

REPORT
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Emelio Marcello	PAGCOR Consultant	WLV Nov 12-17 2009	1,181.60
		WM June 7-9 2010	471.51
Carlos Bautista	PAGCOR VP Legal	WM June 6-10 2010	1,049.69
Mario Cornista	PAGCOR Consultant	WM June 7-9 2010	600.02
Rene Figueroa	PAGCOR Executive VP	WM June 7-10 2010	646.76
Ernesto Francisco	PAGCOR Executive Committee and Casino General Manager	WM June 7-10 2010	797.17
Edward King	PAGCOR VP Corporate Communications	WM June 7-10 2010	767.71
Transportation	PAGCOR Delegation	WM Aug 2010	462.42
Jeffrey Opinion	Member of Naguiat Party	WM Sep 24-26 2010	906.61
Ed de Guzman	PAGCOR Executive Committee, AVP Slots	WM Jun 6-12 2011	3,421.79
Gabriel Guzman	Probable relative of Ed de Guzman (had adjoining room)	WM Jun 6-12 2011	1,391.71
(Thadeo) Francis P. Hernando ⁷¹	PAGCOR VP, Licensed Casino Development Dept.	WM Jun 8-10 2011	709.72
TOTAL			110,636.36

The total in the above table represents charges from the Aruze City Ledger Account that are readily identifiable as incurred directly by officials and consultants of PAGCOR,⁷² their family members and close associates, including Jose Miguel Arroyo, the then-First Gentleman of the Republic of the Philippines, husband of Philippine President Gloria Arroyo. Through a review of the Aruze City Ledger Account for statement periods March 2008 through November 2011, FSS has calculated that total charges to the account for that period, attributable to

⁷¹ This is the same PAGCOR official who denied the FSS request for documents in December 2011, including a copy of the Provisional License Agreement. See footnote 31.

⁷² In order to establish the PAGCOR affiliation of some of the individuals listed in this chart, various sources were consulted, including the PAGCOR website, internet news articles and the PAGCOR Referrals.

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PAGCOR officials, employees, consultants, their associates and family members, exceed USD 110,000.⁷³

FSS investigators interviewed members of the Wynn Macau management team, who furnished the following relevant information regarding a visit to that property in September 2010 by then and current PAGCOR Chairman and CEO Cristino L. Naguiat, Jr., his wife, three children, nanny and other PAGCOR officials, whose four-day stay at Wynn Macau was paid for via the Aruze City Ledger Account:

- September 20, 2010: Yoshiyuki Shoji of Universal, in an e-mail to Angela Lai of Wynn Macau, requests reservations for “Rogelio Bangsil (Guest Representative) & Others.” Mr. Shoji requests Encore Suite or “more gorgeous room, such as Villa,” and “the best butler” for unnamed person in group, who is “VIP for Universal.” Mr. Shoji states that guests other than Bangsil should not be registered, that all charges should be posted to Universal’s City Ledger,⁷⁴ and that “Mr. Okada would like them to experience the best accommodations and services at Wynn Macau.”⁷⁵ The communication makes no reference to PAGCOR or the government affiliation of the guests.
- September 20, 2010: In an e-mail to Wynn Macau President Ian Coughlan and others, Ms. Lai informs Mr. Coughlan of the reservation and that checks of websites indicate that Mr. Bangsil is in charge of PAGCOR’s gaming department.⁷⁶
- September 20, 2010: In an e-mail to Mr. Shoji, Ms. Lai advises that Wynn Macau is checking on availability of the requested upgrade and that Macau law requires that all room occupants be registered, and requests that all guest names be furnished in advance of or at the time of registration.⁷⁷
- September 22, 2010: In an e-mail to Wynn Macau President Ian Coughlan, Wynn Macau Senior Vice-President – Legal Jay M. Schall advises Mr. Coughlan of

⁷³ See City Ledger Account. [See Appendix]

⁷⁴ When Mr. Shoji set up the City Ledger Account for Mr. Okada in 2008, he asked whether the customer name and amount paid would be made public. He was advised that such information would not become public. Email response from Kim Sinatra to Shoji, dated February 8, 2008. [See Appendix]

⁷⁵ E-mail from Y. Shoji to A. Lai, September 20, 2010 [See Appendix]; interview of A. Lai, January 4, 2012.

⁷⁶ E-mail from A. Lai to I. Coughlan, September 20, 2011 [See Appendix]; interview of A. Lai, January 4, 2012; interview of I. Coughlan, December 29, 2011. It should be noted that according to an article in Manilatimes.net, published February 2, 2012, Rogelio Bangsil has recently been transferred to the PAGCOR international marketing department after a probe that found the government losing PHP 160 million in government run casinos to a Mr. Liu. [See Appendix]

⁷⁷ E-mail from A. Lai to Y. Shoji, September 20, 2010 [See Appendix]; interview of A. Lai, January 4, 2012.

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PAGCOR's 100% government ownership and of Mr. Bangsil's position there. He writes "Bangsil, the guest of Mr. Okada, is a top five (if not 3) officer."⁷⁸

- September 22, 2010 (14:00): Wynn Macau sends 1 Rolls Royce and 1 Elgrand to the airport, along with Masato Araki, Special Assistant to Mr. Okada; and Kenichiro Watanabe, another Universal associate, to meet arriving party, who arrived on Philippine Airline Flight 352 from Manila. They return with Chairman Cristino L. Naguiat, Rogelio Bangsil and Jeffrey Opinion at 14:45.⁷⁹ Only Mr. Bangsil furnishes his name upon registration. Ms. Lai and Wynn Macau VIP Services Manager Beatrice Yeung thereafter checks PAGCOR website and identifies Chairman Naguiat's name from his picture there.⁸⁰ Ms. Yeung's log and ongoing entries refer to "[I]ncognito (Mr. Naguiat, Cristino L.)."⁸¹
- Chairman Naguiat occupies Villa 81, the most expensive accommodation at Wynn Resorts Macau (about 7,000 square feet in size, which then cost about US 6,000 per day and is mostly reserved for "high rollers").
- September 22, 2010: the Wynn Encore log book reflects "Incognito (Mr. Naguiat) stayed in Villa 81 Master Bedroom 1."⁸²
- September 23, 2010 (10:00): Mr. Araki advises Ms. Yeung that Chairman Naguiat plans to have lunch with Miss Pansy Ho at MGM.⁸³
- September 23, 2010 (14:04): Jay Schall sends an email to Wynn Macau corporate security to check Worldcheck, as a rush job, for Cristino L. Naguiat Jr., Chairman and Chief Executive Officer of PAGCOR.⁸⁴

⁷⁸ E-mail from J. Schall to I. Coughlan, September 22, 2010 [See Appendix]; interview of J. Schall, January 3, 2012; interview of I. Coughlan, December 29, 2011.

⁷⁹ Wynn Macau Manager – Encore Logbook, September 22, 2010. [See Appendix]

⁸⁰ Interviews of Beatrice Yeung, January 4, 2012 and February 1, 2012; interviews of Angela Lai January 4, 2012 and February 2, 2012.

⁸¹ Wynn Macau Manager – Encore Logbook, September 22, 2010. [See Appendix]

⁸² Ibid. [See Appendix] During subsequent visits, Chairman Naguiat was identified as "Naguiat," though he was identified during his initial visit as "incognito." The negative inference to be drawn is an attempt to hide the payment of extremely costly expenses by a corporation connected with a regulated entity. The fact that he had only recently become chairman may have been a factor in his desire to keep his identity secret.

⁸³ Miss Ho is the daughter of Hong-Kong and Macau-based businessman Stanley Ho. Though Nevada gaming regulators found Miss Ho to be a suitable business partner for MGM Mirage, see <http://www.lvrj.com/business/45462797.html>, New Jersey regulators recommended that she be found unsuitable as MGM Mirage's joint venture partner in Macau. See <http://www.newjerseynewsroom.com/state/mgm-mirage-chooses-pansy-ho-over-atlantic-city>. [See Appendix]

⁸⁴ Email from Jay Schall to Peter Barnes of Wynn Macau Corporate Security, dated September 23, 2010. [See Appendix]

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- September 23, 2010: In an e-mail to Ms. Lai, with a copy to Mr. Okada, Mr. Shoji requests that a credit of US 5,000 be extended to each person now staying at the Villa for shopping and gaming, up to a total of US 50,000. According to Mr. Shoji's email, the funds are to be advanced by Wynn Macau and charged to the Universal City Ledger account.⁸⁵
- September 24, 2010 (13:45): MOP 80,000⁸⁶ (approximately US 10,000) is advanced from the Wynn Macau main cage to a Wynn Macau VIP Services employee (no longer employed at Wynn Macau), who in turn hands the money to Masato Araki, special assistant to president of Aruze USA, based upon instructions in the above referenced e-mail to Ms. Lai. The handover of funds is witnessed by Wynn Encore manager Alex Kong. The funds are charged to the Universal City Ledger Account.⁸⁷ MOP 15,000 of this sum is used to pay for a Chanel bag that Chairman Naguiat requested be purchased for his wife.⁸⁸
- September 24, 2010 (Approximately 14:00): Mrs. Naguiat, her three children, Mrs. Bangsil and her daughter arrive at Wynn Macau.
- September 24, 2010 (15:45): Wynn Macau employees meet Mr. Okada and his assistant, Jun Yoshie, at the airport, transport them to Wynn Macau and escort Mr. Okada to room 5688.⁸⁹
- September 24, 2010 (late afternoon): Mr. Coughlan receives a phone message from Mr. Yoshie that Mr. Okada would like to speak to him. Mr. Coughlan proceeds to an area near the Wynn Encore reception desk, where he meets Mr. Yoshie and Mr. Okada. They step into the Cristal Bar to talk, whereupon Mr. Okada, with Mr. Yoshie interpreting into English, tells Mr. Coughlan that the guests [referring to

⁸⁵ E-mail from Y. Shoji to A. Lai, September 23, 2010 [See Appendix]; e-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 24, 2010.

⁸⁶ MOP 80,000 was worth approximately US 9,816 at that time.

⁸⁷ Wynn Macau Manager – Encore Logbook, September 24, 2010 [See Appendix]; Wynn Macau "Miscellaneous Disbursement" record #013014, dated September 24, 2010 [See Appendix]; e-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012; interview of Alex Kong, February 1, 2012.

⁸⁸ Wynn Macau Manager – Encore Logbook, September 24, 2010. [See Appendix]. The Chanel bag was purchased by a Wynn Macau employee as per instructions by Mr. Araki, who works for Mr. Okada. The Wynn Macau employee gave the bag, store receipt and change to Mr. Araki to deliver to Mrs. Naguiat. Later, Mr. Araki stated that Mrs. Naguiat did not like the bag so he would give it to his own wife.

⁸⁹ Wynn Macau Manager – Encore Logbook, September 24, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012.

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Chairman Naguiat's party] are very important to Universal, and that Mr. Okada wants Mr. Coughlan to insure that they are well cared for during their stay.⁹⁰

- September 24, 2010 (17:00): Mr. Okada meets Chairman Naguiat (and approximately thirteen (13)) others in his party) for dinner at Okada Restaurant.⁹¹ Mr. Okada hosts the dinner and the bill for \$1,673.07 is charged to his room.
- September 25, 2010 (05:45): Wynn Macau employees meet Mr. Okada outside his room and escort him to a limousine, which transports him to the Macau Ferry Terminal for 07:00 scheduled ferry departure to Hong Kong International Airport.⁹²
- September 25, 2010: Beatrice Yeung describes in her log book "Movements – Incognito (Mr. Naguiat, Cristino L) / Mr. Bangsil, Rogelio / Mr. Opinion, Jeffrey (Mr. Okada's guests, Villa 81)."⁹³
- September 25, 2010: Mr. Araki requests a second advance of MOP 80,000 for guests in Villa 81. Ms. Yeung accompanies Mr. Araki to the Main Cage and obtains the advance for him.⁹⁴ [This makes a total of MOP 160,000 advanced for the use of Chairman Naguiat and his party and charged to the Universal City Ledger Account per Mr. Okada's orders, as relayed in Mr. Shoji's e-mail.]
- September 26, 2010 (11:10): Mr. Araki departs the Wynn Macau Encore main entrance. He hands Ms. Yeung MOP 4100, returning what he says is the remainder of the two cash advances for Chairman Naguiat's party.⁹⁵
- September 26, 2010 (13:15): Chairman Naguiat's party departs via Wynn Macau limousine to pick up Mrs. Naguiat from shopping and proceeds to the airport.⁹⁶

⁹⁰ Interviews of Ian Coughlan, January 5, 2012 and February 2, 2012.

⁹¹ Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 24, 2010. [See Appendix]

⁹² Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 25, 2010. [See Appendix]

⁹³ Wynn Macau Manager – Encore Logbook, September 25, 2010. [See Appendix]

⁹⁴ Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 25, 2010 [See Appendix]; Wynn Macau "Miscellaneous Disbursement" record #013066, dated September 25, 2010. [See Appendix]

⁹⁵ E-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; Wynn Macau Manager – Encore Logbook, September 26, 2010 [See Appendix]; handwritten and signed note dated "9/26/10" with notation "MOP 4,100". [See Appendix]. The returned funds were equal to approximately US 503.07 returned out of a total of approximately US 19,632 provided.

⁹⁶ Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 26, 2010. [See Appendix]

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- November 10, 2010: Mr. Shoji advises Mr. Coughlan in an e-mail of receipt of Wynn Macau's invoice for the late September 2010 visit, in which the Villa [for Chairman Naguiat] was charged at the amount of MOP 48,000. Mr. Shoji states that "I understand that Mr. Okada explained to you in Macau that they were our business guests and we made reservations for them and all charges are billed to our company. While some of charges [sic] will be reimbursed by them, room charges were planned to be borne by us as ordinary business expenses. Since the amount charged is too much and beyond the ordinary room charge, our company will be put in a very difficult position to give reasonable explanations if we are inquired by someone. I would appreciate if you would reconsider this matter and charge us the original rate (free upgrade to Villa) since the party directly dealing with [sic] on this matter is our company rather than the each [sic] individual guest." (Emphasis added.)⁹⁷
- On or about December 10, 2010: After e-mails and phone messages following Mr. Shoji's September 20, 2010 e-mail, Mr. Coughlan has a phone conversation with Mr. Shoji, in which he advises Mr. Shoji that, after internal Wynn Macau discussions, the final decision was that Wynn Macau would not provide the requested free upgrade for the Villa occupied during the September 2010 visit.⁹⁸

The foregoing recitation of facts surrounding the September 2010 visit of Chairman Naguiat and his party to Wynn Macau demonstrates several significant elements of that visit:

- Mr. Okada considered these guests to be very important to his company.
- An effort was made from the outset to conceal Chairman Naguiat's identity and official status, to the point of not even wanting to advise Wynn Macau management and staff.
- With Mr. Okada's knowledge, Chairman Naguiat and his family were provided with approximately US 20,000 cash to use for gaming and also shopping
- Mr. Okada's representative sought to have Wynn Resorts fund a portion of the expenses incurred by Chairman Naguiat and his party, i.e., the free upgrade to a Villa.

⁹⁷ E-mail from Y. Shoji to I. Coughlan, November 10, 2010 [See Appendix]; interviews of I. Coughlan, December 29, 2011 and January 5, 2012.

⁹⁸ Interviews of I. Coughlan, December 29, 2011 and January 5, 2012; e-mail string between I. Coughlan and Y. Shoji and others, September 20 to December 9, 2010, subject: "Invoice and Statement for September Stay." [See Appendix]

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- Mr. Okada's representative expressed apprehension about Universal being able to justify the level of expenditures in the event of future inquiries.

There is evidence that Mr. Okada personally directed the payments and gifts provided to Chairman Naguiat and his family during their luxury stay at Wynn Macau's most expensive accommodation in September 2010. On October 5, 2010, Mr. Araki sent an email to Wynn Macau in order to arrange for a "second group of PAGCOR" checking into Wynn Macau on October 8, 2010. Clearly referring back to Chairman Naguiat's stay less than two weeks earlier, Mr. Araki writes: "Our Chairman Okada once again instructed us to take care of the group, but not like last time meaning that we will not take care of their room charges and others." (Emphasis added). Mr. Araki, who worked for Mr. Okada and personally supervised Chairman Naguiat's luxury stay at Wynn Macau, appears to confirm Mr. Okada's personal knowledge and control of the payments for Chairman Naguiat.⁹⁹

It is significant to note that the leadership of PAGCOR, which is appointed by the President of the Republic of the Philippines, changed effective June 30, 2010, when Benigno S. Aquino III assumed office as President of the Republic of the Philippines, succeeding Gloria M. Arroyo. Former PAGCOR Chairman Efraim C. Genuino, an Arroyo appointee, left office effective June 30, 2010, and Cristino L. Naguiat, Jr., President Aquino's appointee, assumed the position of Chairman and CEO of PAGCOR on July 2, 2010.

A review of the Aruze City Ledger Account records reveals that, after June 30, 2010, there are no charges attributed to Mr. Genuino or any of his family members who collectively had three (3) separate stays at Wynn resorts (Macau or Las Vegas) while Mr. Genuino was PAGCOR Chairman.¹⁰⁰ Conversely, the Aruze City Ledger Account reflects charges for Chairman Naguiat, his family, and key PAGCOR staff from Chairman Naguiat's "new" administration only after Naguiat became PAGCOR Chairman. This sequence is evidence that the hosting of these persons at Wynn Resorts, and payments made for them through the Aruze City Ledger Account, are solely related to PAGCOR, the Philippines government agency in charge of licensing and regulating Mr. Okada's business interests.

It is also clear that, having already received approval from PAGCOR in 2008 for a Provisional Licensing Agreement to develop a gaming business in the Philippines, Mr. Okada had a strong and continuing motive through 2010 and beyond to maintain favorable relations with the Chairmen and senior officials of PAGCOR. As previously noted, PAGCOR's primary governmental mission is regulating gaming businesses in the Philippines. Mr. Okada's project in Entertainment City Manila was prominently featured in PAGCOR's annual reports for

⁹⁹ Email from Matt Araki to Beatrice Yeung dated October 5, 2010. [See Appendix]

¹⁰⁰ The sole exception identified, Rodolfo Soriano, Jr., is listed on the Aruze City Ledger Account as having a single room charge on August 18, 2010. [See Appendix]

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2008,¹⁰¹ 2009¹⁰² and 2010.¹⁰³ The 2010 Annual report features photos and messages from Chairman Naguiat, and several other members of the new PAGCOR leadership. The 2010 Annual report makes it clear that two of the proponents, Bloomsbury and the SM Consortium, are constructing their resorts and are expected to complete their first phase within 2014. The other two proponents (one of which is Tiger, the provisional licensee for Mr. Okada's casino project) are in the initial design stages and are expected to break ground in 2012.

The continuing coverage of Mr. Okada's Manila Bay Resorts project in PAGCOR's annual reports indicates that PAGCOR's interest in and oversight of this project did not stop with the granting of the Provisional Licensing Agreement in 2008. Indeed, the very nature of the Provisional Licensing Agreement requires continued oversight by PAGCOR officials. As Lazaro advised, the Provisional Licensing Agreement was issued in relation to the "Bagong Nayong Philipino Manila Bay Tourism City" project, which is also referred to as "PAGCOR City." PAGCOR City is envisioned to be a Las Vegas-style gaming and entertainment complex. The project was designed to attract proponents with established experience in the hotel and gaming business. PAGCOR released the "Terms of Reference," which detailed a list of requirements to which project proponents must conform in order to qualify for a PAGCOR license to operate within PAGCOR City.

The "Terms of Reference" section provides, in pertinent part, a mandatory Minimum Investment of US 1 Billion, consisting of both equity and debt, and the submission of an associated Project Implementation Plan within 120 days from signing of the Provisional License and approval by PAGCOR (Paragraph 4, Section II, Terms of Reference). Furthermore, within 30 days of signing of the Provisional License, proponents are required to submit a Performance Assurance Bond in the amount of PHP 100 Million to guarantee the completion of the project (Paragraph 8, Section II, Terms of Reference). Within 15 days of signing of the Provisional License, proponents are also required to open an Escrow Account (with an initial deposit of at least US 100 Million) through which funds for the project will pass. This Escrow Account must maintain a balance of at least US 50 Million. (Paragraph 9, Section II, Terms of Reference).

Specifically, paragraph 13 of the Terms of Reference states the following in relation to achieving a regular, non-provisional, Casino Gaming license:

¹⁰¹ PAGCOR 2008 Annual Report, pp. 12-18, viewed January 25, 2012 at <http://www.pagcor.ph/annual-reports/annual-2008/pagcor-annual-report-2008.html>. [See Appendix]

¹⁰² PAGCOR 2009 Annual Report, pp. 16-19, viewed January 25, 2012 at <http://www.pagcor.ph/annual-reports/annual-2009/pagcor-annual-report-2009.html>. [See Appendix]

¹⁰³ PAGCOR 2010 Annual Report, pp. 24-26, viewed January 25, 2012 at <http://www.pagcor.ph/annual-reports/annual-2010/pagcor-annual-report-2010.html>. [See Appendix]

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“13. Issuance of License

A Provisional License will be issued to the winning proponent effective for the duration of the project development period and shall not exceed the approved completion date of the whole project.

The Regular Casino Gaming License will be issued upon completion of the Project and upon approval by PAGCOR of the report detailing the actual total cost of the Project to ensure the proponent's compliance with the approved project cost based on the Project Implementation Plan. The term of the License shall not exceed the term of PAGCOR as specified in RA 9487.

No sub-license will be issued nor allowed.” (Emphasis added.)

Thus, a Regular Casino Gaming License will be issued by PAGCOR upon (1) completion of the Project and (2) compliance with the approved project cost as approved by PAGCOR, based on the previously submitted Project Implementation Plan, including all other conditions as may be stipulated in the Provisional License Agreement.¹⁰⁴ Clearly, PAGCOR maintains an active regulatory role over gaming businesses after the issuance of a provisional gaming license. An operator who has already been granted a provisional license, therefore, would have a powerful business incentive to maintain favorable relations with PAGCOR's Chairman and senior leadership.¹⁰⁵

Finally, the PAGCOR officials with whom FSS spoke in December 2011 indicated that, upon “taking over” from the Genuino Administration in 2010, they conducted a review of previously granted gaming licenses to ensure that all issuance decisions had been done properly, indicating that the Naguiat Administration was exercising close review in monitoring of all licensees, including Mr. Okada.

¹⁰⁴ See research of Michelle Lazaro as expressed in her email dated January 30, 2012 to Mike McCall; See also “Terms of Reference” that were attached to the email. [See Appendix]

¹⁰⁵ A recent example of the extent of PAGCOR's continuing oversight of gaming operators can be found in the August 2011 issue of *Inside Asian Gaming* magazine. An article therein reported on claims by gaming operator Thunderbird Resorts, Inc. (“Thunderbird”) that PAGCOR had unlawfully attempted to force Thunderbird, through various allegedly selective enforcement actions, to renegotiate the revenue sharing agreement it had signed with the previous PAGCOR leadership under Mr. Genuino. See “Ball of Confusion,” dated August 10, 2011, *Inside Asian Gaming*, online edition, viewed January 26, 2011 at <http://www.asgam.com/features/item/1238-ball-of-confusion.html>. In the September 2011 issue, PAGCOR responded by making reference to various regulatory or enforcement functions it had been carrying out with regard to Thunderbird's casinos, up through the time that the dispute became heated. Among the functions mentioned were “resident monitoring teams” in Thunderbird casinos to “...guarantee the fair conduct of games...” as well as PAGCOR's serving of a notice of closure to Thunderbird in response to the disputed issues. See “Philippines Gaming Regulation—The Untold Story”, dated 23 September 2011, *Inside Asian Gaming*, online edition, viewed January 26, 2011. [See Appendix]. These statements by PAGCOR clearly indicate that PAGCOR maintains active regulatory monitoring of licensed gaming businesses in the Philippines and claims the authority to close down licensed operators.

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Mr. Okada's hosting and payments on behalf of PAGCOR Chairman Naguiat and his family at Wynn Macau, was most likely related to Mr. Okada's business interests in the Philippines, and would therefore constitute a prima facie violation of the FCPA both by Mr. Okada as well as by Aruze USA, Inc.

4. Possible Pattern of FCPA Violations Regarding Korean Government Officials

As stated previously, in recent years, Mr. Okada has been pursuing development of a resort complex in the Incheon Free Economic Zone in the Republic of Korea. Jong Cheol Lee, the Commissioner of the Incheon Free Economic Zone Authority, and apparently an Incheon government official, announced the signing of a Memorandum of Understanding on approximately October 27, 2011, between the Incheon Free Economic Zone ("IFEZ") and Okada Holdings Korea to develop a casino resort near the Incheon International Airport.¹⁰⁶

A review of the Aruze City Ledger Account disclosed charges paid for Jong Cheol Lee and other guests of his party at Wynn Las Vegas and Wynn Macau for the period November 2010 to June 2011. Registration documents provided by Wynn Resorts disclosed annotations for Mr. Lee and three other guests, indicating: "Share with Incheon Free Economic Zone." According to the Aruze City Ledger Account, the following amounts were paid for government Lee and his party:

Name	Relationship to Incheon Free Economic Zone	Location and Date of Stay	Total Charged to Aruze City Ledger Account
Jong Cheol Lee	Commissioner	WLV Nov 16-18 2010	1,597.16
		WM June 2011	1,134.55
Woo Hyeung Lee	Unknown	WLV Nov 16-18 2010	843.89
		WM June 2011	1,083.22
Min Yong Choi	Unknown	WLV Nov 16-18 2010	507.50
Ki Dong Hur	Unknown	WLV Nov 16-18 2010	779.20
TOTAL PAID			5,945.52

These payments made for and on behalf of possible Korean government officials may be part of a continuing pattern by Mr. Okada and his associates to commit prima facie violations of the

¹⁰⁶http://english.visitkorea.or.kr/enu/bs/tour_investment_support/pds/content/cms_view_1516066.jsp?gotoPage=&item=&keyword=, viewed January 14, 2012 [See Appendix]. <http://blog.daum.net/ikoreatimes/60>, viewed January 14, 2012. [See Appendix]

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FCPA. However, further investigation is required in order to determine (i) the nature of Mr. Okada's relationship with these guests; (ii) whether these guests actually had a government affiliation at the time of their 2010 visits to Wynn Las Vegas and Wynn Macau; and, (iii) the status of Mr. Okada's gaming initiative in Korea.

5. Mr. Okada's Continuing Refusal to Receive Wynn Resorts mandated FCPA Orientation Training and to Acknowledge Wynn Resorts Code of Conduct

Mr. Okada's apparent practice and pattern of committing prima facie violations of the FCPA must also be reviewed in the context of his ongoing and likely future conduct as a majority shareholder and director of Wynn Resorts. Since August, 2011, Mr. Okada has failed to make himself available for requisite Wynn Resorts Board of Directors training regarding the FCPA and compliance. Not only has every other board member accepted and received such training, but attempts to accommodate Mr. Okada (including Japanese translation of the FCPA training materials and telephonic availability for the training) have failed.

Moreover, since August 2011, Mr. Okada has also failed even to acknowledge in writing Wynn Resorts Code of Business Ethics and Wynn Resorts Policy regarding Payments to Government Officials. Mr. Okada's continuing failure to perform this requisite review and agreement to comply with Wynn Resorts Ethics and anti-bribery rules and regulations create risk to Wynn Resorts and its board. Such non-compliance by Mr. Okada also suggests that he intends to continue his apparent practice and pattern of making FCPA prohibited payments on a going-forward basis. Any such future conduct would substantially enhance the risks to Wynn Resorts and compromise Mr. Okada's fiduciary duties to Wynn Resorts.

On August 5, 2011, Cheryl Palmer, the executive assistant to Kevin Tourek, sent out an email memorandum on Mr. Tourek's behalf to all board members stating that per compliance policy requirements, all members must acknowledge in writing on an annual basis having reviewed (and agreeing to comply with) two separate documents: (1) the Company's Code of Business Ethics and (2) Policy Regarding Payments to Government Officials.¹⁰⁷ A copy of the form was attached to the email, as was a copy of both the Code and the Policy. The email asked for the executed form to be returned prior to August 26, 2011. All of the members of the board, except for Mr. Okada, returned a signed copy of the acknowledgement. Mr. Okada was reminded, via emails to his representatives on a number of occasions,¹⁰⁸ as well as via a letter from Kevin Tourek, dated November 2, 2011, to provide an executed copy of the

¹⁰⁷ See email from Cheryl Palmer dated August 5, 2011. [See Appendix]

¹⁰⁸ See emails contained in email from Kevin Tourek to Robert Shapiro, Esq., dated October 24, 2011. [See Appendix]

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acknowledgement form no later than November 15, 2011.¹⁰⁹ Mr. Okada failed to meet this deadline and, as of the date of this report, has yet to provide a signed copy of the form.¹¹⁰

In addition to his failure to return the fully executed Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials Acknowledgment Form, which, as previously indicated, was sent out in August of 2011, Mr. Okada has yet to return a secondary acknowledgement form that was attached to the annual Directors' & Officers' Questionnaire ("D&O Questionnaire"). This form was sent out to each member of the board of directors on January 9, 2012, as part of the overall D&O Questionnaire packet.¹¹¹ The packet contained instructions to "sign where indicated by the *sign here tabs*" and asked that the 2012 D&O Questionnaire be returned in its entirety on or before January 27, 2012. The two places that required Mr. Okada's signature were (1) on page 26 of the D/O Questionnaire itself, and (2) on page 50 on the separate Code of Business Conduct and Ethics Acknowledgment Form that was part of the overall D&O Questionnaire packet. Though Mr. Okada returned the signature page (page 26) of the D&O Questionnaire itself on January 27, 2012,¹¹² (which was confirmed to FSS on February 7, 2012), the fact that he has yet to return the separate Code of Business Conduct and Ethics Acknowledgment Form (which he has unequivocally pledged to do by virtue of signing on the signature page of the D&O Questionnaire) is telling and is consistent with his refusal to provide an executed copy of the Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials Acknowledgment Form that was sent to him in August of 2011. Though Wynn Resorts did not send to Mr. Okada the Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials attached to the D & O Questionnaire in Japanese language versions, which they did previously with respect to the code and policy sent out in August of 2011 after a request by Mr. Okada's attorney, Mr. Okada has never previously requested that the D & O Questionnaire itself be translated into Japanese. Mr. Okada was again reminded of his obligation to return the separate Code of Business Conduct and Ethics Acknowledgment Form (page 50 of the D&O Questionnaire packet) in an email from Roxane Peper to Mr. Okada's assistant, Takashi Matsui, on January 31, 2012.¹¹³ A copy of the form was attached to the email for Mr. Okada's convenience. This form remains outstanding.

¹⁰⁹ See letter from Kevin Tourek to Mr. Okada, dated November 2, 2011. [See Appendix]

¹¹⁰ In a letter dated December 1, 2011 to Robert Shapiro, Esq., outside counsel for Wynn Resorts, Gidon Caine, Esq., counsel for Mr. Okada, explained that the reason Mr. Okada did not sign the acknowledgment form was due to the fact that the materials had not been translated into Japanese. As of the date of submission of this Report, Mr. Okada has not yet submitted a signed copy of the acknowledgment form despite being provided with the requested translations, which were attached to a letter sent via email dated December 27, 2011 from Jeffrey Soza to Gidon Caine. [See Appendix]

¹¹¹ See Memorandum from Kim Sinatra to Board of Directors and Officers of Wynn Resorts, Limited, dated January 9, 2012, and 2012 Director's & Officers Questionnaire attached thereto. [See Appendix]

¹¹² See email from Takashi Matsui to Roxane Peper, dated January 27, 2012. [See Appendix]

¹¹³ See email from Roxane Peper to Takashi Matsui, dated January 31, 2012. [See Appendix]

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On February 1, 2012, Barry Brooks, one of Mr. Okada's attorneys, contacted Kevin Tourek, senior vice president and general counsel with Wynn Resorts, via email regarding "address[ing] the request, forwarded to Mr. Okada under cover of a memorandum from Mr. Wynn, that Mr. Okada execute and return to Wynn Resorts, Ltd. ("Wynn Resorts") a form of acknowledgment ("Acknowledgment") in regard to the Wynn Resorts Code of Business Conduct and Ethics (the "Code"). Most importantly, I wanted to emphasize that Mr. Okada agrees, with a deep sense of commitment, with the principles set out in the Code and agrees that it is in the best interest of Wynn Resorts and its shareholders that he, as a director, be a leader in observing and advocating for those principles. Also, and in any case, Mr. Okada believes that the requirements of the Code, and the spirit of those requirements, are keys to the future success of Wynn Resorts."¹¹⁴ In a follow-up phone call to that email, Mr. Brooks and Mr. Tourek discussed the ramifications of Mr. Okada not signing the policy, the possibility of interpretation issues, and concerns over whether Mr. Okada may have any conflict of interest issues. Mr. Brooks also asked for a copy of the D & O Questionnaire.¹¹⁵

6. Mr. Okada, his associates and companies, Universal have pursued independently a casino gambling development in the Philippines since 2008.

FSS interviewed Mr. Okada on February 15, 2012 and the results of that interview are set forth more fully in Section VI.¹¹⁶ In this interview, Mr. Okada asserted that all his efforts in the Philippines prior to the change of presidential administration in the summer of 2010 were undertaken on behalf of and for the benefit of Steve Wynn and Wynn Resorts, and that he only undertook to develop a gaming business in the Philippines independently subsequent to the change of presidential administrations.

On December 20, 2007, Aruze Corp. issued a press release entitled "Business Realignment and Future Business Development." The press release stated the following:

"The Company looks to acquire the licenses necessary to operate a casino resort in the Asian region, including Macau, and to commence operation of a casino resort on its own over the next business year. . . . For this know-how, which is vital from a management perspective, the Company intends to enlist the full cooperation of Wynn Resorts, Limited's Steve Wynn in its future pursuits regarding this project. For the purpose of successfully operating a casino resort in the Asian Region on an independent basis, the Company has received agreement from Steve Wynn that he will supply all necessary support, including active personal exchange with Wynn Resorts, Limited. . . ."¹¹⁷ (Emphasis added.)

¹¹⁴ See email from Barry Brooks to Kevin Tourek, dated February 1, 2012. [See Appendix]

¹¹⁵ See email from Kevin Tourek to Kim Sinatra, dated February 2, 2012. [See Appendix]

¹¹⁶ Statements attributed to Okada during the February 15, 2012 interview are based on FSS' contemporaneous notes.

¹¹⁷ See JASDAQ press release for Aruze Corp., dated December 20, 2007, entitled "Business Realignment and Future Business," available at: http://www.universal-777.com/en/ir/releases/2007/20071220_e.pdf. [See Appendix]

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On April 25, 2008, Aruze Corp. issued another press release entitled “Casino Project in the Philippines.” This press release stated the following:

“As announced in its ‘Business Realignment and Future Business Development’ press release issued December 20, 2007, ARUZE GROUP seeks to commence the operation of a casino resort in the Asian region, which shall be conducted independently by ARUZE CORP. . . . Out of the above mentioned elements, where essential management-based know-how is concerned, the Company intends to proceed with the project under the full guidance of Wynn Resorts, Limited’s Steve Wynn.”¹¹⁸(Emphasis added.)

The press release identifies the location of the planned casino as a plot of land adjacent to “Bagong Nayong Pilipino Manila Bay Tourism City.”

The language in the press releases suggest that Universal’s intentions from the inception of the project were to develop a gaming business independently, and not for the benefit of Steve Wynn or Wynn Resorts.

7. Mr. Okada has stated that Universal paid expenses related to then-PAGCOR Chairman Genuino’s trip to Beijing during the 2008 Olympics.¹¹⁹

Mr. Okada was asked during his interview whether he met then-PAGCOR Chairman Genuino in Beijing during the 2008 Olympics. Mr. Okada stated that Universal’s President Tokuda made the arrangements for Chairman Genuino to travel to the Olympics. Mr. Okada explained that Mr. Tokuda was involved with the setting of the travel itinerary. When Mr. Okada was asked if the travel arrangements were “paid by Universal,” Mr. Okada responded “not 100% perhaps there were people certainly not all but I’m not familiar with the details.” Mr. Okada was then asked “To your knowledge, did Universal pay any of the associated costs of any of the travel of Mr. Genuino?” Mr. Okada answered “I don’t know whether or not the travel expense was paid by them. My understanding is that there was a certain amount of personal monies being spent from the attendees and participants including Chairman Genuino but I do not know details regarding this.” Mr. Okada was then asked “But is it your knowledge that some of those expenses were paid by Universal?” Mr. Okada answered: “Regarding the individual payment of personal monies, whether before or after, it was Universal that put together all of the expenses.”

Mr. Okada then explained that since Mr. Okada was previously invited to “one of the islands in the Philippines so in return well we decided that we would decide to do this in turn so I too would invite them as well. There was a time from where we had that understanding now that I recall. So I may have asked Mr. Tokuda to include this person [Genuino] as well.” The

¹¹⁸ See JASDAQ press release for Aruze Corp., dated April 25, 2008, entitled “Casino Project in the Philippines,” available at: http://www.universal-777.com/en/ir/releases/2008/20080425_e_pr2.pdf. [See Appendix]

¹¹⁹ Attributions from Mr. Okada’s interview are based on FSS contemporaneous notes.

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following question was then asked: “If there was a time that Genuino has invited you to the Philippines and in return for that you may have invited him or had some knowledge that Universal paid some of his expenses when he came to Beijing?” Mr. Okada responded: “I don’t like to be invited more than what is necessary because that would mean that I am vulnerable and I don’t like that. I was told that it was paid for and he insisted so I remember he had to be paid for in this way. So I remember that Mr. Tokuda said he should be included as well. I remember thinking that I had to return this in some way so I may have made that decision based on that memory.” (Emphasis Added).

Later in the interview, Mr. Okada stated that Chairman Genuino appeared to have a “few people” with him at the Olympics and, “I asked my staff why wasn’t he around and then my people said Mr. Genuino had a few people accompany him and he met with them to go shopping and once I heard that I do not recall now but again I don’t have a clear recollection of his whereabouts.”

VI. Summary of Mr. Okada’s February 15, 2012 Interview¹²⁰

Mr. Okada had four lawyers present over the course of the interview, including a Japanese interpreter/associate. Mr. Okada was given a full opportunity to answer all questions. He attended the interview voluntarily and at the end he was asked whether he wanted to explain anything else.

A. Apparent FCPA Violations regarding Philippine PAGCOR officials.

1. Mr. Okada admitted going to Macau on or about September 24 2010 to meet with PAGCOR chairman Naguiat at Wynn Macau. Mr. Araki called Mr. Okada on either September 24 or 23 to advise that Chairman Naguiat was at Wynn Macau.
2. Mr. Okada stated he flew to Macau from Japan for the sole reason of meeting Chairman Naguiat.
3. Mr. Okada stated the purpose of Chairman Naguiat’s visit to Wynn Macau was for business – as a new PAGCOR Chairman, Naguiat wanted to better understand the casino business. Mr. Okada stated that a number of his Universal employees, including Araki, were at Wynn Macau in order to assist Chairman Naguiat in this regard.
4. Mr. Okada stated that when he got to Wynn Macau he asked to see Ian Coughlan, Wynn Macau CEO.
5. Mr. Okada asked to see and met with Ian Coughlan at Wynn Macau but denied telling Coughlan that the guests were Universal VIPs and that they should be treated well.

¹²⁰ Certain sections of the report below are presented in an abbreviated form. See the attached notes of Mr. Okada’s interview for a more expansive description. [See Appendix]

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6. Mr. Okada emphatically denied saying this and related that there is no way he would have said something to that extent regarding special care: “I would have said this is a person with a position with PAGCOR, I would have said be normal and don’t do anything out of the ordinary.”
7. Mr. Okada stated he attended a dinner for approximately ten (10) people at Wynn Macau and that Chairman Naguiat also attended.
8. Mr. Okada stated that either Araki, Shoji or Universal paid for the dinner
9. Mr. Okada said that he did not know whether any other PAGCOR officials attended the dinner.
10. Mr. Okada stated that he and Naguiat did not discuss any business at the dinner which would have been rude.
11. Mr. Okada stated that he believed Naguiat’s wife was present at the dinner but that he was not introduced to her.
12. Mr. Okada stated he left early the next morning.

B. Mr. Okada’s Knowledge of and Response to Chairman Naguiat’s September 2010 stay

1. Mr. Okada stated that sometime after September 2010 he learned from Universal President Tokuda that the cost of Chairman Naguiat’s stay at Wynn Macau exceeded reasonable entertainment expenses.
2. Mr. Okada learned about the excessive September 2010 expenses from Takuda about three or four months after the events when the bills would come up.
3. Mr. Okada stated that he was never told the cost of Chairman Naguiat’s Wynn Macau stay nor did he ask anybody that question.
4. Mr. Okada stated that he understood that Chairman Naguiat had stayed in the most expensive accommodation at Wynn Macau. But he said “I heard later on that he was in one of the more expensive rooms. I heard this in the context of it would be a problem regarding our corporate policy....”
5. Mr. Okada stated that Chairman Naguiat’s wife was present at Wynn Macau. Mr. Okada did not know if his children were present.
6. Mr. Okada stated that he did not know that any cash had been provided to Chairman Naguiat.
7. Mr. Okada stated that he did not know that Universal employees had tried to hide the identity of Chairman Naguiat as a guest.
8. Mr. Okada stated that he did not know how long Chairman Naguiat had stayed at Wynn Macau.
9. Mr. Okada denied seeing two (2) emails from Shoji to Angela Lai at Wynn Macau, dated September 20th and 23rd 2010 respectively, which requested

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reservations for a Universal VIP guest, “who would not be registered,” and arrangements to provide up to 5,000 US credit for each person staying at Naguiat’s Villa. Mr. Okada explained that although he saw his name in the email cc’s, he would not have seen either email because for the most part he does not use his PC.

10. Mr. Okada stated that internal Universal rules do not permit the payment of cash to government officials. Mr. Okada stated that no stay in the Villa in Wynn Macau could cost US 50,000
11. Mr. Okada stated that internal Universal rules permitted the payment of reasonable entertainment expense for government officials but did not know what amount was permitted.
12. Mr. Okada stated that the cost of Chairman Naguiat’s stay at Wynn Macau caused a “problem” for Universal and that as a result Araki was fired, and Shoji resigned after having been scolded by Mr. Okada.
13. Mr. Okada stated that he did not make any changes at his company or give anyone new instructions as a result of finding out about Naguiat’s stay in September 2010.
14. Mr. Okada said that it was possible that Chairman Naguiat would be billed for the cost of the stay.
15. Mr. Okada said, when he was asked about a reference in a Shoji email to posting all expenses to the Universal City Ledger Account, that he lacked any knowledge of such an account and said “I wonder if the City Ledger is in reference to our internal policy, as long as it is under that ceiling....”

C. Mr. Okada stated that he was aware of only one other guest stay at Wynn Macau that he believed was improperly paid by Universal.

1. Mr. Okada stated only a few weeks ago he learned from President Tokuda that Anthony Genuino, son of former PAGCOR Chairman Genuino, had stayed at Wynn Las Vegas in September of 2008 and that Universal had paid US 2300 for his stay.
2. Mr. Okada stated that Genuino would be sent the bill for this cost
3. Mr. Okada denied any knowledge of other PAGCOR officials staying at Wynn Resorts from 2008 through June 2011 with Universal paying for their expenses.
4. Mr. Okada stated that he had just instructed President Tokuda of Universal to conduct an investigation into Universal’s payment of entertainment expenses.
5. Mr. Okada blamed Shoji as the responsible party for these payments.
6. Mr. Okada stated that he yelled at Shoji for not reporting these matters to him and would have fired Shoji except that Shoji resigned. Mr. Okada stated that Tokuda

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did report these matters and Mr. Okada believed that Shoji was also in a position to know all about what had happened but had failed to report it to him.

7. Mr. Okada stated that Shoji was a trusted employee who had worked closely with him since 2002 and should have reported these matters to him.
8. Mr. Okada stated that they were just starting this investigation and that bills may be sent to certain of these guests for the expenses which Universal paid.
9. Mr. Okada especially blamed Mr. Shoji since he was the head of the company's compliance committee from 2002-2010.
10. Mr. Okada stated that he last met with Chairman Naguiat in the Philippines during January 2012 in order to seek land leasing approval from PAGCOR.
11. Mr. Okada stated that Universal had an expense policy but he didn't know what the amounts were. Mr. Okada stated that he was unfamiliar with the specific details of his compliance policy because he was too high within the company. He left it to others to handle the details of the policies.
12. Mr. Okada was asked a series of questions regarding about a dozen other PAGCOR officials who stayed at Wynn Macau or Wynn Las Vegas during 2010 and 2011 for whom Universal paid their expenses.
13. Mr. Okada denied having authorized any of these payments and said that he would not have authorized such payments if the guests were PAGCOR officials.
14. Mr. Okada stated that on one occasion he met Jose Miguel Arroyo, husband of Former Philippine President Gloria Arroyo, but did not know that Jose Arroyo had stayed at Wynn Las Vegas in November 2009, with Universal paying for his expenses totaling US 4,642.
15. Mr. Okada stated that he met Chairman Naguiat approximately 4 or 5 times since Naguiat's Chairmanship in June 2010 and that these meetings always involved official matters.
16. Mr. Okada stated that he told Tokuda in December of 2011 to investigate these matters.
17. Mr. Okada stated that December was the first time he asked Mr. Tokuda investigate these charges for Universal.
18. Mr. Okada stated further that Shoji was a trusted employee whom he had met with "very frequently." During the time period in September 2010 when Shoji was setting up the Naguiat visit, Shoji told Mr. Okada nothing about Naguiat.

D. Okada statements to the Board of Directors Regarding doing business in Asia

1. Mr. Okada stated that he could not specifically remember attending a Wynn Resorts Board of Directors meeting in February 2011.

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2. Mr. Okada stated that he did not remember attending a Wynn Resorts Board of Directors meeting where bribery was discussed.
3. Mr. Okada denied ever stating to Wynn Resort Directors words to the effect that “it was a matter of hiring the right people and that you must pay other people.” He responded “absolutely not, that’s a lie.”
4. Mr. Okada denied telling fellow board members words to the effect that “you have to follow local customs and that’s why you have consultants.”
5. Mr. Okada also denied ever stating to fellow board members words to the effect “I wouldn’t bribe someone but would have someone else bribe that person.”
6. As to bribing someone in the Philippines, Mr. Okada stated that “there is no need to do that in the Philippines even because we are in the position to invest.”
7. Mr. Okada also denied ever stating words to the effect that “in Asia, it is okay to give gifts to government officials.” His response was “absolutely not.”
8. Mr. Okada stated that he had been a member of the Wynn Resorts Board of Directors since 2005 or 2006. When asked about his duties or responsibilities as a director of Wynn Resorts, Okada stated that he had to “ensure socially just company, there should be no illegal activities, and that I have to help them be successful and grow as a company.”
9. Mr. Okada was asked if he had ever read the Wynn Resorts Code of Conduct to which he responded, “No because it is in English, no I cannot.”
10. Mr. Okada was asked if he had accepted Wynn Resorts Board of Director FCPA training in 2011, to which he replied that he had received some documents but sent them to his lawyers.

E. Doing Business in the Philippines

1. Mr. Okada stated that prior to the new Philippine administration taking over in 2010, his efforts to conduct a gambling business in the Philippines were being done for Wynn Resorts and that he was reporting to Steve Wynn about these activities.
2. Mr. Okada said before the new Philippine administration in 2010 “All of the conversation between myself and Genuino was for the sake of explaining to Mr. Wynn.”
3. Mr. Okada stated that a press release from Aruze Corp. dated April 25, 2008, that announced Aruze would independently operate a casino project in the Philippines, had not been presented to him for approval.
4. Mr. Okada stated that neither Steve Wynn nor Wynn Resorts had invested any money in the Philippine business initiative which he had been conducting since 2008.

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5. Okada stated that Universal had invested between US 300-400 million in 2008 to acquire the land for the Manila Bay project.
6. When asked whether Mr. Wynn or Wynn Resorts invested any money in the US 300-400 million purchase, Mr. Okada stated that “Wynn Resorts had no involvement whatsoever.”
7. Mr. Okada stated that it was only after the new Aquino presidency in June of 2010 that he decided to pursue a Philippine gaming project independently.
8. Mr. Okada stated that this land had been acquired by a company called Eagle I Land Holdings in which Aruze USA had an ownership interest.
9. Mr. Okada stated that at the time of the land acquisition in 2008, Eagle I Land Holdings was 60% owned by Filipino nationals. However, when asked to identify the 60% ownership today, he responded “I know of them I know who they are but I don’t remember their names.”
10. Mr. Okada stated that he was aware of the Philippine legal requirement that land be 60% owned by Filipinos.
11. Mr. Okada stated that neither Tiger or Aruze had a provisional gaming license for the Philippines.
12. Mr. Okada does not know whether a deposit was made by Universal in order to pursue the Filipino gaming initiative.
13. It was his understanding that to get a gaming license in the Philippines you needed to do certain things beforehand and that he asked questions on Wynn’s behalf as to what had to be done.
14. Mr. Okada stated that Platinum Gaming and Entertainment was a Philippine company run by Soriano.
15. Mr. Okada stated that he did not know Paolo Bombase or Manuel Camacho as shareholders of Eagle I and Eagle II.
16. Mr. Okada stated that Masato Araki may have lent his name as a stockholder to Eagle I and Eagle II but that Mr. Okada did not know the details. Mr. Okada stated that he did not know whether Manabu Kawasaki, who was another Universal employee, was a stockholder of Eagle I or Eagle II.

F. Possible Payments by Universal to Korean Government Officials.

Mr. Okada stated that he is interested in the IFEZ for possible investment. Mr. Okada stated that he personally set up arrangements in 2009 or 2010 for a Korean delegation from the IFEZ to visit Las Vegas. According to Mr. Okada, this delegation was led by a Mr. Lee, who was “seconded” to IFEZ by the Korean government. Mr. Okada invited this delegation to see the Venetian.

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Mr. Okada stated that “at the very beginning” he discussed the “issue of expense” and the Korean side said they had to pay for their own expenses as government officials. Mr. Okada stated that the Korean delegation stayed at Wynn Las Vegas and paid for their rooms. When told that Universal in fact paid for the Koreans’ rooms, Mr. Okada stated “It’s possible we paid in advance the first time but then they paid later. I am personally in charge of the Koreans.” When Mr. Okada was then asked if he knew that was done he responded “I am certain it was done.”

Mr. Okada later repeated that the Koreans paid for their own travel. When advised that Universal paid for Commissioner Lee and others to stay at Wynn Macau in 2011, and Wynn Las Vegas in 2010, Mr. Okada stated that “It may have been that we made a temporary payment to be reimbursed later but in any case for Korea all trips must be applied for with the City Hall and they need to get prior approval.”

Mr. Okada later repeated that he did not authorize Universal to pay approximately US 6,000 worth of room charges for Commissioner Lee and other IFEZ officials for stays at Wynn Resorts. When asked if it would be against “Universal’s policy” to pay such travel expenses, Mr. Okada repeated that the Koreans would pay for their own expenses. He added that “Maybe it was the case where Universal made a temporary payment to be reimbursed later and all this would be paid by ‘admin official.’”

G. Mr. Okada Instructs Mr. Tokuda to Conduct an Investigation

Mr. Okada stated that since about 2008-2009, Universal has had both “ordinary” and “extraordinary” rules about paying entertainment expenses regarding government officials. However, he stated that he did not know the “specific details.” Mr. Okada stated that “cash” could not be given but that he did not know the dollar amount limit for providing government officials with meals.

Mr. Okada stated that after learning from Mr. Tokuda about the excessive expenses paid by Universal for Chairman Naguiat’s September 2010 stay at Wynn Macau, Mr. Okada did not take any steps or give instructions to prevent a recurrence. Indeed, Mr. Okada stated his belief that Universal’s corporate policy as it exists today is “plenty on its own.”

Mr. Okada stated that “within the last week or so” he learned from Mr. Tokuda that the son of then-PAGCOR Chairman Genuino stayed at Wynn Las Vegas in 2008 and that Universal had paid US 2,800 for his expenses. Mr. Okada said this was “inexcusable” and that he had given instructions to have him [Genuino] billed directly. Mr. Okada further stated that Mr. Tokuda had found “several more” of these instances but that Mr. Okada did not “know the details.” Mr. Okada stated that in regard to Chairman Naguiat’s stay at Wynn Macau, perhaps an invoice should also be sent to him as the customer.

Mr. Okada stated that “it was just yesterday” that he heard from Tokuda about “these issues being raised.” After being asked what he knew about a list of PAGCOR officials whose

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stays at Wynn Macau and Wynn Las Vegas were paid by Universal from 2008 – 2011, Mr. Okada denied any knowledge of these events. However, Mr. Okada stated that “everything I believe [FSS] mentioned matches with what Mr. Tokuda is investigating right now. And I will have him write a paper that lists all the countermeasures and a progress report and what has been wrapped up and so forth.”

Mr. Okada stated that in approximately December 2011, he “clearly instructed” Mr. Tokuda to conduct an investigation about these matters. At the end of the interview, Mr. Okada stated that “I will look into all the expense that you have asked about and if it is someone who has an existing relationship I will for sure bill that person.”

VII. Conclusions

The investigation has produced substantial evidence that directly relates to Mr. Okada’s suitability under Nevada law as both a major shareholder and director of Wynn Resorts.

Nevada Gaming Commission Regulations regarding individual suitability issues encompass, among other things, a person’s “good character, honesty and integrity,” and whether a person’s “background, reputation and associations will not result in adverse publicity for the State of Nevada and its gaming industry” (Section 3.090 of the NRS). The NRS also require that a covered person satisfy the Commission that such person has “adequate business probity” (Section 463.170, paragraph 3).

Both Aruze USA , a Nevada corporation, and Mr. Okada personally, as a Director, President, Secretary and Treasurer of Aruze Inc., are covered parties under the jurisdiction of the FCPA.

As set forth above, the investigation has produced substantial evidence that Mr. Okada, his associates and companies have apparently been engaging in a longstanding practice and pattern of committing prima facie violations of anti-bribery laws, particularly the FCPA.

The testimonial and documentary evidence appear to prove that, since at least 2008, Mr. Okada, his associates and companies have made over US 110,000 in payments to his chief gaming regulators (2) in the Philippines (PAGCOR), their families and associates. Mr. Okada is building a multi-billion dollar gaming business and operation in the Philippines.

The practice and means of making these payments varied slightly but were regularly and repeatedly arranged in the same manner. For example, between June 2008 and August 2010, former PAGCOR Chairman Efraim Genuino (February 2001 – June 30, 2010), his son and other PAGCOR government officials, were hosted by Mr. Okada, his associates and companies at either Wynn Resorts Las Vegas or Wynn Resorts Macau. Mr. Okada, his associates and companies would arrange and pay thousands of dollars to cover the expenses of Chairman

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Genuino, his son and other then-current PAGCOR officials in his party. These payments were made by Mr. Okada, his associates and companies, using the City Ledger Account, which contained an average balance of US 100,000 funded and replenished by Universal. International money transfers and the facilities of interstate commerce were used to make these payments.

There is substantial evidence to show that Chairman Genuino's June 2010 stay at Wynn Macau was due to the fact that he was then Mr. Okada's principal Philippine gaming regulator. This is also demonstrated by the fact that after Chairman Genuino left his PAGCOR office in June 2010, he and his family were no longer the beneficiaries of such payments at Wynn Resorts facilities.

However, as set forth above in greater detail, Mr. Okada's current chief Philippine gaming regulator, Chairman Cristino Naguiat (July 2, 2010 – present) and his family quickly succeeded Chairman Genuino as the beneficiaries of payments by Universal for stays at Wynn Resorts Las Vegas and Wynn Resorts Macau (September 2010 in Macau; November 2010 in Las Vegas; and June 2011 in Macau, just over seven (7) months ago).

These payments were made using Mr. Okada's City Ledger Account, as was done regarding payments on behalf of the former PAGCOR Chairman. The evidence further suggests that Chairman Naguiat's luxury stays at Wynn Resorts facilities were fully known to Mr. Okada, who actively involved himself in some of the arrangements. For example, Chairman Naguiat's September 22-26, 2010 stay at Wynn Resorts Macau luxury Villa 81, the most expensive accommodation at Wynn Resorts Macau (about 7,000 square feet in size, which then cost about US 6,000 per day), was intended by Mr. Okada and his associates to be kept secret and concealed within Wynn Resorts Macau records. Initially, Mr. Okada's associates arranging for Chairman Naguiat's September 2010 stay at Wynn Resorts Macau purposefully withheld Naguiat's name and had him registered as an "Incognito" VIP guest of Universal, utilizing the named reservation of "Rogelio Bangsil" (another then-senior PAGCOR official). Chairman Naguiat then stayed at the Wynn Resorts Macau for four days, together with his wife, three children and a nanny, without ever once introducing himself to the constantly attending Wynn Resorts Macau VIP service managers.

Mr. Okada's associate, who made this reservation for Chairman Naguiat, requested a "more gorgeous room, such as "Villa" and "the best butler," for this unnamed "VIP for Universal," who turned out to be the chief gaming regulator for the Philippines. The evidence also shows that on September 24, 2010, Mr. Okada personally made clear (via an interpreter) to Ian Coughlan, the Wynn Resorts Macau Executive Director and President, that Chairman Naguiat and his party were important guests and that Mr. Coughlan should make sure that his staff took good care of them. The evidence further shows that on the evening of September 24, 2010, Mr. Okada hosted a dinner at Wynn Macau for Chairman Naguiat (and approximately 13 others). The US 1,673.07 cost of this dinner was charged to Mr. Okada's room.

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The testimonial and documentary evidence also shows that despite deliberate attempts to conceal Chairman Naguiat's identity while a guest at Wynn Resorts Macau in September 2010, hotel staff, acting on their own, soon identified Chairman Naguiat by means of a photo from the PAGCOR website. Their interest in doing so was sparked by the fact that the senior PAGCOR guest known to them, Mr. Bangsil, exercised great deference to Chairman Naguiat, who the staff determined must be the 'boss'. Nevertheless, the VIP service providers continued to refer to Chairman Naguiat only as "sir," thereby following the wishes and directions of Chairman Naguiat and Mr. Okada's associates. The evidence also shows that several weeks after Chairman Naguiat's intended "Incognito" stay at Villa 81, Mr. Okada's associates became concerned about the high cost of Chairman Naguiat's luxury stay at Wynn Resorts Macau. Specifically, Mr. Okada's associate advised Wynn Resorts Macau that the amount being charged for Chairman Naguiat's stay was too much over an ordinary business expense. Mr. Okada's associate then asked if Wynn Resorts Macau "could reconsider the matter [Chairman Naguiat's stay] and charge us [Mr. Okada's company] the original rate [and free upgrade to a Villa] since the party directly dealing with on this matter is our company [Mr. Okada's company] rather than each individual guest [Chairman Naguiat]." Mr. Okada's associate further stated that "since the amount charged [for Chairman Naguiat] is too much beyond the ordinary room charge, our company [Mr. Okada's company] will be put in a very difficult position to give reasonable explanations if we are inquired by someone." (Emphasis added).

Despite Mr. Okada's associate's efforts to have Wynn Resorts Macau reduce these payments and assist in covering up the beneficial amounts received by Chairman Naguiat, Wynn Resorts Macau denied this request.

Mr. Araki's later email ("Our Chairman Okada once again instructed us to take care of the group [PAGCOR], but not like the last time...") to Wynn Macau, dated October 5, 2010, also tends to confirm Mr. Okada's personal knowledge and direction of the payments made on behalf of Chairman Naguiat and his family for their luxury stay at Wynn Macau for September 22-26, 2010.

The evidence also shows that on September 24-25, 2010, Mr. Okada's associates obtained a total of US 20,000 cash from Wynn Resorts Macau's main cage as "cash advances" for Chairman Naguiat, his family and party. This same associate of Mr. Okada returned approximately US 503 of this advance on September 26, 2010 as the remainder from Chairman Naguiat's party. Mr. Okada's City Ledger Account was again used to pay for this advance.

The evidence also shows that the PAGCOR-related payments made by Mr. Okada and his associates are not the result of any misunderstanding of the applicable anti-bribery laws, including the FCPA. Conversely, by his own statements and declarations to fellow Wynn Resorts Board members, Mr. Okada apparently believes that there is nothing wrong with making payments and gifts to government officials when doing business in Asia. When advised by fellow directors and Wynn Resorts lawyers that such payments are bribes strictly prohibited by

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the FCPA and other laws, Mr. Okada responded that third party intermediaries or “consultants” can be used to make the payments.

The best evidence of Mr. Okada’s belief that it is permissible to make payments to government officials is his admission that Universal paid expenses for then-PAGCOR Chairman Genuino’s trip to the 2008 Beijing Olympics. Mr. Okada explained that since Mr. Genuino had previously invited Mr. Okada to “one of the islands in the Philippines,” Mr. Okada and Universal’s President Tokuda in turn had Universal pay for expenses related to Genuino’s trip to Beijing, which Mr. Okada stated was arranged by President Tokuda. This admission by Mr. Okada is consistent with his February 24, 2011 statements to board members that there is nothing wrong with making payments and gifts to government officials.

The evidence about the corporate structures utilized by Mr. Okada and his associates to initiate his multibillion dollar gaming business in the Philippines also appears to demonstrate Mr. Okada’s intent to do business as he desires, regardless of the applicable laws and regulations. FSS’s examination of the corporate documents relating to Mr. Okada’s gaming initiative in the Philippines appears to show that he has used a complex web of corporate structures and companies to evade laws which require Philippine nationals to own 60% interest in all real estate. A separate legal analysis by a Philippine attorney confirms this finding and suggests that Mr. Okada’s Philippine gaming initiative has been set up in violation of applicable law.

Additionally, the preliminary evidence also shows that in connection with Mr. Okada’s efforts to develop a gaming business in IFEZ, Mr. Okada and his associates may be engaging in the same pattern of proscribed payments to government officials. The preliminary evidence shows that in October 2011, Mr. Okada’s company signed a Memorandum of Understanding with IFEZ to develop a casino resort near the Incheon International Airport. Preliminary information indicates that IFEZ is overseen by the Incheon Free Economic Zone Authority, apparently part of the City of Incheon government. Mr. Okada’s City Ledger account reflects that from November 2010 through June 2011, four (4) individuals, including IFEZ Commissioner Jong Cheol Lee, had two stays at Wynn Resorts Las Vegas and Wynn Resorts Macau, where payments totaling US 5,945.52 were made on their behalf through Mr. Okada’s City Ledger account. Preliminary internet research identifies Jong Cheol Lee as the current IFEZ Commissioner, a position he has held since July 2010. It is not clear at this preliminary stage i) whether Mr. Okada’s announced gaming investment and operation within IFEZ has received any gaming licensing, and ii) whether the three (3) guests who accompanied Commissioner Lee were then Korean government officials.

The investigation has established that despite requests by Wynn Resorts since August 2011 that Mr. Okada acknowledge in writing that he has reviewed (and agreed to comply with) Wynn Resort’s “Code of Business Ethics” and “Policy Regarding Payments to Government Officials,” Mr. Okada has failed to do so.

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Finally, Mr. Okada was interviewed by FSS on February 15, 2012 by FSS and was given the opportunity to present his version of the facts. Mr. Okada denied knowledge of Chairman Naguiat staying “incognito” at Wynn Macau in September 2010. He also denied knowledge that Mr. Shoji was actively involved in arranging for Chairman Naguiat’s stay. Although Mr. Shoji’s emails asking that Chairman Naguiat’s identity be kept secret, and that Chairman Naguiat be provided with cash in connection with his visit, were copied directly to Mr. Okada, the latter stated that because he rarely uses his personal computer, he would not have seen such emails. Mr. Okada acknowledged flying to Macau on September 24, 2010 in order to visit Chairman Naguiat but denied telling Ian Coughlan that Chairman Naguiat was an important Universal guest who should be treated well. Conversely, Mr. Okada stated that there is “no way” he would have said something like that, but would have said “be normal and don’t do anything out of the ordinary.” The substantial evidence relating to Chairman Naguiat’s September 2010 stay at Wynn Macau, including emails, Coughlan’s statements, and the facts and reasonable inferences regarding this evidence, cast substantial doubt on Mr. Okada’s credibility.

Mr. Okada also vehemently denied making statements to fellow board members to the effect that doing business in Asia requires and permits bribes to be made to government officials. Mr. Okada’s denials are directly contradicted by many of his fellow board members.

Similarly, Mr. Okada insists that all of his efforts to establish a gambling business in the Philippines prior to 2010 were undertaken solely on behalf of Wynn Resorts. His insistence is largely contradicted by the actions which he undertook. First, Mr. Okada and Universal invested US 300-400 million to buy property in the Manila Bay Entertainment Zone, which was to be used for his gaming operation. Mr. Okada admitted that Wynn Resorts had “no money involved in this investment.” Secondly, Mr. Okada and Universal set up an elaborate corporate structure in order to initiate, and operate in the future, a multimillion dollar casino operation. Wynn Resorts had no participation in any of these corporate initiatives or structures, all of which were controlled by Universal and Mr. Okada. Third, the provisional gaming license, which is required in order to establish a gaming business in the Philippines, was procured by Mr. Okada and his companies, without any relation to Wynn Resorts. Finally, when shown an April 25, 2008 Aruze Corp. press release, which states that the Aruze casino operation will be independently developed by Aruze with the mere intent that Wynn Resorts help guide its project, Mr. Okada denied any knowledge of this press release.

In sum, the substantial evidence developed by this investigation and set forth above, based on witness interviews, public information, documentary and electronic data, provide the Compliance Committee and Board of Directors a factual basis to review Mr. Okada’s continued suitability to be a major shareholder and director of Wynn Resorts.

EXHIBIT 2



DEAN HELLER
Secretary of State

202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684 5706

Certificate to Accompany Restated Articles

(Pursuant to NRS 78.403 or 82.371)
Filed in the office of

Dean Heller
Secretary of State
State of Nevada

Document Number
C14059-2002-004

Filing Date and Time
09/16/2002 12:00 AM

Entity Number
C14059-2002

FILED

C14059-02

Important: Read attached instructions

This Form is to Accompany Restated Articles

(Pursuant to NRS 78.403 or 82.371)

(This form may also be used to accompany Restated Articles for
Limited-Liability Companies and Certificates of Limited Partnership
and Business Trusts)
- Remit in Duplicate -

1. Name of Nevada entity as last recorded in this office:

Wynn Resorts, Limited

2. Indicate what changes have been made by checking the appropriate spaces.*

- ☐ The entity name has been amended.
- ☐ The resident agent has been changed.
(attach Certificate of Acceptance from new resident agent)
- ☐ The purpose of the entity has been amended.
- ☐ The authorized shares have been amended.
- ☐ The directors, managers or general partners have been amended.
- ☐ The duration of the entity has been amended.
- ☐ IRS tax language has been added.
- ☐ Articles have been added to the articles or certificate.
- ☐ Articles have been deleted from the articles or certificate.
- ☒ None of the above apply. The articles or certificate have been amended as follows:
(provide article numbers, if available)

Article IV, Section 2: The board will become classified upon the effectiveness of the IPO.

Article V, Section 1: The provisions regarding the number of directors and providing for the classified board cannot be amended without the approval of at least 66-2/3% of the issued and outstanding stock.

* This form is to accompany Restated Articles which contain newly altered or amended articles.
The Restated Articles must contain all of the requirements as set forth in the statutes for amending
or altering Articles of Incorporation, Articles of Organization or Certificates of Limited Partnership.

IMPORTANT: Failure to include any of the above information and remit the proper fees may cause
this filing to be rejected.

FILED 4 C14059-02

SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION SEP 16 2002

OF

WYNN RESORTS, LIMITED

NOTED BY
DEPARTMENT OF REVENUE

WYNN RESORTS, LIMITED (the "Corporation"), a corporation organized under the laws of the State of Nevada, by its Chief Executive Officer, does hereby certify that:

1. Pursuant to the provisions of Sections 78.390 and 78.403 of Nevada Revised Statutes ("NRS") the Corporation hereby amends and restates its articles of incorporation as follows:

2. The amendment and restatement of the Articles of Incorporation as set forth below was adopted by the Corporation's board of directors by the unanimous written consent as of September 16, 2002 in accordance with the provisions of NRS 78.315 and NRS 78.390.

3. The amendment and restatement of the Articles of Incorporation as set forth below was approved by the written consent of the sole stockholder as of September 16, 2002.

4. That the undersigned officer has been authorized and directed by the board of directors to execute and file this certificate setting forth the text of the Articles of Incorporation of the Corporation as amended and restated in its entirety to this date as follows:

ARTICLE I

NAME

The name of the corporation is Wynn Resorts, Limited (the "Corporation").

ARTICLE II

CAPITAL STOCK

Section 1. Authorized Shares. The aggregate number of shares which the Corporation shall have authority to issue is four hundred and forty million (440,000,000) shares, consisting of two classes to be designated, respectively, "Common Stock" and "Preferred Stock," with all of such shares having a par value of \$.01 per share. The total number of shares of Common Stock that the Corporation shall have authority to issue is four hundred million (400,000,000) shares. The total number of shares of Preferred Stock that the Corporation shall have authority to issue is forty million (40,000,000) shares. The Preferred Stock may be issued in one or more series, each series to be appropriately designated by a distinguishing letter or title, prior to the issuance of any shares thereof. The voting powers, designations, preferences, limitations, restrictions, and relative, participating, optional and other rights, and the qualifications, limitations, or restrictions thereof, of the Preferred Stock shall hereinafter be prescribed by resolution of the board of directors pursuant to Section 3 of this Article II.

Section 2. Common Stock.

(a) Dividend Rate. Subject to the rights of holders of any Preferred Stock having preference as to dividends and except as otherwise provided by these Articles of Incorporation, as amended from time to time (hereinafter, the "Articles") or the NRS, the holders of Common Stock shall be entitled to receive dividends when, as and if declared by the board of directors out of assets legally available therefor.

(b) Voting Rights. Except as otherwise provided by the NRS, the holders of the issued and outstanding shares of Common Stock shall be entitled to one vote for each share of Common Stock. No holder of shares of Common Stock shall have the right to cumulate votes.

(c) Liquidation Rights. In the event of liquidation, dissolution, or winding up of the affairs of the Corporation, whether voluntary or involuntary, subject to the prior rights of holders of Preferred Stock to share ratably in the Corporation's assets, the Common Stock and any shares of Preferred Stock which are not entitled to any preference in liquidation shall share equally and ratably in the Corporation's assets available for distribution after giving effect to any liquidation preference of any shares of Preferred Stock. A merger, conversion, exchange or consolidation of the Corporation with or into any other person or sale or transfer of all or any part of the assets of the Corporation (which shall not in fact result in the liquidation of the Corporation and the distribution of assets to stockholders) shall not be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

(d) No Conversion, Redemption, or Preemptive Rights. The holders of Common Stock shall not have any conversion, redemption, or preemptive rights.

(e) Consideration for Shares. The Common Stock authorized by this Article shall be issued for such consideration as shall be fixed, from time to time, by the board of directors.

Section 3. Preferred Stock.

(a) Designation. The board of directors is hereby vested with the authority from time to time to provide by resolution for the issuance of shares of Preferred Stock in one or more series not exceeding the aggregate number of shares of Preferred Stock authorized by these Articles, and to prescribe with respect to each such series the voting powers, if any, designations, preferences, and relative, participating, optional, or other special rights, and the qualifications, limitations, or restrictions relating thereto, including, without limiting the generality of the foregoing: the voting rights relating to the shares of Preferred Stock of any series (which voting rights, if any, may be full or limited, may vary over time, and may be applicable generally or only upon any stated fact or event); the rate of dividends (which may be cumulative or noncumulative), the condition or time for payment of dividends and the preference or relation of such dividends to dividends payable on any other class or series of capital stock; the rights of holders of Preferred Stock of any series in the event of liquidation, dissolution, or winding up of the affairs of the Corporation; the rights, if any, of holders of Preferred Stock of any series to convert or exchange such shares

of Preferred Stock of such series for shares of any other class or series of capital stock or for any other securities, property, or assets of the Corporation or any subsidiary (including the determination of the price or prices or the rate or rates applicable to such rights to convert or exchange and the adjustment thereof, the time or times during which the right to convert or exchange shall be applicable, and the time or times during which a particular price or rate shall be applicable); whether the shares of any series of Preferred Stock shall be subject to redemption by the Corporation (in addition to any right of redemption pursuant to Article VII of these Articles) and if subject to redemption, the times, prices, rates, adjustments and other terms and conditions of such redemption. The powers, designations, preferences, limitations, restrictions and relative rights may be made dependent upon any fact or event which may be ascertained outside the Articles or the resolution if the manner in which the fact or event may operate on such series is stated in the Articles or resolution. As used in this section "fact or event" includes, without limitation, the existence of a fact or occurrence of an event, including, without limitation, a determination or action by a person, government, governmental agency or political subdivision of a government. The board of directors is further authorized to increase or decrease (but not below the number of such shares of such series then outstanding) the number of shares of any series subsequent to the issuance of shares of that series. Unless the board of directors provides to the contrary in the resolution which fixes the characteristics of a series of Preferred Stock, neither the consent by series, or otherwise, of the holders of any outstanding Preferred Stock nor the consent of the holders of any outstanding Common Stock shall be required for the issuance of any new series of Preferred Stock regardless of whether the rights and preferences of the new series of Preferred Stock are senior or superior, in any way, to the outstanding series of Preferred Stock or the Common Stock.

(b) Certificate. Before the Corporation shall issue any shares of Preferred Stock of any series, a certificate of designation setting forth a copy of the resolution or resolutions of the board of directors, and establishing the voting powers, designations, preferences, the relative, participating, optional, or other rights, if any, and the qualifications, limitations, and restrictions, if any, relating to the shares of Preferred Stock of such series, and the number of shares of Preferred Stock of such series authorized by the board of directors to be issued shall be made and signed by an officer of the corporation and filed in the manner prescribed by the NRS.

Section 4. Non-Assessment of Stock. The capital stock of the Corporation, after the amount of the subscription price has been fully paid, shall not be assessable for any purpose, and no stock issued as fully paid shall ever be assessable or assessed, and the Articles shall not be amended in this particular. No stockholder of the Corporation is individually liable for the debts or liabilities of the Corporation.

ARTICLE III ACTION OF STOCKHOLDERS

Prior to the completion of the initial public offering of the Corporation, the stockholders may take action by written consent in lieu of a meeting. After the completion of the initial public offering of the Corporation, the stockholders may not in any circumstance take action by written consent.

ARTICLE IV
DIRECTORS AND OFFICERS

Section 1. Number of Directors. The members of the governing board of the Corporation are styled as directors. The board of directors of the Corporation shall be elected in such manner as shall be provided in the bylaws of the Corporation. The board of directors shall consist of at least one (1) individual and not more than thirteen (13) individuals. The number of directors may be changed from time to time in such manner as shall be provided in the bylaws of the Corporation.

Section 2. Classified Board. Upon the effectiveness of the Corporation's registration statement on Form S-1 with respect to its initial public offering of common stock, the directors shall be classified, with respect to the time for which they shall hold their respective offices, by dividing them into three classes, to be known as "Class I," "Class II" and "Class III." Directors of Class I shall hold office until the next annual meeting of stockholders after such effectiveness and until their successors are elected and qualified, directors of Class II shall hold office until the second annual meeting of stockholders after such effectiveness and until their successors are elected and qualified and directors of Class III shall hold office until the third annual meeting of stockholders after such effectiveness and until their successors are elected and qualified. At each annual meeting of stockholders following such effectiveness, successors to the directors of the class whose term of office expires at such annual meeting shall be elected to hold office until the third succeeding annual meeting of stockholders, so that the term of office of only one class of directors shall expire at each annual meeting. The number of directors in each class, which shall be such that as near as possible to one-third and at least one-fourth (or such other fraction as required by the NRS) in number are elected at each annual meeting, shall be established from time to time by resolution of the board of directors and shall be increased or decreased by resolution of the board of directors, as may be appropriate whenever the total number of directors is increased or decreased.

Section 3. Limitation of Liability. The liability of directors and officers of the Corporation shall be eliminated or limited to the fullest extent permitted by the NRS. If the NRS is amended to further eliminate or limit or authorize corporate action to further eliminate or limit the liability of directors or officers, the liability of directors and officers of the Corporation shall be eliminated or limited to the fullest extent permitted by the NRS, as so amended from time to time.

Section 4. Payment of Expenses. In addition to any other rights of indemnification permitted by the laws of the State of Nevada or as may be provided for by the Corporation in its bylaws or by agreement, the expenses of officers and directors incurred in defending any threatened, pending, or completed action, suit or proceeding (including without limitation, an action, suit or proceeding by or in the right of the Corporation), whether civil, criminal, administrative or investigative, involving alleged acts or omissions of such officer or director in his or her capacity as an officer or director of the Corporation or member, manager, or managing member of a predecessor limited liability company or affiliate of such limited liability company or while serving in any capacity at the request of the Corporation as a director, officer, employee, agent, member, manager, managing member, partner, or fiduciary of, or in any other capacity for, another corporation or any partnership,

joint venture, trust, or other enterprise, shall be paid by the Corporation or through insurance purchased and maintained by the Corporation or through other financial arrangements made by the Corporation, as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the officer or director to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the Corporation. To the extent that an officer or director is successful on the merits in defense of any such action, suit or proceeding, or in the defense of any claim, issue or matter therein, the Corporation shall indemnify him or her against expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection with the defense. Notwithstanding anything to the contrary contained herein or in the bylaws, no director or officer may be indemnified for expenses incurred in defending any threatened, pending, or completed action, suit or proceeding (including without limitation, an action, suit or proceeding by or in the right of the Corporation), whether civil, criminal, administrative or investigative, that such director or officer incurred in his or her capacity as a stockholder, including, but not limited to, in connection with such person being deemed an Unsuitable Person (as defined in Article VII hereof).

Section 5. Repeal And Conflicts. Any repeal or modification of Sections 3 or 4 above approved by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the liability of a director or officer of the Corporation existing as of the time of such repeal or modification. In the event of any conflict between Sections 3 or 4 above and any other Article of the Articles, the terms and provisions of Sections 3 or 4 above shall control.

ARTICLE V VOTING ON CERTAIN TRANSACTIONS

Section 1. Amendment of Articles. The Corporation reserves the right to amend, alter, change or repeal any provision contained in the Articles, in the manner now or hereafter prescribed by the NRS, and all rights conferred on stockholders herein are granted subject to this reservation; provided, however, that no amendment, alteration, change or repeal may be made to: (a) Article III, (b) Sections 1, 2, 3 and 4 of Article IV, or (c) this Article V without the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the issued and outstanding shares of stock of the Corporation entitled to vote in the election of directors excluding stock entitled to vote only upon the happening of a fact or event unless such fact or event shall have occurred, considered for the purposes of this section as one class.

Section 2. Additional Vote Required. Any affirmative vote required by this Article V shall be in addition to the vote of the holders of any class or series of stock of the Corporation otherwise required by law, the Articles, the resolutions of the board of directors providing for the issuance of such class or series and any agreement between the Corporation and any securities exchange or over-the-counter market upon which the Corporation's shares are listed or designated for trading.

ARTICLE VI
COMBINATIONS WITH INTERESTED STOCKHOLDERS

At such time, if any, as the Corporation becomes a "resident domestic corporation," as that term is defined in NRS 78.427, the Corporation shall not be subject to, or governed by, any of the provisions in NRS 78.411 to 78.444, inclusive, as may be amended from time to time, or any successor statutes.

ARTICLE VII
COMPLIANCE WITH GAMING LAWS

Section 1. Definitions. For purposes of this Article VII, the following terms shall have the meanings specified below:

(a) "Affiliate" shall mean a Person who, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, a specified Person. For the purpose of this Section 1(a) of Article VII, "control," "controlled by" and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise. "Affiliated Companies" shall mean those partnerships, corporations, limited liability companies, trusts or other entities that are Affiliates of the Corporation, including, without limitation, subsidiaries, holding companies and intermediary companies (as those and similar terms are defined in the Gaming Laws of the applicable Gaming Jurisdictions) that are registered or licensed under applicable Gaming Laws.

(b) "Gaming" or "Gaming Activities" shall mean the conduct of gaming and gambling activities, or the use of gaming devices, equipment and supplies in the operation of a casino or other enterprise, including, without limitation, race books, sports pools, slot machines, gaming devices, gaming tables, cards, dice, gaming chips, player tracking systems, cashless wagering systems and associated equipment and supplies.

(c) "Gaming Authorities" shall mean all international, foreign, federal, state, local and other regulatory and licensing bodies and agencies with authority over Gaming within any Gaming Jurisdiction. "Gaming Jurisdiction" shall mean all jurisdictions, domestic and foreign, and their political subdivisions, in which Gaming Activities are lawfully conducted.

(d) "Gaming Laws" shall mean all laws, statutes, ordinances and regulations pursuant to which any Gaming Authority possesses regulatory and licensing authority over Gaming within any Gaming Jurisdiction, and all orders, decrees, rules and regulations promulgated by such Gaming Authority thereunder.

(e) "Gaming Licenses" shall mean all licenses, permits, approvals, authorizations, registrations, findings of suitability, franchises, concessions and entitlements issued by a Gaming Authority necessary for or relating to the conduct of Gaming Activities.

(f) "Own," "Ownership," or "Control," (and derivatives thereof) shall mean (i) ownership of record, (ii) "beneficial ownership" as defined in Rule 13d-3

promulgated by the United States Securities and Exchange Commission (as now or hereafter amended), or (iii) the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or the disposition of Securities, by agreement, contract, agency or other manner.

(g) "Person" shall mean an individual, partnership, corporation, limited liability company, trust or any other entity.

(h) "Redemption Date" shall mean the date specified in the Redemption Notice as the date on which the shares of the Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person are to be redeemed by the Corporation.

(i) "Redemption Notice" shall mean that notice of redemption given by the Corporation to an Unsuitable Person or an Affiliate of an Unsuitable Person pursuant to this Article VII. Each Redemption Notice shall set forth (i) the Redemption Date, (ii) the number and type of shares of the Securities to be redeemed, (iii) the Redemption Price and the manner of payment therefor, (iv) the place where any certificates for such shares shall be surrendered for payment, and (v) any other requirements of surrender of the certificates, including how they are to be endorsed, if at all.

(j) "Redemption Price" shall mean the price to be paid by the Corporation for the Securities to be redeemed pursuant to this Article VII, which shall be that price (if any) required to be paid by the Gaming Authority making the finding of unsuitability, or if such Gaming Authority does not require a certain price to be paid, that amount determined by the board of directors to be the fair value of the Securities to be redeemed; provided, however, that the price per share represented by the Redemption Price shall in no event be in excess of the closing sales price per share of shares on the principal national securities exchange on which such shares are then listed on the trading date on the day before the Redemption Notice is deemed given by the Corporation to the Unsuitable Person or an Affiliate of an Unsuitable Person or, if such shares are not then listed for trading on any national securities exchange, then the closing sales price of such shares as quoted in the Nasdaq National Market or SmallCap Market or, if the shares are not then so quoted, then the mean between the representative bid and the ask price as quoted by any other generally recognized reporting system. The Redemption Price may be paid in cash, by promissory note, or both, as required by the applicable Gaming Authority and, if not so required, as the board of directors determines. Any promissory note shall contain such terms and conditions as the board of directors determines necessary or advisable, including without limitation, subordination provisions, to comply with any law or regulation then applicable to the Corporation or any Affiliate of the Corporation or to prevent a default under, breach of, event of default under or acceleration of any loan, promissory note, mortgage, indenture, line of credit, or other debt or financing agreement of the Corporation or any Affiliate of the Corporation. Subject to the foregoing, the principal amount of the promissory note together with any unpaid interest shall be due and payable no later than the tenth anniversary of delivery of the note and interest on the unpaid principal thereof shall be payable annually in arrears at the rate of 2% per annum.

(k) "Securities" shall mean the capital stock of the Corporation.

(1) "Unsuitable Person" shall mean a Person who (i) 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, or (ii) causes the Corporation or any Affiliated Company to lose or to be threatened with the loss of any Gaming License, or (iii) 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 application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License.

Section 2. Finding of Unsuitability.

(a) 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. If a Gaming Authority requires the Corporation, or the board of directors deems it necessary or advisable, to redeem any such Securities, the Corporation shall give a Redemption Notice to the Unsuitable Person or its Affiliate and shall purchase on the Redemption Date the number of shares of the Securities specified in the Redemption Notice for the Redemption Price set forth in the Redemption Notice. From and after the Redemption Date, such Securities shall no longer be deemed to be outstanding, such Unsuitable Person or any Affiliate of such Unsuitable Person shall cease to be a stockholder with respect to such shares and all rights of such Unsuitable Person or any Affiliate of such Unsuitable Person therein, other than the right to receive the Redemption Price, shall cease. Such Unsuitable Person or its Affiliate shall surrender the certificates representing any shares to be redeemed in accordance with the requirements of the Redemption Notice.

(b) Commencing on the date that a Gaming Authority serves notice of a determination of unsuitability or the board of directors determines that a Person is an Unsuitable Person, and until the Securities Owned or Controlled by such Person are Owned or Controlled by a Person who is not an Unsuitable Person, the Unsuitable Person or any Affiliate of an Unsuitable Person shall not be entitled: (i) to receive any dividend or interest with regard to the Securities, (ii) to exercise, directly or indirectly or through any proxy, trustee, or nominee, any voting or other right conferred by such Securities, and such Securities shall not for any purposes be included in the shares of capital stock of the Corporation entitled to vote, or (iii) to receive any remuneration in any form from the Corporation or any Affiliated Company for services rendered or otherwise.

Section 3. Notices. All notices given by the Corporation pursuant to this Article, including Redemption Notices, shall be in writing and may be given by mail, addressed to the Person at such Person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed given at the time deposited in the United States mail. Written notice may also be given personally or by telegram, facsimile, telex or cable and such notice shall be deemed to be given at the time of receipt thereof, if given personally, or at the time of transmission thereof, if given by telegram, facsimile, telex or cable.

Section 4. Indemnification. Any Unsuitable Person and any Affiliate of an Unsuitable Person shall indemnify and hold harmless the Corporation and its Affiliated Companies for any and all losses, costs, and expenses, including attorneys' fees, incurred by the Corporation and its Affiliated Companies as a result of, or arising out of, such Unsuitable Person's or Affiliate's continuing Ownership or Control of Securities, the neglect, refusal or other failure to comply with the provisions of this Article VII, or failure to promptly divest itself of any Securities when required by the Gaming Laws or this Article VII.

Section 5. Injunctive Relief. The Corporation is entitled to injunctive or other equitable relief in any court of competent jurisdiction to enforce the provisions of this Article VII and each holder of the Securities of the Corporation shall be deemed to have acknowledged, by acquiring the Securities of the Corporation, that the failure to comply with this Article VII will expose the Corporation to irreparable injury for which there is no adequate remedy at law and that the Corporation is entitled to injunctive or other equitable relief to enforce the provisions of this Article.

Section 6. Non-exclusivity of Rights. The Corporation's rights of redemption provided in this Article VII shall not be exclusive of any other rights the Corporation may have or hereafter acquire under any agreement, provision of the bylaws or otherwise.

Section 7. Further Actions. Nothing contained in this Article VII shall limit the authority of the board of directors to take such other action to the extent permitted by law as it deems necessary or advisable to protect the Corporation or its Affiliated Companies from the denial or threatened denial or loss or threatened loss of any Gaming License of the Corporation or any of its Affiliated Companies. Without limiting the generality of the foregoing, the board of directors may conform any provisions of this Article VII to the extent necessary to make such provisions consistent with Gaming Laws. In addition, the board of directors may, to the extent permitted by law, from time to time establish, modify, amend or rescind bylaws, regulations, and procedures of the Corporation not inconsistent with the express provisions of this Article VII for the purpose of determining whether any Person is an Unsuitable Person and for the orderly application, administration and implementation of the provisions of this Article VII. Such procedures and regulations shall be kept on file with the Secretary of the Corporation, the secretary of its Affiliated Companies and with the transfer agent, if any, of the Corporation and any Affiliated Companies, and shall be made available for inspection by the public and, upon request, mailed to any holder of Securities. The board of directors shall have exclusive authority and power to administer this Article VII and to exercise all rights and powers specifically granted to the board of directors or the Corporation, or as may be necessary or advisable in the administration of this Article VII. All such actions which are done or made by the board of directors in good faith shall be final, conclusive and binding on the Corporation and all other Persons; provided, however, that the board of directors may delegate all or any portion of its duties and powers under this Article VII to a committee of the board of directors as it deems necessary or advisable.

Section 8. Severability. If any provision of this Article VII or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal, or

unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Article VII.

Section 9. Termination and Waivers. Except as may be required by any applicable Gaming Law or Gaming Authority, the board of directors may waive any of the rights of the Corporation or any restrictions contained in this Article VII in any instance in which the board of directors determines that a waiver would be in the best interests of the Corporation. The board of directors may terminate any rights of the Corporation or restrictions set forth in this Article VII to the extent that the board of directors determines that any such termination is in the best interests of the Corporation. Except as may be required by a Gaming Authority, nothing in this Article VII shall be deemed or construed to require the Corporation to repurchase any Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person.

IN WITNESS WHEREOF, Wynn Resorts, Limited has caused these second
amended and restated articles of incorporation to be executed in its name by its Chief
Executive Officer this 16th day of September, 2002.


Stephen A. Wynn

EXHIBIT 3

REDEMPTION PRICE PROMISSORY NOTE

U.S.\$1,936,442,631.36

February 18, 2012

WYNN RESORTS, LIMITED, a Nevada corporation ("Maker"), whose address is 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109, for value received, hereby promises to pay to the order of ARUZE USA, INC, a Nevada corporation ("Aruze"), whose address is 745 Grier Drive, Las Vegas, Nevada 89119, the principal amount of ONE BILLION NINE HUNDRED THIRTY-SIX MILLION FOUR HUNDRED FORTY-TWO THOUSAND SIX HUNDRED THIRTY-ONE AND 36/100 DOLLARS (U.S.\$1,936,442,631.36), together with accrued interest thereon as hereinafter provided, subject to the terms and conditions set forth in this promissory note (this "Note").

1. Maturity Date. Notwithstanding Section 5 hereof, the entire outstanding principal balance of this Note, together with all accrued and unpaid interest thereon as provided herein, shall be due and payable in full on the tenth (10th) anniversary of the date of this Note (the "Maturity Date").

2. Interest. The balance of principal outstanding from time to time under this Note shall bear interest at the rate of two percent (2%) per annum (the "Interest Rate"), provided that no interest shall accrue on any principal amount of this Note in respect of the day on which such principal amount is paid. All computations of interest shall be made on the basis of a year of 365 or 366 days, as the case may be, and the actual number of days elapsed. Interest shall be payable annually in arrears on each anniversary of the date of this Note, and, with respect to any principal amount, on the date of payment of such principal amount, including, as applicable, the Maturity Date.

3. Optional Prepayment. Maker may, in its sole and absolute discretion, at any time and from time to time, and without penalty or premium, prepay the whole or any portion of the principal or interest due under this Note. In no instance shall any payment obligation hereunder be accelerated except in the sole and absolute discretion of Maker or as specifically mandated by law.

4. Payments. All payments, including optional prepayments, shall be applied first to the payment of accrued and unpaid interest and then to the reduction of principal. Whenever any payment to be made under this Note shall be due on a Saturday, Sunday or any other day on which commercial banks in Las Vegas, Nevada, are authorized or required by law to close (any other day being a "Business Day"), such payment may be made on the next succeeding Business Day. Payments shall be made in the lawful money of the United States of America, and shall be payable by wire transfer and in immediately available funds.

5. Subordination.

(a) The indebtedness evidenced by this Note is and shall be subordinated in right of payment, to the extent and in the manner provided in this Section 5, to the prior payment in full of all existing and future obligations of Maker or any of its affiliates in respect of indebtedness for borrowed money of any kind or nature (collectively, "Senior Indebtedness"). The provisions of this Section 5 are made for the benefit of the holders of any Senior Indebtedness, each of which is made a beneficiary of this Section 5 and any one or more of which may enforce such provisions.

(b) Upon any distribution to creditors of the Maker in any bankruptcy, insolvency, liquidation or similar proceeding relating to the Maker or its property:

- (i) holders of Senior Indebtedness shall be entitled to receive payment in full of all obligations due in respect of such Senior Indebtedness (including interest after the commencement of any such proceeding at the rate (if any) specified in the applicable Senior Indebtedness) before Aruze shall be entitled to receive any payment with respect to this Note; and
- (ii) until all obligations with respect to Senior Indebtedness (as provided in clause (i) above) are paid in full, any distribution to which Aruze would be entitled but for this Section 5 shall be made ratably to holders of Senior Indebtedness.
- (c) Upon the occurrence and during the continuance of any "default" or "event of default" under any Senior Indebtedness (or combination thereof) with an original aggregate principal amount in excess of \$25,000,000, Maker shall not make any payment, whether of interest, principal or otherwise, in respect of this Note.
- (d) In the event that Aruze receives any payment of any obligations in contravention of this Section 5 with respect to this Note, such payment shall be held by Aruze, in trust for the benefit of, and shall be paid forthwith over and delivered, upon written request, ratably to, the holders of Senior Indebtedness or their representative under the indenture or other agreement (if any) pursuant to which Senior Indebtedness may have been issued, for application to the payment of all obligations with respect to Senior Indebtedness remaining unpaid to the extent necessary to pay such obligations in full and in cash in accordance with their terms, after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness.
- (e) The terms of this Note shall be deemed automatically and immediately modified to the extent necessary to comply with any law or regulation (including, without limitation, gaming laws, rules and regulations) from time to time applicable to Maker or any of its affiliates or to prevent a default under, breach of, event of default under or acceleration of any Senior Indebtedness. Any payment of principal and interest under this Note shall be made only if and to the extent that (a) payment of a distribution (as defined in Nevada Revised Statutes 78.191) to Maker's stockholders could immediately thereafter be made in accordance with Nevada Revised Statutes 78.288 and (b) such payment would not violate or contravene any law or regulation (including, without limitation, gaming laws, rules and regulations) then applicable to Maker or any of its affiliates.
6. Restrictions on Transfer. Without the prior written consent of Maker in each instance, Aruze shall not assign, transfer, pledge, hypothecate or otherwise cause or permit any person or entity to possess or control any right, interest or participation in this Note (each, a "Transfer"). Notwithstanding any such consent by Maker, no Transfer shall be effected except in strict compliance with all applicable securities and gaming laws, rules and regulations. Any Transfer in violation or contravention of this Section 6 shall be void and of no effect whatsoever.
7. Right to Set-Off. Maker shall have the right, at any time and from time to time (and without notice or demand), to withhold, retain and set off against any amounts otherwise payable under this Note, any unpaid amount, obligation or liability of Aruze from time to time owing or payable to Maker.
8. Usury Savings Clause. If at any time the Interest Rate exceeds the maximum rate of interest permitted to be charged under applicable law, then the portion of any payment attributable to interest charged in excess of such maximum rate shall be deemed to be a prepayment of principal.
9. Reservation of Rights. Maker has entered into this Note without waiver of or prejudice to any and all rights and remedies (including, without limitation, indemnification and injunctive relief)

available to Maker under its articles of incorporation or applicable law (including, without limitation, gaming laws, rules and regulations), all of which are hereby expressly reserved.

10. Maker Not Liable for Taxes. Aruze (and not Maker) shall be solely responsible for reporting all interest due under this Note (whether such interest is paid or imputed under applicable law) and shall be obligated to pay any associated tax obligation arising therefrom.

11. Waivers. No term or provision of this Note (including, without limitation, the rights of Maker hereunder) shall be waived except by an instrument in writing signed by the party waiving the same and then only to the extent set forth in such writing.

12. Amendments. Except as otherwise provided in Section 5(e), no term or provision of this Note may be modified or amended except by an instrument in writing signed by Maker and Aruze.

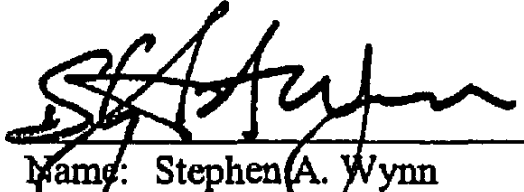
13. Governing Law. This Note shall be governed by and construed and enforced in accordance with the internal laws of the State of Nevada without regard to any choice of law or conflicts of law provisions thereof. Any action, suit or proceeding arising out of or relating to this Note shall be brought and maintained exclusively in the courts of the State of Nevada sitting in Clark County, Nevada.

14. Severability. Except as otherwise provided in Section 8, if any term or provision of this Note is invalid, illegal or unenforceable, then such term or provision shall be enforceable to the maximum extent permitted by law and in a manner so as to preserve, to the greatest extent possible, the original intent of such term or provision. The invalidity, illegality or unenforceability of any term or provision of this Note shall not affect any other term or provision hereof.

[Signature appears on the following page.]
[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, Maker has duly executed this Redemption Price Promissory Note as of the date first written above.

WYNN RESORTS, LIMITED

By:  .
Name: Stephen A. Wynn
Title: Chief Executive Officer

[Redemption Price Promissory Note]

EXHIBIT 4

February 18, 2012

By Facsimile, Email and Hand Delivery

Aruze USA, Inc.
Mr. Kazuo Okada
Universal Entertainment Corporation
c/o Aruze USA, Inc.
745 Grier Drive
Las Vegas, Nevada 89119

REDEMPTION NOTICE

This Redemption Notice (this "Redemption Notice") is hereby given by Wynn Resorts, Limited, a Nevada corporation (the "Corporation") to Aruze USA, Inc., a Nevada corporation ("Aruze"), Kazuo Okada, an individual ("Okada"), and Universal Entertainment Corporation ("Universal"), pursuant to Article VII of the Corporation's Second Amended and Restated Articles of Incorporation (the "Articles"), reference to which is made hereby. Capitalized terms used without definition in this Redemption Notice shall have the meanings ascribed to such terms in the Articles. A copy of the Articles, certified by the Nevada Secretary of State on February 17, 2012, is enclosed herewith for your reference.

1. Determination of Unsuitability. In accordance with Article VII of the Articles, the Board of Directors of the Corporation (the "Board") has determined that each of Okada, Aruze and Universal is an Unsuitable Person and that it is therefore necessary and advisable, and in the best interests of the Corporation and its stockholders, for all of the Securities owned of record by Okada, Aruze and/or Universal to be redeemed. Such determination was made at a meeting of the Board held on February 18, 2012.

2. Redemption Date. The Redemption Date is February 18, 2012.

3. Number and Type of Securities Redeemed. All of the Securities owned of record by Okada, Aruze and/or Universal are redeemed as of the Redemption Date.

4. Redemption Price and Manner of Payment. The Redemption Price is U.S.\$1,936,442,631.36. The entire amount of the Redemption Price shall be paid by a promissory note payable to Aruze. A copy of the promissory note is enclosed with this Redemption Notice.

5. Surrender of Certificates. As soon as practicable on or after the Redemption Date, Okada, Aruze and Universal shall surrender, or cause to be surrendered, to the Corporation's transfer agent any and all certificates evidencing the Securities owned of record by Okada, Aruze and/or Universal. Such certificate(s) shall be delivered to the Corporation's transfer agent at the following address: American Stock Transfer & Trust Company, LLC (Attn: Isaac Kagan.), 6201 15th Avenue, Brooklyn, NY 11219.

6. Reservation of Rights. The Corporation delivers this Redemption Notice without waiver of or prejudice to any and all rights and remedies (including, without limitation, indemnification and injunctive relief) available to the Corporation under the Articles or applicable law (including, without limitation, Gaming Laws), all of which are hereby expressly reserved.

WYNN RESORTS, LIMITED

By: _____


Stephen A. Wynn
Chief Executive Officer

Enclosures (Articles of Incorporation; Copy of Redemption Price Promissory Note)

IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS LIMITED,

Petitioners,

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

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

Real Parties in Interest.

Case No. _____

Electronically Filed
Sep 12 2017 10:22 a.m.

Elizabeth A. Brown
Clerk of Supreme Court
**APPENDIX IN SUPPORT OF
WYNN RESORTS, LIMITED'S
PETITION FOR WRIT OF
PROHIBITION OR MANDAMUS**

VOLUME II OF V

DATED this 11th day of September, 2017.

PISANELLI BICE PLLC

By: /s/ Debra L. Spinelli

James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
Debra L. Spinelli, Esq., Bar No. 9695
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Petitioner Wynn Resorts, Limited

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 11th day of September, 2017, I electronically filed and served by electronic mail true and correct copies of the above and foregoing **APPENDIX IN SUPPORT OF WYNN RESORTS, LIMITED'S PETITION FOR WRIT OF PROHIBITION OR MANDAMUS** to the following:

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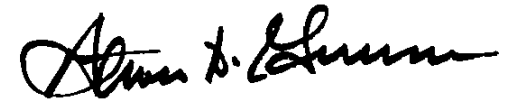
Attorneys for Defendants

SERVED VIA HAND-DELIERY

The Honorable Elizabeth Gonzalez
Eighth Judicial District court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC



CLERK OF THE COURT

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18 **Attorneys for Wynn Resorts, Limited**

DISTRICT COURT

CLARK COUNTY, NEVADA

21 **WYNN RESORTS, LIMITED, , a Nevada**
22 **Corporation,**
23 **Plaintiff,**
24 **vs.**
25 **KAZUO OKADA, an individual, ARUZE**
USA, INC., a Nevada corporation,
26 **UNIVERSAL ENTERTAINMENT CORP.,**
a Japanese corporation,
27 **Defendants.**

Case No.: A - 1 2 - 6 5 6 7 1 0 - B

Dept. No.: X I

COMPLAINT

**(Request for Business Court Assignment
Pursuant to EDCR 1.61(a))**

**(Exempt from Arbitration – Declaratory
Relief Requested)**

1 Plaintiff WYNN RESORTS, LIMITED ("Wynn Resorts"), by and through its undersigned
2 counsel, hereby files the above-captioned Complaint:

3 **NATURE OF THE ACTION**

4 This is an action for breach of fiduciary duty and related offenses committed against
5 Wynn Resorts at the hands of one of its directors, Kazuo Okada ("Okada") and his affiliates.
6 Wynn Resorts' Compliance Committee commissioned former Director of the Federal Bureau of
7 Investigation, Louis J. Freeh, to examine Okada's domestic and foreign activities impacting
8 Wynn Resorts. Based upon a multi-month investigation – which culminated with a personal
9 interview that Okada long evaded – Freeh uncovered substantial evidence of gross improprieties
10 by Okada and his agents, as explained in Freeh's report, attached as Exhibit 1. In particular, Freeh
11 presented Wynn Resorts' Board with evidence that Okada had made unlawful payments to foreign
12 gaming regulators who could advance Okada's business interests. Okada surreptitiously undertook
13 these acts despite admonishments that all Directors closely adhere to Company policy, scrupulous
14 business practices/ethics, and the law, both foreign and domestic. The public's confidence in
15 gaming's integrity depends upon strict observance of these principles. Okada's conduct poses a
16 direct assault upon, and a present threat to, Wynn Resorts' reputation for probity, which is central
17 to maintaining its stature in the gaming industry as well as its current and future licensing.

18 **PARTIES AND RELATED PERSONS/ENTITIES**

19 1. Plaintiff WYNN RESORTS is and was at all times relevant hereto a corporation
20 organized and existing under the laws of the State of Nevada, with its principal place of business
21 in the State of Nevada. Wynn Resorts is publicly traded on NASDAQ.

22 2. Wynn Resorts is a world class developer of destination resort casinos.
23 Wynn Resorts owns resort casinos through its wholly owned subsidiary,
24 WYNN LAS VEGAS, LLC ("Wynn Las Vegas") and through WYNN MACAU, LIMITED
25 ("Wynn Macau").

26 3. Wynn Las Vegas operates the Wynn Las Vegas and Encore resort casinos in
27 Las Vegas, Nevada.

1 4. Wynn Macau is a Cayman Islands company, publicly traded on the Hong Kong
2 Stock Exchange (of which Wynn Resorts owns a majority interest). Through its wholly owned
3 subsidiary, WYNN RESORTS (MACAU), S.A., a company organized and existing under the
4 laws of Macau Special Administrative Region of the Peoples Republic of China, Wynn Macau
5 operates the Wynn Macau and Encore at Wynn Macau resort-casinos in Macau.

6 5. Defendant OKADA is and was at all times relevant hereto a citizen of Japan, and a
7 director of Wynn Resorts. Okada serves multiple roles with Wynn Resorts and its affiliated
8 companies (the "Wynn Companies"). He is a member of the Board of Directors for both
9 Wynn Resorts and Wynn Macau and, until February 18, 2012, through UNIVERSAL
10 ENTERTAINMENT CORPORATION ("Universal") and ARUZE USA, controlled a shareholder
11 that had owned approximately 19.66% of Wynn Resorts. From October 2002 up to and until
12 October 2011, Okada also served as Vice Chairman of Wynn Resorts. In these capacities, Okada
13 owed, and continues to owe, fiduciary duties of care, loyalty, and good faith to the
14 Wynn Companies.

15 6. Defendant ARUZE USA, INC. ("ARUZE USA") is and was at all times relevant
16 hereto a corporation organized and existing under the laws of the State of Nevada, and a wholly
17 owned subsidiary of Universal ("Universal"). Until February 18, 2012, ARUZE USA was a
18 19.66% shareholder in Wynn Resorts. Okada serves as director, President, Secretary, and
19 Treasurer of ARUZE USA.

20 7. Defendant UNIVERSAL is a public corporation organized under the laws of
21 Japan, and formerly known as ARUZE Corporation until a November 2009 name change.
22 Universal manufactures and sells pachislot and pachinko machines, and other similar gaming
23 equipment. Universal does business in the State of Nevada, has been issued a manufacturer's
24 license by the Nevada Gaming Commission, and was deemed suitable by the Nevada Gaming
25 Commission as a 100% shareholder in ARUZE USA. Okada is Director, Chairman of the Board
26 and, together with his family members, a 67.9% shareholder in Universal.

27 8. The Wynn Resorts' Board of Directors consists of 12 members, comprised of
28 Stephen A. Wynn ("Mr. Wynn") as Chairman, Okada, Russell Goldsmith, Linda Chen,

1 Dr. Ray R. Irani, former Nevada Governor Robert J. Miller, John A. Moran, Alvin V. Shoemaker,
2 D. Boone Wayson, Elaine P. Wynn, Allan Zeman, and Marc D. Schorr (collectively "Wynn
3 Directors" and/or "Wynn Board").

4 9. Wynn Resorts' Gaming Compliance Committee ("Compliance Committee") is an
5 internal committee chaired by Director Miller and comprised of two additional members, Schorr
6 (director and COO) and John Strzemp (Wynn Resorts' Executive Vice President and Chief
7 Administrative Officer). The Compliance Committee is charged with assuring Wynn Resorts'
8 compliance with all laws and regulations, particularly on gaming laws, regulations, and policies.

9 10. The Honorable Louis J. Freeh, Esq., is a former director of the Federal Bureau of
10 Investigation ("FBI"), having led that agency with distinction from 1993 to 2001. Prior to serving
11 as FBI Director, Freeh was a United States District Court Judge. Today, Freeh is a partner in
12 Freeh Sporkin & Sullivan, LLP – a law firm he founded with two other former federal judges –
13 which specializes in domestic and foreign corporate investigations and compliance.

14 JURISDICTION

15 11. Defendants Universal, ARUZE USA, and Okada have each individually and in
16 concert with one another, caused the acts and events alleged herein within the State of Nevada
17 and all are subject to the jurisdiction of this Court. Venue is also proper in this Court.

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

20 GENERAL ALLEGATIONS

21 13. A Nevada gaming license is a privilege. Nevada law imposes comprehensive
22 regulatory requirements upon gaming licensees, including obligations that those associated with
23 the licensee possess the necessary character, qualifications, and integrity to be suitable to hold
24 that privilege so as to not pose a threat to the public interest or the integrity of the regulation and
25 control of gaming. As a Director of Wynn Resorts, Okada is subject to these demanding
26 standards.

27 14. Additionally, all of Wynn Resorts' Directors agreed to be, were, and are subject to
28 Wynn Resorts' Code of Business Conduct and Ethics (the "Code of Conduct"). The Code of

1 Conduct reinforces and enhances Wynn Resorts' commitment to doing business in an ethical
2 manner. The Code of Conduct reflects Wynn Resorts' values, demonstrates ethical leadership,
3 and promotes an environment that upholds its longstanding reputation for integrity, ethical
4 conduct, and trust.

5 15. Forsaking his obligations to maintain the integrity required of a gaming licensee,
6 the Company's Code of Conduct and his other fiduciary duties, Okada committed improper acts
7 that included making payments for the benefit of foreign gaming officials who could advance his
8 personal business interests. He has furthermore elected to compete against Wynn Resorts,
9 undertaking a campaign to convert Wynn Resorts' assets for his own benefit, and that of his
10 affiliates. Wynn Resorts has been compelled to defend against Okada's acts of aggression by,
11 among other things, the initiation of remedial and defensive Board actions and the prosecution of
12 this action.

13 *Okada Enters the Philippine Market*

14 16. By all measures, Okada's abandonment of his duty of loyalty to Wynn Resorts
15 commenced with his plan to develop gaming operations in the Philippines.

16 17. Upon learning of opportunities in the Philippines, Okada approached Mr. Wynn
17 with an idea of creating a casino resort in Manila Bay. Neither Mr. Wynn nor the Board of
18 Directors was willing to pursue such opportunities in the Philippines.

19 18. Undeterred, Okada pressed on with his personal agenda without full disclosure to
20 Mr. Wynn or the Board. In furtherance of his personal scheme, Okada asked that a city ledger
21 account at Wynn Resorts be opened in the name of his company, Universal ("Universal City
22 Ledger"). Upon information and belief, and unbeknownst to Wynn Resorts, Okada sought the
23 city ledger account, in part, to facilitate his pursuit of his personal business interests in the
24 Philippines and to promote the false appearance of an affiliation with Wynn Resorts to his
25 Philippine business contacts.

26 19. Upon information and belief, many doors opened for Okada in the Philippines due
27 to his well-publicized relationship with Mr. Wynn and Wynn Resorts. Wynn Resorts is informed
28 and believes that Okada touted his relationship and affiliation with Wynn Resorts so as to

1 convince others that Wynn Resorts was and/or is somehow affiliated with Universal's desired
2 presence in Manila. All such representations were and are false.

3 20. In 2008, the Philippine Amusement and Gaming Corporation ("PAGCOR"), a
4 100% government-owned and controlled corporation that operates under the direct supervision of
5 the Office of the President of the Philippines and is charged with "[r]egulat[ing], authoriz[ing] and
6 licens[ing] games of chance, games of cards and games of numbers, particularly casino gaming,
7 in the Philippines," awarded four provisional gaming licenses without public bidding. PAGCOR
8 issued one such license to a newly-formed entity that is owned 99% by ARUZE USA, known as
9 Tiger Resort, Leisure and Entertainment Inc. Okada's pursuit and development of that license
10 expressly contradicts Wynn Resorts' requests to Okada not to pursue business in the Philippines.
11 Moreover, Okada's actions to obtain and exploit that license involved violations of his duties to
12 Wynn Resorts.

13 *Initial Examination of Okada's Activities*

14 21. In or around the fall of 2010, Wynn Resorts heard that Okada was continuing to
15 represent to multiple people that he (and/or Universal) and Wynn Resorts were involved in a joint
16 venture together in the Philippines and were pursuing, also as joint venturers, potential
17 opportunities in Japan. Such representations were again false.

18 22. Questioning Okada's actions, in or around January 2011, Wynn Resorts, through
19 its Compliance Committee, commissioned an independent investigation and risk assessment of
20 investing in the gaming industry in the Philippines, which found:

- 21 a. Official corruption in the Philippine gaming industry is "deeply ingrained";
- 22 b. Doubts that newly-elected President Aquino's stated plans for reform would
23 eliminate corruption from the gaming industry;
- 24 c. The country's legal/regulatory frameworks were not closely aligned with
25 American compliance and transparency standards; and
- 26 d. Despite a general refusal by witnesses to discuss Okada's role in the
27 Philippines (many refused to comment), other information created
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1 reasonable suspicion that persons acting on Okada's behalf had engaged in
2 improprieties.

3 23. Notwithstanding the issues identified by the investigation/assessment, Okada was
4 unrelenting in his appeal to Wynn Resorts. In February 2011, he repeated his oft-uttered request
5 that Mr. Wynn travel to the Philippines to explore investing in Universal's Manila Bay project.

6 24. During the February 24, 2011 meeting of the Board of Directors, following
7 discussion of the Foreign Corrupt Practices Act ("FCPA"), the findings from the independent
8 investigation were relayed to the Board. Mr. Wynn advised the Board that he had been invited by
9 Okada to meet Philippine President Aquino. Okada was present for the Board's discussions. The
10 independent directors (Goldsmith, Irani, Miller, Moran, Shoemaker, Wayson, and Zeman)
11 unanimously advised Wynn Resorts management that involvement in the Philippines was
12 inadvisable and that the meeting should be cancelled. In plain terms, the Board informed Okada
13 that Wynn Resorts would not invest in Universal's Manila Bay project.

14 25. Okada, who had scheduled on his own initiative a meeting between Mr. Wynn and
15 Philippine President Aquino, was embarrassed and angry in having to cancel the arrangements.
16 Again, however, Okada remained undeterred.

17 26. Finally recognizing that Wynn Resorts was not going to provide Okada and
18 Universal with funds or know-how for his Philippine project, Okada nonetheless moved forward
19 with his secret plans to compete against Wynn Resorts by false claims of affiliation and
20 endorsement, among other things.

21 27. Despite knowing the Board's opposition to his plans in the Philippines, Okada
22 proceeded to announce that he and Universal planned to lure high-limit, VIP gamblers from China
23 to its Manila Bay resort-casino, the same customer base as Wynn Macau. In short, Okada was
24 creating a new casino in direct competition with Wynn Macau.

25 28. Universal purportedly intends to construct two casinos and three hotels in Manila
26 by December 2013, intends to open those facilities in early 2014, intends to spend \$2.3 billion on
27 the project, and hopes to turn \$2 billion in sales in its first year of operation. Okada has publicly
28

1 stated his intent to open more casinos in Asia in 2015. On or about January 26, 2012, Universal
2 broke ground on construction of the Manila Bay casino resort.

3 29. To promote his own interests, Okada launched a campaign to misappropriate
4 Wynn Resorts' assets and secrets for his and his affiliates' use. Among other things, Okada
5 arranged to have several people serve as interns at the Wynn Macau property so that Wynn Macau
6 "know how" could be learned and siphoned from Wynn Resorts.

7 *Wynn Resorts Expects Compliance*

8 30. During a July 28, 2011 executive session, the independent directors again
9 discussed Okada's ongoing involvement in the Philippines and expressed concern about probity
10 issues attendant to Okada's involvement and the effect that Okada's actions in the Philippines
11 could have on Wynn Resorts. Of notable concern were Okada's comments at prior Board
12 meetings. Specifically, Okada had relayed his familiarity with local business practices that
13 involved having third parties make payments to government officials rather than someone doing
14 so directly (acts prohibited not only under the Foreign Corrupt Practices Act, but also by Wynn
15 Resorts' Code of Conduct and other policies).

16 31. Following Okada's comments, Wynn Resorts took several steps to reiterate and to
17 ensure awareness of the boundaries of corporate policies and legal restrictions on payments to
18 government officials (among other things). These include the following:

- 19 a. To ensure that all directors, especially Okada, were kept informed about the
20 Foreign Corrupt Practices Act, on August 4, 2011, a notice to the Board
21 was issued for a training on the Foreign Corrupt Practices Act to be held on
22 October 31, 2011, followed by a Board meeting on November 1, 2011.
- 23 b. To further protect Wynn Resorts, on August 5, 2011, all members of the
24 Board of Directors were asked to review: (1) the Code of Business Ethics;
25 and (2) the Policy Regarding Payments to Government Officials, and
26 execute an acknowledgement that they read, understood, and
27 acknowledged the policies. All members of the Board have signed the
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1 acknowledgement but for one. Despite multiple attempts to follow-up,
2 Okada has still failed to sign.

3 c. Attached to the Directors' & Officers' Questionnaire sent to all members of
4 the Board on January 12, 2012 was an acknowledgement form that required
5 the Directors to sign in two places: (1) Page 26 of the questionnaire; and
6 (2) Page 50 on the separate Code of Business Conduct and Ethics
7 Acknowledgement Form that was part of the questionnaire packet. Okada
8 signed and returned the former on the January 27, 2012 deadline but failed
9 to return a signed Code of Business Conduct and Ethics Acknowledgement
10 Form. Okada has still not returned the acknowledgement despite a
11 follow-up request to do so.

12 32. On September 15, 2011, Okada, through his assistant, sent an RSVP that he would
13 attend both the Foreign Corrupt Practices Act training on October 31 and the Board meeting
14 noticed for November 1, 2011. But Okada never attended the training.

15 33. To follow up on issues raised during the July 28, 2011 Board meeting, in early
16 August, Wynn Resorts' Board of Directors also commissioned a second independent investigation
17 into the regulatory and compliance climate in the Philippines. This investigation identified
18 anomalies and improprieties related to Universal's/Okada's dealings in the Philippines.

19 34. On September 27, 2011, the Compliance Committee held a special meeting to
20 discuss the findings of the second independent investigation. Those findings identified a number
21 of concerns regarding Okada's activities, including that he may be: (a) engaging in acts that
22 would render him unsuitable under Nevada gaming regulations, and (b) breaching the fiduciary
23 duties he owed to Wynn Resorts.

24 35. At the direction of the Compliance Committee, Wynn Resorts approached Okada's
25 counsel to discuss the Committee's concerns relative to Okada's conduct and business in the
26 Philippines, and its effect on Wynn Resorts and Okada's duties and responsibilities as a member
27 of Wynn Resorts' Board of Directors. Wynn Resorts' concerns were ill-received.

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1 36. Over the next month, counsel for Wynn Resorts and Okada engaged in discussions
2 about Wynn Resorts' concerns that Okada's involvement in the Philippines was placing
3 Wynn Resorts and its shareholders at substantial risk.

4 37. Okada designed and executed a strategy to divert attention away from his own
5 misconduct. Okada claimed to need access to certain books and records (*e.g.*, records related to
6 an amendment to a shareholder's agreement between Mr. Wynn, Elaine Wynn, and Okada).
7 Okada's diversionary tactics underscored his need to change the topic from the real issue – his
8 misconduct in the Philippines.

9 38. Okada's game playing continued. On October 25, 2011, days before the
10 long-scheduled Foreign Corrupt Practices Act training, he requested that the training materials be
11 translated into Japanese (despite his previous, long-term practice of translating all materials on his
12 own) and that the date of the training be moved (despite that it had been planned around his
13 previous confirmation). His refusal to attend the training, an event attended by all other Board
14 members, demonstrated a cavalier disregard for his obligations as director of a company in a
15 highly regulated gaming industry. In the end, Okada was the sole Board member who failed to
16 attend the training, with all other directors appearing in person or telephonically.

17 ***Former FBI Director Freeh Investigates***

18 39. On or about October 29, 2011, Wynn Resorts, on behalf of its Compliance
19 Committee, retained Freeh to conduct an independent investigation into Okada and his activities,
20 with a focus on three main areas: (1) whether Okada breached the fiduciary duties owed to
21 Wynn Resorts; (2) whether Okada engaged in conduct that could jeopardize Wynn Resorts'
22 gaming licenses; and (3) whether Okada engaged in any conduct that could violate Wynn Resorts'
23 compliance policy.

24 40. As part of that investigation, Freeh conducted dozens of interviews (including of
25 all independent members of Wynn Resorts' Board of Directors), and reviewed thousands of pages
26 of documents and emails. As of January 1, 2012, there remained only one outstanding item on
27 Freeh's to-do list: interview Okada. Yet, Okada refused to schedule the interview despite Freeh's
28

1 stated willingness to travel on short notice to conduct the interview anywhere in the world to
2 accommodate Okada's schedule.

3 41. With only Okada's interview outstanding, on February 6, 2012, Freeh briefed
4 Wynn Resorts' Compliance Committee.

5 42. Okada finally sat for his interview with Freeh in Tokyo, Japan, on February 15,
6 2012, where Okada was accompanied by United States counsel.

7 43. Freeh announced that he would report his findings to the Board of Directors on
8 February 18, 2012.

9 44. At the February 18, 2012 Board meeting, Freeh made a detailed presentation and
10 provided the Board with copies of his final report, outlining the following improprieties, among
11 others:

12 a. The Universal City Ledger account established by Okada revealed
13 36 separate instances, from May 2008 to through June 2011 where Okada
14 or his associates/affiliates made payments exceeding US \$110,000 that
15 directly benefitted senior PAGCOR officials. This included payment for
16 luxury lodging, extravagant dinners, shopping, and cash to spend for,
17 among others, former PAGCOR Chairman Genuino and his family and
18 friends and current PAGCOR Chairman, Cristino Naguiat ("Naguiat").

19 b. The Freeh report noted that Okada's conduct constituted *prima facie*
20 evidence of violations of the Foreign Corrupt Practices Act. On one
21 particular occasion, Okada arranged for PAGCOR Chairman Naguiat, his
22 wife, his three children, their nanny, other senior PAGCOR officials, one of
23 whom also brought his family to stay at Wynn Macau. Okada and his
24 associates refused to provide Wynn Macau management with the name of
25 Chairman Naguiat and tried to conceal his identity. At Okada's associates'
26 request and Okada's direction, Chairman Naguiat and his entourage were
27 provided with the most expensive accommodation, food, and star
28 treatment. In addition, Okada's associates asked that each guest be

1 provided a \$5,000 cash advance during their stay. Following the stay,
2 Okada's associates requested Wynn Macau reduce the excessive charges
3 because they feared an investigation and did not want Universal to get in
4 trouble. Wynn Macau refused.

5 c. There is substantial evidence that Okada, his associates and companies may
6 have arranged and manipulated ownership and management of legal
7 entities in the Philippines under his control, in a manner that may have
8 enabled the evasion of Philippine constitutional and statutory requirements.

9 d. Moreover, close associates and consultants of the former PAGCOR
10 administration attained positions as corporate officers, directors and/or
11 nominal shareholders of entities controlled by Okada and, in some cases,
12 served as links between Okada and the former PAGCOR chair.

13 e. There is substantial evidence that the ownership structure of
14 Okada-affiliated, ARUZE USA-owned entities may subject Okada to civil
15 and criminal penalties under Philippine law.

16 f. Despite being repeatedly advised of the strict anti-bribery laws and
17 Wynn Resorts' policies, Okada insists and strongly believes that, when
18 doing business in Asia, he is permitted to provide gifts and things of value
19 to government officials, whether directly or indirectly.

20 g. His conduct is not accidental or based upon a misunderstanding of the law
21 or the policies. Rather, Okada stated his personal rejection of anti-bribery
22 laws and Wynn Resorts' related policies to fellow Wynn Resorts Board
23 members.

24 45. Following Freeh's presentation, the Board deliberated at length and unanimously
25 adopted resolutions finding the Defendants to be Unsuitable Persons under Wynn Resorts' Second
26 Amended and Restated Articles of Incorporation ("Articles of Incorporation" and/or "Articles"),
27 and redeemed ARUZE USA's shares in Wynn Resorts in accordance with the provisions of the
28 Articles

(Wynn Resorts against Okada)

11 48. Wynn Resorts' Code of Conduct, which applies to all employees, officers, and
12 directors, provides guidelines for ethical behavior consistent with the reputation and integrity of
13 Wynn Resorts. The Code of Conduct supplements the duties, fiduciary and otherwise, imposed
14 upon Okada under Wynn Resorts' governing documents and the law.

49. The Code of Conduct addresses conflicts of interest. Specifically, the Code of Conduct provides that "directors are expected to dedicate their best efforts to advancing [Wynn Resorts'] interests and to make decisions that affect [Wynn Resorts] based on [Wynn Resorts'] best interest, independent of outside influences."

19 50. The Code of Conduct defines a "conflict of interest" as "when your own interests
20 (including the interests of a family member or an organization with which you have a significant
21 relationship) interfere, or even appear to interfere with the interests of [Wynn Resorts]. A conflict
22 situation can arise when you take actions, have interests or are offered benefits that make it
23 difficult for you to perform your [Wynn Resorts] work objectively and effectively."

24 51. The Code of Conduct provides a non-exclusive list of potential conflict scenarios.
25 Included in this list is an express prohibition on financial interests in other businesses: "You may
26 not own a significant interest in any company that competes with [Wynn Resorts]." The Code of
27 Conduct provides that "it is not typically" a conflict if the competing entity "is a publicly traded
28 company *and* you and your family members' only relationship with any such entity is to have an

1 interest of *less than 2%* of the outstanding shares of the [competing] company." (Emphasis
2 added).

3 52. Further, the Code of Conduct precludes outside employment or activities with a
4 competitor. Specifically, "[s]imultaneous employment with or serving as a director of a
5 competitor of [Wynn Resorts] is prohibited, as is any activity that is intended to or that you
6 should reasonably expect to advance a competitor's interests. You may not market products or
7 services in competition with [Wynn Resorts'] current or potential business activities. . . ."

8 53. In addition, the Code of Conduct expressly states that "*[y]ou may not use*
9 *corporate property or information or your position at [Wynn Resorts] for improper personal*
10 *gain, and you may not compete with [Wynn Resorts].*" (Emphasis added.)

11 54. The Code of Conduct also provides as follows:

12 a. With respect to offering gifts and entertainment,

13 i. "Special rules apply in the context of dealing with government
14 officials and employees. See 'Interacting with Government –
15 Prohibition on Gifts to Government Officials and Employees'
16 below."

17 ii. "Giving or receiving any payment or gift in the nature of a bribe or
18 a kickback is absolutely prohibited."

19 iii. "You are prohibited from providing gifts, meals or anything of
20 value to government officials or employees or members of their
21 families in connection with Company business without prior written
22 approval from the Compliance Officer."

23 iv. "The Company's Policy Regarding Payments to Foreign Officials,
24 the U.S. Foreign Corrupt Practices Act (the "FCPA"), and the laws
25 of many other countries prohibit the Company and its officers,
26 employees and agents or other third parties from giving or offering
27 to give money or anything of value, directly or through an
28 intermediary, to a foreign officials, employees of a state-owned

1 company, a foreign political party, a party official or a candidate for
2 political office in order to attempt to influence officials acts or
3 decisions of that person or entity, to obtain or retain business, or to
4 secure any improper advantage."

5 b. With respect to company information and intellectual property:

6 i. "Company assets, including Company time, equipment, materials,
7 resources and proprietary information, must be used for business
8 purposes only."

9 ii. "The Intellectual Property must not be used or reproduced without
10 the consent of the Company and for authorized use in connection
11 with the Company's business. Every effort must be undertaken to
12 protect the Intellectual Property from illegal copying or misuse."

13 55. As a Wynn Resorts director, Okada was bound by the Code of Conduct.

14 56. Further, as a Director, Okada stands as a fiduciary to Wynn Resorts and, therefore,
15 owes a high duty to the Company, including the duty of care, the duty of loyalty, and that he at all
16 times discharged those duties in good faith and with a view to the interests of Wynn Resorts.

17 57. The fiduciary duty of loyalty that Okada owed as a Director required him to
18 maintain, in good faith, the corporation's and its shareholders' best interests over the interests of
19 anyone else, including his own.

20 58. Okada breached his fiduciary duties by engaging in unlawful activities, many of
21 which occurred on Wynn Resorts' properties, and all of which undermine Wynn Resorts'
22 reputation as well as its business and gaming licenses.

23 59. Okada further breached his fiduciary duty of loyalty by, among other things,
24 self-dealing, placing his own interests above those of Wynn Resorts, and using Wynn Resorts'
25 confidential information, trade secrets, and related trademarks for his own benefit and to
26 Wynn Resorts' detriment. Specifically, and among other things, the website of Universal (of
27 which Okada holds a significant interest and serves as Chairman of the Board) states that
28 Universal obtained its purported experience and "know how" in operating top quality facilities

1 and providing services to the high end market through Okada's experience with Wynn Resorts.
2 Universal's website also states that it intends to use its know-how acquired by Okada from his
3 relationship with Wynn Resorts in Universal's Manila Bay casino-resort operation. Universal and
4 Okada expressly admit (and those in the industry indisputably recognize) that a Manila Bay
5 casino-resort will compete with Wynn Macau (in which Wynn Resorts has a significant
6 ownership interest) for gaming customers and resort clientele.

7 60. Okada's acts and/or failures to act constituted breaches of his fiduciary duties.
8 Okada's breaches of duty involved intentional misconduct and knowing violations of the law.

9 61. As a direct and proximate result of Okada's acts and omissions, Wynn Resorts has
10 suffered and will continue to suffer direct, incidental and consequential damages in an amount to
11 be proven at trial, but in any event, in excess of \$10,000, plus prejudgment interest.

12 62. In committing the acts herein above alleged, Okada is guilty of oppression, fraud,
13 and malice toward Wynn Resorts. As such, Wynn Resorts is entitled to recover punitive damages
14 from Okada for the purpose of deterring him and others similarly situated from engaging in like
15 conduct.

16 63. As a result of the acts and omissions of Okada, Wynn Resorts has been compelled
17 to hire the services of an attorney for the protection of its interests.

18 **SECOND CAUSE OF ACTION**

19 **(Aiding & Abetting Breach of Fiduciary Duty)**

20 **(Wynn Resorts against ARUZE USA & Universal)**

21 64. Wynn Resorts repeats and realleges the allegations set forth in Paragraphs 1
22 through 63 above as though fully set forth herein.

23 65. As a director, Okada owed Wynn Resorts a fiduciary duty of loyalty which, as
24 alleged herein, he breached.

25 66. ARUZE USA and Universal knowingly participated in Okada's breach by
26 facilitating the self-dealing and misappropriation of Wynn Resorts' confidential information, trade
27 secrets, and trademarks, and committing unlawful acts that undermine Wynn Resorts' good
28 reputation as well as its business and gaming licenses.

1 67. As a direct and proximate result of ARUZE USA's and Universal's acts and
2 omissions in aiding and abetting Okada's breach of duty, Wynn Resorts has suffered and will
3 continue to suffer direct, incidental and consequential damages in an amount to be proven at trial,
4 but in any event, in excess of \$10,000, plus prejudgment interest.

5 68. In committing the acts herein above alleged, ARUZE USA and Universal are
6 guilty of oppression, fraud, and malice toward Wynn Resorts. As such, Wynn Resorts is entitled
7 to recover punitive damages from ARUZE USA and Universal for the purpose of deterring them
8 and others similarly situated from engaging in like conduct.

9 69. As a result of the acts and omissions of ARUZE USA and Universal, Wynn
10 Resorts has been compelled to hire the services of an attorney for the protection of its interests.

11 **THIRD CAUSE OF ACTION**

12 **(Declaratory Relief – NRS Chapter 30)**

13 **(Wynn Resorts against Okada, ARUZE USA & Universal)**

14 70. Wynn Resorts repeats and realleges the allegations set forth in Paragraphs 1
15 through 69 above as though fully set forth herein.

16 71. To be deemed "suitable" under Nevada gaming law, the applicant must be: (a) a
17 person of good character, honesty and integrity; (b) a person whose prior activities, criminal
18 record, if any, reputation, habits and associations do not pose a threat to the public interest of the
19 State of Nevada or to the effective regulation and control of gaming, and (c) must have adequate
20 business probity, competence and experience, in gaming or generally.

21 72. Section 3.090 of the Nevada Gaming Regulations provides that a license,
22 registration, and suitability finding requires, among other things, a person of "good character,
23 honesty, and integrity" and one "whose background, reputation and associations will not result in
24 adverse publicity for the State of Nevada and its gaming industry"

25 73. Even after a suitability finding, Regulation 3.080 provides that "[t]he commission
26 may deny, revoke, suspend, limit condition or restrict any registration or finding of suitability or
27 application therefor upon the same grounds as it may take such action with respect to licenses,
28 licensees and licensing; without exclusion of any other grounds."

1 74. In recognition of the central importance of its gaming license, Wynn Resorts'
2 Articles of Incorporation afford the Board of Directors the "sole discretion" to take certain action
3 to protect the gaming licenses and approvals of Wynn Resorts and its affiliates. Under the
4 Articles of Incorporation, an "'Unsuitable Person' shall mean a Person who . . . in the sole
5 discretion of the board of directors of the Corporation, is deemed likely to jeopardize the
6 Corporation's or any Affiliated Company's application for, receipt of approval for, right to the use
7 of, or entitlement to, any Gaming License." In addition, the Amended and Restated Gaming and
8 Compliance Program defines an "Unsuitable Person" as, among other things, one "that the
9 Company determines is unqualified as a business associate of the Company or its Affiliates based
10 on, without limitation, that person's antecedents, financial practices, financial condition or
11 business probity."

12 75. Following a determination of unsuitability, the Articles of Incorporation provide
13 that "[t]he Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an
14 Unsuitable Person shall be subject to redemption by the Corporation, out of funds legally
15 available therefor, by action of the board of directors, to the extent . . . deemed necessary or
16 advisable by the board of directors. If . . . the board of directors deems it necessary or advisable,
17 to redeem any such Securities, the Corporation shall give a redemption Notice to the Unsuitable
18 Person or its Affiliate and shall purchase on the Redemption Date the number of shares of the
19 Securities specified in the Redemption Notice for the price set forth in the Redemption
20 Notice"

21 76. On February 18, 2012, following Freeh's presentation, the Board of Directors
22 deliberated at length and thereafter adopted resolutions that: (1) determined that ARUZE USA,
23 and Universal were likely to jeopardize Wynn Resorts' and its affiliated companies' gaming
24 licenses; (2) deemed Okada, ARUZE USA, and Universal to be unsuitable persons under
25 Wynn Resorts' Articles of Incorporation; and (3) redeemed ARUZE USA's shares in
26 Wynn Resorts for approximately US \$1.936 billion via a promissory note, in accordance with
27 Article VII of the Articles of Incorporation.

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1 77. Aware of the magnitude of his improprieties and what any reasonable Board of
2 Directors of a Nevada gaming company would have to do, Okada attempted, in advance of the
3 February 18, 2012 Board meeting, to set up a defense by disputing the Board's authority to act
4 upon Freeh's report.

5 78. Accordingly, a justiciable controversy has arisen between the parties whose
6 interests are adverse, and the dispute is ripe for adjudication. Wynn Resorts acted lawfully and in
7 full compliance with its Articles of Incorporation, Bylaws, and other governing documents and is
8 entitled to a declaration from this Court to that effect.

9 79. As a result of the acts and omissions of Defendants, Wynn Resorts has been
10 compelled to hire the services of an attorney for the protection of its interests.

11 WHEREFORE, Wynn Resorts prays for judgment as follows:

12 1. For compensatory and special damages, including attorneys' fees, against
13 Defendants in an amount to be determined at trial;

14 2. For a declaration that Wynn Resorts acted lawfully and in full compliance with its
15 Articles of Incorporation, Bylaws, and other governing documents as set forth herein;

16 3. Disgorgement of profits;

17 4. Punitive damages;

18 5. For an award of reasonable costs and attorneys' fees;

19 6. For prejudgment and post-judgment interest on the foregoing sums at the highest
20 rate permitted by law; and

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7. Any additional relief this Court deems just and proper on the evidence presented at trial.

DATED this 18th day of February, 2012.

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EXHIBIT 1

REPORT
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I. Introduction

Wynn Resorts, Limited (“Wynn Resorts”), a publicly traded company incorporated in the State of Nevada, on behalf of its Compliance Committee, retained Freeh Sporkin & Sullivan, LLP (“FSS”) on November 2, 2011 to conduct an independent investigation. That independent investigation has been conducted under the sole direction of the Compliance Committee. The purpose of the investigation was to determine whether there is evidence that Mr. Kazuo Okada, a member of the Wynn Resorts Board of Directors, may have: (i) breached his fiduciary duties to Wynn Resorts; (ii) engaged in conduct that potentially could jeopardize the gaming licenses of Wynn Resorts; and/or, (iii) violated the Wynn Resorts compliance policy. Specifically, FSS has been asked to examine Mr. Okada’s efforts in connection with the creation of a gaming establishment in the Republic of the Philippines.

This is the Report to the Compliance Committee Chairman on the results of FSS’ investigation. As set forth with greater detail in the attached appendix, FSS has performed its investigation by interviewing dozens of individuals and by reviewing thousands of documents, electronic emails, corporate and public records.

II. Summary

The investigation has produced substantial evidence that:

1. Despite being advised by the Wynn Resorts Board of Directors and Wynn Resorts attorneys on the strict US anti-bribery laws which govern Wynn Resorts and its board, Mr. Okada strongly believes and asserts that when doing business in Asia, he should be able to provide gifts and things of value to foreign government officials, whether directly or by the use of third party intermediaries or consultants.
2. Mr. Okada, his associates and companies have arranged and designed his corporate gaming business and operations in the Philippines in a manner which appears to contravene Philippine Constitutional provisions and statutes that require 60% ownership by Philippine nationals, as well as a Philippine criminal statute.
3. Mr. Okada, his associates and companies appear to have engaged in a longstanding practice of making payments and gifts to his two (2) chief gaming regulators at the Philippines Amusement and Gaming Corporation (“PAGCOR”), who directly oversee and regulate Mr. Okada’s Provisional Licensing Agreement to operate in that country. Since 2008, Mr. Okada and his associates have made multiple payments to and on behalf of these chief regulators, former PAGCOR Chairman Efraim Genuino and Chairman Cristino Naguiat (his current chief regulator), their families and PAGCOR associates, in an amount exceeding US 110,000. At times, Mr. Okada, his

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associates and companies have consciously taken active measures to conceal both the nature and amount of these payments, which appear to be prima facie violations of the United States Foreign Corrupt Practices Act (“FCPA”). In one such instance in September 2010, Mr. Okada, his associates and companies, paid the expenses for a luxury stay at Wynn Macau by Chairman Naguiat, Chairman Naguiat’s wife, their three children and nanny, along with other senior PAGCOR officials, one of whom also brought his family. Mr. Okada and his staff intentionally attempted to disguise this particular visit by Chairman Naguiat by keeping his identity “Incognito” and attempting to get Wynn Resorts to pay for the excessive costs of the chief regulator’s stay, fearing an investigation. Wynn Resorts rejected the request by Mr. Okada and his associates to disguise and to conceal the actual expenditures made on behalf of Chairman Naguiat.

4. Additionally, Mr. Okada, his associates and companies appear to have engaged in a pattern of such prima facie violations of the FCPA. For example, in 2010 it also is possible that Mr. Okada, his associates and companies made similar payments to a Korean government official who oversees Mr. Okada’s initial gaming investment in that country. Additional investigation is needed to develop and confirm these possible FCPA violations.
5. The prima facie FCPA violations by Mr. Okada, his associates and companies constitute a substantial, ongoing risk to Wynn Resorts and to its Board of Directors, creating regulatory risk, conflicts of interest and potential violations of his fiduciary duty to Wynn Resorts. Finally, Mr. Okada’s documented refusal to receive Wynn Resorts requisite FCPA training provided to other Directors, as well as his failure to sign an acknowledgment of understanding of Wynn Resorts Code of Conduct, increase this risk going forward.
6. Mr. Okada insisted in his interview that all of his gaming efforts in the Philippines prior to the change of the presidential administration in the summer of 2010 were undertaken on behalf of and for the benefit of Steve Wynn and Wynn Resorts. This assertion is contradicted by press releases dating back to 2007 on his website, which announce an independent effort by Universal; his real estate investments; and the ownership of his corporations in the Philippines.
7. (7) Mr. Okada has stated that Universal paid expenses related to then-PAGCOR Chairman Genuino’s trip to Beijing during the 2008 Olympics.

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III. Kazuo Okada's Relevant Corporate Affiliations

A. Wynn Resorts

After an initial public offering which closed in October 2002, Aruze USA, Inc., controlled by Mr. Okada, became a 24.5% shareholder of Wynn Resorts. Mr. Okada's current ownership of Wynn Resorts through his control of Aruze USA, Inc. is 19.66%.

Mr. Okada became a member of the Wynn Resorts Board of Directors on October 21, 2002, and remains on the Board of Directors as of the date of this Report. In the past, Mr. Okada has used the title of Vice Chairman of Wynn Resorts. In October 2011, the Wynn Resorts Board of Directors eliminated the position of Vice Chairman.

As a Director of Wynn Resorts, Mr. Okada is entitled to receive the courtesy of what is called a "City Ledger Account." Such accounts were originally instituted as a result of Sarbanes Oxley's prohibition of extensions of credit, in the form of a personal loan from an issuer to an officer or director. The accounts were funded by deposits from the director or his company. Such an account exists for billing conveniences related to charges incurred at various Wynn Resorts locales. Mr. Okada has availed himself of this courtesy and established such a City Ledger Account.¹ Within Wynn Resorts, this Okada City Ledger Account is referred to either as the "Universal City Ledger Account" or as the "Aruze City Ledger Account." Accordingly, the phrases Universal City Ledger Account and Aruze City Ledger Account will be referred to interchangeably within this report despite the fact that Aruze Corp.'s name was changed to Universal Entertainment Corporation in November of 2009.

Mr. Okada has been found to be suitable by the Nevada Gaming Commission.²

B. Universal Entertainment Corporation of Japan

Mr. Okada currently serves as Director and Chairman of the Board of Universal Entertainment Corporation ("Universal Entertainment"), registered in Tokyo, Japan. Universal Entertainment Corporation is the current trade name of a company which was incorporated in 1969 as Universal Lease Co. Ltd. and which became Aruze Corp. in 1998. Aruze changed its

¹ The initial wire to establish the Aruze Corp. City Ledger Account was dated February 15, 2008.

² Mr. Okada was originally found to be suitable as a shareholder of Aruze Corp. as part of *An Order of Registration* issued jointly by the State Gaming Control Board and the Nevada Gaming Commission on June 4, 2004. On June 5, 2005, in a similar order, the Nevada Commission and the State Gaming Control Board found Aruze Corp. to be (1) suitable as a controlling shareholder of Wynn Resorts, Limited, (2) suitable as the sole shareholder of Aruze USA, Inc., (3) that Aruze USA, Inc. is registered as an intermediary company and is found suitable as a shareholder of Wynn Resorts, Limited, and (4) that Mr. Okada is suitable as a shareholder and controlling shareholder of Aruze Corp. [See Appendix]

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name to Universal Entertainment Corporation in November 2009. Universal is listed on the JASDAQ stock exchange and is engaged in the manufacture and sale of pachinko and gaming machines and related business activities. As of September 2011, Okada Holdings Godokaisha was Universal Entertainment's major shareholder, with 67.90% of the issued shares.

The Nevada Gaming Commission has approved Universal Entertainment's suitability as the 100% shareholder for a subsidiary, Aruze USA, Inc.

C. Aruze USA, Inc.

Aruze USA, Inc. ("Aruze USA") is a wholly owned subsidiary of Universal Entertainment. Aruze USA is a US company and was incorporated in the State of Nevada on June 9, 1999. Mr. Okada is a Director of Aruze USA and serves as its President, Secretary, and Treasurer.

Aruze USA has been found suitable by the Nevada Gaming Commission as a major shareholder of Wynn Resorts.

D. Aruze Gaming America, Inc.

Aruze Gaming America, Inc. is a private company that is 100% personally owned by Mr. Okada. He currently serves as a Director, Secretary, and Treasurer of the company. Aruze Gaming America, Inc. is a US company and was incorporated on February 7, 1983. The company changed its name from Universal Distributing of Nevada, Inc. to Aruze Gaming America, Inc. on January 6, 2006. Aruze Gaming America, Inc. shares a common business address with Aruze USA, Inc. in Las Vegas, Nevada.

E. Business Interests in the Republic of the Philippines

Since 2008, Mr. Okada has been involved with a variety of corporate entities and with various business associates in the creation of a gaming establishment in an area of the Philippines known as Entertainment City Manila.³ In furtherance of this endeavor, Mr. Okada and his associates have procured land and a provisional gaming license in the Philippines. A more detailed review of Mr. Okada's corporate entities and business associates in the Philippines is set forth in Section V(2)(A) below.

F. Business Interests in the Republic of Korea

Mr. Okada has recently pursued development of a casino resort complex in the Incheon Free Economic Zone in the Republic of Korea. A more detailed review of Mr. Okada's activities in Korea is set forth in Section V(4) below.

³ On the Universal Entertainment website (viewed January 30, 2012) this project is referenced as "Manila Bay Resorts." [See Appendix]

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IV. Relevant Legal and Policy Standards

A. FCPA

The United States Foreign Corrupt Practices Act (“FCPA”) contains two primary categories of violations: (i) a books and records provision, and (ii) a bribery provision. Based upon available information, it seems clear that Aruze USA fits the definition of domestic concern⁴ and United States person⁵ provided in the FCPA, and that the FCPA applies both to Aruze USA and to Mr. Okada personally, in his capacity as an officer and director of Aruze USA.

Under the definitions of domestic concern and United States person, the statute applies to a corporation, partnership, unincorporated organization and other enumerated entities that have their principal place of business in the United States or which are organized under the laws of a State of the United States. It also applies to officers and directors of such concerns.⁶

In 1998, the FCPA was amended and added an alternative basis to interstate commerce for jurisdiction. As the United States District Court for the Southern District of New York wrote: “. . . . The amendments expanded FCPA coverage to ‘any person’ -- not just ‘issuers’ or ‘domestic concerns’ [A]ny United States person or entity violating the Act outside of the United States is subject to prosecution, regardless of whether any means of interstate commerce were used. Citing 15 USC 78dd-1, 78dd-2. . . . (Emphasis added.)”⁷

Under this definition, Aruze USA is a covered party under the FCPA.

The FCPA provides that “[i]t shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd-1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)

⁴ 15 U.S.C. 78 dd – 2(a),(h).

⁵ 15 U.S.C. 78 dd – 2(i).

⁶ 15 U.S.C. 78 dd – 2(g).

⁷ *In re Grand Jury Subpoena*, 218 F. Supp. 2d 544, 550 (S.D.N.Y. 2002).

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- (i) influencing any act or decision of such foreign official in his official capacity,
 - (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or
 - (iii) securing any improper advantage; or
- (B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; . . .”⁸

The head of PAGCOR fits within the definition of foreign official as used in the FCPA.

According to PAGCOR’s website, it “is a 100 percent government-owned and controlled corporation that runs under the direct supervision of the Office of the President of the Republic of the Philippines.”⁹ In addition to prescribing mandates to generate revenue for certain government programs and promote tourism in the Philippines, PAGCOR’s charter states that the entity will “...[r]egulate, authorize and license games of chance, games of cards and games of numbers, *particularly casino gaming*, in the Philippines...”¹⁰ (Emphasis added.)

As set forth above, there is still the interstate commerce basis for jurisdiction, but there is also an alternative. The alternative would require the same elements for an offense, but a showing of interstate commerce would not be required. If the interstate commerce basis for jurisdiction were used, the analysis set forth below would be of significance.

With regard to means or instrumentality of interstate commerce, some of the facts referred to in this report pertain to Mr. Okada utilizing the Universal City Ledger Account to confer financial benefits upon Philippine gambling regulators who could affect the business interests of Aruze USA, Inc. in the Philippines. Some of those benefits were conferred at Wynn Macau. The following facts concerning the Universal City Ledger Account, which bear upon use of means or instrumentalities of interstate commerce, were established during the investigation:

- The account is maintained at the corporate offices of Wynn Resorts, Limited in Las Vegas, Nevada where periodic deposits are made from Universal into the Wynn Resorts, Limited operating account at Bank of America in Las Vegas, Nevada to ensure that the amount on deposit remains at or about US 100,000. Bank documents reflect that the deposits are received from a Universal Entertainment account located in Japan.¹¹

⁸ 15 U.S.C. Section 78dd – 2(a).

⁹ <http://www.pagcor.ph/pagcor-faqs-profile.php>, viewed January 18, 2012. [See Appendix]

¹⁰ Ibid., viewed January 18, 2012. [See Appendix]

¹¹ See, e.g. wire transfer documents from Sumitomo Mitsumi Bank to Bank of America. [See Appendix]

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- When charges are incurred at Wynn Macau, Wynn Macau tracks all charges for the Universal City Ledger Account on its books, and then the accounting department transfers the charges to accounting at Wynn Resorts, Limited in Las Vegas via a journal entry. Wynn Macau sends a pdf file to a staff accountant at Wynn Resorts, Limited in Las Vegas with all the backup documentation. Invoices issued by Wynn Resorts, Limited are periodically sent to a Universal Entertainment email address.¹²

B. Nevada Gaming Regulations and Wynn Resorts Policies

The question of whether or not a gaming licensee or licensee applicant is deemed “suitable” in Nevada is answered by reviewing the Nevada Revised Statutes (“NRS”) in conjunction with the regulations promulgated by the Nevada Gaming Commission (“NGC”), which is empowered by the NRS.¹³

1. Legislative Authority

The standard for determining suitability is found in Section 463.170 of the NRS. Paragraph (2) of the NRS 463.170, entitled *Qualifications for license, finding of suitability or approval; regulations*, provides that the person seeking a license or a suitability determination is subject to the following considerations: “[a]n application to receive a license or be found suitable must not be granted unless the Commission is satisfied that the applicant is: (a) A person of good character, honesty and integrity; (b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this State or to the effective regulation and control of gaming. . . .” In addition, paragraph (3) provides in pertinent part “[a] license to operate a gaming establishment or an inter-casino linked system must not be granted unless the applicant has satisfied the Commission that: (a) [t]he applicant has adequate business probity, competence and experience, in gaming or generally. . . .”

The Nevada Gaming Commission Regulations (“Nevada Gaming Regulations”) are also relevant to the conditions placed upon suitability. According to Section 3.080 of the Nevada Gaming Regulations, entitled *Unsuitable affiliates*, “[t]he commission may deny, revoke, suspend, limit, condition or restrict any registration or finding of suitability or application therefor upon the same grounds as it may take such action with respect to licenses, licensees and licensing; without exclusion of any other grounds.” Paragraph (1) of Section 3.090, entitled

¹² In a Wynn Resorts Memorandum to File from the Corporate Accounting department, dated January 10, 2012, the “invoice[s] and all support documentation are emailed to kimiko.okamura@hq.universal-777.com, takashi.usami@hq.universal-777.com and iwayama.hidetsugu@hq.universal-777.com on the 5th of each month for the prior month [sic] activity.” [See Appendix]

¹³ For further advice regarding suitability, please consult directly with David Arraji, Esq. and/or see Memo dated December 9, 2011 from Kate Lowenhar-Fisher, Esq. and Jamie L. Thalgott, Esq. to David Arraji, Esq. re Associations and the Suitability Analysis. [See Appendix]

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Standards for commission action, provides in pertinent part that “[n]o license, registration, finding of suitability, or approval shall be granted unless and until the applicant has satisfied the commission that the applicant: (a) Is a person of good character, honesty, and integrity; (b) Is a person whose background, reputation and associations will not result in adverse publicity for the State of Nevada and its gaming industry; and (c) Has adequate business competence and experience for the role or position for which application is made.”

2. Underlying Corporate Documents of Wynn Resorts

The Second Amended and Restated Articles of Incorporation of Wynn Resorts, Limited (filed September 16, 2002) also provide for standards that seek to define an “Unsuitable Person.” As set forth on page 8 of the Articles of Incorporation, the phrase Unsuitable Person “shall mean a Person who . . . 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 application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License.” (Emphasis added.)

Finally, the Amended and Restated Gaming and Compliance Program of Wynn Resorts, Limited (adopted as of July 29, 2010) defines an *Unsuitable person* as a “[p]erson (i) who has been denied licensing or other related approvals by a Gaming Authority on the grounds of unsuitability or who has been determined to be unsuitable to be associated with a gaming enterprise by a Gaming Authority; or (ii) that the Company determines is unqualified as a business associate of the Company or its Affiliates based on, without limitation, that Person’s antecedents, associations, financial practices, financial condition or business probity.”

In the event of a finding of unsuitability, there are provisions within the aforementioned corporate documents that provide for a resolution post determination. Specifically, on page 6 of the Second Amended and Restated Articles of Incorporation of Wynn Resorts, Limited, the Articles state in pertinent part, “[t]he 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. If a Gaming Authority requires the Corporation, or the board of directors deems it necessary or advisable, to redeem any such Securities, the Corporation shall give a Redemption Notice to the Unsuitable Person or its Affiliate and shall purchase on the Redemption Date the number of shares of the Securities specified in the Redemption Notice for the Price set forth in the Redemption Notice. . . .” The Articles provide further guidance as to the terms of the redemption.

In addition, according to Section 3.6 of the Fourth Amended and Restated Bylaws, effective as of November 13, 2006, the removal of a director is premised upon “. . . the

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affirmative vote of the holders of not less than two-thirds (2/3) of the voting power of the issued and outstanding stock of the Corporation entitled to vote generally in the election of directors (voting as a single class). . . .” Resignation is also listed as an option “upon giving written notice, unless the notice specifies a later time for effectiveness of such resignation, to the chairman of the board, if any, the president or secretary, or in the absence of all of them, any other officer.”

C. Wynn Resorts Code of Business Ethics

Wynn Resorts first adopted a Code of Business Conduct and Ethics on May 4, 2004. The document defines itself as “a statement of policies for the individual and business conduct of the Company’s employees and Directors”¹⁴ There are two sections of the Code that are relevant to this investigation: (i) conflict of interest and (ii) interaction with government officials. The sections are included below for reference purposes.

1. Conflict of Interest:

“A Conflict of interest occurs when your private interests interfere, or even appear to interfere, with the interests of the Company. A conflict situation can arise when you take actions or have interests that make it difficult for you to perform your Company work objectively and effectively. 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 personal and business relationships. This includes full disclosure of any actual, apparent or potential conflicts of interest as set forth below.

Special rules apply to executive officers and Directors who engage in conduct that creates an actual, apparent or potential conflict of interest. Before engaging in any such conduct, executive officers and Directors must make full disclosure of all facts and circumstances to the Corporate Secretary, who shall inform and seek the prior approval of the Audit Committee of the Board of Directors.”

2. Interacting with Government:

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.”

¹⁴ Wynn Resorts Code of Business Conduct and Ethics dated May 4, 2004, page 7. [See Appendix]

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Bribery of Government Officials

"The Company's Policy Regarding Payments to Foreign Officials, the U.S. Foreign Corrupt Practices Act (the "FCPA"), and the laws of many other countries prohibit the Company and its officers, employees and agents from giving or offering to give money or anything of value to a foreign official, a foreign political party, a party official or a candidate for political office in order 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 Policy Regarding Payments to Foreign Officials for more details regarding prohibited payments to foreign government officials."

Discipline for Violations:

"The Company intends to use every reasonable effort to prevent the occurrence of conduct not in compliance with its Code and to halt any such conduct that may occur as soon as reasonably possible after its discovery. Subject to applicable laws 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." (Emphasis added.)

The Code has since been revised twice, once in 2009 and then again on November 1, 2011. Although the above sections have been expanded in these later editions, for the purpose of this investigation and the dates in question the substance has remained basically the same and the FCPA has continued to be a point of emphasis.

V. Report of Investigation

1. Mr. Okada's Attitude Toward Wynn Resorts Compliance Requirements

Mr. Okada's prima facie violations of FCPA, involving both his government regulators in the Philippines and possibly in Korea, do not appear to be accidental or based upon a misunderstanding of anti-bribery laws. Conversely, despite being advised by fellow Wynn Resorts Board members and Wynn Resorts counsel that payments and gifts to foreign government officials are strictly prohibited, Mr. Okada has insisted that there is nothing wrong with this practice in Asian countries. Mr. Okada has stated his personal rejection of Wynn Resorts anti-bribery rules and regulations, as well as legal prohibitions against making such payments to government officials, to fellow Wynn Resorts Board members.

In a February 24, 2011 Wynn Resorts Board of Directors ("Board") meeting at which Mr. Okada was present, after a lengthy discussion by the Board of the FCPA,¹⁵ including specifically the Universal project in the Philippines and potential Wynn Resorts' involvement, "[t]he

¹⁵ In an email from Kim Sinatra to Michiaki Tanaka, dated February 26, 2011, Ms. Sinatra referenced a meeting with Mr. Okada in which she furnished FCPA policy and training materials and reiterated the importance of strict compliance with the FCPA. [See Appendix]

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independent members of the board unanimously advised management that any involvement [by Wynn Resorts] in the Philippines under the current circumstances was inadvisable.”¹⁶ During this discussion, Mr. Okada challenged the other board members over statements regarding the impermissibility under the FCPA of giving gifts abroad in return for favorable treatment, and made statements about hiring “third party consultants” to give gifts to officials.¹⁷

One board member recalled Mr. Okada stating that, in Asia, one must follow the local culture, and that is why one should hire “consultants” to give the gifts.¹⁸ This board member understood Mr. Okada to mean that such use of consultants would help avoid prosecution under the FCPA. Another board member who was present recalled Mr. Okada stating that conducting business in the Philippines was all a matter of “hiring the right people” to pay other people.¹⁹ Yet another board member recalled Mr. Okada being “adamant” during the FCPA discussion that it is not corrupt to give “gifts.”²⁰ A board member who participated in the meeting by phone recalled Mr. Okada claiming that, in the Philippines, “business is done in a different manner, and sometimes you have an ‘intermediary’ that will do whatever he has to do,” or words to that effect.²¹ A different board member recalled being “shocked” by the contradiction between two of Mr. Okada’s statements during this discussion.²² Early in the discussion, Mr. Okada explained that there were no longer corruption issues in the Philippines with the new administration. However, Mr. Okada subsequently stated, in effect, that while he himself would not pay bribes, he would “hire someone else” to bribe the necessary person.

Pursuant to a chain of emails reviewed by FSS, commencing with an email on August 4, 2011 from Roxane Peper, Director of Intellectual Property and Corporate Records, to each of the board members (or their representatives), and ending with an email from Ms. Peper to Kevin Tourek, Senior Vice President and Corporate Counsel, on October 26, 2011, the following is clear:²³

- All board members were notified of upcoming FCPA training/board meeting set for October 31 – November 1, 2011 and asked to confirm attendance by August 31, 2011.
- Mr. Okada, through two of his representatives, was emailed at least three (3) separate times before Shinobu Noda, his assistant, sent an email on September 15, 2011 confirming that Mr. Okada would attend.

¹⁶ Minutes of Wynn Resorts Board of Directors meeting, February 24, 2011, p.3. [See Appendix]

¹⁷ Interview of Steve Wynn, November 7, 2011.

¹⁸ Interview of Robert J. Miller, December 16, 2011.

¹⁹ Interview of Alvin V. Shoemaker, December 20, 2011.

²⁰ Interview of Marc D. Schorr, December 20, 2011.

²¹ Interview of Allan Zeman, December 21, 2011.

²² Interview of D. Boone Wayson, December 20, 2011.

²³ See emails from Roxane Peper to Kevin Tourek on October 26, 2011. [See Appendix]

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Subsequent to the confirmation, Ms. Peper received an email from Ms. Noda on October 25, 2011. Ms. Noda stated that the email contained a message to Kim Sinatra, Senior Vice President and General Counsel of Wynn Resorts, from Mr. Okada.²⁴ This part of the message was entirely in Japanese and had to be translated. Mr. Okada asked for the FCPA training materials to be provided in Japanese. He also stated that he would be arriving on “Monday [October 31]”, which was the day the FCPA training was to commence. He asked if the training could be held after the board meeting or rescheduled. Kim Sinatra sent a response to Ms. Noda via email on October 25, 2011 thanking Mr. Okada for the note and stating further that the FCPA training materials had been translated and would be provided to him via email and that Wynn Resorts had made further arrangements to have the FCPA live training translated to Japanese via simultaneous translation.²⁵ She also stated that the date of the training could not be rescheduled because it had been planned around his previous confirmation and that outside counsel was coming to Las Vegas to provide the training.

Mr. Okada failed to attend the training on October 31, 2011. He was the only member of the board not in attendance (all others attended in person or via telephone dial-in as evidenced via a sign-in sheet).²⁶

2. Gaming Establishment in the Philippines

Evidence obtained in the course of the investigation establishes that Mr. Okada, his associates and companies, may have arranged and manipulated the ownership and management of legal entities in the Philippines under his control, in a manner that may have enabled the evasion of Philippine constitutional and statutory requirements. It is also noted that Mr. Okada’s two principal Philippine corporations, Eagle I Landholdings, Inc. and Eagle II Holdco, Inc., which may have been purposefully created to circumvent Philippine constitutional restrictions on foreign ownership of land, appear to be closely intertwined with Rodolfo Soriano, Paolo Bombase and Manuel M. Camacho, who have numerous common ties to former PAGCOR Chairman Efraim Genuino. For example, with regard to Eagle II Holdco, Inc., as late as 2010, Platinum Gaming and Entertainment (“Platinum”) had acquired 60% of its shares. According to a dated filing by Platinum on file with the Philippine SEC, Rodolfo Soriano controlled 20% of Platinum at the time of its incorporation. Mr. Soriano, referred to by attorney Camacho as a “bag man” for then-Chairman Genuino, is a former PAGCOR consultant and respondent in PAGCOR corruption referrals (see page 15 *infra*). Similarly, Paolo Bombase, an officer, director and nominal shareholder of Eagle I Landholding, Inc. and Eagle II Holdco, Inc. has a 1.25% share of Ophiuchus Real Properties Corp. This Ophiuchus entity is 15% owned by a Philippine company named SEAA Corp. In turn, SEAA is the family-controlled company of former PAGCOR Chairman Efraim Genuino. At this time, the significance of this interlocking shareholder link

²⁴ See email from Shinobu Noda to Roxane Peper dated October 25, 2011. [See Appendix]

²⁵ See email from Kim Sinatra to Shinobu Noda dated October 25, 2011. [See Appendix]

²⁶ See FCPA Training Sign-In sheet dated October 31, 2011. [See Appendix]

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between Mr. Okada, his former Philippine gaming regulator, and the regulator's associates is not known.

A. Corporate Links between Mr. Okada's Business Interests and Those of Philippine Government Officials

Close associates and consultants of the former Genuino PAGCOR administration eventually attained positions as corporate officers, directors and/or nominal shareholders in legal entities controlled by Mr. Okada, and, in some cases, served as links between the business interests of Mr. Okada and those of former PAGCOR chairman Efraim Genuino and members of Genuino's immediate family.

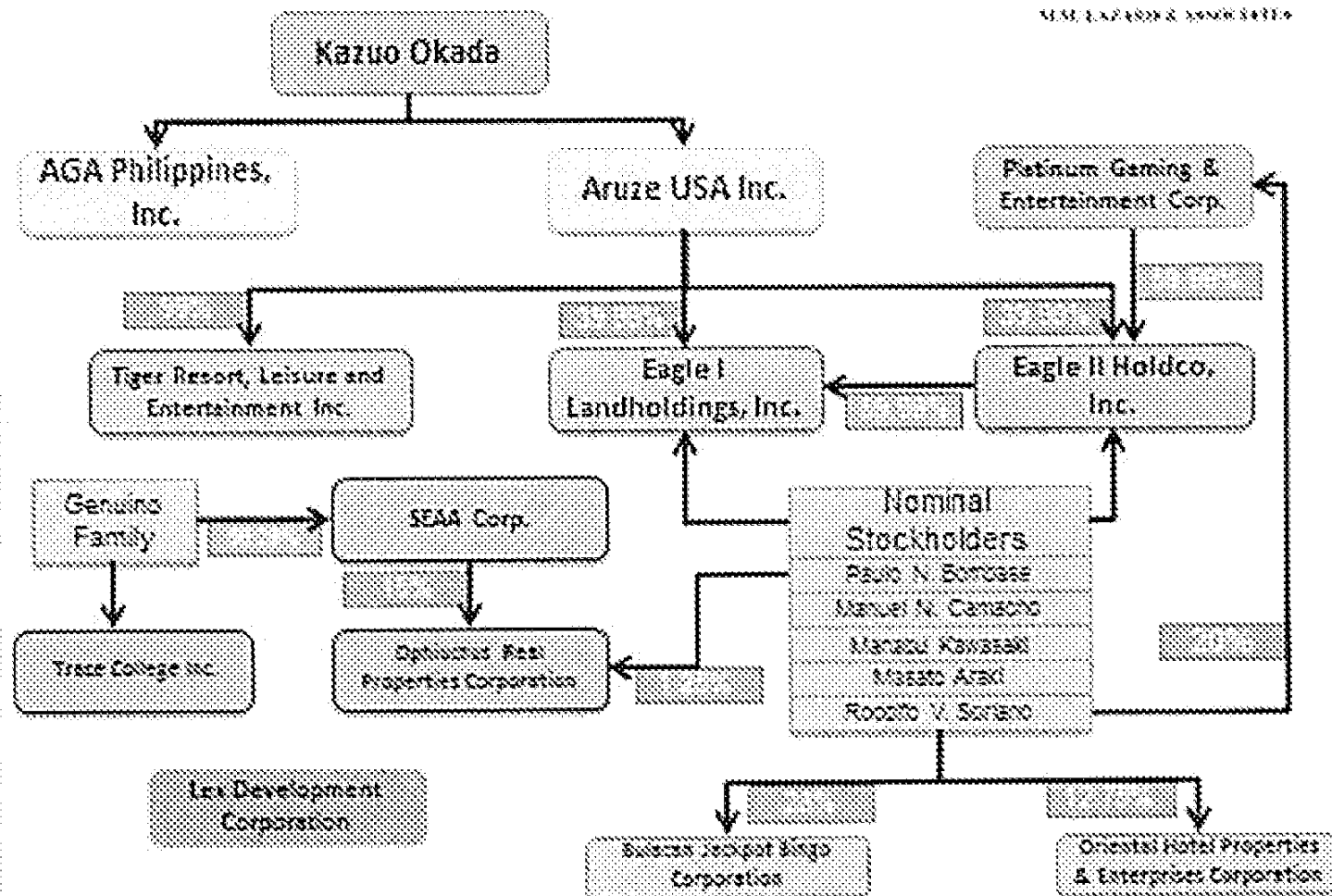
In order to better understand the interrelationships among corporate entities in the Philippines controlled by Mr. Okada and those controlled by PAGCOR officials and their associates, FSS requested the Philippines law firm of M. M. Lazaro & Associates ("Lazaro") to produce a study of this issue.²⁷ Drawing upon official records obtained from the Philippines Securities and Exchange Commission, Lazaro produced an analysis of the relationships created by the ownership and control structures of these entities.²⁸ The chart below, extracted from that analysis, illustrates these relationships in schematic form.

²⁷ Manuel Lazaro was formerly a government corporate counsel with the rank and privileges of a Philippine presiding justice, court of appeals, who FSS retained to assist in the investigation and to advise on certain aspects of Philippine law. [See Appendix]

²⁸ The complete Lazaro PPT is attached to this report. [See Appendix]

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Overview



Tiger Resorts, Leisure and Entertainment, Inc. ("Tiger") was incorporated in the Philippines on June 13, 2008.²⁹ Its primary purpose was stated as:

To acquire, own, maintain, operate and/or manage hotels (city and resort), inns, apartments, private clubs, pension houses, convention halls, lodging houses, restaurants, cocktail bars, and any and all services and facilities related or incident thereto.³⁰

Tiger is predominantly owned by Aruze USA, Inc.³¹ In August 2008, PAGCOR granted Tiger a Provisional Licensing Agreement to operate a gaming establishment in the Entertainment City Manila Zone. An official of the current PAGCOR administration told FSS in December 2011 that PAGCOR was currently reexamining this license.³²

²⁹ Articles of Incorporation of Tiger. [See Appendix]

³⁰ Ibid. [See Appendix]

³¹ GIS of Tiger, 2010. [See Appendix]

³² Combined interview of Jay Daniel R. Santiago and Thadeo Francis P. Hernando, on December 12, 2011. It should be noted that after the interview with Santiago and Hernando, FSS along with its Philippine counsel, for purposes of this investigation, formally requested a copy of the Provisional Licensing Agreement from PAGCOR, as well as other related documents. On the same date that the formal request was made, PAGCOR refused to supply a

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Eagle I Landholdings, Inc. (“Eagle I”) was incorporated in the Philippines on May 16, 2008 with 5 partners of the Philippines law firm Sycip Salazar Gatmaitan (“Sycip”) as the shareholders, directors and officers.³³ By certification on September 5, 2008, the original shareholders were all replaced by, among others, Eagle II Holdco, Inc. (“Eagle II”), with approximately 60% ownership. Eagle II maintained this percentage of ownership of Eagle I through the filing of the latest available General Information Statement (“GIS”) for the year 2010.³⁴ Eagle I’s 2009 GIS, filed September 17, 2009, indicates that Paolo Bombase, Manuel N. Camacho and Rodolfo V. Soriano (whose associations with PAGCOR and Mr. Genuino are explained below) all had become officers/directors and nominal stockholders of Eagle I; they retained this status through the filing of the latest GIS for Eagle I.³⁵ Aruze USA, Inc. first appears as the owner of approximately 40% of Eagle I as of the 2010 GIS, owning the share previously owned by Molly Investments Cooperative UA (“Molly”).³⁶

Eagle II’s filings with the Philippines Securities and Exchange Commission indicate a history similar to that of Eagle I. Incorporated on May 19, 2008 by the same 5 Sycip partners,³⁷ Eagle II reflected the acquisition of approximately 60% of its shares by Platinum Gaming & Entertainment Corp. (“Platinum”) on its GIS filed September 17, 2009, with Platinum owning the same percentage as of the 2010 GIS.³⁸ The same filings reflect the appearance--in 2009 and continuing through the 2010 filing--of Messrs. Camacho, Soriano and Bombase as officers/directors and nominal shareholders. In 2010 Aruze USA, Inc. appears with the 40% shareholding that was attributed to Molly in 2009.³⁹

Platinum was incorporated in the Philippines on November 21, 2001, with a Certificate of Filing of Amended Articles of Incorporation (“AOI”) issued by the Philippines Securities and Exchange Commission on June 10, 2002.⁴⁰ Platinum has no GIS on file with the Philippines Securities and Exchange Commission, and the only corporate document filed besides the Articles of Incorporation is the 2004 Financial Statement. The latest information on file lists Mr.

copy of Tiger’s Provisional Licensing Agreement, saying that they were bound by a non-disclosure clause. That refusal was signed by Francis P. Hernando, who is identified below as a PAGCOR employee, who stayed in Wynn Macau in June 2011 and had US 709.72 of expenses paid for by the Aruze City Ledger account. See Letter of Request and Letter of Refusal. [See Appendix]

³³ Articles of Incorporation of Eagle I. [See Appendix]

³⁴ GIS of Eagle I for years 2009 and 2010. [See Appendix] A GIS is required to be filed on an annual basis according to Section 141 of the Corporation Code of the Philippines. [See Appendix]

³⁵ Ibid. [See Appendix]

³⁶ Ibid. [See Appendix]; FSS has determined Molly to be a wholly owned subsidiary of Aruze Corp. See http://www.universal-777.com/en/ir/ir_lib/material/annual_20081119.pdf, page 32.

³⁷ Articles of Incorporation of Eagle II. [See Appendix]

³⁸ GIS of Eagle II, years 2009-2010. [See Appendix]

³⁹ GIS of Eagle II, 2010. [See Appendix]

⁴⁰ Articles of Incorporation of Platinum, as amended June 10, 2002. [See Appendix]

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Soriano, a former PAGCOR consultant, as a director/officer and a 20% shareholder in Platinum.⁴¹

Messrs. Camacho, Bombase and Soriano are all directly associated with former PAGCOR Chairman Genuino in significant ways. Mr. Camacho is an attorney and a principal of the Manila law firm Camacho & Associates. He was for a time in a law partnership with Mr. Genuino's son, Erwin Genuino.⁴² Mr. Camacho traveled to Japan with Mr. Soriano at then PAGCOR Chairman Genuino's behest, to meet with Mr. Okada and other representatives of Aruze. This meeting resulted in Mr. Camacho's firm replacing Sycip in representing Aruze with respect to the development of the project in Entertainment City Manila.⁴³

Sometime subsequent to this meeting, Aruze wired retainer funds to the bank account of Mr. Camacho's firm, an account controlled jointly by Mr. Camacho and Erwin Genuino. Later, Mr. Camacho discovered that all or most of these funds had been withdrawn by Erwin Genuino. When he questioned this withdrawal, he was eventually told by Mr. Soriano and/or then PAGCOR Chairman Genuino that the funds had been withdrawn to be used as a "cash payoff" to the mayor of the municipality in which the Entertainment City Manila project is located, in order to facilitate approval of the use of some plots of land to build roads needed for Mr. Okada's casino project. Mr. Camacho claims to have had a falling out with Erwin Genuino and Mr. Soriano, and to be involved currently in a lawsuit against Erwin Genuino over the dissolution of their law partnership.⁴⁴ Erwin Genuino is named as a respondent, along with former PAGCOR Chairman Genuino, in two sworn corruption referrals ("PAGCOR Referrals") filed with the Republic of the Philippines Department of Justice ("DOJ") in the summer of 2011 by the current PAGCOR Administration.⁴⁵

Mr. Bombase, also an attorney, is an officer/director and shareholder of Ophiuchus Real Properties Corporation ("Ophiuchus"), incorporated in April 2011.⁴⁶ According to its 2011 GIS, Ophiuchus was 15% owned by SEAA Corporation ("SEAA").⁴⁷ SEAA, which was registered with the Philippine SEC on December 3, 1997, is, according to its 2011 GIS, 100% owned by members of former PAGCOR Chairman Genuino's immediate family.⁴⁸ The Articles of

⁴¹ M. M. Lazaro & Associates, "Aruze Corporations in the Philippines and 'Related' Corporations", p. 18. [See Appendix]

⁴² Interview of M. Camacho, December 13, 2011.

⁴³ In his discussion with FSS, Mr. Camacho referred to the firm only as "Aruze," not further defined.

⁴⁴ Although Mr. Camacho, who is in his seventies, failed to recall some details of his dealings with Mr. Genuino and Mr. Soriano, FSS credits the general account given by him during the December 13, 2011 interview.

⁴⁵ See PAGCOR Referrals. [See Appendix]

⁴⁶ Articles of Incorporation of Ophiuchus. [See Appendix]

⁴⁷ GIS of Ophiuchus, 2011. [See Appendix]

⁴⁸ GIS of SEAA, 2011. [See Appendix]

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Incorporation of Ophiuchus also list Emilio Marcelo as an officer/director and shareholder.⁴⁹ Mr. Marcelo is named as a respondent in the PAGCOR Referrals.⁵⁰

Mr. Soriano is a former PAGCOR consultant, named by Mr. Camacho as a close business associate and “bag man” for Mr. Genuino.⁵¹ Mr. Soriano is also named as a respondent in the PAGCOR Referrals.⁵² As of the latest information filed with the Philippines Securities and Exchange Commission in 2002, Mr. Soriano was a 20% shareholder and an officer/director of Platinum,⁵³ identified above as a 60% shareholder in Eagle II. If Mr. Soriano still held the same stake in Platinum when it acquired its share of Eagle II in 2009, then he became an effective owner of 12% of Eagle II and approximately 7% in Eagle I.

B. Apparent Evasion of Republic of Philippines Legal Requirements

As described in the preceding section, Mr. Okada caused various legal entities to be incorporated in the Philippines, in order to develop his casino resort project there, over time replacing the original incorporating Filipino shareholders with combinations of foreign shareholders affiliated with or controlled by him and associates of then-PAGCOR Chairman Genuino. As discussed below, there are constitutional and statutory requirements in the Republic of the Philippines requiring that purchasers of land be Philippines citizens or Filipino-owned legal entities, and that legal entities conducting business in the Philippines, with certain exceptions, be at least 60% Filipino owned.

In 2008, Eagle I purchased various tracts of land near Manila Bay totaling approximately 30 hectares at a total price of PHP 13,527,637,941.00 (approximately US 314,953,000.00) for the development of the project in Entertainment City Manila.⁵⁴

At FSS’ request, Lazaro prepared an analysis and opinion on the validity of Eagle I’s ownership of these properties, in light of the aforementioned provisions of the Philippines Constitution and applicable statutes.⁵⁵ The analysis included a detailed review of the ownership and capitalization of Eagle I and associated entities described in the preceding section. The following is a summary of pertinent findings of the Lazaro analysis.

⁴⁹ Articles of Incorporation of Ophiuchus. [See Appendix]

⁵⁰ See PAGCOR Referrals. [See Appendix]

⁵¹ Interview of M. Camacho, Dec 13, 2011.

⁵² See PAGCOR Referrals. [See Appendix]

⁵³ Articles of Incorporation of Platinum, as amended June 10, 2002. The 2001 Articles of Incorporation list four (4) additional 20% shareholders, identified as Filipino nationals. Because Platinum has not filed a GIS since 2002, the current ownership and control of Platinum is unknown. [See Appendix]

⁵⁴ Numbered Transfer Certificates of Title (“TCT”) for Eagle I purchase of land tracts in Parañaque City, Philippines, dated August 19, 2008. [See Appendix]

⁵⁵ M. M. Lazaro & Associates. Memo re “Validity of Eagle I’s Ownership of Real Estate Properties” (“Ownership Memo”), Jan 2012. [See Appendix]

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A review of the 2009 Financial Statement of Eagle I disclosed that the funds used to purchase the land tracts appear to have been advanced by Molly.⁵⁶

Platinum, the 59.99% owner of Eagle II, has filed no records with the Philippines Securities and Exchange Commission indicating that its paid-in capital ever increased beyond the original PHP 62,500, despite its amended Articles of Incorporation indicating that its authorized capital stock was increased from the initial PHP 1,000,000.00 to PHP 24,000,000.00.⁵⁷ Nor is it known today what person(s) or entities have controlled Platinum since incorporation in 2001.

The 1987 Constitution of the Philippines requires that only Philippines citizens or corporations with at least 60% of their capital stock owned by Filipinos are qualified to acquire land in the Philippines.⁵⁸ The Philippines Foreign Investment Act further requires that for a corporation to be considered a Philippines national, at least 60% of its capital stock outstanding and entitled to vote must be owned and held by citizens of the Philippines.⁵⁹

Whenever facts or circumstances create doubt as to whether the ownership of 60% of a corporation is truly Filipino, Philippines Securities and Exchange Commission case law has held that a stringent examination of the true ownership of the voting stock of the subject corporation and of the true ownership of the voting stock of all successive layers of corporate ownership should be conducted. The application of this stringent standard is known as the “Grandfather Rule.”⁶⁰

Serious doubts are therefore raised about the actual Filipino equity of Eagle I, because of the appearance that Eagle I and Eagle II were created purposely to “...circumvent the constitutional restriction on foreign ownership of land.”⁶¹ Lazaro bases this assertion on its conclusion that “...Platinum appears to be merely a shell corporation used to satisfy the Filipino equity requirement.”⁶² Application of the Grandfather Rule would therefore be appropriate.

Applying the Grandfather Rule, Lazaro calculates the true percentage of Filipino versus foreign equity in Eagle I as illustrated in the following table:⁶³

⁵⁶ Ibid, p. 2. [See Appendix]

⁵⁷ Ibid, pp. 5-6. [See Appendix]

⁵⁸ Ibid, p. 8. [See Appendix]

⁵⁹ Ibid, pp. 9-10. [See Appendix]

⁶⁰ Ibid, pp. 11-14. [See Appendix]

⁶¹ Ibid, p. 14. [See Appendix]

⁶² Ibid, pp. 14-15. [See Appendix]

⁶³ Ibid, p. 15. [See Appendix]

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Shareholder	Direct	Indirect	Total Filipino investment in Eagle I	Total Foreign investment in Eagle I
Aruze USA	40% of Eagle I	24% (40% of 60% total holdings of Eagle II in Eagle I)		64%
Platinum*		36% (60% of 60% total holdings of Eagle II in Eagle I)	36%	

*As noted above, Platinum has failed to file its annually required GIS with the Philippine SEC since its inception in 2001. The calculations in the above table prepared by Lazaro assume the “best case” scenario (for Platinum), i.e., that it is a truly 100% Filipino-owned corporation. If Platinum’s actual Filipino ownership is less than 100%, then the percentage of Filipino investment in Eagle I would be correspondingly even less than calculated in the table.

Lazaro concludes that “...the foregoing shareholder structure appears to have been formulated by the parties as a legal scheme to justify the qualification of Eagle I to own real estate properties. The scheme employed...gives Aruze USA, Inc....a convenient vehicle to justify its ownership...in circumvention of the constitutional restriction on the foreign ownership of land.”⁶⁴ Lazaro goes on to conclude that the apparent shareholder structuring scheme outlined above may also constitute a violation of Commonwealth Act No. 108, commonly known in the Philippines as the “Anti-Dummy Law.”⁶⁵ If convicted of a violation of this law, stockholders of Platinum and of Aruze USA, Inc. who profited from the scheme would face a sentence of imprisonment of not less than five years nor more than fifteen years.⁶⁶

From the foregoing discussion, there is substantial evidence and credible legal opinion indicating that the ownership structure of Eagle I and Eagle II may subject Mr. Okada, along with his associates and companies, to civil as well as criminal sanctions under Philippine law.

⁶⁴ Ibid, p. 16. [See Appendix]

⁶⁵ Ibid, pp. 16-17. [See Appendix]

⁶⁶ Ibid, p. 17. [See Appendix]

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3. Apparent FCPA Violations Regarding Philippine PAGCOR Officials at Wynn Resort Properties

FSS has reviewed records of the Aruze City Ledger Account, through which Mr. Okada and Universal charge expenses for lodging, entertainment and other incidentals incurred at Wynn Resorts facilities against funds deposited into the account by Universal, and available underlying documentation furnished by Wynn Resorts management. The table below highlights thirty-six (36) separate instances, from May, 2008, through June 2011 (more than a three (3) year period), when Mr. Okada, his associates and companies made payments exceeding US 110,000, which directly benefitted senior PAGCOR officials, including two chairmen and their family members.

Name	Relationship to PAGCOR/Phil. Gov't.	Location(s) and Date(s) of Stay(s)	Total Charged to Aruze City Ledger Account (in US)
Efraim C. Genuino	Former PAGCOR Chairman (February 2001 to June 30, 2010)	WM June 6-9 2010	1,870.64
Cristino L. Naguiat Jr.	PAGCOR Chairman (July 2, 2010 to Present)	WM Sep 22-26 2010	See Suzanne Bangsil ⁶⁷
		WLV Nov 15-20 2010	5,380.86
		WM June 6-10 2011	3,909.80
Dinner (Naguiat Party)	Chairman (PAGCOR)	WM Sep 24 2010 (Hosted by and charged to Kazuo Okada)	1,673.07
Maria Teresa Socorro Naguiat	Wife of PAGCOR Chairman Cristino L. Naguiat Jr.	WM June 6-10 2011	1,039.31
Suzanne Bangsil ⁶⁸	Wife of Rogelio Bangsil, PAGCOR	WM Sep 22-26 2010	50,523.22
Jose Miguel	Husband of former	WLV Nov 12-17	4,642.40

⁶⁷ Chairman Naguiat did not identify himself and Mr. Okada's representatives insisted that his stay there be "Incognito." Accordingly, the bulk of the charges for the trip are reflected on the City Ledger Account as attributable to "Suzanne Bangsil," the wife of Rogelio Bangsil, a senior PAGCOR official and Chairman Naguiat's employee. However, interviews, photo identifications and documentary evidence clearly establish that Chairman Naguiat was the "Incognito" guest and the direct beneficiary of these payments.

⁶⁸ Investigation has in fact determined that Chairman Naguiat was registered as an "Incognito" VIP guest under Suzanne Bangsil's reservation. Therefore, this US 50,523.22 was paid for Chairman Naguiat's benefit.

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"Mike" Arroyo	Philippines President Gloria M. Arroyo (Jan 20 2001 – June 20 2010)	2009	
Imelda Dimaporo	PAGCOR Board Member	WM June 8-10 2010	891.44
Philip Lo	PAGCOR Board Member	WLV April 29 2009 – May 3 2009	1,755.25
Manuel Roxas	PAGCOR Board Member	WLV April 2009 ⁶⁹	253.75
		WLV April 29 2009 – May 3 2009	1,686.95
Susan Vargas	PAGCOR Board Member	WM June 8-10 2010	480.17
Jose Tanjuatco	PAGCOR Board Member (July 19 2010 to Present)	WLV Nov 15-18 2010	2,148.57
Rogelio J. B. Bangsil	Officer in Charge of PAGCOR Gaming Department	WM Sep 24-26 2010	1,149.04
		WM June 6-12 2011	2,955.23
Rodolfo Soriano	PAGCOR Consultant	WM June 3-7 2008	1,186.08
		WLV Nov 12-17 2009	4,228.00
		WM June 7-10 2010	1,104.06
		WM Aug 18 2010	368.06
Olivia Soriano	Relative of Rodolfo Soriano	WLV May 2008	975.55
Anthony F. "Ton" Genuino ⁷⁰	Son of Efraim C. Genuino; Mayor of Los Baños (2010 to Present)	WLV Sep. 2008	2,386.26
		WLV Oct 2008	2,326.49
Rafael Francisco	PAGCOR COO and President	WLV Nov 12-17 2009	4,360.16
		WM June 7-11 2010	935.21

⁶⁹ When the "Dates of Stay" in this table were not readily available, the month and year that the charges were entered in the City Ledger Account are used.

⁷⁰ See PAGCOR Referrals (Anthony Genuino is named as a respondent). [See Appendix]

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Emelio Marcello	PAGCOR Consultant	WLV Nov 12-17 2009	1,181.60
		WM June 7-9 2010	471.51
Carlos Bautista	PAGCOR VP Legal	WM June 6-10 2010	1,049.69
Mario Cornista	PAGCOR Consultant	WM June 7-9 2010	600.02
Rene Figueroa	PAGCOR Executive VP	WM June 7-10 2010	646.76
Ernesto Francisco	PAGCOR Executive Committee and Casino General Manager	WM June 7-10 2010	797.17
Edward King	PAGCOR VP Corporate Communications	WM June 7-10 2010	767.71
Transportation	PAGCOR Delegation	WM Aug 2010	462.42
Jeffrey Opinion	Member of Naguiat Party	WM Sep 24-26 2010	906.61
Ed de Guzman	PAGCOR Executive Committee, AVP Slots	WM Jun 6-12 2011	3,421.79
Gabriel Guzman	Probable relative of Ed de Guzman (had adjoining room)	WM Jun 6-12 2011	1,391.71
(Thadeo) Francis P. Hernando ⁷¹	PAGCOR VP, Licensed Casino Development Dept.	WM Jun 8-10 2011	709.72
TOTAL			110,636.36

The total in the above table represents charges from the Aruze City Ledger Account that are readily identifiable as incurred directly by officials and consultants of PAGCOR,⁷² their family members and close associates, including Jose Miguel Arroyo, the then-First Gentleman of the Republic of the Philippines, husband of Philippine President Gloria Arroyo. Through a review of the Aruze City Ledger Account for statement periods March 2008 through November 2011, FSS has calculated that total charges to the account for that period, attributable to

⁷¹ This is the same PAGCOR official who denied the FSS request for documents in December 2011, including a copy of the Provisional License Agreement. See footnote 31.

⁷² In order to establish the PAGCOR affiliation of some of the individuals listed in this chart, various sources were consulted, including the PAGCOR website, internet news articles and the PAGCOR Referrals.

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PAGCOR officials, employees, consultants, their associates and family members, exceed USD 110,000.⁷³

FSS investigators interviewed members of the Wynn Macau management team, who furnished the following relevant information regarding a visit to that property in September 2010 by then and current PAGCOR Chairman and CEO Cristino L. Naguiat, Jr., his wife, three children, nanny and other PAGCOR officials, whose four-day stay at Wynn Macau was paid for via the Aruze City Ledger Account:

- September 20, 2010: Yoshiyuki Shoji of Universal, in an e-mail to Angela Lai of Wynn Macau, requests reservations for “Rogelio Bangsil (Guest Representative) & Others.” Mr. Shoji requests Encore Suite or “more gorgeous room, such as Villa,” and “the best butler” for unnamed person in group, who is “VIP for Universal.” Mr. Shoji states that guests other than Bangsil should not be registered, that all charges should be posted to Universal’s City Ledger,⁷⁴ and that “Mr. Okada would like them to experience the best accommodations and services at Wynn Macau.”⁷⁵ The communication makes no reference to PAGCOR or the government affiliation of the guests.
- September 20, 2010: In an e-mail to Wynn Macau President Ian Coughlan and others, Ms. Lai informs Mr. Coughlan of the reservation and that checks of websites indicate that Mr. Bangsil is in charge of PAGCOR’s gaming department.⁷⁶
- September 20, 2010: In an e-mail to Mr. Shoji, Ms. Lai advises that Wynn Macau is checking on availability of the requested upgrade and that Macau law requires that all room occupants be registered, and requests that all guest names be furnished in advance of or at the time of registration.⁷⁷
- September 22, 2010: In an e-mail to Wynn Macau President Ian Coughlan, Wynn Macau Senior Vice-President – Legal Jay M. Schall advises Mr. Coughlan of

⁷³ See City Ledger Account. [See Appendix]

⁷⁴ When Mr. Shoji set up the City Ledger Account for Mr. Okada in 2008, he asked whether the customer name and amount paid would be made public. He was advised that such information would not become public. Email response from Kim Sinatra to Shoji, dated February 8, 2008. [See Appendix]

⁷⁵ E-mail from Y. Shoji to A. Lai, September 20, 2010 [See Appendix]; interview of A. Lai, January 4, 2012.

⁷⁶ E-mail from A. Lai to I. Coughlan, September 20, 2011 [See Appendix]; interview of A. Lai, January 4, 2012; interview of I. Coughlan, December 29, 2011. It should be noted that according to an article in Manilatimes.net, published February 2, 2012, Rogelio Bangsil has recently been transferred to the PAGCOR international marketing department after a probe that found the government losing PHP 160 million in government run casinos to a Mr. Liu. [See Appendix]

⁷⁷ E-mail from A. Lai to Y. Shoji, September 20, 2010 [See Appendix]; interview of A. Lai, January 4, 2012.

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PAGCOR's 100% government ownership and of Mr. Bangsil's position there. He writes "Bangsil, the guest of Mr. Okada, is a top five (if not 3) officer."⁷⁸

- September 22, 2010 (14:00): Wynn Macau sends 1 Rolls Royce and 1 Elgrand to the airport, along with Masato Araki, Special Assistant to Mr. Okada; and Kenichiro Watanabe, another Universal associate, to meet arriving party, who arrived on Philippine Airline Flight 352 from Manila. They return with Chairman Cristino L. Naguiat, Rogelio Bangsil and Jeffrey Opinion at 14:45.⁷⁹ Only Mr. Bangsil furnishes his name upon registration. Ms. Lai and Wynn Macau VIP Services Manager Beatrice Yeung thereafter checks PAGCOR website and identifies Chairman Naguiat's name from his picture there.⁸⁰ Ms. Yeung's log and ongoing entries refer to "[I]ncognito (Mr. Naguiat, Cristino L.)."⁸¹
- Chairman Naguiat occupies Villa 81, the most expensive accommodation at Wynn Resorts Macau (about 7,000 square feet in size, which then cost about US 6,000 per day and is mostly reserved for "high rollers").
- September 22, 2010: the Wynn Encore log book reflects "Incognito (Mr. Naguiat) stayed in Villa 81 Master Bedroom 1."⁸²
- September 23, 2010 (10:00): Mr. Araki advises Ms. Yeung that Chairman Naguiat plans to have lunch with Miss Pansy Ho at MGM.⁸³
- September 23, 2010 (14:04): Jay Schall sends an email to Wynn Macau corporate security to check Worldcheck, as a rush job, for Cristino L. Naguiat Jr., Chairman and Chief Executive Officer of PAGCOR.⁸⁴

⁷⁸ E-mail from J. Schall to I. Coughlan, September 22, 2010 [See Appendix]; interview of J. Schall, January 3, 2012; interview of I. Coughlan, December 29, 2011.

⁷⁹ Wynn Macau Manager – Encore Logbook, September 22, 2010. [See Appendix]

⁸⁰ Interviews of Beatrice Yeung, January 4, 2012 and February 1, 2012; interviews of Angela Lai January 4, 2012 and February 2, 2012.

⁸¹ Wynn Macau Manager – Encore Logbook, September 22, 2010. [See Appendix]

⁸² Ibid. [See Appendix] During subsequent visits, Chairman Naguiat was identified as "Naguiat," though he was identified during his initial visit as "incognito." The negative inference to be drawn is an attempt to hide the payment of extremely costly expenses by a corporation connected with a regulated entity. The fact that he had only recently become chairman may have been a factor in his desire to keep his identity secret.

⁸³ Miss Ho is the daughter of Hong-Kong and Macau-based businessman Stanley Ho. Though Nevada gaming regulators found Miss Ho to be a suitable business partner for MGM Mirage, see <http://www.lvrj.com/business/45462797.html>, New Jersey regulators recommended that she be found unsuitable as MGM Mirage's joint venture partner in Macau. See <http://www.newjerseynewsroom.com/state/mgm-mirage-chooses-pansy-ho-over-atlantic-city>. [See Appendix]

⁸⁴ Email from Jay Schall to Peter Barnes of Wynn Macau Corporate Security, dated September 23, 2010. [See Appendix]

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- September 23, 2010: In an e-mail to Ms. Lai, with a copy to Mr. Okada, Mr. Shoji requests that a credit of US 5,000 be extended to each person now staying at the Villa for shopping and gaming, up to a total of US 50,000. According to Mr. Shoji's email, the funds are to be advanced by Wynn Macau and charged to the Universal City Ledger account.⁸⁵
- September 24, 2010 (13:45): MOP 80,000⁸⁶ (approximately US 10,000) is advanced from the Wynn Macau main cage to a Wynn Macau VIP Services employee (no longer employed at Wynn Macau), who in turn hands the money to Masato Araki, special assistant to president of Aruze USA, based upon instructions in the above referenced e-mail to Ms. Lai. The handover of funds is witnessed by Wynn Encore manager Alex Kong. The funds are charged to the Universal City Ledger Account.⁸⁷ MOP 15,000 of this sum is used to pay for a Chanel bag that Chairman Naguiat requested be purchased for his wife.⁸⁸
- September 24, 2010 (Approximately 14:00): Mrs. Naguiat, her three children, Mrs. Bangsil and her daughter arrive at Wynn Macau.
- September 24, 2010 (15:45): Wynn Macau employees meet Mr. Okada and his assistant, Jun Yoshie, at the airport, transport them to Wynn Macau and escort Mr. Okada to room 5688.⁸⁹
- September 24, 2010 (late afternoon): Mr. Coughlan receives a phone message from Mr. Yoshie that Mr. Okada would like to speak to him. Mr. Coughlan proceeds to an area near the Wynn Encore reception desk, where he meets Mr. Yoshie and Mr. Okada. They step into the Cristal Bar to talk, whereupon Mr. Okada, with Mr. Yoshie interpreting into English, tells Mr. Coughlan that the guests [referring to

⁸⁵ E-mail from Y. Shoji to A. Lai, September 23, 2010 [See Appendix]; e-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 24, 2010.

⁸⁶ MOP 80,000 was worth approximately US 9,816 at that time.

⁸⁷ Wynn Macau Manager – Encore Logbook, September 24, 2010 [See Appendix]; Wynn Macau "Miscellaneous Disbursement" record #013014, dated September 24, 2010 [See Appendix]; e-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012; interview of Alex Kong, February 1, 2012.

⁸⁸ Wynn Macau Manager – Encore Logbook, September 24, 2010. [See Appendix]. The Chanel bag was purchased by a Wynn Macau employee as per instructions by Mr. Araki, who works for Mr. Okada. The Wynn Macau employee gave the bag, store receipt and change to Mr. Araki to deliver to Mrs. Naguiat. Later, Mr. Araki stated that Mrs. Naguiat did not like the bag so he would give it to his own wife.

⁸⁹ Wynn Macau Manager – Encore Logbook, September 24, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012.

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Chairman Naguiat's party] are very important to Universal, and that Mr. Okada wants Mr. Coughlan to insure that they are well cared for during their stay.⁹⁰

- September 24, 2010 (17:00): Mr. Okada meets Chairman Naguiat (and approximately thirteen (13)) others in his party) for dinner at Okada Restaurant.⁹¹ Mr. Okada hosts the dinner and the bill for \$1,673.07 is charged to his room.
- September 25, 2010 (05:45): Wynn Macau employees meet Mr. Okada outside his room and escort him to a limousine, which transports him to the Macau Ferry Terminal for 07:00 scheduled ferry departure to Hong Kong International Airport.⁹²
- September 25, 2010: Beatrice Yeung describes in her log book "Movements – Incognito (Mr. Naguiat, Cristino L) / Mr. Bangsil, Rogelio / Mr. Opinion, Jeffrey (Mr. Okada's guests, Villa 81)."⁹³
- September 25, 2010: Mr. Araki requests a second advance of MOP 80,000 for guests in Villa 81. Ms. Yeung accompanies Mr. Araki to the Main Cage and obtains the advance for him.⁹⁴ [This makes a total of MOP 160,000 advanced for the use of Chairman Naguiat and his party and charged to the Universal City Ledger Account per Mr. Okada's orders, as relayed in Mr. Shoji's e-mail.]
- September 26, 2010 (11:10): Mr. Araki departs the Wynn Macau Encore main entrance. He hands Ms. Yeung MOP 4100, returning what he says is the remainder of the two cash advances for Chairman Naguiat's party.⁹⁵
- September 26, 2010 (13:15): Chairman Naguiat's party departs via Wynn Macau limousine to pick up Mrs. Naguiat from shopping and proceeds to the airport.⁹⁶

⁹⁰ Interviews of Ian Coughlan, January 5, 2012 and February 2, 2012.

⁹¹ Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 24, 2010. [See Appendix]

⁹² Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 25, 2010. [See Appendix]

⁹³ Wynn Macau Manager – Encore Logbook, September 25, 2010. [See Appendix]

⁹⁴ Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 25, 2010 [See Appendix]; Wynn Macau "Miscellaneous Disbursement" record #013066, dated September 25, 2010. [See Appendix]

⁹⁵ E-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; Wynn Macau Manager – Encore Logbook, September 26, 2010 [See Appendix]; handwritten and signed note dated "9/26/10" with notation "MOP 4.100". [See Appendix]. The returned funds were equal to approximately US 503.07 returned out of a total of approximately US 19,632 provided.

⁹⁶ Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 26, 2010. [See Appendix]

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- November 10, 2010: Mr. Shoji advises Mr. Coughlan in an e-mail of receipt of Wynn Macau's invoice for the late September 2010 visit, in which the Villa [for Chairman Naguiat] was charged at the amount of MOP 48,000. Mr. Shoji states that "I understand that Mr. Okada explained to you in Macau that they were our business guests and we made reservations for them and all charges are billed to our company. While some of charges [sic] will be reimbursed by them, room charges were planned to be borne by us as ordinary business expenses. Since the amount charged is too much and beyond the ordinary room charge, our company will be put in a very difficult position to give reasonable explanations if we are inquired by someone. I would appreciate if you would reconsider this matter and charge us the original rate (free upgrade to Villa) since the party directly dealing with [sic] on this matter is our company rather than the each [sic] individual guest." (Emphasis added.)⁹⁷
- On or about December 10, 2010: After e-mails and phone messages following Mr. Shoji's September 20, 2010 e-mail, Mr. Coughlan has a phone conversation with Mr. Shoji, in which he advises Mr. Shoji that, after internal Wynn Macau discussions, the final decision was that Wynn Macau would not provide the requested free upgrade for the Villa occupied during the September 2010 visit.⁹⁸

The foregoing recitation of facts surrounding the September 2010 visit of Chairman Naguiat and his party to Wynn Macau demonstrates several significant elements of that visit:

- Mr. Okada considered these guests to be very important to his company.
- An effort was made from the outset to conceal Chairman Naguiat's identity and official status, to the point of not even wanting to advise Wynn Macau management and staff.
- With Mr. Okada's knowledge, Chairman Naguiat and his family were provided with approximately US 20,000 cash to use for gaming and also shopping
- Mr. Okada's representative sought to have Wynn Resorts fund a portion of the expenses incurred by Chairman Naguiat and his party, i.e., the free upgrade to a Villa.

⁹⁷ E-mail from Y. Shoji to I. Coughlan, November 10, 2010 [See Appendix]; interviews of I. Coughlan, December 29, 2011 and January 5, 2012.

⁹⁸ Interviews of I. Coughlan, December 29, 2011 and January 5, 2012; e-mail string between I. Coughlan and Y. Shoji and others, September 20 to December 9, 2010, subject: "Invoice and Statement for September Stay." [See Appendix]

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- Mr. Okada's representative expressed apprehension about Universal being able to justify the level of expenditures in the event of future inquiries.

There is evidence that Mr. Okada personally directed the payments and gifts provided to Chairman Naguiat and his family during their luxury stay at Wynn Macau's most expensive accommodation in September 2010. On October 5, 2010, Mr. Araki sent an email to Wynn Macau in order to arrange for a "second group of PAGCOR" checking into Wynn Macau on October 8, 2010. Clearly referring back to Chairman Naguiat's stay less than two weeks earlier, Mr. Araki writes: "Our Chairman Okada once again instructed us to take care of the group, but not like last time meaning that we will not take care of their room charges and others." (Emphasis added). Mr. Araki, who worked for Mr. Okada and personally supervised Chairman Naguiat's luxury stay at Wynn Macau, appears to confirm Mr. Okada's personal knowledge and control of the payments for Chairman Naguiat.⁹⁹

It is significant to note that the leadership of PAGCOR, which is appointed by the President of the Republic of the Philippines, changed effective June 30, 2010, when Benigno S. Aquino III assumed office as President of the Republic of the Philippines, succeeding Gloria M. Arroyo. Former PAGCOR Chairman Efraim C. Genuino, an Arroyo appointee, left office effective June 30, 2010, and Cristino L. Naguiat, Jr., President Aquino's appointee, assumed the position of Chairman and CEO of PAGCOR on July 2, 2010.

A review of the Aruze City Ledger Account records reveals that, after June 30, 2010, there are no charges attributed to Mr. Genuino or any of his family members who collectively had three (3) separate stays at Wynn resorts (Macau or Las Vegas) while Mr. Genuino was PAGCOR Chairman.¹⁰⁰ Conversely, the Aruze City Ledger Account reflects charges for Chairman Naguiat, his family, and key PAGCOR staff from Chairman Naguiat's "new" administration only after Naguiat became PAGCOR Chairman. This sequence is evidence that the hosting of these persons at Wynn Resorts, and payments made for them through the Aruze City Ledger Account, are solely related to PAGCOR, the Philippines government agency in charge of licensing and regulating Mr. Okada's business interests.

It is also clear that, having already received approval from PAGCOR in 2008 for a Provisional Licensing Agreement to develop a gaming business in the Philippines, Mr. Okada had a strong and continuing motive through 2010 and beyond to maintain favorable relations with the Chairmen and senior officials of PAGCOR. As previously noted, PAGCOR's primary governmental mission is regulating gaming businesses in the Philippines. Mr. Okada's project in Entertainment City Manila was prominently featured in PAGCOR's annual reports for

⁹⁹ Email from Matt Araki to Beatrice Yeung dated October 5, 2010. [See Appendix]

¹⁰⁰ The sole exception identified, Rodolfo Soriano, Jr., is listed on the Aruze City Ledger Account as having a single room charge on August 18, 2010. [See Appendix]

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2008,¹⁰¹ 2009¹⁰² and 2010.¹⁰³ The 2010 Annual report features photos and messages from Chairman Naguiat, and several other members of the new PAGCOR leadership. The 2010 Annual report makes it clear that two of the proponents, Bloomsbury and the SM Consortium, are constructing their resorts and are expected to complete their first phase within 2014. The other two proponents (one of which is Tiger, the provisional licensee for Mr. Okada's casino project) are in the initial design stages and are expected to break ground in 2012.

The continuing coverage of Mr. Okada's Manila Bay Resorts project in PAGCOR's annual reports indicates that PAGCOR's interest in and oversight of this project did not stop with the granting of the Provisional Licensing Agreement in 2008. Indeed, the very nature of the Provisional Licensing Agreement requires continued oversight by PAGCOR officials. As Lazaro advised, the Provisional Licensing Agreement was issued in relation to the "Bagong Nayong Philipino Manila Bay Tourism City" project, which is also referred to as "PAGCOR City." PAGCOR City is envisioned to be a Las Vegas-style gaming and entertainment complex. The project was designed to attract proponents with established experience in the hotel and gaming business. PAGCOR released the "Terms of Reference," which detailed a list of requirements to which project proponents must conform in order to qualify for a PAGCOR license to operate within PAGCOR City.

The "Terms of Reference" section provides, in pertinent part, a mandatory Minimum Investment of US 1 Billion, consisting of both equity and debt, and the submission of an associated Project Implementation Plan within 120 days from signing of the Provisional License and approval by PAGCOR (Paragraph 4, Section II, Terms of Reference). Furthermore, within 30 days of signing of the Provisional License, proponents are required to submit a Performance Assurance Bond in the amount of PHP 100 Million to guarantee the completion of the project (Paragraph 8, Section II, Terms of Reference). Within 15 days of signing of the Provisional License, proponents are also required to open an Escrow Account (with an initial deposit of at least US 100 Million) through which funds for the project will pass. This Escrow Account must maintain a balance of at least US 50 Million. (Paragraph 9, Section II, Terms of Reference).

Specifically, paragraph 13 of the Terms of Reference states the following in relation to achieving a regular, non-provisional, Casino Gaming license:

¹⁰¹ PAGCOR 2008 Annual Report, pp. 12-18, viewed January 25, 2012 at <http://www.pagcor.ph/annual-reports/annual-2008/pagcor-annual-report-2008.html>. [See Appendix]

¹⁰² PAGCOR 2009 Annual Report, pp. 16-19, viewed January 25, 2012 at <http://www.pagcor.ph/annual-reports/annual-2009/pagcor-annual-report-2009.html>. [See Appendix]

¹⁰³ PAGCOR 2010 Annual Report, pp. 24-26, viewed January 25, 2012 at <http://www.pagcor.ph/annual-reports/annual-2010/pagcor-annual-report-2010.html>. [See Appendix]

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“13. Issuance of License

A Provisional License will be issued to the winning proponent effective for the duration of the project development period and shall not exceed the approved completion date of the whole project.

The Regular Casino Gaming License will be issued upon completion of the Project and upon approval by PAGCOR of the report detailing the actual total cost of the Project to ensure the proponent's compliance with the approved project cost based on the Project Implementation Plan. The term of the License shall not exceed the term of PAGCOR as specified in RA 9487.

No sub-license will be issued nor allowed.” (Emphasis added.)

Thus, a Regular Casino Gaming License will be issued by PAGCOR upon (1) completion of the Project and (2) compliance with the approved project cost as approved by PAGCOR, based on the previously submitted Project Implementation Plan, including all other conditions as may be stipulated in the Provisional License Agreement.¹⁰⁴ Clearly, PAGCOR maintains an active regulatory role over gaming businesses after the issuance of a provisional gaming license. An operator who has already been granted a provisional license, therefore, would have a powerful business incentive to maintain favorable relations with PAGCOR's Chairman and senior leadership.¹⁰⁵

Finally, the PAGCOR officials with whom FSS spoke in December 2011 indicated that, upon “taking over” from the Genuino Administration in 2010, they conducted a review of previously granted gaming licenses to ensure that all issuance decisions had been done properly, indicating that the Naguiat Administration was exercising close review in monitoring of all licensees, including Mr. Okada.

¹⁰⁴ See research of Michelle Lazaro as expressed in her email dated January 30, 2012 to Mike McCall; See also “Terms of Reference” that were attached to the email. [See Appendix]

¹⁰⁵ A recent example of the extent of PAGCOR's continuing oversight of gaming operators can be found in the August 2011 issue of *Inside Asian Gaming* magazine. An article therein reported on claims by gaming operator Thunderbird Resorts, Inc. (“Thunderbird”) that PAGCOR had unlawfully attempted to force Thunderbird, through various allegedly selective enforcement actions, to renegotiate the revenue sharing agreement it had signed with the previous PAGCOR leadership under Mr. Genuino. See “Ball of Confusion,” dated August 10, 2011, *Inside Asian Gaming*, online edition, viewed January 26, 2011 at <http://www.asgam.com/features/item/1238-ball-of-confusion.html>. In the September 2011 issue, PAGCOR responded by making reference to various regulatory or enforcement functions it had been carrying out with regard to Thunderbird's casinos, up through the time that the dispute became heated. Among the functions mentioned were “resident monitoring teams” in Thunderbird casinos to “...guarantee the fair conduct of games...” as well as PAGCOR's serving of a notice of closure to Thunderbird in response to the disputed issues. See “Philippines Gaming Regulation—The Untold Story”, dated 23 September 2011, *Inside Asian Gaming*, online edition, viewed January 26, 2011. [See Appendix]. These statements by PAGCOR clearly indicate that PAGCOR maintains active regulatory monitoring of licensed gaming businesses in the Philippines and claims the authority to close down licensed operators.

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Mr. Okada's hosting and payments on behalf of PAGCOR Chairman Naguiat and his family at Wynn Macau, was most likely related to Mr. Okada's business interests in the Philippines, and would therefore constitute a prima facie violation of the FCPA both by Mr. Okada as well as by Aruze USA, Inc.

4. Possible Pattern of FCPA Violations Regarding Korean Government Officials

As stated previously, in recent years, Mr. Okada has been pursuing development of a resort complex in the Incheon Free Economic Zone in the Republic of Korea. Jong Cheol Lee, the Commissioner of the Incheon Free Economic Zone Authority, and apparently an Incheon government official, announced the signing of a Memorandum of Understanding on approximately October 27, 2011, between the Incheon Free Economic Zone ("IFEZ") and Okada Holdings Korea to develop a casino resort near the Incheon International Airport.¹⁰⁶

A review of the Aruze City Ledger Account disclosed charges paid for Jong Cheol Lee and other guests of his party at Wynn Las Vegas and Wynn Macau for the period November 2010 to June 2011. Registration documents provided by Wynn Resorts disclosed annotations for Mr. Lee and three other guests, indicating: "Share with Incheon Free Economic Zone." According to the Aruze City Ledger Account, the following amounts were paid for government Lee and his party:

Name	Relationship to Incheon Free Economic Zone	Location and Date of Stay	Total Charged to Aruze City Ledger Account
Jong Cheol Lee	Commissioner	WLV Nov 16-18 2010	1,597.16
		WM June 2011	1,134.55
Woo Hyeung Lee	Unknown	WLV Nov 16-18 2010	843.89
		WM June 2011	1,083.22
Min Yong Choi	Unknown	WLV Nov 16-18 2010	507.50
Ki Dong Hur	Unknown	WLV Nov 16-18 2010	779.20
TOTAL PAID			5,945.52

These payments made for and on behalf of possible Korean government officials may be part of a continuing pattern by Mr. Okada and his associates to commit prima facie violations of the

¹⁰⁶http://english.visitkorea.or.kr/enu/bs/tour_investment_support/pds/content/cms_view_1516066.jsp?gotoPage=&item=&keyword=, viewed January 14, 2012 [See Appendix]. <http://blog.daum.net/ikoreatimes/60>, viewed January 14, 2012. [See Appendix]

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FCPA. However, further investigation is required in order to determine (i) the nature of Mr. Okada's relationship with these guests; (ii) whether these guests actually had a government affiliation at the time of their 2010 visits to Wynn Las Vegas and Wynn Macau; and, (iii) the status of Mr. Okada's gaming initiative in Korea.

5. Mr. Okada's Continuing Refusal to Receive Wynn Resorts mandated FCPA Orientation Training and to Acknowledge Wynn Resorts Code of Conduct

Mr. Okada's apparent practice and pattern of committing prima facie violations of the FCPA must also be reviewed in the context of his ongoing and likely future conduct as a majority shareholder and director of Wynn Resorts. Since August, 2011, Mr. Okada has failed to make himself available for requisite Wynn Resorts Board of Directors training regarding the FCPA and compliance. Not only has every other board member accepted and received such training, but attempts to accommodate Mr. Okada (including Japanese translation of the FCPA training materials and telephonic availability for the training) have failed.

Moreover, since August 2011, Mr. Okada has also failed even to acknowledge in writing Wynn Resorts Code of Business Ethics and Wynn Resorts Policy regarding Payments to Government Officials. Mr. Okada's continuing failure to perform this requisite review and agreement to comply with Wynn Resorts Ethics and anti-bribery rules and regulations create risk to Wynn Resorts and its board. Such non-compliance by Mr. Okada also suggests that he intends to continue his apparent practice and pattern of making FCPA prohibited payments on a going-forward basis. Any such future conduct would substantially enhance the risks to Wynn Resorts and compromise Mr. Okada's fiduciary duties to Wynn Resorts.

On August 5, 2011, Cheryl Palmer, the executive assistant to Kevin Tourek, sent out an email memorandum on Mr. Tourek's behalf to all board members stating that per compliance policy requirements, all members must acknowledge in writing on an annual basis having reviewed (and agreeing to comply with) two separate documents: (1) the Company's Code of Business Ethics and (2) Policy Regarding Payments to Government Officials.¹⁰⁷ A copy of the form was attached to the email, as was a copy of both the Code and the Policy. The email asked for the executed form to be returned prior to August 26, 2011. All of the members of the board, except for Mr. Okada, returned a signed copy of the acknowledgement. Mr. Okada was reminded, via emails to his representatives on a number of occasions,¹⁰⁸ as well as via a letter from Kevin Tourek, dated November 2, 2011, to provide an executed copy of the

¹⁰⁷ See email from Cheryl Palmer dated August 5, 2011. [See Appendix]

¹⁰⁸ See emails contained in email from Kevin Tourek to Robert Shapiro, Esq., dated October 24, 2011. [See Appendix]

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acknowledgement form no later than November 15, 2011.¹⁰⁹ Mr. Okada failed to meet this deadline and, as of the date of this report, has yet to provide a signed copy of the form.¹¹⁰

In addition to his failure to return the fully executed Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials Acknowledgment Form, which, as previously indicated, was sent out in August of 2011, Mr. Okada has yet to return a secondary acknowledgement form that was attached to the annual Directors' & Officers' Questionnaire ("D&O Questionnaire"). This form was sent out to each member of the board of directors on January 9, 2012, as part of the overall D&O Questionnaire packet.¹¹¹ The packet contained instructions to "sign where indicated by the *sign here tabs*" and asked that the 2012 D&O Questionnaire be returned in its entirety on or before January 27, 2012. The two places that required Mr. Okada's signature were (1) on page 26 of the D/O Questionnaire itself, and (2) on page 50 on the separate Code of Business Conduct and Ethics Acknowledgment Form that was part of the overall D&O Questionnaire packet. Though Mr. Okada returned the signature page (page 26) of the D&O Questionnaire itself on January 27, 2012,¹¹² (which was confirmed to FSS on February 7, 2012), the fact that he has yet to return the separate Code of Business Conduct and Ethics Acknowledgment Form (which he has unequivocally pledged to do by virtue of signing on the signature page of the D&O Questionnaire) is telling and is consistent with his refusal to provide an executed copy of the Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials Acknowledgment Form that was sent to him in August of 2011. Though Wynn Resorts did not send to Mr. Okada the Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials attached to the D & O Questionnaire in Japanese language versions, which they did previously with respect to the code and policy sent out in August of 2011 after a request by Mr. Okada's attorney, Mr. Okada has never previously requested that the D & O Questionnaire itself be translated into Japanese. Mr. Okada was again reminded of his obligation to return the separate Code of Business Conduct and Ethics Acknowledgment Form (page 50 of the D&O Questionnaire packet) in an email from Roxane Peper to Mr. Okada's assistant, Takashi Matsui, on January 31, 2012.¹¹³ A copy of the form was attached to the email for Mr. Okada's convenience. This form remains outstanding.

¹⁰⁹ See letter from Kevin Tourek to Mr. Okada, dated November 2, 2011. [See Appendix]

¹¹⁰ In a letter dated December 1, 2011 to Robert Shapiro, Esq., outside counsel for Wynn Resorts, Gidon Caine, Esq., counsel for Mr. Okada, explained that the reason Mr. Okada did not sign the acknowledgment form was due to the fact that the materials had not been translated into Japanese. As of the date of submission of this Report, Mr. Okada has not yet submitted a signed copy of the acknowledgment form despite being provided with the requested translations, which were attached to a letter sent via email dated December 27, 2011 from Jeffrey Soza to Gidon Caine. [See Appendix]

¹¹¹ See Memorandum from Kim Sinatra to Board of Directors and Officers of Wynn Resorts, Limited, dated January 9, 2012, and 2012 Director's & Officers Questionnaire attached thereto. [See Appendix]

¹¹² See email from Takashi Matsui to Roxane Peper, dated January 27, 2012. [See Appendix]

¹¹³ See email from Roxane Peper to Takashi Matsui, dated January 31, 2012. [See Appendix]

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On February 1, 2012, Barry Brooks, one of Mr. Okada's attorneys, contacted Kevin Tourek, senior vice president and general counsel with Wynn Resorts, via email regarding "address[ing] the request, forwarded to Mr. Okada under cover of a memorandum from Mr. Wynn, that Mr. Okada execute and return to Wynn Resorts, Ltd. ("Wynn Resorts") a form of acknowledgment ("Acknowledgment") in regard to the Wynn Resorts Code of Business Conduct and Ethics (the "Code"). Most importantly, I wanted to emphasize that Mr. Okada agrees, with a deep sense of commitment, with the principles set out in the Code and agrees that it is in the best interest of Wynn Resorts and its shareholders that he, as a director, be a leader in observing and advocating for those principles. Also, and in any case, Mr. Okada believes that the requirements of the Code, and the spirit of those requirements, are keys to the future success of Wynn Resorts."¹¹⁴ In a follow-up phone call to that email, Mr. Brooks and Mr. Tourek discussed the ramifications of Mr. Okada not signing the policy, the possibility of interpretation issues, and concerns over whether Mr. Okada may have any conflict of interest issues. Mr. Brooks also asked for a copy of the D & O Questionnaire.¹¹⁵

6. Mr. Okada, his associates and companies, Universal have pursued independently a casino gambling development in the Philippines since 2008.

FSS interviewed Mr. Okada on February 15, 2012 and the results of that interview are set forth more fully in Section VI.¹¹⁶ In this interview, Mr. Okada asserted that all his efforts in the Philippines prior to the change of presidential administration in the summer of 2010 were undertaken on behalf of and for the benefit of Steve Wynn and Wynn Resorts, and that he only undertook to develop a gaming business in the Philippines independently subsequent to the change of presidential administrations.

On December 20, 2007, Aruze Corp. issued a press release entitled "Business Realignment and Future Business Development." The press release stated the following:

"The Company looks to acquire the licenses necessary to operate a casino resort in the Asian region, including Macau, and to commence operation of a casino resort on its own over the next business year. . . . For this know-how, which is vital from a management perspective, the Company intends to enlist the full cooperation of Wynn Resorts, Limited's Steve Wynn in its future pursuits regarding this project. For the purpose of successfully operating a casino resort in the Asian Region on an independent basis, the Company has received agreement from Steve Wynn that he will supply all necessary support, including active personal exchange with Wynn Resorts, Limited...."¹¹⁷ (Emphasis added.)

¹¹⁴ See email from Barry Brooks to Kevin Tourek, dated February 1, 2012. [See Appendix]

¹¹⁵ See email from Kevin Tourek to Kim Sinatra, dated February 2, 2012. [See Appendix]

¹¹⁶ Statements attributed to Okada during the February 15, 2012 interview are based on FSS' contemporaneous notes.

¹¹⁷ See JASDAQ press release for Aruze Corp., dated December 20, 2007, entitled "Business Realignment and Future Business," available at: http://www.universal-777.com/en/ir/releases/2007/20071220_c.pdf. [See Appendix]

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On April 25, 2008, Aruze Corp. issued another press release entitled “Casino Project in the Philippines.” This press release stated the following:

“As announced in its ‘Business Realignment and Future Business Development’ press release issued December 20, 2007, ARUZE GROUP seeks to commence the operation of a casino resort in the Asian region, which shall be conducted independently by ARUZE CORP. . . . Out of the above mentioned elements, where essential management-based know-how is concerned, the Company intends to proceed with the project under the full guidance of Wynn Resorts, Limited’s Steve Wynn.”¹¹⁸(Emphasis added.)

The press release identifies the location of the planned casino as a plot of land adjacent to “Bagong Nayong Pilipino Manila Bay Tourism City.”

The language in the press releases suggest that Universal’s intentions from the inception of the project were to develop a gaming business independently, and not for the benefit of Steve Wynn or Wynn Resorts.

7. Mr. Okada has stated that Universal paid expenses related to then-PAGCOR Chairman Genuino’s trip to Beijing during the 2008 Olympics.¹¹⁹

Mr. Okada was asked during his interview whether he met then-PAGCOR Chairman Genuino in Beijing during the 2008 Olympics. Mr. Okada stated that Universal’s President Tokuda made the arrangements for Chairman Genuino to travel to the Olympics. Mr. Okada explained that Mr. Tokuda was involved with the setting of the travel itinerary. When Mr. Okada was asked if the travel arrangements were “paid by Universal,” Mr. Okada responded “not 100% perhaps there were people certainly not all but I’m not familiar with the details.” Mr. Okada was then asked “To your knowledge, did Universal pay any of the associated costs of any of the travel of Mr. Genuino?” Mr. Okada answered “I don’t know whether or not the travel expense was paid by them. My understanding is that there was a certain amount of personal monies being spent from the attendees and participants including Chairman Genuino but I do not know details regarding this.” Mr. Okada was then asked “But is it your knowledge that some of those expenses were paid by Universal?” Mr. Okada answered: “Regarding the individual payment of personal monies, whether before or after, it was Universal that put together all of the expenses.”

Mr. Okada then explained that since Mr. Okada was previously invited to “one of the islands in the Philippines so in return well we decided that we would decide to do this in turn so I too would invite them as well. There was a time from where we had that understanding now that I recall. So I may have asked Mr. Tokuda to include this person [Genuino] as well.” The

¹¹⁸ See JASDAQ press release for Aruze Corp., dated April 25, 2008, entitled “Casino Project in the Philippines,” available at: http://www.universal-777.com/en/ir/releases/2008/20080425_c_pr2.pdf. [See Appendix]

¹¹⁹ Attributions from Mr. Okada’s interview are based on FSS contemporaneous notes.

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following question was then asked: “If there was a time that Genuino has invited you to the Philippines and in return for that you may have invited him or had some knowledge that Universal paid some of his expenses when he came to Beijing?” Mr. Okada responded: “I don’t like to be invited more than what is necessary because that would mean that I am vulnerable and I don’t like that. I was told that it was paid for and he insisted so I remember he had to be paid for in this way. So I remember that Mr. Tokuda said he should be included as well. I remember thinking that I had to return this in some way so I may have made that decision based on that memory.” (Emphasis Added).

Later in the interview, Mr. Okada stated that Chairman Genuino appeared to have a “few people” with him at the Olympics and, “I asked my staff why wasn’t he around and then my people said Mr. Genuino had a few people accompany him and he met with them to go shopping and once I heard that I do not recall now but again I don’t have a clear recollection of his whereabouts.”

VI. Summary of Mr. Okada’s February 15, 2012 Interview¹²⁰

Mr. Okada had four lawyers present over the course of the interview, including a Japanese interpreter/associate. Mr. Okada was given a full opportunity to answer all questions. He attended the interview voluntarily and at the end he was asked whether he wanted to explain anything else.

A. Apparent FCPA Violations regarding Philippine PAGCOR officials.

1. Mr. Okada admitted going to Macau on or about September 24 2010 to meet with PAGCOR chairman Naguiat at Wynn Macau. Mr. Araki called Mr. Okada on either September 24 or 23 to advise that Chairman Naguiat was at Wynn Macau.
2. Mr. Okada stated he flew to Macau from Japan for the sole reason of meeting Chairman Naguiat.
3. Mr. Okada stated the purpose of Chairman Naguiat’s visit to Wynn Macau was for business – as a new PAGCOR Chairman, Naguiat wanted to better understand the casino business. Mr. Okada stated that a number of his Universal employees, including Araki, were at Wynn Macau in order to assist Chairman Naguiat in this regard.
4. Mr. Okada stated that when he got to Wynn Macau he asked to see Ian Coughlan, Wynn Macau CEO.
5. Mr. Okada asked to see and met with Ian Coughlan at Wynn Macau but denied telling Coughlan that the guests were Universal VIPs and that they should be treated well.

¹²⁰ Certain sections of the report below are presented in an abbreviated form. See the attached notes of Mr. Okada’s interview for a more expansive description. [See Appendix]

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6. Mr. Okada emphatically denied saying this and related that there is no way he would have said something to that extent regarding special care: “I would have said this is a person with a position with PAGCOR, I would have said be normal and don’t do anything out of the ordinary.”
7. Mr. Okada stated he attended a dinner for approximately ten (10) people at Wynn Macau and that Chairman Naguiat also attended.
8. Mr. Okada stated that either Araki, Shoji or Universal paid for the dinner
9. Mr. Okada said that he did not know whether any other PAGCOR officials attended the dinner.
10. Mr. Okada stated that he and Naguiat did not discuss any business at the dinner which would have been rude.
11. Mr. Okada stated that he believed Naguiat’s wife was present at the dinner but that he was not introduced to her.
12. Mr. Okada stated he left early the next morning.

B. Mr. Okada’s Knowledge of and Response to Chairman Naguiat’s September 2010 stay

1. Mr. Okada stated that sometime after September 2010 he learned from Universal President Tokuda that the cost of Chairman Naguiat’s stay at Wynn Macau exceeded reasonable entertainment expenses.
2. Mr. Okada learned about the excessive September 2010 expenses from Takuda about three or four months after the events when the bills would come up.
3. Mr. Okada stated that he was never told the cost of Chairman Naguiat’s Wynn Macau stay nor did he ask anybody that question.
4. Mr. Okada stated that he understood that Chairman Naguiat had stayed in the most expensive accommodation at Wynn Macau. But he said “I heard later on that he was in one of the more expensive rooms. I heard this in the context of it would be a problem regarding our corporate policy....”
5. Mr. Okada stated that Chairman Naguiat’s wife was present at Wynn Macau. Mr. Okada did not know if his children were present.
6. Mr. Okada stated that he did not know that any cash had been provided to Chairman Naguiat.
7. Mr. Okada stated that he did not know that Universal employees had tried to hide the identity of Chairman Naguiat as a guest.
8. Mr. Okada stated that he did not know how long Chairman Naguiat had stayed at Wynn Macau.
9. Mr. Okada denied seeing two (2) emails from Shoji to Angela Lai at Wynn Macau, dated September 20th and 23rd 2010 respectively, which requested .

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reservations for a Universal VIP guest, “who would not be registered,” and arrangements to provide up to 5,000 US credit for each person staying at Naguiat’s Villa. Mr. Okada explained that although he saw his name in the email cc’s, he would not have seen either email because for the most part he does not use his PC.

10. Mr. Okada stated that internal Universal rules do not permit the payment of cash to government officials. Mr. Okada stated that no stay in the Villa in Wynn Macau could cost US 50,000
11. Mr. Okada stated that internal Universal rules permitted the payment of reasonable entertainment expense for government officials but did not know what amount was permitted.
12. Mr. Okada stated that the cost of Chairman Naguiat’s stay at Wynn Macau caused a “problem” for Universal and that as a result Araki was fired, and Shoji resigned after having been scolded by Mr. Okada.
13. Mr. Okada stated that he did not make any changes at his company or give anyone new instructions as a result of finding out about Naguiat’s stay in September 2010.
14. Mr. Okada said that it was possible that Chairman Naguiat would be billed for the cost of the stay.
15. Mr. Okada said, when he was asked about a reference in a Shoji email to posting all expenses to the Universal City Ledger Account, that he lacked any knowledge of such an account and said “I wonder if the City Ledger is in reference to our internal policy, as long as it is under that ceiling....”

C. Mr. Okada stated that he was aware of only one other guest stay at Wynn Macau that he believed was improperly paid by Universal.

1. Mr. Okada stated only a few weeks ago he learned from President Tokuda that Anthony Genuino, son of former PAGCOR Chairman Genuino, had stayed at Wynn Las Vegas in September of 2008 and that Universal had paid US 2300 for his stay.
2. Mr. Okada stated that Genuino would be sent the bill for this cost
3. Mr. Okada denied any knowledge of other PAGCOR officials staying at Wynn Resorts from 2008 through June 2011 with Universal paying for their expenses.
4. Mr. Okada stated that he had just instructed President Tokuda of Universal to conduct an investigation into Universal’s payment of entertainment expenses.
5. Mr. Okada blamed Shoji as the responsible party for these payments.
6. Mr. Okada stated that he yelled at Shoji for not reporting these matters to him and would have fired Shoji except that Shoji resigned. Mr. Okada stated that Tokuda

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did report these matters and Mr. Okada believed that Shoji was also in a position to know all about what had happened but had failed to report it to him.

7. Mr. Okada stated that Shoji was a trusted employee who had worked closely with him since 2002 and should have reported these matters to him.
8. Mr. Okada stated that they were just starting this investigation and that bills may be sent to certain of these guests for the expenses which Universal paid.
9. Mr. Okada especially blamed Mr. Shoji since he was the head of the company's compliance committee from 2002-2010.
10. Mr. Okada stated that he last met with Chairman Naguiat in the Philippines during January 2012 in order to seek land leasing approval from PAGCOR.
11. Mr. Okada stated that Universal had an expense policy but he didn't know what the amounts were. Mr. Okada stated that he was unfamiliar with the specific details of his compliance policy because he was too high within the company. He left it to others to handle the details of the policies.
12. Mr. Okada was asked a series of questions regarding about a dozen other PAGCOR officials who stayed at Wynn Macau or Wynn Las Vegas during 2010 and 2011 for whom Universal paid their expenses.
13. Mr. Okada denied having authorized any of these payments and said that he would not have authorized such payments if the guests were PAGCOR officials.
14. Mr. Okada stated that on one occasion he met Jose Miguel Arroyo, husband of Former Philippine President Gloria Arroyo, but did not know that Jose Arroyo had stayed at Wynn Las Vegas in November 2009, with Universal paying for his expenses totaling US 4,642.
15. Mr. Okada stated that he met Chairman Naguiat approximately 4 or 5 times since Naguiat's Chairmanship in June 2010 and that these meetings always involved official matters.
16. Mr. Okada stated that he told Tokuda in December of 2011 to investigate these matters.
17. Mr. Okada stated that December was the first time he asked Mr. Tokuda investigate these charges for Universal.
18. Mr. Okada stated further that Shoji was a trusted employee whom he had met with "very frequently." During the time period in September 2010 when Shoji was setting up the Naguiat visit, Shoji told Mr. Okada nothing about Naguiat.

D. Okada statements to the Board of Directors Regarding doing business in Asia

1. Mr. Okada stated that he could not specifically remember attending a Wynn Resorts Board of Directors meeting in February 2011.

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2. Mr. Okada stated that he did not remember attending a Wynn Resorts Board of Directors meeting where bribery was discussed.
3. Mr. Okada denied ever stating to Wynn Resort Directors words to the effect that “it was a matter of hiring the right people and that you must pay other people.” He responded “absolutely not, that’s a lie.”
4. Mr. Okada denied telling fellow board members words to the effect that “you have to follow local customs and that’s why you have consultants.”
5. Mr. Okada also denied ever stating to fellow board members words to the effect “I wouldn’t bribe someone but would have someone else bribe that person.”
6. As to bribing someone in the Philippines, Mr. Okada stated that “there is no need to do that in the Philippines even because we are in the position to invest.”
7. Mr. Okada also denied ever stating words to the effect that “in Asia, it is okay to give gifts to government officials.” His response was “absolutely not.”
8. Mr. Okada stated that he had been a member of the Wynn Resorts Board of Directors since 2005 or 2006. When asked about his duties or responsibilities as a director of Wynn Resorts, Okada stated that he had to “ensure socially just company, there should be no illegal activities, and that I have to help them be successful and grow as a company.”
9. Mr. Okada was asked if he had ever read the Wynn Resorts Code of Conduct to which he responded, “No because it is in English, no I cannot.”
10. Mr. Okada was asked if he had accepted Wynn Resorts Board of Director FCPA training in 2011, to which he replied that he had received some documents but sent them to his lawyers.

E. Doing Business in the Philippines

1. Mr. Okada stated that prior to the new Philippine administration taking over in 2010, his efforts to conduct a gambling business in the Philippines were being done for Wynn Resorts and that he was reporting to Steve Wynn about these activities.
2. Mr. Okada said before the new Philippine administration in 2010 “All of the conversation between myself and Genuino was for the sake of explaining to Mr. Wynn.”
3. Mr. Okada stated that a press release from Aruze Corp. dated April 25, 2008, that announced Aruze would independently operate a casino project in the Philippines, had not been presented to him for approval.
4. Mr. Okada stated that neither Steve Wynn nor Wynn Resorts had invested any money in the Philippine business initiative which he had been conducting since 2008.

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5. Okada stated that Universal had invested between US 300-400 million in 2008 to acquire the land for the Manila Bay project.
6. When asked whether Mr. Wynn or Wynn Resorts invested any money in the US 300-400 million purchase, Mr. Okada stated that “Wynn Resorts had no involvement whatsoever.”
7. Mr. Okada stated that it was only after the new Aquino presidency in June of 2010 that he decided to pursue a Philippine gaming project independently.
8. Mr. Okada stated that this land had been acquired by a company called Eagle I Land Holdings in which Aruze USA had an ownership interest.
9. Mr. Okada stated that at the time of the land acquisition in 2008, Eagle I Land Holdings was 60% owned by Filipino nationals. However, when asked to identify the 60% ownership today, he responded “I know of them I know who they are but I don’t remember their names.”
10. Mr. Okada stated that he was aware of the Philippine legal requirement that land be 60% owned by Filipinos.
11. Mr. Okada stated that neither Tiger or Aruze had a provisional gaming license for the Philippines.
12. Mr. Okada does not know whether a deposit was made by Universal in order to pursue the Filipino gaming initiative.
13. It was his understanding that to get a gaming license in the Philippines you needed to do certain things beforehand and that he asked questions on Wynn’s behalf as to what had to be done.
14. Mr. Okada stated that Platinum Gaming and Entertainment was a Philippine company run by Soriano.
15. Mr. Okada stated that he did not know Paolo Bombase or Manuel Camacho as shareholders of Eagle I and Eagle II.
16. Mr. Okada stated that Masato Araki may have lent his name as a stockholder to Eagle I and Eagle II but that Mr. Okada did not know the details. Mr. Okada stated that he did not know whether Manabu Kawasaki, who was another Universal employee, was a stockholder of Eagle I or Eagle II.

F. Possible Payments by Universal to Korean Government Officials.

Mr. Okada stated that he is interested in the IFEZ for possible investment. Mr. Okada stated that he personally set up arrangements in 2009 or 2010 for a Korean delegation from the IFEZ to visit Las Vegas. According to Mr. Okada, this delegation was led by a Mr. Lee, who was “seconded” to IFEZ by the Korean government. Mr. Okada invited this delegation to see the Venetian.

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Mr. Okada stated that “at the very beginning” he discussed the “issue of expense” and the Korean side said they had to pay for their own expenses as government officials. Mr. Okada stated that the Korean delegation stayed at Wynn Las Vegas and paid for their rooms. When told that Universal in fact paid for the Koreans’ rooms, Mr. Okada stated “It’s possible we paid in advance the first time but then they paid later. I am personally in charge of the Koreans.” When Mr. Okada was then asked if he knew that was done he responded “I am certain it was done.”

Mr. Okada later repeated that the Koreans paid for their own travel. When advised that Universal paid for Commissioner Lee and others to stay at Wynn Macau in 2011, and Wynn Las Vegas in 2010, Mr. Okada stated that “It may have been that we made a temporary payment to be reimbursed later but in any case for Korea all trips must be applied for with the City Hall and they need to get prior approval.”

Mr. Okada later repeated that he did not authorize Universal to pay approximately US 6,000 worth of room charges for Commissioner Lee and other IFEZ officials for stays at Wynn Resorts. When asked if it would be against “Universal’s policy” to pay such travel expenses, Mr. Okada repeated that the Koreans would pay for their own expenses. He added that “Maybe it was the case where Universal made a temporary payment to be reimbursed later and all this would be paid by ‘admin official.’”

G. Mr. Okada Instructs Mr. Tokuda to Conduct an Investigation

Mr. Okada stated that since about 2008-2009, Universal has had both “ordinary” and “extraordinary” rules about paying entertainment expenses regarding government officials. However, he stated that he did not know the “specific details.” Mr. Okada stated that “cash” could not be given but that he did not know the dollar amount limit for providing government officials with meals.

Mr. Okada stated that after learning from Mr. Tokuda about the excessive expenses paid by Universal for Chairman Naguiat’s September 2010 stay at Wynn Macau, Mr. Okada did not take any steps or give instructions to prevent a recurrence. Indeed, Mr. Okada stated his belief that Universal’s corporate policy as it exists today is “plenty on its own.”

Mr. Okada stated that “within the last week or so” he learned from Mr. Tokuda that the son of then-PAGCOR Chairman Genuino stayed at Wynn Las Vegas in 2008 and that Universal had paid US 2,800 for his expenses. Mr. Okada said this was “inexcusable” and that he had given instructions to have him [Genuino] billed directly. Mr. Okada further stated that Mr. Tokuda had found “several more” of these instances but that Mr. Okada did not “know the details.” Mr. Okada stated that in regard to Chairman Naguiat’s stay at Wynn Macau, perhaps an invoice should also be sent to him as the customer.

Mr. Okada stated that “it was just yesterday” that he heard from Tokuda about “these issues being raised.” After being asked what he knew about a list of PAGCOR officials whose

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stays at Wynn Macau and Wynn Las Vegas were paid by Universal from 2008 – 2011, Mr. Okada denied any knowledge of these events. However, Mr. Okada stated that “everything I believe [FSS] mentioned matches with what Mr. Tokuda is investigating right now. And I will have him write a paper that lists all the countermeasures and a progress report and what has been wrapped up and so forth.”

Mr. Okada stated that in approximately December 2011, he “clearly instructed” Mr. Tokuda to conduct an investigation about these matters. At the end of the interview, Mr. Okada stated that “I will look into all the expense that you have asked about and if it is someone who has an existing relationship I will for sure bill that person.”

VII. Conclusions

The investigation has produced substantial evidence that directly relates to Mr. Okada’s suitability under Nevada law as both a major shareholder and director of Wynn Resorts.

Nevada Gaming Commission Regulations regarding individual suitability issues encompass, among other things, a person’s “good character, honesty and integrity,” and whether a person’s “background, reputation and associations will not result in adverse publicity for the State of Nevada and its gaming industry” (Section 3.090 of the NRS). The NRS also require that a covered person satisfy the Commission that such person has “adequate business probity” (Section 463.170, paragraph 3).

Both Aruze USA , a Nevada corporation, and Mr. Okada personally, as a Director, President, Secretary and Treasurer of Aruze Inc., are covered parties under the jurisdiction of the FCPA.

As set forth above, the investigation has produced substantial evidence that Mr. Okada, his associates and companies have apparently been engaging in a longstanding practice and pattern of committing prima facie violations of anti-bribery laws, particularly the FCPA.

The testimonial and documentary evidence appear to prove that, since at least 2008, Mr. Okada, his associates and companies have made over US 110,000 in payments to his chief gaming regulators (2) in the Philippines (PAGCOR), their families and associates. Mr. Okada is building a multi-billion dollar gaming business and operation in the Philippines.

The practice and means of making these payments varied slightly but were regularly and repeatedly arranged in the same manner. For example, between June 2008 and August 2010, former PAGCOR Chairman Efraim Genuino (February 2001 – June 30, 2010), his son and other PAGCOR government officials, were hosted by Mr. Okada, his associates and companies at either Wynn Resorts Las Vegas or Wynn Resorts Macau. Mr. Okada, his associates and companies would arrange and pay thousands of dollars to cover the expenses of Chairman

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Genuino, his son and other then-current PAGCOR officials in his party. These payments were made by Mr. Okada, his associates and companies, using the City Ledger Account, which contained an average balance of US 100,000 funded and replenished by Universal. International money transfers and the facilities of interstate commerce were used to make these payments.

There is substantial evidence to show that Chairman Genuino's June 2010 stay at Wynn Macau was due to the fact that he was then Mr. Okada's principal Philippine gaming regulator. This is also demonstrated by the fact that after Chairman Genuino left his PAGCOR office in June 2010, he and his family were no longer the beneficiaries of such payments at Wynn Resorts facilities.

However, as set forth above in greater detail, Mr. Okada's current chief Philippine gaming regulator, Chairman Cristino Naguiat (July 2, 2010 – present) and his family quickly succeeded Chairman Genuino as the beneficiaries of payments by Universal for stays at Wynn Resorts Las Vegas and Wynn Resorts Macau (September 2010 in Macau; November 2010 in Las Vegas; and June 2011 in Macau, just over seven (7) months ago).

These payments were made using Mr. Okada's City Ledger Account, as was done regarding payments on behalf of the former PAGCOR Chairman. The evidence further suggests that Chairman Naguiat's luxury stays at Wynn Resorts facilities were fully known to Mr. Okada, who actively involved himself in some of the arrangements. For example, Chairman Naguiat's September 22-26, 2010 stay at Wynn Resorts Macau luxury Villa 81, the most expensive accommodation at Wynn Resorts Macau (about 7,000 square feet in size, which then cost about US 6,000 per day), was intended by Mr. Okada and his associates to be kept secret and concealed within Wynn Resorts Macau records. Initially, Mr. Okada's associates arranging for Chairman Naguiat's September 2010 stay at Wynn Resorts Macau purposefully withheld Naguiat's name and had him registered as an "Incognito" VIP guest of Universal, utilizing the named reservation of "Rogelio Bangsil" (another then-senior PAGCOR official). Chairman Naguiat then stayed at the Wynn Resorts Macau for four days, together with his wife, three children and a nanny, without ever once introducing himself to the constantly attending Wynn Resorts Macau VIP service managers.

Mr. Okada's associate, who made this reservation for Chairman Naguiat, requested a "more gorgeous room, such as "Villa" and "the best butler," for this unnamed "VIP for Universal," who turned out to be the chief gaming regulator for the Philippines. The evidence also shows that on September 24, 2010, Mr. Okada personally made clear (via an interpreter) to Ian Coughlan, the Wynn Resorts Macau Executive Director and President, that Chairman Naguiat and his party were important guests and that Mr. Coughlan should make sure that his staff took good care of them. The evidence further shows that on the evening of September 24, 2010, Mr. Okada hosted a dinner at Wynn Macau for Chairman Naguiat (and approximately 13 others). The US 1,673.07 cost of this dinner was charged to Mr. Okada's room.

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The testimonial and documentary evidence also shows that despite deliberate attempts to conceal Chairman Naguiat's identity while a guest at Wynn Resorts Macau in September 2010, hotel staff, acting on their own, soon identified Chairman Naguiat by means of a photo from the PAGCOR website. Their interest in doing so was sparked by the fact that the senior PAGCOR guest known to them, Mr. Bangsil, exercised great deference to Chairman Naguiat, who the staff determined must be the 'boss'. Nevertheless, the VIP service providers continued to refer to Chairman Naguiat only as "sir," thereby following the wishes and directions of Chairman Naguiat and Mr. Okada's associates. The evidence also shows that several weeks after Chairman Naguiat's intended "Incognito" stay at Villa 81, Mr. Okada's associates became concerned about the high cost of Chairman Naguiat's luxury stay at Wynn Resorts Macau. Specifically, Mr. Okada's associate advised Wynn Resorts Macau that the amount being charged for Chairman Naguiat's stay was too much over an ordinary business expense. Mr. Okada's associate then asked if Wynn Resorts Macau "could reconsider the matter [Chairman Naguiat's stay] and charge us [Mr. Okada's company] the original rate [and free upgrade to a Villa] since the party directly dealing with on this matter is our company [Mr. Okada's company] rather than each individual guest [Chairman Naguiat]." Mr. Okada's associate further stated that "since the amount charged [for Chairman Naguiat] is too much beyond the ordinary room charge, our company [Mr. Okada's company] will be put in a very difficult position to give reasonable explanations if we are inquired by someone." (Emphasis added).

Despite Mr. Okada's associate's efforts to have Wynn Resorts Macau reduce these payments and assist in covering up the beneficial amounts received by Chairman Naguiat, Wynn Resorts Macau denied this request.

Mr. Araki's later email ("Our Chairman Okada once again instructed us to take care of the group [PAGCOR], but not like the last time...") to Wynn Macau, dated October 5, 2010, also tends to confirm Mr. Okada's personal knowledge and direction of the payments made on behalf of Chairman Naguiat and his family for their luxury stay at Wynn Macau for September 22-26, 2010.

The evidence also shows that on September 24-25, 2010, Mr. Okada's associates obtained a total of US 20,000 cash from Wynn Resorts Macau's main cage as "cash advances" for Chairman Naguiat, his family and party. This same associate of Mr. Okada returned approximately US 503 of this advance on September 26, 2010 as the remainder from Chairman Naguiat's party. Mr. Okada's City Ledger Account was again used to pay for this advance.

The evidence also shows that the PAGCOR-related payments made by Mr. Okada and his associates are not the result of any misunderstanding of the applicable anti-bribery laws, including the FCPA. Conversely, by his own statements and declarations to fellow Wynn Resorts Board members, Mr. Okada apparently believes that there is nothing wrong with making payments and gifts to government officials when doing business in Asia. When advised by fellow directors and Wynn Resorts lawyers that such payments are bribes strictly prohibited by

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the FCPA and other laws, Mr. Okada responded that third party intermediaries or “consultants” can be used to make the payments.

The best evidence of Mr. Okada’s belief that it is permissible to make payments to government officials is his admission that Universal paid expenses for then-PAGCOR Chairman Genuino’s trip to the 2008 Beijing Olympics. Mr. Okada explained that since Mr. Genuino had previously invited Mr. Okada to “one of the islands in the Philippines,” Mr. Okada and Universal’s President Tokuda in turn had Universal pay for expenses related to Genuino’s trip to Beijing, which Mr. Okada stated was arranged by President Tokuda. This admission by Mr. Okada is consistent with his February 24, 2011 statements to board members that there is nothing wrong with making payments and gifts to government officials.

The evidence about the corporate structures utilized by Mr. Okada and his associates to initiate his multibillion dollar gaming business in the Philippines also appears to demonstrate Mr. Okada’s intent to do business as he desires, regardless of the applicable laws and regulations. FSS’s examination of the corporate documents relating to Mr. Okada’s gaming initiative in the Philippines appears to show that he has used a complex web of corporate structures and companies to evade laws which require Philippine nationals to own 60% interest in all real estate. A separate legal analysis by a Philippine attorney confirms this finding and suggests that Mr. Okada’s Philippine gaming initiative has been set up in violation of applicable law.

Additionally, the preliminary evidence also shows that in connection with Mr. Okada’s efforts to develop a gaming business in IFEZ, Mr. Okada and his associates may be engaging in the same pattern of proscribed payments to government officials. The preliminary evidence shows that in October 2011, Mr. Okada’s company signed a Memorandum of Understanding with IFEZ to develop a casino resort near the Incheon International Airport. Preliminary information indicates that IFEZ is overseen by the Incheon Free Economic Zone Authority, apparently part of the City of Incheon government. Mr. Okada’s City Ledger account reflects that from November 2010 through June 2011, four (4) individuals, including IFEZ Commissioner Jong Cheol Lee, had two stays at Wynn Resorts Las Vegas and Wynn Resorts Macau, where payments totaling US 5,945.52 were made on their behalf through Mr. Okada’s City Ledger account. Preliminary internet research identifies Jong Cheol Lee as the current IFEZ Commissioner, a position he has held since July 2010. It is not clear at this preliminary stage i) whether Mr. Okada’s announced gaming investment and operation within IFEZ has received any gaming licensing, and ii) whether the three (3) guests who accompanied Commissioner Lee were then Korean government officials.

The investigation has established that despite requests by Wynn Resorts since August 2011 that Mr. Okada acknowledge in writing that he has reviewed (and agreed to comply with) Wynn Resort’s “Code of Business Ethics” and “Policy Regarding Payments to Government Officials,” Mr. Okada has failed to do so.

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Finally, Mr. Okada was interviewed by FSS on February 15, 2012 by FSS and was given the opportunity to present his version of the facts. Mr. Okada denied knowledge of Chairman Naguiat staying “incognito” at Wynn Macau in September 2010. He also denied knowledge that Mr. Shoji was actively involved in arranging for Chairman Naguiat’s stay. Although Mr. Shoji’s emails asking that Chairman Naguiat’s identity be kept secret, and that Chairman Naguiat be provided with cash in connection with his visit, were copied directly to Mr. Okada, the latter stated that because he rarely uses his personal computer, he would not have seen such emails. Mr. Okada acknowledged flying to Macau on September 24, 2010 in order to visit Chairman Naguiat but denied telling Ian Coughlan that Chairman Naguiat was an important Universal guest who should be treated well. Conversely, Mr. Okada stated that there is “no way” he would have said something like that, but would have said “be normal and don’t do anything out of the ordinary.” The substantial evidence relating to Chairman Naguiat’s September 2010 stay at Wynn Macau, including emails, Coughlan’s statements, and the facts and reasonable inferences regarding this evidence, cast substantial doubt on Mr. Okada’s credibility.

Mr. Okada also vehemently denied making statements to fellow board members to the effect that doing business in Asia requires and permits bribes to be made to government officials. Mr. Okada’s denials are directly contradicted by many of his fellow board members.

Similarly, Mr. Okada insists that all of his efforts to establish a gambling business in the Philippines prior to 2010 were undertaken solely on behalf of Wynn Resorts. His insistence is largely contradicted by the actions which he undertook. First, Mr. Okada and Universal invested US 300-400 million to buy property in the Manila Bay Entertainment Zone, which was to be used for his gaming operation. Mr. Okada admitted that Wynn Resorts had “no money involved in this investment.” Secondly, Mr. Okada and Universal set up an elaborate corporate structure in order to initiate, and operate in the future, a multimillion dollar casino operation. Wynn Resorts had no participation in any of these corporate initiatives or structures, all of which were controlled by Universal and Mr. Okada. Third, the provisional gaming license, which is required in order to establish a gaming business in the Philippines, was procured by Mr. Okada and his companies, without any relation to Wynn Resorts. Finally, when shown an April 25, 2008 Aruze Corp. press release, which states that the Aruze casino operation will be independently developed by Aruze with the mere intent that Wynn Resorts help guide its project, Mr. Okada denied any knowledge of this press release.

In sum, the substantial evidence developed by this investigation and set forth above, based on witness interviews, public information, documentary and electronic data, provide the Compliance Committee and Board of Directors a factual basis to review Mr. Okada’s continued suitability to be a major shareholder and director of Wynn Resorts.

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Plaintiff,

vs.

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

Defendants.

ARUZE USA, INC., a Nevada corporation,
UNIVERSAL ENTERTAINMENT
CORPORATION, a Japanese corporation

Counterclaimants,

vs.

CASE NO: 2:12-cv-00400-LRH-PAL

**COUNTERCLAIM AND ANSWER
OF ARUZE USA, INC. AND
UNIVERSAL ENTERTAINMENT
CORPORATION**

JURY DEMAND

1 WYNN RESORTS, LIMITED, a Nevada
2 Corporation, STEPHEN A. WYNN, an
3 individual, KIMMARIE SINATRA, an
4 individual, LINDA CHEN, an individual,
5 RAY R. IRANI, an individual, RUSSELL
6 GOLDSMITH, an individual, ROBERT J.
7 MILLER, an individual, JOHN A. MORAN,
8 an individual, MARC D. SCHORR, an
9 individual, ALVIN V. SHOEMAKER, an
10 individual, D. BOONE WAYSON, an
11 individual, ELAINE P. WYNN, an individual,
12 ALLAN ZEMAN, an individual,

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Counterdefendants.

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COUNTERCLAIM

JURISDICTION AND VENUE

1
2
3 1. This Court has jurisdiction over this Counterclaim pursuant to Section 27 of
4 the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78aa; 28 U.S.C. §
5 1331; and 28 U.S.C. § 1367.

6 2. The claims asserted herein arise under Section 10(b) of the Exchange Act,
7 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240 10b-5, the
8 Nevada Racketeer Influenced and Corrupt Organizations Act ("RICO"), N.R.S. § 207.400
9 *et seq.*, and Nevada statutory and common law. Additionally, the claims asserted herein
10 raise substantial federal questions under the Foreign Corrupt Practices Act of 1977
11 ("FCPA"), 15 U.S.C. §§ 78dd-1, *et seq.*

12 3. Venue is proper in this District pursuant to: (i) 15 U.S.C. § 78aa, because
13 this is the District in which acts constituting the violation occurred and in which
14 Defendants transact business; and (ii) 28 U.S.C. § 1391(b)(2), because this is a District in
15 which a substantial part of the events or omissions giving rise to the claim occurred, or a
16 substantial part of the property that is the subject of the action is situated.

NATURE OF THE ACTION

4. Plaintiff and Counterdefendant Wynn Resorts, Limited (“Wynn Resorts” or the “Company”) initiated this litigation on the same night it claims to have forcibly purchased (*i.e.*, “redeemed”) the nearly 20% of its own common stock held by 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.

5. 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, would be forcibly purchased in exchange for a 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 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.

6. This Counterclaim arises because this purported redemption would:

- (a) violate the express terms of agreements between Wynn Resorts and Aruze USA;
- (b) allow Mr. Wynn and others to profit unjustly from their illegal acts and a process that

¹ The Wynn Resorts’ Board of Directors (the “Board”), other than Kazuo Okada (“Kazuo Okada” and “Mr. Okada”), are Stephen A. Wynn (“Mr. Wynn” or “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.

1 was corrupt and unfair; and (c) subject Aruze USA to an unconscionably punitive remedy
2 based on an unproven pretext.

3 7. To be clear at the outset, Aruze USA disputes that any redemption has
4 occurred. Among other things, even if the redemption provision in the Company's
5 Second Amended Articles of Incorporation were legally enforceable (which it is not), the
6 Board's vote of redemption is void *ab initio*, because Wynn Resorts is barred by contract
7 from redeeming Aruze USA's securities. According to Wynn Resorts, the stock held by
8 Aruze USA is subject to transfer restrictions in a stockholders agreement (the
9 "Stockholders Agreement"). The transfer restrictions in the Stockholders Agreement (to
10 which Wynn Resorts agreed to be bound), if valid, preclude any redemption of Aruze
11 USA's stock. In addition, Aruze USA's stock was never subject to the redemption
12 provision in the Company's Articles of Incorporation, because Aruze USA agreed to
13 purchase Wynn Resorts stock *before* the redemption provision became effective. As a
14 threshold matter, then, the applicable contracts relied upon by Wynn Resorts to justify its
15 conduct actually bar Wynn Resorts' purported redemption of Aruze USA's stock.

16 8. Even if the Articles of Incorporation allowed the redemption of
17 Aruze USA's interests in Wynn Resorts (which they do not), there was no legitimate
18 factual or legal basis to invoke the redemption provision in this case. Wynn Resorts
19 undertook a secret investigation, hiding the subjects of the investigation from Aruze USA
20 by erroneously invoking attorney-client privilege and confidentiality, even after Wynn
21 Resorts had leaked a "report" of the investigation to the *Wall Street Journal*. Wynn
22 Resorts refused Aruze USA any reasonable opportunity to respond prior to redeeming
23 Aruze USA's interests, despite prior written promises to do so. If Wynn Resorts had
24 provided the opportunity, it would be clear why redemption is unwarranted.

25 9. The Wynn Directors breached their fiduciary duties to Wynn Resorts and to
26 Aruze USA in not undertaking a thorough, independent, and objective examination of the
27 law, facts, and evidence before purporting to usurp the role of the gaming authorities in
28 finding Aruze USA "unsuitable." Similarly, they breached their duties by then voting for

1 a wholly unnecessary and improper “redemption” on unconscionable terms. As a result,
2 the Wynn Directors cannot rely on the “business judgment rule,” as they did not act in a
3 fully informed, good faith, and independent manner, and their actions are both contrary to
4 the law and not objectively reasonable.

5 10. Apart from the lack of any legal basis for Wynn Resorts’ actions,
6 Aruze USA sues because Wynn Resorts, for all its accomplishments, is not a corporation
7 in any ordinary sense. Rather, Wynn Resorts’ flamboyant Chairman, Mr. Wynn, has run
8 Wynn Resorts as a personal fiefdom, packing the Board with friends who do his personal
9 bidding, and paying key executives exorbitant amounts for their unwavering fealty.

10 11. In the course of trying to illegally force out Aruze USA as Wynn Resorts’
11 largest stockholder, Mr. Wynn and Wynn Resorts’ General Counsel Kimmarie Sinatra
12 (“Kim Sinatra” or “Ms. Sinatra”) committed a series of predicate acts of racketeering,
13 which include fraud, acquiring property under false pretenses, acquiring signatures under
14 false pretenses, and other similar wrongful activities. Mr. Wynn and Ms. Sinatra executed
15 on a scheme and pattern of racketeering activity, the aim of which was to defraud, defame,
16 and steal from Aruze USA and its President, Mr. Okada, by taking Aruze USA’s interest
17 in Wynn Resorts, for the purpose of illegally placing and maintaining the control of Wynn
18 Resorts in a single man – Mr. Wynn. The wrongful acts complained of here cannot be
19 countenanced, and the purported taking of Aruze USA’s property cannot stand

20 **PARTIES**

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

27 13. Counterclaimant Universal (f/k/a Aruze Corp.) is a corporation organized
28 and existing under the laws of Japan. Universal manufactures and sells pachislot and

1 pachinko machines. Universal is registered with the Nevada Gaming Commission, and
2 was deemed suitable by the Nevada Gaming Commission as a 100% shareholder of Aruze
3 USA. Mr. Okada is the Chairman of the Board of Universal.

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

8 15. Counterdefendant Stephen A. Wynn is the Chairman of the Board and Chief
9 Executive Officer of Wynn Resorts and is a resident of Nevada. Mr. Wynn owns
10 10,026,708 shares² of the common stock of Wynn Resorts.

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

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

17 18. Counterdefendant Linda Chen is a director of Wynn Resorts and, on
18 information and belief, is a resident of Macau. Ms. Chen owns 265,000 shares of the
19 common stock of Wynn Resorts.

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

23 20. Counterdefendant Russell Goldsmith is a director of Wynn Resorts and, on
24 information and belief, is a resident of California. Mr. Goldsmith owns 40,000 shares of
25 the common stock of Wynn Resorts.

26
27 ² All references to the number of shares owned by Counterdefendants are as of March 1, 2012, as
28 disclosed in Wynn Resorts' Schedule 14A Proxy Statement, filed with the SEC on March 7,
2012.

1 21. Counterdefendant Robert J. Miller is a director of Wynn Resorts and, on
2 information and belief, is a resident of Nevada. Mr. Miller owns 20,500 shares of the
3 common stock of Wynn Resorts.

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

7 23. Counterdefendant Marc D. Schorr is a director and Chief Operating Officer
8 of Wynn Resorts and, on information and belief, is a resident of Nevada. Mr. Schorr owns
9 250,000 shares of the common stock of Wynn Resorts.

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

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

16 26. Counterdefendant Allan Zeman is a director of Wynn Resorts and, on
17 information and belief, is a resident of Macau. Mr. Zeman owns 30,500 shares of the
18 common stock of Wynn Resorts.

GENERAL ALLEGATIONS

I. MR. 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

27. 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.

28. 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 Mr. Okada, who became the means for Mr. Wynn to get back on his feet.

29. 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.

1 30. Beginning in November 2000, Mr. Wynn used a Nevada limited liability
2 company called Valvino Lamore, LLC (“Valvino”) as the holding entity for his new
3 Desert Inn casino project. After in-person discussions between Mr. Wynn and Mr. Okada,
4 Aruze USA made a contribution of \$260 million in cash to Valvino in exchange for 50%
5 of the membership interests in Valvino effective November 30, 2000. This contribution
6 was the seed capital that allowed for the development of what is now Wynn Resorts.
7 Valvino is referred to by Wynn Resorts as Wynn Resorts’ “predecessor.”

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

14 **B. The Stockholders Agreement**

15 32. In 2002, all three owners of LLC interests in Valvino – Mr. Wynn, Aruze
16 USA, and Baron Asset Fund³ – understood that the Wynn organization was planning to go
17 public as Wynn Resorts. This required a series of legal steps by which the owners’
18 interests in Valvino were converted into shares of a newly formed corporation, “Wynn
19 Resorts, Limited,” that could then sell additional shares to the public.

20 33. On April 11, 2002, prior to the filing of the Articles of Incorporation for
21 Wynn Resorts, the three owners of LLC interests in Valvino – Mr. Wynn, Aruze USA,
22 and Baron Asset Fund – entered into the Stockholders Agreement, which imposed certain
23 restrictions on the sale of the stock they were to receive in “NewCo,” the entity that would
24 become Wynn Resorts. As described in Wynn Resorts’ prospectus, dated October 29,
25 2002, “the stockholders agreement establishes various rights among Mr. Wynn, Aruze

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

1 USA and Baron Asset Fund with respect to the ownership and management of Wynn
2 Resorts.”

3 34. Notably, the parties to the Stockholders Agreement stated that the terms of
4 that agreement were a condition of transferring their LLC interests in Valvino to Wynn
5 Resorts. Specifically, the Stockholders Agreement stated “as a condition to their
6 willingness to form [Wynn Resorts], either through the contribution of their interests in
7 the LLC or through a different technique, the Stockholders are willing to agree to the
8 matters set forth” in the Stockholders Agreement.

9 35. Wynn Resorts publicly acknowledged the impact of the Stockholders
10 Agreement on the Company and the shareholders, disclosing in Wynn Resorts’ Form S-
11 1/A filed with the SEC on October 7, 2002 that the Stockholders Agreement established
12 “restrictions on the transfer of the shares of Wynn Resorts’ common stock owned by the
13 parties to the stockholders agreement.” In this way, Wynn Resorts – and all other
14 stockholders – were aware that there were limitations written in the Stockholders
15 Agreement on the transferability of the Wynn Resorts stock held by Aruze USA.

16 36. The Stockholders Agreement contained certain transfer restrictions on
17 shares held by Aruze USA. The agreement defined a “[t]ransfer” as “any . . . disposition,
18 either voluntary or *involuntary*” (emphasis added). The agreement provided that such
19 securities may only be transferred to Mr. Okada, an immediate family member of Mr.
20 Okada, a family trust, or a company related to Aruze USA. No other transfers were
21 allowed. For example, there is no provision that would allow Wynn Resorts to buy or
22 take, or redeem the securities. To the contrary, the Stockholders Agreement expressly
23 made **any** transfer of shares – including any involuntary transfers – in violation of the
24 Agreement “null and void *ab initio*.” As explained in further detail below, because Wynn
25 Resorts expressly adopted this transfer restriction at the time of the contribution of Aruze
26 USA’s LLC interests in Valvino, and Wynn Resorts asserts that these transfer restrictions
27 are legally valid, Wynn Resorts had no legal right or ability to redeem Aruze USA’s
28 interests in Wynn Resorts.

1 37. Apart from removing Aruze USA from the purview of later-adopted
2 redemption provisions in Wynn Resorts' Articles of Incorporation, the Stockholders
3 Agreement also contained provisions that allowed Mr. Wynn to nominate a bare majority
4 of directors, and Aruze USA to nominate all remaining directors. Although Aruze USA
5 repeatedly tried over the years to nominate directors, Mr. Wynn refused to allow this to
6 happen, instead nominating all of the directors himself to ensure and perpetuate his
7 complete control of the Board.

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

12 39. On November 8, 2006, Mr. Wynn caused Aruze USA to enter into an
13 Amendment to the Stockholders Agreement which purports to contain a mutual restriction
14 on the sale of stock without the other party's written consent. All other relevant terms of
15 the Stockholders Agreement remained unchanged.

16 **C. Wynn Resorts' Original Articles of Incorporation**

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

21 **D. The Contribution Agreement**

22 41. Before Wynn Resorts could go public, the LLC interests in Valvino held by
23 Mr. Wynn, Aruze USA, and Baron Asset Fund had to be transferred to the new Wynn
24 Resorts entity. This was no small matter. By this point, Aruze USA had contributed some
25 \$380 million in exchange for its LLC interests in Valvino.

26 42. On June 11, 2002, Wynn Resorts, Mr. Wynn, Aruze USA, Baron Asset
27 Fund, and the Kenneth R. Wynn Family Trust entered into the Contribution Agreement
28 (the "Contribution Agreement"), by which they agreed to contribute all of the Valvino

1 membership interests to Wynn Resorts in exchange for the capital stock of Wynn Resorts.
2 The Wynn Resorts stock acquired by Aruze USA was subject to the provisions of the
3 Stockholders Agreement.

4 43. The Contribution Agreement made clear that Wynn Resorts could not later
5 enlarge its rights *vis-à-vis* the stock held by Aruze USA. An integration clause stated:

6 *This Agreement, the Stockholders Agreement, and the*
7 *Operating Agreement contain the entire understanding of the*
8 *parties with respect to the subject matter hereof or thereof.*
9 *There are no restrictions, agreements, promises,*
10 *representations, warranties, covenants, or undertakings with*
11 *respect to the subject matter hereof other than those expressly*
12 *set forth or referred to herein or therein. This Agreement, the*
13 *Stockholders Agreement, and the Operating Agreement*
14 *supersede all prior agreements and understandings between*
15 *the parties with respect to their subject matter.*

16 (emphasis added) (The Contribution Agreement defined the “Stockholders Agreement” as
17 the agreement dated April 11, 2002, and “as it may be amended and/or restated from time
18 to time.”). Accordingly, any attempt by Wynn Resorts to claim that it could unilaterally
19 impose a redemption provision on Aruze USA is contradicted by the express language of
20 Wynn Resorts’ agreements with Aruze USA.

21 **E. After Securing Aruze USA’s Contribution, Steve Wynn Unilaterally**
22 **Amends the Articles of Incorporation**

23 44. After entering into the Contribution Agreement, but before transferring the
24 LLC interests in Valvino, Mr. Wynn secretly and unilaterally changed Wynn Resorts’
25 Articles of Incorporation to include a provision that purportedly allows Wynn Resorts to
26 “redeem” stock held by stockholders under certain circumstances. At this time, Mr. Wynn
27 was the sole stockholder and director of Wynn Resorts.

28 45. 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
deliberately delayed the contribution of the LLC interests in Valvino interests to Wynn

1 Resorts. Among other things, this delay meant that, although he had already received
2 Aruze USA's commitment via the Contribution Agreement and the Stockholders
3 Agreement, Mr. Wynn would continue to maintain unilateral control over Wynn Resorts
4 for the period of the delay. This enabled Mr. Wynn to improperly change the Company's
5 Articles of Incorporation in an attempt to achieve Mr. Wynn's own long-term interests at
6 Aruze USA's expense. This deliberate delay, and the intervening acts taken by Mr. Wynn
7 before he fulfilled the terms of the Contribution Agreement, breached Mr. Wynn's
8 fiduciary duties to Aruze USA.

9 46. On September 16, 2002, Mr. Wynn secretly and unilaterally amended Wynn
10 Resorts' Articles of Incorporation. Although this change would purport to fundamentally
11 alter the securities received by Aruze USA, Mr. Wynn made the change unilaterally,
12 without providing notice and affording Aruze USA the opportunity to vote on the changes,
13 as required in order to make the provision enforceable. The language Mr. Wynn
14 unilaterally added to the Articles of Incorporation provided, in pertinent part:

15 The Securities Owned or Controlled by an Unsuitable Person
16 or an Affiliate of an Unsuitable Person shall be subject to
17 redemption by the Corporation, out of funds legally available
18 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. . . .

19 47. If Mr. Wynn had done what he was bound to do pursuant to the trust and
20 duties placed in him under the Stockholders Agreement and Contribution Agreement, and
21 transferred the LLC interests in Valvino to Wynn Resorts *before* adding the redemption
22 provision, Aruze USA would have had the right under Nevada law to vote on the changes
23 to Wynn Resorts' Articles of Incorporation. On information and belief, Mr. Wynn's
24 actions were a deliberate effort to induce Aruze USA to agree to transfer the LLC interests
25 in Valvino, and then change the nature of the Wynn Resorts stock that Aruze USA would
26 receive in exchange for those interests. Aruze USA relied on the absence of a redemption
27 provision in making its sizable contribution of interests to Wynn Resorts. Although the
28 first acts perpetrated in furtherance of this fraud occurred in 2002, damages only accrued

1 recently, when Wynn Resorts purported to use the redemption provision to redeem Aruze
2 USA's shares in 2012 for a fraction of their true value.

3 **F. Wynn Resorts Goes Public**

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

7 49. On October 25, 2002, Wynn Resorts conducted an initial public offering
8 ("IPO") on NASDAQ at \$13 per share. At this time, Mr. Okada and Mr. Wynn each
9 owned about 30% of the outstanding stock. Shortly thereafter, Mr. Okada became Vice
10 Chairman of Wynn Resorts' Board.

11 50. On April 28, 2005, Wynn Las Vegas opened. It was an instant success. On
12 September 8, 2006, Wynn Resorts opened in Macau. "Encore" hotels followed in both
13 locations. Again, each property has been very successful. None of this success would
14 have been possible without the capital funding, support, and expertise of Aruze USA and
15 Mr. Okada.

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

19 **G. The Close and Trusting Relationship of Steve Wynn and Mr. Okada**

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

24 53. For example, at hearings before the Nevada State Gaming Control Board
25 and Nevada Gaming Commission, on June 4 and 17, 2004, respectively Mr. Wynn
26 affirmed that "Mr. Okada was not only suitable" to receive a gaming license "but he was
27 desirable." Repeatedly referring to Mr. Okada as his "partner," Mr. Wynn said Mr. Okada
28 was "dedicated to the pursuit of excellence."

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

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

10 **II. UNIVERSAL DISCLOSES AND ULTIMATELY PURSUES FOREIGN**
11 **DEVELOPMENT PROJECTS**

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

14 56. Universal and Mr. Okada first began exploring the possibility of acquiring
15 and developing land in the Philippines in 2007, with one possible option for development
16 being a casino and hotel resort. Although the initial discussions were preliminary,
17 Mr. Okada brought the opportunity immediately to Mr. Wynn, hoping that Wynn Resorts
18 might be interested in undertaking the project. Mr. Wynn told Mr. Okada that Wynn
19 Resorts was not interested at that time in pursuing a project in the Philippines. However,
20 Mr. Wynn voiced no concerns at all with Universal's pursuit of the project. Mr. Okada
21 thereafter kept Mr. Wynn fully informed of the project's progress.

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

24 58. On April 25, 2008, Universal announced its planned casino project in the
25 Philippines.

26 59. From that point on, Wynn Resorts and Universal had an agreement.
27 Universal could pursue a project in the Philippines, but at least for the time being, it would
28 not formally be a Wynn Resorts project. On a May 1, 2008 conference call with stock

1 analysts, Mr. Wynn affirmed that Wynn Resorts' Board and management team had
2 longstanding knowledge of and fully supported Universal's project in the Philippines:

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

16 (emphasis added).

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

23 61. As a further example of Wynn Resorts' knowledge and approval of
24 Universal and Aruze USA's activities in the Philippines, on April 4, 2008, Kevin Tourek,
25 a member of Wynn Resorts' Compliance Committee, emailed Frank Schreck, the then-
26 head of Universal's Compliance Committee. The email was regarding Universal's
27 investment in the Philippines. Mr. Tourek confirmed that – so long as Universal was in
28 compliance with the laws of the Philippines – the investment would not be something that
would concern Nevada regulators or Wynn Resorts.

 62. 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

1 public in 2010. Mr. Okada confirms that, as at the Latest
2 Practicable Date, except for his indirect shareholding interests
3 in Wynn Resorts, Limited through Aruze USA, Inc., neither he
4 nor his associates holds, owns or controls more than 5%
5 voting interests in an entity which, directly or indirectly,
6 carries on, engages, invests, participates or otherwise is
7 interested in any company, business or operation that
8 competes, or is reasonably expected to compete, with the
9 business carried on by us in Macau.

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

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

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

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

21 66. The Philippine government approached Universal as early as 2005 and
22 courted Universal for years. The Philippine government ultimately secured an agreement
23 that Universal would employ significant numbers of local people to work in the casinos,
24 and press reports indicate Universal's project could create as many as 15,000 jobs for
25 Filipinos, and generate billions of dollars in tax revenues for the Philippine government.
26 When Universal delayed the project in the wake of the 2008 financial crisis, the Philippine
27 government again stepped up its efforts to encourage Universal to advance the
28

1 development of its project. While Universal certainly expects the Manila Bay Project to
2 be a “win-win” for the Philippines and Universal, the idea that Universal needed to curry
3 special favor with Philippine government officials is profoundly mistaken.

4 **C. Steve Wynn and Elaine Wynn Divorce**

5 67. In March 2009, Mr. Wynn divorced Elaine Wynn. The divorce proved to be
6 damaging to Mr. Wynn’s financial position and standing within Wynn Resorts. By early
7 2010, Mr. Wynn had reached an agreement to split his ownership of Wynn Resorts stock
8 with Elaine Wynn. As a result of the divorce settlement, Aruze USA was now by far
9 Wynn Resorts’ largest stockholder, owning some 24,549,222 shares of Wynn Resorts, or
10 19.66% of the outstanding stock. Mr. Wynn would now own less than half what Aruze
11 USA owned of Wynn Resorts stock. While neither Aruze USA nor Mr. Okada ever made
12 any threats against Mr. Wynn, the possibility loomed that Mr. Wynn could be losing
13 control of Wynn Resorts, as had happened ten years earlier, Mr. Wynn lost control of
14 Mirage Resorts, Inc.

15 68. On January 6, 2010, Mr. Wynn obtained an Amended and Restated
16 Stockholders Agreement. The amended agreement altered the Stockholders Agreement
17 language regarding Aruze USA’s right to nominate directors. Aruze USA could endorse
18 nominees so long as the majority of nominees were endorsed by Mr. Wynn. Although the
19 agreement required Mr. Wynn to support a minority slate of directors proposed by Aruze
20 USA, he never did so. On information and belief, Mr. Wynn obtained the Amended and
21 Restated Stockholders Agreement, with the intention of never supporting any director
22 proposed by Aruze USA. In fact, Mr. Wynn consistently refused efforts to consider Aruze
23 USA directors for the Board, in an effort to continue to monopolize control over Wynn
24 Resorts.

25 69. In addition, the Amended and Restated Stockholders Agreement continued
26 to contain a non-compete clause that prohibited Mr. Okada, Aruze USA, and Universal
27 only from operating casinos in Clark County, Nevada and in Macau, and certain Internet
28 gaming ventures. Neither this version of the Stockholders Agreement, nor any prior or

1 subsequent agreements, contained any prohibition or concerns regarding the Philippines or
2 Korea.

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

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

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

16 72. As illustrated in the photographs, this pre-arranged trip involved meetings
17 with dignitaries and officials and informational presentations on the project.
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73. 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 recent press conferences – 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

74. 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 have also disclosed that Wynn Macau is in the process of seeking to obtain land in Macau and the rights to develop a third casino in the area.

75. 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

1 and duration of the commitment. It was unclear how the University of Macau would use
2 the funds. Mr. Okada wondered why a wealthy university that sits on government land
3 and largely caters to non-Macau residents might need or want such a large donation. Mr.
4 Okada, who is himself a significant philanthropist, wondered whether such a donation
5 actually benefits the people who live in Macau. He was concerned about the lack of
6 deliberation of the boards of Wynn Resorts and Wynn Macau (the donation was approved
7 at a joint meeting in Macau of the two boards), and that pending approvals in Macau
8 related to a new development in Cotai, and the coincidence of the date of the donation and
9 the term of Wynn Macau's gaming license in Macau, might make it appear that Wynn
10 Macau and Wynn Resorts were paying for benefits.

11 76. Notably, for example, the Chancellor of University of Macau is also the
12 head of Macao's government, with ultimate oversight of gaming matters.

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

20 78. Mr. Okada's opposition to this donation caught the attention of the U.S.
21 Securities and Exchange Commission ("SEC"). According to Wynn Resorts 2011 Form
22 10-K, Wynn Resorts received a letter from the Division of Enforcement of the SEC
23 indicating the SEC has commenced an "informal inquiry" regarding matters in Macau.
24 Mr. Wynn, Ms. Sinatra (Wynn Resorts' General Counsel), and Mr. Miller (head of Wynn
25 Resorts' Compliance Committee) did not take kindly to Mr. Okada's scrutiny of the
26 donation. On information and belief, Mr. Wynn, Ms. Sinatra, and Mr. Miller set out to
27 discredit Mr. Okada, in an effort to distract attention from the problematic Macau
28 donation.

F. Steve Wynn and Kim Sinatra Fraudulently Promise Mr. Okada Financing for the Philippine Project

79. 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.

80. 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.

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

82. Mr. Wynn suggested that instead of having Aruze USA sell or 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.

83. 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

1 on such assurances, Mr. Okada agreed to financing from Wynn Resorts, rather than selling
2 or otherwise pledging Aruze USA's stock.

3 84. Ms. Sinatra was present at the meeting. On information and belief, Ms.
4 Sinatra is a highly sophisticated and knowledgeable attorney, and is one of the highest
5 paid general counsels in the United States. Toward the end of the meeting, Ms. Sinatra
6 stated that draft loan agreements would be provided to Aruze USA within 10 days to
7 support the agreement reached between Mr. Okada and Mr. Wynn. Neither Mr. Wynn nor
8 Ms. Sinatra said anything about internal or external limitations on loans to directors and
9 officers. For example, neither of them made any mention of Section 402 of the Sarbanes-
10 Oxley Act ("SOX") which, contrary to Japanese law that has no such prohibition, would
11 appear to bar any loan to Aruze USA by Wynn Resorts. On information and belief, at the
12 time of this meeting, Ms. Sinatra was intimately familiar with SOX and Section 402 of the
13 Act, having overseen the implementation of SOX compliance policies at Wynn Resorts
14 that specifically addressed prohibitions on loans to officers and directors.

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

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

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

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

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

23 90. In the same email, Ms. Sinatra then explained that Wynn Resorts was
24 negotiating with Deutsche Bank on a margin loan transaction, with Wynn Resorts acting
25 as a "backstop." She did not dispute that Mr. Okada's consent to the amendment in the
26 Stockholders Agreement was based on Wynn Resorts agreement to continue to pursue
27 financing for a loan to Aruze USA (using Aruze USA's Wynn Resorts shares as
28 collateral). At no point in time did Ms. Sinatra call into question the Philippine project.

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

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

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

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

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

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

28

**III. 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**

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

97. 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.

98. 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.

99. 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.

100. 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.

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

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

14 103. Ms. Sinatra then brought her threat into stark reality. She stated that the
15 Compliance Committee would meet on October 31, 2011 (in advance of a November 1
16 Board meeting). She told Mr. Okada that she hoped a “resolution” would be reached
17 before those meetings regarding Mr. Okada’s directorship and the voting rights of
18 Aruze USA’s stock, so as to avoid presenting this matter to the Compliance Committee
19 and the Board. Ms. Sinatra’s intent was clear – Wynn Resorts’ compliance procedures
20 were being used to extract a personal benefit for Mr. Wynn.

21 **B. Steve Wynn and Kim Sinatra Try to Intimidate and Threaten Mr.**
22 **Okada, While Hiding Supposed Evidence of Wrongdoing**

23 104. On an October 3, 2011 telephone call, Aruze USA’s counsel asked Ms.
24 Sinatra to provide Aruze USA with a copy of the Compliance Committee’s investigative
25 report regarding Mr. Okada. Ms. Sinatra replied that she would have to check to see if a
26 copy could be provided; in fact, she did not and has never provided a copy of the
27 investigative report to Aruze USA, Mr. Okada, or their counsel.

28 105. On October 4, 2011, Mr. Wynn and Ms. Sinatra met with Mr. Okada and his

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

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

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

- 23 • That the Philippines were so corrupt that no one could possibly do business
24 in that country without violating the FCPA;
- 25 • That "research" showed Mr. Okada owned land without a Philippines
26 partner, and that this violated Philippines law;
- 27 • That the other directors were "convinced" that Mr. Okada's use of his Wynn
28 Resorts business card in other countries had caused a belief that Wynn

1 Resorts was involved in the Philippine project and that the Company would
2 not be in this position had he instead used his Universal business card;

- 3 • That Mr. Okada had used the Wynn Resorts' building design and other trade
4 secrets without permission; and
- 5 • That Mr. Okada had associated with persons who had later been indicted in
6 the Philippines on charges unrelated to the Philippine project.

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

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

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

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

25 111. On October 13, 2011, Robert L. Shapiro, Esq., an attorney retained by Wynn
26 Resorts, sent a letter to Aruze USA. Without any elaboration, the letter reiterated the
27 same mistaken – and soon to be abandoned – conclusions that Mr. Wynn outlined in the
28 October 4 meeting. Mr. Shapiro also explicitly stated that Universal's Manila Bay project

1 “raises questions” regarding “possible violations of the Foreign Corrupt Practices Act.”
2 The letter again demanded Mr. Okada’s resignation.

3 112. Curiously, Mr. Shapiro’s letter admitted that the Compliance Committee
4 was only then beginning the very investigation that Mr. Wynn and Ms. Sinatra claimed to
5 have already been concluded. They also claimed to have already generated a report. Yet
6 Mr. Shapiro wrote that “The Compliance Committee of Wynn Resorts must fully
7 investigate the foregoing acts and have retained Louis J. Freeh . . . to conduct an
8 independent investigation.” On information and belief, as of the date of Mr. Shapiro’s
9 letter, Mr. Freeh had not started his investigation.

10 **D. Wynn Resorts Refuses to Allow Mr. Okada and Aruze USA to Review**
11 **Any Supposed “Evidence”**

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

18 **E. The Board Summarily Removes Mr. Okada As Vice-Chairman**

19 114. At the Board’s November 1, 2011 meeting, Mr. Miller presented a report of
20 an alleged investigation by the Compliance Committee into Mr. Okada’s and Universal’s
21 activities in the Philippines. The report disclosed that the Compliance Committee had
22 allegedly conducted one internal and two “independent” investigations into allegations of
23 suitability, conflicts of interest, and possible breaches of fiduciary duties related to
24 acquisition of land for the Philippine project and charitable contributions made by
25 Universal. To date, the contents of these purported investigations have not been presented
26 to Mr. Okada.

27 115. Mr. Miller reported that the Compliance Committee (and not a committee
28 consisting of the independent directors) had retained Freeh Sporkin & Sullivan LLP

1 (“Freeh Sporkin”) as a special investigator to conduct an investigation into the allegations
2 against Mr. Okada. The Board – without debate, deliberation, or allowing Mr. Okada a
3 chance to respond – summarily eliminated Mr. Okada’s position as Vice-Chairman of
4 Board and ratified the decision to hire Freeh Sporkin.

5 **F. Kazuo Okada Seeks More Information Regarding Wynn Macau**

6 116. The vehemence of the actions by Mr. Wynn, Ms. Sinatra, Mr. Miller, and
7 the Board against Mr. Okada is highly suspicious. After all, Mr. Okada had raised
8 concerns about the donation to the University of Macau before Wynn Resorts had raised
9 any type of unsuitability allegations against Mr. Okada and before anyone associated with
10 Wynn Resorts even mentioned the word “redemption” to him. Mr. Okada made several
11 requests for access to Wynn Resorts’ books and records for information relating to the
12 donation made by Wynn Resorts to the University of Macau, all of which were denied
13 without a valid basis. In the state court of Nevada, Mr. Okada even filed a petition for a
14 writ of mandamus on January 11, 2012 to compel Wynn Resorts to grant him access to
15 Wynn Resorts’ books and records. *Okada v. Wynn Resorts, Ltd.*, case number A-12-
16 65422-B, Department XI (the “Inspection Action”). At a hearing on February 9, 2012, the
17 Court ordered Wynn Resorts to comply with Mr. Okada’s reasonable requests.

18 **G. Aruze USA Nominates Directors; But Steve Wynn Refuses to Endorse**
19 **Them Despite His Obligation to Do So**

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

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

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

10 119. While Plaintiffs allege in their Complaint that Mr. Okada “long evaded” his
11 interview (Complaint at 2), the record conclusively contradicts this contention. Freeh
12 Sporkin did not contact Mr. Okada or his counsel about an interview until January 9,
13 2012, at which time it demanded (not requested) an interview of Mr. Okada during the
14 week of January 30 (*i.e.*, January 30-February 5). On January 15, 2012, four days after
15 Mr. Okada filed his Inspection Action, Freeh Sporkin informed Mr. Okada’s counsel that
16 the “schedule has changed” and pressured Mr. Okada to agree to an interview *before* the
17 week of January 30.

18 120. On January 19, 2012, Mr. Miller, Chair of Wynn Resorts’ Compliance
19 Committee, wrote directly to Mr. Okada, threatening that if Mr. Okada failed to make
20 himself available for interviews with Freeh Sporkin on January 30 or 31, the Compliance
21 Committee “can only conclude that you have refused participation.” The letter stated that
22 the Compliance Committee originally had a goal of receiving a report by the end of 2011,
23 which was extended to January 15, 2012. In addition to this being the first time anyone
24 shared the Compliance Committee’s purported deadlines with Mr. Okada, these dates are
25 inconsistent with Freeh Sporkin making its initial request to conduct an interview of Mr.
26 Okada that would take place in the first week of February. It proved not to be the first
27 time Mr. Miller was “confused” about the “investigation” that was supposedly operating
28 under his direction.

1 121. Mr. Okada had only recently hired new counsel to assist with the response to
2 the Freeh Sporkin investigation. In order to prepare for the interview, the new counsel
3 requested that the parties seek a mutually convenient date for an interview by February 15,
4 2012. Freeh Sporkin then agreed to schedule the interview on February 15. This
5 undeniable record demolishes any claim that Mr. Okada avoided an interview with Freeh
6 Sporkin, let alone that he “long evaded” an interview.

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

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

19 123. Freeh Sporkin refused to provide anything more than a statement that it was
20 investigating “all matters related to Mr. Okada’s, Universal’s, and Aruze’s activities in the
21 Philippines and Korea.” This was the first time that Korea was even mentioned as the
22 subject of any investigation by the Company. Again – the basis of Aruze USA’s supposed
23 “unsuitability” kept changing.

24 124. Instead of sharing the topics of the interview with Mr. Okada, Mr. Freeh
25 chose to conduct the interview as an ambush, not unlike the hostile interrogation of a
26 suspected criminal, rather than a respectful and cooperative interview seeking information
27 from a director of Wynn Resorts. If he was afforded the opportunity to do so, Mr. Okada
28 could have helped Mr. Freeh and Freeh Sporkin avoid the public embarrassment of a

1 report that is riddled with factual and legal errors.

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

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

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

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

20 **K. Wynn Resorts Allows No Opportunity for A Reasonable Response**

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

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

28 129. Similarly, the Wynn Resorts Complaint states that "Freeh announced that he

1 would report his findings to the Board of Directors on February 18, 2012.” (Compl. at ¶
2 43.)

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

7 131. On February 16, 2012, Mr. Okada’s counsel emailed Mr. Freeh stating:
8 Louis:

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

17 132. In response, on February 17, 2012, Mr. Freeh offered two options to Mr.
18 Okada’s counsel:

19 Joel Friedman called you about 900a today (PT) and left a
20 message for you to call a well as an email.

21 I can suggest two possibilities in response to your letter:

22 First, that you provide me as soon as possible, and no later
23 than 600p PacT today, with a proffer of what Mr Okada and
24 Universal wish to submit for additional consideration. Your
25 very able firm has represented Mr. Okada now for several
26 weeks and you know the principal areas of our investigation
27 based on Wednesday’s interview. So I would expect you can
28 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.

...

1 Anyway, I have a great deal of respect for you and believe the
2 above alternatives allow for a fair resolution at this stage.

3 Best regards,

4 Louie

5 (emphasis added.)

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

8 Louis:

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

22 (emphasis added.)

23 134. Mr. Freeh responded "Thanks Tom and safe travels."

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

26 Just to confirm, I will now deliver my report to the
27 Compliance Committee having completed my investigation
28 regarding the matters under inquiry. It is my understanding
29 that the Compliance Committee will thereafter provide all of
30 the Directors, including Mr. Okada, with a copy of the report.
31 As we both stated, Mr. Okada can then submit any responses
32 to the report which will be considered and evaluated.
33 However, the report I am submitting is not a 'draft' subject to
34 being finalized after Mr. Okada provides any response. Rather
35 this is akin to a final brief being submitted with the
36 opportunity for a response to be made.

1 Please let me know if you have any questions.

2 Best regards

3 Louie

4 136. Perhaps unbeknownst to Mr. Freeh, this statement would prove to be
5 misleading. As it turned out, Wynn Resorts would refuse to give Mr. Okada a copy of the
6 Freeh Sporkin report and then purported to redeem Aruze USA's stock (at a nearly \$1
7 billion discount) *on the day the other Wynn Directors received the report*, without giving
8 Mr. Okada any reasonable opportunity to respond.

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

21 **L. Steve Wynn Hurriedly Schedules Board of Directors Meeting**

22 138. On February 15, 2012, scant hours after the completion of Mr. Freeh's
23 interview of Mr. Okada, Wynn Resorts noticed a special meeting of its Board. The
24 meeting was set for Saturday, February 18, 2012, at 9:00 a.m. in Las Vegas – which is
25 2:00 a.m. Sunday morning in Japan. Although the notice for the Board meeting went out
26 immediately following the conclusion of the interview of Mr. Okada, and was scheduled
27 to occur a mere three days after the interview, Mr. Wynn and Ms. Sinatra included on the
28 agenda a review of the Freeh Sporkin report.

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

3 139. Following the interview, Mr. Wynn communicated to Aruze USA through
4 intermediaries that, instead of having the Board consider the Freeh Sporkin report, Mr.
5 Wynn would be willing to buy Aruze USA's stock for his benefit at a significant discount.
6 A sale to Mr. Wynn was presented as an alternative to the embarrassment and regulatory
7 issues attendant to possible disclosure of the Freeh Sporkin report.

8 **IV. WYNN RESORTS' UNFOUNDED AND UNPRECEDENTED**
9 **REDEMPTION OF MORE THAN \$2.7 BILLION OF ARUZE USA'S**
10 **SHARES**

11 **A. The Board Hurriedly Meets and Rushes to Redeem Aruze USA's Stock**

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

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

23 142. When it came time for the meeting, at 2:00 a.m. on Sunday morning, Mr.
24 Okada sat ready to participate by telephone. Mr. Wynn yelled at Mr. Okada's counsel
25 when he introduced himself. Mr. Wynn also said that Mr. Okada's counsel could not be
26 present to advise Mr. Okada even though counsel made clear that he would not address the
27 meeting. (At the threat of having Mr. Okada's telephone connection to the meeting
28 severed, Mr. Okada's counsel had to sit outside the room while the meeting went on,

1 despite Wynn Resorts having a battery of lawyers from multiple law firms present on its
2 end of the line.) Mr. Wynn and a company lawyer informed Mr. Okada that – despite
3 prior assurances that Mr. Okada would receive a copy of the Freeh Sporkin report along
4 with the other directors – he would not receive a copy of the report unless both he and his
5 legal counsel signed a nondisclosure agreement. The nondisclosure agreement would
6 have arguably precluded Mr. Okada from using the report in legal proceedings. Mr.
7 Okada did not sign the nondisclosure agreement.

8 143. As alleged in detail below, a few hours after demanding that Mr. Okada sign
9 the nondisclosure agreement claiming confidentiality, Wynn Resorts would leak a copy of
10 the Freeh Sporkin report to the *Wall Street Journal* and would itself attach a copy to its
11 Complaint in this action.

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

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

25 146. At some point, someone at Wynn Resorts hung up the telephone, cutting Mr.
26 Okada off from the meeting. Mr. Okada waited to be reconnected, staying up until the sun
27 rose in Asia, all the while not knowing whether the Board had resolved anything following
28 the presentation by Mr. Freeh. Ms. Sinatra later claimed that cutting off the telephone

1 connection to Mr. Okada was a “misunderstanding.” No other contact was made with Mr.
2 Okada.

3 147. At 4:45 am ET on February 19, 2012, Aruze USA’s counsel received
4 correspondence, containing a notice of determination of unsuitability and a purported
5 redemption notice. In the redemption notice, the Company stated that it would redeem
6 Aruze USA’s stock for a note of approximately \$1.936 billion, a discount of exactly 30%
7 off the value measured by the stock market’s valuation of the stock based on the prior
8 day’s closing price.

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

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

18 150. Despite repeated requests to Ms. Sinatra and Mr. Shapiro, Mr. Okada’s
19 counsel only obtained a copy of the “confidential” report when it sent a messenger to court
20 on February 21, 2012, the first court day following the weekend Board meeting. Wynn
21 Resorts continues to refuse to provide the Freeh Sporkin report’s exhibits to Mr. Okada or
22 Aruze USA.

23 **B. Aruze USA Disputes That Redemption Has Occurred**

24 151. In public statements, representatives of Wynn Resorts have claimed
25 redemption is complete and that the securities formerly held by Aruze USA have been
26 cancelled. Aruze USA disputes that this has happened. Among other reasons, as
27 explained elsewhere in this Counterclaim, the purported redemption is void *ab initio*.
28

1 **C. The Board Redeems on False Premises**

2 152. Even if Aruze USA were bound by the Redemption Provision (which Aruze
3 USA disputes), the Articles of Incorporation only purport to allow redemption in three
4 situations.

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

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

13 155. Third, Wynn Resorts’ Articles of Incorporation profess that the Company
14 can redeem where a person “in the sole discretion of the board of directors of the
15 Corporation, is deemed likely to jeopardize the Corporation’s or any Affiliated
16 Company’s [a] application for, [b] receipt of approval for, [c] right to the use of, or [d]
17 entitlement to, any Gaming License.” Subsections [a] and [b] do not apply because, on
18 information and belief, Wynn Resorts has no present plan to apply for a license and is not
19 awaiting approval of any pending application. So, even under the standards of the Articles
20 of Incorporation, Wynn Resorts could only seek redemption upon a showing that Aruze
21 USA’s stock ownership is “likely to jeopardize” Wynn Resorts’ “right to the use of, or
22 entitlement to” its existing gaming licenses.

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

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

10 **D. Even if Aruze USA Was Subject to the Redemption Provision (Which it**
 11 **is Not), the Unilateral Blanket 30% Discount that Wynn Resorts**
 12 **Applied to the Stock is Erroneous**

13 157. According to a press release dated February 19, 2012, Wynn Resorts issued
 14 a note in the amount of \$1.936 billion to Aruze USA. This amount is exactly 30% less
 15 than the market value of Aruze USA's stock as measured by the closing price of Wynn
 16 Resorts' stock on the Friday prior to the Saturday Board meeting. According to its press
 17 release, Wynn Resorts arrived at this value because “it engaged an independent financial
 18 advisor to assist in the fair value calculation and concluded that a discount to the current
 19 trading price was appropriate because of restrictions on most of the shares which are
 20 subject to the terms of an existing stockholder agreement.” The irony here is rich, because
 21 the Stockholders Agreement, by its terms, either precludes the redemption of Aruze
 22 USA's stock altogether or, alternately, the transfer restrictions are not binding on Aruze
 23 USA to the extent that they constitute an illegal restraint on alienability, and thus could
 24 not legitimately impact the value of Aruze USA's shares so as to support a discount
 25 against the market price.

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

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

11 160. Mr. Wynn called on Mr. Moelis' loyalty in this case. Despite the fact that at
 12 least some of the stock was exempted from the Stockholders Agreement, Moelis
 13 discounted Aruze USA's more than \$2.7 billion shares of Wynn Resorts stock by a round
 14 30%.

15 **E. The Timing of the Redemption Suggests Wynn Resorts Traded on**
 16 **Inside Information**

17 161. On March 2, 2012, Wynn Resorts released two Form 8-Ks.

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

20 As previously disclosed . . . Wynn Macau, Limited ("WML"),
 21 an indirect subsidiary of the Registrant with ordinary shares of
 22 its common stock listed on The Stock Exchange of Hong
 23 Kong Limited, announced that Palo Real Estate Company
 24 Limited ("Palo") and Wynn Resorts (Macau) S.A. ("Wynn
 25 Macau"), each an indirect subsidiary of the Registrant,
 26 formally accepted the terms and conditions of a land
 27 concession contract (the "Land Concession Contract") from
 28 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.

1 The Land Concession Contract was published in the official
 2 gazette of Macau (the "Gazette") on January [•] 2012.
 3 Effective from such publication date, Palo will lease the Cotai
 4 Land from the Macau Government for an initial term of 25
 5 years with the right to renew the Land Concession Contract
 6 for additional successive periods, subject to applicable
 7 legislation. The Land Concession Contract also requires that
 8 Wynn Macau, as a gaming concessionaire, operate and
 9 manage gaming operations on the Cotai Land. In addition, as
 10 previously disclosed in the Registrant's filings with the
 11 Commission, on August 1, 2008, Palo and certain affiliates of
 12 the Registrant entered into an agreement (the "Agreement")
 13 with an unrelated third party to make a one-time payment in
 14 the amount of US \$50 million in consideration of the latter's
 15 relinquishment of certain rights in and to any future
 16 development on the Cotai Land. The Agreement provides that
 17 such payment be made within 15 days after the publication of
 18 the Land Concession Contract in the Gazette.

19 The foregoing description of the Land Concession Contract is
 20 qualified in its entirety by reference to the full English
 21 translation of the Land Concession Contract (originally
 22 published in the Gazette in traditional Chinese and
 23 Portuguese), which is filed as Exhibit 10.1 hereto and
 24 incorporated herein by reference. Dollar amounts in the Land
 25 Concession Contract refer to Macau Patacas.

26 163. If true, such a land concession would be a significant positive development
 27 for Wynn Resorts. In fact, Wynn Resorts' stock immediately spiked 6% on this news.
 28 Shortly, thereafter, Wynn Resorts issued a corrective Form 8-K:

On March 2, 2012, a Current Report regarding the gazetting of
 the Cotai Land Concession Contract on Form 8-K (the "Land
 Concession 8-K") was filed by mistake by the Company's
 agent. The filing was not authorized by the Company. The
 Cotai Land Concession Contract has not been gazetted. The
 purpose of this filing is to retract the Land Concession 8-K in
 its entirety.

164. Wynn Resorts blamed a clerical error at its outside law firm for the
 accidental filing of the detailed Form 8-K. To the extent any positive developments in
 Macau (or elsewhere in Wynn Resorts operational sphere) was imminent and known, and
 to the extent redemption happened, Wynn Resorts and its directors traded on inside
 information when it allegedly purchased Aruze USA's stock.

CLAIMS FOR RELIEF

COUNT I

Declaratory Relief

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

165. Aruze USA and Universal reassert and reallege Paragraphs 4 through 164 above as if set forth in full below.

166. 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 Contribution Agreement, which prevented any further restrictions without agreement of the parties, before the enactment of the redemption provision, and Wynn Directors' acts were *ultra vires*; (2) the redemption provision in the Articles of Incorporation is inconsistent with Nevada law and public policy, and thus void; (3) the Stockholders Agreement bars redemption of the Wynn Resorts stock owned by Aruze USA; (4) the Board lacked a sufficient basis for a finding of "unsuitability" or for redemption; and/or, (5) the redemption provision as written and as applied is unconscionable.

167. 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

1 and illegally usurps that authority. Furthermore, if and when Nevada gaming regulators
2 were to make such a determination, redemption that simply replaces equity with debt is
3 ineffective to effect a disassociation; it, therefore, would not comply with Nevada law.

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

11 169. In addition or alternatively, Aruze USA and Universal seek a judicial
12 declaration that the Board resolution to redeem Aruze USA’s shares was procedurally
13 and/or substantively defective, and contrary to law and public policy. As alleged in detail
14 above, this declaration is appropriate because (1) the Stockholders Agreement bars
15 redemption of the Wynn Resorts stock owned by Aruze USA; (2) the redemption
16 provision in the Articles of Incorporation is inapplicable to the Wynn Resorts stock owned
17 by Aruze USA because Aruze USA entered into the Contribution Agreement, which
18 prevented any further restrictions without agreement of the parties, before the enactment
19 of the redemption provision, and Wynn Directors’ acts were *ultra vires*; (3) the Board
20 lacked a sufficient basis for a finding of “unsuitability” or redemption and made its
21 findings without a thorough and complete review of relevant law, facts, and evidence; (4)
22 the redemption provision in the Articles of Incorporation is inconsistent with Nevada law
23 and public policy, and thus void; and, (5) the redemption provision, as written and as
24 applied, is unconscionable.

25 170. Alternatively, to the extent that redemption is not otherwise barred, Aruze
26 USA and Universal seek a judicial declaration that the form and amount of compensation
27 paid for Aruze USA’s shares was improper and/or inadequate and that Aruze USA is
28 entitled to cash in an amount equivalent to at least the closing price of the stock on

1 February 17, 2012. As alleged in detail above, this declaration is appropriate because
2 simply converting Wynn Resorts' largest shareholder to Wynn Resorts' largest creditor
3 serves no valid legal purpose. Furthermore, the valuation by Moelis was not objective,
4 independent, or the product of sound financial analysis, and, among other things, did not
5 consider material non-public information available to Wynn Resorts that would militate in
6 favor of a higher valuation, did not account for the premium that would be applied to such
7 a large block of shares, and did not consider the extent to which transfer restrictions were
8 not valid as to Aruze USA.

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

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

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

22 COUNT II

23 **Permanent Prohibitory Injunction**

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

25 174. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
26 forth in full below.

27 175. Aruze USA seeks a permanent injunction enjoining and restraining Wynn
28

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

9 176. For the reasons alleged above, the purported redemption is invalid as a
10 matter of law and violated applicable contracts, and/or depends on provisions of contracts
11 that are unenforceable as a matter of law. Even if there were a potentially valid legal
12 mechanism to redeem Aruze USA's stock, which there is not, redemption would be
13 inappropriate in this case because the Board lacked sufficient basis to find Aruze USA or
14 any of its affiliates or employees "unsuitable."

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

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

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

25 180. It has been necessary for Aruze USA to retain the services of attorneys to
26 prosecute this action, and Aruze USA is entitled to an award of the reasonable value of
27 said services performed and to be performed in a sum to be determined.
28

COUNT III

Permanent Mandatory Injunction

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

181. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

182. 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.

183. 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.

184. 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.

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

186. 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.

187. 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.

188. 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 Wynn Resorts)**

189. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

190. The Contribution Agreement, the Stockholders Agreement, and the Articles of Incorporation form a contractual relationship and understanding (the “Agreement”) between Aruze USA, Wynn Resorts, Mr. Wynn, and Elaine Wynn.

191. The Agreement between Aruze USA, Wynn Resorts, Mr. Wynn, and Elaine Wynn does not permit Wynn Resorts to redeem Aruze USA's shares of Wynn Resorts stock.

192. Aruze USA's purchase of Wynn Resorts' shares under the Contribution Agreement did not impose any condition of redemption on Aruze USA, and therefore Wynn Resorts had no right to redeem Aruze USA's shares under the Agreement.

193. Moreover, if the Stockholders Agreement is enforceable, Wynn Resorts' involuntary redemption (*i.e.*, transfer) of Aruze USA's shares is expressly prohibited under the terms of the Stockholders Agreement.

194. Wynn Resorts' involuntary redemption of Aruze USA's shares is therefore a breach of the Agreement between Aruze USA, Wynn Resorts, Mr. Wynn, and Elaine

1 Wynn.

2 195. Aruze USA has been damaged in an amount greater than \$10,000.

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

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

11
12 **COUNT V**

13 **Breach of Articles of Incorporation/Breach of Contract in Connection with Wynn**
14 **Resorts' Discounting Method of Involuntary Redemption**
15 **(By Aruze USA Against Wynn Resorts)**

16 198. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
17 forth in full below.

18 199. The Contribution Agreement, the Stockholders Agreement, and the Articles
19 of Incorporation form a contractual relationship and understanding (the "Agreement")
20 between Aruze USA, Wynn Resorts, Mr. Wynn, and Elaine Wynn.

21 200. To the extent that the redemption provision in the Articles of Incorporation
22 applies to Aruze USA's shares (despite the parties' understanding under the Agreement),
23 Wynn Resorts' involuntary redemption breaches the terms of the Agreement.

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

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

203. Wynn Resorts improperly discounted the fair value of the Aruze USA stock to the extent the Stockholders Agreement between Mr. Wynn, Elaine Wynn, and Aruze USA is not enforceable for any reason, including that it imposes an unreasonable restraint on alienation and are therefore unenforceable.

204. 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.

205. 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.

206. Aruze USA has been damaged in an amount greater than \$100,000.

207. 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.

208. 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)

209. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below:

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

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

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

10 213. The Wynn Directors abused their discretion in finding Aruze USA,
11 Universal, and Mr. Okada "unsuitable" and resolving to have the Company cause the
12 purported redemption of Aruze USA's shares of Wynn Resorts' stock. The outcome of
13 the Compliance Committee's "investigation" was already determined prior to engaging a
14 supposedly "independent" investigator, which then openly acted as an advocate against
15 Aruze USA, Universal, and Mr. Okada rather than providing an objective, balanced, and
16 fully informed review of the facts and law. Despite the fact that Freeh Sporkin informed
17 the Board that further investigation would be required with respect to matters
18 encompassed by its report, and despite assurances that Aruze USA, Mr. Okada, and
19 Universal would be permitted to respond substantively to the report, the Wynn Directors
20 deprived them of an opportunity to understand and to present any information to address
21 the allegations against them prior to the vote on redemption.

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

27 215. Wynn Resorts, at the direction of Mr. Wynn, conducted an "investigation"
28 that was hurried, incomplete, one-sided, and unfair to Aruze USA, with a result that was

1 preordained by Mr. Wynn and his cohorts before the “investigator” was even hired. Aruze
2 USA was not given an opportunity to review the allegations against it or rebut or address
3 any findings of improper conduct or any other supposed basis for redemption. The entire
4 process was tainted by the desire to serve Mr. Wynn’s pretextual goals of removing Aruze
5 USA as the largest single shareholder of the Company, silencing Mr. Okada, and
6 consolidating and maintaining Mr. Wynn’s control over Wynn Resorts. Such actions do
7 not withstand any standard of fundamental fairness or due process.

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

11 217. Through their acts, the Wynn Directors have acted in a manner that seeks to
12 deprive Aruze USA alone from its right to vote its shares, receive dividends, elect
13 directors and other benefits of stock ownership.

14 218. Harm will result if relief is not granted because Aruze USA’s more than
15 \$2.7 billion equity stake in Wynn Resorts will be instantaneously and irreversibly
16 damaged by the Company’s purported action to convert Aruze USA’s substantial
17 ownership interest into a wholly subordinated ten-year promissory note in a principal
18 amount 30% less than the fair market value of the stock, and paying a mere 2% percent
19 interest, without providing Aruze USA any voting rights or rights to dividends.

20 219. As a further direct and proximate result of the wrongful conduct by the
21 Wynn Directors, as alleged herein, Aruze USA was and continues to be damaged in an
22 amount in excess of \$100,000 to be proven at trial.

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

28 221. It has been necessary for Aruze USA to retain the services of attorneys to

1 prosecute this action, and Aruze USA is entitled to an award of the reasonable value of
2 said services performed and to be performed in a sum to be determined.

3
4 **COUNT VII**

5 **Imposition of a Constructive Trust and Unjust Enrichment**

6 **(By Aruze USA Against Wynn Resorts)**

7 222. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
8 forth in full below.

9 223. By engaging the in the wrongful conduct alleged herein, Wynn Resorts
10 purportedly redeemed Aruze USA's stock in exchange for a wholly subordinated ten-year
11 promissory note in a principal amount at least 30% less than the fair value of Aruze
12 USA's stock, and paying a mere 2% interest, without providing Aruze USA any voting
13 rights or rights to dividends.

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

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

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

COUNT VIII

Conversion

(By Aruze USA Against Wynn Resorts)

227. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

228. Wynn Resorts 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.”

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

230. Wynn Resorts wrongfully exercised dominion over Aruze USA’s stock.

231. 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.

232. Wynn Resorts converted Aruze USA stock, damaging Plaintiff in an amount excess of \$100,000.

233. 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.

234. 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

**Violations Of Nevada's Racketeer Influenced And Corrupt Organizations Act
(RICO) (N.R.S. § 207.350, *Et. Seq.*)**

(By Aruze USA Against Steve Wynn And Kim Sinatra)

235. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

236. **The Enterprise.** As alleged above, Wynn Resorts is a corporation formed under the laws of Nevada. In a conspiracy with Ms. Sinatra, Mr. Wynn engaged in wrongful conduct to acquire or maintain, directly or indirectly, an interest in or control of Wynn Resorts in violation of N.R.S. § 207.400(1)(b) and (j). Moreover, Mr. Wynn and Ms. Sinatra were and are employed by Wynn Resorts and conducted or participated, directly or indirectly, in racketeering activity by and through the affairs of Wynn Resorts, and/or conducted or participated, directly or indirectly, in the affairs of Wynn Resorts through racketeering activity, in violation of N.R.S. § 207.400(1)(c) and (j). Mr. Wynn and Ms. Sinatra are separate and distinct persons from Wynn Resorts. Thus, Wynn Resorts is an "enterprise" within the meaning of N.R.S. § 207.380.

237. **Mr. Wynn and Ms. Sinatra engaged in at least two predicate acts related to racketeering.** Mr. Wynn and Ms. Sinatra have each engaged in at least two predicate acts related to racketeering that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents, within the meaning of N.R.S. § 207.390.

238. Pursuant to N.R.S. § 207.360, a "crime related to racketeering" includes the commission of, attempt to commit, or conspiracy to commit securities fraud, "[o]btaining possession of money or property valued at \$250 or more, or obtaining a signature by means of false pretenses." Securities fraud occurs under N.R.S. § 90.570 when a person, in connection with the purchase or sale of a security, either directly or indirectly, employs any device, scheme or artifice to defraud, makes a material misstatement or omission with

the intent to decisive, and/or engages in any act, practice or course of business which operates or would operate as a fraud or deceit. Under N.R.S. § 205.380, a person obtains possession of money or property by false pretenses when he/she, with an intent to defraud, makes a false representation (whether by direct or indirect conduct), that induces reliance on that representation, and defrauds the victim. A person obtains a signature by false pretenses under N.R.S. § 205.390 when he/she has an intent to defraud, obtains a signature on a written interest, and uses a false representation (whether by direct or indirect conduct) to obtain the signature.

239. In particular, Mr. Wynn and Ms. Sinatra engaged in a scheme to defraud Aruze USA and, ultimately, forcibly take its ownership interest in Wynn Resorts. The central purpose of their scheme to deceive and steal from Aruze USA was to allow Mr. Wynn to consolidate, acquire, and maintain control of Wynn Resorts through a series of fraudulent and deceptive acts.

240. In violation of N.R.S. § 207.400(1)(b), Mr. Wynn, through the above crimes related to racketeering detailed herein, acquired and maintained control over Wynn Resorts in connection with various agreements entered into by fraudulent means. Mr. Wynn's control over Wynn Resorts has allowed him to use and operate, and transfer assets obtained in connection with Wynn Resorts, to the financial detriment of Aruze USA. Specifically, Mr. Wynn personally committed, among other acts, the following acts constituting racketeering activity:

- a. On or about June 11, 2002, Mr. Wynn obtained Aruze USA's signature on the Contribution Agreement under false pretenses;
- b. On or about May 16, 2011, Mr. Wynn obtained under false pretenses Aruze USA's signature on a document entitled "Waiver, Consent and Limited Release," relating to the transfer of Elaine Wynn's shares;
- c. On or about February 18, 2012, Mr. Wynn purportedly caused Wynn Resorts to redeem Aruze USA's shares of Wynn Resorts stock (*i.e.*, the forced sale) through an ongoing fraudulent and deceptive scheme in

1 violation of N.R.S. § 90.570; and,

2 d. On or about February 18, 2012, Mr. Wynn caused Wynn Resorts to
3 purportedly redeem Aruze USA's shares under false pretenses, in
4 particular based on false, incomplete and/or misleading factual
5 allegations made in the Freeh Sporkin report, for the central purpose of
6 allowing Mr. Wynn to acquire and/or maintain control of Wynn
7 Resorts.

8 241. In violation of N.R.S. § 207.400(1)(c), Ms. Sinatra, who was employed by
9 or associated with Wynn Resorts, has participated in and conducted the racketeering
10 activity alleged in detail above through the affairs of Wynn Resorts. Wynn Resorts,
11 although ultimately controlled by Mr. Wynn, is separate and distinct from Mr. Wynn and
12 Ms. Sinatra. Specifically, Ms. Sinatra committed, among other acts, the following acts
13 constituting racketeering activity:

- 14 a. On or about May 16, 2011, in concert with Mr. Wynn, Ms. Sinatra
15 obtained under false pretenses Aruze USA's signature on a document
16 entitled "Waiver, Consent and Limited Release," relating to the
17 transfer of Elaine Wynn's shares;
- 18 b. On or about February 18, 2012, in concert with Mr. Wynn, Ms. Sinatra
19 purportedly caused Wynn Resorts to redeem Aruze USA's shares of
20 Wynn Resorts stock (*i.e.*, the forced sale) through an ongoing
21 fraudulent and deceptive scheme in violation of N.R.S. § 90.570; and,
- 22 c. On or about February 18, 2012, in concert with Mr. Wynn, Ms. Sinatra
23 caused Wynn Resorts to purportedly redeem Aruze USA's shares
24 under false caused Wynn Resorts to redeem Aruze USA's shares under
25 false pretenses, in particular based on false, incomplete and/or
26 misleading factual allegations made in the Freeh Sporkin report, for the
27 central purpose of allowing Mr. Wynn to acquire and/or maintain
28 control of Wynn Resorts.

1 242. In addition, Mr. Wynn and Ms. Sinatra have joined together to defraud
2 Aruze USA and forcibly take its Wynn Resorts shares, and agreed to commit the
3 racketeering activity detailed above. Mr. Wynn's and Ms. Sinatra's activities, as
4 demonstrated by the facts alleged above, establish Mr. Wynn's and Ms. Sinatra's
5 agreement to knowingly participate in a collective venture toward a common goal, and
6 thereby establish a conspiracy to commit the racketeering activity alleged in detail above
7 within the meaning of N.R.S. § 207.400(1)(b) and (c). Mr. Wynn's and Ms. Sinatra's
8 activities, therefore, violate N.R.S. § 207.400(1)(j), which prohibits a conspiracy to violate
9 N.R.S. § 207.400(1)(b) and (c).

10 243. **Aruze USA's damages.** As alleged above, each of Mr. Wynn and
11 Ms. Sinatra has engaged in at least two crimes related to racketeering activity in
12 connection with Wynn Resorts violation of N.R.S. § 207.400(1).

13 244. As a direct and proximate result of Mr. Wynn's and Ms. Sinatra's violations
14 of N.R.S. § 207.400(1)(b), (c), and (j), Aruze USA has suffered and continues to suffer
15 injuries to its property, most notably the fraudulent purported redemption of Aruze USA's
16 shares held in Wynn Resorts stock. Those shares, with a stock market value of more than
17 \$2.7 billion, were purportedly redeemed for a 10-year, \$1.9 billion promissory note.

18 245. Pursuant to N.R.S. § 207.400(1), Aruze USA is entitled to recover threefold
19 its actual damages, the costs of this action, and its reasonable attorneys' fees incurred in
20 the trial and appellate courts.

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

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

COUNT X

**Fraud/Fraudulent Misrepresentation in Connection with Financing for Aruze USA
(By Aruze USA Against Wynn Resorts, Steve Wynn, and Kim Sinatra)**

248. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

249. 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.

250. 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 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.

251. 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

252. 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

1 and misleading statements and omissions was reasonable and justifiable, especially in
2 light or Mr. Okada's trusting relationship with Mr. Wynn.

3 253. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra knew
4 that Aruze USA intended to rely on this information as a reason for Aruze USA to consent
5 to Elaine Wynn's transfer of shares under the Stockholders Agreement, and for Aruze
6 USA to not take steps to invalidate the purported restrictions on alienability contained in
7 the Stockholders Agreement. On information and belief, Wynn Resorts, Mr. Wynn, and
8 Ms. Sinatra further knew and intended that, in reliance on these misrepresentations, Aruze
9 USA would relinquish its own opportunity to liquidate its own shares of Wynn Resorts
10 stock to fund Universal's project in the Philippines or seek other financing. Therefore,
11 Aruze USA relied on the fact that Wynn Resorts was a committed lender to the project at
12 the expense of pursuing other financing options.

13 254. As a further direct and proximate result of the wrongful conduct by Wynn
14 Resorts, Mr. Wynn, and Ms. Sinatra, as alleged herein, Aruze USA was and continues to
15 be damaged in an amount in excess of \$100,000 to be proven at trial.

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

20 256. Aruze USA brings this claim within the relevant statute of limitations under
21 Nevada law, having discovered facts giving rise to this claim, including injury arising
22 from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or
23 about September 30, 2012.

24 257. Aruze USA brings this claim within the relevant statute of limitations under
25 Nevada law, having discovered facts giving rise to this claim on or about September 30,
26 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not
27 reasonably have discovered earlier the facts giving rise to this claim.

28 258. It has been necessary for Aruze USA to retain the services of attorneys to

1 prosecute this action, and Aruze USA is entitled to an award of the reasonable value of
2 said services performed and to be performed in a sum to be determined.

3
4 **COUNT XI**

5 **Negligent Misrepresentation in Connection with Financing for Aruze USA**
6 **(By Aruze USA Against Wynn Resorts, Steve Wynn, and Kim Sinatra)**

7 259. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
8 forth in full below.

9 260. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made false and misleading
10 statements and omissions of material facts to Aruze USA. Specifically, on or about May
11 16, 2011, and for months thereafter, Mr. Wynn and Ms. Sinatra made false and misleading
12 statements and omissions concerning the ability of Aruze USA to loan money from Wynn
13 Resorts, which Wynn Resorts, Mr. Wynn, and Ms. Sinatra agreed would be backed by
14 shares of Wynn Resorts stock held by Aruze USA.

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

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

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

1 have Wynn Resorts redeem Aruze USA's shares at a discount.

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

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

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

16 267. Aruze USA has suffered and continues to suffer economic and non-
17 economic losses because of Wynn Resorts, Mr. Wynn, and Ms. Sinatra false statements of
18 fact. The amount of losses will be determined according to proof at trial, but damages are
19 in an amount in excess of \$100,000.

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

24 269. Aruze USA brings this claim within the relevant statute of limitations under
25 Nevada law, having discovered facts giving rise to this claim on or about September 30,
26 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not
27 reasonably have discovered earlier the facts giving rise to this claim.

28 270. It has been necessary for Aruze USA to retain the services of attorneys to

1 prosecute this action, and Aruze USA is entitled to an award of the reasonable value of
2 said services performed and to be performed in a sum to be determined.

3
4 **COUNT XII**

5 **Civil Conspiracy in Connection with Financing for Aruze USA**

6 **(By Aruze USA Against Steve Wynn and Kim Sinatra)**

7 271. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
8 forth in full below.

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

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

14 274. On information and belief, Ms. Sinatra had knowledge that Mr. Wynn
15 needed Aruze USA to waive the restriction, permitting Elaine Wynn to transfer her shares.

16 275. On information and belief, Ms. Sinatra and Mr. Wynn agreed to persuade
17 Aruze USA to permit Elaine Wynn to transfer her shares without permitting Aruze USA
18 to transfer or pledge any shares to anyone outside the control of Mr. Wynn. In fact, upon
19 receiving an email from Aruze USA's representative on July 13, 2011 permitting the
20 immediate transfer of Elaine Wynn's shares, Ms. Sinatra expressed happiness for Mr.
21 Wynn, stating, "Thank you very much for this. I'm sure Mr. Wynn will be happy about
22 the clarification."

23 276. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made false and misleading
24 statements and omissions of material facts to Aruze USA. Specifically, on or about May
25 16, 2011, and for months thereafter, Mr. Wynn and Ms. Sinatra made false and misleading
26 statements and omissions concerning Wynn Resorts' ability to loan money to Aruze USA,
27 which Wynn Resorts, Mr. Wynn, and Ms. Sinatra agreed would be backed by shares of
28 Wynn Resorts stock held by Aruze USA.

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

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

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

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

28 281. As a further direct and proximate result of the wrongful conduct by Wynn

1 Resorts, Mr. Wynn, and Ms. Sinatra, as alleged herein, Aruze USA was and continues to
2 be damaged in an amount in excess of \$100,000 to be proven at trial.

3 282. Aruze USA brings this claim within the relevant statute of limitations under
4 Nevada law, having discovered facts giving rise to this claim on or about September 30,
5 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not
6 reasonably have discovered earlier the facts giving rise to this claim.

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

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

14
15 **COUNT XIII**

16 **Fraud/Fraud in the Inducement of the Contribution Agreement**

17 **(By Aruze USA Against Wynn Resorts and Steve Wynn)**

18 285. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
19 forth in full below.

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

24 287. On behalf of Aruze USA, on or about June 11, 2002, Mr. Wynn caused
25 Aruze USA to enter into a Contribution Agreement between Aruze USA, Mr. Wynn, and
26 Wynn Resorts. The Contribution Agreement committed Aruze USA's LLC interests in
27 Valvino in exchange for Wynn Resorts common stock.

28 288. Prior to causing the contribution to occur, on or about September 16, 2002,

1 Mr. Wynn filed amended Articles of Incorporation that included the redemption provision.
2 On information and belief, Mr. Wynn deliberately delayed in causing the contribution in
3 order to allow Mr. Wynn to amend the Articles of Incorporation without affording Aruze
4 USA a shareholder vote as would have been required pursuant to N.R.S. § 78.390. At the
5 time of the amendment, Mr. Wynn was the sole stockholder of Wynn Resorts.

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

10 290. In entering into the Contribution Agreement, Wynn Resorts and Mr. Wynn
11 made materially false and/or misleading representations to Aruze USA regarding Wynn
12 Resorts' stockholder obligations under the Articles of Incorporation. Mr. Wynn and
13 Wynn Resorts misrepresented and/or failed to disclose that Wynn Resorts' Articles of
14 Incorporation would seek to impose substantial financial risk on Aruze USA by providing
15 Wynn Resorts' Board – which was controlled by Mr. Wynn – purported discretion to
16 redeem Aruze USA's stock on potentially onerous terms.

17 291. The misrepresentations and concealment of facts alleged herein were
18 material because, had Wynn Resorts and Mr. Wynn provided Aruze USA with truthful
19 and correct information, Aruze USA would not have entered into the Contribution
20 Agreement.

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

24 293. Wynn Resorts and Mr. Wynn made the misrepresentations and concealed
25 facts as set forth herein with the intent to induce Aruze USA's to enter into the
26 Contribution Agreement. Furthermore, Wynn Resorts and Mr. Wynn made the
27 misrepresentations and concealment of facts alleged herein with the intent of gaining their
28 own financial advantage to the disadvantage of Aruze USA.

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

6 295. Wynn Resorts and Mr. Wynn aided and abetted each other in making the
7 false statements of facts alleged herein by each failing to exercise reasonable care or
8 competence in obtaining or communicating those statements.

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

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

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

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

26
27
28

COUNT XIV

Negligent Misrepresentation in Connection with the Contribution Agreement

(By Aruze USA Against Wynn Resorts and Steve Wynn)

300. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

301. 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.

302. On behalf of Aruze USA, on or about June 11, 2002, Mr. Wynn caused Aruze USA to enter into a Contribution Agreement between Aruze USA, Mr. Wynn, and Wynn Resorts. The Contribution Agreement committed Aruze USA's LLC interests in Valvino in exchange for Wynn Resorts common stock.

303. Prior to causing the contribution to occur, on or about September 16, 2002, Mr. Wynn filed amended Articles of Incorporation that included the redemption provision. On information and belief, Mr. Wynn deliberately delayed in causing the contribution in order to allow Mr. Wynn to 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.

304. On or about September 28, 2002, over three months after Aruze USA entered into the Contribution Agreement, and twelve 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.

305. In entering into the Contribution Agreement, Wynn Resorts and Mr. Wynn made materially false representations and/or omissions to Aruze USA regarding Wynn Resorts' stockholder obligations under Articles of Incorporation. Mr. Wynn and Wynn Resorts misrepresented and/or failed to disclose that Wynn Resorts' Articles of Incorporation would seek to impose substantial financial risk to Aruze USA by providing

1 Wynn Resorts' Board (which was controlled by Mr. Wynn) purported discretion to
2 redeem Aruze USA's stock on potentially onerous terms.

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

6 307. Wynn Resorts and Mr. Wynn failed to exercise reasonable care or
7 competence in obtaining or communicating the false statements of fact alleged herein.

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

13 309. On information and belief, Wynn Resorts and Mr. Wynn knew that Aruze
14 USA intended to rely on this information as a reason for Aruze USA to enter into the
15 Contribution Agreement.

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

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

25 312. Aruze USA brings this claim within the relevant statute of limitations under
26 Nevada law, having discovered facts giving rise to this claim, including injury arising
27 from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or
28 about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA did

1 not and could not reasonably have discovered earlier the facts giving rise to this claim.

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

5
6 **COUNT XV**

7 **Breach of Contract in Connection with the Stockholders Agreement**

8 **(By Aruze USA Against Steve Wynn)**

9 314. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
10 forth in full below.

11 315. Mr. Wynn, Elaine Wynn, and Aruze USA are parties to the Stockholders
12 Agreement.

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

16 317. Aruze USA has designated three nominees for election to the Board. If the
17 stockholders of the Company elect the Aruze USA director candidates, the resulting Board
18 shall be comprised of at least nine (9) of the directors nominated by Mr. Wynn, a clear
19 majority.

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

24 319. Mr. Wynn has materially breached the Stockholders Agreement without
25 justification and has frustrated the essential purpose of the Stockholders Agreement.

26 320. The Stockholders Agreement provides that each of the parties to it
27 recognizes and acknowledges that a breach by any party of any covenants or agreements
28 contained in the Agreement will cause the other parties to sustain damages for which they

1 would not have an adequate remedy at law for money damages, and therefore each of the
2 parties agrees that in the event of any such breach the parties shall be entitled to
3 appropriate equitable relief.

4 321. On account of Mr. Wynn's material breach of the Stockholders Agreement,
5 Aruze USA is entitled to be excused and completely discharged from any further
6 performance of its obligations contained therein.

7 322. Further, the breaches by Mr. Wynn have frustrated the entire purpose of the
8 Stockholders Agreement, and have instead served to further entrench Mr. Wynn's control
9 over the Company to the detriment of the other parties to the Agreement. Thus, the
10 appropriate equitable relief for Mr. Wynn's breach is rescission of the Stockholders
11 Agreement.

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

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

20
21 **COUNT XVI**

22 **Breach of Covenant of Good Faith and Fair Dealing in Stockholders Agreement**
23 **(By Aruze USA Against Steve Wynn)**

24 325. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
25 forth in full below.

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

28 327. Aruze USA and Mr. Wynn are parties to the Stockholders Agreement,

1 between Mr. Wynn, Elaine Wynn, and Aruze USA.

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

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

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

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

17 332. Accordingly, Mr. Wynn's conduct has breached the covenant of good faith
18 and fair dealing. On account of Mr. Wynn's material breach, Aruze USA is entitled to
19 contract damages, or in the alternative, Aruze USA is entitled being excused and
20 discharged from its obligations under the Stockholders Agreement. Aruze USA is also
21 entitled to rescission of the Stockholders Agreement.

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

27 334. Aruze USA brings this claim within the relevant statute of limitations under
28 Nevada law, having discovered facts giving rise to this claim, including injury arising

1 from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or
2 about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA did
3 not and could not reasonably have discovered earlier the facts giving rise to this claim.

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

7
8 **COUNT XVII**

9 **Claim for Violations of Section 10(b) of the Securities Exchange Act of 1934**
10 **and SEC Rule 10b-5(a) Promulgated Thereunder**

11 **(By Aruze USA Against Wynn Resorts and Steve Wynn)**

12 336. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
13 forth in full below.

14 337. Wynn Resorts has claimed publicly and Wynn Resorts has alleged in its
15 Complaint in this action that it has redeemed Aruze USA's shares of Wynn Resorts' stock.
16 Aruze USA brings this claim in the alternative to Aruze USA's claims that assert the
17 purported redemption by Wynn Resorts is void *ab initio*.

18 338. Since at least the beginning of 2011, Wynn Resorts and Mr. Wynn have
19 committed a series of manipulative or deceptive acts in furtherance of a device, scheme,
20 and/or artifice to defraud Aruze USA, which they knew or deliberately disregarded would
21 perpetrate a fraud.

22 339. In particular, as alleged in detail above, Wynn Resorts and Mr. Wynn caused
23 an illegal redemption (*i.e.*, a forced "sale" under the securities laws) of Aruze USA's more
24 than \$2.7 billion interest in Wynn Resorts by:

- 25 • Undertaking a series of acts in 2011 to prevent Aruze USA from selling or
26 pledging its securities, including acts by Mr. Wynn and Ms. Sinatra
27 dissuading Aruze USA from selling or pledging its shares of Wynn Resorts
28 and holding out a false promise of financing by Wynn Resorts, while

- 1 knowing that Wynn Resorts was secretly investigating Mr. Okada to create a
2 pretext for redemption;
- 3 • Causing a redemption based on the Freeh Sporkin report, which among
4 other things:
- 5 • was incomplete;
- 6 • contained false and misleading statements;
- 7 • failed to address or include exculpatory facts and evidence;
- 8 • relied upon an inaccurate and incomplete understanding the FCPA;
9 and,
- 10 • relied upon an inaccurate and incomplete understanding of Philippine
11 law and related facts.
- 12 • Causing a redemption without evidence of any bona fide jeopardy to any
13 Wynn Resorts gaming license;
- 14 • Causing a redemption in the absence of a finding by the Nevada Gaming
15 Commission, or any other gaming regulator, that Aruze USA or its affiliates
16 is unsuitable;
- 17 • Causing Aruze USA not to apply for injunctive relief prior to the Board's
18 consideration of redemption, by falsely representing through Mr. Freeh that
19 Aruze USA and Mr. Okada would have an opportunity to review the Freeh
20 Sporkin report and present responsive facts and evidence;
- 21 • Excluding Mr. Okada and his counsel from Wynn Resorts' Board meetings
22 discussing redemption;
- 23 • Denying Aruze USA access to investigative materials, by falsely invoking
24 attorney-client privilege;
- 25 • Falsely invoking "confidentiality" in an attempt to get Aruze USA to sign
26 away legal rights in exchange for reviewing the Freeh Sporkin report;
- 27 • Setting a redemption price for Aruze USA's shares of Wynn Resorts stock
28 that was not the product of independent assessment;

- 1 • Setting a redemption price that does not reflect, among other things, fair
- 2 value and that failed to consider:
- 3 • the lack of applicability of the Stockholders Agreement to a
- 4 redemption;
- 5 • developments in Cotai and other positive inside information; and,
- 6 • a premium for the volume of stock transacted.

7 340. The deliberate, intentional, and/or reckless aim of the above scheme by
8 Wynn Resorts and Mr. Wynn was to force the illegal sale of Aruze USA's shares of Wynn
9 Resorts stock to Wynn Resorts at a price well below the fair value of the shares. As
10 alleged in detail above, Wynn Resorts and Mr. Wynn's acts were carefully orchestrated to
11 secure Aruze USA's continued acceptance of the Stockholders Agreement and to dissuade
12 legal action to enjoin enforcement of the Stockholders Agreement or otherwise challenge
13 the restraint on alienation purportedly contained therein. At the same time as Wynn
14 Resorts and Mr. Wynn were promising Aruze USA financing secured by Aruze USA's
15 stock in Wynn Resorts, Wynn Resorts and Mr. Wynn were secretly conspiring to force a
16 sale of Aruze USA's interest in Wynn Resorts based on false, misleading, and incomplete
17 allegations. This scheme was deliberately calculated to perpetuate and consolidate Mr.
18 Wynn's control over Wynn Resorts and to enable the forced sale of Aruze USA's shares
19 of Wynn Resorts stock at this steep discount. Wynn Resorts and Mr. Wynn took steps to
20 conceal all aspects of the investigation from Aruze USA and its representatives in order to
21 prevent scrutiny or rebuttal and to prevent legal action that would interrupt the scheme to
22 take Aruze USA's stock at a vast discount. In order to bring the scheme to fruition, Wynn
23 Resorts and Mr. Wynn fashioned a rushed and wholly inadequate determination that
24 Aruze USA, Mr. Okada, and Universal are "unsuitable." This determination necessarily
25 depended on false information, unreliable innuendo, an incorrect understanding of the
26 FCPA and the laws of the Philippines, and a flawed process that failed to (1) investigate
27 or consider obvious exculpatory evidence; (2) provide any reasonable opportunity for
28 Aruze USA, Mr. Okada, and Universal to respond to the allegations; or (3) consider the

1 unprecedented nature of the determination and the utter lack of any bona fide jeopardy to
2 Wynn Resorts' gaming licenses.

3 341. The determinations of unsuitability and subsequent redemption were aided
4 by actions deliberately calculated to prevent an application for injunctive relief or other
5 steps by Aruze USA to intervene and prevent a redemption, including but not limited to:
6 (1) false promises that Aruze USA, Mr. Okada, and Universal would have an opportunity
7 to respond, (2) false assertions of privilege, (3) exclusion of English speaking persons and
8 counsel from Board proceedings (so that Aruze USA could understand the proceedings
9 and/or respond appropriately or effectively), and (4) false assertions of confidentiality and
10 imposing onerous waivers of legal rights in order to see documents that were not
11 confidential because they were leaked to the *Wall Street Journal* and filed in Court at or
12 about the time Mr. Wynn and Wynn Resorts' asserted they were confidential. Finally,
13 Wynn Resorts and Mr. Wynn conspired to ensure that the redemption price was set well
14 below fair value, by relying on one biased appraisal that relied centrally on an incorrect
15 premise of the enforceability of the restraint of sale in the Stockholders Agreement and
16 failed to account for inside information available to Mr. Wynn and Wynn Resorts.

17 342. In the absence of the wrongful conduct of Wynn Resorts and Mr. Wynn, no
18 redemption would have occurred, let alone a redemption of Aruze USA's shares in Wynn
19 Resorts at a price well below fair value or market value.

20 343. Under the "forced seller" or "fundamental change" doctrine, reliance is not
21 an element of a scheme liability claim alleging an involuntary sale, such as the purported
22 redemption in this case. The forced seller doctrine provides a cause of action under the
23 federal securities laws, because Aruze USA was forced by Wynn Resorts and Mr. Wynn
24 to convert its stock for money or other consideration, and/or because Aruze USA was
25 forced by Wynn Resorts and Mr. Wynn to fundamentally change the nature of its
26 investments as part of the fraudulent scheme. No volitional act was necessary by
27 Aruze USA to complete the transaction – and, in fact, Aruze USA did not want the sale to
28 occur.

344. As a direct consequence of the wrongful conduct of Wynn Resorts and Mr. Wynn, Aruze USA suffered injury that resulted in the sale of its stock for more than \$1 billion below fair value.

345. Aruze USA brings this claim within the relevant statute of limitations under federal 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.

COUNT XVIII

Claim for Violations of Section 10(b) of the Securities Exchange Act of 1934

and SEC Rule 10b-5(c) Promulgated Thereunder

(By Aruze USA Against Wynn Resorts and Steve Wynn)

346. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

347. Wynn Resorts has claimed publicly and Wynn Resorts has alleged in its Complaint in this action that it has redeemed Aruze USA's shares of Wynn Resorts' stock. Aruze USA brings this claim in the alternative to Aruze USA's claims that assert the purported redemption by Wynn Resorts is improper, illegal, and void *ab initio*.

348. Since the beginning of 2011, Wynn Resorts and Mr. Wynn have engaged in a series of acts, practices, of courses of business, which Wynn Resorts and Mr. Wynn knew or deliberately disregarded would operate as a fraud and/or deceit upon Aruze USA, in connection with the redemption of Aruze's shares in Wynn Resorts.

349. In particular, as alleged in detail above, Wynn Resorts and Mr. Wynn caused an illegal redemption (*i.e.*, a forced “sale” under the securities laws) of Aruze USA’s more than \$2.7 billion interest in Wynn Resorts by:

- Undertaking a series of acts in 2011 to prevent Aruze USA from selling or pledging its securities, including acts by Mr. Wynn and Ms. Sinatra

1 dissuading Aruze USA from selling or pledging its shares of Wynn Resorts
2 and holding out a false promise of financing by Wynn Resorts, while
3 knowing that Wynn Resorts was secretly investigating Mr. Okada to create a
4 pretext for redemption;

- 5 • Causing a redemption based on the Freeh Sporkin report, which, among
6 other things:
 - 7 • was incomplete;
 - 8 • contained false and misleading statements;
 - 9 • failed to address or include exculpatory facts and evidence;
 - 10 • relied upon an inaccurate and incomplete understanding the FCPA;
 - 11 and,
 - 12 • relied upon an inaccurate and incomplete understanding of Philippine
13 law and related facts.
- 14 • Causing a redemption without evidence of any bona fide jeopardy to any
15 Wynn Resorts gaming license;
- 16 • Causing a redemption in the absence of a finding by the Nevada Gaming
17 Commission, or any other gaming regulator, that Aruze USA or its affiliates
18 is unsuitable;
- 19 • Causing Aruze USA not to apply for injunctive relief prior to the Board's
20 consideration of redemption, by falsely representing through Mr. Freeh that
21 Aruze USA and Mr. Okada would have an opportunity to review the Freeh
22 Sporkin report and present responsive facts and evidence;
- 23 • Excluding Mr. Okada and his counsel from Wynn Resorts' Board meetings
24 discussing redemption;
- 25 • Denying Aruze USA access to investigative materials, by falsely invoking
26 attorney-client privilege;
- 27 • Falsely invoking "confidentiality" in an attempt to get Aruze USA to sign
28 away legal rights in exchange for reviewing the Freeh Sporkin report;

- 1 • Setting a redemption price for Aruze USA's shares of Wynn Resorts stock
- 2 that was not the product of independent assessment;
- 3 • Setting a redemption price that does not reflect, among other things, fair
- 4 value and that failed to consider:
- 5 • the lack of applicability of the Stockholders Agreement to a
- 6 redemption;
- 7 • developments in Cotai and other positive inside information; and,
- 8 • a premium for the volume of stock transacted.

9 350. The deliberate, intentional, and/or reckless aim of the above scheme by
10 Wynn Resorts and Mr. Wynn was to force the illegal sale of Aruze USA's shares of Wynn
11 Resorts stock to Wynn Resorts at a price well below the fair value of the shares. As
12 alleged in detail above, Wynn Resorts and Mr. Wynn's acts were carefully orchestrated to
13 secure Aruze USA's continued acceptance of the Stockholders Agreement and to dissuade
14 legal action to enjoin enforcement of the Stockholders Agreement or otherwise challenge
15 the restraint on alienation purportedly contained therein. At the same time as Wynn
16 Resorts and Mr. Wynn were promising Aruze USA financing secured by Aruze USA's
17 stock in Wynn Resorts, Wynn Resorts and Mr. Wynn were secretly conspiring to force a
18 sale of Aruze USA's interest in Wynn Resorts based on false, misleading, and incomplete
19 allegations. This scheme was deliberately calculated to perpetuate and consolidate Mr.
20 Wynn's control over Wynn Resorts and to enable the forced sale of Aruze USA's shares
21 of Wynn Resorts stock at this steep discount. Wynn Resorts and Mr. Wynn took steps to
22 conceal all aspects of the investigation from Aruze USA and its representatives in order to
23 prevent scrutiny or rebuttal and to prevent legal action that would interrupt the scheme to
24 take Aruze USA's stock at a vast discount. In order to bring the scheme to fruition, Wynn
25 Resorts and Mr. Wynn fashioned a rushed and wholly inadequate determination that
26 Aruze USA, Mr. Okada, and Universal are "unsuitable." This determination necessarily
27 depended on false information, unreliable innuendo, an incorrect understanding of the
28 FCPA and the laws of the Philippines, and a flawed process that failed to (1) investigate

1 or consider obvious exculpatory evidence; (2) provide any reasonable opportunity for
2 Aruze USA, Mr. Okada, and Universal to respond to the allegations; or (3) consider the
3 unprecedented nature of the determination and the utter lack of any bona fide jeopardy to
4 Wynn Resorts' gaming licenses.

5 351. The determinations of unsuitability and subsequent redemption were aided
6 by actions deliberately calculated to prevent an application for injunctive relief or other
7 steps by Aruze USA to intervene and prevent a redemption, including but not limited to:
8 (1) false promises that Aruze USA, Mr. Okada, and Universal would have an opportunity
9 to respond, (2) false assertions of privilege, (3) exclusion of English speaking persons and
10 counsel from Board proceedings (so that Aruze USA could understand the proceedings
11 and/or respond appropriately or effectively), and (4) false assertions of confidentiality and
12 imposing onerous waivers of legal rights in order to see documents that were not
13 confidential because they were leaked to the *Wall Street Journal* and filed in Court at or
14 about the time Mr. Wynn and Wynn Resorts' asserted they were confidential. Finally,
15 Wynn Resorts and Mr. Wynn conspired to ensure that the redemption price was set well
16 below fair value, by relying on one biased appraisal that relied centrally on an incorrect
17 premise of the enforceability of the restraint of sale in the Stockholders Agreement and
18 failed to account for inside information available to Mr. Wynn and Wynn Resorts.

19 352. In the absence of the wrongful conduct of Wynn Resorts and Mr. Wynn, no
20 redemption would have occurred, let alone a redemption of Aruze USA's shares in Wynn
21 Resorts at a price well below fair value or market value.

22 353. Under the "forced seller" or "fundamental change" doctrine, reliance is not
23 an element of a scheme liability claim alleging an involuntary sale, such as the purported
24 redemption in this case. The forced seller doctrine provides a cause of action under the
25 federal securities laws, because Aruze USA was forced by Wynn Resorts and Mr. Wynn
26 to convert its stock for money or other consideration, and/or because Aruze USA was
27 forced by Wynn Resorts and Mr. Wynn to fundamentally change the nature of its
28 investments as part of the fraudulent scheme. No volitional act was necessary by

1 Aruze USA to complete the transaction – and, in fact, Aruze USA did not want the sale to
2 occur.

3 354. As a direct consequence of the wrongful conduct of Wynn Resorts and
4 Mr. Wynn, Aruze USA suffered injury that resulted in the sale of its stock for more than
5 \$1 billion below fair value.

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

11
12 **COUNT XIX**

13 **Claim for Violations of Section 10(b) of the Securities Exchange Act of 1934**

14 **and SEC Rule 10b-5(b) Promulgated Thereunder**

15 **(By Aruze USA Against Wynn Resorts and Steve Wynn)**

16 356. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set
17 forth in full below.

18 357. Wynn Resorts has claimed publicly and Wynn Resorts has alleged in its
19 Complaint in this action that it has redeemed Aruze USA's shares of Wynn Resorts' stock.
20 Aruze USA brings this claim in the alternative to Aruze USA's claims that assert the
21 purported redemption by Wynn Resorts is improper, illegal, and void *ab initio*.

22 358. Furthermore, this claim under SEC Rule 10b-5(b) is made in the alternative
23 to the prior claims under Rule 10b-5(a) and Rule 10b-5(c). While Aruze USA believes the
24 allegations are more properly brought under Rule 10b-5(a) and Rule 10b-5(c) because the
25 claims encompass conduct beyond mere misrepresentations and/or omissions, Aruze USA
26 makes this alternate claim under Rule 10b-5(b) to the extent a Court might find certain
27 allegations of wrongdoing are misstatements or omissions, and not: (i) devices, schemes,
28 or artifices under Rule 10b-5(a); (ii) acts, practices, of courses of business under Rule 10b-

1 5(c); or (iii) fraudulent statements that sound under Rule 10b-5(a) or (c) because they were
2 intended to deceive third parties in furtherance of a scheme to defraud Aruze USA.

3 359. Since the beginning of 2011, Wynn Resorts and Mr. Wynn have made a
4 series of untrue statements of material fact and/or have omitted to state material facts
5 necessary in order to make the statements made, in light of the circumstances under which
6 they were made, not misleading.

7 360. In particular, as alleged in detail above, Wynn Resorts and Mr. Wynn caused
8 an illegal redemption (*i.e.*, a forced “sale” under the securities laws) of Aruze USA’s more
9 than \$2.7 billion interest in Wynn Resorts by:

- 10 • Making false statements by Mr. Wynn and Ms. Sinatra to dissuade Aruze
11 USA from selling or pledging its shares of Wynn Resorts and holding out a
12 false promise of financing by Wynn Resorts, while knowing that Wynn
13 Resorts was secretly investigating Mr. Okada to create a pretext for
14 redemption;
- 15 • Causing a redemption based on the Freeh Sporkin report, which, as alleged
16 in detail above, contained numerous false and misleading statements, and
17 omitted to state numerous facts material facts necessary in order to make the
18 statements made, in light of the circumstances under which they were made,
19 not misleading;
- 20 • Making untrue statements that Mr. Okada and Aruze USA would have an
21 opportunity to review the Freeh Sporkin report and present responsive facts
22 and evidence, with the intent of inducing Aruze USA not to apply for
23 injunctive relief prior to the Board’s consideration of redemption;
- 24 • Making false statements invoking attorney-client privilege to deny
25 Aruze USA access to investigative materials and impede Aruze USA’s
26 ability to present arguments against and/or enjoin the redemption;
- 27 • Making false statements claiming that the Freeh Sporkin report was
28 “confidential” in an attempt to (i) delay Aruze USA’s access to the report

- 1 and thereby impede Aruze USA's ability to argue against the Board's action
2 and/or seek injunctive relief prior to redemption, and (ii) deceive Aruze
3 USA into signing away legal rights in exchange for reviewing the report;
- 4 • Making false statements regarding the "fair value" or market value of Aruze
5 USA's shares in Wynn Resorts that failed to account for:
 - 6 • the lack of applicability of the Stockholders Agreement to a
7 redemption;
 - 8 • developments in Cotai and other positive inside information; and,
 - 9 • a premium for the volume of stock transacted;
 - 10 • Making false statements that Aruze USA, Universal Entertainment, and Mr.
11 Okada are unsuitable; and
 - 12 • Making false statements that there was any bona fide jeopardy to Wynn
13 Resorts gaming license.

14 361. The deliberate, intentional, and/or reckless aim of the above
15 misrepresentations and omissions by Mr. Wynn and Wynn Resorts was to force the illegal
16 sale of Aruze USA's shares of Wynn Resorts stock to Wynn Resorts at a price well below
17 the fair value of the shares. As alleged in detail above, Wynn Resorts and Mr. Wynn's
18 misrepresentations and omissions were carefully orchestrated to secure Aruze USA's
19 continued acceptance of the Stockholders Agreement and to dissuade legal action to
20 enjoin enforcement of the Stockholders Agreement or otherwise challenge the restraint on
21 alienation purportedly contained therein. At the same time as Wynn Resorts and Mr.
22 Wynn were holding out a false promise of financing to Aruze USA secured by Aruze
23 USA's stock in Wynn Resorts, Wynn Resorts and Mr. Wynn were secretly conspiring to
24 force a sale of Aruze USA's interest in Wynn Resorts based on false, misleading, and
25 incomplete allegations. Mr. Wynn and Wynn Resorts' misrepresentations and omissions
26 were deliberately calculated to perpetuate and consolidate Mr. Wynn's control over Wynn
27 Resorts and to enable the forced sale of Aruze USA's shares of Wynn Resorts stock at a
28 vast discount.

1 362. In order to bring this to fruition, Wynn Resorts and Mr. Wynn fashioned a
2 rushed and wholly inadequate determination that Aruze USA, Mr. Okada, and Universal
3 were “unsuitable.” This determination necessarily depended on misrepresentations and
4 omissions regarding the facts and law. The misrepresentations concern facts resulting
5 from an incomplete investigation that omitted to include obvious exculpatory evidence
6 and false statements regarding purported jeopardy to Wynn Resorts’ gaming licenses.
7 The determinations of unsuitability and subsequent redemption were enabled by
8 misrepresentations and omissions, including but not limited to false promises that Aruze
9 USA, Mr. Okada, and Universal would have an opportunity to respond, false assertions of
10 privilege, and false assertions of confidentiality. Finally, Wynn Resorts and Mr. Wynn
11 misrepresented the fair value of the securities by relying on one biased appraisal that
12 failed to account for inside information available to Mr. Wynn and Wynn Resorts and
13 other relevant factors, including the lack of enforceability of the Stockholders Agreement.

14 363. In the absence of the wrongful conduct of Wynn Resorts and Mr. Wynn, no
15 redemption would have occurred, let alone a redemption of Aruze USA’s shares in Wynn
16 Resorts at a price well below fair value or market value.

17 364. Under the “forced seller” or “fundamental change” doctrine, reliance is not
18 an element of a securities fraud claim alleging an involuntary sale, such as the purported
19 redemption in this case. The forced seller doctrine provides a cause of action under the
20 federal securities laws, because Aruze USA was forced by Wynn Resorts and Mr. Wynn
21 to convert its stock for money or other consideration, and/or because Aruze USA was
22 forced by Wynn Resorts and Mr. Wynn to fundamentally change the nature of its
23 investments as part of the fraudulent scheme. No volitional act was necessary by
24 Aruze USA to complete the transaction – and, in fact, Aruze USA did not want the sale to
25 occur.

26 365. As a direct consequence of the wrongful conduct of Wynn Resorts and
27 Mr. Wynn, Aruze USA suffered losses that resulted in the sale of its stock for more than
28 \$1 billion below fair value.

366. Aruze USA brings this claim within the relevant statute of limitations under federal 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.

COUNT XX

**Claim for Violations of Section 20(a) of the Securities Exchange Act of 1934
and SEC Rule 10b-5 Promulgated Thereunder**

(By Aruze USA Against Steve Wynn)

367. Aruze USA reasserts and realleges Paragraphs 4 through 164 above as if set forth in full below.

368. Mr. Wynn acted as a controlling person of Wynn Resorts within the meaning of Section 20(a) of the Exchange Act, as alleged herein. By reason of his positions as an officer and director of Wynn Resorts, and his ownership of Wynn Resorts stock, Mr. Wynn had the power and authority to cause Wynn Resorts to engage in the wrongful conduct complained of herein. Mr. Wynn controlled Wynn Resorts and all of its other employees.

369. By reason of such conduct, Mr. Wynn is liable pursuant to Section 20(a) of the Exchange Act.

370. Aruze USA brings this claim within the relevant statute of limitations under federal 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.

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, and each of them, as follows:

- a. For general damages in an amount in excess of \$100,000;
- 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 injunctive and declaratory relief;
- h. For costs and expenses of this action, prejudgment and post-judgment interest, and reasonable attorneys' fees incurred herein; and,
- i. Any and all such other and further equitable and legal relief as this Court deems just and proper.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Wynn Resorts, Limited

(b) County of Residence of First Listed Plaintiff Clark
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Pisanelli Bice, PLLC, 3883 Howard Hughes Parkway, Suite 800,
Las Vegas, Nevada 89169; (702) 214-2100

DEFENDANTS

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

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Lionel Sawyer & Collins, 1700 Bank of America Plaza,
Las Vegas, Nevada 89101; (702) 383-8888

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. §§ 78dd-1, et seq.

Brief description of cause:

Purported breach of fiduciary duty based on alleged FCPA violations

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

March 12, 2012

SIGNATURE OF ATTORNEY OF RECORD

/s/

Charles W. Bice

FOR OFFICE USE ONLY

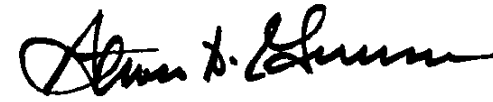
RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE



CLERK OF THE COURT

PISANELLI BICE PLLC
3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

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17 Russell Goldsmith, Ray R. Irani, Robert J. Miller,
John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
18 Kimmarie Sinatra, D. Boone Wayson and Allan Zeman

19 **DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 WYNN RESORTS, LIMITED, a Nevada
Corporation,

22 Plaintiff,

23 vs.

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

26 Defendants.
27
28

Case No.: A-12-656710-B

Dept. No.: XI

**AFFIDAVIT OF ROBERT J. MILLER
IN SUPPORT OF WYNN PARTIES'
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

Date of Hearing: October 2, 2012

Time of Hearing: 8:30 a.m.

1 STATE OF NEVADA

ss:

2 COUNTY OF CLARK

3 ROBERT J. MILLER, being duly sworn, deposes and says:

4 1. I am a resident of Clark County, Nevada and a director of Wynn Resorts, Limited
5 ("Wynn Resorts"), Chairman of the Compliance Committee of Wynn Resorts, and Chairman of
6 the Nominating and Corporate Governance Committee of the board. I also serve as presiding
7 director for executive sessions of the independent members of the Wynn Resorts board. From
8 1989 to 1999, I served as Governor of the State of Nevada.

9 2. I make this affidavit in opposition to the motion by Aruze USA, Inc. ("Aruze") and
10 Universal Entertainment Corp. ("Universal") for a preliminary injunction. I have personal
11 knowledge of the facts set forth herein unless otherwise so stated and could, if called to testify as
12 a witness, testify competently to them.

13 The Wynn Resorts board

14 3. Wynn Resorts has a twelve-member board of directors. Excluding Kazuo Okada,
15 eight of Wynn Resorts' eleven directors have no employment relationship with the Company
16 (myself, Russell Goldsmith, Ray R. Irani, John A. Moran, Alvin V. Shoemaker, D. Boone
17 Wayson, Elaine P. Wynn, and Allan Zeman). Stephen A. Wynn, Chairman and Chief Executive
18 Officer of Wynn Resorts, Linda Chen, President of Wynn International Marketing, Limited and
19 Chief Operating Officer of Wynn Resorts (Macau), S.A., and Marc D. Schorr, Chief Operating
20 Officer of Wynn Resorts, are the only members of Wynn Resorts' management on the board.

21 The Compliance Committee

22 4. In 2002, the Company adopted a "Compliance Program," which has been
23 periodically reviewed and amended. The Compliance Program states that it is designed to
24 mitigate the "dangers of unsuitable associations and compliance with regulatory requirements." It
25 describes the duties of the Compliance Committee and provides that the Committee has an
26 affirmative obligation to investigate all senior executives, directors, and key employees "in order
27 to protect the Company from becoming associated with an Unsuitable Person." Under the
28 program, the term "Unsuitable Person" refers to anyone "that the Company determines is

1 unqualified as a business associate of the Company or its Affiliates based on, without limitation,
2 that Person's antecedents, associations, financial practices, financial condition, or business
3 probity."

4 5. The Compliance Program also requires the Company to report to Nevada gaming
5 authorities to keep them "advised of the Company's compliance efforts in Nevada and other
6 jurisdictions." Specifically, the Company has an obligation to self-report — that is, to inform the
7 gaming regulators of significant compliance-related issues.

8 History of compliance concerns related to Mr. Okada

9 6. As Chairman of the Compliance Committee, I have reviewed certain investigative
10 reports, and from these, I have learned the following facts. Mr. Okada began developing a large
11 casino resort in the Philippines some time in 2007 or 2008. Wynn Resorts was not a partner or
12 participant in the project, and Mr. Okada attempted to persuade Wynn Resorts to participate in the
13 project in some way.

14 7. In the summer of 2010, a senior executive of Wynn Resorts prepared a report on
15 the business climate in the Philippines that caused the Compliance Committee to become
16 increasingly concerned about Mr. Okada's business involvement in that country. Thereafter, in
17 early 2011, management retained an independent third-party firm to do preliminary investigative
18 work concerning the Philippines and Mr. Okada's activities there.

19 8. The Wynn Resorts board discussed the results of that preliminary investigation at a
20 board meeting on February 24, 2011. Mr. Okada was present at the meeting. At that time,
21 Mr. Wynn advised the board that Mr. Okada had arranged a meeting for him with Philippine
22 President Aquino. Based on the information the board had received about endemic corruption in
23 the Philippines, the independent directors unanimously advised management that any involvement
24 in the Philippines was inadvisable, and the board strongly recommended that Mr. Wynn cancel
25 the meeting with President Aquino. Management agreed with the board's recommendation. At
26 this board meeting, Mr. Okada was clearly made aware that the board was greatly concerned
27 about any direct or indirect Wynn Resorts involvement in the Philippines.

1 9. Also at the February 24, 2011 board meeting, Kim Sinatra, Wynn Resorts' General
2 Counsel, updated the board on Foreign Corrupt Practices Act ("FCPA") matters, particularly with
3 respect to Wynn Resorts' program of director compliance and education. Such updates were and
4 are part of the Compliance Committee's efforts, as part of the overall Compliance Program, to
5 insure that Wynn Resorts does not risk compliance problems that could affect its present and
6 future licensing status, which in turn is critical to the Company's business and its prospects for the
7 future.

8 10. In the course of this meeting, Mr. Okada made the surprising and disturbing
9 comment that, in his view, making gifts to government officials was a recognized and accepted
10 way of doing business in parts of Asia, and that it was all a question of using third parties.
11 Needless to say, this comment raised concerns for me and others about Mr. Okada's ability and
12 willingness to comply with Wynn Resorts' compliance policies and with anti-corruption statutes
13 such as the FCPA.

14 11. The Wynn Resorts board again discussed Mr. Okada's business activities in the
15 Philippines at a board meeting held on July 28, 2011. Mr. Okada confirmed to the board that he
16 was proceeding with the Philippines project. In the course of the meeting, certain of the
17 Company's independent directors, including me, expressed concern with regard to probity issues
18 related to Mr. Okada and the possible effect that Mr. Okada's involvement in the Philippines
19 would have on Wynn Resorts. Following that board meeting, in August 2011, the Company
20 received additional information from a separate independent investigatory firm that raised further
21 questions about the business climate in the Philippines and Mr. Okada's activities there.

22 12. At a meeting held on September 27, 2011, the Compliance Committee reviewed
23 the results of a third-party investigative report that had been conducted at the Company's request
24 and that addressed the current political environment in the Philippines and the issues related to
25 Mr. Okada's project there. Three days later, at the direction of the Committee, representatives of
26 the Company met with Mr. Okada's lawyers to discuss the Committee's concerns with regard to
27 Mr. Okada's involvement in the Philippines project. These concerns included, among other
28

1 things, whether Mr. Okada had violated Philippine law in acquiring the land for his project. I was
2 informed that the discussion at this meeting with Mr. Okada's representatives was unproductive.

3 13. On October 31, 2011, Mr. Okada failed to attend a long-scheduled training session
4 for board members concerning the Foreign Corrupt Practices Act. Every other Wynn Resorts
5 director attended, either in person or by telephone. Management informed the directors that
6 Mr. Okada had RSVP'd for the training session in mid-September, and later asked the Company
7 to translate the training materials into Japanese, which they did. But in the end, Mr. Okada did
8 not participate.

9 The Freeh investigation

10 14. On October 29, 2011, the Compliance Committee determined to retain Freeh
11 Sporkin & Sullivan, LLP, and specifically Louis Freeh. Mr. Freeh is the former director of the
12 FBI and a former federal judge. We believed his experience and reputation were the finest in the
13 field, and that his firm had the resources to pursue the somewhat difficult task of investigating
14 matters arising out of Mr. Okada's conduct in Asia. That decision was based on the concerns
15 raised by and the information gathered in the preliminary investigations that had been conducted
16 by firms retained by the Company, and on Mr. Okada's troubling comments about FCPA
17 compliance.

18 15. The Wynn Resorts board met on November 1, 2011. Mr. Okada was told at this
19 meeting that the Compliance Committee intended to retain Mr. Freeh to do an in-depth
20 investigation of his activities, and Mr. Okada attempted to persuade us not to engage Mr. Freeh.
21 At this meeting, Mr. Wynn explained to Mr. Okada that Mr. Okada would be breaching his
22 fiduciary duties as a director of Wynn Resorts if Mr. Okada — as it appeared he was planning —
23 used information he obtained as a Wynn Resorts director concerning the Company's marketing to
24 Asian customers to siphon off to the Philippines profitable business from Wynn Resorts' existing
25 and planned Macau properties. Mr. Okada strongly disagreed.

26 16. Also at the November 1, 2011 board meeting, the Wynn Resorts board ratified the
27 Compliance Committee's decision to hire Mr. Freeh and the Committee formally retained
28

1 Mr. Freeh to conduct an investigation and produce a report related to Mr. Okada and his business
2 activities in the Philippines.

3 17. Over a three-month period, Mr. Freeh and/or his colleagues made several trips to
4 the Philippines and Macau; conducted numerous interviews; and engaged in detailed documentary
5 research of public records. By early 2012, Mr. Freeh and his team had uncovered detailed prima
6 facie evidence of serious wrongdoing by Mr. Okada and his associates.

7 18. In early 2012, I received a preliminary briefing from Mr. Freeh indicating that his
8 investigation had revealed serious issues concerning the legality, under Philippine law, of
9 Mr. Okada's purchase and title to the land on which his new casino project was to be built.
10 Moreover, Mr. Freeh had found evidence from records maintained by Wynn Macau, and from
11 interviews of Wynn Macau personnel, that Aruze provided gifts of value at Wynn Macau to
12 senior officials of PAGCOR (including its Chairman, Mr. Cristino Naguiat), and that Mr. Okada
13 was aware of this. (PAGCOR is a Philippine governmental agency that is both the regulator and
14 operator of gaming in that country.) Mr. Freeh also uncovered evidence that Mr. Okada's
15 associates had requested anonymity for a VIP guest they did not wish to be registered. This
16 individual was later determined to be Chairman Naguiat of PAGCOR.

17 19. As Chairman of the Compliance Committee, I decided that before Mr. Freeh
18 concluded his investigation and produced his report, Mr. Okada should be offered the opportunity
19 to submit exculpatory evidence. For several weeks, Mr. Okada would not commit to a date for an
20 interview with Mr. Freeh. Finally, Mr. Okada agreed to let Mr. Freeh interview him, in Tokyo,
21 on February 15, 2012. I was informed that one or more of Mr. Okada's attorneys from the Paul
22 Hastings firm were present at the interview.

23 20. As is reflected in the 47-page "Freeh Report" that was presented to the Compliance
24 Committee and the Wynn Resorts board on February 18, 2012, Mr. Freeh concluded that
25 Mr. Okada had not presented any persuasive evidence whatsoever to rebut what Mr. Freeh had
26 found, and that while Mr. Okada had offered broad denials of involvement in any of the
27 misconduct, the evidence uncovered in Mr. Freeh's investigation cast substantial doubt on
28 Mr. Okada's credibility. The Freeh Report is attached hereto as Exhibit 1.

The February 18, 2012 board meeting and the redemption of Aruze's shares

21. The first portion of the Wynn Resorts board meeting on February 18, 2012 was devoted to a consideration of the response to the Court's order in the books-and-records case brought by Mr. Okada. Mr. Okada then joined the meeting by telephone. In response to a question regarding whether Mr. Okada had joined the meeting alone, an attorney from Mr. Okada's U.S. law firm responded that he was in the room with Mr. Okada, along with a colleague and certain Universal executives. Mr. Okada was reminded that Company policy provided that board members attend meetings without personal lawyers. Thereafter, Mr. Okada's counsel advised that everyone would leave the room except for Mr. Okada and his translator. Following confirmation from Mr. Okada's translator that all other persons had departed, the meeting continued. As the focus of the meeting turned to the Freeh Report, the meeting was interrupted constantly by issues relating to translation. The question was asked of Mr. Okada's translator whether he was a licensed translator, and he replied that he was, in fact, not a professional translator, but a Japanese attorney for Mr. Okada. That person was asked to leave the meeting. Subsequently, the meeting proceeded with Mr. Okada having the discussion at the meeting translated for him by a professional translator provided by the Company.

22. Mr. Freeh provided the board (including Mr. Okada) with a detailed summary of his investigation and his findings. The Chairman then declared that there would be a two-hour recess to allow the board members who had executed a confidentiality agreement to read the Freeh Report — that is, all members other than Mr. Okada, who refused to execute the agreement, which had been translated into Japanese — following which the meeting would resume with a discussion of the Freeh Report. Prior to taking the recess, the Chairman inquired of Mr. Okada whether he had any questions or comments. Mr. Okada did not respond. Thereafter, the decision was made that Mr. Okada would not be re-connected to the portion of the meeting that would involve a discussion of the Freeh Report.

1 23. When the board meeting reconvened, there was a general discussion of the Freeh
2 Report and its implications for Wynn Resorts and its shareholders. The board then received
3 advice from two attorneys from separate law firms, each of whom is expert in gaming law, and
4 asked questions of them. There was a consensus among the members of the board that Aruze's
5 status as a substantial shareholder of the Company jeopardized the gaming licenses held by
6 Wynn Resorts and could jeopardize future efforts by Wynn Resorts to become licensed in other
7 jurisdictions.

8 24. After further extensive discussion, the directors present voted unanimously to
9 declare Mr. Okada, Aruze, and Universal "Unsuitable Persons" within the meaning and according
10 to the criteria specified in Article VII of the Wynn Resorts Articles of Incorporation. (The
11 Articles are attached as Exhibit 2 to this affidavit.) In connection with this determination, the
12 board received advice from the gaming law experts present at the meeting, including on the topics
13 of the likely response of Nevada gaming regulators to a lack of action by the board, to a delay in
14 action by the board, and related matters.

15 25. The board then considered the amount at which to value the Aruze shares within
16 the meaning of Article VII, and whether to redeem the Aruze shares with cash or with a
17 promissory note having the terms specified in Article VII. In connection with these questions, the
18 board received information and advice from the independent investment banking firm of
19 Moelis & Company, from Duff & Phelps, and from the Company's chief financial officer.

20 26. In determining the "fair value" of the securities to be redeemed, the board first
21 considered what would be the fair value of unrestricted shares of Wynn Resorts and determined
22 that it would be the then current NASDAQ market price. The board then considered the transfer
23 restrictions applicable to Aruze's shares under the stockholders agreement among Aruze,
24 Mr. Wynn, and Ms. Wynn, as well as the size of Aruze's block, and determined that it would be
25 appropriate to apply a discount to the then current NASDAQ market price to account for these
26 restrictions. In determining what discount to apply, the board was guided by the view of
27 Moelis & Company that the transfer restrictions on Aruze's shares (restrictions that would travel
28 with the shares to any potential buyer) were as restrictive as any other restrictions it had identified

1 in respect of the shares of a U.S. public company. In addition, the board was guided by the advice
2 of Moelis & Company that the size of Aruze's block would make it more difficult to sell. Based
3 on this information, and following further discussion, the board determined to apply a
4 30% discount to the then current NASDAQ market price of Wynn Resorts shares in calculating
5 the fair value of Aruze's shares.

6 27. The board then considered whether to pay cash or to issue a promissory note to
7 Aruze to effect the redemption. In consideration of the potential negative effects on the
8 Company's balance sheet and the borrowing costs associated with a cash payment, as well as the
9 related negative impact on the Company's public shareholders, the board determined to issue to
10 Aruze a promissory note on the terms set forth in the Articles of Incorporation. That promissory
11 note is attached as Exhibit 3 to this affidavit. In connection with the decision to pay by note
12 rather than by cash, the board received advice from outside expert gaming counsel, and it
13 considered the potential views of the Nevada gaming authorities.

14 28. The board instructed management to advise Aruze of the redemption of its shares
15 and the board's decision to issue to it a promissory note in exchange. That redemption notice is
16 attached as Exhibit 4 to this affidavit.

17 29. On February 18, 2012, Wynn Resorts gave notice to the Nevada State Gaming
18 Control Board that the board had found Mr. Okada, Aruze, and Universal to be "Unsuitable
19 Persons" and redeemed Aruze's shares pursuant to Article VII in exchange for a promissory note.
20 To my knowledge, the Gaming Control Board has expressed no concern with respect to the
21 board's unsuitability determination, the redemption of Aruze's shares, or the board's decision to
22 issue a promissory note to Aruze.

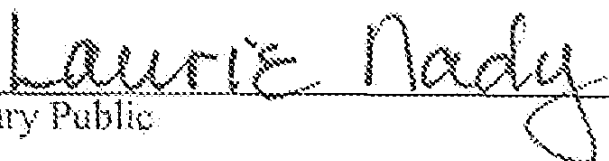
23 30. I understand that, in this motion, Aruze is making two main arguments — first,
24 that Aruze's shares are not subject to the redemption provisions that the board invoked because
25 Article VII has never applied to them; and, second, that the redemption was a "sham" meant to
26 advance a plan by Steve Wynn to increase control over Wynn Resorts, and that the board has
27
28

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1 treated Mr. Okada unfairly because the directors are simply carrying out Steve Wynn's personal
2 wishes. I am unaware of any evidence that would support these contentions.

3
4
5
6 
7 ROBERT J. MILLER

8 Subscribed and sworn to in my presence this
9 20th day of September, 2012

10 
11 Notary Public

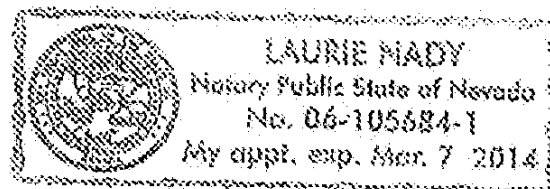


EXHIBIT 1

REPORT
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I. Introduction

Wynn Resorts, Limited (“Wynn Resorts”), a publicly traded company incorporated in the State of Nevada, on behalf of its Compliance Committee, retained Freeh Sporkin & Sullivan, LLP (“FSS”) on November 2, 2011 to conduct an independent investigation. That independent investigation has been conducted under the sole direction of the Compliance Committee. The purpose of the investigation was to determine whether there is evidence that Mr. Kazuo Okada, a member of the Wynn Resorts Board of Directors, may have: (i) breached his fiduciary duties to Wynn Resorts; (ii) engaged in conduct that potentially could jeopardize the gaming licenses of Wynn Resorts; and/or, (iii) violated the Wynn Resorts compliance policy. Specifically, FSS has been asked to examine Mr. Okada’s efforts in connection with the creation of a gaming establishment in the Republic of the Philippines.

This is the Report to the Compliance Committee Chairman on the results of FSS’ investigation. As set forth with greater detail in the attached appendix, FSS has performed its investigation by interviewing dozens of individuals and by reviewing thousands of documents, electronic emails, corporate and public records.

II. Summary

The investigation has produced substantial evidence that:

1. Despite being advised by the Wynn Resorts Board of Directors and Wynn Resorts attorneys on the strict US anti-bribery laws which govern Wynn Resorts and its board, Mr. Okada strongly believes and asserts that when doing business in Asia, he should be able to provide gifts and things of value to foreign government officials, whether directly or by the use of third party intermediaries or consultants.
2. Mr. Okada, his associates and companies have arranged and designed his corporate gaming business and operations in the Philippines in a manner which appears to contravene Philippine Constitutional provisions and statutes that require 60% ownership by Philippine nationals, as well as a Philippine criminal statute.
3. Mr. Okada, his associates and companies appear to have engaged in a longstanding practice of making payments and gifts to his two (2) chief gaming regulators at the Philippines Amusement and Gaming Corporation (“PAGCOR”), who directly oversee and regulate Mr. Okada’s Provisional Licensing Agreement to operate in that country. Since 2008, Mr. Okada and his associates have made multiple payments to and on behalf of these chief regulators, former PAGCOR Chairman Efraim Genuino and Chairman Cristino Naguiat (his current chief regulator), their families and PAGCOR associates, in an amount exceeding US 110,000. At times, Mr. Okada, his

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associates and companies have consciously taken active measures to conceal both the nature and amount of these payments, which appear to be prima facie violations of the United States Foreign Corrupt Practices Act (“FCPA”). In one such instance in September 2010, Mr. Okada, his associates and companies, paid the expenses for a luxury stay at Wynn Macau by Chairman Naguiat, Chairman Naguiat’s wife, their three children and nanny, along with other senior PAGCOR officials, one of whom also brought his family. Mr. Okada and his staff intentionally attempted to disguise this particular visit by Chairman Naguiat by keeping his identity “Incognito” and attempting to get Wynn Resorts to pay for the excessive costs of the chief regulator’s stay, fearing an investigation. Wynn Resorts rejected the request by Mr. Okada and his associates to disguise and to conceal the actual expenditures made on behalf of Chairman Naguiat.

4. Additionally, Mr. Okada, his associates and companies appear to have engaged in a pattern of such prima facie violations of the FCPA. For example, in 2010 it also is possible that Mr. Okada, his associates and companies made similar payments to a Korean government official who oversees Mr. Okada’s initial gaming investment in that country. Additional investigation is needed to develop and confirm these possible FCPA violations.
5. The prima facie FCPA violations by Mr. Okada, his associates and companies constitute a substantial, ongoing risk to Wynn Resorts and to its Board of Directors, creating regulatory risk, conflicts of interest and potential violations of his fiduciary duty to Wynn Resorts. Finally, Mr. Okada’s documented refusal to receive Wynn Resorts requisite FCPA training provided to other Directors, as well as his failure to sign an acknowledgment of understanding of Wynn Resorts Code of Conduct, increase this risk going forward.
6. Mr. Okada insisted in his interview that all of his gaming efforts in the Philippines prior to the change of the presidential administration in the summer of 2010 were undertaken on behalf of and for the benefit of Steve Wynn and Wynn Resorts. This assertion is contradicted by press releases dating back to 2007 on his website, which announce an independent effort by Universal; his real estate investments; and the ownership of his corporations in the Philippines.
7. (7) Mr. Okada has stated that Universal paid expenses related to then-PAGCOR Chairman Genuino’s trip to Beijing during the 2008 Olympics.

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III. Kazuo Okada's Relevant Corporate Affiliations

A. Wynn Resorts

After an initial public offering which closed in October 2002, Aruze USA, Inc., controlled by Mr. Okada, became a 24.5% shareholder of Wynn Resorts. Mr. Okada's current ownership of Wynn Resorts through his control of Aruze USA, Inc. is 19.66%.

Mr. Okada became a member of the Wynn Resorts Board of Directors on October 21, 2002, and remains on the Board of Directors as of the date of this Report. In the past, Mr. Okada has used the title of Vice Chairman of Wynn Resorts. In October 2011, the Wynn Resorts Board of Directors eliminated the position of Vice Chairman.

As a Director of Wynn Resorts, Mr. Okada is entitled to receive the courtesy of what is called a "City Ledger Account." Such accounts were originally instituted as a result of Sarbanes Oxley's prohibition of extensions of credit, in the form of a personal loan from an issuer to an officer or director. The accounts were funded by deposits from the director or his company. Such an account exists for billing conveniences related to charges incurred at various Wynn Resorts locales. Mr. Okada has availed himself of this courtesy and established such a City Ledger Account.¹ Within Wynn Resorts, this Okada City Ledger Account is referred to either as the "Universal City Ledger Account" or as the "Aruze City Ledger Account." Accordingly, the phrases Universal City Ledger Account and Aruze City Ledger Account will be referred to interchangeably within this report despite the fact that Aruze Corp.'s name was changed to Universal Entertainment Corporation in November of 2009.

Mr. Okada has been found to be suitable by the Nevada Gaming Commission.²

B. Universal Entertainment Corporation of Japan

Mr. Okada currently serves as Director and Chairman of the Board of Universal Entertainment Corporation ("Universal Entertainment"), registered in Tokyo, Japan. Universal Entertainment Corporation is the current trade name of a company which was incorporated in 1969 as Universal Lease Co. Ltd. and which became Aruze Corp. in 1998. Aruze changed its

¹ The initial wire to establish the Aruze Corp. City Ledger Account was dated February 15, 2008.

² Mr. Okada was originally found to be suitable as a shareholder of Aruze Corp. as part of *An Order of Registration* issued jointly by the State Gaming Control Board and the Nevada Gaming Commission on June 4, 2004. On June 5, 2005, in a similar order, the Nevada Commission and the State Gaming Control Board found Aruze Corp. to be (1) suitable as a controlling shareholder of Wynn Resorts, Limited, (2) suitable as the sole shareholder of Aruze USA, Inc., (3) that Aruze USA, Inc. is registered as an intermediary company and is found suitable as a shareholder of Wynn Resorts, Limited, and (4) that Mr. Okada is suitable as a shareholder and controlling shareholder of Aruze Corp. [See Appendix]

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name to Universal Entertainment Corporation in November 2009. Universal is listed on the JASDAQ stock exchange and is engaged in the manufacture and sale of pachinko and gaming machines and related business activities. As of September 2011, Okada Holdings Godokaisha was Universal Entertainment's major shareholder, with 67.90% of the issued shares.

The Nevada Gaming Commission has approved Universal Entertainment's suitability as the 100% shareholder for a subsidiary, Aruze USA, Inc.

C. Aruze USA, Inc.

Aruze USA, Inc. ("Aruze USA") is a wholly owned subsidiary of Universal Entertainment. Aruze USA is a US company and was incorporated in the State of Nevada on June 9, 1999. Mr. Okada is a Director of Aruze USA and serves as its President, Secretary, and Treasurer.

Aruze USA has been found suitable by the Nevada Gaming Commission as a major shareholder of Wynn Resorts.

D. Aruze Gaming America, Inc.

Aruze Gaming America, Inc. is a private company that is 100% personally owned by Mr. Okada. He currently serves as a Director, Secretary, and Treasurer of the company. Aruze Gaming America, Inc. is a US company and was incorporated on February 7, 1983. The company changed its name from Universal Distributing of Nevada, Inc. to Aruze Gaming America, Inc. on January 6, 2006. Aruze Gaming America, Inc. shares a common business address with Aruze USA, Inc. in Las Vegas, Nevada.

E. Business Interests in the Republic of the Philippines

Since 2008, Mr. Okada has been involved with a variety of corporate entities and with various business associates in the creation of a gaming establishment in an area of the Philippines known as Entertainment City Manila.³ In furtherance of this endeavor, Mr. Okada and his associates have procured land and a provisional gaming license in the Philippines. A more detailed review of Mr. Okada's corporate entities and business associates in the Philippines is set forth in Section V(2)(A) below.

F. Business Interests in the Republic of Korea

Mr. Okada has recently pursued development of a casino resort complex in the Incheon Free Economic Zone in the Republic of Korea. A more detailed review of Mr. Okada's activities in Korea is set forth in Section V(4) below.

³ On the Universal Entertainment website (viewed January 30, 2012) this project is referenced as "Manila Bay Resorts." [See Appendix]

IV. Relevant Legal and Policy Standards

A. FCPA

The United States Foreign Corrupt Practices Act (“FCPA”) contains two primary categories of violations: (i) a books and records provision, and (ii) a bribery provision. Based upon available information, it seems clear that Aruze USA fits the definition of domestic concern⁴ and United States person⁵ provided in the FCPA, and that the FCPA applies both to Aruze USA and to Mr. Okada personally, in his capacity as an officer and director of Aruze USA.

Under the definitions of domestic concern and United States person, the statute applies to a corporation, partnership, unincorporated organization and other enumerated entities that have their principal place of business in the United States or which are organized under the laws of a State of the United States. It also applies to officers and directors of such concerns.⁶

In 1998, the FCPA was amended and added an alternative basis to interstate commerce for jurisdiction. As the United States District Court for the Southern District of New York wrote: “. . . . The amendments expanded FCPA coverage to ‘any person’ -- not just ‘issuers’ or ‘domestic concerns’ [A]ny United States person or entity violating the Act outside of the United States is subject to prosecution, regardless of whether any means of interstate commerce were used. Citing 15 USC 78dd-1, 78dd-2. . . . (Emphasis added.)⁷

Under this definition, Aruze USA is a covered party under the FCPA.

The FCPA provides that “[i]t shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd–1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)

⁴ 15 U.S.C. 78 dd – 2(a),(h).

⁵ 15 U.S.C. 78 dd – 2(i).

⁶ 15 U.S.C. 78 dd – 2(g).

⁷ *In re Grand Jury Subpoena*, 218 F. Supp. 2d 544, 550 (S.D.N.Y. 2002).

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- (i) influencing any act or decision of such foreign official in his official capacity,
 - (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or
 - (iii) securing any improper advantage; or
- (B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; . . .”⁸

The head of PAGCOR fits within the definition of foreign official as used in the FCPA.

According to PAGCOR’s website, it “is a 100 percent government-owned and controlled corporation that runs under the direct supervision of the Office of the President of the Republic of the Philippines.”⁹ In addition to prescribing mandates to generate revenue for certain government programs and promote tourism in the Philippines, PAGCOR’s charter states that the entity will “...[r]egulate, authorize and license games of chance, games of cards and games of numbers, *particularly casino gaming*, in the Philippines....”¹⁰ (Emphasis added.)

As set forth above, there is still the interstate commerce basis for jurisdiction, but there is also an alternative. The alternative would require the same elements for an offense, but a showing of interstate commerce would not be required. If the interstate commerce basis for jurisdiction were used, the analysis set forth below would be of significance.

With regard to means or instrumentality of interstate commerce, some of the facts referred to in this report pertain to Mr. Okada utilizing the Universal City Ledger Account to confer financial benefits upon Philippine gambling regulators who could affect the business interests of Aruze USA, Inc. in the Philippines. Some of those benefits were conferred at Wynn Macau. The following facts concerning the Universal City Ledger Account, which bear upon use of means or instrumentalities of interstate commerce, were established during the investigation:

- The account is maintained at the corporate offices of Wynn Resorts, Limited in Las Vegas, Nevada where periodic deposits are made from Universal into the Wynn Resorts, Limited operating account at Bank of America in Las Vegas, Nevada to ensure that the amount on deposit remains at or about US 100,000. Bank documents reflect that the deposits are received from a Universal Entertainment account located in Japan.¹¹

⁸ 15 U.S.C. Section 78dd – 2(a).

⁹ <http://www.pagcor.ph/pagcor-faqs-profile.php>, viewed January 18, 2012. [See Appendix]

¹⁰ Ibid., viewed January 18, 2012. [See Appendix]

¹¹ See, e.g. wire transfer documents from Sumitomo Mitsumi Bank to Bank of America. [See Appendix]

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- When charges are incurred at Wynn Macau, Wynn Macau tracks all charges for the Universal City Ledger Account on its books, and then the accounting department transfers the charges to accounting at Wynn Resorts, Limited in Las Vegas via a journal entry. Wynn Macau sends a pdf file to a staff accountant at Wynn Resorts, Limited in Las Vegas with all the backup documentation. Invoices issued by Wynn Resorts, Limited are periodically sent to a Universal Entertainment email address.¹²

B. Nevada Gaming Regulations and Wynn Resorts Policies

The question of whether or not a gaming licensee or licensee applicant is deemed “suitable” in Nevada is answered by reviewing the Nevada Revised Statutes (“NRS”) in conjunction with the regulations promulgated by the Nevada Gaming Commission (“NGC”), which is empowered by the NRS.¹³

1. Legislative Authority

The standard for determining suitability is found in Section 463.170 of the NRS. Paragraph (2) of the NRS 463.170, entitled *Qualifications for license, finding of suitability or approval; regulations*, provides that the person seeking a license or a suitability determination is subject to the following considerations: “[a]n application to receive a license or be found suitable must not be granted unless the Commission is satisfied that the applicant is: (a) A person of good character, honesty and integrity; (b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this State or to the effective regulation and control of gaming. . . .” In addition, paragraph (3) provides in pertinent part “[a] license to operate a gaming establishment or an inter-casino linked system must not be granted unless the applicant has satisfied the Commission that: (a) [t]he applicant has adequate business probity, competence and experience, in gaming or generally. . . .”

The Nevada Gaming Commission Regulations (“Nevada Gaming Regulations”) are also relevant to the conditions placed upon suitability. According to Section 3.080 of the Nevada Gaming Regulations, entitled *Unsuitable affiliates*, “[t]he commission may deny, revoke, suspend, limit, condition or restrict any registration or finding of suitability or application therefor upon the same grounds as it may take such action with respect to licenses, licensees and licensing; without exclusion of any other grounds.” Paragraph (1) of Section 3.090, entitled

¹² In a Wynn Resorts Memorandum to File from the Corporate Accounting department, dated January 10, 2012, the “invoice[s] and all support documentation are emailed to kimiko.okamura@hq.universal-777.com, takashi.usami@hq.universal-777.com and iwayama.hidetsugu@hq.universal-777.com on the 5th of each month for the prior month [sic] activity.” [See Appendix]

¹³ For further advice regarding suitability, please consult directly with David Arrajj, Esq. and/or see Memo dated December 9, 2011 from Kate Lowenhar-Fisher, Esq. and Jamie L. Thalgott, Esq. to David Arrajj, Esq. re Associations and the Suitability Analysis. [See Appendix]

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Standards for commission action, provides in pertinent part that “[n]o license, registration, finding of suitability, or approval shall be granted unless and until the applicant has satisfied the commission that the applicant: (a) Is a person of good character, honesty, and integrity; (b) Is a person whose background, reputation and associations will not result in adverse publicity for the State of Nevada and its gaming industry; and (c) Has adequate business competence and experience for the role or position for which application is made.”

2. Underlying Corporate Documents of Wynn Resorts

The Second Amended and Restated Articles of Incorporation of Wynn Resorts, Limited (filed September 16, 2002) also provide for standards that seek to define an “Unsuitable Person.” As set forth on page 8 of the Articles of Incorporation, the phrase Unsuitable Person “shall mean a Person who . . . 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 application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License.” (Emphasis added.)

Finally, the Amended and Restated Gaming and Compliance Program of Wynn Resorts, Limited (adopted as of July 29, 2010) defines an *Unsuitable person* as a “[p]erson (i) who has been denied licensing or other related approvals by a Gaming Authority on the grounds of unsuitability or who has been determined to be unsuitable to be associated with a gaming enterprise by a Gaming Authority; or (ii) that the Company determines is unqualified as a business associate of the Company or its Affiliates based on, without limitation, that Person’s antecedents, associations, financial practices, financial condition or business probity.”

In the event of a finding of unsuitability, there are provisions within the aforementioned corporate documents that provide for a resolution post determination. Specifically, on page 6 of the Second Amended and Restated Articles of Incorporation of Wynn Resorts, Limited, the Articles state in pertinent part, “[t]he 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. If a Gaming Authority requires the Corporation, or the board of directors deems it necessary or advisable, to redeem any such Securities, the Corporation shall give a Redemption Notice to the Unsuitable Person or its Affiliate and shall purchase on the Redemption Date the number of shares of the Securities specified in the Redemption Notice for the Price set forth in the Redemption Notice. . . .” The Articles provide further guidance as to the terms of the redemption.

In addition, according to Section 3.6 of the Fourth Amended and Restated Bylaws, effective as of November 13, 2006, the removal of a director is premised upon “. . . the

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affirmative vote of the holders of not less than two-thirds (2/3) of the voting power of the issued and outstanding stock of the Corporation entitled to vote generally in the election of directors (voting as a single class). . . .” Resignation is also listed as an option “upon giving written notice, unless the notice specifies a later time for effectiveness of such resignation, to the chairman of the board, if any, the president or secretary, or in the absence of all of them, any other officer.”

C. Wynn Resorts Code of Business Ethics

Wynn Resorts first adopted a Code of Business Conduct and Ethics on May 4, 2004. The document defines itself as “a statement of policies for the individual and business conduct of the Company’s employees and Directors”¹⁴ There are two sections of the Code that are relevant to this investigation: (i) conflict of interest and (ii) interaction with government officials. The sections are included below for reference purposes.

1. Conflict of Interest:

"A Conflict of interest occurs when your private interests interfere, or even appear to interfere, with the interests of the Company. A conflict situation can arise when you take actions or have interests that make it difficult for you to perform your Company work objectively and effectively. 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 personal and business relationships. This includes full disclosure of any actual, apparent or potential conflicts of interest as set forth below.

Special rules apply to executive officers and Directors who engage in conduct that creates an actual, apparent or potential conflict of interest. Before engaging in any such conduct, executive officers and Directors must make full disclosure of all facts and circumstances to the Corporate Secretary, who shall inform and seek the prior approval of the Audit Committee of the Board of Directors."

2. Interacting with Government:

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."

¹⁴ Wynn Resorts Code of Business Conduct and Ethics dated May 4, 2004, page 7. [See Appendix]

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Bribery of Government Officials

"The Company's Policy Regarding Payments to Foreign Officials, the U.S. Foreign Corrupt Practices Act (the "FCPA"), and the laws of many other countries prohibit the Company and its officers, employees and agents from giving or offering to give money or anything of value to a foreign official, a foreign political party, a party official or a candidate for political office in order 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 Policy Regarding Payments to Foreign Officials for more details regarding prohibited payments to foreign government officials."

Discipline for Violations:

"The Company intends to use every reasonable effort to prevent the occurrence of conduct not in compliance with its Code and to halt any such conduct that may occur as soon as reasonably possible after its discovery. Subject to applicable laws 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." (Emphasis added.)

The Code has since been revised twice, once in 2009 and then again on November 1, 2011. Although the above sections have been expanded in these later editions, for the purpose of this investigation and the dates in question the substance has remained basically the same and the FCPA has continued to be a point of emphasis.

V. Report of Investigation

1. Mr. Okada's Attitude Toward Wynn Resorts Compliance Requirements

Mr. Okada's prima facie violations of FCPA, involving both his government regulators in the Philippines and possibly in Korea, do not appear to be accidental or based upon a misunderstanding of anti-bribery laws. Conversely, despite being advised by fellow Wynn Resorts Board members and Wynn Resorts counsel that payments and gifts to foreign government officials are strictly prohibited, Mr. Okada has insisted that there is nothing wrong with this practice in Asian countries. Mr. Okada has stated his personal rejection of Wynn Resorts anti-bribery rules and regulations, as well as legal prohibitions against making such payments to government officials, to fellow Wynn Resorts Board members.

In a February 24, 2011 Wynn Resorts Board of Directors ("Board") meeting at which Mr. Okada was present, after a lengthy discussion by the Board of the FCPA,¹⁵ including specifically the Universal project in the Philippines and potential Wynn Resorts' involvement, "[t]he

¹⁵ In an email from Kim Sinatra to Michiaki Tanaka, dated February 26, 2011, Ms. Sinatra referenced a meeting with Mr. Okada in which she furnished FCPA policy and training materials and reiterated the importance of strict compliance with the FCPA. [See Appendix]

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independent members of the board unanimously advised management that any involvement [by Wynn Resorts] in the Philippines under the current circumstances was inadvisable.”¹⁶ During this discussion, Mr. Okada challenged the other board members over statements regarding the impermissibility under the FCPA of giving gifts abroad in return for favorable treatment, and made statements about hiring “third party consultants” to give gifts to officials.¹⁷

One board member recalled Mr. Okada stating that, in Asia, one must follow the local culture, and that is why one should hire “consultants” to give the gifts.¹⁸ This board member understood Mr. Okada to mean that such use of consultants would help avoid prosecution under the FCPA. Another board member who was present recalled Mr. Okada stating that conducting business in the Philippines was all a matter of “hiring the right people” to pay other people.¹⁹ Yet another board member recalled Mr. Okada being “adamant” during the FCPA discussion that it is not corrupt to give “gifts.”²⁰ A board member who participated in the meeting by phone recalled Mr. Okada claiming that, in the Philippines, “business is done in a different manner, and sometimes you have an ‘intermediary’ that will do whatever he has to do,” or words to that effect.²¹ A different board member recalled being “shocked” by the contradiction between two of Mr. Okada’s statements during this discussion.²² Early in the discussion, Mr. Okada explained that there were no longer corruption issues in the Philippines with the new administration. However, Mr. Okada subsequently stated, in effect, that while he himself would not pay bribes, he would “hire someone else” to bribe the necessary person.

Pursuant to a chain of emails reviewed by FSS, commencing with an email on August 4, 2011 from Roxane Peper, Director of Intellectual Property and Corporate Records, to each of the board members (or their representatives), and ending with an email from Ms. Peper to Kevin Tourek, Senior Vice President and Corporate Counsel, on October 26, 2011, the following is clear:²³

- All board members were notified of upcoming FCPA training/board meeting set for October 31 – November 1, 2011 and asked to confirm attendance by August 31, 2011.
- Mr. Okada, through two of his representatives, was emailed at least three (3) separate times before Shinobu Noda, his assistant, sent an email on September 15, 2011 confirming that Mr. Okada would attend.

¹⁶ Minutes of Wynn Resorts Board of Directors meeting, February 24, 2011, p.3. [See Appendix]

¹⁷ Interview of Steve Wynn, November 7, 2011.

¹⁸ Interview of Robert J. Miller, December 16, 2011.

¹⁹ Interview of Alvin V. Shoemaker, December 20, 2011.

²⁰ Interview of Marc D. Schorr, December 20, 2011.

²¹ Interview of Allan Zeman, December 21, 2011.

²² Interview of D. Boone Wayson, December 20, 2011.

²³ See emails from Roxane Peper to Kevin Tourek on October 26, 2011. [See Appendix]

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Subsequent to the confirmation, Ms. Peper received an email from Ms. Noda on October 25, 2011. Ms. Noda stated that the email contained a message to Kim Sinatra, Senior Vice President and General Counsel of Wynn Resorts, from Mr. Okada.²⁴ This part of the message was entirely in Japanese and had to be translated. Mr. Okada asked for the FCPA training materials to be provided in Japanese. He also stated that he would be arriving on “Monday [October 31]”, which was the day the FCPA training was to commence. He asked if the training could be held after the board meeting or rescheduled. Kim Sinatra sent a response to Ms. Noda via email on October 25, 2011 thanking Mr. Okada for the note and stating further that the FCPA training materials had been translated and would be provided to him via email and that Wynn Resorts had made further arrangements to have the FCPA live training translated to Japanese via simultaneous translation.²⁵ She also stated that the date of the training could not be rescheduled because it had been planned around his previous confirmation and that outside counsel was coming to Las Vegas to provide the training.

Mr. Okada failed to attend the training on October 31, 2011. He was the only member of the board not in attendance (all others attended in person or via telephone dial-in as evidenced via a sign-in sheet).²⁶

2. Gaming Establishment in the Philippines

Evidence obtained in the course of the investigation establishes that Mr. Okada, his associates and companies, may have arranged and manipulated the ownership and management of legal entities in the Philippines under his control, in a manner that may have enabled the evasion of Philippine constitutional and statutory requirements. It is also noted that Mr. Okada’s two principal Philippine corporations, Eagle I Landholdings, Inc. and Eagle II Holdco, Inc., which may have been purposefully created to circumvent Philippine constitutional restrictions on foreign ownership of land, appear to be closely intertwined with Rodolfo Soriano, Paolo Bombase and Manuel M. Camacho, who have numerous common ties to former PAGCOR Chairman Efraim Genuino. For example, with regard to Eagle II Holdco, Inc., as late as 2010, Platinum Gaming and Entertainment (“Platinum”) had acquired 60% of its shares. According to a dated filing by Platinum on file with the Philippine SEC, Rodolfo Soriano controlled 20% of Platinum at the time of its incorporation. Mr. Soriano, referred to by attorney Camacho as a “bag man” for then-Chairman Genuino, is a former PAGCOR consultant and respondent in PAGCOR corruption referrals (see page 15 *infra*). Similarly, Paolo Bombase, an officer, director and nominal shareholder of Eagle I Landholding, Inc. and Eagle II Holdco, Inc. has a 1.25% share of Ophiuchus Real Properties Corp. This Ophiuchus entity is 15% owned by a Philippine company named SEAA Corp. In turn, SEAA is the family-controlled company of former PAGCOR Chairman Efraim Genuino. At this time, the significance of this interlocking shareholder link

²⁴ See email from Shinobu Noda to Roxane Peper dated October 25, 2011. [See Appendix]

²⁵ See email from Kim Sinatra to Shinobu Noda dated October 25, 2011. [See Appendix]

²⁶ See FCPA Training Sign-In sheet dated October 31, 2011. [See Appendix]

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between Mr. Okada, his former Philippine gaming regulator, and the regulator's associates is not known.

A. Corporate Links between Mr. Okada's Business Interests and Those of Philippine Government Officials

Close associates and consultants of the former Genuino PAGCOR administration eventually attained positions as corporate officers, directors and/or nominal shareholders in legal entities controlled by Mr. Okada, and, in some cases, served as links between the business interests of Mr. Okada and those of former PAGCOR chairman Efraim Genuino and members of Genuino's immediate family.

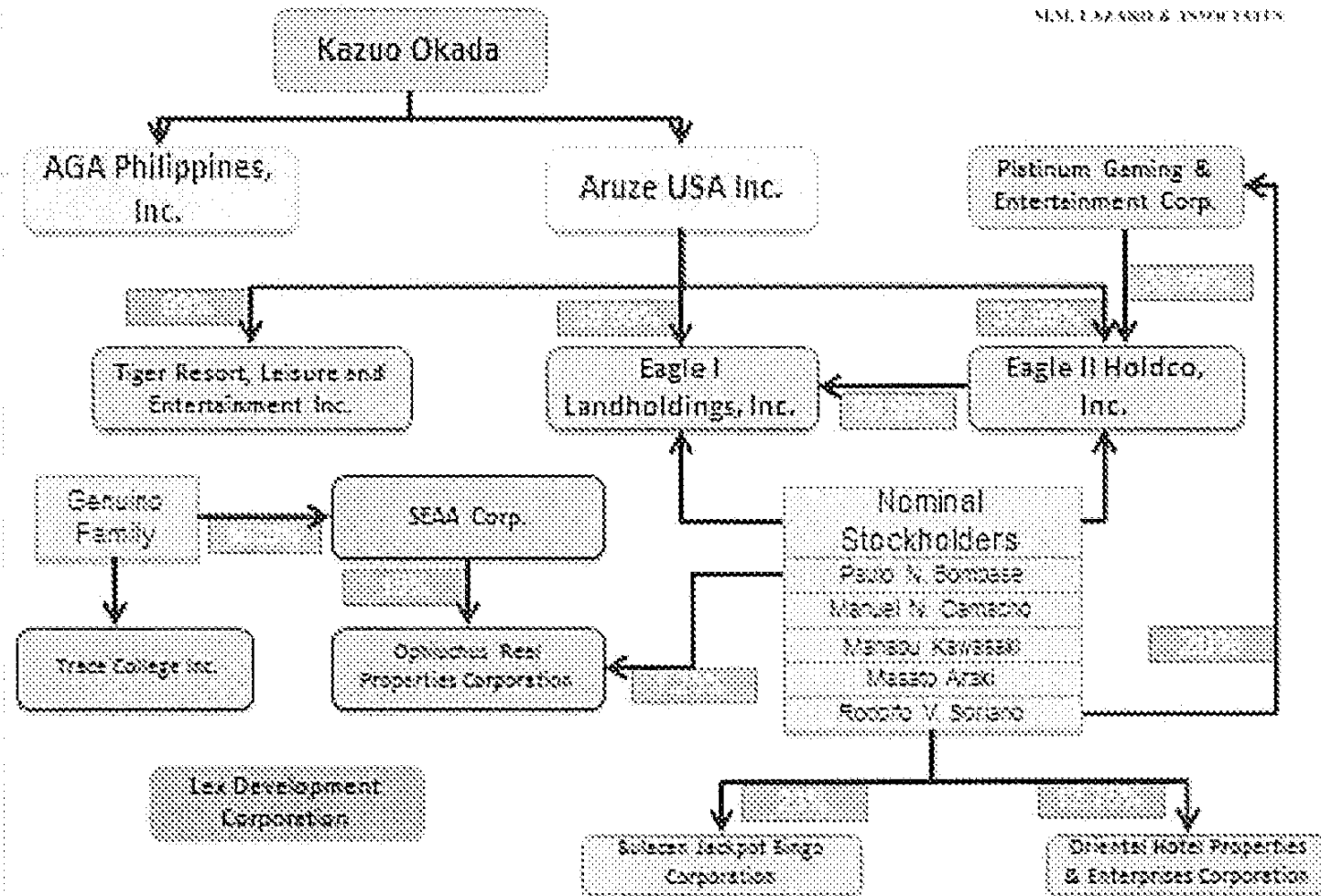
In order to better understand the interrelationships among corporate entities in the Philippines controlled by Mr. Okada and those controlled by PAGCOR officials and their associates, FSS requested the Philippines law firm of M. M. Lazaro & Associates ("Lazaro") to produce a study of this issue.²⁷ Drawing upon official records obtained from the Philippines Securities and Exchange Commission, Lazaro produced an analysis of the relationships created by the ownership and control structures of these entities.²⁸ The chart below, extracted from that analysis, illustrates these relationships in schematic form.

²⁷ Manuel Lazaro was formerly a government corporate counsel with the rank and privileges of a Philippine presiding justice, court of appeals, who FSS retained to assist in the investigation and to advise on certain aspects of Philippine law. [See Appendix]

²⁸ The complete Lazaro PPT is attached to this report. [See Appendix]

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Overview



Tiger Resorts, Leisure and Entertainment, Inc. ("Tiger") was incorporated in the Philippines on June 13, 2008.²⁹ Its primary purpose was stated as:

To acquire, own, maintain, operate and/or manage hotels (city and resort), inns, apartments, private clubs, pension houses, convention halls, lodging houses, restaurants, cocktail bars, and any and all services and facilities related or incident thereto.³⁰

Tiger is predominantly owned by Aruze USA, Inc.³¹ In August 2008, PAGCOR granted Tiger a Provisional Licensing Agreement to operate a gaming establishment in the Entertainment City Manila Zone. An official of the current PAGCOR administration told FSS in December 2011 that PAGCOR was currently reexamining this license.³²

²⁹ Articles of Incorporation of Tiger. [See Appendix]

³⁰ Ibid. [See Appendix]

³¹ GIS of Tiger, 2010. [See Appendix]

³² Combined interview of Jay Daniel R. Santiago and Thadeo Francis P. Hernando, on December 12, 2011. It should be noted that after the interview with Santiago and Hernando, FSS along with its Philippine counsel, for purposes of this investigation, formally requested a copy of the Provisional Licensing Agreement from PAGCOR, as well as other related documents. On the same date that the formal request was made, PAGCOR refused to supply a

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Eagle I Landholdings, Inc. (“Eagle I”) was incorporated in the Philippines on May 16, 2008 with 5 partners of the Philippines law firm Sycip Salazar Gatmaitan (“Sycip”) as the shareholders, directors and officers.³³ By certification on September 5, 2008, the original shareholders were all replaced by, among others, Eagle II Holdco, Inc. (“Eagle II”), with approximately 60% ownership. Eagle II maintained this percentage of ownership of Eagle I through the filing of the latest available General Information Statement (“GIS”) for the year 2010.³⁴ Eagle I’s 2009 GIS, filed September 17, 2009, indicates that Paolo Bombase, Manuel N. Camacho and Rodolfo V. Soriano (whose associations with PAGCOR and Mr. Genuino are explained below) all had become officers/directors and nominal stockholders of Eagle I; they retained this status through the filing of the latest GIS for Eagle I.³⁵ Aruze USA, Inc. first appears as the owner of approximately 40% of Eagle I as of the 2010 GIS, owning the share previously owned by Molly Investments Cooperative UA (“Molly”).³⁶

Eagle II’s filings with the Philippines Securities and Exchange Commission indicate a history similar to that of Eagle I. Incorporated on May 19, 2008 by the same 5 Sycip partners,³⁷ Eagle II reflected the acquisition of approximately 60% of its shares by Platinum Gaming & Entertainment Corp. (“Platinum”) on its GIS filed September 17, 2009, with Platinum owning the same percentage as of the 2010 GIS.³⁸ The same filings reflect the appearance--in 2009 and continuing through the 2010 filing--of Messrs. Camacho, Soriano and Bombase as officers/directors and nominal shareholders. In 2010 Aruze USA, Inc. appears with the 40% shareholding that was attributed to Molly in 2009.³⁹

Platinum was incorporated in the Philippines on November 21, 2001, with a Certificate of Filing of Amended Articles of Incorporation (“AOI”) issued by the Philippines Securities and Exchange Commission on June 10, 2002.⁴⁰ Platinum has no GIS on file with the Philippines Securities and Exchange Commission, and the only corporate document filed besides the Articles of Incorporation is the 2004 Financial Statement. The latest information on file lists Mr.

copy of Tiger’s Provisional Licensing Agreement, saying that they were bound by a non-disclosure clause. That refusal was signed by Francis P. Hernando, who is identified below as a PAGCOR employee, who stayed in Wynn Macau in June 2011 and had US 709.72 of expenses paid for by the Aruze City Ledger account. See Letter of Request and Letter of Refusal. [See Appendix]

³³ Articles of Incorporation of Eagle I. [See Appendix]

³⁴ GIS of Eagle I for years 2009 and 2010. [See Appendix] A GIS is required to be filed on an annual basis according to Section 141 of the Corporation Code of the Philippines. [See Appendix]

³⁵ Ibid. [See Appendix]

³⁶ Ibid. [See Appendix]; FSS has determined Molly to be a wholly owned subsidiary of Aruze Corp. See http://www.universal-777.com/en/ir/ir_lib/material/annual_20081119.pdf, page 32.

³⁷ Articles of Incorporation of Eagle II. [See Appendix]

³⁸ GIS of Eagle II, years 2009-2010. [See Appendix]

³⁹ GIS of Eagle II, 2010. [See Appendix]

⁴⁰ Articles of Incorporation of Platinum, as amended June 10, 2002. [See Appendix]

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Soriano, a former PAGCOR consultant, as a director/officer and a 20% shareholder in Platinum.⁴¹

Messrs. Camacho, Bombase and Soriano are all directly associated with former PAGCOR Chairman Genuino in significant ways. Mr. Camacho is an attorney and a principal of the Manila law firm Camacho & Associates. He was for a time in a law partnership with Mr. Genuino's son, Erwin Genuino.⁴² Mr. Camacho traveled to Japan with Mr. Soriano at then PAGCOR Chairman Genuino's behest, to meet with Mr. Okada and other representatives of Aruze. This meeting resulted in Mr. Camacho's firm replacing Sycip in representing Aruze with respect to the development of the project in Entertainment City Manila.⁴³

Sometime subsequent to this meeting, Aruze wired retainer funds to the bank account of Mr. Camacho's firm, an account controlled jointly by Mr. Camacho and Erwin Genuino. Later, Mr. Camacho discovered that all or most of these funds had been withdrawn by Erwin Genuino. When he questioned this withdrawal, he was eventually told by Mr. Soriano and/or then PAGCOR Chairman Genuino that the funds had been withdrawn to be used as a "cash payoff" to the mayor of the municipality in which the Entertainment City Manila project is located, in order to facilitate approval of the use of some plots of land to build roads needed for Mr. Okada's casino project. Mr. Camacho claims to have had a falling out with Erwin Genuino and Mr. Soriano, and to be involved currently in a lawsuit against Erwin Genuino over the dissolution of their law partnership.⁴⁴ Erwin Genuino is named as a respondent, along with former PAGCOR Chairman Genuino, in two sworn corruption referrals ("PAGCOR Referrals") filed with the Republic of the Philippines Department of Justice ("DOJ") in the summer of 2011 by the current PAGCOR Administration.⁴⁵

Mr. Bombase, also an attorney, is an officer/director and shareholder of Ophiuchus Real Properties Corporation ("Ophiuchus"), incorporated in April 2011.⁴⁶ According to its 2011 GIS, Ophiuchus was 15% owned by SEAA Corporation ("SEAA").⁴⁷ SEAA, which was registered with the Philippine SEC on December 3, 1997, is, according to its 2011 GIS, 100% owned by members of former PAGCOR Chairman Genuino's immediate family.⁴⁸ The Articles of

⁴¹ M. M. Lazaro & Associates, "Aruze Corporations in the Philippines and 'Related' Corporations", p. 18. [See Appendix]

⁴² Interview of M. Camacho, December 13, 2011.

⁴³ In his discussion with FSS, Mr. Camacho referred to the firm only as "Aruze," not further defined.

⁴⁴ Although Mr. Camacho, who is in his seventies, failed to recall some details of his dealings with Mr. Genuino and Mr. Soriano, FSS credits the general account given by him during the December 13, 2011 interview.

⁴⁵ See PAGCOR Referrals. [See Appendix]

⁴⁶ Articles of Incorporation of Ophiuchus. [See Appendix]

⁴⁷ GIS of Ophiuchus, 2011. [See Appendix]

⁴⁸ GIS of SEAA, 2011. [See Appendix]

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Incorporation of Ophiuchus also list Emilio Marcelo as an officer/director and shareholder.⁴⁹ Mr. Marcelo is named as a respondent in the PAGCOR Referrals.⁵⁰

Mr. Soriano is a former PAGCOR consultant, named by Mr. Camacho as a close business associate and “bag man” for Mr. Genuino.⁵¹ Mr. Soriano is also named as a respondent in the PAGCOR Referrals.⁵² As of the latest information filed with the Philippines Securities and Exchange Commission in 2002, Mr. Soriano was a 20% shareholder and an officer/director of Platinum,⁵³ identified above as a 60% shareholder in Eagle II. If Mr. Soriano still held the same stake in Platinum when it acquired its share of Eagle II in 2009, then he became an effective owner of 12% of Eagle II and approximately 7% in Eagle I.

B. Apparent Evasion of Republic of Philippines Legal Requirements

As described in the preceding section, Mr. Okada caused various legal entities to be incorporated in the Philippines, in order to develop his casino resort project there, over time replacing the original incorporating Filipino shareholders with combinations of foreign shareholders affiliated with or controlled by him and associates of then-PAGCOR Chairman Genuino. As discussed below, there are constitutional and statutory requirements in the Republic of the Philippines requiring that purchasers of land be Philippines citizens or Filipino-owned legal entities, and that legal entities conducting business in the Philippines, with certain exceptions, be at least 60% Filipino owned.

In 2008, Eagle I purchased various tracts of land near Manila Bay totaling approximately 30 hectares at a total price of PHP 13,527,637,941.00 (approximately US 314,953,000.00) for the development of the project in Entertainment City Manila.⁵⁴

At FSS’ request, Lazaro prepared an analysis and opinion on the validity of Eagle I’s ownership of these properties, in light of the aforementioned provisions of the Philippines Constitution and applicable statutes.⁵⁵ The analysis included a detailed review of the ownership and capitalization of Eagle I and associated entities described in the preceding section. The following is a summary of pertinent findings of the Lazaro analysis.

⁴⁹ Articles of Incorporation of Ophiuchus. [See Appendix]

⁵⁰ See PAGCOR Referrals. [See Appendix]

⁵¹ Interview of M. Camacho, Dec 13, 2011.

⁵² See PAGCOR Referrals. [See Appendix]

⁵³ Articles of Incorporation of Platinum, as amended June 10, 2002. The 2001 Articles of Incorporation list four (4) additional 20% shareholders, identified as Filipino nationals. Because Platinum has not filed a GIS since 2002, the current ownership and control of Platinum is unknown. [See Appendix]

⁵⁴ Numbered Transfer Certificates of Title (“TCT”) for Eagle I purchase of land tracts in Parañaque City, Philippines, dated August 19, 2008. [See Appendix]

⁵⁵ M. M. Lazaro & Associates. Memo re “Validity of Eagle I’s Ownership of Real Estate Properties” (“Ownership Memo”), Jan 2012. [See Appendix]

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A review of the 2009 Financial Statement of Eagle I disclosed that the funds used to purchase the land tracts appear to have been advanced by Molly.⁵⁶

Platinum, the 59.99% owner of Eagle II, has filed no records with the Philippines Securities and Exchange Commission indicating that its paid-in capital ever increased beyond the original PHP 62,500, despite its amended Articles of Incorporation indicating that its authorized capital stock was increased from the initial PHP 1,000,000.00 to PHP 24,000,000.00.⁵⁷ Nor is it known today what person(s) or entities have controlled Platinum since incorporation in 2001.

The 1987 Constitution of the Philippines requires that only Philippines citizens or corporations with at least 60% of their capital stock owned by Filipinos are qualified to acquire land in the Philippines.⁵⁸ The Philippines Foreign Investment Act further requires that for a corporation to be considered a Philippines national, at least 60% of its capital stock outstanding and entitled to vote must be owned and held by citizens of the Philippines.⁵⁹

Whenever facts or circumstances create doubt as to whether the ownership of 60% of a corporation is truly Filipino, Philippines Securities and Exchange Commission case law has held that a stringent examination of the true ownership of the voting stock of the subject corporation and of the true ownership of the voting stock of all successive layers of corporate ownership should be conducted. The application of this stringent standard is known as the “Grandfather Rule.”⁶⁰

Serious doubts are therefore raised about the actual Filipino equity of Eagle I, because of the appearance that Eagle I and Eagle II were created purposely to “...circumvent the constitutional restriction on foreign ownership of land.”⁶¹ Lazaro bases this assertion on its conclusion that “...Platinum appears to be merely a shell corporation used to satisfy the Filipino equity requirement.”⁶² Application of the Grandfather Rule would therefore be appropriate.

Applying the Grandfather Rule, Lazaro calculates the true percentage of Filipino versus foreign equity in Eagle I as illustrated in the following table:⁶³

⁵⁶ Ibid, p. 2. [See Appendix]

⁵⁷ Ibid, pp. 5-6. [See Appendix]

⁵⁸ Ibid, p. 8. [See Appendix]

⁵⁹ Ibid, pp. 9-10. [See Appendix]

⁶⁰ Ibid, pp. 11-14. [See Appendix]

⁶¹ Ibid, p. 14. [See Appendix]

⁶² Ibid, pp. 14-15. [See Appendix]

⁶³ Ibid, p. 15. [See Appendix]

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Shareholder	Direct	Indirect	Total Filipino investment in Eagle I	Total Foreign investment in Eagle I
Aruze USA	40% of Eagle I	24% (40% of 60% total holdings of Eagle II in Eagle I)		64%
Platinum*		36% (60% of 60% total holdings of Eagle II in Eagle I)	36%	

*As noted above, Platinum has failed to file its annually required GIS with the Philippine SEC since its inception in 2001. The calculations in the above table prepared by Lazaro assume the “best case” scenario (for Platinum), i.e., that it is a truly 100% Filipino-owned corporation. If Platinum’s actual Filipino ownership is less than 100%, then the percentage of Filipino investment in Eagle I would be correspondingly even less than calculated in the table.

Lazaro concludes that “...the foregoing shareholder structure appears to have been formulated by the parties as a legal scheme to justify the qualification of Eagle I to own real estate properties. The scheme employed...gives Aruze USA, Inc....a convenient vehicle to justify its ownership...in circumvention of the constitutional restriction on the foreign ownership of land.”⁶⁴ Lazaro goes on to conclude that the apparent shareholder structuring scheme outlined above may also constitute a violation of Commonwealth Act No. 108, commonly known in the Philippines as the “Anti-Dummy Law.”⁶⁵ If convicted of a violation of this law, stockholders of Platinum and of Aruze USA, Inc. who profited from the scheme would face a sentence of imprisonment of not less than five years nor more than fifteen years.⁶⁶

From the foregoing discussion, there is substantial evidence and credible legal opinion indicating that the ownership structure of Eagle I and Eagle II may subject Mr. Okada, along with his associates and companies, to civil as well as criminal sanctions under Philippine law.

⁶⁴ Ibid, p. 16. [See Appendix]

⁶⁵ Ibid, pp. 16-17. [See Appendix]

⁶⁶ Ibid, p. 17. [See Appendix]

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3. Apparent FCPA Violations Regarding Philippine PAGCOR Officials at Wynn Resort Properties

FSS has reviewed records of the Aruze City Ledger Account, through which Mr. Okada and Universal charge expenses for lodging, entertainment and other incidentals incurred at Wynn Resorts facilities against funds deposited into the account by Universal, and available underlying documentation furnished by Wynn Resorts management. The table below highlights thirty-six (36) separate instances, from May, 2008, through June 2011 (more than a three (3) year period), when Mr. Okada, his associates and companies made payments exceeding US 110,000, which directly benefitted senior PAGCOR officials, including two chairmen and their family members.

Name	Relationship to PAGCOR/Phil. Gov't.	Location(s) and Date(s) of Stay(s)	Total Charged to Aruze City Ledger Account (in US)
Efraim C. Genuino	Former PAGCOR Chairman (February 2001 to June 30, 2010)	WM June 6-9 2010	1,870.64
Cristino L. Naguiat Jr.	PAGCOR Chairman (July 2, 2010 to Present)	WM Sep 22-26 2010	See Suzanne Bangsil ⁶⁷
		WLV Nov 15-20 2010	5,380.86
		WM June 6-10 2011	3,909.80
Dinner (Naguiat Party)	Chairman (PAGCOR)	WM Sep 24 2010 (Hosted by and charged to Kazuo Okada)	1,673.07
Maria Teresa Socorro Naguiat	Wife of PAGCOR Chairman Cristino L. Naguiat Jr.	WM June 6-10 2011	1,039.31
Suzanne Bangsil ⁶⁸	Wife of Rogelio Bangsil, PAGCOR	WM Sep 22-26 2010	50,523.22
Jose Miguel	Husband of former	WLV Nov 12-17	4,642.40

⁶⁷ Chairman Naguiat did not identify himself and Mr. Okada's representatives insisted that his stay there be "Incognito." Accordingly, the bulk of the charges for the trip are reflected on the City Ledger Account as attributable to "Suzanne Bangsil," the wife of Rogelio Bangsil, a senior PAGCOR official and Chairman Naguiat's employee. However, interviews, photo identifications and documentary evidence clearly establish that Chairman Naguiat was the "Incognito" guest and the direct beneficiary of these payments.

⁶⁸ Investigation has in fact determined that Chairman Naguiat was registered as an "Incognito" VIP guest under Suzanne Bangsil's reservation. Therefore, this US 50,523.22 was paid for Chairman Naguiat's benefit.

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"Mike" Arroyo	Philippines President Gloria M. Arroyo (Jan 20 2001 – June 20 2010)	2009	
Imelda Dimaporo	PAGCOR Board Member	WM June 8-10 2010	891.44
Philip Lo	PAGCOR Board Member	WLV April 29 2009 – May 3 2009	1,755.25
Manuel Roxas	PAGCOR Board Member	WLV April 2009 ⁶⁹	253.75
		WLV April 29 2009 – May 3 2009	1,686.95
Susan Vargas	PAGCOR Board Member	WM June 8-10 2010	480.17
Jose Tanjuatco	PAGCOR Board Member (July 19 2010 to Present)	WLV Nov 15-18 2010	2,148.57
Rogelio J. B. Bangsil	Officer in Charge of PAGCOR Gaming Department	WM Sep 24-26 2010	1,149.04
		WM June 6-12 2011	2,955.23
Rodolfo Soriano	PAGCOR Consultant	WM June 3-7 2008	1,186.08
		WLV Nov 12-17 2009	4,228.00
		WM June 7-10 2010	1,104.06
		WM Aug 18 2010	368.06
Olivia Soriano	Relative of Rodolfo Soriano	WLV May 2008	975.55
Anthony F. "Ton" Genuino ⁷⁰	Son of Efraim C. Genuino; Mayor of Los Baños (2010 to Present)	WLV Sep. 2008	2,386.26
		WLV Oct 2008	2,326.49
Rafael Francisco	PAGCOR COO and President	WLV Nov 12-17 2009	4,360.16
		WM June 7-11 2010	935.21

⁶⁹ When the "Dates of Stay" in this table were not readily available, the month and year that the charges were entered in the City Ledger Account are used.

⁷⁰ See PAGCOR Referrals (Anthony Genuino is named as a respondent). [See Appendix]