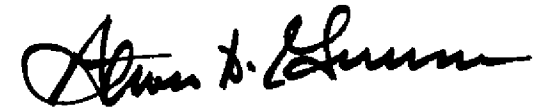


EXHIBIT 1

EXHIBIT 1



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and Universal Entertainment Corp.

DISTRICT COURT

CLARK COUNTY, NEVADA

19 WYNN RESORTS, LIMITED, a Nevada
20 corporation,

21 Plaintiff,

22 v.

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

25 Defendants.

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

**ORDER GRANTING THE ARUZE
PARTIES' MOTION TO COMPEL
SUPPLEMENTAL RESPONSES TO
THEIR SECOND AND THIRD SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO WYNN RESORTS,
LIMITED**

Electronic Filing Case

Hearing Date: June 4, 2015
Hearing Time: 8:30 a.m.

27 AND ALL RELATED CLAIMS.
28

1 The Aruze Parties’ Motion to Compel Supplemental Responses to Their Second and
2 Third Set of Requests for Production of Documents to Wynn Resorts, Limited (the “Motion”),
3 filed on April 28, 2015, came before this Court for hearing on June 4, 2015 at 8:30 a.m. James J.
4 Pisanelli, Esq. and Debra L. Spinelli, Esq. of Pisanelli Bice PLLC and Robert L. Shapiro, Esq. of
5 Glaser Weil Fink Howard Avchen & Shapiro, LLP appeared on behalf of
6 Plaintiff/Counterdefendant Wynn Resorts, Limited and Counterdefendants Linda Chen, Russell
7 Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
8 Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman (the “Wynn Parties”). Donald J.
9 Campbell, Esq. and J. Colby Williams, Esq., of Campbell & Williams, appeared on behalf of
10 Counterdefendant/Cross-defendant Stephen A. Wynn (“Mr. Wynn”). William R. Urga, Esq., of
11 Jolley Urga Woodbury & Little, and Jeffrey Wu, Esq. of Munger, Tolles & Olson LLP appeared
12 on behalf of Counterdefendant/Counterclaimant/Cross-claimant Elaine P. Wynn (“Ms. Wynn”).
13 J. Stephen Peek, Esq. and Robert J. Cassity, Esq. of Holland & Hart LLP, and David S. Krakoff,
14 Esq. and Adam Miller, Esq. of BuckleySandler LLP, appeared on behalf of Defendant Kazuo
15 Okada and Defendant/Counterclaimant/Counter-defendant Aruze USA, Inc. (“Aruze USA”) and
16 Defendant/Counterclaimant Universal Entertainment Corp. (“Universal”) (the “Aruze Parties”).

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

20 IT IS HEREBY ORDERED that the Aruze Parties’ Motion is GRANTED as follows:

21 The Wynn Parties shall produce all non-privileged documents responsive to the Aruze
22 Parties’ Requests No. 82, 86, 89, 90, 93, 114, 118-120, 122-149, 152, 166-167, 205-206, 215,

23 ///

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28

1 230-234, 235, 236, 238, 239, 240-242, 249-250, 259-266, 269-278, 283, 289, and 294.

2 DATED this 19th day of June, 2015.

3
4 
5 THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

6 Respectfully submitted by:

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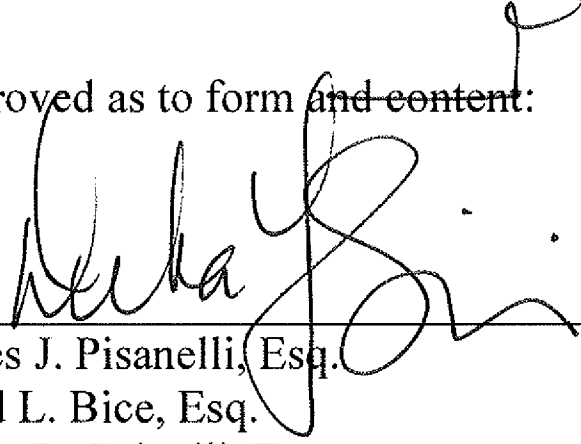
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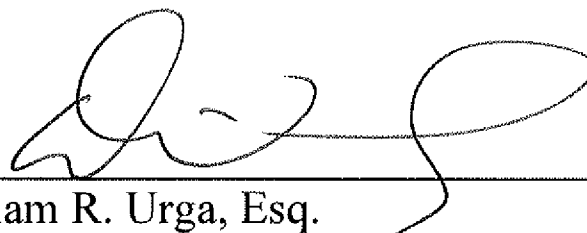
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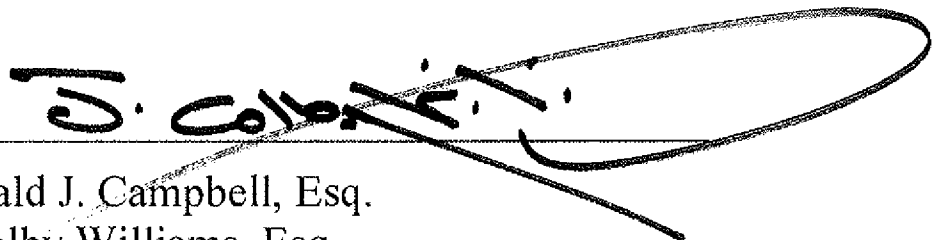
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IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS, LIMITED,

Petitioner,

v.

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

Respondent,

and

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

Real Parties in Interest.

Electronically Filed
Dec 08 2016 08:19 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 71638

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

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

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*Attorneys for Real Parties in Interest
Kazuo Okada, Universal Entertainment
Corp. and Aruze USA, Inc.*

Real Parties in Interest Aruze USA, Inc., Universal Entertainment Corp., and Kazuo Okada (the "Aruze Parties") respectfully submit this Opposition to the Motion to Extend District Court's Stay Pending Writ Petition and Rule 27(e) Emergency Motion for Interim Extension of Stay (the "Motion") filed by Petitioner Wynn Resorts, Limited ("Wynn Resorts") on December 2, 2016.¹ Wynn Resorts has delayed this discovery for over two years, and its Petition is yet another delay tactic. The Motion should also be denied because Wynn Resorts has not carried its burden of establishing the factors warranting a stay as set forth in *Hansen v. Eighth Judicial District Court*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000).

A. Wynn Resorts Is Not Likely to Prevail on Its Petition

The Petition clearly lacks merit. The district court compelled Wynn Resorts, a party properly before the district court, to produce documents that are within its possession, custody and control. NRCP 34(a)(1). Contrary to Wynn Resorts' claim, the Order does not "compel discovery from foreign entities that are neither parties to the case nor subject to jurisdiction in Nevada." Mot. at 1. The documents at issue are discoverable because they are in the possession of Wynn

¹ The district court made abundantly clear that it would not extend its stay of the challenged order by more than thirty days, and thus, any further stay would have to come from this Court. *See* Motion, Ex. A, at 10. Despite knowing that the stay would expire on Monday December 5, 2016, Wynn Resorts waited until late on the preceding Friday afternoon to file its Motion, thereby forcing the Aruze Parties to respond in less than one business day.

Resorts' subsidiary, Wynn Macau Ltd. ("Wynn Macau"). Numerous cases establish that control under Rule 34 "does not require that the party have legal ownership or actual physical possession of the documents at issue; rather, documents are considered to be under a party's control when that party has the right, authority, or practical ability to obtain the documents from a non-party to the action." *In re NTL, Inc. Sec. Litig.*, 244 F.R.D. 179, 195 (S.D.N.Y. 2007) (internal quotation marks omitted).² Thus, the fact that Wynn Resorts' subsidiary is a "foreign non-party," Motion at 2, is irrelevant because the documents are within Wynn Resorts' control. The district court has ordered Wynn Resorts, not its foreign subsidiary, to produce the documents. Moreover, Wynn Resorts has demonstrated its control over Wynn Macau by producing in this case many other documents in Wynn Macau's possession—including providing documents in the

² See also *Ice Corp. v. Hamilton Sundstrand Corp.*, 245 F.R.D. 513, 517 (D. Kan. 2007) ("Rule 34 performs the salutary function of creating access to documentation in an economical and expeditious fashion by requiring a party to produce relevant records not in its physical possession when the records can be *obtained easily* from a third-party source. Production of documents not in a party's possession is required if a party has the *practical ability* to obtain the documents from another, irrespective of legal entitlements to the documents." (internal quotation marks omitted) (footnote omitted)); *N.Y. ex rel. Boardman v. Nat'l R.R. Passenger Corp.*, 233 F.R.D. 259, 268 (N.D.N.Y. 2006) ("The term control in the context of discovery is to be broadly construed. The critical inquiry is whether the party-litigant can exercise custody and control over the documents. The rubric of this query is not limited to whether the party has a legal right to those documents but rather that there is 'access to the documents' and 'ability to obtain the documents.'" (citations omitted)).

possession of Wynn Macau to a third party in furtherance of its investigation of Mr. Okada and subsequent improper redemption of Aruze USA's stock in Wynn Resorts. *Id.* at 11.

Wynn Resorts seeks to avoid its discovery obligations based on what it claims are the requirements of a foreign privacy statute, the Macau Personal Data Protection Act ("MPDPA"). But, as this Court clearly held in a recent case involving the MPDPA, in which counsel for Wynn Resorts was the proponent of discovery notwithstanding the Macau blocking statute, "civil litigants *may not utilize foreign international privacy statutes as a shield to excuse their compliance with discovery obligations in Nevada courts.* Rather, the existence of an international privacy statute is relevant to a district court's sanctions analysis if the court's discovery order is disobeyed." *Las Vegas Sands Corp. v. Eighth Judicial Dist. Court*, 130 Nev., Adv. Op. 61, 331 P.3d 876, 877 (2014) (emphasis added). Thus, there is no legal basis to overturn the district court's production order.

B. The Aruze Parties Will Be Irreparably Harmed by a Stay

The Aruze Parties will suffer irreparable harm from a stay. This Motion is yet another unjustified delay tactic by Wynn Resorts that will slow the progress of the litigation and hamper their preparations for trial. The documents at issue were first requested in discovery more than two years ago, and the district court ordered them produced nearly eighteen months ago. *See Exhibit 1.* But, it has become

Wynn Resorts' practice to use extraordinary writ practice to disrupt and delay the Aruze Parties' discovery efforts—this is the *fourth* writ petition filed by Wynn Resorts in the past 18 months. The Court should not encourage this form of dilatory practice.³

C. Wynn Resorts Will Suffer No Harm from Denial of the Stay

Wynn Resorts will not suffer irreparable harm if the stay is denied. This is apparent because Wynn Resorts has not taken all available and reasonable steps to avoid any harm that may come from a compelled production of the documents. In the district court, Wynn Resorts admitted that it can and does seek guidance from the Macau Office for Personal Data Protection ("MOPDP") before it responds to discovery requests. 3 PA 597. The MOPDP is empowered to relieve Wynn Resorts of any burdens imposed by Macau's privacy laws. *See* Pet. at 10. However, Wynn Resorts has not sought such relief, which demonstrates that it is not really concerned with Macau's privacy laws. Instead, its goal is to make the discovery process as difficult and time-consuming as possible for the Aruze Parties.

³ While the underlying litigation is currently stayed pending a hearing on Wynn Resorts' motion to disqualify counsel for another party, when that stay is lifted the discovery period will be nearly over. Based on past experience, even after Wynn Resorts has exhausted all legal avenues to avoid production it will still delay as long as possible. Thus, it is important that the order to produce be finalized as soon as possible.

D. Denial of a Stay Would Not Defeat the Object of the Petition

The object of the Petition will not be defeated if the stay is denied. Wynn Resorts disingenuously argues that the "purpose of the Petition would be interfered with" because "the Petition seeks to enjoin the District Court's Order as exceeding its jurisdiction." Mot. at 2. But, the district court's order merely compels Wynn Resorts—*not its subsidiary*—to produce documents that are within Wynn Resorts' "control" under NRCP 34(a)(1).

Moreover, denial of the stay will not cause any irreversible impact to Wynn Resorts or waive any of its rights.⁴ Wynn Resorts has preserved its argument that it lacks "control" over its subsidiary's documents for purposes of NRCP 34(a)(1). And, if Wynn Resorts does produce the documents, it will still retain the right to argue that they should not be admissible at trial. As to waiver, Wynn Resorts does not claim that the requested documents are privileged under Nevada law, and thus producing them will not constitute a waiver of privilege. *See Gowan v. Mid Century Ins. Co.*, 309 F.R.D. 503, 510 (D.S.D. 2015) ("[C]ontrol does not,

⁴ *See Hansen*, 116 Nev. at 657-58, 6 P.3d at 986 (concluding that the "object of the writ petition" would not be defeated because denial of the petition would not waive petitioner's right to raise arguments in subsequent proceedings); *see also Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252-53, 89 P.3d 36, 39 (2004) (determining in appeal regarding order denying arbitration that object of appeal would be defeated if stay is denied because "[t]he benefits of arbitration would likely be lost or eroded if it were necessary for an appellant to simultaneously or sequentially proceed in both judicial and arbitral forums").

however, automatically mean [documents] are discoverable. The work product doctrine and the attorney-client privilege still apply and may be asserted in opposition to discovery, along with the appropriate privilege log.").

CONCLUSION

For the foregoing reasons, the Aruze Parties respectfully request that Wynn Resorts' Motion be denied.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFR 9(f), I hereby certify that I am an employee of Morris Law Group; that on this date I electronically filed the following document: **ARUZE PARTIES' OPPOSITION TO PETITIONER'S MOTION TO EXTEND DISTRICT COURT'S STAY PENDING WRIT PETITION AND RULE 27(E) EMERGENCY MOTION FOR INTERIM EXTENSION OF STAY** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

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Dated this 7th day of December, 2016.

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