

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 10:23 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 IV OF V**

DATED this 11th day of September, 2017.

PISANELLI BICE PLLC

By: /s/ Debra L. Spinelli

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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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/s/ Kimberly Peets  
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18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 WYNN RESORTS, LIMITED, a Nevada  
21 corporation,

22 Plaintiff,  
23 v.

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

28 Defendants.

27 AND ALL RELATED CLAIMS.

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

**DEFENDANTS' MOTION TO SET A  
DATE CERTAIN ON PRODUCTION  
OF PRE-REDEMPTION FREEH  
DOCUMENTS WITHHELD AS  
ATTORNEY-CLIENT PRIVILEGED**

**EX PARTE APPLICATION FOR  
ORDER SHORTENING TIME AND  
ORDER THEREON**

Electronic Filing Case  
Hearing Date:  
Hearing Time:

**FILE WITH  
MASTER CALENDAR**

1 Universal Entertainment Corp. (“Universal”), Aruze USA, Inc. (“Aruze USA”), and Mr.  
2 Kazuo Okada (together, the “Defendants”) by and through their undersigned counsel of record,  
3 hereby move this Court for an order setting a date certain for Wynn Resorts, Limited to produce  
4 the pre-redemption Freeh Documents that the Nevada Supreme Court ordered it to produce in  
5 the opinion in Docket Number 70452, filed as 133 Nev., Adv. Op. 52, on July 27, 2017 (“Freeh  
6 Opinion”).

7 This Motion is based on the attached Memorandum of Points and Authorities, the papers  
8 and pleadings on file in this action, and any oral argument this Court may allow.

9 DATED this 1st day of August 2017.

10  
11 By /s/ Robert J. Cassity  
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**EX PARTE APPLICATION FOR ORDER SHORTENING TIME**

Pursuant to EDCR 2.26, the Defendants apply to the Court *ex parte* for an Order Shortening Time for the hearing of the Defendants' Motion to Set a Date Certain on Production of Pre-Redemption Freeh Documents Withheld as Attorney-Client Privileged ("Motion").

Good cause supports hearing the Motion on shortened time. The Court ordered the documents at issue to be produced a year ago, and now that the Supreme Court has affirmed that part of the order, there is no reason for further delay. A hearing on shortened time is necessary because these documents are critical for upcoming depositions, and absent an order of this Court compelling production by a date certain, WRL will likely delay the production indefinitely. Accordingly, Defendants request that this Motion be heard on the first available date, which is August 7, 2017.

DATED this 1st day of August 2017.

By /s/ Robert J. Cassity  
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USA, Inc., and Universal Entertainment Corp.*

**DECLARATION OF ROBERT J. CASSITY**

I, Robert J. Cassity, declare as follows:

1. I am over 18 years of age and am competent to testify as to the matters set forth in this Declaration based upon my own personal knowledge.

2. I am an attorney at Holland & Hart LLP, counsel for Defendant Kazuo Okada in this action.

3. I make this Declaration in support of Defendants' Motion to Set a Date Certain on Production of Pre-Redemption Freeh Documents Withheld as Attorney-Client Privileged (the "Motion") and *Ex Parte* Application for Order Shortening Time.

4. On July 27, 2017, the Supreme Court of Nevada issued an opinion in Docket Number 70452 that, among other things, affirmed this Court's May 3, 2016 Order that Wynn Resorts, Limited ("WRL") waived any attorney-client privilege that might otherwise protect the documents prepared by Louis Freeh in connection with his investigation in this case.

5. Attached as Exhibit A is a chart identifying the documents prepared by Mr. Freeh's firm that WRL withheld based only on the attorney-client privilege.

6. On August 1, 2017, before submitting this Motion to the Court, I advised Debbie Spinelli, counsel for WRL, that Defendants were filing this Motion and asking that it be heard at the earliest possible date.

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

Executed this 1st day of August 2017, in Las Vegas, Nevada.

/s/ Robert J. Cassity  
Robert J. Cassity

**ORDER SHORTENING TIME**

Having considered the Ex Parte Application for Order Shortening Time filed by the Aruze Parties, and good cause appearing,

IT IS HEREBY ORDERED that **DEFENDANTS' MOTION TO SET A DATE CERTAIN ON PRODUCTION OF PRE-REDEMPTION FREEH DOCUMENTS WITHHELD AS ATTORNEY-CLIENT PRIVILEGED** shall come for hearing before Department XI of the above-entitled Court on the 21<sup>st</sup> day of Aug 2017 at the hour of 8 a.m./p.m.

DATED this 3<sup>rd</sup> day of AUG 2017.

  
DISTRICT COURT JUDGE Jw

**MEMORANDUM OF POINTS AND AUTHORITIES**

Defendants respectfully submit this Motion for Setting a Date Certain for WRL to produce the pre-redemption Freeh Documents that the Nevada Supreme Court ordered it to produce in the opinion in Docket Number 70452, filed as 133 Nev., Adv. Op. 52, on July 27, 2017 ("Freeh Opinion").

Specifically, in the Freeh Opinion, the Nevada Supreme Court affirmed this Court's ruling that WRL waived the attorney-client privilege as to the pre-redemption Freeh Documents through "the public disclosure of the Freeh Group's report." *See* May 3, 2016 Ord. at 2; Freeh Opinion at 22 (attorney-client privilege was waived when WRL "disclosed the Freeh Report by voluntarily and intentionally placing protected information into the litigation").<sup>1</sup> WRL asserted the attorney-client privilege as the exclusive basis for withholding or redacting nearly 2,300 pre-redemption Freeh Documents, all of which are identified on the attached **Exhibit A**. Under the

<sup>1</sup> The pre-redemption Freeh Documents are the documents from the Fifth Amended Freeh Privilege Log that are dated February 22, 2012 or earlier. *See* May 3, 2016 Ord. at 2.

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1 orders of this Court and the Supreme Court, these documents must be produced in full  
2 immediately, and Defendants respectfully request that this Court set a date certain for WRL's  
3 production.<sup>2</sup>

4 DATED this 1st day of August 2017.

5 By /s/ Robert J. Cassity  
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27 \_\_\_\_\_  
28 <sup>2</sup> Defendants will address separately the Supreme Court's ruling on the application of the work product doctrine to the Freeh Documents.

**CERTIFICATE OF SERVICE**

I hereby certify that on the <sup>7<sup>th</sup></sup> 1<sup>st</sup> day of August 2017, a true and correct copy of the foregoing **DEFENDANTS' MOTION TO SET A DATE CERTAIN ON PRODUCTION OF PRE-REDEMPTION FREEH DOCUMENTS WITHHELD AS ATTORNEY-CLIENT PRIVILEGED** was served by the following method(s):

☒ **Electronic:** by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

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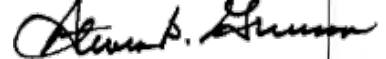
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada  
Corporation,

Plaintiff,

vs.

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

Defendants.

AND RELATED CLAIMS

Case No.: A-12-656710-B

Dept. No.: XI

**WYNN RESORTS, LIMITED'S  
OPPOSITION TO MOTION TO  
SET A DATE CERTAIN ON  
PRODUCTION OF PRE-REDEMPTION  
FREEH DOCUMENTS**

Hearing Date: August 21, 2017

Hearing Time: 8:00 a.m.

1     **I.     INTRODUCTION**

2             In the early fall 2011, tensions between Wynn Resorts, Limited ("Wynn Resorts" or the  
3     "Company") and Kazuo Okada ("Okada") were at a high. Wynn Resorts' management and its  
4     Gaming Compliance Committee had requested and received three different reports about the  
5     business climate in the Philippines and some of Mr. Okada's activities in the Philippines. Each  
6     report raised additional concerns about those activities, and Mr. Okada, with counsel at his side,  
7     continued to obfuscate. Okada acted indignant that his activities would be questioned yet, in the  
8     face of increased publicity about [REDACTED] and the potential  
9     [REDACTED], he steadfastly refused to answer any questions.

10            Meetings with the Okada Parties' counsel in September and October 2011 were  
11     unproductive, with Okada [REDACTED]  
12     [REDACTED] In other words, [REDACTED] Thus, Wynn Resorts retained  
13     litigation counsel, Robert S. Shapiro, Esq., to take over the communications and to pursue the  
14     continued non-disclosure (*i.e.*, breach of fiduciary duty). His letters explained that Okada's  
15     [REDACTED]  
16     [REDACTED] Okada retained additional litigation  
17     counsel and responded [REDACTED] With tensions high, *both*  
18     *parties believed* litigation was imminent.

19            In the face of Okada's litigation counsel's [REDACTED]  
20     [REDACTED]  
21     [REDACTED] the Compliance Committee retained Judge Louis J. Freeh to investigate Okada's  
22     activities in the Philippines; specifically, to find the answers to the same questions that Okada  
23     refused to answer and to determine if Okada had breached his fiduciary duty to Wynn Resorts.  
24     The cloud of litigation continued to grow with the retention of Freeh Sporkin & Sullivan, LLP.  
25     For Wynn Resorts, a gaming licensee, it could not afford to sit back and do nothing. So, while the  
26     parties and their litigation counsel continued with exchanges, and Okada commenced a writ  
27     proceeding demanding Company books and records, the Freeh Group proceeded to determine if  
28     Okada had breached his duties to Wynn Resorts. For his part, Okada switched litigation counsel,

1 and delayed giving an interview to Judge Freeh. In the end, Freeh issued his report and presented  
2 it to the Board. During the same meeting, the Board determined that the Okada Parties were  
3 unsuitable, as defined in the Articles of Incorporation, voted to redeem Aruze shares, and also  
4 voted to commence legal action that is this case.

5 In short, Wynn Resorts needed to know about Okada's activities in the Philippines to  
6 determine (1) if Okada was putting the Company's licenses (current and prospective) at risk by his  
7 underlying conduct; and (2) whether he was breaching a duty to the Company by, among other  
8 things, failing to disclose the fact of those activities so Wynn Resorts could protect its licenses.  
9 The two questions were interrelated, and Freeh ultimately provided answers to both. Litigation  
10 might not have been guaranteed because of some unanswered questions, but the prospect of it was  
11 very real, very obvious, and openly threatened by both sides.

## 12 II. RELEVANT FACTS

13 The Court knows the most basic facts. The Company [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 [REDACTED] (Ex. 1, Management Report.)

20 In early 2011, Wynn Resorts' management retained an independent third-party firm, the  
21 Arkin Group LLC ("Arkin Group") to further examine the risks associated with the Philippines  
22 and Mr. Okada's activities there. Arkin Group [REDACTED] official  
23 corruption in the Philippines – particularly in the gaming industry – was "deeply ingrained" and  
24 that [REDACTED]

25 [REDACTED] (Ex. 2, Arkin Reports.) The Arkin Group also discussed t [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED] in the Philippines. (*Id.*)



1 The Wynn Resorts Board discussed the results of the Arkin Reports at a board meeting on  
2 February 24, 2011 a meeting Mr. Okada attended. (Ex. 3, Board Meeting Minutes, Feb. 24, 2011.)  
3 Displeased with the recommendation, Mr. Okada [REDACTED]

4 [REDACTED]  
5 [REDACTED] Mr. Okada also  
6 stated that [REDACTED]

7 [REDACTED]  
8 [REDACTED]

9 The Company commissioned another third-party investigator, Archfield Limited  
10 ("Archfield"), following a July 28, 2011 Board meeting where Mr. Okada confirmed to the Board  
11 that [REDACTED] (Ex. 4, Board Meeting Minutes, July 28,  
12 2011.) At a Compliance Committee meeting on September 27, 2011, the Committee reviewed  
13 Archfield's reports. (Ex. 5, Archfield Reports.) The Archfield Reports stated that [REDACTED]

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED] (Id.)

18 Three days later, [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 [REDACTED] (See Ex. 6, Declaration of Kimmarie  
22 Sinatra, Esq. ("Sinatra Decl.") ¶ 5.) During and after this meeting, communications between  
23 Wynn Resorts and Okada's counsel continued to try to resolve the outstanding issues, including

24 [REDACTED]  
25 [REDACTED] (Id. ¶¶ 5-6.) Wynn Resorts made clear that Mr. Okada's alleged  
26 activities in the Philippines posed substantial risks for Wynn Resorts and needed to be explained  
27 post haste. (Id. ¶ 5.) Following the September 30, 2011 [REDACTED]

28 [REDACTED] (Id. ¶ 6.) But, Mr. Okada was not

1 interested in a resolution, and [REDACTED]

2 [REDACTED] (*Id.*) On or around October 7, 2011, [REDACTED]

3 [REDACTED] (*Id.* ¶ 7.)

4 During this same timeframe, the Company retained outside litigation counsel, Robert S.  
5 Shapiro, Esq., to [REDACTED] because

6 [REDACTED] (*Id.* ¶ 8; Ex. 7, Declaration of Robert S. Shapiro, Esq.  
7 ("Shapiro Decl.") ¶ 4.) On or around October 12, 2011, Mr. Shapiro [REDACTED]

8 [REDACTED]  
9 [REDACTED] (Ex. 6, Sinatra Decl. ¶ 8; Ex. 7, Shapiro Decl. ¶ 5; Ex. 8, Oct. 12, 2011 Ltr. from  
10 R. Shapiro to R. Faiss.) Mr. Shapiro warned that his [REDACTED]

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED] (Ex. 7, Shapiro Decl. ¶ 5; Ex. 8.) The letter noted possible  
14 [REDACTED]. (Ex. 8.)

15 Two days later, on October 14, 2011, the Okada Parties [REDACTED]

16 [REDACTED]  
17 [REDACTED]<sup>1</sup> There was a flurry of communication between the [REDACTED]

18 [REDACTED]  
19 [REDACTED]<sup>3</sup> Indeed, this piece of [REDACTED]  
20 communication (as stated by the Okada Parties), describes the communication as including a

21 [REDACTED]  
22 [REDACTED]

23  
24  
25 <sup>1</sup> Ex. 9, Excerpts from Okada Parties' Supp. Privilege Log, dated Dec. 11, 2015, Priv. Log  
Entry No. 5, dated 10/14/2011, ARUZE\_PRIV017338.

26 <sup>2</sup> Ex. 9, Priv. Log Entry No. 63, dated 10/17/2011, ARUZE\_PRIV018171.

27 <sup>3</sup> Ex. 9, Priv. Log Entry No. 141, dated 10/17/2011, ARUZE\_PRIV018437-39 [REDACTED]

28 <sup>4</sup> *Id.*

1 Indeed, just days later, on October 18, 2011, the Okada Parties [REDACTED]  
2 [REDACTED]  
3 and [REDACTED] The same [REDACTED]  
4 [REDACTED] continued on October 22, 2011.<sup>8</sup>

5 On October 24, 2011, [REDACTED] communicated with the  
6 Okada Parties and the [REDACTED] attorneys [REDACTED]  
7 [REDACTED] and [REDACTED]  
8 [REDACTED] The latter two of these communications are, according to the  
9 Okada Parties, respectively, a [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 <sup>5</sup> Ex. 9, Priv. Log Entry No. 139, 10/18/2011, ARUZ-PRIV018434-35.

15 <sup>6</sup> Ex. 9, Priv. Log Entry No. 170, dated 10/17/2011, ARUZE PRIV018699 [REDACTED]  
16 [REDACTED] (emphasis added)

17 <sup>7</sup> Ex. 9, Priv. Log Entry No. 229, dated 10/17/2011, ARUZE PRIV018950 [REDACTED]  
18 [REDACTED] (emphasis added).

19 <sup>8</sup> Ex. 9, Priv. Log Entry No. 527, dated 10/22/2011, ARUZE PRIV020788-822 [REDACTED]  
20 [REDACTED] (emphasis added); Priv.  
21 Log Entry No. 538, dated 10/22/2011, ARUZE PRIV020904-13 [REDACTED]  
22 [REDACTED] (emphasis added).

23 <sup>9</sup> Ex. 9, Priv. Log Entry No. 377, dated 10/22/2011, ARUZE PRIV020055-56)

24 <sup>10</sup> Ex. 9, Priv. Log Entry No. 378, dated 10/22/2011, ARUZE PRIV020057-61 [REDACTED]  
25 [REDACTED] (emphasis added).

26 <sup>11</sup> Ex. 9, Priv. Log Entry No. 405, dated 10/22/2011, ARUZE PRIV020228-29 [REDACTED]  
27 [REDACTED] (emphasis added).

28 <sup>12</sup> *Supra* note 10.

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[REDACTED]<sup>13</sup>

After internally preparing their litigation strategy, on October 24, 2011, Mr. Caine sent a letter responding to Mr. Shapiro, [REDACTED]

(Ex. 10, Ltr. dated Oct. 24, 2011 from G. Caine to R. Shapiro; Ex. 7, Shapiro Decl. ¶ 7.)

Mr. Caine also [REDACTED]

[REDACTED] (Ex. 10; Ex. 7, Shapiro Decl. ¶ 7.)

The exchange of correspondence [REDACTED]

[REDACTED] And, in this context, on or around October 27, 2011, [REDACTED]

[REDACTED] (Ex. 7, Shapiro Decl. ¶ 8; Ex. 11, Freeh Engagement Letter.) At this time, litigation was a significant possibility regarding the matters discussed in the exchanges between counsel, and the information gathered by the Freeh Group would, among other things, be necessary for it. (Ex. 7, Shapiro Decl. ¶ 8.) The Compliance Committee voted to retain Judge Freeh. (*Id.* ¶ 9; *see also* Ex. 12, Compliance Committee Meeting Minutes, Oct. 27, 2011 and Oct. 29, 2011.)

Mr. Okada continued to entrench and his actions related to the FCPA became more flamboyant. (Ex. 6, Sinatra Decl. ¶ 11.) With numerous reminders about the annual FCPA training, the Company having translated the materials into Japanese, and Mr. Okada's confirmation that he would attend, Mr. Okada failed to attend the October 31, 2011 training. (*Id.* ¶ 12.)

<sup>13</sup> *Supra* note 11.

1        Thereafter, the back and forth between the parties continued, further demonstrating that  
2 litigation was imminent. On November 2, 2011, Mr. Caine sent another letter and made  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 (Ex. 13, Ltr. dated Nov. 2, 2011 from G. Caine to R. Shapiro; Ex. 7, Shapiro Decl. ¶ 10.)  
8 Mr. Caine expressly [REDACTED]  
9 [REDACTED] (Ex. 13.) But Mr. Caine's – or rather, Mr. Okada's – demands  
10 did not stop there. Mr. Caine continued to [REDACTED]  
11 [REDACTED]  
12 [REDACTED] (Ex. 7, Shapiro Decl. ¶ 11;  
13 Ex. 14, Ltr. dated Dec. 1, 2011 from G. Caine to R. Shapiro.)

14        On January 12, 2012, litigation was no longer just imminent, when Mr. Okada  
15 commenced a writ proceeding in Nevada court against Wynn Resorts, seeking access to books  
16 and records. (Petition for a Writ of Mandamus, Case No. A-12-654522-B, filed on Jan. 12, 2011,  
17 on file.) Meanwhile, on January 15, 2012, Mr. Okada finally appeared for an interview with  
18 Judge Freeh after delay and obstructions. (Ex. 15, Freeh Report, pp. 36-43.)

19        On February 18, 2012, the Wynn Resorts Board convened, including Okada. It was  
20 during this meeting that the Board determined that the Okada Parties were unsuitable persons  
21 under the Articles of Incorporation, redeemed Aruze's shares, and voted to commence the instant  
22 action.

### 23        III.     ARGUMENT

#### 24            A.     The Supreme Court Did Not Order Wynn Resorts to Produce the 25                    Pre-Redemption Freeh Documents.

26        *This* Court ordered the production of Pre-Redemption Freeh documents, concluding that  
27 (1) "the attorney work product doctrine does not apply to documents related to work product  
28 performed by the Freeh Group prior to February 22, 2012 because its work was not done in



1 anticipation of litigation;" and (2) "because while there was an attorney-client relationship [with  
2 the Freeh Group], there was a waiver of the attorney client privilege by use of the Freeh Group's  
3 report to inform the WRL's board's decision-making with respect to the potential redemption and  
4 public disclosure of the Freeh group's report." (May 3, 2016 Order ("Freeh Order") 2:11-13,  
5 2:22-26, on file.)

6 The Nevada Supreme Court affirmed the Freeh Order, in part; specifically, that  
7 "Wynn Resorts waived the attorney client privilege in regard to the Freeh Report and the  
8 documentation compiled in preparation of the Report." *Wynn Resorts, Ltd. v. Eighth Jud.*  
9 *Dist. Ct.*, 133 Nev. Adv. Op. 52, at p. 23 (2017). *However*, the Nevada Supreme Court *did not*  
10 *affirm* the Freeh Order in two important respects: (1) that "there was a waiver of the attorney  
11 client privilege by use of the Freeh Group's report to inform the WRL's board's decision-making  
12 with respect to the potential redemption" (*i.e.*, waiver of privilege by virtue of the business  
13 judgment rule); or (2) "the attorney work product doctrine does not apply to documents related to  
14 work product performed by the Freeh Group prior to February 22, 2012 because its work was not  
15 done in anticipation of litigation" (*i.e.*, there is no work product protection). (Freeh Order,  
16 2:11-13, 2:22-26.) It is for these reasons that, with respect to the Freeh Order, Wynn Resorts'  
17 petition was "*granted in part, with instructions.*" *Wynn Resorts, Ltd.*, 133 Nev. Adv. Op. 52,  
18 at p. 2 (emphasis in original).

19 As to the application of the work product doctrine, the Supreme Court expressly stated  
20 that "disclosure of some of the underlying Freeh Report documents may be protected by the work  
21 product privilege." *Id.* at p. 23. The Supreme Court went on to describe the work product doctrine  
22 under Nevada law, adopted the "because of" test, and the "totality of the circumstances" standard  
23 to determine whether the "because of test" is met on a document-by-document basis. *Id.* at p. 26.  
24 The Supreme Court noted that the record was "unclear" as to whether this Court utilized the  
25 "because of" test for determining whether the Freeh report was prepared in anticipation of  
26 litigation. *Id.* at pp. 26-27. *Even if the "because of" test was utilized by this Court*, the Nevada  
27 Supreme Court articulated, for the first time, the exact standard to be applied in Nevada courts,  
28

1 and to apply to the documents at issue here. This includes a "totality of the circumstances"  
2 analysis to assess the "because of" test. Thus, the Supreme Court "direct[] the district court to  
3 consider whether the Freeh Report was created 'in anticipation of litigation' under the 'because of'  
4 test, applying a 'totality of circumstances' analysis." *Id.* at p. 27.

5 B. The Freeh Report (and its Related Documents) Constitute Protected Work  
6 Product under the *Wynn Resorts, Limited v. Eighth Judicial District Court*  
7 Decision.

8 The work-product doctrine "protect(s) against disclosure of the mental impressions,  
9 conclusions, opinions, or legal theories of an attorney or other representative of a party  
10 concerning the litigation." NRCp 26(b)(3). The Nevada Supreme Court reiterated in July 2017  
11 that the work-product doctrine protects documents with "two characteristics: (1) they must be  
12 prepared in anticipation of litigation or for trial, and (2) they must be prepared by or for another  
13 party or by or for that other party's representative."<sup>14</sup> *Wynn Resorts, Ltd.*, Nev. Adv. Op. 52,  
14 at p. 24 (quoting *In re Grand Jury Subpoena (Mark Torf/Torf Envtl. Mgmt.) (Torf)*, 357 F.3d 900,  
907 (9th Cir. 2004)).

15 To determine whether a document is prepared "in anticipation of litigation," the Nevada  
16 Supreme Court now employs the "because of" test. *Wynn Resorts, Ltd.*, 133 Nev. Adv. Op. 52,  
17 at pp. 24-25. Documents are prepared in anticipation of litigation when "in light of the nature of  
18 the document and the factual situation in the particular case, the documents can be fairly be said  
19 to have been prepared or obtained *because of* the *prospect* of litigation." *Id.* at p. 25 (first  
20 emphasis in original, second emphasis added).

21 The Supreme Court discussed "dual purpose documents" when it adopted the Second  
22 Circuit's conclusion that "[a] document. . . does not lose protection under th[is "because of"]  
23 formulation merely because it is created in order to assist with a business decision."  
24 *Id.* at pp. 25-26 (quoting *United States v. Adlman*, 134 F.3d 1194, 1202 (2d Cir. 1998). Rather,  
25

26 <sup>14</sup> Attorney involvement in the creation of the document is not required for the protection to  
27 apply, nor is it determinative. See *Mega Mfg., Inc. v. Eighth Jud. Dist. Ct. of State ex rel. Cnty. of*  
28 *Clark*, No. 62396, 2014 WL 2527226, at \*2 (Nev. May 30, 2014) ("Whether an attorney is  
involved or directs an investigation is not dispositive for deciding whether the fruit of that  
investigation is work product." (citing *Wardleigh v. Second Jud. Dist. Ct.*, 111 Nev. 345, 357-58,  
891 P.2d 1180, 1188 (1995)).



1 for the "because of" test, the Court must consider the "totality of circumstances," by "the context  
2 of the communication[s]" "and content of the document[s] to determine whether a request for  
3 legal advice is *in fact* fairly implied, taking into consideration the facts surrounding the creation  
4 of the document and the nature of the document." *Id.* (quoting *In re CV Therapeutics*,  
5 2006 WL 1699536, at \*4.) "[T]he nature of the document *and* the factual situation of the  
6 particular case" are key to a determination of whether work product protection applies." *Torf*,  
7 357 F.3d at 908. Also in a work product determination via the "because of" standard and the  
8 totality of circumstances analysis, the Court "should consider 'whether a communication  
9 explicitly sought advice and comment.'" *Wynn Resorts, Ltd.*, 133 Nev. Adv. Op. 52 (quoting  
10 *In re CV Therapeutics*, 2006 WL 1699536, at \*4.)

11 ***I. This Court's previous decision and the Okada Parties' positions, since***  
12 ***rejected by the Supreme Court.***

13 This Court previously determined that "[f]or those [documents] that are pre report[,]  
14 I made a determination earlier in this case that they were not [prepared] in anticipation of  
15 litigation, *that there was a different purpose for which it was being prepared.* Therefore,  
16 attorney work product didn't apply to it." (Hr'g Tr., Apr. 14, 2016, 27:25-28:4 (emphasis added);  
17 *see also* Order dated May 3, 2016, ¶ 1; Hr'g Tr., Oct. 15, 2015, 15:5-12 ("THE COURT: . . . The  
18 motion is granted in part. Freeh was hired as counsel to conduct an investigation to provide  
19 conclusions related to information at the request of the board. . . . However, this was not done in  
20 contemplation of litigation, and the work product doctrine does not apply.").)

21 For their part, the Okada Parties advocated to this Court and the Supreme Court for the  
22 application of the *now rejected* primary purpose rule for work product. In support thereof, the  
23 Okada Parties cited *In re Kidder Peabody Sec. Litig.*, 168 F.R.D. 459 (S.D.N.Y. 1996), for the  
24 proposition that a work product was unavailable when an internal investigation was conducted to  
25 address a business crisis even though litigation was virtually inevitable because Kidder would  
26 have hired outside counsel to perform [its] inquiry even if no litigation had been threatened at the  
27 time." (Okada Parties' Answer to Freeh Writ Petition, p. 22, on file) Important to note,  
28 *In re Kidder Peabody* was decided by the Southern District of New York in 1996, *two years*

1 *before* the Second Circuit adopted the "because of " and totality of circumstances" standard for  
2 work product in *In re Adlman* in 1998, which the Nevada Supreme Court cited and adopted in its  
3 recent decision. Although not expressly overruled or rejected, the federal district court in  
4 *In re Kidder Peabody* had applied the primary purpose work product test that the Second Circuit  
5 expressly rejected two years later. *In re Kidder Peabody*, 168 F.R.D. at 462-63. ("Specifically,  
6 Kidder has failed to sustain its burden to demonstrate that the documents at issue were created  
7 principally or exclusively to assist in contemplated or ongoing litigation.").<sup>15</sup> Thus, any  
8 discussion, analysis or holding in *In re Kidder Peabody* is not applicable to a Nevada work  
9 product analysis post-*Wynn Resorts, Limited v. Eighth Judicial District Court*.

10                   2.     *The Freeh Report and underlying documents served a dual purpose, but*  
11                   *that does not render work product unavailable, pursuant to*  
12                   *Wynn Resorts, Limited v. Eighth Judicial District Court.*

12           There is no serious question that the Freeh Report (and related communications) had a  
13 dual purpose. But the Supreme Court's decision makes clear that the "because of" standard it  
14 adopted "*does not consider* whether litigation was a primary or secondary motive behind the  
15 creation of a document." *Wynn Resorts, Ltd.*, 133 Nev. Adv. Op. 52, at p. 26 (citation omitted)  
16 (emphasis added).

17           In *In re Adlman*, the Second Circuit considered whether work product applied to a  
18 document prepared to inform a business decision "where "[l]itigation was virtually certain to  
19 result" from the business decision being contemplated. 134 F.3d at 1196-97. In *In re Adlman*,  
20 the subject memorandum was drafted to assist the party in making a business decision, but also  
21 was prepared "because of" the almost certain prospect that the proposed business decision would  
22 result in litigation. *Id.* at 1196. Importantly, "[n]othing in the Rule states or suggests that  
23 documents prepared "in anticipation of litigation" with the purpose of assisting in the making of a  
24 business decision do not fall within its scope." *Id.* at 1198-99. In fact, that court stated that "it

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26 <sup>15</sup> The same is true for other cases offered and argued by the Okada Parties. *E.g.*,  
27 *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 230 F.R.D. 433, 435 (D. Md. 2005) ("Lead plaintiffs  
28 argue persuasively that the principal reason was to satisfy the requirement of Royal Ahold's  
outside accountants. . . .") (and citing *In re Kidder Peabody* as support); *In re Leslie Fay Cos.,*  
*Inc. Sec. Litig.*, 161 F.R.D. 274, 280 (S.D.N.Y. 1995) (decided before *In re Adlman* (hence  
applying the wrong test) when finding that "the internal Audit Committee investigation was not  
conducted *primarily* in anticipation of litigation," but rather for business reasons).



1 would oddly undermine its purposes if such documents were excluded from protection merely  
2 because they were prepared to assist in the making of a business decision expected to result in the  
3 litigation." *Id.* at 1199. Thus, a memorandum may be prepared in expectation of litigation with  
4 the primary purpose of helping the company decide whether to undertake the contemplated  
5 transaction . . . . We can see no reason under the words or policies of the Rule why such a  
6 document should not be protected." *Id.* at 1199.

7 Here, the Freeh Report, and the underlying communications and exchanges, did help in a  
8 business judgment that the Board had to make as a result of Okada's conduct, and his refusal to  
9 answer questions that were legitimately raised because of investigations, news accounts, as well  
10 as Mr. Okada's own statements during board meetings. And, here, like in *In re Adlman*, "[t]here  
11 is little doubt . . . that [Wynn Resorts] had the prospect of litigation in mind when it directed the  
12 preparation of the [Freeh Report] by [the Freeh Group]." 134 F.3d at 1204. There is also no  
13 doubt that litigation was anticipated by the Okada Parties as well, who were [REDACTED]

14 [REDACTED]  
15 [REDACTED] (*Compare* Ex. 9, with Ex. 11, and Ex. 12.)

16 Wynn Resorts and its Compliance Committee had received the results of three separate  
17 reports/investigations, raising questions as to the [REDACTED]

18 [REDACTED]  
19 [REDACTED]

20 [REDACTED] among other questions. (*See, e.g.*, Ex. 2, Ex. 5.) Mr. Okada was asked questions,  
21 as were his counsel, and they [REDACTED] (Ex. 6, Sinatra Decl. ¶¶ 5-7.) The parties'  
22 respective counsel raised claims about [REDACTED] in

23 the very least. (Ex. 7, Shapiro Decl. ¶¶ 4, 5, 7, 10, 11; Ex. 8; Ex. 10, Ex. 13; Ex. 14.) The issues  
24 were suitability *and* the lack of disclosure/breach of fiduciary duty are profoundly interconnected.

25 Here, the Freeh Group was retained after the Company's counsel and management [REDACTED]

26 [REDACTED] Regardless of any  
27 attorney-client privilege waiverd, there was, indeed, an attorney client relationship. The  
28 Freeh Report and underlying communications were needed and created both for the compliance

1 obligations that the Compliance Committee heads and the Board carries out *as well as* the  
2 litigation that was looming over and anticipated by all parties.

3 Even setting aside the work product asserted by the Okada Parties for their own  
4 documents, their counsel in this litigation stated clearly that litigation was imminent from all  
5 parties' perspectives in the early fall:

6 MR. PEEK: . . . *Certainly there was no question but there would be*  
7 *litigation if you take away almost \$3 billion worth of stock of an*  
8 *individual or a company, as they did here;* but it was not done in  
9 anticipation of litigation, it was not done that Mr. Okada, Aruze  
USA are going to sue me, Wynn Resorts, so I need to defensively  
investigate whether or not there is some validity to his claims.

10 (Hr'g Tr., Oct. 15, 2015, 8:4-10 (emphasis added) (arguing in support of the rejected work product  
11 standard).)

12 Taking into account the facts surrounding the retention of the Freeh Group, the  
13 communications between the Freeh Group and Wynn Resorts and the Freeh Report, and  
14 "notwithstanding their dual purpose character, . . . their litigation purpose so permeates any  
15 non-litigation purpose that the two purposes cannot be discretely separated from the factual nexus  
16 as a whole." *Torf*, 357 F.3d at 909-910 (adopted and cited to with approval by the Nevada  
17 Supreme Court in *Wynn Resorts, Ltd.*) They thus "fall within the ambit of the work product  
18 protections . . . ." *Id.*

19 **3. Not in the normal course of business.**

20 The final point of analysis is whether the documents were "prepared in the normal course  
21 of business" and hence not prepared because of the prospect of litigation. *Wynn Resorts, Ltd.*,  
22 133 Nev. Adv. Op. 52, at p. 25. Here, the Freeh investigation was not one done "in the normal [or  
23 ordinary] course." There was nothing "normal" or "ordinary" about a director refusing to [REDACTED]  
24 [REDACTED] months of asking and rising evidence of  
25 irregularities. There was nothing "ordinary" about a director [REDACTED] because he  
26 was feeling threatened and insulted by the [REDACTED]  
27 [REDACTED] Ordinary may have been the first report  
28 about the [REDACTED] Perhaps less ordinary but still not created "but for



1 the prospect of litigation" would be the Arkin and Archfield reports and investigations. There, the  
2 Company and the Compliance Committee were fulfilling their obligations to self-police and doing  
3 their due diligence because of Okada's statements at Board meetings, the business and political  
4 climate in the Philippines, and Mr. Okada's silence.

5 But, come Fall 2011, the parties and their litigation counsel were plainly anticipating  
6 litigation. [REDACTED] and tensions high because the  
7 stakes were high. Then the Compliance Committee retained the Freeh Group [REDACTED]  
8 [REDACTED] because the circumstances were not normal.  
9 This was not an "ordinary," normal course suitability/compliance investigation. In fact, the  
10 extraordinary decision to retain Judge Freeh is the very reason why Okada [REDACTED]  
11 [REDACTED]

12 Wynn Resorts chose to conduct an investigation of this nature and extent and expense  
13 because litigation was very much anticipated in the Fall of 2011. There would not have been an  
14 investigation of this nature, or a report of this extent if litigation were not contemplated. As such,  
15 in the words of the Nevada Supreme Court, "[t]he anticipation of litigation [was] the sine qua non  
16 for the creation of the [Freeh Report and related communications] – 'but for the prospect of that  
17 litigation,' the documents would not exist" in this form, or anything substantially similar in form,  
18 manner, or scope. *Wynn Resorts, Ltd.*, 133 Nev. Adv. Op. 52, at p. 25. The Freeh Report and the  
19 Freeh Group's investigation was not done in the "ordinary course of [Wynn Resorts'] business."  
20 The Freeh Report was created in anticipation of litigation, as defined by the Supreme Court's  
21 decision in this very case.

22 C. Wynn Resorts' Work Product Assertions from Its Second Amended Privilege  
23 Log Were Preserved.

24 Should the Court conclude that the Okada Parties' discovery behind the Board's exercise  
25 of its business judgment is still proper in light of the Supreme Court's order granting  
26 Wynn Resorts' writ petition related to the BHFS documents, then the Court must conduct a  
27 document-by-document review of the Pre-Redemption documents on the Freeh Privilege Log  
28 pursuant to footnote 7 of the writ decision.

1 The Okada Parties ran to the Court to demand the immediate production of all  
2 Pre-Redemption Freeh documents for which there was no work product assertion on the  
3 Wynn Parties' Fifth Amended Privilege Log. They argued -- multiple times in a record short  
4 motion, and then again in their supplemental three-page related motion, and then again  
5 (improperly) in a status report filed on August 18, 2017 -- that the production of these documents  
6 were purportedly ordered by the Supreme Court (it was not, as discussed above). In addition to  
7 the mischaracterization of the Supreme Court's actual directive (*i.e.*, to consider the newly  
8 adopted work product test to the Freeh Report), the Okada Parties' rushed demand about what  
9 documents to review was knowingly incorrect.

10 Wynn Resorts prepared the privilege log for the documents Pepper Hamilton (and the  
11 Freeh Group) produced as responsive to the subpoena duces tecum the Okada Parties served. The  
12 Wynn Parties served the initial privilege log for Freeh documents on June 11, 2015, an Amended  
13 Privilege Log on June 15, 2016 (to identify documents in chronological order and to correct one  
14 entry), and a Second Amended Log on August 17, 2015 (removing 5 documents from the  
15 previous log). The Second Amended Privilege Log consisted 5966 entries (both Pre- and  
16 Post-Redemption), with assertions of both attorney client privilege and work product protections,  
17 in various combinations depending upon the specific, underlying document.

18 The Okada Parties moved to compel, and this Court held a hearing on October 15, 2015.  
19 As discussed above, this Court first ruled that work product did not apply to the pre-redemption  
20 Freeh documents because it was not prepared in anticipation of litigation, but the Court also held  
21 that the attorney client privilege had not been waived. (Freeh Order, 2:11-13; *see also* Hr'g Tr.,  
22 10/15/2015, at 15:5-12.)<sup>16</sup> The parties and the Court discussed attorneys' notes, mental  
23 impressions, work product and privilege. The Court stated: "[M]any of the entries simply say, 'in  
24

25 <sup>16</sup> THE COURT: Freeh was hired as counsel to conduct an investigation to  
26 provide conclusions related to information at the request of the board. As a  
27 result of that, *the attorney-client privilege may apply* to certain of the entries  
28 of the 6,000 or so in the 3 inches of the privilege log. However, this was  
not done in contemplation of litigation, and *the work product doctrine does*  
*not apply*.

(Hr'g Tr., 10/15/2015, at 15:5-12 (emphasis added).)



1 the privilege designation category work product.' If they are not attorney's notes, I am overruling  
2 that objection." (Hr'g Tr., 10/15/2015, 16:15-17:4.) The Court's written order from that hearing  
3 provides:

4 The Court overrules all claims of work product in the Freeh  
5 Privilege Log, except as to those documents that were described as  
6 attorneys' notes in the Freeh Privilege Log because such documents  
7 may be subject to the attorney-client privilege.

8 (Nov. 18, 2015 Order, on file.)

9 The confusion about attorneys' notes, work product and attorney-client privilege was  
10 discussed at a subsequent hearing as well (*see* Hrg. Tr. Jan. 26, 2016, 8:4-10:12), but before  
11 realizing that there was confusion, the Court had allowed Wynn Resorts to go back and review the  
12 privilege log in accordance with her decision and Wynn Resorts did so. Specifically, on  
13 November 9, 2015, served a Third Amended Privilege Log for Freeh documents, after  
14 re-reviewing the Freeh documents, and released 1700 documents. In accord with the Court's  
15 decision (or Wynn Resorts' counsel's interpretation of that decision/reasoning), Pre-Redemption  
16 documents did not indicate the original work product assertion made by Wynn Resorts.

17 The Okada Parties moved to compel again. And, the work product/attorneys' notes/mental  
18 impressions confusion was discussed further at the January 26, 2016 hearing. Indeed, one of the  
19 initial points raised by the Court in response to the briefing remained the confusion related to  
20 attorneys' notes and mental impressions:

21 THE COURT: Okay. I didn't say attorneys' notes or attorney-client  
22 privilege. I said they're more closely related to attorney-client  
23 privilege and if you're going to get protection on work product,  
24 you're going to get more protection on notes than you are other  
25 things. That's what I said. That's the context -- I didn't say they were  
26 privileged. So, just so we're clear because the -- I understand that it  
27 may be a big deal to you guys, but attorneys' notes, I'm more likely  
28 to protect when you designate something attorney work product than  
29 other types of information you designate as attorney work product.

30 (Hr'g Tr., 1/26/2016, 8:4-14.) Wynn Resorts acknowledged the clarification, and made sure that,  
31 in light of the confusion its position on privileges and protections was clear:

32 So, for the preservation of, you know, all of our privileges,  
33 obviously there was an intent at all times to assert privilege and  
34 protect these documents, you know, with your permission, as you've  
35 done in this and other cases.

36 (*Id.* at 9:2-6.)

1 Wynn Resorts explained how it proceeded following the November hearing, and before  
2 serving the Third Amended Privilege Log simultaneously with its disclosure releasing  
3 1700 Freeh documents on November 9, 2017:

4 You know, I see that the concept of attorney notes and what it can  
5 mean and what it can contain and you told us, as we understood you,  
6 saying if you're protecting it, this is you shared with us what your  
7 thoughts were. And, so, we went back and tried to follow your  
8 directive to make sure that the record was clear and we were  
9 proceeding in a manner that you wanted us to."

10 \* \* \*

11 So, we took your directive and we went back and went through our  
12 privilege log.

13 \* \* \*

14 Now, we went through the log and where we found notes, or  
15 memos, or internal communications, one lawyer inside of the firm to  
16 another, one co-counsel to another co-counsel on another firm to  
17 another, these communications, mental impressions we attempted to  
18 protect. When it was simply a work product, not an attorney  
19 impression or communication, and you said that that had been  
20 overruled, we produced it.

21 \* \* \*

22 And, so, having gone through the exercise, following your  
23 instruction, we changed some of the attorney work product privilege  
24 to attorney-client privilege, believing that was your instruction and  
25 perhaps now with your introductory comments to us, that's not what  
26 you necessarily intended us to do.

27 (*Id.* at 20:6-12, 21:10-11, 22:7-14, 23:25-24:5.)

28 One point is absolutely clear: "There clearly was never a waiver. There is never an  
intentional relinquishment of any right." (*Id.* at 23:14-17; *see also* 23:18-22 ("What we're trying  
to do is get it right. We believe that these attorney notes and mental impressions are part of the  
work product doctrine. There are other cases that says it is more akin, exactly as you have said, to  
an attorney-client communication.") That remains a fact to this day, up to and past the  
Supreme Court's writ decision.

In the end, the Court restated its position: "THE COURT: What I'm trying to say to you,  
they are really work product. Under the way the rules are currently in Nevada, they're work  
product." (*Id.* at 24:21-23.) And, though they conveniently have now changed their mind since,



1 *the Okada Parties agreed: "The attorney-client privilege does not protect all mental*  
2 *impressions of counsel, nor any mental impressions of counsel. Those are characterized as*  
3 *work product."* (*Id.* at 16:24-17:2 (emphasis added).)

4 Wynn Resorts served a Fourth Amended Privilege Log on February 5, 2016 to add dates  
5 and subject matter descriptions that had been inadvertently omitted from a few entries in the  
6 lengthy log before the Court's *in camera* review,<sup>17</sup> and a Fifth Amended Privilege Log on  
7 February 18, 2016 related to a [REDACTED]  
8 [REDACTED] (Ex. 16,  
9 Feb. 18, 2016 Ltr. from D. Spinelli to all counsel, p 2, ¶ 2.)

10 The Freeh Privilege Log and related assertions was discussed again in an April 14, 2016  
11 hearing:

12 THE COURT: I've already told you the rule I'm using, which is  
13 attorney-client - - or attorney work product did not apply to Mr.  
14 Freeh and his group for purposes of the work he did on the report. I  
15 told you that.

16 MR. PISANELLI: Is it the Court's position that once the rule of law  
17 is resolved after the writ we will still have the opportunity to object  
18 and preserve our rights on a document-by-document basis once the  
19 review is done?

20 THE COURT "You've already got work product all over this  
21 privilege log, so I don't think anybody omitted it. Remember how I  
22 gave you a chance to go back and revise the privilege log? Work  
23 product's still all over it. *So I don't think that you've abandoned*  
24 *work product even though I have previously overruled that*  
25 *objection. And that's okay, because it's preserved for purposes of*  
26 *your appellate purposes . . . ."*

27 (Hr'g Tr., Apr. 14, 2016, 16:7-10, 20:11-21, on file (emphasis added).)  
28

25 <sup>17</sup> Although a handful of work product assertions were added to the Fourth Amended  
26 Privilege Log, the purpose of the amendment was to add dates and subject matter descriptions that  
27 had been inadvertently omitted from the previous iteration of the log, and to include line entries  
28 for documents that had been mistakenly logged as families in previous iteration of the log.  
Wynn Resorts provided this Fourth Amended Privilege Log to the Court simultaneously with the  
documents that the Court ordered to be reviewed *in camera*. (See Notice of Submission for In  
Camera Review, dated February 5, 2016, on file.)

1 Wynn Resorts still asserted the work product protection over the *Post-Redemption*  
2 documents, and that is why the Court noted that it was "all over [the Fifth Amended Privilege]  
3 log." But, Wynn Resorts had tried to conform to the Court's earlier ruling (and Wynn Resorts'  
4 interpretation of that ruling) and had amended its log subsequent to this Court overruling the work  
5 product doctrine for pre-redemption documents. Counsel for Wynn Resorts made clear during  
6 this April 2015 hearing that because of the Court's comments after an in camera review of 25% of  
7 documents, that its original privilege and work product assertions would stand. Therefore,  
8 Wynn Resorts was maintaining its original privileges and protections asserted on its  
9 Second Amended Log, which included the work product protections.

10 In short, in light of the Supreme Court writ decision that the attorney client privilege has  
11 been waived Pre-Redemption but that work product may apply, the Court's in camera review  
12 should be of the Pre-Redemption documents from the Second Amended Privilege Log.<sup>18</sup>

#### 13 IV. CONCLUSION

14 In light of the foregoing, Wynn Resorts requests that the Okada Parties' motion be denied.  
15 Wynn Resorts also requests that should the Court believe that discovery of the Freeh documents is  
16 still proper despite the business judgment rule and the Nevada Supreme Court's decision that  
17 discovery is only permitted on the "procedural indicia of whether the directors resorted in good  
18 faith to an informed decision making process," *Wynn Resorts, Ltd.*, 133 Nev. Ad. Op. 52, at p. 15,  
19 then this Court should determine that the Freeh Report was created in anticipation of litigation  
20 under Nevada's recent articulated standard, and conduct a document-by-document review of the  
21  
22  
23

24  
25 <sup>18</sup> Because documents have been released, produced with redactions, and some documents  
26 clawed back since service of the Second Amended Privilege Log, Wynn Resorts intends to serve  
27 an amended and superseding privilege log of Pre-Redemption Freeh documents to facilitate the  
28 Court's review. The forthcoming amended and superseding log will be (1) the Second Amended  
Privilege Log privilege assertions; (2) with documents that have been released/produced since  
service of the Second Amended Privilege Log clearly indicated; and (3) supplemental/amended  
subject matter descriptions. Wynn Resorts intends to serve the log with delivery of the  
corresponding documents to the Court for the *in camera* review on or before Friday, August 25,  
2017.

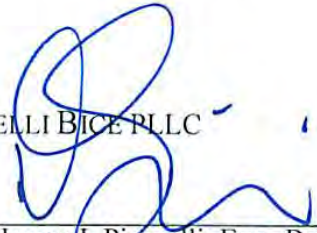


1 Pre-Redemption documents from the Second Amended Privilege Log, as modified consistent with  
2 the description above.

3 DATED this 18th day of August, 2017.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 18th day of August, 2017, I caused to be electronically served through the Court's filing system true and correct copies of the foregoing WYNN RESORTS, LIMITED'S OPPOSITION TO MOTION TO SET A DATE CERTAIN ON PRODUCTION OF PRE-REDEMPTION FREEH DOCUMENTS to the following:

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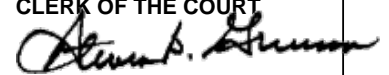
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16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 WYNN RESORTS, LIMITED, a Nevada  
19 Corporation,

20 Plaintiff,

21 vs.

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

24 Defendants.

25 AND RELATED CLAIMS

Case No.: A-12-656710-B

Dept. No.: XI

**APPENDIX TO WYNN RESORTS,  
LIMITED'S OPPOSITION TO MOTION  
TO SET A DATE CERTAIN ON  
PRODUCTION OF PRE-REDEMPTION  
FREEH DOCUMENTS**

**(FILED UNDER SEAL)**

Hearing Date: August 24, 2017

Hearing Time: 8:00 a.m.

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EXHIBIT	DOCUMENT	BATES
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16	D. Spinelli Letter to Counsel for Okada Parties dated February 18, 2016	125-127
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DATED this 18th day of August, 2017.

PISANELLI BICE PLLC

By: /s/ Debra L. Spinelli

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I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 18th day of August, 2017, I caused to be **electronically served through the Court's filing system** true and correct copies of the foregoing **APPENDIX TO WYNN RESORTS, LIMITED'S OPPOSITION TO MOTION TO SET A DATE CERTAIN ON PRODUCTION OF PRE-REDEMPTION FREEH DOCUMENTS** to the following:

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/s/ Kimberly Peets  
An employee of PISANELLI BICE PLLC

# EXHIBIT 1

001

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 2**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 3**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**



# **EXHIBIT 4**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 5**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 6**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 7**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**



# EXHIBIT 8

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# EXHIBIT 9

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 10**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 11**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**



# **EXHIBIT 12**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 13**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 14**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**



# **EXHIBIT 15**

## 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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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 Interview**<sup>120</sup>

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.

<sup>120</sup> 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 20<sup>th</sup> and 23<sup>rd</sup> 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

# **EXHIBIT 16**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**