION NO. 20:**

19 All documents concerning any of the Korean Government Officials named in the
20 Freeh Report, including but not limited to: Jong Cheol Lee; Woo Hyeung Lee; Min Yong Choi;
21 and Ki Dong Hur.

22 **REQUEST FOR PRODUCTION NO. 21:**

23 All documents concerning any competition or potential competition between
24 Defendants' casino resort in the Philippines and Wynn Macau, as alleged in Paragraph 27 of the
25 Complaint, including but not limited to all documents concerning:

- 26 A. All due diligence, assessments, investigations, and analyses of the potential
27 for competition; and
28

1 B. Okada's alleged plans to " lure high-limit, VIP gamblers from China" to
2 Universal's casino resorts in the Philippines, "the same customer base as
3 Wynn Macau," as alleged in Paragraph 27 of the Complaint.

4 **REQUEST FOR PRODUCTION NO. 22:**

5 All documents concerning the statement in Wynn Macau's IPO prospectus that
6 Okada does not hold, own, or control more than 5% voting interests in an entity which is
7 reasonably expected to compete with Wynn Macau, including but not limited to all
8 communications and drafts related to this language in Wynn Macau's IPO prospectus.

9 **REQUEST FOR PRODUCTION NO. 23:**

10 All documents concerning the non-compete clause set forth in in Paragraph 6 of
11 the Stockholder's Agreement, including but not limited to all communications related to the
12 drafting of the non-compete clause.

13 **REQUEST FOR PRODUCTION NO. 24:**

14 All documents concerning Wynn's or Wynn Resorts' exploration into developing
15 casino resorts in locations other than Las Vegas or Macau, including but not limited to all
16 documents concerning:

- 17 A. Any impact any such casino resorts would have on Wynn Resorts'
18 businesses in Las Vegas or Macau;
19 B. Any visits by Wynn to Monaco, including any visits initially planned but
20 later cancelled; and
21 C. Any use of Wynn Resorts' corporate plane or Wynn's private plane.

22 **REQUEST FOR PRODUCTION NO. 25:**

23 All documents identifying or otherwise concerning persons who have received
24 complimentary rooms, meals, gifts, gaming credits, or other things of value from Wynn Resorts
25 (including, but not limited to, Wynn Macau).

26 **REQUEST FOR PRODUCTION NO. 26:**

27 All documents concerning any trade secrets owned by Wynn Resorts that any
28 Defendant allegedly misappropriated, including but not limited to all documents concerning:

- 1 A. Any damages to Wynn Resorts caused by Defendants' alleged
2 misappropriation of any such trade secrets.
3 B. The identity of any such trade secrets;
4 C. Wynn Resorts' ownership of any such trade secrets;
5 D. The independent economic value of any such trade secret, actual or
6 potential, from not being generally known to (and not being readily
7 ascertainable by proper means by) the public or any other persons who can
8 obtain commercial or economic value from its disclosure or use;
9 E. All efforts by Wynn Resorts to maintain the secrecy of any such trade
10 secrets; and
11 F. The allegedly improper means used by Defendants to obtain any such trade
12 secrets.

13 REQUEST FOR PRODUCTION NO. 27:

14 All documents concerning any confidential information, trademarks, or other
15 intellectual property owned by Wynn Resorts (other than trade secrets) that Defendants allegedly
16 used or intended to use for their own benefit or to the detriment of Wynn Resorts, including but
17 not limited to all documents concerning:

- 18 A. Any damages to Wynn Resorts caused by Defendants' alleged use of any
19 such confidential information, trademarks, or other intellectual property.
20 B. The confidential information, trademarks, or other intellectual property
21 Okada allegedly used for his own benefit and to Wynn Resorts' detriment,
22 as alleged in Paragraph 72 of the Complaint;
23 C. Wynn Resorts' ownership of such confidential information, trademarks, or
24 other intellectual property; and
25 D. All efforts by Wynn Resorts to keep such information or property
26 confidential.

27 REQUEST FOR PRODUCTION NO. 28:

28 All documents concerning any information Defendants allegedly acquired from

1 Wynn Resorts that Defendant used or intended to use for their own benefit, including but not
2 limited to all documents concerning:

- 3 A. Any damages to Wynn Resorts caused by Defendants' alleged use of any
4 such information;
- 5 B. The alleged public statements by Universal that it would use information
6 acquired from Wynn Resorts for its own use, as alleged in Paragraphs 31 to
7 34 of the Complaint; and
- 8 C. The allegation that "Okada arranged to have several key individuals serve
9 as interns at the Wynn Macau property so that Wynn Macau 'know how'
10 could be learned and siphoned from Wynn Resorts" in Paragraph 35 of the
11 Complaint.

12 **REQUEST FOR PRODUCTION NO. 29:**

13 All documents concerning Defendants' alleged linking of Wynn Resorts to
14 Defendants' separate business endeavors, including but not limited to all documents concerning:

- 15 A. Linking the website of Wynn Resorts and/or Wynn Macau to the websites
16 controlled by Defendants;
- 17 B. Any damages to Wynn Resorts caused by any such alleged linking of
18 Wynn Resorts to Defendants' separate business endeavors; and
- 19 C. The allegation that Wynn Resorts was harmed by Defendants' alleged
20 "linking Wynn Resorts to business endeavors in the Philippines that would
21 necessarily suggest its involvement with 'deeply ingrained' official
22 corruption and a legal/regulatory framework ill-aligned with American
23 compliance and transparency standards" in Paragraph 36 of the Complaint.

24 **REQUEST FOR PRODUCTION NO. 30:**

25 All documents concerning the possibility of Aruze pledging some of its shares in
26 Wynn Resorts or obtaining a loan in 2011, including but not limited to all documents concerning:

- 27 A. Wynn Resorts possibly making a loan to Aruze, including but not limited
28 to any legal analysis concerning any such loan;

- 1 B. The draft side letter prepared by Kimmarré Sinatra concerning a possible
2 loan from Wynn Resorts to Aruze, as alleged in Paragraph 88 of the
3 Counterclaim;
4 C. Deutsche Bank's participation in any possible loan to Aruze in 2011;
5 D. The meeting held on May 16, 2011 involving Wynn, Kimmarré Sinatra,
6 Matt Maddox, and Okada concerning, among other things, Aruze possibly
7 either pledging some of its shares in Wynn Resorts or obtaining a loan; and
8 E. Wynn Resorts' Compliance Committee's review and decision on any
9 possible loan to Aruze.

10 **REQUEST FOR PRODUCTION NO. 31:**

11 All documents concerning Elaine Wynn transferring some or all of her shares of
12 Wynn Resorts to a new owner in 2011, including but not limited to documents concerning
13 Aruze's consent to any such transfer.

14 **REQUEST FOR PRODUCTION NO. 32:**

15 All documents concerning the Kimmarré Sinatra's role and duties with respect to
16 any business of Wynn and/or Wynn Resorts.

17 **REQUEST FOR PRODUCTION NO. 33:**

18 All documents concerning Kimmarré Sinatra's communications about Section 402
19 of the Sarbanes-Oxley Act to any Defendant or Counterdefendant.

20 **REQUEST FOR PRODUCTION NO. 34:**

21 All documents concerning any investigation that Wynn Resorts conducted or
22 commissioned concerning Defendants or their businesses in the Philippines, including but not
23 limited to all documents concerning:

- 24 A. The "independent investigation and risk assessment of investing in the
25 gaming industry in the Philippines" commissioned by the Compliance
26 Committee in January 2011, as alleged in Paragraph 22 of the Complaint;
27
28

- 1 B. The "second independent investigation in the regulatory and compliance
2 climate in the Philippines" commissioned by the Wynn Board in August
3 2011, as alleged in Paragraph 40 of the Complaint;
4 C. The report presented by Robert J. Miller at the November 1, 2011 Wynn
5 Board meeting concerning the investigations conducted to that date; and
6 D. Any documents concerning any investigation or assistance provided by any
7 person engaged by Wynn or Wynn Resorts.

8 **REQUEST FOR PRODUCTION NO. 35:**

9 All documents concerning communications by Wynn Resorts with Defendants
10 (including Defendants' representatives) concerning any investigation that Wynn Resorts
11 conducted or commissioned concerning Defendants or their businesses in the Philippines,
12 including but not limited to all documents concerning:

- 13 A. The meeting between Robert Faiss, Mark Clayton, Kimmarie Sinatra and
14 Kevin Tourek on September 30, 2011; and
15 B. The meeting held on October 4, 2011 between Wynn, Kimmarie Sinatra,
16 Okada, and Okada's counsel, including but not limited to the possible
17 removal of Okada as Vice Chairman of Wynn Resorts and as a director of
18 both Wynn Resorts and Wynn Macau, including the purported grounds for
19 any such removals, discussed at that meeting.

20 **REQUEST FOR PRODUCTION NO. 36:**

21 All documents concerning Frank A. Schreck's resignation as Chairman of
22 Universal's Compliance Committee on September 27, 2011, including but not limited to all
23 communications to or from Frank A. Schreck, Wynn Resorts, and any of the Counterdefendants.

24 **REQUEST FOR PRODUCTION NO. 37:**

25 All documents concerning the law firms Brownstein Hyatt Farber Schreck, LLP
26 and Gordon Silver, including but not limited to any advice provided by them concerning alleged
27 actions by any of the Defendants and/or their businesses in the Philippines.

28 **REQUEST FOR PRODUCTION NO. 38:**

1 All documents concerning the Arkin Group LLC, Arkin Kaplan Rice LLP, Stanley
2 S. Arkin, and Jack Devine, including but not limited to any due diligence, assessments,
3 investigations, and analyses conducted by the Arkin Group LLC and Arkin Kaplan Rice LLP
4 concerning the Philippines, the gaming industry in the Philippines, and/or any of the Defendants.

5 **REQUEST FOR PRODUCTION NO. 39:**

6 All documents concerning any investigation of any of the Defendants or their
7 businesses in the Philippines and Korea conducted by Freeh Sporkin, including but not limited to
8 all documents concerning:

- 9 A. The retention of Freeh Sporkin, including the terms of its compensation;
10 B. All information gathered, and analyses conducted, by Freeh Sporkin or any
11 consultants retained by Freeh Sporkin or Wynn, Wynn Resorts or any of
12 the Counterdefendants, including (i) all documents included in the
13 appendix to – and referenced in – the Freeh Report, (ii) all documents
14 provided by Wynn Resorts and/or any of the Counterdefendants to Freeh
15 Sporkin for any investigation, and (iii) all documents provided by Freeh
16 Sporkin or any consultants to Wynn Resorts and/or any Counterdefendants;
17 C. All persons interviewed by Freeh Sporkin, including all documents used at,
18 or created as a result of, such interviews;
19 D. The interview of Okada conducted by Louis J. Freeh in Tokyo on February
20 15, 2012, including all documents used at, or created as a result of, such
21 interviews;
22 E. All communications between Wynn, Wynn Resorts, and/or any
23 Counterdefendant concerning the Freeh Sporkin investigation;
24 F. All communications with Defendants concerning the investigation,
25 including opportunities for Defendants to respond to the Freeh Report; and
26 G. All diaries or other billing records related to the Freeh Sporkin
27 investigation, including how much Freeh or Freeh Sporkin were paid and
28 how many hours they worked.

1 **REQUEST FOR PRODUCTION NO. 40:**

2 All documents concerning any assessment by the Wynn Board of the accuracy of
3 the Freeh Report.

4 **REQUEST FOR PRODUCTION NO. 41:**

5 All documents concerning any communications by Wynn, Wynn Resorts, or any
6 Counterdefendant with any person outside Wynn Resorts concerning the Freeh Report, including
7 but not limited to the Wall Street Journal.

8 **REQUEST FOR PRODUCTION NO. 42:**

9 All documents concerning Wynn Resorts' or Wynn's offer to purchase some or all
10 of Aruze's stock in 2011 or 2012.

11 **REQUEST FOR PRODUCTION NO. 43:**

12 All documents concerning the resolutions adopted by the Wynn Board on February
13 18, 2012, as alleged in Paragraph 97 of the Complaint, including but not limited to all documents
14 concerning:

- 15 A. The Wynn Board's determination that Aruze and Universal were likely to
16 jeopardize Wynn Resorts' and its affiliated companies' gaming licenses;
17 B. The Wynn Board's determination that Okada, Aruze, and Universal were
18 unsuitable persons under the Articles of Incorporation;
19 C. The Wynn Board's determination to redeem Aruze's shares in Wynn
20 Resorts for approximately \$1.936 billion through a promissory note; and
21 D. The basis for each of the Wynn Board's determinations set forth above,
22 including all information considered by the Wynn Board before making
23 each of these determinations.

24 **REQUEST FOR PRODUCTION NO. 44:**

25 All documents concerning any instances where the Wynn Board considered or
26 made a determination whether a person was an unsuitable person under the Articles of
27 Incorporation, other than the Wynn Board's determination concerning Okada on February 18,
28 2012.

1 **REQUEST FOR PRODUCTION NO. 45:**

2 All documents concerning any instances where the Wynn Board considered
3 whether to redeem, or made a determination to redeem, the shares of any shareholder pursuant to
4 the Articles of Incorporation, other than the Wynn Board's redemption of Aruze's shares on
5 February 18, 2012.

6 **REQUEST FOR PRODUCTION NO. 46:**

7 All documents concerning the valuation of Aruze's shares in Wynn Resorts for the
8 redemption in 2012, including but not limited to all documents concerning the valuation
9 conducted by Moelis & Company, including all documents provided to or by Moelis & Company
10 concerning the valuation.

11 **REQUEST FOR PRODUCTION NO. 47:**

12 All documents concerning the valuation of Aruze's shares in Wynn Resorts for the
13 redemption in 2012, including but not limited to all documents concerning the valuation
14 conducted by Duff & Phelps, LLC, including all documents provided to or by Duff & Phelps,
15 LLC concerning the valuation.

16 **REQUEST FOR PRODUCTION NO. 48:**

17 All documents concerning Kenneth Moelis' and Moelis & Company's work for
18 Wynn or Wynn Resorts prior to the valuation of Aruze's shares in 2011 and/or 2012.

19 **REQUEST FOR PRODUCTION NO. 49:**

20 All documents concerning Duff & Phelps, LLC's work for Wynn or Wynn Resorts
21 prior to the valuation of Aruze's shares in 2011 and/or 2012.

22 **REQUEST FOR PRODUCTION NO. 50:**

23 All documents concerning any valuation of Aruze's shares in Wynn Resorts,
24 including but not limited to valuations included or referenced in filings with the United States
25 Securities and Exchange Commission ("US SEC"), court filings, or the letter from Robert L.
26 Shapiro to Aruze's counsel dated December 15, 2011.

27 **REQUEST FOR PRODUCTION NO. 51:**

28 All documents concerning the land concession contract permitting Wynn Macau to

1 develop a casino resort in Cotai, as referenced in Wynn Resorts' March 2, 2012 and May 2, 2012

2 Form 8-K filings, including but not limited to all documents concerning:

- 3 A. The date Wynn Resorts began negotiations for such concession contract;
- 4 B. The date such concession contract was executed;
- 5 C. The disclosure of such concession contract in Wynn Resorts' initial Form
- 6 8-K filing on March 2, 2012;
- 7 D. Wynn Resorts' March 2, 2012 retraction of the initial March 2, 2012 Form
- 8 8-K filing as having been filed by "mistake" by the "Company's agent,"
- 9 including all communications with the Company's agent referenced in the
- 10 retraction; and
- 11 E. Wynn Resorts' May 2, 2012 Form 8-K filing, including any documents
- 12 concerning changes in the wording of the May 2, 2012 Form 8-K filing
- 13 from the initial March 2, 2012 Form 8-K filing.

14 **REQUEST FOR PRODUCTION NO. 52:**

15 All documents concerning the removal of Okada as Vice Chairman of Wynn

16 Resorts and as a director of both Wynn Resorts and Wynn Macau,

17 **REQUEST FOR PRODUCTION NO. 53:**

18 All documents concerning any investigation of Wynn Resorts or its employees,

19 officers, shareholders, or directors (including but not limited to Wynn and Defendants) by any

20 local, state, federal, or foreign law enforcement agency, regulatory agency, or gaming regulator,

21 including but not limited to all documents concerning any investigation by the Nevada Gaming

22 Commission, the State Gaming Control Board of Nevada, the US SEC, the United States

23 Department of Justice ("DOJ"), Philippine Securities and Exchange Commission ("Philippine

24 SEC"), or the Macau Gaming Commission concerning:

- 25 A. Wynn Macau's pledge to donate to the University of Macau Development
- 26 Foundation;
- 27 B. Wynn Resorts' purported redemption of Aruze's shares of Wynn Resorts;
- 28

- 1 C. Any alleged payment, benefit, or gift by Defendants to former or current
2 members of PAGCOR;
3 D. The Land Concession Contract included as exhibit 10.1 to Wynn Resorts'
4 Form 8-K filing on May 2, 2012;
5 E. The payment of \$50 million to Tien Chiao Entertainment & Investment Co.
6 Ltd. by a Palo Real Estate Company Limited as disclosed in exhibit 99.1 to
7 Wynn Resorts' Form 8-K filing on September 11, 2009; and
8 F. The FCPA or any other corruption prevention laws.

9 **REQUEST FOR PRODUCTION NO. 54:**

10 All documents sufficient to show the relationships between Wynn Resorts, Wynn
11 Macau, Wynn, Universal, Aruze, and Okada, and their ownership interests in Wynn Resorts and
12 Wynn Macau.

13 **REQUEST FOR PRODUCTION NO. 55:**

14 All organizational charts of Wynn Resorts and Wynn Macau, including but not
15 limited to its subsidiaries, divisions, departments, affiliates, committees, and any other related
16 entity or group.

17 **REQUEST FOR PRODUCTION NO. 56:**

18 All documents concerning Wynn Resorts' budget for each fiscal year from 2012 to
19 2022, including but not limited to financial forecasts and projected revenue and costs.

20 **REQUEST FOR PRODUCTION NO. 57:**

21 All documents concerning the negotiation, drafting, and execution of each of the
22 following documents and any and all amendments thereto:

- 23 A. The Articles of Incorporation;
24 B. The Bylaws;
25 C. The Contribution Agreement; and
26 D. The Stockholder's Agreement.

27 **REQUEST FOR PRODUCTION NO. 58:**

28 All documents concerning Aruze's nomination of individuals to serve as directors

1 of Wynn Resorts, including but not limited to Wynn's refusal to endorse the individuals
2 nominated by Aruze as required by Paragraph 2(a) of the Stockholder's Agreement.

3 **REQUEST FOR PRODUCTION NO. 59:**

4 All documents concerning Wynn Resorts' policies and training, including all
5 communications to the Wynn Board of Directors, concerning:

- 6 A. Membership on the Board of Directors and procedure for nominating
7 members to the Board of Directors;
- 8 B. Removal of persons from the Board of Directors;
- 9 C. Compliance with the Nevada Revised Statutes and the Nevada Gaming
10 Commission Regulations;
- 11 D. Compliance with the Sarbanes-Oxley Act, including Section 402;
- 12 E. Compliance with the FCPA or any other corruption prevention law;
- 13 F. The adoption of resolutions by Wynn Resorts' Board of Directors;
- 14 G. Wynn Resorts' Gaming and Compliance Program;
- 15 H. Wynn Resorts' Policy Regarding Payment to Government Officials,
16 referenced in Paragraph 38(b) of the Complaint;
- 17 I. Wynn Resorts' Code of Business Conduct and Ethics ("Code of Conduct"),
18 referenced in Paragraph 14 of the Complaint, including any amendments
19 to the Code of Conduct;
- 20 J. Determinations of "unsuitability" under the Articles of Incorporation;
- 21 K. The confidentiality and privacy of guest information, including guest
22 information in Macau;
- 23 L. Data privacy laws in Macau;
- 24 M. Amendments to the Articles of Incorporation;
- 25 N. All notices sent to members of the Board of Directors regarding training;
- 26 O. Restrictions on shares of Wynn Resorts owned by officers and directors of
27 Wynn Resorts, including any prohibition on pledging such shares; and
28

1 P. Any other policies relevant to Wynn Resorts' allegations against
2 Defendants.

3 **REQUEST FOR PRODUCTION NO. 60:**

4 All communications to and from Okada, Wynn Resorts, or any of the
5 Counterdefendants concerning the FCPA, including but not limited to Okada's requests to have
6 FCPA training materials provided to him in Japanese.

7 **REQUEST FOR PRODUCTION NO. 61:**

8 All documents concerning Wynn Resorts' procedure for choosing and developing
9 new casino gaming sites, including but not limited to the investigation or audit of proposed new
10 casino gaming sites.

11 **REQUEST FOR PRODUCTION NO. 62:**

12 All documents concerning Wynn Resorts' Sarbanes Oxley Steering Committee.

13 **REQUEST FOR PRODUCTION NO. 63:**

14 All documents concerning Wynn Resorts' Audit Committee, including but not
15 limited to the Audit Committee's Enterprise Risk Management review, any policies or procedures
16 designed to uncover any conduct that would be a risk to Wynn Resorts' FCPA compliance, and
17 Audit Committee documents concerning the Philippines and any of the Defendants.

18 **REQUEST FOR PRODUCTION NO. 64:**

19 All documents concerning the Directors' & Officers' Questionnaire Packet
20 allegedly sent to all members of Wynn Resorts' Board of Directors in January 2012, as alleged in
21 Paragraph 38(c) of the Complaint, including but not limited to acknowledgement forms.

22 **REQUEST FOR PRODUCTION NO. 65:**

23 All documents (including notes, meeting minutes, handouts, or transcripts)
24 concerning meetings of the Board of Directors of Wynn Resorts, including meetings held on or
25 about February 24, 2011, April 18, 2011, November 1, 2011, and February 18, 2012.

26 **REQUEST FOR PRODUCTION NO. 66:**

27 All documents (including notes, meeting minutes, handouts, or transcripts)
28 concerning executive sessions held by members of the Board of Directors of Wynn Resorts.

1 including a session held on or about July 28, 2011.

2 **REQUEST FOR PRODUCTION NO. 67:**

3 All documents (including notes, meeting minutes, handouts, or transcripts)
4 concerning meetings held by members of the Compliance Committee of Wynn Resorts, including
5 a meeting held on or about September 27, 2011.

6 **REQUEST FOR PRODUCTION NO. 68:**

7 All documents, including correspondence, notes, memoranda, or meeting minutes
8 concerning Okada's alleged statements during any meeting of Wynn Board concerning payments
9 to foreign Government Officials, the FCPA, or any other corruption prevention laws, as alleged in
10 Paragraph 37 of the Complaint.

11 **REQUEST FOR PRODUCTION NO. 69:**

12 All documents concerning requests by Okada for Japanese translation services for
13 Board materials and Board meetings and telephone conferences.

14 **REQUEST FOR PRODUCTION NO. 70:**

15 All documents concerning Wynn Resorts' statement on October 2, 2012
16 concerning the denial of Aruze and Universal's Motion for Preliminary Injunction, including but
17 not limited to all documents concerning:

- 18 A. The investigations allegedly initiated by law enforcement and regulatory
19 authorities in the United States and multiple jurisdictions in Asia;
- 20 B. The purported business connections and common shareholding in a Hong
21 Kong entity by Okada;
- 22 C. An alleged individual associated with "yakuza," a Japanese organized
23 crime group; and
- 24 D. An alleged improper payment in the Philippines in connection with Aruze.

25 **REQUEST FOR PRODUCTION NO. 71:**

26 All documents concerning the name change and closure of the Okada restaurants
27 in Wynn Las Vegas and Wynn Macau, including but not limited to all communications to or from
28 Wynn Las Vegas, Wynn Resorts and Wynn concerning the name change and closure.

1 **REQUEST FOR PRODUCTION NO. 72:**

2 All documents concerning the alleged risks to Wynn Resorts and/or to its Board of
3 Directors, such as regulatory risks, conflicts of interests, and risks to Wynn Resorts' current
4 and/or prospective gaming license(s), arising from the alleged acts of Defendants, including but
5 not limited to all Communications concerning such risks, all analyses, reports, assessments,
6 and/or studies of such risks.

7 **REQUEST FOR PRODUCTION NO. 73:**

8 All documents related to any gaming licenses that Wynn Resorts (including, but
9 not limited to Wynn Macau) or any members of the Wynn Resorts' Board of Directors has
10 considered pursuing, whether or not the gaming license was actually pursued or granted, since
11 Wynn Resorts' inception in 2002.

12 **REQUEST FOR PRODUCTION NO. 74:**

13 All documents related to any insurance agreement entered into by Wynn Resorts
14 (including, but not limited to Wynn Macau) within the past five years which a person carrying on
15 an insurance business may be liable to satisfy part or all of a judgment which may be entered in
16 this action, including any disclaimer or limitation of coverage or reservation of rights under any
17 such insurance agreement.

18 **REQUEST FOR PRODUCTION NO. 75:**

19 All documents related to any insurance agreement entered into by Wynn Resorts
20 (including, but not limited to Wynn Macau) within the past five years which a person carrying on
21 an insurance business may be liable to advance, indemnify or reimburse for litigation costs and
22 expenses and/or payments made to satisfy the judgment in this action, including any disclaimer or
23 limitation of coverage or reservation of rights under any such insurance agreement.

24

25

26

27

28

1 Dated: Las Vegas, Nevada

2 January 2, 2013

3 LIONEL SAWYER & GOLLINS

4 By: 

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17 Defendants and Counterclaimants ARUZE USA, INC. and
18 UNIVERSAL ENTERTAINMENT CORPORATION
19
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1 CERTIFICATE OF SERVICE

2 Pursuant to Nevada Rule of Civil Procedure 5(b), I hereby certify that I am an employee
3 of LIONEL SAWYER & COLLINS and that on this 2nd day of January, 2013, I caused
4 documents entitled **DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF**
5 **DOCUMENTS TO WYNN RESORTS, LIMITED** to be served as follows:

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

8
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27 ☐ pursuant to NEV. R. Civ. P. 5(b)(2)(D) to be sent via facsimile as indicated:

28 ☐ to be hand delivered to:

and/or

☐ through the Court's Electronic Filing Program pursuant to the Electronic Filing and
Service Order enter in Case No. 12 A656710 on October 4, 2012.

25 
26 An Employee of
27 LIONEL SAWYER & COLLINS
28

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.

Electronically Filed
May 16, 2017 10:15 a.m.
Supreme Court No. May 16, 2017 402
Elizabeth A. Brown
Clerk of Supreme Court
District Court Case No. A-12-858710-B

**ARUZE PARTIES' OPPOSITION TO
WYNN RESORTS LIMITED'S MOTION
TO EXTEND THE DISTRICT COURT'S
STAY PENDING WRIT PETITION AND
RULE 27(E) EMERGENCY MOTION FOR
INTERIM EXTENSION OF STAY**

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*Attorneys for Kazuo Okada, Universal
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Kazuo Okada, Universal Entertainment Corp. and Aruze USA, Inc. (collectively referred to as "the Aruze Parties") submit this opposition to Wynn Resorts, Limited's ("WRL's") Motion to Extend the District Court's Stay Pending Writ Petition and Rule 27 Emergency Motion for Interim Extension of Stay, filed on May 5, 2017 (the "Motion").

I. ARGUMENT

WRL launched this case more than five years ago, on February 19, 2012, seeking judicial ratification of its decision to oust its largest shareholder and founder Kazuo Okada as "unsuitable," and its decision to forcibly redeem Mr. Okada's stock at a massive discount. WRL's primary justification for these decisions was the Freeh Report – a purportedly privileged report which WRL attached in full to its Complaint – and the advice of its lawyers and other advisors, including its attorneys at Brownstein Hyatt Farber Schreck, LLP ("Brownstein Hyatt"), which WRL summarized in its Complaint. Because WRL made the Freeh Report and Brownstein Hyatt's advice central to this litigation, the Aruze Parties sought documents related to both (the "Freeh and Brownstein Hyatt Documents" or "the Documents") starting in 2012. *See* Ex. A at Requests 37, 39. After more than five years, despite multiple District Court Orders

requiring WRL to produce the Documents, despite the fact that fact discovery ends in less than four months, and despite the fact that this case must go to trial by May 2018,¹ the Aruze Parties are still waiting for the Documents.

After considering the relevant factors, the District Court rejected WRL's request for an unlimited stay of its orders compelling production of the Freeh and Brownstein Hyatt Documents, and ordered that the stay expire on May 17, 2017. The Aruze Parties respectfully submit that this Court should do the same. Under *Hansen v. District Court*, WRL is not entitled to a stay because the Aruze Parties will be irreparably harmed if WRL does not produce the Freeh and Brownstein Hyatt Documents at this time. *See Hansen v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). Specifically, the Aruze Parties will not have enough time to conduct follow-

¹ Under the five-year rule set forth in Nevada Rule of Civil Procedure 41(e), this case must be brought to trial by May 27, 2018. *See* Ex. B, August 19, 2016 Stipulation and Order Regarding NRCP 41(e). The June 26, 2017 stay, referred to in the Stipulation as the "Second Stay," was lifted on March 27, 2017. That stay extends the August 23, 2017 trial deadline until May 27, 2018. Ex. C at 2. Since the Court's May 4, 2017 Order, attached as Ex. 2 to Petitioner's Motion, does not stay all discovery or proceedings and does not prevent the parties from bringing this action to trial, it does not toll the five-year rule. *See Boren v. City of North Las Vegas*, 98 Nev. 5, 638 P.2d 404, 405 (1982) (only tolling under Rule 41(e) "any period during which the parties are prevented from bringing an action to trial by reason of a stay order").

up discovery and depositions before the fact discovery deadline, a deadline which is immovable and rapidly approaching in less than four months. If the Aruze Parties are required to go to trial without the Freeh and Brownstein Hyatt Documents, they will be deprived of their fundamental right to defend themselves on the merits of WRL's claims against them.

A. The Stay Should Not Be Extended Because the Object of the Petitions Will Not be Defeated.

The first *Hansen* factor – "[w]hether the object of the appeal or writ petition will be defeated if the stay is denied" – weighs against WRL because the purpose of its writ petitions on the Freeh and Brownstein Hyatt Documents (the "Petitions") can still be upheld without a stay. *Hansen*, 116 Nev. at 657, 6 P.3d at 986. If this Court finds, contrary to the District Court's conclusions, that WRL's use of the Freeh Report and the Brownstein Hyatt advice did not put those matters "at issue" under *Wardleigh v. Second Judicial Dist. Court*, 111 Nev. 345, 891 P.2d 1180 (1995), then WRL can claw back documents as needed under the terms of the parties' Stipulated Protective Order, which will prevent the Aruze Parties from using such documents in depositions or at trial. WRL has already availed itself of this procedure numerous times in this case.

WRL's claim that unless the stay is extended, "the protections of the Business Judgment Rule for the Board members and the Company will be eviscerated," is meritless, because the District Court specifically reserved judgment on the question of the extent to which the business judgment rule applies to any of the claims at issue in this case for purposes of trial. *See* Mot. at 3; Ex. E, Mar. 24, 2016 Order at 2-3. The District Court's Orders requiring WRL to produce the Freeh and Brownstein Hyatt Documents simply do not affect WRL's claims that the business judgment rule applies to this case.

Moreover, WRL's claims about the applicability of the business judgment rule are of no moment on this appeal because those are relevance arguments, not claims of privilege. This Court has never before utilized the extraordinary vehicle of a writ petition to review a district court's determination that a particular set of documents was reasonably calculated to lead to the discovery of admissible evidence under NRCP 26(b)(1). *Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. Adv. Op. 15, 252 P.3d 676, 678 (2011) ("[E]xtraordinary writs are generally not available to review discovery orders.").

B. WRL Will Not Suffer Irreparable Harm If A Stay Is Denied.

Similarly, under the second *Hansen* factor, WRL will not suffer irreparable harm if required to produce the Freeh and Brownstein Hyatt Documents. *Hansen*, 116 Nev. at 657, 6 P.3d at 986. As noted above, if this Court deems that any of the documents are privileged, WRL may claw back those documents. Similarly, if this Court accepts WRL's argument that the documents are not reasonably calculated to lead to the discovery of admissible evidence because of the business judgment rule, then the documents will simply be ruled inadmissible at trial.²

Furthermore, WRL cannot now claim irreparable harm after it made a strategic decision to disclose the Freeh Report and Brownstein Hyatt's advice, and to attack the Aruze Parties with both in this litigation. It is instead the Aruze Parties who have been irreparably harmed through WRL's use of the attorney-client privilege as a sword and a shield.

² Moreover, the District Court has already determined that the Documents are relevant for purposes of discovery. In 2012, WRL moved to dismiss the Aruze Parties' counterclaims because of, among other things, "application of the business judgment rule." After a lengthy hearing, the Court rejected that argument, concluding that the counterclaims were well-plead and could proceed into discovery. *See* Ex. D, Nov. 13, 2012 Hr'g Transcript at 11, 51.

C. A Continued Stay Would Cause the Aruze Parties Irreparable Harm.

The third *Hansen* factor – whether the real party in interest will suffer irreparable harm if the stay is granted – also counsels against a stay because the Aruze Parties will be irreparably harmed if this Court enters a continued stay. A continued stay ensures that the Aruze Parties will not have enough time to analyze the thousands of Freeh and Brownstein Hyatt Documents at issue, and will not be able to conduct follow-up discovery and depositions in advance of the fact discovery cut-off. Fact discovery ends in less than four months, and that cut-off date cannot be moved because under Rule 41(e), this litigation must be brought to trial by May 2018 (which WRL notably fails to mention in its Motion).

The Aruze Parties first requested the Freeh and Brownstein Hyatt documents nearly five years ago. The District Court's Orders were entered more than a year ago. If the stay continues, the Aruze Parties will be denied a fair opportunity for discovery to defend against WRL's claims, and to demonstrate that WRL was not entitled to rely on its purported justification for the redemption – the Freeh Report and its advice of counsel. The effect, if not the purpose, of the Petitions has been to delay the proceedings and prejudice the Aruze Parties.

D. The Petitions Lack Merit

The stay should further be denied because WRL is unlikely "to prevail on the merits." *Hansen*, 116 Nev. at 657, 6 P.3d at 986 (fourth factor is "[w]hether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition"). The District Court ordered WRL to produce the Freeh Documents after a careful *in camera* review of more than 1,000 documents, and in light of WRL's flagrant use of the Freeh Report to attack the Aruze Parties in open court and the press while shielding all related documents as privileged. Similarly, the District Court ordered WRL to produce the Brownstein Hyatt Documents after determining that WRL strategically decided to put that advice at issue in the litigation. Consequently, WRL has little chance of succeeding on the merits. Indeed, WRL has filed two other writ petitions in this litigation, both of which this Court summarily rejected.

E. The Balance Weighs in Favor of the Aruze Parties

Finally, the stay should be denied because the balance of factors strongly favors the Aruze Parties. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (no single factor is dispositive and instead, "[i]f one or two factors are especially strong, they may

counterbalance other weak factors"). Here, the potential harm to the Aruze Parties outweighs any harm to WRL because fact discovery ends in less than four months, and because this matter must be brought to trial by May 27, 2018. WRL's desire to protect its alleged privileges and to shield evidence that it claims is irrelevant must be balanced against the Aruze Parties' right to fairly defend themselves, which they cannot reasonably do without the Freeh and Brownstein Hyatt Documents – documents that the District Court has already determined the Aruze Parties are entitled to.

II. CONCLUSION

Based on the forgoing, the Aruze Parties ask that the stay of WRL's obligation to produce the Freeh and Brownstein Hyatt documents be denied to allow this case to proceed through discovery and then to trial.

MORRIS LAW GROUP

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*Attorneys for Kazuo Okada, Aruze USA Inc.
and Universal Entertainment Corp.*

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 ARUZE PARTIES' OPPOSITION TO WYNN RESORTS LIMITED'S MOTION TO EXTEND THE DISTRICT COURT'S STAY PENDING WRIT PETITION AND RULE 27(E) EMERGENCY MOTION FOR INTERIM EXTENSION OF STAY to be served via Electronic Mail unless otherwise indicated below:

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DATED this 15th day of May, 2017

By: /s/ Patricia A. Cannon