9/15/2017 11:51 AM Steven D. Grierson CLERK OF THE COURT 1 **ORDR** 2 3 DISTRICT COURT 4 CLARK COUNTY, NEVADA CASE NO.: A-12-656710-B-KOF SUPREME COURT WYNN RESORTS, LIMITED, a Nevada corporation, DEPT. NO.: XI DEPUTY CLERK 7 Plaintiff, ORDER REGARDING (1) DEFENDANTS' MOTION TO SET A DATE CERTAIN ON PRODUCTION OF 8 PRE-REDEMPTION FREEH KAZUO OKADA, an individual, ARUZE USA, DOCUMENTS; AND (2) DEFENDANTS' INC., a Nevada corporation, and UNIVERSAL MOTION TO OVERRULE WORK ENTERTAINMENT CORP., a Japanese 10 corporation, PRODUCT CLAIMS AS TO PRE-REDEMPTION FREEH DOCUMENTS Defendants. AND TO COMPEL IMMEDIATE 11 PRODUCTION 12 Electronic Filing Case 13 Hearing Date: August 25, 2017 14 Hearing Time: 9:00 a.m. AND ALL RELATED CLAIMS. 16 This matter came before the Court on August 25, 2017, concerning the Defendants' 17 Motion to Set a Date Certain for the Production of Pre-Redemption Freeh Documents and 18 Defendants' Motion to Overrule Work Product Claims as to Pre-Redemption Freeh Documents 19 and to Compel Immediate Production (the "Motion"). James J. Pisanelli, Esq., Todd L. Bice, 20 and Debra L. Spinelli, Esq., of PISANELLI BICE PLLC, appeared on behalf of 21 Plaintiff/Counterdefendant Wynn Resorts, Limited and Counterdefendants Linda Chen, Russell 22 Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. 23 Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman (collectively the "Wynn J. Colby Williams, Esq., of CAMPBELL & WILLIAMS, appeared on behalf of Counterdefendant/Cross-defendant Stephen A. Wynn ("Mr. Wynn"). William R. Urga, Esq., **102** 26 27 of Jolley Urga Woodbury & Little, Mark E. Ferrario, Esq., of Greenberg Traurig, LLP, appeared

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Counderdefendant/Counterclaimant/Crossclaimant Elaine P. Wynn ("Ms. Wynn"). J. Stephen Peek and Robert J. Cassity, Esq. of HOLLAND & HART LLP appeared on behalf of Defendant Kazuo Okada ("Okada"), and David S. Krakoff, Esq. of BUCKLEY SANDLER LLP and J. Randall Jones of KEMP, JONES & COULTHARD LLP appeared on behalf of Defendants/Counterclaimants/Counterdefendants Aruze USA, Inc. ("Aruze USA") and Universal Entertainment Corp. ("Universal") (collectively the "Aruze Parties").

The Court has considered the Motions, the Wynn Parties' Opposition, the Defendants' 8 | Reply, and the arguments of counsel at the hearing on August 25. The Court has also considered 9 the 2015 proceedings in which the Court granted the Aruze Parties' motion to compel 10 production of documents related to the Defendants' pretext claim, which the Nevada Supreme Court declined to overrule on November 12, 2015 for lack of clear legal error in that discovery determination.

After having considered these matters and having carefully reviewed the Supreme Court's Opinion in 133 Nevada Advance Opinion 52 (Case No. 70050) filed on July 27, 2017, directing the Court to determine whether, considering the totality of the circumstances, the 16 Freeh Report was prepared "because of anticipated litigation," the Court determines that the Report was not prepared in anticipation of litigation. It was prepared for a different purpose, a business purpose—to assess Mr. Okada's suitability for use by Wynn Resorts' Compliance Committee to decide whether the stock of the Aruze Parties should be forcibly redeemed.

On the basis of the foregoing, good cause appearing,

IT IS HEREBY ORDERED that the Motions are GRANTED as follows:

Wynn Resorts' claim that production of the pre-Redemption Freeh Documents is prohibited by the work-product doctrine is overruled. Wynn Resorts shall produce the documents identified in Wynn Resorts' Fifth Amended and Superseding Privilege Log Regarding Freeh Documents ("Fifth Amended Log") dated on or before February 22, 2012.

<sup>133</sup> Nevada Advance Opinion 52, page 27, note 7.