IN THE SUPREME COURT OF THE STATE OF NEVADA

ELAINE P. WYNN, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. XI, Respondent, and WYNN RESORTS, LIMITED, Real Party in Interest.	Case No. 71432 **APPENDIX TO REAL PARTY IN INTEREST WYNN RESORTS, LIMITED'S ANSWER TO PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, MANDAMUS** **VOLUME I OF III**

DATED this 12th day of December, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 12th day of December, 2016, I electronically filed and served a true and correct copy of the above and foregoing **APPENDIX TO REAL PARTY IN INTEREST WYNN RESORTS, LIMITED'S ANSWER TO PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, MANDAMUS (VOLUME I OF III)** properly addressed to the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

COUNTERCLAIM

JURISDICTION AND VENUE

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

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

NATURE OF THE ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GENERAL ALLEGATIONS

II. KAZUO OKADA AND STEVE WYNN LAUNCH WYNN RESORTS

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

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

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

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

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

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

32. In April 2002, Aruze USA made two additional contributions totaling $120 million to Valvino. Mr. Wynn told Mr. Okada that $30 million was related to Macau, but Mr. Wynn did not explain to Mr. Okada how Mr. Wynn actually spent the money. Serious questions now exist about how Mr. Wynn used the money and whether Mr. Wynn used the funds for his personal benefit and/or for other inappropriate purposes. There are also serious questions about the use of the other $90 million Aruze USA contributed.

B. The Stockholders Agreement

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

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

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

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

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

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

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

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

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

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

C. Wynn Resorts' Original Articles of Incorporation

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

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

D. The Contribution Agreement

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

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

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

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

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

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

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

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

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

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

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

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

F. Wynn Resorts Goes Public

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

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

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

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

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

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

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

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

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

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

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

III. UNIVERSAL DISCLOSES AND ULTIMATELY PURSUES FOREIGN DEVELOPMENT PROJECTS

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

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

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

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

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

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

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

(Emphasis added).

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

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

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

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

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

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

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

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

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

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

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

C. Steve Wynn and Elaine Wynn Divorce

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

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

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

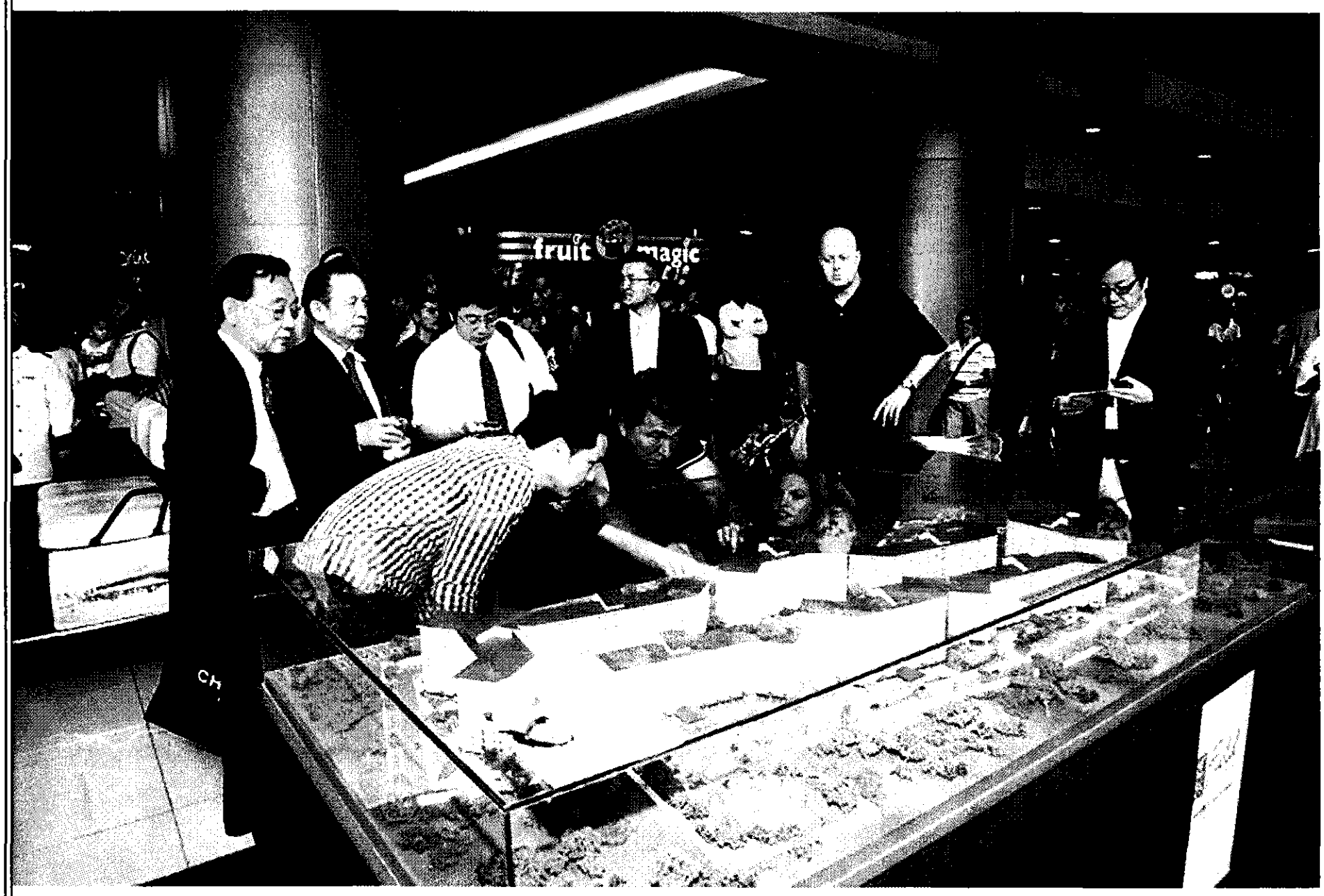
74. In addition, the Amended and Restated Stockholders Agreement continued to contain a non-compete clause that prohibited Mr. Okada, Aruze USA, and Universal only from operating casinos in Clark County, Nevada and in Macau, and certain Internet gaming ventures. Neither this version of the Stockholders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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Kazuo Okada Seeks More Information Regarding Wynn Macau

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

K. Wynn Resorts Allows No Opportunity for A Reasonable Response

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

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

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

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

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

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

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

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

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

(Emphasis added.)

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

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

(Emphasis added.)

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

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

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

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

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

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

L. Steve Wynn Hurriedly Schedules Board of Directors Meeting

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

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

M. Steve Wynn Tries to Use the Threat of Redemption to Buy Aruze USA's Stock at a Substantial Discount

146. Following the interview, Mr. Wynn communicated to Aruze USA through intermediaries that, instead of having the Board consider the Freeh Sporkin report, Mr. Wynn would be willing to buy Aruze USA's stock for his benefit at a significant discount off of the fair value of the shares. Mr. Wynn, through his intermediaries stated that in exchange for Aruze USA selling its stock to Mr. Wynn, Mr. Wynn would ensure that the Freeh Sporkin report would not be disclosed. A sale to Mr. Wynn was presented as an alternative to the public embarrassment and regulatory issues attendant to possible disclosure of the Freeh Sporkin report. Aruze USA did not accede to these demands, ultimately causing Wynn Resorts, Mr. Wynn, and Ms. Sinatra to make good on their threats and commence a systematic process of defaming Mr. Okada, Aruze USA, and Universal and precipitating the redemption Aruze USA's shares at a $1 billion discount off the fair value of the shares.

147. On information and belief, this is not the first time Mr. Wynn has attempted to co-opt state gaming regulations to consolidate his ownership and control over a gaming company. According to published reports, in 1980, Mr. Wynn forced out the second largest shareholder of the Golden Nugget, Inc., Mr. Edward Doumani. Mr. Doumani was also a board member, and had expressed concerns about Mr. Wynn's practices as CEO of the Golden Nugget. Mr. Wynn eventually strong-armed Mr. Doumani into selling his stake by threatening to instigate an investigation of Mr. Doumani, contending that his continued association with the company caused a risk to a potential gaming license in Atlantic City. Three decades later, Mr. Wynn attempted the same scam, only this time Aruze USA refused to accede to Mr. Wynn's demand to sell him its stock on the cheap.

V. WYNN RESORTS' UNFOUNDED AND UNPRECEDENTED REDEMPTION OF MORE THAN $2.9 BILLION OF ARUZE USA'S SHARES

A. Wynn Resorts Publicly Asserts That the Value of Aruze USA's Stock Is $2.9 Billion

148. In a letter to Aruze USA's counsel dated December 15, 2011, Mr. Shapiro asserted that Aruze USA's shares were worth approximately $2.7 billion.

149. Hardly a month later (and a mere 22 days before purporting to redeem the shares), on January 27, 2012, Wynn Resorts filed its opposition papers in response to Mr. Okada's Petition for a Writ of Mandamus. In that court filing, Wynn Resorts declared that Aruze USA's holdings were worth *more* than $2.7 billion, stating that Aruze USA's shares are "valued at approximately $2.9 billion[.]" In the 22 days following Wynn Resorts' $2.9 billion valuation of Aruze USA's stock, Aruze USA's stock was not sold, transferred, or further encumbered by any additional restrictions.

B. The Board Hurriedly Meets and Rushes to Redeem Aruze USA's Stock

150. On February 17, 2012, Mr. Okada's counsel contacted Wynn Resorts' representatives to express Mr. Okada's concerns with the substantive and procedural process for the Company's investigation, and stated that any discussion of unsuitability or redemption, including any discussion involving the Freeh Sporkin report at the February 18 Board meeting, would be premature.

151. Rather than addressing the substantive and procedural issues raised by Mr. Okada and his counsel, Wynn Resorts responded briefly, informing Mr. Okada's counsel that additional accommodations would not be made to facilitate translation to enable Mr. Okada's participation by teleconference. The Company also informed Mr. Okada's counsel that, despite the seriousness of the accusations against him, Mr. Okada was not permitted to have counsel present for the Board call.

152. When it came time for the meeting, at 2:00 a.m. on Sunday morning, Mr. Okada sat ready to participate by telephone. Mr. Wynn yelled at Mr. Okada's counsel when he

introduced himself. Mr. Wynn also said that Mr. Okada's counsel could not be present to advise Mr. Okada even though counsel made clear that he would not address the meeting. (At the threat of having Mr. Okada's telephone connection to the meeting severed, Mr. Okada's counsel had to sit outside the room while the meeting went on, despite Wynn Resorts having a battery of lawyers from multiple law firms present on its end of the line.) Mr. Wynn and a company lawyer informed Mr. Okada that – despite prior assurances that Mr. Okada would receive a copy of the Freeh Sporkin report along with the other directors – he would not receive a copy of the report unless both he and his legal counsel signed a nondisclosure agreement. The nondisclosure agreement would have arguably precluded Mr. Okada from using the report in legal proceedings. Mr. Okada did not sign the nondisclosure agreement.

153. As alleged in detail below, a few hours after demanding that Mr. Okada sign the nondisclosure agreement claiming confidentiality, Wynn Resorts "leaked" a copy of the Freeh Sporkin report to the *Wall Street Journal* and attached a copy to its Complaint in this action.

154. There were numerous translation problems during the Board meeting. Mr. Wynn provided a translator who was woefully unable to perform an accurate simultaneous translation. Mr. Okada requested that the translation be provided sequentially (with each speaker and the translator speaking in turn) rather than simultaneously (with the translator speaking at the same time as the speaker at the meeting), but this request was denied. As a result, Mr. Okada could not follow or participate in the proceedings.

155. In this way, Mr. Okada sat and listened while Mr. Freeh made a presentation in English that Mr. Okada could not understand. After Mr. Freeh completed his presentation, the Board asked if Mr. Okada had any questions. Mr. Okada stated that he could not understand the presentation, and that he would be able to address the claims of the report only after receiving a copy and discussing with counsel. Mr. Okada also asked the Board to delay making any resolutions until he could respond to the Freeh Sporkin report.

156. At some point, someone at Wynn Resorts hung up the telephone, cutting Mr. Okada off from the meeting. Mr. Okada waited to be reconnected, staying up until the sun

rose in Asia, all the while not knowing whether the Board had resolved anything following the presentation by Mr. Freeh. Ms. Sinatra later claimed that cutting off the telephone connection to Mr. Okada was a "misunderstanding." No other contact was made with Mr. Okada.

157. At 1:45 am PT on February 19, 2012, Aruze USA's counsel received correspondence, containing a notice of determination of unsuitability and a purported redemption notice. In the redemption notice, the Company stated that it would redeem Aruze USA's stock for a promissory note of approximately $1.936 billion, a discount of exactly 30% off the $2.7 billion value measured by the stock market's valuation of the stock based on the prior day's closing price and 33% less than the value (*i.e.*, $2.9 billion) Wynn Resorts had publicly proclaimed three weeks before.

158. Although Wynn Resorts had claimed the Freeh Sporkin report was confidential and tried to extract a signature from both Mr. Okada and his legal counsel in order to see the report prior to redemption, a copy of the report was leaked to the *Wall Street Journal* in the early morning Eastern Time of February 19, 2012. Almost immediately, reports appeared on the *Wall Street Journal* website regarding the contents of the report.

159. In addition, at 2:14 a.m. PT on February 19, 2012, Wynn Resorts electronically filed a complaint attaching the supposedly confidential Freeh Sporkin report (without exhibits).

160. Despite repeated requests to Ms. Sinatra and Mr. Shapiro, Mr. Okada's counsel only obtained a copy of the "confidential" report when it sent a messenger to court on February 21, 2012, the first court day following the weekend Board meeting. Wynn Resorts refused to provide the Freeh Sporkin report's exhibits to Mr. Okada or Aruze USA until ordered to do so by this Court.

C. Aruze USA Disputes That Redemption Has Occurred

161. In public statements, representatives of Wynn Resorts have claimed redemption is complete and that the securities formerly held by Aruze USA have been cancelled. Aruze USA disputes that this has happened. Among other reasons, as explained elsewhere in this Counterclaim, the purported redemption is void *ab initio* because it is in violation of the

Stockholders Agreement, which predates the amended Articles of Incorporation purporting to grant Wynn Resorts a right of redemption.

D. The Board Redeems on False Premises

162. Even if Aruze USA were bound by the redemption provision (which Aruze USA disputes), the Articles of Incorporation only purport to allow redemption in three situations.

163. First, according to the Articles of Incorporation, Wynn can redeem when it "is determined by a Gaming Authority to be unsuitable to Own or Control any Securities or unsuitable to be connected or affiliated with a Person engaged in Gaming Activities in a Gaming Jurisdiction." This has not occurred. In fact, Aruze USA has been found to be "suitable" by the Nevada gaming authorities.

164. Second, according to the Articles of Incorporation, Wynn can redeem when a person "causes the Corporation or any Affiliated Company to lose or to be threatened with the loss of any Gaming License." This has not occurred.

165. Third, Wynn Resorts' Articles of Incorporation profess that the Company can redeem where a person "in the sole discretion of the board of directors of the Corporation, is deemed likely to jeopardize the Corporation's or any Affiliated Company's [a] application for, [b] receipt of approval for, [c] right to the use of, or [d] entitlement, to any Gaming License." Subsections [a] and [b] do not apply because, on information and belief, at the time of redemption Wynn Resorts had no present plan to apply for a license and was not awaiting approval of any pending application. So, even under the standards of the Articles of Incorporation, Wynn Resorts could only seek redemption upon a showing that Aruze USA's stock ownership was "likely to jeopardize" Wynn Resorts' "right to the use of, or entitlement to" its existing gaming licenses.

166. No such showing was made in the rushed Freeh Sporkin report. In fact, in the gaming industry, any impact on the right to use or entitlement to a gaming license requires action by the cognizant gaming authority. No gaming authority has found Aruze USA, Universal, or Mr. Okada to be "unsuitable." Furthermore, association with an "unsuitable" person would only conceivably create a problem for a gaming license *after* that person has been found by a gaming

authority to be unsuitable. Even then, such concerns can be addressed via a voting trust or orderly sale of shares. If Wynn Resorts' true aim was to disassociate itself from Aruze USA in order to protect its interests, it failed miserably. Even if the redemption were effective, Aruze USA would now be Wynn Resorts' largest holder of debt – a circumstance which would be impermissible under Nevada law if Aruze USA were truly "unsuitable." Under the circumstances, it is obvious that the supposed redemption of Aruze USA's shares was simply a pretext to seek to quiet a potential dissident shareholder and director, increase the relative ownership interests of the Board members by virtue of their shareholdings in Wynn Resorts, and to enhance and maintain Mr. Wynn's personal control over Wynn Resorts.

E. Even if Aruze USA Were Subject to the Redemption Provision (Which it is Not), the Wynn Parties are Still Liable for Breaching and/or Tortiously Interfering with the Stockholders Agreement and Amended Stockholders Agreement.

167. Even if Aruze USA were subject to the redemption provision, which it is not, the Wynn Parties are not excused from breaching and/or tortiously interfering with the Stockholders Agreement when they purported to redeem Aruze USA's shares. Steve Wynn was bound by the terms of the Stockholders Agreement before he unilaterally amended the Articles of Incorporation to include a purported redemption right. The remainder of the Wynn Parties also knew or reasonably should have known that Aruze USA's shares were subject to the limitations of the Shareholders Agreement and Amended Shareholders Agreement when they purported to utilize their discretionary authority under the Articles of Incorporation to redeem Aruze USA's shares. Thus, even if the redemption provision of the Articles of Incorporation applies to Aruze USA, the Wynn Parties are liable for all harm caused to Aruze USA as a result of the redemption.

F. Even if Aruze USA Was Subject to the Redemption Provision (Which it is Not), the Unilateral Blanket 30% Discount that Wynn Resorts Applied to the Stock is Erroneous and the Promissory Note is Unconscionably Vague, Ambiguous, and Oppressive

168. According to a press release dated February 19, 2012, Wynn Resorts issued a note in the amount of $1.936 billion to Aruze USA. This amount is exactly 30% less than the market value of Aruze USA's stock as measured by the closing price of Wynn Resorts' stock on the Friday prior to the Saturday Board meeting. According to its press release, Wynn Resorts arrived at this value because "it engaged an independent financial advisor to assist in the fair value calculation and concluded that a discount to the current trading price was appropriate because of restrictions on most of the shares which are subject to the terms of an existing stockholder agreement." The irony here is rich, because the Stockholders Agreement, by its terms, either precludes the redemption of Aruze USA's stock altogether or, alternately, the transfer restrictions are not binding on Aruze USA as a result of Steve Wynn's and Elaine Wynn's breach of the Stockholders Agreement (by voting in favor of the redemption of Aruze USA's shares and by Steve Wynn's failure to vote in favor of directors nominated by Aruze USA). The transfer restrictions are also invalid and unenforceable to the extent that they constitute an illegal restraint on alienability. Thus, the restrictions in the Stockholders Agreement could not legitimately impact the value of Aruze USA's shares so as to support a discount against the market price.

169. The February 19, 2012 Wynn Resorts press release also falsely stated that the redemption process in the Articles of Incorporation had "been [in place] since the Company's inception." This is untrue, as Mr. Wynn unilaterally *amended* the Articles of Incorporation to include the purported redemption language months *after Wynn Resorts was created*, and nearly 90 days after Aruze USA agreed to invest in Wynn Resorts and committed its interests in Valvino to Wynn Resorts. Wynn Resorts and Mr. Wynn thus sought to continue their fraudulent scheme by publishing a false basis under which Wynn Resorts purported to have the authority to redeem Aruze USA's shares of Wynn Resorts' stock.

170. Nevertheless, hoping to unilaterally decide on a "clearance" price for Aruze USA's almost 20% shareholder interest in the Company, Wynn Resorts relied solely on one opinion from Moelis & Company ("Moelis"), *which has done business with Wynn Resorts in the past*.

171. Mr. Wynn and Kenneth Moelis ("Mr. Moelis") – the founder of Moelis – go way back. Mr. Moelis first worked with Mr. Wynn when Mr. Moelis worked at the investment banking firm of Drexel Burnham Lambert ("Drexel"). At Drexel, Mr. Moelis was the banker who helped Mr. Wynn finance his Golden Nugget Casino in Atlantic City and Mirage casino in Las Vegas. On information and belief, Mr. Wynn has a close personal and professional relationship with Mr. Moelis. According to press reports, Mr. Moelis has stated that he would take the first flight out of LAX to rush to the assistance of Mr. Wynn. Mr. Wynn reciprocates Mr. Moelis' loyalty and support. Among other things, Mr. Wynn engaged Mr. Moelis to serve as the lead underwriter of Wynn Resorts' $210 million common stock offering in March 2009.

172. Mr. Wynn called on Mr. Moelis' loyalty in this case. Despite the fact that at least some of the stock was exempted from the Stockholders Agreement, Moelis discounted Aruze USA's more than $2.7 billion shares of Wynn Resorts' stock by around 30%.

173. The terms of the note are unreasonable and one-sided in the extreme, completely lacking reasonable and customary terms used to protect and preserve the interests of the note holder. Among other things, the amount of compensation paid for Aruze USA's shares do not reflect the "fair value" of the shares under the Articles of Incorporation and/or under governing law. Additionally, the hastily issued, ten-year $1.936 billion promissory note is unsecured and fully subordinated, not merely to current outstanding Wynn Resorts debt, but potentially to all future debt Wynn Resorts may incur, and pays a mere 2% interest per annum. In contrast, for example, less than a month after the purported redemption, Wynn Resorts issued $900 million aggregate principal amount in collateralized notes paying 5.375% interest. Moreover, though Nevada gaming regulations do not permit an "unsuitable" person from holding debt of a publicly-traded licensee, by its terms the note sent to Aruze USA is not even transferable. Wynn Resorts

prepared the promissory note without any input from Mr. Okada, or any representative at Aruze USA, forcibly imposing an unsecured, non-transferrable, non-voting, un-marketable, severely discounted and oppressive debt instrument on its largest shareholder.

G. The Timing of the Redemption Demonstrates that Wynn Resorts Redeemed Aruze USA's Shares Based on Material, Non-Public Information that Was Not Incorporated Into the Redemption Price

174. On March 2, 2012, Wynn Resorts released a Form 8-K.

175. The Form 8-K purported to disclose positive news regarding Wynn Resorts' efforts in Macau to receive certain land concessions related to Cotai:

> As previously disclosed … Wynn Macau, Limited ("WML"), an indirect subsidiary of the Registrant with ordinary shares of its common stock listed on The Stock Exchange of Hong Kong Limited, announced that Palo Real Estate Company Limited ("Palo") and Wynn Resorts (Macau) S.A. ("Wynn Macau"), each an indirect subsidiary of the Registrant, formally accepted the terms and conditions of a land concession contract (the "Land Concession Contract") from the government (the "Macau Government") of the Macau Special Administrative Region of the People's Republic of China ("Macau") in respect of approximately 51 acres of land in the Cotai area of Macau (the "Cotai Land"). The Land Concession Contract permits Palo and Wynn Macau to develop a resort containing a five-star hotel, gaming areas, retail, entertainment. food and beverage, spa and convention offerings on the Cotai Land.
>
> The Land Concession Contract was published in the official gazette of Macau (the "Gazette") on January [•] 2012. Effective from such publication date, Palo will lease the Cotai Land from the Macau Government for an initial term of 25 years with the right to renew the Land Concession Contract for additional successive periods, subject to applicable legislation. The Land Concession Contract also requires that Wynn Macau, as a gaming concessionaire, operate and manage gaming operations on the Cotai Land. In addition, as previously disclosed in the Registrant's filings with the Commission, on August 1, 2008, Palo and certain affiliates of the Registrant entered into an agreement (the "Agreement") with an unrelated third party to make a one-time payment in the amount of US $50 million in consideration of the latter's relinquishment of certain rights in and to any future development on the Cotai Land. The Agreement provides that such payment be made within 15 days after the publication of the Land Concession Contract in the Gazette.
>
> The foregoing description of the Land Concession Contract is qualified in its entirety by reference to the full English translation of the Land Concession Contract (originally published in the Gazette

in traditional Chinese and Portuguese), which is filed as Exhibit 10.1 hereto and incorporated herein by reference. Dollar amounts in the Land Concession Contract refer to Macau Patacas.

176. Such a land concession is significant positive development for Wynn Resorts. In fact, Wynn Resorts' stock immediately spiked 6% on this news.

177. After initially attempting to backtrack from the filing as a "mistake," Wynn Resorts filed another Form 8-K on May 2, 2012. The Form 8-K reconfirmed the material information Wynn Resorts disclosed on March 2, 2012.

178. On information and belief, these positive developments in Macau (or elsewhere in Wynn Resorts operational sphere) were imminent and known by Wynn Resorts. To the extent that the redemption of Aruze USA's stock actually occurred, Wynn Resorts redeemed Aruze USA's stock based on this material, non-public information. Although Wynn Resorts claims to have purchased Aruze USA's stock using the current stock market value, Wynn Resorts knew, but failed to disclose, that the stock market value did not reflect the land concession contract that it had obtained in Macau. Therefore, Wynn Resorts continued its fraudulent and misleading omission of this information in calculating the redemption price knowingly based on materially misleading information.

CLAIMS FOR RELIEF

COUNT I

Declaratory Relief

(By Aruze USA and Universal Against Wynn Resorts and the Wynn Directors)

179. Aruze USA and Universal reassert and reallege Paragraphs 4 through 178 above as if set forth in full below.

180. Aruze USA and Universal seek a judicial declaration that the purported redemption of Aruze USA's shares is void *ab initio*, and that Aruze USA is the owner of 24,549,222 shares or 19.66% of the total outstanding common stock of Wynn Resorts, with all rights and privileges appurtenant thereto (including, but not limited to, payment of dividends and voting rights). This declaration is appropriate because, as alleged above: (1) the redemption provision in the Articles of Incorporation is inapplicable to the Wynn Resorts' stock owned by

Aruze USA because Aruze USA entered into the Stockholders Agreement, which prevented any further restrictions without agreement of the parties and vested in Aruze USA the "sole power of disposition" of its shares, before the enactment of the redemption provision; (2) the redemption provision in the Articles of Incorporation is inconsistent with Nevada law and public policy, and thus void; (3) the Board lacked a sufficient basis for a finding of "unsuitability" or for redemption; and/or, (4) the redemption provision as written and as applied is unconscionable.

181. In addition or alternatively, Aruze USA and Universal seek a judicial declaration that the redemption provision in Wynn Resorts' Articles of Incorporation is invalid as a matter of law because it is impermissibly vague, contrary to law and public policy, and/or unconscionable. This declaration is appropriate because, among other things, Nevada gaming regulators are given the authority under the laws of Nevada to make determinations regarding "suitability." The redemption provision in Wynn Resorts' Articles of Incorporation purportedly relied on here by the Wynn Directors improperly and illegally usurps that authority. Furthermore, if and when Nevada gaming regulators were to make such a determination, redemption that simply replaces equity with debt is ineffective to effect a disassociation; the redemption provision, therefore, would not comply with Nevada law.

182. In addition or alternatively, Aruze USA and Universal seek a judicial declaration that the Board resolution finding Aruze USA, Universal, and Mr. Okada "unsuitable" was procedurally and/or substantively defective and contrary to the Articles of Incorporation and/or Nevada law. As alleged in detail above, this declaration is appropriate because the Wynn Directors' finding that there was a likely jeopardy to Wynn Resorts' gaming licenses lacked a sound foundation and was made without a thorough and complete review of relevant law, facts, and evidence.

183. In addition or alternatively, Aruze USA and Universal seek a judicial declaration that the Board resolution to redeem Aruze USA's shares was procedurally and/or substantively defective, and contrary to law and public policy. As alleged in detail above, this declaration is appropriate because (1) the Stockholders Agreement, executed before the redemption provision

was added to the Articles of Incorporation, prevented any further restrictions on Aruze USA's shares without agreement of the parties and vested in Aruze USA the "sole power of disposition" of its shares; (2) the Board lacked a sufficient basis for a finding of "unsuitability" or redemption and made its findings without a thorough and complete review of relevant law, facts, and evidence; (3) the redemption provision in the Articles of Incorporation is inconsistent with Nevada law and public policy, and thus void; and, (4) the redemption provision, as written and as applied, is unconscionable.

184. Alternatively, to the extent that redemption is not otherwise barred, Aruze USA and Universal seek a judicial declaration that the form and amount of compensation paid for Aruze USA's shares was improper and/or inadequate and that Aruze USA is entitled to cash in an amount equivalent to at least the closing price of the stock on February 17, 2012. Indeed, Wynn Resorts asserted in a court filing dated January 27, 2012, that "[w]ith holdings valued at approximately $2.9 billion, Aruze is one of Wynn's largest shareholders." As alleged in detail above, this declaration is appropriate because simply converting Wynn Resorts' largest shareholder to Wynn Resorts' largest creditor serves no valid legal purpose. Furthermore, the discount applied to Aruze USA's shares based on the transfer restrictions of the Stockholder Agreement is invalid because of Steve Wynn's and Elaine Wynn's prior breach of the Stockholders Agreement. Moreover, the amount and form of compensation paid for Aruze USA's shares does not represent the "fair value" of the shares under the Articles of Incorporation and governing law. The "fair value" of the Aruze USA's stock at the time of the redemption should not have included any discount for the transfer restrictions or lack of marketability of Aruze USA's stock. In addition, the valuation by Moelis was not objective, independent, or the product of sound financial analysis, and, among other things, did not consider material non-public information available to Wynn Resorts that would militate in favor of a higher valuation, did not account for the premium that would be applied to such a large block of shares, and did not consider the extent to which transfer restrictions were not valid as to Aruze USA.

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

186. An actual justifiable controversy has arisen between parties whose interests are adverse, and the dispute is ripe for adjudication. Wynn Resorts acted unlawfully when it purported to "redeem" Aruze USA's equity interest in Wynn Resorts.

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

COUNT II

Permanent Prohibitory Injunction

(By Aruze USA Against Wynn Resorts and the Wynn Directors)

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

189. Aruze USA seeks a permanent injunction enjoining and restraining Wynn Resorts and the Wynn Directors, their agents, servants, employees, attorneys, and all those acting in concert or in active participation with Wynn Resorts, from enforcing a redemption notice upon Aruze USA, and from engaging in any efforts to redeem Aruze USA's equity holdings in Wynn Resorts, including but not limited to making any demands that Aruze USA surrender its Wynn Resorts stock, instructing any transfer agent for Wynn Resorts' stock to effect any transfer or cancellation of Aruze USA's Wynn Resorts stock, and/or making any other changes to Wynn Resorts' stock ledger regarding Aruze USA's stock.

190. For the reasons alleged above, the purported redemption is invalid as a matter of law and violated applicable contracts, and/or depends on provisions of contracts that are unenforceable as a matter of law. Even if there were a potentially valid legal mechanism to

redeem Aruze USA's stock, which there is not, redemption would be inappropriate in this case because the Board lacked sufficient basis to find Aruze USA or any of its affiliates or employees "unsuitable."

191. Harm will result if relief is not granted because Aruze USA's interest in Wynn Resorts is not fungible and Aruze USA's status as the largest shareholder in Wynn Resorts cannot be fully remedied through damages.

192. Injunctive relief poses no appreciable risk of undue prejudice to Wynn Resorts and the Wynn Directors.

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

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

COUNT III

Permanent Mandatory Injunction

(By Aruze USA Against Wynn Resorts and the Wynn Directors)

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

196. To the extent it might be determined that Wynn Resorts' purported redemption has already occurred, Aruze USA seeks a permanent mandatory injunction directing Wynn Resorts and the Wynn Directors, their agents, servants, employees, attorneys, and all those acting in concert or in active participation with Wynn Resorts, to restore Aruze USA's ownership interest in Wynn Resorts. The injunction sought should restore both Aruze USA's ownership interest, as

well as the value of Aruze USA's stock, and all dividends and other rights and privileges accruing to the shares.

197. For the reasons alleged above, the purported redemption was contrary to law and violated applicable contracts, and/or depends on provisions of contracts that are unenforceable as a matter of law. Even if there were a potentially valid legal mechanism to redeem Aruze USA's stock, redemption would be inappropriate in this case because the Board lacked sufficient basis to find Aruze USA or any of its affiliates or employees unsuitable.

198. Harm will result if relief is not granted because Aruze USA's interest in Wynn Resorts is not fungible and Aruze USA's status as the largest shareholder in Wynn Resorts cannot be fully remedied through damages.

199. Injunctive relief poses no appreciable risk of undue prejudice to Wynn Resorts and the Wynn Directors.

200. To the extent that Aruze USA cannot be restored to its status and/or its full rights as a Wynn Resorts shareholder, and to the extent further compensation is warranted or punitive or exemplary damages are warranted, Aruze USA seeks damages from Wynn Resorts in an amount to make Aruze USA whole, as alleged in multiple damages counts below.

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

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

COUNT IV

Breach of Contract in Connection with Wynn Resorts' Involuntary Redemption

(By Aruze USA Against Steve Wynn and Elaine Wynn)

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

204. The Stockholders Agreement, with Mr. Wynn in 2002, and as amended in 2010 to include Ms. Wynn as a party, forms a contractual relationship and understanding between, *inter alia*, Aruze USA, Mr. Wynn, and Elaine Wynn.

205. The Stockholders Agreement between Aruze USA, Mr. Wynn, and Elaine Wynn prohibits the involuntary disposition of any shares of Wynn Resorts held by Aruze USA. Specifically, the Stockholders Agreement provides that Aruze USA "shall be the record and Beneficial owner of all of the [Wynn Resorts' common] Shares. . . [and] shall have the ***sole power of disposition*** [and] sole power of conversion…" over its shares in Wynn Resorts and there are "no material limitations, qualification or restrictions on such rights…." (Emphasis added.)

206. Any redemption of Aruze USA's shares of Wynn Resorts is an involuntary disposition of Aruze USA's shares in violation of the Stockholders Agreement. By voting in favor of the redemption, Steve Wynn and Elaine Wynn did knowingly, willfully, and intentionally breach the Stockholders Agreement.

207. Aruze USA has been damaged in excess of $10,000.

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

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

COUNT V

Breach of Articles of Incorporation/Breach of Contract in Connection with Wynn Resorts' Discounting Method of Involuntary Redemption

(By Aruze USA Against Wynn Resorts)

210. Aruze USA reasserts and realleges Paragraphs 4 through 172 above as if set forth in full below.

211. In the alternative, to the extent the Court finds that the redemption provision in the Articles of Incorporation applies to Aruze USA's shares, Wynn Resorts' involuntary redemption breaches the terms of the Agreement.

212. Wynn Resorts' Articles of Incorporation provides that fair value will be provided for shares redeemed under its provisions.

213. On or about February 18, 2012, Wynn Resorts purportedly redeemed Aruze USA's shares for far less than the value of the shares, *e.g.*, as reflected by the closing market price of Wynn Resorts' stock on NASDAQ.

214. Wynn Resorts improperly discounted the fair value of the Aruze USA stock to the extent the Stockholders Agreement is not enforceable as a result of Mr. Wynn's and Elaine Wynn's breach of the Stockholders Agreement. In addition, the purported stock restrictions impose an unreasonable restraint on alienation and are therefore unenforceable.

215. In the alternative, if the Stockholders Agreement is enforceable, Wynn Resorts used an excessive discount amount and failed to provide fair value for Aruze USA's stock.

216. Among other things, although known to Wynn Resorts, Wynn Resorts did not take into account material non-public information concerning positive developments for Wynn Resorts regarding the Cotai land concession in Macau, as well as other positive non-public information, when redeeming Aruze USA's shares for far less than the value of the shares. Furthermore,

Wynn Resorts' unilateral valuation did not account for the premium that would be applied to such a large block of shares.

217. Aruze USA has been damaged in excess of $10,000.

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

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

COUNT VI

Breach of Fiduciary Duty

(By Aruze USA Against the Wynn Directors)

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

221. Directors of a corporation owe a fiduciary duty to the corporation and to its shareholders, including a duty of care and a duty of loyalty toward the corporation and each shareholder.

222. Under Nevada law, directors of a corporation are individually liable to a stockholder for any act or failure to act that constitutes a breach of fiduciary duty.

223. The terms of the Wynn Resorts' Articles of Incorporation purported to define an "Unsuitable Person" as a person who "in the sole discretion of the board of directors of the [Wynn Resorts], is deemed likely to jeopardize [Wynn Resorts'] or any Affiliated Company's … right to the use of, or entitlement to, any Gaming Licenses."

224. The Wynn Directors abused their discretion in finding Aruze USA, Universal, and Mr. Okada "unsuitable" and resolving to have the Company cause the purported redemption of

Aruze USA's shares of Wynn Resorts' stock. The outcome of the Compliance Committee's "investigation" was already determined prior to engaging a supposedly "independent" investigator, which then openly acted as an advocate against Aruze USA, Universal, and Mr. Okada rather than providing an objective, balanced, and fully informed review of the facts and law. Despite the fact that Freeh Sporkin informed the Board that further investigation would be required with respect to matters encompassed by its report, and despite assurances that Aruze USA, Mr. Okada, and Universal would be permitted to respond substantively to the report, the Wynn Directors deprived them of an opportunity to understand and to present any information to address the allegations against them prior to the vote on redemption.

225. On information and belief, the Wynn Directors acted at the direction of Mr. Wynn and abandoned their own independence and objectivity in evaluating the allegations. The Wynn Directors failed to conduct a fair, comprehensive, and thoughtful investigation, and failed to ensure that they were properly and adequately informed before acting.

226. Wynn Resorts, at the direction of Mr. Wynn, conducted an "investigation" that was hurried, incomplete, one-sided, and unfair to Aruze USA, with a result that was preordained by Mr. Wynn and his cohorts before the "investigator" was even hired. Aruze USA was not given an opportunity to review the allegations against it or rebut or address any findings of improper conduct or any other supposed basis for redemption. The entire process was tainted by the desire to serve Mr. Wynn's pretextual goals of removing Aruze USA as the largest single shareholder of the Company, silencing Mr. Okada, and consolidating and maintaining Mr. Wynn's control over Wynn Resorts. Such actions do not withstand any standard of fundamental fairness or due process.

227. Further, the purported redemption was voted on by persons with irreconcilable conflicts of interest, including breaches of the duty of loyalty, the duty of care, and the duty of good faith.

228. Through their acts, the Wynn Directors have acted in a manner that seeks to deprive Aruze USA alone from its right to vote its shares, receive dividends, elect directors, and

to utilize other privileges incident to controlling the largest single block of shares in a publicly traded company.

229. Harm will result if relief is not granted because Aruze USA's more than $2.7 billion equity stake in Wynn Resorts will be instantaneously and irreversibly damaged by the Company's purported action to convert Aruze USA's substantial ownership interest into a wholly subordinated ten-year promissory note in a principal amount 30% less than the fair market value of the stock, and paying a mere 2% percent interest, without providing Aruze USA any voting rights, rights to dividends, or the right to transfer the note.

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

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

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

COUNT VII

Imposition of a Constructive Trust and Unjust Enrichment

(By Aruze USA Against Wynn Resorts)

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

234. By engaging the in the wrongful conduct alleged herein, Wynn Resorts purportedly redeemed Aruze USA's stock in exchange for a wholly subordinated, unsecured ten-year promissory note in a principal amount at least 30% less than the fair value of Aruze USA's

stock, and paying a mere 2% interest, without providing Aruze USA any voting rights, rights to dividends, or the right to transfer the note.

235. As a result of the relationship between the parties and the facts stated above, Wynn Resorts will be unjustly enriched if it is permitted to retain Aruze USA's stock and dividends and, therefore, a constructive trust should be established over Aruze USA's stock, and all dividends that would be paid on such shares if held by Aruze USA. These shares and dividends are traceable to Wynn Resorts.

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

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

COUNT VIII

Conversion

(By Aruze USA Against Wynn Resorts)

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

239. Wynn Resorts did not have a legal right to redeem and in addition lacked a proper and sufficient basis to find that the allegations in the Freeh Sporkin report against Aruze USA, Mr. Okada, and Universal were activities that "were likely to jeopardize [the Company's] or any Affiliated Company's … right to the use of, or entitlement to any Gaming License."

240. As a result, Wynn Resorts' Board lacked a fair, proper, and sufficient basis for seizing Aruze USA's stock.

241. Wynn Resorts wrongfully exercised dominion over Aruze USA's stock.

242. Wynn Resorts' dominion over Aruze USA's stock without a valid basis for redemption is inconsistent with the Articles of Incorporation and Aruze USA's rights in the stock under the Contribution Agreement and the Stockholders Agreement.

243. Wynn Resorts converted Aruze USA stock, damaging Plaintiff in an amount in excess of $10,000.

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

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

COUNT IX

Fraud/Fraudulent Misrepresentation in Connection with Financing for Aruze USA

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

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

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

248. Mr. Wynn and Ms. Sinatra, acting in their individual capacity and as agents of Wynn Resorts, made these false and misleading statements and omissions knowingly or without sufficient basis of information because they believed Wynn Resorts was not permitted to enter

into such a lending transaction pursuant to the restrictions in Section 402 of SOX. As alleged above, Mr. Wynn and Ms. Sinatra engaged in this wrongful conduct for the purpose of maintaining Mr. Wynn's control over Wynn Resorts after Mr. Wynn's shares in the Company were split with Elaine Wynn following their divorce, and keeping alive the opportunity to later have Wynn Resorts seek to redeem Aruze USA's shares at a discount.

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

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

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

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

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

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

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

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

COUNT X

Negligent Misrepresentation in Connection with Financing for Aruze USA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT XI

Civil Conspiracy in Connection with Financing for Aruze USA

(By Aruze USA Against Steve Wynn and Kimmarie Sinatra)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT XII

Promissory Estoppel in Connection with Financing for Aruze USA

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

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

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

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

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

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

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

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

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

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

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

COUNT XIII

Fraud/Fraud in the Inducement of the Stockholders Agreement

(By Aruze USA Against Steve Wynn)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT XIV

Negligent Misrepresentation in Connection with the Stockholders Agreement

(By Aruze USA Against Steve Wynn)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT XV

Breach of Contract in Connection with the Stockholders Agreement

(By Aruze USA Against Steve Wynn)

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

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

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

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

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

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

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

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

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

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

COUNT XVI

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

(By Aruze USA Against Steve Wynn)

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

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

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

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

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

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

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

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

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

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

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

COUNT XVII

Breach of Fiduciary Duty

(By Aruze USA Against Steve Wynn)

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

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

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

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

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

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

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

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

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

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

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

COUNT XVIII

Tortious Interference of Contract

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

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

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

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

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

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

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

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

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

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

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

COUNT XIX

Unconscionability/Reformation of Promissory Note

(By Aruze USA Against Wynn Resorts)

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

b. For consequential damages;

c. For treble and statutory damages;

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

e. For disgorgement of profits;

f. For constructive trust and unjust enrichment;

g. For preliminary and/or permanent injunctive relief;

h. For declaratory relief;

i. For reformation of the promissory note;

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

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

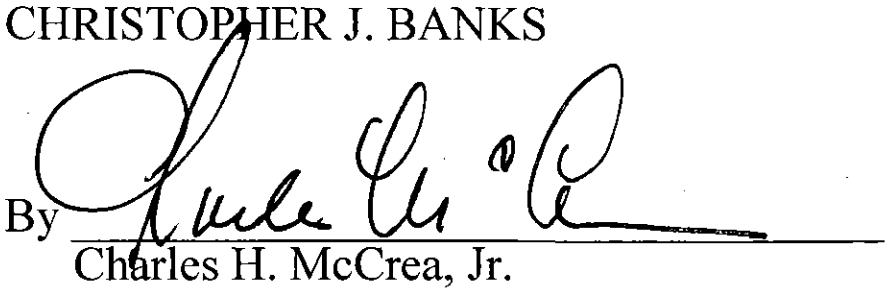
JURY DEMAND

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

Dated: November 26, 2013

LIONEL SAWYER & COLLINS
SAMUEL S. LIONEL (SBN 1766)
CHARLES H. McCREA, JR. (SBN 104)
STEVEN C. ANDERSON (SBN 11901)

MORGAN, LEWIS & BOCKIUS LLP
MARC J. SONNENFELD
ROLLIN B. CHIPPEY, II
JOSEPH E. FLOREN
BENJAMIN P. SMITH
CHRISTOPHER J. BANKS

By 
Charles H. McCrea, Jr.

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

CERTIFICATE OF SERVICE

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

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

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

[ ] to be hand delivered to:

and/or

[X] by the Court's ECF System through Wiznet.

An Employee of
LIONEL SAWYER & COLLINS

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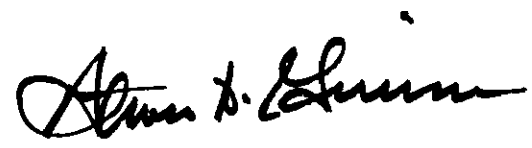


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

TUESDAY, JUNE 7, 2016

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

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

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ. TODD L. BICE, ESQ. DEBRA SPINELLI, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. BRYCE K. KUNIMOTO, ESQ. DONALD JUDE CAMPBELL, ESQ. COLBY J. WILLIAMS, ESQ. WILLIAM R. URGA, ESQ. MICHAEL T. ZELLER, ESQ.

LAS VEGAS, NEVADA, TUESDAY, JUNE 7, 2016, 8:04 A.M.

(Court was called to order)

THE COURT: Good morning. Mr. Peek said he was running about five minutes late, so I thought I'd come in a couple minutes before he got here so we can all be sitting here watching him.

(Pause in the proceedings)

THE COURT: Mr. Kunimoto, what'd you do with Mr. Peek?

MR. KUNIMOTO: I'm trying to reach him, Your Honor, but I --

THE COURT: He called us. He said he was late. But it didn't sound like him. It sounded like someone masquerading as him.

(Pause in the proceedings)

THE COURT: 'Morning, Mr. Peek. How are you today?

MR. PEEK: I'm well, Your Honor. Thank you.

THE COURT: All right. So we're on Wynn versus Okada. What motion would you like to start with, since I do not have a preference today.

I'm used to people not listening.

MR. PISANELLI: I'm sorry, Your Honor.

THE COURT: It's okay. It's been that kind of a week, and it's only Tuesday.

MR. PISANELLI: So, Your Honor, if I might.

THE COURT: Sure.

MR. PISANELLI: We have a couple of things that before I even argue them you may want to take into consideration. So we're talking about further deposition of Jim Stern, further deposition of Governor Miller, and further deposition, potentially, of Joel Friedman. All of them touch upon a series of issues, but one common one being privilege and the privilege that is before the Supreme Court to be resolved. So I just question for Your Honor, since we're not up against the close of discovery yet, whether it doesn't make sense for all of us so that we don't continue to do these piecemeal depositions -- and this is, you know, with no idea which way you're leaning, for or against any of us, but I just pose whether it makes sense that we put those off.

THE COURT: So what did you guys argue yesterday? Didn't you have an argument yesterday afternoon at 1:30 or something?

MR. ZELLER: We did.

THE COURT: In this case?

MR. ZELLER: Yes.

THE COURT: On what?

MR. ZELLER: There were two -- there were two motions that the Wynn Resorts put on shortened time. One was a motion for protective order as to --

THE COURT: No, no. In the Supreme Court.

MR. ZELLER: Oh.

MR. PEEK: Supreme Court. That was Pisanelli Bice I think did that.

MR. PISANELLI: That was --

THE COURT: Different case?

MR. PISANELLI: Different case.

THE COURT: Oh. Okay.

MR. PISANELLI: But we have the writ pending --

THE COURT: So do you have any arguments scheduled?

MR. PEEK: We do not, Your Honor.

THE COURT: Okay.

MR. PISANELLI: Is the writ scheduled for hearing?

MR. BICE: No. They have directed an answer, and so that hasn't been filed. And then we will do our reply, and then --

THE COURT: So at this point --

MR. PEEK: So we have two writs. One has been ordered reply -- a response. That's due Friday. Their reply is do the 24th. The other writ with respect to the Freeh documents has not even been requested to be answered. It's the Brownstein Hyatt.

THE COURT: Okay. So let me go back to my question. So at this point we are not even to the point where we're waiting for the Supreme Court to make a decision on something that's been fully briefed and submitted.

MR. PISANELLI: Right.

THE COURT: And so how long would you want me to wait to see what they do? Because my past life experience is sometimes it takes a long time for them to do things.

MR. PISANELLI: Sure. I understand that. I've experienced that with you from time to time. So, you know, I'd defer to your judgment. I guess there's a different alternative here, and that would get us to arguing these motions, is that part of the frustration that we're experiencing, I'll use Mr. Stern as an example, that the parties go forward with knowledge that they don't have the documents and with knowledge that pending issues of privilege haven't been resolved yet. And in other cases that are not as complex as this we've all made those choices with our eyes wide open that if you take the depo now knowing that you may get more information later, this is your one opportunity. But instead --

MR. PEEK: Yeah. This is my motion.

THE COURT: Yeah, but that's -- wait.

MR. PEEK: This is my motion. I'd like to be able to argue my motion.

THE COURT: But, Mr. Pisanelli, that's not how we've operated in this --

MR. PISANELLI: I can't hear you, Your Honor.

THE COURT: That's not how we've operated in this

case. And I had expressly said that if additional documents are produced after the deposition is completed that I will not preclude someone from asking for that deposition to be reset.

MR. PISANELLI: I'm aware of that.

THE COURT: Okay.

MR. PISANELLI: And my only point is whether we can within the confines of that ruling, which I think has been abused --

THE COURT: It's not a ruling. It's a statement of my usual practice.

MR. PISANELLI: Okay. Well, I'm just saying that we're getting piecemeal multiple depositions of a lot of different witnesses with kind of a blank check that they keep bringing them back. It's not just Mr. Stern, it's a bunch of them. And so my proposal is merely to put these depositions and these motions aside for the time being, see if we get a ruling.

THE COURT: Well, let me ask a question of the parties. And this is one of the things that I was thinking of as we were going through the bigger stack of information than I anticipated. Which means that people did a really good job getting oppositions on order shortening time.

Have you discussed among yourselves whether you want to stay discovery pending certain decisions by the Nevada Supreme Court?

MR. PISANELLI: We have not had that discussion.

THE COURT: Okay. Well, until you have that discussion I'm not going to make a decision on that issue.

So I'm going to go Mr. Peek, because these are his motions, at least most of them, on the depositions.

MR. PISANELLI: Okay. So I can manage my time appropriately and with other counsel here, how are we dividing up?

THE COURT: Well, that's a really good question. Laura just asked me. Because I've got the Quinn Emanuel disqualification issue, and so I can't make Mr. Peek share time with them. And can we seven and a half, seven and a half, fifteen?

MR. PEEK: And I have four motions. I think I may be able to well get them within that time frame, seven and a half minutes.

THE COURT: Okay. We'll do our best to hit that.

MR. PISANELLI: Your Honor, I have 15 minutes.

THE COURT: Can you use less?

MR. PISANELLI: I'm going to do my best. But I have colleagues that are arguing other motions. Would Your Honor have any opposition to going --

THE COURT: You have to share on that side of the room.

MR. PISANELLI: I understand. That's actually my

point. Can -- would you mind terribly if we go first with the disqualification motion?

THE COURT: Sure. I don't mind terribly if we choose to do that one first.

MR. PISANELLI: Thank you.

So, Your Honor, the legal landscape in Nevada has been changing seemingly month by month here, partly as a result of this case, partly as a result of the Sands-Jacobs case, in that it's just a lot of complicated litigation that was going up and down in the Supreme Court, and we're getting some new guidance as we move forward. One thing that has been made perfectly clear to us has recently emerged from the Sands decision, and that being who owns and controls privilege after an executive leaves the company. That question no longer has any ambiguity in the state of Nevada, and that is the corporation. The Supreme Court tells us that the sole client -- or communications between corporate counsel and the company is the corporation, and that it is the corporation's protection and the corporation's choice whether to waive it. That doesn't change if the person who had access was a CEO or whether they were a number of the board of directors. And so that's what brings us here today.

We have wrestled with this issue here and with other cases of what to do before we got that guidance of counsel reading things, et cetera. There's different approaches.

There's a conservative approach available to everybody, don't read it until you know, until there's a ruling, or there's an aggressive approach to do just do what you want and ask for permission later. It appears from what we have learned --

THE COURT: The conservative approach being notify the other side that you have potentially privileged information in your possession, let the other side know that you are willing to do something to secure that and prevent disclosure of that information to you, which might lead to your disqualification, and then wait and see what the ruling is from the court. That being the conservative description.

MR. PISANELLI: That sounds like the best practice, as I would describe it to my colleagues and young lawyers entering my firm.

THE COURT: Okay.

MR. PISANELLI: Quinn Emanuel took a different approach. We have -- we have to argue this case with somewhat limited information, because obviously we don't have access to their communications with Ms. Wynn. We sometimes have to read between the lines, sometimes have to read actual lines. Here during the course of Ms. Sinatra's deposition the fear and suspicion came to fruition as email which were produced the day before, which in and of itself is a suspicious fact, email the day before which contains communication between a then sitting director and a then general counsel where there are

communications about the company business, including a conflict analysis, which by any standard it is the mental impressions and legal advice of the in-house counsel. Rather than take the best practice approach that Merits Incentives and Your Honor just described to us, Quinn Emanuel took a different approach, and that is the bull in the china shop that we have seen in other circumstances, and went ahead and put it in the record and started examining the general counsel on that topic.

We have put forth in our papers as best we can descriptions for you so that you could see the nature of the questions that followed on that email and the email itself offering to Your Honor to submit anything you want to see in camera, understanding there are two violations that Ms. Wynn appears to have committed here, violations of both her common-law and contractual obligation to maintain confidentiality of information from this company and then, of course, the obligation to preserve privileged information. She by all mrs appears to have violated them both for her own gain notwithstanding this nonsensical suggestion in her opposition that she is somehow a whistleblower. I won't even spend any of my 15 minutes on that absurd proposition. But in order to relitigate her divorce, not a whistleblower by any standard, she went ahead and violated those obligations in order to present and pursue her campaign of destruction against our

company.

So we find ourselves now, as Merits Incentives and other cases have directed, figure out what do we do about this. I have shown you the questions asked. There's lots of questions in there that suggest and even prove that Quinn Emanuel is in possession of information they are not entitled to have. We now have at least one email that shows that. And so we can go through the six factors of Merits Incentives, which we did in our papers, which shows that at least five of the six weigh towards disqualification and other relief. Quinn Emanuel and Ms. Wynn fall back on the same argument we hear, I would suggest, in every single debate of this sort, and that is it wasn't privileged. Caught with the proverbial hand in the cookie jar, that's all that's left for somebody that says that. They did not employ a best practice, they did not employ a conservative practice. They just said, we have already made the determination it was not privileged and so let's move on, alleging that we are frivolous and vexatious in their opposition.

So, you know, unlike the Keker matter that was brought to your attention -- there both sides put all the cards face up on the table for you and put Mr. Keker with his own notes of what the communication with Ms. Wynn was, and that left Your Honor with a pretty clear issue of law to decide, here are the facts, nobody's arguing what happened.

You found them to be privileged information and that he was disqualified. Here we don't have a real argument on the law. We have the opposite. We have Quinn Emanuel on behalf of Ms. Wynn saying this wasn't privileged. We can see on its face that there is some privilege there. So I think the only way to protect us, to get to the bottom of this to see if disqualification is appropriate, to see if an injunction on multiple is appropriate, is to have an evidentiary hearing. We're willing to do it quickly, because we think it is highly prejudicial to us to allow tainted counsel to continue to conduct depositions, continue to file motions, continue to pursue discovery.

So timing is of the essence from the harmed party in this perspective, and that's us. And so we'd ask you to set an evidentiary hearing at your earliest opportunity. Let's put some witnesses and some documents before Your Honor, maybe in camera, maybe in open court, and figure out what happened, number one, and what to do about it, number two.

THE COURT: Okay. And you do not know the nature of the communications that have been disclosed at this point, because there's been no identification to you of the Quinn Emanuel firm as to the materials that have been provided to them?

MR. PISANELLI: None. All they just tell us is this is frivolous and there's nothing privileged.

THE COURT: Thank you.

MR. PISANELLI: Thank you.

THE COURT: Mr. Zeller.

MR. ZELLER: Your Honor, the motion suffers under a basic misapprehension not only of the law, but the facts. I'm sure the Court has seen our opposition.

THE COURT: I read it.

MR. ZELLER: And we put in the communications and the surrounding circumstances. So this idea that we have not disclosed them is just simply fundamentally false. Moreover, as we point out in our opposition, these allegations in terms of the substance of the conversation that happened between Ms. Sinatra and Elaine Wynn back in 2009, number one, has been in our pleadings since March. So the idea that somehow they were surprised by this or somehow that we did not disclose this is just simply incorrect. That has been in our pleadings that the Court allowed back in March. It is also something we specific referenced in the motion to dismiss papers. So the facts are and we have put in evidence showing exactly what those communications are, and then in both instances they are not privileged.

Furthermore -- and I assume that there's no issue if I briefly summarize what Kim Sinatra testified to.

MR. PISANELLI: There is an issue, please.

MR. ZELLER: Well, the Court has her testimony.

THE COURT: I have some of her testimony.

MR. ZELLER: Well, the Court has her testimony as --

THE COURT: I have some of her testimony.

MR. ZELLER: Well, Your Honor, we put the entirety of it in in connection with the Sinatra motion.

THE COURT: That's all I got from you.

MR. ZELLER: I understand, Your Honor. But this is one reason why we were suggesting that perhaps that if the Court heard also the Sinatra motions on the motion to compel, the Court would see the overall context of the deposition. So we put --

THE COURT: Let me ask you the question --

MR. ZELLER: Sure.

THE COURT: -- I was concerned about as I read this last night.

MR. ZELLER: Sure.

THE COURT: It appears to me that your position is there was not an attorney-client relationship between Ms. Wynn and Ms. Sinatra and that when Ms. Wynn and Ms. Sinatra were talking that there was no attorney-client relationship. My concern is, and this is what I'm trying to figure out from reading your information, that it doesn't matter whether there's an attorney-client relationship between Ms. Wynn and Ms. Sinatra. What matters is whether Ms. Wynn is seeking information and advice from Ms. Sinatra or providing

information for Ms. Sinatra to do additional work on behalf of Wynn.

MR. ZELLER: Well, let me unpack that, Your Honor. Because it's not our -- the issue is not whether there was an attorney-client relationship from our perspective. We are arguing specifically that, first of all, as the Court is aware, not every communication with an in-house lawyer, particularly one who has business roles as Ms. Sinatra does, is by definition privileged.

THE COURT: I agree.

MR. ZELLER: So that's point one. Point two is in these conversations, and we have submitted evidence and Ms. Sinatra has conceded with respect to at least one of those conversations there was no legal advice sought, no legal advice given. Those are essential elements in order to establish the privilege. So we're not talking about the overall larger context of relationship, Your Honor. There was no question that Ms. Sinatra had certain --

THE COURT: I think you misapply the standard, Counsel.

So let me see if I can skip ahead.

MR. ZELLER: Sure.

THE COURT: I have concerns about whether Ms. Wynn has provided you with information that may arguably be privileged. How do I make a determination, since you didn't

notify anyone of what you received from Ms. Wynn and set it aside as they did in the Jacobs versus Sands case?

MR. ZELLER: Well, number one, Your Honor, as to the 2009 conversation, that has been --

THE COURT: And you're talking about the conversation between Ms. Wynn and Ms. Sinatra --

MR. ZELLER: Yes.

THE COURT: -- about other activities by other board members so Ms. Sinatra could tell her whether she thought there were issues, not issues, do an additional investigation or something?

MR. ZELLER: Well, I guess there's a couple of issues on that, Your Honor. Number one is that in terms of what it is that Wynn Resorts is complaining about here today only involves two things, the 2009 conversation, which is in our pleading and has been since March and which we put in evidence that that is not privileged, and that's undisputed. The second component --

THE COURT: I don't think it's undisputed. That's where I think you're missing the boat.

MR. ZELLER: No, see, I do -- I don't agree, Your Honor. I think it is undisputed. They put in absolutely no declaration or evidence from Ms. Sinatra asserting that in that conversation legal advice was sought or given. And in fact her deposition testimony forecloses that very argument.

THE COURT: Okay.

MR. ZELLER: So in terms of the actual specific instances that they are complaining about, there's only two of them, one, there's the 2009 conversation, and then the other is the email, which I can address separately.

THE COURT: Okay. So let me go back to what I asked you and you didn't answer and you're dodging.

MR. ZELLER: Sure.

THE COURT: And let's stop dodging.

MR. ZELLER: Right. No. I'm sorry, Your Honor.

THE COURT: I need you to identify for me the information which was provided to your firm by Ms. Wynn, and whether it's a privilege log or something, so I can make a determination as to whether there are factual issues as to whether privileged information of the company has been provided to your firm. Because she can't waive the privilege and give it to you even if she had it in her possession as a director.

MR. ZELLER: Well, first of all, Your Honor, I'm not sure that that's entirely true.

THE COURT: Really? Have you read the decision from the Supreme Court in Sands versus Jacobs?

MR. ZELLER: Your Honor, we represent Elaine Wynn in her capacity as a director against Mr. Okada's claims.

THE COURT: Absolutely.

MR. ZELLER: So -- but let me just state for the record -- and I'm sorry if I appear to be dodging --

THE COURT: You are dodging, Counsel.

MR. ZELLER: Your Honor, the fact is that there are only two things that have been disclosed to us, and those are the ones that are at issue here. I mean, I can certainly put in a declaration in order to confirm any concerns that the Court has on that issue. But my -- as the Court is aware, they filed this on Friday. They only raised, you know, as far as we understood it, two particular instances. Those are the ones we addressed. If the Court has broader concerns --

THE COURT: That's not what I'm asking you, Counsel. I asked you a very different question, and I haven't got an answer.

MR. ZELLER: The answer is, Your Honor, there is nothing more. We can -- we can --

THE COURT: So the only information that your client provided to you and you're going to stand here tell me that might arguably be privileged is the email about --

MR. ZELLER: Correct.

THE COURT: -- the potential board member to Ms. Sinatra --

MR. ZELLER: Right.

THE COURT: -- and then an email or conversation with Ms. Sinatra related to potential breach of fiduciary duty

by other high-ranking members of the board?

MR. ZELLER: That's correct.

THE COURT: Okay.

MR. ZELLER: And we'll put in a declaration to that effect, Your Honor, if that is what the Court is -- where the Court is headed. But, honestly, just in fairness -- and I apologize if I look like I was trying to dodge that -- the only thing that they are raising are those two things.

THE COURT: Counsel, it's an iceberg issue.

MR. ZELLER: Sure. I understand. I understand. And there's only this --

THE COURT: What do you think I mean when I say it's an iceberg issue, Counsel, so we're clear there's no ambiguity?

MR. ZELLER: I understand, Your Honor. But there is no iceberg.

THE COURT: There's a lot more under the water is what it means.

MR. ZELLER: I understand.

THE COURT: And that's the concern --

MR. ZELLER: Sure.

THE COURT: -- is that there may be two instances that have been -- now arisen in the litigation, but now there's much more that's been provided to you that's arguably privileged.

MR. ZELLER: And there is not. This is not the Jacobs case, Your Honor. This is not an instance --

THE COURT: I know this is not the Jacobs case, Counsel.

MR. ZELLER: Yeah. Right. And it's not -- this is not an instance where there's all sorts of documents that she took and has. So -- but the fact is, Your Honor, what's been disclosed to us as the lawyers I can tell you are these two -- these two instances that we actually pled in our pleading going back to March. That's why it's a little surprising that we're standing here today, them acting like it's some sort of emergency, both tone at the top, including by Ms. Sinatra, which is -- that's what that is referring to, is that email, as well as the 2009 conversation were both pled quite specifically in our pleading going back to March. And that is the universe of what we're talking about. And I can -- you know, like I say, if the Court -- if the Court would like me to, I'll put it in a declaration to establish that. But we think that the evidence that we've put in for the Court, undisputed evidence is that neither of those communications are privileged. And there's nothing, nothing in the record that Wynn Resorts has put in to dispute it.

If I may just briefly address the one --

THE COURT: No, Counsel. You're out of time.

MR. ZELLER: Thank you, Your Honor.

MR. PISANELLI: So, Your Honor, a couple of things that Ms. Wynn and her counsel seem to have backwards. First of all they say that there's only two things that we have discovered. Well, there's only two things we have disclosed to them that they have that's inappropriate. The law is the other way around. We don't know what they have. They were supposed to disclose it to us.

Secondly, simply because they -- we have only discovered and now argued about one email doesn't mean that that's the end of the analysis, doesn't mean that it's one email, and doesn't also mean that email is the only issue, right. The issue about preservation of privilege has to do with information, not the form. And so if Ms. Wynn walks into Quinn Emanuel after dismissing Munger Tolles and now spills everything that was privileged, that is as important as if she was giving a computerful of documents that had all kinds of privileged information in it. So Quinn Emanuel can't sit back and wait to find out what they got caught doing, what we discovered. They are supposed to put it up front. Sometimes you see lawyers do this with independent counsel to review the client's information to see if there's privilege in there so that the trial counsel doesn't get tainted. There's lots of ways to do this. But just simply saying, let's wait and see what we caught with, is not what Merits Incentive and it's not what the Las Vegas Sands case tells us to do.

We would ask Your Honor for a full disclosure not just of this one email, but of all information. If that includes debriefing notes when they met with Ms. Wynn and show them to you or a special master so a special master can now go through this information in the exact way that occurred with Mr. Keker, where Your Honor got to see what Mr. Keker wrote down by way of his notes, and Your Honor said, yes, he's tainted and he's got to go. Same process should apply here. We would like to see what information is in the hands of Quinn Emanuel and not do what they are telling us and now telling you to do is take their word for it. That's not good enough.

THE COURT: Thank you.

So I need, Mr. Zeller, not a declaration. I need an identification of all potentially privileged information that was provided by Ms. Wynn to your firm to be provided for me for an in-camera review. How long will that take to gather and provide? That includes not only documents, but also conversations related to privileged communications in her capacity as a board member.

MR. ZELLER: I think a week.

THE COURT: How about two? Because I want it done right.

MR. ZELLER: Yes, Your Honor. I know the universe of materials. But I'll take two weeks, Your Honor.

THE COURT: All right. Once you give me that I'm

going to review it, and then I'm going to make a determination as to whether I need to release that information to the other parties and whether I'm going to set an evidentiary hearing. If you would also like to submit the declaration that you've offered me, I would be happy to accept that as part of this.

So I'm going to set this on my chambers calendar for two weeks from Friday.

MR. PISANELLI: Couple of things, Your Honor.

THE COURT: No.

THE CLERK: June 24 in chambers.

THE COURT: Okay. Now did you want to go to the motions related to the depositions?

MR. CAMPBELL: I think we can raise it there.

MR. PISANELLI: Well, the only thing I was in need of is to know if we're going to get a log of what was given to you to avoid the ex parte issue.

THE COURT: Maybe.

MR. PISANELLI: Okay.

THE COURT: Maybe.

MR. PISANELLI: And whether you would --

THE COURT: The reason I asked for it as information, as opposed to a log is the conversations are more difficult to provide as a log if she had additional conversations with Ms. Sinatra about the company's business.

MR. PISANELLI: Okay.

THE COURT: Those need to be included on the identification. I have not called it a log, because it's not really a privilege log, because you would be provided a privilege log if it was.

MR. PISANELLI: Fair enough. I'm just -- okay.

THE COURT: Okay. Now I'm on the depos. Mr. Peek.

MR. PEEK: Thank you, Your Honor.

Your Honor, if there's one of the two that you'd like me to start. Both have overlapping issues, but --

THE COURT: They're all overlapping.

MR. PEEK: Yeah, they are. And, Your Honor, I appreciate Mr. Pisanelli's remarks of at least making an effort to see if we couldn't reach some agreement with respect to the depositions. Certainly you'll see from our papers that that is at least the way we approach both -- or each of the motions.

First of all, we have said with respect to Governor Miller that we recognize that there are issues pending before the Supreme Court, we recognize that those issues will certainly resolve one way or the other the time and the amount of time necessary for Governor Miller.

We are both two -- we have two pending writs in the Supreme Court, one with respect to the Brownstein Hyatt documents, and one with respect to the Freeh Group documents. As I noted and as Mr. Bice concurred, the Brownstein Hyatt

documents or Brownstein Hyatt issue has been ordered to be an answer. The Freeh Group is still pending.

We are entitled to seek the discovery that we need. They have produced documents related to Governor Miller and his testimony since his original deposition, and we're entitled to ask him questions about those documents. The Wynn parties have refused to produce Governor Miller even if the Supreme Court rejects either writ petition. That goes to Mr. Pisanelli's point about, well, let's talk about this later. The reason why we're here is because they have refused to produce him at all.

They don't mention that they've refused to produce Governor Miller if either written petition is rejected. They don't say a word about that. Without any agreement from Wynn Resorts that they will produce Governor Miller in those circumstances and because there's so little time left for discovery, the Court should consider our request for additional time now. We don't want to wait. Supreme Court acts, we want to be prepared to go.

We're obviously willing to work with both Ms. Wynn and Governor Miller's counsel in good faith to attempt to have our additional questioning dates set at a time and within proximity for the convenience of everyone. There's no basis right now to refuse to produce Governor Miller for an additional four hours. That's all we ask, an additional four

hours to go over those documents that we were prohibiting from reviewing with him in light of the Supreme Court. We do not need any more than that full four hours. We thought we'd ask for a full day, but we think that the additional questions that we need to ask him with respect to those documents and with respect to those conversations that he had with both Brownstein Hyatt, as well as with Freeh Group, they will avoid -- in those four hours will avoid imposing too much of a burden on Governor Miller. So we ask just for the four hours. That's all I have on that motion.

THE COURT: Thank you. Do you want to do any of the other motions while you're up there? Because they all have interrelated issues.

MR. PEEK: They do have interrelated issues, and so I'm happy to move forward. And, as I understand and appreciate that the Stern deposition has been vacated and is to be scheduled for another day with respect to Ms. Wynn's request. So it certainly -- I preview that. I don't know what impact it might have, if any, on this, but I understand it has been vacated.

Your Honor, Wynn Resorts continues to try to dictate the Aruze parties discovery process in this case, especially when the issues surrounding Mr. Stern are of Wynn Resorts' making, their making. This Court required Mr. Stern first to return for two days of testimony because Wynn Resorts

obstructed the first session by refusing to let Mr. Stern answer any questions about his interaction with the government. You recall that motion. This Court has already overruled Wynn Resorts' privilege claim on the pre-redemption investigation, demonstrating that the instructions not to answer were inappropriate.

Second, Wynn Resorts has failed to produce Mr. Stern's documents timely even though we first requested them not recently, as they argue, but back in our fourth set of requests for production in April 2015. But, to make it clear to Wynn Resorts, because they seem to be confused by it, we issued the subpoena. That request in April 2015 was in conjunction with our original motion for expert discovery and sanctions of Mr. Stern. You may recall that motion now over a year ago. In fact, Wynn Resorts still has not produced some of these key documents despite promising numerous times to do so. Once they do and once the Nevada Supreme Court upholds this Court's decision Wynn Resorts will also have to produce what we believe to be thousands of documents, many involving Stern. We should be entitled and will be entitled to question Mr. Stern about these documents and issues as part of the discovery process.

Third, the fact that Wynn has raised privilege claims does not prohibit the Aruze parties from seeking discovery from Mr. Stern. Such discovery could have and did

have an impact on other depositions and discovery issues. We used information obtained from Mr. Stern in depositions of McCall, Scotty, and Freeh. Wynn suggests that the Aruze parties chose to move forward with Stern and forfeited the right to seek additional time; but Wynn ignores that the additional time was because Mr. Stern did not answer questions in the first place, nor did they produce fully all documents that had been requested. They also ignore that it cannot dictate the discovery schedule to suit its self-serving claims. We're entitled to move forward. We're entitled to proceed with other discovery of Mr. Stern, rather than wait for WRL's obstruction on some points; but we should not allow them to delay us on other questioning of Mr. Stern, which is they want us to do. They don't want us to have any testimony of Mr. Stern. Elaine Wynn's counsel's notice of Mr. Stern for deposition should not impact our independent and long-standing need to depose Mr. Stern.

We understand that your preference is that Mr. Stern only be called back once. I think given the way the parties have worked through this, that may or may not occur. However, we recognize that until the Supreme Court decides certain issues with respect to Freeh it may not go forward. However, there are a number of documents they have yet to produce that we want to review, we want to see, we want to have as part of our examination of Mr. Stern.

We'll be prejudiced if we're forced to conduct our only remaining deposition of Mr. Stern at the same time as Ms. Wynn before those privilege issues have been resolved. And given his presence here in Las Vegas and the lack of need for him to travel, we respectfully request that while Ms. Wynn proceed on June 30th, now vacated, we be permitted to wait for our final deposition of Stern until after the privilege issues are resolved.

So I guess the question that you ask me is are we willing to enter into a stay with respect to those two depositions, those two depositions only.

THE COURT: Miller and Stern?

MR. PEEK: Miller and Stern. I don't want to call it a stay. We're not going to schedule them, Your Honor, until such time as the Supreme Court acts, even though we don't have a decision.

THE COURT: Okay. Thank you.

MR. PISANELLI: So as it relates to Mr. Stern I wrote down the quote, "They don't want us to have any testimony from Mr. Stern." That's a little bit of a shocking statement considering he's the most deposed person in this case because there's no translation issues here. Mr. Stern has been -- has already sat for four days. He's scheduled to sit for his fifth for Ms. Wynn on the 30th, and now the Okada parties say they need more,

This is why they need more, Your Honor. They have asked -- and we've heard comments about documents not produced yet. They issued subpoenas to Mr. -- for Mr. Stern's records other than phone records, for documents that came into existence after their depositions already occurred. The point is this. They want these serial depositions of him not because he has anything to do with the company, but because he is doing investigation and having communications with federal prosecutors and they are building a defense case there. So they want to continue to know, what have you found now, what have you found now, anything new since the last time we've seen you that you've given to the government. Enough is enough as it relates to Mr. Stern. Any suggestion that they don't have any testimony from him is belied by the record here. They made decisions early on unrelated to what you told us earlier is the practice and rule in this court about documents that were subject to debate and argument over privilege. They're now making these serial depositions so that they can continue to find out what he's up to, and they just can't do that anymore.

The alternative argument that -- or position that Mr. Peek takes is that apparently he wants an order today as it relates to the privileged information, but will wait and conduct the deposition after the Supreme Court rules. That seems to be a flipped analysis. There shouldn't be an order

if the deposition isn't going forward until after the Supreme Court rules anyway as it relates to privilege.

So as it relates to Governor Miller Mr. Peek also says that he hasn't received any documents. And Mr. Miller's motion and the debate about Mr. Miller has nothing to do with any documents. In the meet and confer BuckelySanders was very clear that has nothing to do with documents, and it's not in their papers that it has anything to do with documents. It has to do with privilege, the assertion of privilege that will be resolved by the Supreme Court. Again, asking this Court to rule that he's obligated to give answers even though he's not going to be deposed and after we get that ruling. The simple way to handle this, I would suggest, is let's wait till we get the ruling, figure it out then, come back in on an order shortening time when the dust has settled and have a discussion with you of what, if any additional time for these directors and for this employee Mr. Stern should occur. Our suggestion and request to the Court is that you rule that they've had their chance and then another chance and then another chance and then another chance, that's been enough.

THE COURT: Thank you.

The motions as to Governor Miller and Mr. Stern are both granted. However, given Mr. Peek's comments that they are going to await the decision from the Nevada Supreme Court, I am declining to set the amount of time set aside for the

deposition, because the number of hours will depend on whether the Supreme Court grants the petition or doesn't grant the petition.

MR. PEEK: Thank you, Your Honor. We'll prepare the order.

THE COURT: So we now have a motion for protective order.

MR. PEEK: Your Honor, can we do the motion to stay now? Because it's --

THE COURT: But you agreed to the motion to stay. You said, given them 60 days, Judge, and then make them come back.

MR. PEEK: Okay. Well, I didn't know that's what the Court's ruling was.

THE COURT: I haven't -- you're running out of time, so I wrote that one down because I could do that with nothing.

MR. PISANELLI: So the motion for protective order, Your Honor, has to do with one of the company's outside counsels, Joel Friedman.

THE COURT: And Hagenbuch and Virtue.

MR. PISANELLI: Okay. That's a different issue.

THE COURT: I've got three motions.

MR. PISANELLI: Which one do you want to hear first?

THE COURT: I don't.

MR. PISANELLI: Because I'm not arguing the other

two.

THE COURT: Well, then do the one you're arguing, because you may use up all the time.

MR. PISANELLI: How much time do I have?

THE LAW CLERK: Three minutes.

MR. PISANELLI: All right. So I'll use one minute of those three. As it relates to Mr. Friedman, the deposition, Your Honor, was conducted in bad faith. They -- Ms. Wynn attempted to take the company's counsel, outside counsel, and examine him on information he learned about the company. That just falls squarely in violation of Club Vista. There are other ways to obtain information, discoverable information other than swearing in the company's lawyer and say, what did you learn about this policy, what did you learn about that policy, what are your thoughts on taking those policies into a new scenario. In other words, under the guise of a hypothetical they crammed in their arguments, Ms. Wynn's arguments to the company's lawyer for what he learned from representing the company to try and get a quasi-expert opinion from him to turn the outside counsel into this unretained expert. It was conducted in bad faith. I made sure that they had the opportunity to answer all questions that were fair game. They did that. The only thing left was this bad-faith examination, and we'd like Your Honor to order that this deposition be concluded.

THE COURT: You're out of time, but you can have a minute.

MR. ZELLER: Thank you, Your Honor. Very briefly.

As the Court is aware, of course, this is part of the Freeh Group. To call them outside counsel for the company is not really an accurate characterization. They were brought in to do an independent investigation. One reason why we believe that Mr. Friedman should be answering these questions is that Mr. Freeh was deposed this last Friday, and he basically said he didn't know about the nuts and bolts of what was uncovered in terms of, you know, weaknesses and internal controls and the like. That's the purpose of our questioning, is to ask him. And that is something we have specifically pled in our complaint. So it is part of our claims, it is absolutely related to it, and this investigation uncovered from our perspective evidence of this is in internal controls, and that's all that Mr. Friedman has been asked about. And he was not acting as an outside lawyer for the company. He may be a lawyer, but he was hired to do the investigation. He has factual information. And to go back to one privilege point is that just because an attorney uncovers information, does not make that information privileged. Thank you.

THE COURT: Okay. Thank you.

The motion for protective order is granted in part. To the extent that any inquiry is made for information or work

done by Mr. Friedman following the decision for redemption the request for protective order is granted.

For that information including the work he actually did related to the investigation provided to the board for their determination on redemption the motion is denied. He is not permitted to be able to be asked hypothetical questions about internal procedures.

MR. PISANELLI: Thank you, Your Honor. But may we have a stay on the pre-redemption --

THE COURT: Yes.

MR. PISANELLI: -- portion? Thank you. We'll file a writ on that as quickly as possible.

THE COURT: Maybe.

MR. PISANELLI: Maybe?

THE COURT: And package it with all the others?

MR. PISANELLI: Yeah. That makes sense.

THE COURT: Because it's the same issue.

MR. PISANELLI: I agree with you. I'll work with Mr. Bice on that. Thank you.

THE COURT: All right. So that takes me to the Virtue-Hagenbuch motion.

MR. BICE: Good morning, Your Honor.

THE COURT: I feel like I'm revisiting issues I've heard about before.

MR. BICE: Well, my involvement in this case is

modest and relatively new. So, Your Honor, all I would say -- understand the time is very limited -- with respect to these two individuals, Your Honor, they are board members of Wynn Resorts, they have been identified not by Okada, who has the claims against the company, but by Ms. Wynn. And Ms. Wynn had also deposed him. We have offered to produce them in Las Vegas when they are here as board members for a board meeting at the beginning of August. Ms. Wynn has vacillated as to the amount of time which she needed. Originally when these were scheduled it was a half-day deposition for each of them. It's now transformed into, well, two days, although they haven't sought any leave of the Court for the two days.

What we have proposed, Your Honor, and I think is imminently reasonable is that they will be here for the board meeting, they can be deposed for a day. We have set aside a day for each of them when they are here at the beginning of August. There's plenty of other depositions and discovery going on in this case that these depositions don't need to be accelerated simply because these witnesses are in New York when they're going to be here. Otherwise everybody would otherwise have to travel to New York for those depositions. And we believe all that can be avoided by simply entering a protective order until they are here on the 3rd and 4th of August, Your Honor.

THE COURT: A minute or less.

MR. URGA: Thank you, Your Honor.

THE COURT: You guys used all your time.

MR. URGA: I will try to be brief. The most critical one we want is Mr. Virtue, and he was already noticed at least twice. And all we're asking for at this point is to give us our day, we'll go wherever he wants to go. But we don't want to wait till August 3rd and 4th. Once again the company is dictating what is going on. We will go to wherever Mr. Virtue lives, or if he wants to come here, that's fine. But we want this done this month or at least the first couple weeks in July. We can't keep postponing everything. And that's what is happening here. We want this done sooner.

We thought we had him in February when he decides a skiing trip is more important so he doesn't show up. We then set it again in April. We then have been trying to get this -- and you've seen all of the email back and forth. We have agreed one day right now. If it turns out we have to come back as this Court has allowed us to do, we will. But right now will take one day, we will go wherever he lives or wherever wants to show up at, but we want it sooner than August 3rd and 4th.

Same thing with Mr. Hagenbuch. They both are in New York. We could do them in one time.

THE COURT: Thank you.

The motion is granted. Mr. Hagenbuch and Mr. Virtue

will be taken in their capacity as board members adjacent to the board member [sic] in August on or about August 3rd and 4th at times not to exceed seven hours per individual.

Next? So you have a motion to extend your stay. I'm going to grant you 60 additional days. If we haven't heard from the Nevada Supreme Court, come back.

MR. PISANELLI: Thank you, Your Honor.

THE COURT: Alvin Shoemaker --

MR. PEEK: Your Honor, with respect to that there is no -- there was a request, as well, by the party seeking the stay for a 30-day window within which to produce documents.

THE COURT: I didn't grant that part. I gave them 60 days. If we hear from the Supreme Court, then we'll talk about the length of time needed to comply.

So the motion to de-designate the testimony of Alvin Shoemaker is premature, so I am not acting on it. I'm not going to de-designate it at this time. It does not mean that eventually I may not act upon it, but it is not appropriate today.

And I think that hit every one of the issues.

MR. PEEK: No, Your Honor. We have one motion, I thought.

THE COURT: All of you are out of time.

MR. PEEK: Colby and I have a motion --

MR. WILLIAMS: Your Honor, I'm just going to stand

up to tell you that I have nothing to add.

THE COURT: Your motion for reconsideration? Okay. Anything else on your motion for reconsideration?

MR. PEEK: I opposed it, Your Honor.

THE COURT: Anything else on your motion for reconsideration?

Motion for reconsideration is denied. But thank you for briefing it.

Anything else?

MR. URGA: Yes, Your Honor. We had filed a motion to amend the complaint or our cross-claim. It is set in chambers calendar on Friday, July 1st, I believe it is. We've asked that it be moved to a hearing date. We would prefer to have it sooner, rather than later because of everybody's schedule.

THE COURT: Can I put it on June 28th?

MR. URGA: That's fine with us, Your Honor.

MR. WILLIAMS: No, we're not here.

MR. CAMPBELL: We're out of town.

THE COURT: July 5?

MR. URGA: 28th?

THE COURT: July 5? I heard June 28 was bad, so I went to July 5.

MR. CAMPBELL: Your Honor, if I might.

THE COURT: Sure, Mr. Campbell.

MR. CAMPBELL: Your Honor, Mr. Williams and I are leaving town. We're going to be gone I think from the 27th and then through like I think it's the 11th of July. I normally don't even leave town that much. My son, who Mr. Williams is a surrogate uncle to -- Colby and I have been together 26 years -- has to deploy again, and he's flying out from a special operation command before he goes out. And we're going to try to spend as much time with him as possible. We're going to Sun Valley.

THE COURT: Do you want the 12th?

MR. CAMPBELL: Yeah. I think we'll be back the 12th.

THE COURT: July 12th, Mr. Urga?

MR. URGA: Well, I would prefer before he leaves. If we could go the 25th or 26th or whatever it is.

THE COURT: When do you leave, Mr. Campbell?

MR. CAMPBELL: I think it's the 27th Mr. Williams and I are departing.

THE COURT: I can do it on the 23rd.

MR. URGA: The 23rd is fine.

MR. WILLIAMS: I don't care.

THE COURT: 23rd?

MR. PISANELLI: June?

THE COURT: Who sent me documents in Japanese yesterday?

MR. URGA: Not me, Your Honor.

MR. PEEK: You're looking at the right one, Your Honor.

THE COURT: Hi, Mr. Kunimoto. How are you?

MR. KUNIMOTO: Your Honor, as you may know, my Japanese is --

THE COURT: I asked Laura when she handed the binder. I said, are they in English, or Japanese. She opened a page, she said, gosh, they're in Japanese. And I go, darn.

MR. PEEK: I thought the two of them could read it, though.

THE COURT: She reads Korean, he reads Japanese.

MR. PEEK: Your Honor, there was one other issue, and that had to do with the Kim Sinatra motion. You may recall we spoke about it yesterday. Mr. Urga was going to get back to us. He has not. So I'm waiting to hear from him as to whether we can move that --

THE COURT: He's standing next to you.

MR. PEEK: I know.

MR. URGA: We will give -- we will get in touch with him. We've had kind of a busy day, Your Honor.

MR. PEEK: Your Honor, I just want to have it heard when I get back on the 21st, as opposed to on the 14th.

MR. ZELLER: That's fine, Your Honor.

THE COURT: Sounds great.

MR. PEEK: That way we'll have a joint motion -- or we'll have a companion motion. Thank you, Your Honor.

THE COURT: If my 8:00 o'clock could leave so I could start my 8:30 calendar 27 minutes late.

MR. ZELLER: Thank you, Your Honor.

MR. URGA: I only used one minute of it, Your Honor.

THE COURT: Goodbye.

THE PROCEEDINGS CONCLUDED AT 8:56 A.M.

* * * * *

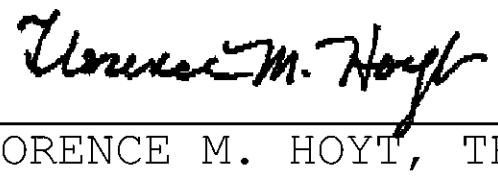
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



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6/8/16

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DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada Corporation,

Plaintiff,

vs.

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

Defendants.

AND RELATED CLAIMS

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

WYNN RESORTS' MOTION TO DISQUALIFY QUINN EMANUEL AND FOR ORDERS REQUIRING TURNOVER OF PRIVILEGED MATTER, INJUNCTIVE RELIEF, PROTECTION AND OTHER APPROPRIATE RELIEF ON AN ORDER SHORTENING TIME

Hearing Date:

Hearing Time:

It is now apparent that Elaine Wynn has provided Quinn Emanuel with attorney-client privileged and otherwise confidential materials belonging to Wynn Resorts – information known to her and only in her possession by virtue of her former position as a member of Wynn Resorts Board of Directors. She does not own that information and did not have the right to share it with

third parties, even her attorneys. Quinn Emanuel wrongfully received this information and used it against Wynn Resorts in this lawsuit.

Indeed, it is now clear that at the very time Ms. Wynn and Quinn Emanuel were complaining about John Keker's ***potential misuse*** of a small amount of allegedly privileged information, Quinn Emanuel was gathering from Ms. Wynn and planning for the ***actual misuse*** of a substantial amount of Wynn Resorts' privileged information.

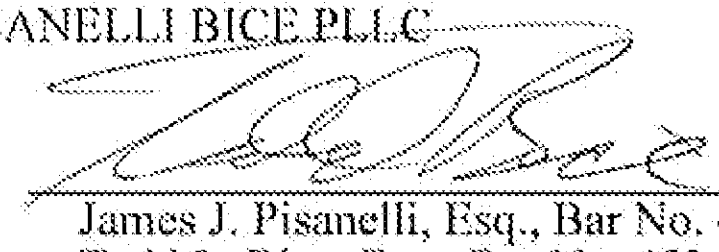
This conduct is improper, unethical and necessitates immediate intervention by this Court. ***Wynn Resorts requests that this matter be heard on an OST and that the Court hold an immediate evidentiary hearing because there are many hearings and other events upcoming in this case, including several depositions, in which Quinn Emanuel – tainted by the improper disclosure of privileged material – should not be permitted to participate.***

Wynn Resorts hereby moves the Court for an order disqualifying Quinn Emanuel and for orders requiring turnover of privileged matter, injunctive relief, protection and other appropriate relief.

This Motion is made and based on the attached Memorandum of Points and Authorities, the pleadings and papers on file herein, and any argument this Honorable Court allows at any hearing of this matter.

DATED this 3rd day of June, 2016.

PISANELLI BICE PLLC

By: 

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ORDER SHORTENING TIME

Before this Court is the Request for an Order Shortening Time accompanied by the Declaration of counsel. Good cause appearing, the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 7 day of June, 2016, at 8:30 a.m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **WYNN RESORTS' MOTION TO DISQUALIFY QUINN EMANUEL AND FOR ORDERS REQUIRING TURNOVER OF PRIVILEGED MATTER, INJUNCTIVE RELIEF, PROTECTION AND OTHER APPROPRIATE RELIEF ON AN ORDER SHORTENING TIME** on for hearing.

DATED: June 3, 2016

DISTRICT COURT JUDGE

Respectfully submitted by:

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DECLARATION OF DEBRA L. SPINELLI, ESQ

I, DEBRA L. SPINELLI, Esq., hereby declare as follows:

1. I am one of the attorneys representing Plaintiff Wynn Resorts, Limited ("Wynn Resorts") in above-entitled action. I make this Declaration in support of Wynn Resorts' Motion to Disqualify Quinn Emanuel and for Orders Requiring Turnover of Privileged Matter, Injunctive Relief, Protection and Other Appropriate Relief on an Order Shortening Time ("Disqualification Motion"). I have personal knowledge of the facts stated herein and I am competent to testify to those facts.

2. This Motion raises serious issues regarding violations of the attorney-client privilege, Quinn Emanuel's use of Wynn Resorts' privileged information and, among other things, whether Quinn Emanuel can continue to represent Ms. Wynn in this case.

3. ***Wynn Resorts requests that this matter be heard on an OST and that the Court hold an immediate evidentiary hearing because there are many hearings and other events upcoming in this case, including several depositions, in which Quinn Emanuel – tainted by the improper disclosure of privileged material – should not be permitted to participate.***

4. The attorney-client privileged May 23, 2016, email chain that is one of the subjects of this Motion was not disclosed by Quinn Emanuel or produced until the late afternoon hours of May 23, 2016 – the day before the deposition of Kimmarie Sinatra, Wynn Resorts' general counsel, was set to commence.

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

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

Executed this 3rd day of June, 2016.

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Elaine Wynn's ("Ms. Wynn") constant refrain in this lawsuit has been that she served for many years as a devoted, highly principled member of Wynn Resorts' board of directors. As Ms. Wynn would have it, she was an exemplary fiduciary who unfailingly placed the company's interests ahead of her own. But events of the past several weeks belie that virtuous image and call into question Ms. Wynn's ethics and those of her attorneys. It is now clear that Ms. Wynn repeatedly disregarded a central tenet of corporate governance by disclosing to her personal counsel, Quinn Emanuel, the attorney-client privileged information and other confidential information that she acquired solely by virtue of her position on Wynn Resorts' board. As will be shown, Ms. Wynn has no right to reveal to third parties the privileged material she obtained in her capacity as Wynn Resorts' fiduciary. Now that she is adverse to Wynn Resorts, and her attorneys have chosen to employ a "scorched earth" strategy against Mr. Wynn and the Company, their efforts to use that very material to harm the Company is highly improper and must be enjoined.

Quinn Emanuel committed an even more egregious wrong by accepting attorney-client privileged material and other confidential information from Ms. Wynn. Worse still, Quinn Emanuel unabashedly used that material to achieve Ms. Wynn's ends in litigation. Quinn Emanuel was sufficiently indifferent to the attorney-client privilege that it included privileged communications in pleadings that are now part of the public record. On top of that, it used confidential information to obtain an unfair advantage in depositions. Quinn Emanuel plied this tactic with special diligence during the deposition of Wynn Resorts' General Counsel, Kimmarie Sinatra. At that proceeding, it posed question after question based on Wynn Resorts' privileged communications with Ms. Sinatra – all of which took place during, and as a result of, Ms. Wynn's tenure on the board.

The Rules of Professional Conduct forbid counsel from communicating with a former corporate officer or director in a manner that violates the corporation's legal rights. Quinn Emanuel not only violated those rules, but flouted them. Under Nevada law, Quinn Emanuel's conduct warrants disqualification. Although the misuse of Wynn Resorts' attorney-client communications and other confidential information has caused irremediable harm, this Court can insure that the

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damage spreads no further by disqualifying the firm and ordering that Elaine Wynn and her attorneys promptly return all privileged materials to Wynn Resorts. Until Elaine Wynn obtains new, untainted counsel, and relinquishes all privileged materials, she should be prohibited from participating in further depositions.

This Court is familiar with the factual background in this case. It need not be recited, once again, in this Motion. Set forth below is limited information (as much as can be revealed here without further jeopardizing the privilege) regarding examples of questions asked by Ms. Wynn's counsel during Ms. Sinatra's deposition that can leave no doubt that Ms. Wynn shared Wynn Resorts' privileged information with Quinn Emanuel. Immediate intervention by this Court is required.

Wynn Resorts requests that the Court set an immediate evidentiary hearing. At that hearing, Wynn Resorts can more fully address the invasion and abuse of its attorney-client privileged information, as highlighted below. At that hearing, the Court will also hear more about Ms. Wynn sharing with Quinn Emanuel confidential business information that she obtained subject to her own confidentiality obligations, apparently providing Quinn Emanuel unfettered access to restricted information, circumventing the discovery process and this Court's oversight which would have allowed Wynn Resorts to object (and this Court to rule on) the relevance of some matter and, where relevant, to appropriately designate materials as either confidential or highly confidential. Finally, Wynn Resorts believes that the Court will also hear evidence that Ms. Wynn has solicited confidential information from other Wynn Resorts' employees whom she knew were subject to the same confidentiality obligations that applied to her.

These issues are serious. They impact Quinn Emanuel's ability to continue representing Ms. Wynn. And, ultimately, they may impact whether Ms. Wynn can proceed with her affirmative claims.

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II. ARGUMENT

A. Wynn Resorts – Not Its Former Director – Controls Its Privileged Communications With Corporate Counsel.

Corporate directors are routinely privy to confidential or privileged communications between corporate counsel and the company. This is entirely appropriate and necessary because directors are among the human agents through whom the company speaks. However, it is the corporation – not its director – that is the sole "client" in these communications, and it is the corporation that is the exclusive holder of the attorney-client privilege. *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 69, 331 P.3d 905, 914 (2014) ("[A] corporation's current management controls the privilege 'to refuse to disclose, and to prevent any other person from disclosing, confidential communications.'").

Ms. Wynn's status as a former director does not change the analysis. The Nevada Supreme Court has been clear that there is nobody "outside the corporation's ***current*** officers and directors who [is] entitled to access the client's confidential or privileged information over the client's objection for use in litigation" – not even former managers and directors who were previously within the privilege. *Id.* When a director leaves the board, s/he retains no control over the attorney-client privilege and has no authority to waive it – even as to communications that s/he initiated. As the United States Supreme Court explained: "[D]isplaced managers may not assert the privilege over the wishes of current managers, even as to statements that they might have made to counsel concerning matters within the scope of their corporate duties. . . . [A former director] who is now neither an officer not director . . . retains no control over the corporation's privilege." *Commodity Futures Trading Commission v. Weintraub*, 471 U.S. 343, 349, 105 S.Ct. 1986, 1991 (1985).

Ms. Wynn served on Wynn Resorts' board of directors for nearly fifteen years. In her capacity as a board member, she had innumerable communications with Wynn Resorts general

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counsel, Ms. Sinatra.[1] At all times, the attorney-client privilege that attached to those communications belonged to – and belongs to – Wynn Resorts.

In 2012, while still a member of Wynn Resorts' board, Ms. Wynn filed suit against Mr. Wynn, in part, to avoid her obligations under the 2010 Stockholders Agreement, notwithstanding the negative impact that could have on Wynn Resorts. She did this to benefit herself personally, and not in her capacity as a member of the board. In 2015, Ms. Wynn's tenure on the board ended when her appointment expired and she failed to win re-nomination to the board or reelection after she launched her own proxy fight. Thereafter, she not only continued to prosecute her lawsuit against Mr. Wynn, but also sought to expand the scope of the litigation through amended pleadings that asserted additional claims against Mr. Wynn as well as new claims against Wynn Resorts and the Company's general counsel.

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Under Nevada law, Ms. Wynn is prohibited from using the privileged or confidential communications to which she was party during her directorship for any purposes, particularly to advance her personal interests in the litigation. In *Las Vegas Sands* the Nevada Supreme Court held that, while a displaced corporate officer may have had access to privileged information while employed as CEO, he was "duty-bound to keep such information confidential" and forbidden to use it in his lawsuit against the corporation. *Las Vegas Sands,* 331 P.3d at 912 (*citing Weintraub*, 471 U.S. at 349, 105 S.Ct. at 1991).

The *Las Vegas Sands* Court provided a cogent explanation of the policy underlying this rule:

> Allowing a former fiduciary of a corporation to ... use privileged information after he or she becomes adverse to the corporation solely based on his or her former fiduciary role is entirely inconsistent with the purpose of the attorney-client privilege. We believe such a situation would have a chilling effect on candid communications between attorney and client.

Las Vegas Sands, 331 P3d at 913.

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[1] Indeed, Ms. Wynn refers to those communications repeatedly and with specificity in her Fifth Amended Complaint. *See, e.g.*, pages 35:22-28; 36:13-15; 37;13-24; 41:20-26; 42:10-11; 45:1-14; 46:5-8; 48:1-3.

Ms. Wynn should be prohibited from using or disseminating Wynn Resorts' privileged materials to any third party, including her attorneys.

B. Elaine Wynn Improperly Provided Attorney-Client Privileged and Confidential Material to Quinn Emanuel.

It is glaringly apparent that Ms. Wynn has communicated privileged and confidential information to Quinn Emanuel. She did this not only in violation of her duty to maintain such material in confidence but also in violation of ***her express confidentiality obligations to the Company.*** In November 2013, the Company, through its Board of Directors (on which Ms. Wynn served) amended its Code of Business Conduct and Ethics (the "2013 Code"). The 2013 Code was publicly available on Wynn Resorts' website. Declaration of Kevin Tourek ("Tourek Decl."), ¶2 (**Exhibit 1,** hereto); 2013 Code, § 5.4 (**Exhibit** 2, hereto). Section 5.4 of the 2013 Code specifically addresses Ms. Wynn's confidentiality obligations:

> Directors and employees are expected to maintain the confidentiality of information entrusted to them, from whatever source, during the course of performing their responsibilities for the Company, unless disclosure is expressly authorized or legally required. This includes information about the Company and information about third parties such as current or prospective vendors, suppliers, tenants, business partners, customers or employees. You should use Company and third party confidential information only for legitimate business purposes, and limit the dissemination of the information (both inside and outside the Company) to those who have a need to know the information for legitimate business purposes. If you are uncertain about whether information is confidential, you should treat it as such until you obtain further guidance. ***The obligation to protect confidential information continues even after your relationship with the Company ends.*** If you have any questions regarding the use or protection of confidential information, please call the Legal Department. In addition to the provisions of this section of the Code, directors should also refer to the Company's Policy Regarding Nondisclosure and Nonuse of Confidential Information. (emphasis added).

Notably, the 2013 Code also makes reference to the Company's Policy Regarding Nondisclosure and Nonuse of Confidential information. That document and information about how Ms. Wynn voted with regard to that policy will be made available for the Court's *in camera* review if the Court requests. Of course, no written agreement or policy was required. As the Nevada Supreme Court made clear in its ultimate conclusion in *Las Vegas Sands,* there is nobody "outside the corporation's current officers and directors who [is] entitled to access the client's

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confidential or privileged information over the client's objection for use in litigation. *Id.* at 914; *In re Mortgage & Realty Trust*, 195 B.R. 740, 751 (Bankr. C.D. Cal. 1996) ("The duty to protect and preserve confidential information received during service as a director continues after the director leaves the board.").

Courts have held that agreements of this kind operate to prevent a corporate employee's disclosure of any corporate information – even to his/her personal attorney in litigation. In *In re Marketing Investors Corp.*, 80 S.W.3d 44, 48 (Tex. Ct. App. 1998)[2], the court held, "[t]he employment agreement recites that all information is a Corporation asset, that an employee will not disclose any information without prior written consent of the Board of Directors, and the agreement continues after an employee leaves the Corporation. The agreement provides no exception for an ex-employee to disclose Corporation information to his personal attorneys who are in an adversarial position with the Corporation." *Id.* at 48. On that basis, the *Marketing Investors* Court overturned the trial court's denial of a motion to disqualify counsel for failing to return privileged documents.

Wynn Resorts' confidentiality policy is significant here. In addition to her fiduciary obligation to refrain from disclosing the corporation's attorney-client communications, she was well aware of the corporation's express policies on disclosures of confidential information. Indeed, the board upon which she served adopted them. Under the circumstances, it is reasonable to infer that Ms. Wynn disclosed the company's privileged material to her attorneys knowingly and in disregard of Wynn Resorts' legal rights.

1. The July 31, 2012 email between Ms. Wynn and Kim Sinatra.

Evidence of Ms. Wynn's improper disclosures to Quinn Emanuel is plentiful.

One blatant example consists of an email dated July 31, 2012. Wynn Resorts will not compound the harm caused by Ms. Wynn and Quinn Emanuel's disregard of privilege by further publicizing the content of the email in this brief. It will be made available for this Court's *in camera* review at the hearing of this motion or at such earlier time as this Court might request. It should be noted that ***this email was not disclosed by Quinn Emanuel or produced until the late afternoon***

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[2] *In re Marketing Investors Corp.* was cited with approval by the Nevada Supreme Court in *Merits Incentives, LLC v. Eighth Judicial Dist.*, 127 Nev. Adv. Op. 63, 262 P.3d 720, 724 (2011).

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hours of May 23, 2016 – the day before the deposition of Ms. Sinatra, the Company's general counsel, was set to commence. Spinelli Decl., ¶4. As a general matter, and limiting the information to what would normally be on a privilege log, the email exchange is between Ms. Wynn and Ms. Sinatra. Ms. Wynn was communicating with Ms. Sinatra "as corporate counsel." It pertains to another individual's potential nomination to the board of directors. In the email, Ms. Sinatra renders legal advice regarding an issue relevant to the subject. The mere fact that Ms. Wynn provided this privileged email to Quinn Emanuel suggests that she provided other privileged and/or confidential correspondence to her lawyers.

2. The deposition questions posed to Ms. Sinatra reveal that Ms. Wynn disclosed attorney-client communications to Quinn Emanuel.

Other examples of improper disclosure permeate Ms. Sinatra's deposition transcript. Ms. Wynn's attorney, John Quinn, conducted the deposition of Ms. Sinatra on May 24, 2016. In the course of the proceeding, Mr. Quinn posed a series of highly specific questions that he could have formulated only after familiarizing himself with attorney-client communications between Ms. Sinatra and Ms. Wynn in her director's capacity.

Mr. Quinn queried about:

[redacted] (Deposition of Kimmarie Sinatra, Volume 1 ("Sinatra Depo"), p. 65:4-7) (this and the other excerpts will be provided to the Court for *in camera* review);

[redacted] (Sinatra Depo., pp. 65:22-24; 67:3-6; 83:25-84:1-2; 90:9-11);

[redacted] (Sinatra Depo., pp. 83:20-22; 84:11-13; 87:23-6; 89:9-12);

If there were any doubt that the foregoing inquiries and others like them were based on Quinn Emanuel's conversations with Ms. Wynn regarding her privileged communications with Ms. Sinatra, that doubt was extinguished by the follow-up questions posed by Mr. Quinn, all of which reflected very specific content that only could have been obtained from Ms. Wynn. In

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particular, Mr. Quinn asked [redacted] (Sinatra Depo., pp. 93:13-16; 94:5-9).

Again, Wynn Resorts will not reveal the details of the problematic exchange in this brief, but the Court, will see that the first nine questions show that Ms. Wynn told Quinn Emanuel about her communication with Ms. Sinatra concerning a sensitive company matter. The last two drive home the fact that Ms. Wynn's improper disclosures to her counsel were so detailed that Mr. Quinn was able to incorporate Ms. Sinatra's alleged responses into them.

Wynn Resorts' counsel appropriately objected to these questions on attorney-client privilege and other grounds. On several occasions, counsel instructed Ms. Sinatra not to answer. But Mr. Quinn was undeterred. In the final minutes of the deposition, he asked: [redacted] (Sinatra Depo., pp. 111:24-25-112:1-2; 112-6-7.)

At that point, Wynn Resorts' counsel terminated the examination, stating, [redacted] Sinatra Depo., p. 113:10-16.) Counsel further notified Mr. Quinn that [redacted] (Sinatra Depo., pp. 113:17-114:1-5.)

C. Quinn Emanuel Should Be Disqualified for Using Wynn Resorts' Confidential Communications to Its Client's Advantage.

The Nevada Supreme Court has recognized that "[d]isqualification may be necessary to prevent disclosure of confidential information that may be used to an adverse party's disadvantage." *Nev. Yellow Cab Corp. v. Eighth Jud. Dist. Ct*, 123 Nev. 44, 53, 152 P.3d 737, 743 (2007). Where there is a risk that confidential information has been disclosed and may potentially be misused, ***doubts should generally be resolved in favor of disqualification***. *Brown v. Eighth Jud. Dist. Ct.*,

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116 Nev. 1200, 1205, 14 P.3d 1266, 1270 (2000); *Hull v. Celanese Corp.*, 513 F.2d 568, 570 (2d Cir.1975).

Courts have not hesitated to disqualify attorneys who knowingly accept and use their opponent's privileged material. In *Maldonado v. New Jersey*, 225 F.R.D. 120, 125 (D.N.J. 2004), the court upheld the propriety of disqualifying counsel who accepted from his client a confidential letter from the opposing party in litigation to its own counsel. The court found that disqualification was proper given that the attorney neither disclosed his possession of the letter nor returned it to opposing counsel. In *In re Marketing Investors Corp.*, 80 S.W.3d at 46-47, counsel was properly disqualified for accepting documents from his client that the latter took in violation of an employment agreement. In *Castellano v. Winthrop*, 27 So. 3d 134 (Fla. Dist. Ct. App. 2010), disqualification was deemed proper when an attorney used material contained on opposing party's flash drive. The *Castellano* Court emphasized that "disqualification is appropriate where a party obtains an unfair informational or tactical advantage through the disclosure of privileged information to that party's counsel." Id at 134.

In *Merits Incentives, LLC v. Eighth Jud. Dist. Ct.*, the Nevada Supreme articulated six non-exclusive factors that trial courts should consider in determining whether to disqualify an attorney who has received an opponent's privileged materials. *Merits Incentives*, 127 Nev. Adv. Op. 63, 262 P.3d at 724. As will be shown, at least five of those factors support disqualification in this case.

The first factor is "[W]hether the attorney knew or should have known that the material was privileged." Attorneys who know that their clients have provided them with their opponent's privileged material are more culpable and deserving of disqualification than attorneys who receive such material inadvertently.

In this case, Ms. Wynn's attorneys will be hard pressed to persuade the court that they acquired Wynn Resorts' privileged communications unknowingly. Quinn Emanuel is a highly reputed law firm with vast litigation experience. Its website boasts that it is "Better. Tougher. Faster. Scarier" than other firms and that it "knows how to win." It did not naively question Ms. Wynn about her communications with Wynn Resorts' general counsel. Nor was it oblivious to

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the fact that Ms. Wynn was providing it with privileged material. It understood that its receipt of privileged matter had serious, adverse ethical implications, but it accepted and used the material anyway.

One need look no further than Ms. Wynn's Fifth Amended Crossclaim to perceive that a critical basis for the relief sought is the legal advice that Ms. Sinatra gave to Ms. Wynn and other members of Wynn Resorts' board. Ms. Wynn alleges that Ms. Sinatra, "the Company's General Counsel," "intentionally fed misinformation" to Ms. Wynn and her fellow board members (Fifth Am. Crossclaim, 35:25-28). She alleges that Ms. Sinatra dec[ided] to keep secret from the Board and other Company counsel . . . the fact that the Chairman and CEO had engaged in alleged misconduct on Company property against at least one Company employee serious enough to warrant a multimillion dollar payment[.]" (Fifth Am. Crossclaim 37:17-24.) And, she explicitly alleges that "Ms. Sinatra stated" that the matter "should not be disclosed to the Board or other Company counsel." (*Id.* at 45:6-14.) Ms. Wynn alleges that she and Kim Sinatra discussed former Chief Operating Officer Marc Schorr's fitness for service, and that Ms. Sinatra "rebuffed her complaints." (*Id.* at 46:7-10; 47:48:1-3.) Simply put, Quinn Emanuel made Wynn Resorts' privileged communications with its counsel the lynchpin of its case. This strategy is not merely "knowing" but intentional.

The second factor in the disqualification analysis is "the promptness with which the attorney notifies the opposing side that he or she has received its privileged information." Here, Quinn Emanuel never notified Wynn Resorts that Ms. Wynn gave it detailed information about attorney-client communications.

The third factor is "the extent to which the attorney reviews and digests the privileged information." As noted above, Mr. Quinn not only digested the privileged material but based Ms. Wynn's theories of liability upon it.

The fourth factor is "the significance of the privileged information; *i.e.*, the extent to which its disclosure may prejudice the movant's claim or defense, and the extent to which return of the documents will mitigate that prejudice." Until the court orders Quinn Emanuel to restore to Wynn Resorts the privileged material it obtained from Ms. Wynn, the full significance of the

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disclosure cannot be gauged with certainty. One thing is certain: In the realm of attorney-client communications, improper disclosure is irremediable as the privilege bell cannot be un-rung. When, as in this case, attorney client communications are set forth in publicly available pleadings, the candid, open communications between corporate representatives and corporate counsel that the privilege is designed to protect are profoundly chilled.

The fifth factor in the disqualification analysis is "the extent to which movant may be at fault for the unauthorized disclosure." Here, the privileged communications are in Quinn Emanuel's hands for one reason alone: Elaine Wynn provided them. Wynn Resorts bears no responsibility for the disclosure.

The sixth and final factor is "the extent to which the non-movant will suffer prejudice from the disqualification of his or her attorney." In this case, Quinn Emanuel came to the litigation relatively recently. It substituted in for Ms. Wynn's prior counsel in January of this year. While Quinn Emanuel has initiated a great deal of discovery and motion practice, it has not advanced the case to the point where Ms. Wynn would be unduly prejudiced by its withdrawal. Moreover, this is not a case in which society has an interest in Quinn Emanuel's continued participation. The parties are not seeking to resolve a point of civil rights or First Amendment law. This case is a business dispute between well-heeled parties, neither of whom is at risk of poor representation. Ms. Wynn had able local counsel and retained other counsel before she hired Quinn Emanuel. She certainly is in a position to hire a replacement.

D. <u>Quinn Emanuel's Conduct Violates The Nevada Rules of Professional Conduct</u>.

In determining whether disqualification is appropriate here, the court should note that Quinn Emanuel has run afoul of two Nevada Rules of Professional Conduct. RPC 4.4 states in pertinent part:

> In representing a client, a lawyer shall not ... use methods of obtaining evidence that violate the legal rights of a [third] person.

RPC 8.4 (d) states that

> It is professional misconduct for a lawyer to ... [e]ngage in conduct that is prejudicial to the administration of justice.

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In this case, Quinn Emanuel undertook to represent a former member of Wynn Resorts' board of directors in a matter adverse to the company she once served. It had every reason to know that, as a consequence of her directorship, Ms. Wynn possessed privileged and confidential information that could easily be misused. In the exercise of ordinary prudence, it could have reminded her that she was bound to maintain the confidentiality of Wynn Resorts' attorney-client communications and that the firm, itself, was ethically prohibited from receiving such material. It could have complied with Nevada law by notifying opposing counsel if it acquired privileged information unintentionally. If it truly believed that some of the communications Ms. Wynn described were not protected by the attorney-client privilege, it could have come to this Court and awaited a decision before making use of the material. It followed no such course. Instead, it obtained and used privileged material to its client's advantage and to its opponents' prejudice. In fact, it studied the privileged communications and wove them into the very fabric of Ms. Wynn's lawsuit. When the Rules of Professional Conduct are openly disregarded in this way, the sanction of disqualification is more than justified.

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E. The Court Should Act to Prevent Any Further Violation of Ms. Wynn's Fiduciary Duties.

Of course, disqualification of Quinn Emanuel will serve no purpose if Ms. Wynn is able simply to continue her breaches through new counsel. Further, until this Court can rule on disqualification, Wynn Resorts will suffer further harm unless this Court acts to protect it. Thus, in addition to disqualification of her current counsel, Wynn Resorts requests that the Court issue a preliminary injunction against Ms. Wynn continuing to breach her fiduciary duties and confidentiality obligations. Wynn Resorts further requests the Court to enter a protective order against Ms. Wynn appearing at depositions in this matter until she is represented by new counsel not in possession of privileged and confidential information and materials.

1. The Court should enter a preliminary injunction preventing Ms. Wynn from further breaching her fiduciary duties and contractual obligations of confidentiality.

This Court has broad discretion in determining whether to enter a preliminary injunction. *Univ. & Community College Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d

179, 187 (2004). A preliminary injunction is appropriate "to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). Under NRCP 65, to obtain a preliminary injunction or temporary restraining order, Wynn Resorts must show: (1) Ms. Wynn's conduct will cause irreparable harm if it continues, (2) Wynn Resorts has no adequate remedy at law, and (3) Wynn Resorts has a reasonable likelihood of prevailing on the merits. *Dept. of Conservation & Natural Resources, Div. of Water Resources v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). Each of these standards is met here. A preliminary injunction is appropriate relief to prevent further violation of Ms. Wynn's fiduciary duties and contractual obligations of confidentiality.

Without injunctive relief, Wynn Resorts faces irreparable harm. Improper disclosure of privileged and confidential information is just the sort of harm injunctive relief is appropriate to prevent. *See, e.g., Continental Group, Inc. v. Kinsley*, 422 F. Supp. 838, 844 (D. Conn. 1976) (injunctive relief against former employee appropriate to protect against disclosure of confidential information, even if it did not qualify as a trade secret). In this case, the threat of disclosure is not speculative; rather, Ms. Wynn has already revealed privileged and confidential information which her counsel has used in this litigation, and her misuse of Wynn Resorts' privileged and confidential information will predictably continue unless enjoined. *See Union Carbide Corp. v. UGI Corp.*, 731 F.2d 1186, 1191 (5th Cir. 1984) (finding irreparable harm where movant presented strong circumstantial evidence that defendant had already revealed confidential information); *SI Handling Sys., Inc. v. Heisley*, 753 F.2d 1244, 1261 (3d Cir. 1985) (same). *Compare Continental Group, Inc. v. Amoco Chems Corp.*, 614 F.2d 351, 358-59 (3d Cir. 1980) (denying injunction against disclosure of confidential information for lack of any "imminent threat of the allegedly harmful disclosure"). Moreover, her improper disclosures are designed to threaten Wynn Resorts' reputation and goodwill, itself an irreparable harm. *See, e.g., Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Op. Co.*, 22 F.3d 546, 552 (4th Cir. 1994) (loss of goodwill constitutes irreparable harm), abrogated on other grounds, *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008); *Tantopia Franchising Co. v. West Coast Tans of PA, LLC*, 918 F. Supp. 2d 407, 417-18 (E.D. Pa. 2013) (finding irreparable injury in potential harm to reputation, trade and goodwill)

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Wynn Resorts has no adequate remedy at law. There is no claim for damages that can adequately unwind Ms. Wynn's disclosure of privileged and confidential information. As the Sixth Circuit held in the specific context of disclosure in the course of litigation of information covered by a confidentiality agreement, "[i]t was sufficient to show that [nonmovant's] use and disclosure of the information in the context of pre-trial communications with others presented a significant threat that [movant's] information would no longer be confidential." *Uniroyal Goodrich Tire Co. v. Hudson*, 97 F.3d 1452 (table), 1996 WL 520789, *9 (6th Cir. Sept. 12, 1996).

Further, as shown above, Ms. Wynn's counsel has received and made use of attorney-client privileged communications and information protected by confidentiality obligations. Thus, it is likely that she has committed and continues to commit breaches of her fiduciary duties and her contractual obligations to Wynn Resorts, such that injunctive relief is appropriate.

Consistent with these standards, preliminary injunctive relief is appropriate to prevent a director from breaching fiduciary duties. *See, e.g., Johnson v. Couturier*, 572 F.3d 1067 (9th Cir. 2009) (enjoining directors from paying defense costs with corporate funds, where plaintiffs had shown likelihood of success on merits of claim for breach of directors' fiduciary duties). The injunction may appropriately include a requirement of returning confidential corporate documents received directly from Wynn Resorts. *See, e.g., In re Marketing Investors Corp.*, 80 S.W.3d at 48 (requiring return of confidential corporate documents). *Cf Maheu v. Hughes Tool Co.*, 88 Nev. 592, 597-98, 503 P.2d 4, 7 (1972) (finding district court's injunction requiring turnover of corporate documents overbroad, because it could encompass documents obtained elsewhere that were only indirectly related to the corporation). Maintaining the status quo by preventing any further breaches of her fiduciary duties "will impose small burden" on Ms. Wynn. *Ottenheimer v. Real Estate Div. of Nevada Dept. of Commerce*, 91 Nev. 338, 342, 535 P.2d 1284, 1285 (1975).

Accordingly, Wynn Resorts requests the Court to enjoin Ms. Wynn from further breaches of her fiduciary duties and contractual obligations of confidentiality. Specifically, Wynn Resorts asks that the Court: (i) enjoin Ms. Wynn against any further use of privileged or confidential information or documents, (ii) order Ms. Wynn to return privileged materials in her possession, and

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(iii) order Ms. Wynn to produce a log of all documents she provided to Quinn Emanuel, any other counsel, any other person and for her counsel to do the same.

2. The Court should enter a protective order against Ms. Wynn's participation in depositions until she can be represented by new counsel.

Finally, until such time that this Court can rule on the disqualification of Quinn Emanuel and all relevant disclosures are mitigated and returned, the Court should enter a protective order preventing Ms. Wynn from appearing at any further depositions in this matter.

Pursuant to NRCP 26(c), the Court "may make any order which justice requires to protect [Wynn Resorts] from annoyance, embarrassment, oppression, or undue burden," including placing conditions on discovery or designating who may be present. Here, it is apparent from their recent conduct in discovery that excluding Ms. Wynn and her counsel from depositions is necessary to prevent further disclosures of Wynn Resorts' privileged and confidential information and to prohibit Ms. Wynn from benefiting from such disclosures. Meanwhile, there would be no prejudice to Ms. Wynn from such a temporary order. Once Ms. Wynn has retained counsel untainted by improper disclosures, her new counsel will be able to review the transcripts of depositions taken by other parties and will have the opportunity to continue the depositions of those witnesses relevant to the claims involving Ms. Wynn. This is the appropriate outcome to allow this litigation to move forward expeditiously without further compromising Wynn Resorts' confidential information and attorney-client privilege.

III. CONCLUSION

For all of the foregoing reasons, Wynn Resorts respectfully requests that this Court hold an immediate evidentiary hearing, issue the orders necessary to remediate the breaches of Wynn Resorts privileges, order the appropriate protective orders to prevent further harm while the

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Court considers this motion, and, ultimately, disqualify Quinn Emanuel from representing Elaine Wynn in this case.

DATED this 3rd day of June, 2016.

PISANELLI BICE PLLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 3rd day of June, 2016, I caused to be **electronically served through the Court's filing system** true and correct copies of the foregoing **MOTION TO DISQUALIFY QUINN EMANUEL AND FOR ORDERS REQUIRING TURNOVER OF PRIVILEGED MATTER, INJUNCTIVE RELIEF, PROTECTION AND OTHER APPROPRIATE RELIEF ON AN ORDER SHORTENING TIME** to the following:

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EXHIBIT 1

DECLARATION OF KEVIN TOUREK, ESQ.

I, KEVIN TOUREK, Esq., hereby declare as follows:

1. I am the Global Compliance Officer for Plaintiff Wynn Resorts, Limited ("Wynn Resorts") in the above-entitled action. I make this Declaration in support of Wynn Resorts' Motion to Disqualify Quinn Emanuel and for Orders Requiring Turnover of Privileged Matter, Injunctive Relief, Protection and Other Appropriate Relief on an Order Shortening Time (the "Motion"). I have personal knowledge of the facts stated herein and I am competent to testify to those facts.

2. In November 2013, Wynn Resorts, through its Board of Directors (on which Ms. Wynn served) amended its Code of Business Conduct and Ethics (the "2013 Code"). The 2013 Code was publicly available on the Wynn Resorts website.

3. Attached to this Motion as Exhibit 2 is a true and correct copy of the 2013 Code.

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

Executed this 2nd day of June, 2016 at Las Vegas, Nevada.

KEVIN TOUREK, ESQ.

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EXHIBIT 2

WYNN RESORTS, LIMITED
CODE OF BUSINESS CONDUCT AND ETHICS
(Amended as of November 5, 2013)

Dear Colleague:

All of us at Wynn Resorts are focused on our commitment to providing an elegant environment, high-quality amenities, a superior level of service and distinctive attractions for our customers. However, our ability to conduct our business and sustain the respect of the investment community and the people who regulate our industry rests first and foremost on our commitment to integrity.

What follows in this booklet is the Code of Business Conduct and Ethics of Wynn Resorts, Limited, as approved by our Board of Directors. The purposes of the Code are not only to comply with federal securities laws and the marketplace rules of The Nasdaq Global Select Market, but also to reinforce and enhance the Company's commitment to an ethical way of doing business.

We live in an age where legal and ethical missteps of others have resulted in the law imposing special duties on our personal and business lives. In the midst of this unfortunate environment, the good name and reputation of Wynn Resorts are a result of the dedication and hard work of all of us. Together, we are responsible for preserving and strengthening this reputation. Our goal is not just to comply with the laws, rules and regulations that apply to our business; we also continuously strive to abide by high standards of ethical business conduct.

This booklet is not to be ignored or taken lightly. All employees, officers and directors of Wynn Resorts and its subsidiaries must comply with the Code. Please read the Code carefully and make sure that you understand it, the consequences of non-compliance, and the Code's importance to the success of the Company. Your signature on the acknowledgement form at the conclusion of the Code certifies that you have read, understood and complied with its contents.

The Code cannot and is not intended to cover every applicable law, or provide answers to all questions that might arise; for that we must ultimately rely on each person's good sense of what is right, including a sense of when it is proper to seek guidance from others on the appropriate course of conduct. If you have questions, speak to your supervisor, the Compliance Officer or any of the other resources identified in the Code.

Warmest personal regards,

Steve Wynn
Chief Executive Officer

1. PUTTING THE CODE OF BUSINESS CONDUCT AND ETHICS TO WORK

1.1 About the Code

Our business depends on the reputation of all of us for integrity and principled business conduct. The purpose of this Code of Business Conduct and Ethics (the "Code") is to reinforce and enhance the Company's commitment to an ethical way of doing business. The Code applies to all employees, officers and directors of the Company and its subsidiaries. This Code also applies to certain independent contractors and consultants who work at the Company's facilities or on the Company's behalf, in which case those persons will be notified and provided a copy of this Code. The policies set forth here are the basis for Wynn Resorts to continue a tradition of high ethical business standards. The Company has additional policies that supplement the policies in this Code. These policies are set forth in the policy guide applicable to your particular operating subsidiary, which is available on the Company's Intranet on **the Wire.**

The Code is a statement of policies for the individual and business conduct of the Company's employees and directors and does not, in any way, constitute an employment contract or an assurance of continued employment. Any rights you have as an employee and the Company's rights as an employer are governed by the laws of the country of employment, the work rules of your employing unit and your individual written employment contract, if any.

1.2 Meeting Our Shared Obligations

Each of us is responsible for knowing and understanding the policies and guidelines contained in the following pages. If you have questions, ask them; if you have ethical concerns, raise them. The Compliance Officer is responsible for overseeing and monitoring compliance with this Code. The Compliance Officer and the other resources identified in this Code are available to answer your questions and provide guidance and for you to report suspected misconduct. Our conduct should reflect the Company's values, demonstrate ethical leadership, and promote a work environment that upholds the Company's reputation for integrity, ethical conduct and trust.

1.3 Seeking Guidance

This Code cannot provide definitive answers to all questions. Unless a particular provision of the Code directs otherwise, if you have questions regarding any of the policies discussed in this Code or if you are in doubt about the best course of action in a particular situation, you should seek guidance from your supervisor, the Compliance Officer or the Legal Department.

Compliance Officer and Wynn Las Vegas	**Kevin J. Tourek** Compliance Officer 3131 Las Vegas Boulevard South Las Vegas, Nevada 89109 **702.770.2113** **Kevin.Tourek@wynnlasvegas.com**
Wynn Macau	**Jay Schall** Legal Department Rua Cidade de Sintra, NAPE Wynn Macau **+853.2888.9966** **Jay.Schall@wynnresorts.com**
Wynn Resorts	**Kim Sinatra** Legal Department 3131 Las Vegas Boulevard South Las Vegas, Nevada 89109 **702.770.2112** **Kim.Sinatra@wynnresorts.com**

1.4 Reporting Violations

If you know of or suspect a violation of applicable laws, rules or regulations, the Code, or the Company's related policies, you must immediately report that information to your supervisor or the Compliance Officer. Violations of this Code may result in disciplinary action, up to and including discharge.

Compliance Officer	**Kevin Tourek** Compliance Officer 3131 Las Vegas Boulevard South Las Vegas, Nevada 89109 **702.770.2113** **Kevin.Tourek@wynnlasvegas.com**

Alternatively, if an accounting, internal accounting controls, auditing matter or a securities law is involved, you have the option of reporting the matter to the Legal Department or to In Touch, a service that will transcribe the reports and send them directly to the Audit Committee of the Board of Directors. Executive officers and directors also may report known or suspected violations directly to the Audit Committee.

Legal Department	**Kim Sinatra** General Counsel 3131 Las Vegas Boulevard South Las Vegas, Nevada 89109 **702.770.2112** **Kim.Sinatra@wynnresorts.com**
In Touch (Las Vegas)	1-866-204-9791 or **info@getintouch.com**
In Touch (Macau)	+853.6262.5201 **integrity@getintouch.com**

You can make a report confidentially and anonymously through In Touch, although you are encouraged to provide your name to facilitate investigation and follow-up.

All reports of potential misconduct will be treated confidentially to the extent reasonably possible. No one will be subject to retaliation or adverse employment action because of a good faith report of suspected misconduct or for assisting in the investigation of suspected misconduct.

2. RESPONSIBILITY TO OUR ORGANIZATION

2.1 Compliance With Laws, Rules And Regulations

You are required to comply with the laws, rules and regulations that govern the conduct of our business. No one is expected to know the details of all applicable laws, but you should be knowledgeable about specific laws, rules and regulations that apply to your areas of responsibility. If you have questions about the applicability or meaning of a law, rule or regulation, or if you have any questions regarding whether particular conduct is proper, you should consult the Legal Department.

The Company operates in more than one country and interacts with many different cultures. What is appropriate in some parts of the world may be entirely inappropriate or even unlawful in others. You should always abide by the laws, rules and regulations of the country in which you are conducting business, the federal law of the United States of America and applicable laws of the State of

Nevada and the Macau Special Administrative Region. You should also abide by generally accepted business practices of the countries in which you are conducting business, unless they conflict with any of the foregoing laws, rules and regulations, in which case you are to abide by the law. If there is a conflict between local laws and this Code or any other law applicable to the conduct of the Company's business, you should consult with the Legal Department before taking any action.

2.2 Promoting a Diverse and Productive Workforce

The Company is an equal opportunity employer committed to complying with all state and federal fair employment practice laws, as well as maintaining a workforce that reflects the diversity of the community. The Company believes in and supports equal opportunity in employment to all persons regardless of race, color, national origin, citizenship status, sex, marital status, gender identity or expression, sexual orientation or perceived sexual orientation, age, religion, veteran status, military status, disability, history of disability or perceived disability. Harassment or discrimination of any sort will not be tolerated.

3. CONFLICTS OF INTEREST

Company employees and directors are expected to dedicate their best efforts to advancing the Company's interests and to make decisions that affect the Company based on the Company's best interests, independent of outside influences.

A conflict of interest occurs when your own interests (including the interests of a family member or an organization with which you have a significant relationship) interfere, or even appear to interfere, with the interests of the Company. A conflict situation can arise when you take actions, have interests or are offered benefits that make it difficult for you to perform your Company work objectively and effectively. Moreover, even the appearance of a conflict of interest can create problems, regardless of the propriety of your behavior.

Your obligation to conduct the Company's business in an honest and ethical manner includes the ethical handling of actual, apparent and potential conflicts of interest between the Company's business and your personal and business relationships. This includes full disclosure of any actual, apparent or potential conflicts of interest, as set forth below. Many actual, apparent or potential conflicts of interest can be resolved or avoided if they are appropriately disclosed and approved. In some instances, disclosure may not be sufficient and the Company may require that the conduct in question be stopped or that actions taken be reversed where possible.

Although we cannot list every conceivable conflict, what follows are some common examples of actual, apparent and potential conflicts of interest, and the

persons to whom employees should make disclosures. You may not engage in any conduct that creates an actual or apparent conflict of interest, including those situations described below, unless you first disclose all the relevant facts to the Compliance Officer and the Company, in its sole discretion, determines to approve the situation. Any such approval must be obtained in writing. If you are involved in a conflict situation that is not described below, you should discuss your particular situation with the Compliance Officer.

Special rules apply to actual, apparent or potential conflict of interests involving executive officers and directors. Specifically, before engaging in any conduct that may involve such a conflict, executive officers and directors must make full disclosure of all facts and circumstances to the General Counsel who will inform and seek the approval of the Audit Committee of the Board of Directors.

3.1 Improper Personal Benefits from the Company

Conflicts of interest arise when an employee or director, or a member of his or her family, receives improper personal benefits as a result of his or her position in the Company. You may not accept any benefits from the Company, including any Company loans or guarantees of your personal obligations, that have not been duly authorized and approved pursuant to Company policies and procedures, including without limitation the Company's Corporate Aircraft Policy and the Company's Personal Loan Policy. Consistent with applicable law and the Company's Personal Loan Policy, the Company will not make any personal loans to, nor guarantee the personal obligations of, directors or officers. Please refer to the Company's Personal Loan Policy for more details.

3.2 Financial Interests in Other Businesses

You may not own a significant interest in any company that competes with the Company. You may not own a significant interest in a company that does business with the Company (such as a Company tenant or supplier) without the prior written approval of the Compliance Officer. However, it is not typically considered a conflict of interest (and therefore, approval is not required) if the entity is a publicly traded company and you and your family members' only relationship with any such entity is to have an interest of less than 2% of the outstanding shares of the company.

3.3 Business Arrangements with the Company

You may not participate in a joint venture, partnership or other business arrangement with the Company.

3.4 Outside Employment or Activities With a Competitor

Simultaneous employment with or serving as a director of a competitor of the Company is prohibited, as is any activity that is intended to or that you should reasonably expect to advance a competitor's interests. You may not market products or services in competition with the Company's current or potential business activities. It is your responsibility to consult with the Compliance Officer to determine whether a planned activity will compete with any of the Company's business activities before you pursue the activity in question.

3.5 Outside Employment With a Guest, Patron, Visitor, Tenant or Supplier

You may not be employed by, serve as a director of or represent any supplier, joint venture partner or tenant of the Company. Similarly, you may not be or be employed by, serve as a director of, or represent, a supplier to the Company. In addition, you may not accept money or benefits of any kind as compensation or payment for any advice or services that you may provide to a guest, patron, visitor, tenant or supplier or anyone else in connection with its business with the Company, other than gratuities or tips received in accordance with generally accepted business practices for the industry.

3.6 Charitable, Government and Other Outside Activities

The Company encourages all employees to participate in projects and causes that further the welfare of our local communities. However, employees must obtain the prior written approval of the Compliance Officer before serving as a director or trustee of any charitable, not-for-profit, for-profit, or other entity or before running for election or seeking appointment to any government-related position. Directors and senior officers should refer to the Company's Corporate Guidelines before serving as a director or trustee of another organization.

3.7 Family Members Working In The Industry

You may find yourself in a situation where your spouse, domestic partner or significant other, your children, parents, or in-laws, or someone else with whom you have a close familial relationship is a competitor, supplier, or tenant of the Company or is employed by one. Such situations are not prohibited, but they call for extra sensitivity to security, confidentiality and potential conflicts of interest.

There are several factors to consider in assessing such a situation. Among them: the relationship between the Company and the other company; the nature of your responsibilities to the Company and those of the other person; and the access each of you has to your respective organization's confidential information. Such a situation, however harmless it may appear to you, could arouse suspicions among your colleagues that might affect your working relationships.

To remove any such doubts or suspicions, you must disclose your specific situation to the Compliance Officer to assess the nature and extent of any concern and how it can be resolved. In some instances, any risk to the Company's interests is sufficiently remote that the Compliance Officer may only remind you to guard against inadvertently disclosing Company confidential information and not to be involved in decisions on behalf of the Company that involve the other company.

3.8 Corporate Opportunities

Employees and directors owe a duty to the Company to advance its legitimate interests when the opportunity to do so arises. If an employee or director learns of a business or investment opportunity through the use of corporate property or information or his or her position at the Company, such as from a competitor or actual or potential customer, supplier or business associate of the Company, he or she may not personally participate in the opportunity or make the investment without the prior written approval of the Compliance Officer. Executive officers and directors must obtain the prior approval of the Audit Committee of the Board of Directors. Such an opportunity should be considered a business or investment opportunity for the Company in the first instance. You may not use corporate property or information or your position at the Company for improper personal gain, and you may not compete with the Company.

4.0 ENTERTAINMENT, GIFTS AND GRATUITIES

4.1 Receipt of Gifts and Entertainment

Accepting gifts from any organization or individual doing business or seeking to do business with the Company is prohibited. All employees and directors are prohibited from accepting gifts valued at more than $250 (including below market purchases of goods and services). Gifts worth more than $250 should be returned with the explanation that Company policy prohibits the acceptance of substantial gifts. Gifts considered customary, reasonable and valued at less than $250 may be accepted. However, even nominal gifts should not be accepted if the potential for a conflict of interest or personal obligation exists. Additionally, employees and directors should avoid a pattern of accepting frequent gifts from the same source.

This policy does not prohibit tip category employees from accepting gratuities received during the performance of their regular job duties.

4.2 Offering Gifts and Entertainment

When you are providing a gift, entertainment or other accommodation in connection with Company business, you must do so in a manner that is in good

taste and without excessive expense. Except for complimentary goods and services customarily provided to customers in the ordinary course of the Company's business, you may not furnish or offer to furnish any gift that is of more than token value or that goes beyond the common courtesies associated with accepted business practices. You should follow the above guidelines for receiving gifts in determining when it is appropriate to give gifts.

Our suppliers and tenants likely have gift and entertainment policies of their own. You must be careful never to provide a gift or entertainment that you know violates the other company's gift and entertainment policy. Special rules apply in the context of dealing with government officials and employees. See "Interacting with Government—Prohibition on Gifts to Government Officials and Employees" below.

Giving or receiving any payment or gift in the nature of a bribe or kickback is absolutely prohibited.

5. PROTECTION AND PROPER USE OF COMPANY ASSETS AND INFORMATION

We each have a duty to protect the Company's assets and promote their efficient use. Theft, carelessness and waste have a direct impact on the Company's profitability. We should take measures to prevent damage to and theft or misuse of Company property. When you leave the Company, all Company property must be returned to the Company. Except as specifically authorized, Company assets, including Company time, equipment, materials, resources and proprietary information, must be used for business purposes only. Incidental personal use of equipment such as telephones and office supplies is permitted.

5.1 Computer, Internet, Intranet, E-mail Use

The Company provides access to computers, the internet, the Company's intranet, e-mail and other electronic communication and data storage devices ("Computer Systems") to assist individuals in performing their job duties. Employees should not consider their use of the Computer Systems provided by the Company to be subject to personal privacy. All such use can and will be monitored and controlled by the Company. All employees authorized to use the Computer Systems must take care to safeguard all login and password information to protect the integrity of the Computer Systems. Additionally, employees must use the Computer Systems as intended and maintain the confidentiality of all proprietary information.

Please refer to the policy guide applicable to your particular operating subsidiary for more details.

5.2 Workplace Monitoring – Ensuring Safety and Security for All

The Company conducts regular and routine video monitoring of its physical premises, including but not limited to all public, work and back of house areas. Video monitoring is utilized for numerous reasons, including but not limited to promoting guest service, identifying potential safety concerns, maintaining quality control standards, detecting acts of misconduct, and preventing acts of harassment and/or violence. The Company reserves the right to utilize other monitoring techniques as deemed necessary and appropriate for the protection of its guests, its employees and its property.

Employees should have no expectation of privacy in any public, work and back of house areas on the Company's premises. In addition, the Company's provision of an office to an employee that may otherwise have restricted access does not transform the office into a private area. These offices are considered work areas and are also subject to video monitoring. Therefore, occupants of offices should have no expectation of privacy in such areas.

5.3 Protection of Intellectual Property

The Company, and its affiliates, own multiple copyrights, trademarks, service marks, domain names and other forms of intellectual property ("Intellectual Property"). The Intellectual Property must not be used or reproduced without the consent of the Company and then only for authorized use in connection with the Company's business. Every effort must be undertaken to protect the Intellectual Property from illegal copying or misuse. If you have any questions regarding the use or protection of Intellectual Property, please call the Legal Department.

5.4 Confidentiality

Directors and employees are expected to maintain the confidentiality of information entrusted to them, from whatever source, during the course of performing their responsibilities for the Company, unless disclosure is expressly authorized or legally required. This includes information about the Company and information about third parties such as current or prospective vendors, suppliers, tenants, business partners, customers or employees. You should use Company and third party confidential information only for legitimate business purposes, and limit the dissemination of the information (both inside and outside the Company) to those who have a need to know the information for legitimate business purposes. If you are uncertain about whether information is confidential, you should treat it as such until you obtain further guidance. The obligation to protect confidential information continues even after your relationship with the Company ends. If you have any questions regarding the use or protection of confidential information, please call the Legal Department. In addition to the provisions of this section of the Code, directors should also refer to the Company's Policy Regarding Nondisclosure and Nonuse of Confidential Information.

5.5 Insider Trading

You are prohibited by the Company's Insider Trading Policy and the law from buying or selling securities of any company at a time when you are in possession of "material non-public information" about that company. This conduct is known as "insider trading." The prohibition on insider trading applies to Company securities and to securities of other companies if you learn material non-public information about other companies, such as the Company's suppliers or tenants, in the course of your duties for the Company. Communicating material non-public information about a company to someone who may buy or sell the company's securities - known as "tipping" - is also illegal. Federal and international law enforcement officials have sophisticated techniques for identifying insider trading and tipping and vigorously enforce these laws regardless of where the activity occurs or the amount involved.

Information is "material" if (a) there is a substantial likelihood that a reasonable investor would find the information "important" in determining whether to trade in a security; or (b) the information, if made public, likely would affect the market price of a company's securities.

Information is considered to be “non-public” unless it has been disclosed and broadly disseminated to the public by the Company, which means that the information must be publicly disclosed by the Company through appropriate channels (such as by means of a filing with the Securities and Exchange Commission, a press release or a widely disseminated statement from a senior officer) and adequate time (generally at least a full trading day) must have passed for the securities markets to digest the information.

Insider trading is a crime punishable by civil penalties of up to three times the profit gained or losses avoided on a transaction, criminal fines of up to $5 million, and up to 20 years in prison. Companies may also face civil penalties, up to the greater of over $1 million or three times the profit gained or losses avoided, for insider trading violations by their employees and other agents. "Tipping" can result in the same civil and criminal penalties that apply if an individual engages in insider trading directly, even if the individual does not receive any money or derive any benefit from trades made by others to whom the individual passed material non-public information.

5.6 Record Retention

In the course of its business, the Company produces and receives large numbers of records. Numerous laws require the retention of certain Company records for various periods of time. The Company is committed to compliance with all applicable laws, rules and regulations relating to the preservation of records. The Company's policy is to identify, maintain, safeguard, sort and either destroy or

retain all records in the Company's possession on a systematic and regular basis. Under no circumstances are Company records to be destroyed selectively or to be maintained outside Company premises or designated storage facilities, except in those instances where Company records may be temporarily brought home by employees working from home in accordance with approvals from their supervisors.

If you learn of a subpoena or a pending or contemplated litigation or government investigation, you should immediately contact the Legal Department. You must retain and preserve ALL records that may be responsive to the subpoena or relevant to the litigation or that may pertain to the investigation until you are advised by the Legal Department as to how to proceed. You must also affirmatively preserve from destruction all relevant records that without intervention would automatically be destroyed or erased (such as e-mails and voicemail messages). Destruction of such records, even if inadvertent, could seriously harm the Company. If you have any questions regarding whether a particular record pertains to a pending or contemplated investigation or litigation or may be responsive to a subpoena or regarding how to preserve particular types of records, you should preserve the records in question and ask the Legal Department for advice.

5.7 Company Books and Records

It is Company policy to make full, fair, accurate, timely and understandable disclosure in compliance with all applicable laws, rules and regulations in all reports and documents that the Company files with, or submits to, the Securities and Exchange Commission and all other governmental, quasi-governmental and self-regulatory bodies and in all other public communications made by the Company. You are required to abide by Company standards, policies and procedures designed to promote compliance with this policy.

You must complete all Company documents accurately, truthfully, and in a timely manner, including all travel and expense reports. When applicable, documents must be properly authorized. You must record the Company's financial activities in compliance with all applicable laws and accounting practices. The making of false or misleading entries, records or documentation is strictly prohibited. You must never create a false or misleading report or make a payment or establish an account on behalf of the Company with the understanding that any part of the payment or account is to be used for a purpose other than as described by the supporting documents.

5.8 Responding to Inquiries from the Press and Others

Company employees who are not officially designated Company spokespersons may not speak with the press, securities analysts, other members of the financial community, stockholders or groups or organizations as a Company

representative or about Company business unless specifically authorized to do so by the vice president of investor relations or the public relations department. Employees generally should refer requests for financial or other information about the Company from the media, the press, the financial community, stockholders or the public to the vice president of investor relations or the public relations department. Requests for information from regulators or the government should be referred to the Legal Department. Directors should refer to the Company's Policy Regarding Board Communications.

6. INTERACTING WITH GOVERNMENT

6.1 Prohibition on Gifts to Government Officials and Employees

Different governments have different laws restricting gifts, including meals, entertainment, transportation and lodging that may be provided to government officials and government employees. You are prohibited from providing gifts, meals or anything of value to government officials or employees or members of their families in connection with Company business without prior written approval from the Compliance Officer.

6.2 Political Contributions and Activities

Laws of certain jurisdictions prohibit the use of Company funds, assets, services, or facilities on behalf of a political party or candidate. Political contributions (including direct or indirect payments of corporate funds to any political party, candidate or campaign, contributions by political action committees funded by employee donations, contributions to social welfare and political organizations, and trade association dues) may be made only if permitted under applicable law and approved in writing and in advance by the Compliance Officer or Chief Executive Officer. Affiliates of the Company have filed applications for gaming licenses in both the Commonwealth of Pennsylvania and the Commonwealth of Massachusetts. Both Pennsylvania and Massachusetts law prohibits the Company, its affiliates, its officers, directors and key employees, from making political contributions (cash or in kind), direct and indirect, to candidates, political parties, political party committees or other groups, committees or associations, including PACs for any candidate for public office in either Pennsylvania or Massachusetts. Any proposed political contributions relating to Pennsylvania or Massachusetts candidates, parties or organizations must be cleared in advance by the General Counsel.

Your work time may be considered the equivalent of a contribution by the Company. Therefore, unless required by applicable law, you will not be paid by the Company for any time spent running for public office, serving as an elected official, or campaigning for a political candidate. Nor will the Company compensate or reimburse you, in any form, for a political contribution that you intend to make or have made.

If you speak out on public issues, including through postings on social media websites or communications, you should make clear that you are expressing your individual views. Employees should not indicate or do anything to suggest that they are speaking or acting on the Company's behalf.

6.3 Prohibition on Bribery of Government Officials

The Company's Anti-Corruption Policy, the U.S. Foreign Corrupt Practices Act (the "FCPA"), and the laws of many other countries prohibit the Company and its directors, officers, employees and agents or other third parties from giving or offering to give money or anything of value, directly or through an intermediary, to a foreign official, employees of a state-owned company, a foreign political party, a party official or a candidate for political office in order to attempt to influence official acts or decisions of that person or entity, to obtain or retain business, or to secure any improper advantage.

Please refer to the Company's Anti-Corruption Policy for more details regarding prohibited payments to foreign government officials.

7. IMPLEMENTATION OF THE CODE

7.1 Responsibilities

While each of us is individually responsible for putting the Code to work, we need not go it alone. The Company has a number of resources, people and processes in place to answer our questions and guide us through difficult decisions. Copies of this Code are available from the Compliance Officer and on the Company's website. This Code will be distributed annually to all employees, directors and other individuals to whom it applies who will be asked to certify that they have read and understand the Code and that they have complied and will comply with its terms. If you know of or suspect a violation of applicable laws, rules or regulations, the Code, or the Company's related policies, you must immediately report that information as described in Section 1.4 of this Code.

7.2 Investigations of Suspected Violations

All reported violations of the Code will be taken seriously and promptly investigated. All reports will be treated confidentially to the extent reasonably possible. It is the Company's policy that no one will be subject to retaliation or adverse employment action because of a good faith report of suspected misconduct or for assisting in the investigation of suspected misconduct. It is imperative that reporting persons not conduct their own preliminary investigations. Investigations of alleged violations may involve complex legal issues, and acting on your own may compromise the integrity of an investigation and adversely affect both you and the Company.

7.3 Discipline for Violations

The Company intends to use every reasonable effort to prevent the occurrence of conduct not in compliance with the Code and to halt any such conduct that may occur as soon as reasonably possible after its discovery. Subject to applicable law and agreements, Company personnel who violate this Code and other Company policies and procedures may be subject to disciplinary action, up to and including discharge.

7.4 Waivers of the Code

The Company may waive application of the policies set forth in this Code but only when the Company determines in its sole discretion that circumstances warrant granting a waiver. Any waivers must be obtained in writing from the Compliance Officer or the Legal Department. Waivers of the Code for directors and executive officers may be made only by the Board of Directors as a whole or the Audit Committee of the Board and must be promptly disclosed to the extent required by law or regulation. Any waiver granted by the Audit Committee of the Board must be reported to the Board of Directors as a whole.

7.5 No Rights Created

This Code is a statement of the fundamental principles and key policies and procedures that govern the conduct of the Company's business. It is not intended to and does not create any obligations to or rights in any employee, director, client, supplier, competitor, stockholder or any other person or entity.

7.6 Remember

Ultimate responsibility to see that we as a Company comply with the many laws, rules, regulations and ethical standards affecting our business rests with each of us. You must become familiar with and conduct yourself strictly in compliance with those laws, rules, regulations and standards and the Company's policies and guidelines pertaining to them.

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada Corporation, Plaintiffs, vs. KAZUO OKADA, an individual; ARUZE USA, INC., a Nevada corporation, UNIVERSAL ENTERTAINMENT CORPORATION, a Japanese corporation, Defendants. AND ALL RELATED CLAIMS.	CASE NO. A-12-656710-B Dept. No.: XI **ORDER ON WYNN RESORTS, LIMITED'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER** Hearing Date: July 22, 2016 Hearing Time: 2:00 p.m. **ELECTRONIC FILING CASE**

Plaintiff Wynn Resorts, Limited's ("Wynn Resorts") *Ex Parte* Application For Temporary Restraining Order, Motion For Preliminary Injunction, And Motion For Sanctions For Violations Of The Protective Order; Ex Parte Application For An Order Shortening Time, filed on Order Shortening Time on July 20, 2016 (the "Application"), came before this Court for hearing on July 22, 2016 at 2:00 p.m. James J. Pisanelli, Esq., Todd L. Bice, Esq., and Debra L. Spinelli, Esq., of Pisanelli Bice appeared on behalf of Plaintiff/Counterdefendant Wynn Resorts, Limited and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman (collectively the "Wynn Parties"). J. Colby Williams, Esq., of Campbell & Williams, appeared on behalf of Counterdefendant/Cross-defendant Stephen A. Wynn ("Mr. Wynn"). William R. Urga,

Esq. and David Malley, Esq., of Jolley Urga Woodbury & Little, and Michael T. Zeller, Esq. of Quinn Emmanuel, appeared on behalf of Counterdefendant/Counterclaimant/Cross-claimant Elaine P. Wynn ("Ms. Wynn"). And, J. Stephen Peek, Esq., of Holland & Hart, LLP, appeared behalf of Defendant Kazuo Okada ("Okada") and Defendants/Counterclaimants/Counter-defendants Aruze USA, Inc. ("Aruze USA") and Universal Entertainment Corp. ("Universal") (collectively the "Okada Parties").

The Court having considered the Motion, the Opposition filed by Ms. Wynn, as well as the arguments of counsel presented at the hearing, and good cause appearing therefor, THE COURT HEREBY FINDS THAT:

Based on the record before the Court, the Court finds it appropriate to grant the motion for temporary restraining order in a limited respect. In particular, the temporary restraining order is granted to the extent that the Court is requiring that Elaine Wynn specifically comply with all terms of the protective order with respect to confidentiality that was entered by the Court on February 14, 2013.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Wynn Resorts' Application for a Temporary Restraining Order is GRANTED; and

2. Ms. Wynn is required to specifically comply with all terms of the Protective Order.

3. Wynn Resorts will suffer irreparable harm because if Ms. Wynn releases information designated as Confidential or Highly Confidential under the Protective Order.

4. Prior to release of any information, Ms. Wynn (or her agents, or counsel) must seek permission from the Court to release information obtained in discovery, including information from any deposition that has been designated as Confidential or Highly Confidential pursuant to the Protective Order.

5. The deposition of Ms. Wynn and the individual who placed the anonymous phone call to Ernst & Young; and the deposition of either the 30(b)(6) designee of Ernst & Young or the person at Ernst & Young who received the phone call may be completed prior to the hearing on

the preliminary injunction. Additional discovery on these issues may be taken upon agreement of the parties[1] or by order of the court.

6. The Court further orders that security is set at a nominal amount of $ 100.

7. The Hearing on Wynn Resorts' Motion for Preliminary Injunction and Sanctions will be scheduled after completion of the discovery ordered herein.

8. The Temporary Restraining Order shall remain in place until the conclusion of the preliminary injunction hearing.

IT IS SO ORDERED.

DATED this 12 day of Aug, 2016.

DISTRICT COURT JUDGE

[1] Because of the privileged nature of the issues which form the basis of these depositions, the Okada parties are precluded from participation in the depositions, but may request a copy of the record of the depositions. Wynn may seek redaction or other protection from the Court to maintain privileged information.