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the members of the Board directly or indirectly that he did not want her to continue on the Board. Once Mr. Wynn conveyed his desire to have Ms. Wynn ousted from the Board, the other Board members supported his decision as they have nearly every other decision in the history of the Company. The other Board members never would have acted not to renominate and not to reelect Ms. Wynn without Mr. Wynn's approval.

- 123. At the Board meeting in which Ms. Wynn's renomination was considered, Mr. Wynn failed to make a motion to include Ms. Wynn as a nominee. Further, when he voted against the motion to shrink the size of the Board, he expressly stated that he was doing so only because he was contractually obligated to support Ms. Wynn's candidacy. This conveyed that Mr. Wynn was not genuinely endorsing her candidacy. Mr. Wynn's lack of support for Ms. Wynn, which on information and belief Mr. Wynn had also previously conveyed to other Board members, caused those other members to exclude Ms. Wynn from the Board.
- 124. Mr. Wynn, Ms. Sinatra, and Wynn Resorts generated transparently false and pretextual reasons for not renominating Ms. Wynn to the Board. These reasons included things like Ms. Wynn's demeanor and body language at Board meetings – reasons that were not communicated to Ms. Wynn but were asserted for the first time only after Ms. Wynn filed claims based on her improper ouster from the Board. The Directors' reliance on these demonstrably false – and after-the-fact – justifications shows that they were not exercising any independent judgment, or any judgment at all, but were merely doing Mr. Wynn's bidding.
- 125. In addition, Mr. Wynn's decision to vote for Mr. Hagenbuch and against Mr. Virtue was not made on the merits of the two candidates but was part of a calculated effort to maximize the success of the effort not to reelect Ms. Wynn at the shareholders' meeting. As Mr. Wynn and his advisors correctly predicted, Mr. Virtue secured more votes than Mr. Hagenbuch, so Mr. Wynn's support for the weaker candidate was deliberately calculated to increase Mr. Hagenbuch's chances of defeating Ms. Wynn.
- Mr. Wynn breached the January 2010 Stockholders Agreement by undertaking the 126. foregoing measures to oust Ms. Wynn from the Board.

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127. These actions in breach of Mr. Wynn's contractual obligations were material breaches of the January 2010 Stockholders Agreement and are sufficient to excuse Ms. Wynn from any future performance of obligations purportedly imposed on her under the January 2010 Stockholders Agreement.

- 128. As a result of Mr. Wynn's material breaches of the January 2010 Stockholders Agreement, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an award of said damages.
- 129. In addition to compensatory damages, Ms. Wynn seeks a declaration that her contractual duties under the January 2010 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders Agreement is subject to rescission and is rescinded.

# **NINTH CAUSE OF ACTION**

# BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(Against Stephen Wynn)

- 130. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 and paragraphs 118 to 129 above.
- 131. The January 2010 Stockholders Agreement contained an implied covenant of good faith and fair dealing that required Mr. Wynn not to do anything to undermine or injure Ms. Wynn's right to receive the benefits of the contract, namely, her renomination and reelection to the Board of Directors.
- 132. Mr. Wynn's conduct alleged above was unfaithful to the purpose of the January 2010 Stockholders Agreement and Ms. Wynn's justified expectations and, as a result, breached the implied covenant of good faith and fair dealing.
- 133. Mr. Wynn's actions in breach of the implied covenant of good faith and fair dealing were material and sufficient to excuse Ms. Wynn from any future performance of obligations purported to be imposed on her under the January 2010 Stockholders Agreement.
- 134. As a result of Mr. Wynn's breaches of the implied covenant of good faith and fair dealing, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an award of said damages.

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135. In addition to compensatory damages, Ms. Wynn seeks a declaration that her contractual duties under the January 2010 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders Agreement is subject to rescission and is rescinded.

# TENTH CAUSE OF ACTION

# **SPECIFIC PERFORMANCE**

# (Against Stephen Wynn)

- 136. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 above.
- 137. Ms. Wynn has fully performed and has complied with all material obligations of the January 2010 Stockholders Agreement.
- 138. Section (g) of the January 2010 Stockholders Agreement entitled "Specific Performance" provides that "a breach by any party hereto of any covenants or agreements contained in this Agreement will cause the other parties hereto to sustain damages for which they would not have an adequate remedy at law for money damages, and therefore . . . the parties shall be entitled to the remedy of specific performance." This remedy is consistent with the unique character and nature of a director position on the Wynn Resorts Board of Directors. The wrongful loss of Ms. Wynn's director position cannot be duplicated or replaced in any fashion except by ordering Mr. Wynn to comply with his obligations to Ms. Wynn in a new director election.
- 139. Ms. Wynn requests an order compelling Mr. Wynn to comply with the January 2010 Stockholders Agreement, including without limitation his obligations to assure the nomination and election of Ms. Wynn to the Board of Directors.

#### **ELEVENTH CAUSE OF ACTION**

## INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

### (Against Wynn Resorts)

- 140. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 above.
- 141. Wynn Resorts knew of the January 2010 Stockholders Agreement, including without limitation Ms. Wynn's contractual rights to nomination and election to the Wynn Resorts Board of Directors. In particular, Wynn Resorts' senior executives and members of its Board of Directors had knowledge of the January 2010 Stockholders Agreement and its provisions regarding Ms.

| Wynn's reelection to the Board. With full knowledge of these contractual rights and obligations,   |
|--|
| Wynn Resorts took intentional actions intended or designed to disrupt and frustrate performance of |
| he January 2010 Stockholders Agreement.  |

- 142. Wynn Resorts intentionally conspired and acted with Mr. Wynn to interfere with and disrupt Mr. Wynn's contractual obligation to renominate and reelect Ms. Wynn to the Board of Directors as set forth in the 2010 Stockholders Agreement, including without limitation by:
  - (i) expelling Ms. Wynn from the Board, contrary to her entitlement under the 2010 Stockholders Agreement, in retaliation for her proper inquiries into Company activities;
  - (ii) interfering with Mr. Wynn's obligation to renominate and reelect Ms. Wynn to the Board of Directors, including without limitation by devising and executing a campaign to ensure Ms. Wynn's ouster from the Board;
  - (iii) voting to recommend that Ms. Wynn not be renominated to the Board, recommending instead that the size of the Board be decreased by one and that only directors J. Edward Virtue and John J. Hagenbuch be renominated;
  - (iv) reducing the size of the Board by one, with the one being Ms. Wynn;
  - (v) issuing a press release written by the Company's public relations department stating that Mr. Wynn's comments that 'he did not agree with the Board's decision not to renominate Ms. Wynn' should not be misconstrued and that he had great respect for the care the Board took in making its decision not to renominate her;
  - (vi) convincing investors to vote against Ms. Wynn based on false, pretextual reasons; and
  - (vii) cancelling the redeemed shares held by Mr. Okada. Had the shares not been cancelled, they would have been voted in Ms. Wynn's favor.
- These acts substantially contributed to the disruption of Ms. Wynn's contractual relationship, with resulting damage to Ms. Wynn.
- 143. Wynn Resorts conspired to and did engage in the foregoing intentional acts with the intent and design to disrupt Ms. Wynn's rights under the January 2010 Stockholders Agreement. Furthermore, there was actual disruption of Ms. Wynn's contractual rights, with resulting damage to Ms. Wynn. Wynn Resorts did so without any proper purpose or legitimate interest, including because Wynn Resorts is not an intended beneficiary of and does not otherwise have an interest in the January 2010 Stockholders Agreement.

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| 144.           | Wynn Resorts willfully and knowingly acted to damage Ms. Wynn's interests. | It did |
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| so with malice | , oppression, and fraud, and in conscious disregard of Ms. Wynn's rights.  |        |

145. As a result of Wynn Resorts' intentional interference with the January 2010 Stockholders Agreement, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an award of said damages, as well as an award of punitive damages.

# **TWELFTH CAUSE OF ACTION**

# INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

#### (Against Kimmarie Sinatra)

- 146. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 above.
- 147. Ms. Sinatra knew of the January 2010 Stockholders Agreement, including without limitation Ms. Wynn's rights to nomination and election to the Wynn Resorts Board of Directors by Mr. Wynn. With full knowledge of these contractual rights and obligations, Ms. Sinatra took intentional actions intended and designed to disrupt the contractual relationship under the January 2010 Stockholders Agreement.
- 148. Ms. Sinatra intentionally conspired and acted with Mr. Wynn and Wynn Resorts to disrupt Mr. Wynn's obligation to assure Ms. Wynn's renomination and reelection to the Board of Directors as set forth in the 2010 Stockholders Agreement, including without limitation by:
  - (i) engineering and orchestrating Board actions to expel Ms. Wynn from the Board, contrary to her entitlement under the 2010 Stockholders Agreement, in retaliation for her proper inquiries into Company activities;
  - (ii) inventing false, pretextual reasons to justify Ms. Wynn's ouster as a director and providing such reasons as if they were legitimate to senior executives and members of the Wynn Resorts Board of Directors;
  - (iii) developing the scheme to reduce of the size of the Board by one seat to further ensure Ms. Wynn's expulsion and engineered its execution;
  - (iv) sanctioning and encouraging Board members' attempts to convince investors to vote against Ms. Wynn; and
  - (v) conspiring to propose the redeemed shares held by Mr. Okada be cancelled to ensure they were not voted in Ms. Wynn's favor and to convince the Board to vote to do so.
- These acts substantially contributed to the disruption of Ms. Wynn's contractual relationship, with resulting damage to Ms. Wynn.

149. Ms. Sinatra conspired to and did engage in the foregoing intentional acts with the intent and design to disrupt Ms. Wynn's rights under the January 2010 Stockholders Agreement. Furthermore, there was actual disruption of Ms. Wynn's contractual rights as a result, with resulting damage to Ms. Wynn. Ms. Sinatra did so without any proper purpose or legitimate interest, including because she is not an intended beneficiary of and does not otherwise have an interest in the January 2010 Stockholders Agreement.

- 150. Ms. Sinatra willfully and knowingly acted to damage Ms. Wynn's interests. She did so with malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's rights.
- 151. As a result of Ms. Sinatra's intentional interference with the January 2010 Stockholders Agreement, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an award of said damages, as well as an award of punitive damages.

# THIRTEENTH CAUSE OF ACTION

# BREACH OF FIDUCIARY DUTY

# (Against Stephen Wynn)

- 152. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 above.
- 153. At all relevant times, Mr. Wynn was a controlling shareholder of Wynn Resorts, as he exercised actual control over Wynn Resorts by dominating its affairs, including but not limited to the corporate decision-making process of Wynn Resorts and the process of nominating and electing directors. Mr. Wynn had, and continues to have, such voting and managerial power that, as a practical matter, he is no differently situated than if he had actual majority shareholder voting control.
- 154. Mr. Wynn's position is that the purported corporate purpose underlying the January 2010 Stockholders Agreement is to ensure that Mr. Wynn retains control over Wynn Resorts.
- 155. Mr. Wynn, as a director and controlling shareholder of Wynn Resorts, owed fiduciary duties to Ms. Wynn, a fellow director and minority shareholder of Wynn Resorts. Mr. Wynn's fiduciary obligations to Ms. Wynn were independent of any obligations under the January 2010 Stockholders Agreement.

156. Mr. Wynn breached his fiduciary duties to Ms. Wynn by taking actions to eliminate her voice in the management of Wynn Resorts and to dilute her role as a minority shareholder by making sure that Ms. Wynn was ousted from the Board. Among other things, Mr. Wynn, in conspiracy with Ms. Sinatra and Wynn Resorts generated false, pretextual, and post hoc reasons for not renominating and reelecting Ms. Wynn to the Board and thereby ensured that she would not be reelected and created a tone at the top that punished Ms. Wynn for legitimate inquiry into the Company's management and operations.

- 157. Mr. Wynn willfully and knowingly acted to damage Ms. Wynn's interests by eliminating her minority shareholder's voice in the management of Wynn Resorts. He did so with malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's rights.
- 158. As a result of Mr. Wynn's breaches of fiduciary duty, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an award of said damages, as well as an award of punitive damages.

# FOURTEENTH CAUSE OF ACTION AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

# (Against Wynn Resorts)

- 159. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 and paragraphs 152 to 158 above.
- 160. Mr. Wynn, as a director and controlling shareholder of Wynn Resorts, owed fiduciary duties to Ms. Wynn, a fellow director and minority shareholder of Wynn Resorts. Mr. Wynn's fiduciary obligations to Ms. Wynn were independent of any obligations under the January 2010 Stockholders Agreement.
  - 161. Mr. Wynn breached his fiduciary duties, as set forth in paragraphs 152 to 158 above.
- 162. Wynn Resorts knowingly participated in and substantially assisted Mr. Wynn's breaches of fiduciary duties owed to Ms. Wynn as explained above in paragraphs 62-66, including without limitation by:
  - (i) conceiving and implementing a scheme to have Ms. Wynn removed from the Board, contrary to Mr. Wynn's fiduciary duty to Ms. Wynn;

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| (ii) | intentionally acting and conspiring with Mr. Wynn to oust Ms. Wynn from   |
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|      | the Board of Directors, including by recommeding against her renomination |
|      | at the Committee and then at the Board level;                             |

- (iii) actively soliciting investors and encouraging them to vote against Ms. Wynn;
- knowingly and intentionally reducing the size of Board by one seat with the (iv) intent to ensure Ms. Wynn was not renominated to the Board;
- (v) conceiving and approving a press release written by the Company's public relations department stating that Mr. Wynn's comments that "he did not agree with the Board's decision not to renominate Ms. Wynn" should not be misconstrued and that he had great respect for the care the Board took in making its decision not to renominate her; and
- (vi) knowingly and intentionally voting to cancel Mr. Okada's shares with the intent to prevent those shares from being voted in favor of Ms. Wynn.
- 163. Wynn Resorts willfully and knowingly acted to damage Ms. Wynn's interests. They did so with malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's rights.
- As a result of Wynn Resorts' aiding and abetting of Mr. Wynn's breaches of 164. fiduciary duty, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an award of said damages, as well as an award of punitive damages.

# FIFTEENTH CAUSE OF ACTION

# AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

#### (Against Kimmarie Sinatra)

- 165. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66.
- 166. Mr. Wynn, as a director and controlling shareholder of Wynn Resorts, owed fiduciary duties to Ms. Wynn, a fellow director and minority shareholder of Wynn Resorts. Mr. Wynn's fiduciary obligations to Ms. Wynn were independent of any obligations under the January 2010 Stockholders Agreement.
  - 167. Mr. Wynn breached his fiduciary duties, as set forth in paragraphs 152 to 158 above.
- 168. Ms. Sinatra knowingly participated in and substantially assisted Mr. Wynn's breaches of fiduciary duties owed to Ms. Wynn as explained above in paragraphs 62 to 66, including without limitation by:
  - (i) conceiving and implementing a scheme to have Ms. Wynn removed from the Board, contrary to Mr. Wynn's fiduciary duty to Ms. Wynn;

- (ii) intentionally concealing misconduct by Mr. Wynn that should have been disclosed the Board, and could have exposed the Company to liability, or other losses, putting the interests of Mr. Wynn ahead of those of shareholders;
- (iii) promoting and enforcing a tone at the top that punished proper inquiry into corporate governance decisions and Company activities;
- (iv) putting the interests of Mr. Wynn ahead of all others, including by manipulating the Board and its members, including without limitation by:
  - (a) failing to truthfully tell Ms. Wynn about the circumstances surrounding the 2005 payment when asked about it by Ms. Wynn and instead misrepresenting that it had been appropriately handled, when in fact company counsel at the time had been not been properly informed, among other reasons;
  - (b) falsely telling the Board that a proxy statement that had been issued would have to be amended and reissued because of conduct by Ms. Wynn; and
  - (c) misrepresenting to the Board and others the reason for the Company's COO's departure, as if it were nothing more than a decision to retire, and claiming he was retiring when he in fact was terminated for his connections to illegal gambling;
- (v) engineering and assisting in the execution of a scheme to ensure Mr. Okada's redeemed shares were cancelled in an intentional effort to ensure they were not voted in favor of Ms. Wynn; and
- (vi) acting knowingly and intentionally to advance Mr. Wynn's scheme to oust Ms. Wynn from the Board in violation of his fiduciary duties.
- 169. Ms. Sinatra willfully and knowingly acted to damage Ms. Wynn's interests. She did so with malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's rights.
- 170. As a result of Ms. Sinatra's aiding and abetting of Mr. Wynn's breaches of fiduciary duty, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an award of said damages, as well as an award of punitive damages.

# SIXTEENTH CAUSE OF ACTION

# PERMANENT INJUNCTIVE RELIEF

- 171. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 above.
- 172. To enforce the judicial declarations Ms. Wynn seeks in paragraphs 67 to 135 and to secure her rights declared thereunder, Ms. Wynn further seeks an injunction that enjoins Mr. Wynn from instructing Wynn Resorts not to register shares sold or transferred by or otherwise prevent the

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Transfer, as defined in the January 2010 Stockholders Agreement, of shares by Ms. Wynn, and that provides such other injunctive relief against Mr. Wynn and/or Aruze that the Court deems necessary and appropriate to enforce the declaratory relief granted.

## **DEMAND FOR JURY TRIAL**

Ms. Wynn hereby demands trial by jury pursuant to Nevada Rule of Civil Procedure 38(b).

### PRAYER FOR RELIEF

WHEREFORE, Ms. Wynn demands judgment against Mr. Wynn, Wynn Resorts, Aruze, and Ms. Sinatra as follows:

- 1. A declaration that Ms. Wynn's contractual duties under the January 2010 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders Agreement is subject to rescission and is rescinded because the redemption of Aruze's stock frustrated the principal purpose of the January 2010 Stockholders Agreement and its predecessor agreements (i.e., the April 2002 Stockholders Agreement and the 2006 Amendment);
- 2. A declaration that the restrictions on alienability as set forth in paragraph 75 above are unenforceable as an unreasonable restraint on alienation in violation of public policy and statutes;
- 3. A declaration that that the restrictions are unenforceable as an unlawful forfeiture in violation of public policy;
- 4. A declaration that the restrictions are voidable by Ms. Wynn because she made a unilateral mistake (known to Mr. Wynn) as to a fundamental assumption, or assumptions based on which she agreed to the restrictions;
- 5. A declaration that that Ms. Wynn's contractual duties under the January 2010 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders Agreement is subject to rescission and is rescinded because of failures of consideration and/or performance;
- 6. Judgment in favor of Ms. Wynn and against Mr. Wynn based on Mr. Wynn's fraudulent inducement and a declaration that the restrictions are voidable by Ms. Wynn because Mr.

Wynn made false representations to Ms. Wynn with the intention to induce her to enter into and to consent to the formation of the January 2010 Stockholders Agreement;

- 7. If Aruze successfully obtains a discharge of its obligations under the January 2010 Stockholders Agreement, a declaration that Ms. Wynn's contractual duties under the January 2010 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders Agreement is subject to rescission and is rescinded;
- 8. Judgment in favor of Ms. Wynn and against Mr. Wynn based upon Mr. Wynn's breaches of contract, and a declaration that Ms. Wynn's contractual duties under the January 2010 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders Agreement is subject to rescission and is rescinded because Mr. Wynn materially breached the agreement;
- 9. Judgment in favor of Ms. Wynn and against Mr. Wynn based upon Mr. Wynn's breach of the implied covenant of good faith and fair dealing, and a declaration that Ms. Wynn's contractual duties under the January 2010 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders Agreement is subject to rescission and is rescinded because Mr. Wynn materially breached the implied covenant of good faith and fair dealing;
- 10. An order compelling Mr. Wynn to comply with the January 2010 Stockholders

  Agreement, including without limitation his obligations to assure the nomination and election of

  Ms. Wynn to the Board of Directors;
- 11. Judgment in favor of Ms. Wynn and against Wynn Resorts based on Wynn Resorts' intentional interference with the January 2010 Stockholders Agreement;
- 12. Judgment in favor of Ms. Wynn and against Ms. Sinatra based on Ms. Sinatra's intentional interference with the January 2010 Stockholders Agreement;
- 13. Judgment in favor of Ms. Wynn and against Mr. Wynn based on Mr. Wynn's breaches of fiduciary duty;
- 14. Judgment in favor of Ms. Wynn and against Wynn Resorts based on Wynn Resorts' aiding and abetting of Mr. Wynn's breaches of fiduciary duty;

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| 15.           | Judgment in favor of Ms. Wynn and against Ms. Sinatra based on Ms. Sinatra's |
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| aiding and ab | petting of Mr. Wynn's breaches of fiduciary duty.                            |

- 16. Preliminary and/or permanent injunctions as the Court deems necessary and appropriate to enforce the declarations prayed for, including an injunction that prohibits Mr. Wynn from instructing Wynn Resorts not to register shares sold or transferred by or otherwise to prevent the Transfer, as defined in the January 2010 Stockholders Agreement, of shares by Ms. Wynn, as well as such other injunctive relief against Mr. Wynn and/or Aruze that the Court deems necessary and appropriate;
  - 17. For compensatory damages in an amount to be proved at trial;
- 18. For punitive and exemplary damages in a sum sufficient to punish Mr. Wynn, Wynn Resorts, and Ms. Sinatra, and to deter similar wrongdoing by others; and
  - 19. Costs of suit and such other relief as the Court deems just and proper.

Dated: May 17, 2017

#### GREENBERG TRAURIG, LLP

#### By /s/Mark E. Ferrario

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## **CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 17<sup>th</sup> day of

May, 2017, I caused a true and correct copy of the forgoing First Amended Answer of Elaine P.

Wynn to Aruze and Universal's Fourth Amended Counterclaim, Sixth Amended Counterclaim

and Crossclaim of Elaine P. Wynn to be filed and served via the Court's e-filing system upon the

parties listed below. The date and time of the electronic proof of service is in place of the date and

8 place of deposit in the mail.

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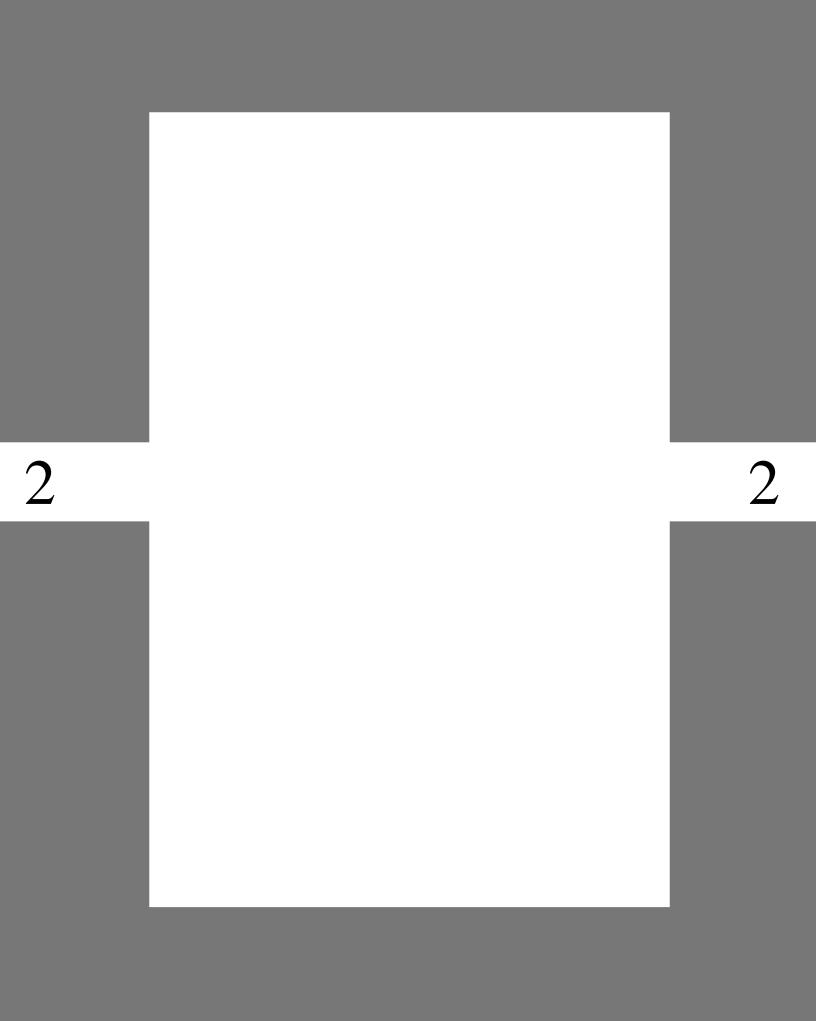
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/s/ Andrea Lee Rosehill
An Employee of Greenberg Traurig, LLP



TRAN

DISTRICT COURT CLARK COUNTY, NEVADA

\* \* \* \* \*

WYNN RESORTS LIMITED

Plaintiff . CASE NO. A-12-656710-B

VS.

. DEPT. NO. XI

KAZUO OKADA, et al. .

. Transcript of Defendants . Proceedings

. . . . . . . . . . . . . . . .

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

#### HEARING ON MOTIONS FOR PROTECTIVE ORDERS

MONDAY, AUGUST 14, 2017

COURT RECORDER: TRANSCRIPTION BY:

JILL HAWKINS FLORENCE HOYT

District Court Las Vegas, Nevada 89146

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

# APPEARANCES:

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DEBRA L. SPINELLI, ESQ.

FOR THE DEFENDANTS: J. STEPHEN PEEK, ESQ.

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JAMES COLE, ESQ.

WILLIAM R. URGA, ESQ.

DONALD JUDE CAMPBELL, ESQ.

COLBY WILLIAMS, ESQ.

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LAS VEGAS, NEVADA, MONDAY, AUGUST 14, 2017, 8:03 A.M.
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                      (Court was called to order)
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              THE COURT: Good morning. Before we start the
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    arguments let's talk about the September 25th date that I set
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    that apparently doesn't work for Mr. Schall.
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              MR. PISANELLI: Or her or me or him. No one at this
 7
    table, including the witnesses, Judge.
 8
              THE COURT:
                          So, Mr. Peek.
 9
              MR. PEEK:
                         I don't know what to tell you, Your
10
            I mean, September 11th was a date that certainly
    worked for us, although I know we do have depositions in the
11
12
    Far East.
               I don't know what to say. I mean, I want to get
13
    this completed, and I know the Court wants to complete the
14
    sanctions hearing, as well, and get on with other business of
15
    a more substantive nature.
                                I don't know what the following
    week looks like for the Court. I don't know what the week
16
17
    before looks like for the Court, but obviously the Court
18
    looked at its calendar and came up with two dates, the 11th of
19
    September and the 25th of September. Neither of those dates
20
    seems to be okay with the --
21
              THE COURT:
                          Do you want to take Mr. Schall on August
22
    21 and 23 and then resume with the rest of the folks, since
23
    he's our problem -- mostly our problem September 25th?
24
              MR. PEEK:
                         I think that's what I said, Your Honor.
25
                         No, that's not what you said. At least
              THE COURT:
```

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not the email traffic that Dan showed me, because Dan
 1
    summarized your email traffic and then sent it to me and said,
 2
 3
    they can't agree. And I said, great. Tell them September
 4
    25th.
 5
                                No, I actually said that I was
              MR. PEEK:
                         Yeah.
 6
    okay with those dates with Mr. Schall, and then Ms. Spinelli
 7
    wrote back and she wanted to have Mr. Okada appear this week,
 8
    and I said that wasn't acceptable. So that's when the Court
    saw that we didn't agree and kicked it to the 25th.
10
    happy to take Mr. Schall next week.
              THE COURT: So is Mr. Schall available on the 21st
11
    and the 23rd to finish up?
12
              MS. SPINELLI: He's available in the afternoon on
13
14
    the 21st, Your Honor, and on the -- he might be able to get
15
    here in the morning, but I understand that you have a calendar
16
    in the morning. But, yes, he's available.
17
              THE COURT: I do. I start at 8:00 o'clock with Wynn
18
    Okada, and sometimes I get done.
19
              MS. SPINELLI: Oh, yeah. That's us.
                                                     He is
    available, Your Honor.
20
21
              THE COURT: So -- and what about the 23rd?
22
                                     He's available that whole
              MS. SPINELLI:
                             He is.
23
    week.
24
              THE COURT: So do you want to take him on the 21st
25
    and the 23rd?
```

```
Yes, Your Honor.
 1
              MR. PISANELLI:
                          Then tell me how bad your September 25th
 2
              THE COURT:
 3
    conflict is. Because I thought your conflict was September
 4
    11th, and then Mr. Bice had a trial.
 5
              MR. BICE:
                         It's both. Your Honor, what is --
   because I still don't understand what -- Mr. Schall would be
 6
 7
   here on the 23rd -- or the 21st --
 8
              THE COURT:
                          21st in the afternoon.
                         And the 23rd.
 9
              MR. BICE:
10
              THE COURT: And the 23rd all day long, starting as
11
    early as I can make you guys get here.
              MR. BICE: Right. And then we had proposed the 25th
12
13
    of August.
                (Off-record colloquy - Clerk and Court)
14
15
              THE COURT: How long is it going to take to finish
    Mr. Schall?
16
17
                         Well, they're not done with him.
              MR. BICE:
                          I understand. That's why I'm saying how
18
              THE COURT:
19
    long.
20
                         Three hours for me, half a day.
              MR. BICE:
21
              THE COURT:
                         I'm trying to get an estimate so I can
22
                     Because the question is do we bump the Lt.
    see what to do.
23
    Governor, or do we figure out something. Because he has that
24
    23rd apparently reserved and nobody told me.
25
                         I would always bump the Lt. Governor,
              MR. PEEK:
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Your Honor. Mark wouldn't.
                                 I'm not sure --
 1
 2
              THE COURT:
                          So I'm trying to get --
 3
                         As I said to the Court, it may be a day
              MR. PEEK:
 4
    and a half for me, but I wanted to be safe.
                                                  That's why we
 5
    went with the four days. But Mr. Bice --
              THE COURT: Only with Mr. Schall.
 6
 7
              MR. PEEK:
                         I know. Mr. Schall, he may be a day and
 8
    a half, although I don't -- would not like it to be a day and
 9
    a half, but it depends upon how the flow goes, Your Honor.
    And then if Mr. Bice has three hours -- as I said to Mr. Bice
10
    and I said to the Court, I'm going to be going to Hong Kong
11
    for two weeks.
12
13
              THE COURT:
                          No, I know.
                                       I'm going to try and
14
    move --
15
                         And I want to reserve the 25th.
              MR. PEEK:
    know they're trying to push me to give up the 25th as a prep
16
17
    date to go to Hong Kong, because I'm leaving on Sunday, the
           I would not like to do that. I think I'd like to have
18
    27th.
19
    some time to prepare for the depositions that are going to
20
    take place in Hong Kong. And I'm going to be there for two
21
    weeks.
22
                          So I will try and bump what is currently
              THE COURT:
23
    scheduled for the 23rd to the 30th, but that only gives you a
24
    day and a half. I can start earlier if Mr. Schall can get
25
    here earlier on the 21st.
```

```
MR. PEEK:
                         I don't even know if he's going to make
 1
 2
    it in the afternoon. I thought there was some concern he may
 3
    not even be able to be here exactly in the afternoon, but I'm
 4
   pretty flexible about that, too.
 5
              THE COURT: They said he would be here in the
 6
    afternoon.
 7
                         Well, they said other things, as well.
              MR. PEEK:
 8
              MS. SPINELLI:
                            He's available the entire week of the
 9
    21st.
10
              THE COURT: Okay.
                                 I have Mental Health Court on
    Tuesday afternoon, so I cannot be with you, because my staff
11
    covers Mental Health Court on Tuesday afternoon. But I will
12
13
    see if perhaps the Thursday or -- we'll work with it.
14
              MR. PEEK:
                         So right now we're going to go the
15
    afternoon of the 21st and the -- all day on the 23rd?
16
              THE COURT:
                          That's the plan.
17
                         Thank you, Your Honor. And then the
              MR. PEEK:
    continuation of it so I can --
18
19
              THE COURT: I need you to tell me how long it's
20
    going to take you to finish Mr. Schall. Because if you don't
21
    finish Mr. Schall, then I've got real problems, because I
22
    can't make him skip his personal vacation to Portugal and
23
    Dubai.
24
              MR. PEEK:
                         I understand that, Your Honor.
25
                         I try and let everybody have their
              THE COURT:
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vacations.
 1
 2
              MR. PEEK:
                         I lost a whole -- I lost a very large
 3
    portion of my vacation.
 4
              THE COURT: You were on sabbatical, though.
 5
                         It's still a vacation, Your Honor. You
              MR. PEEK:
 6
    only get -- you only get it every five years, and I don't know
 7
    if I'll be back here -- still be here in five years.
 8
              THE COURT:
                          Savannah, Georgia, looking at colleges.
 9
    That's a really --
10
                         I did, and I got both my daughters going
11
    to Savannah, Georgia, Your Honor.
              THE COURT: You were a great dad to go do that, Mr.
12
13
    Peek.
14
              MR. PISANELLI:
                              So, Your Honor, on the 25th am I
15
    understanding Counsel correctly that we could probably be
    finished with this whole thing except Counsel wants the day
16
17
    off two before he leaves?
                               Mr. Pisanelli has it absolutely
18
              MR. PEEK: Yes.
19
    correct, Your Honor. Counsel does have it, so if he wants to
20
    take a cheap shot at me, yes. I've said that to them
21
    repeatedly. Ms. Spinelli said it to me.
                                              So they know it.
22
    They just want to out it here and say, oh, Judge, this is just
23
    all about Mr. Peek. No, it's not.
24
              MR. PISANELLI: Well, I think he just told us it
25
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was.

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THE COURT: All right. So I'll see you guys for that hearing on the 21st. I do not know if I currently have a Business Court settlement conference that morning, but we will -- I will contact the Sher Development people later this morning, Dulce, and move them a week or so. So we'll plan to start in the afternoon unless the settlement conference vacates.
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All right. I would like to go first to the motion about the notes.

MR. PISANELLI: Good morning, Your Honor.

So, Your Honor, at the heart of this motion is another instance where Wynn Resorts has learned that one of its former employees took company documents without authorization on their way out the door. So our motion seeks to preserve everyone's rights and, relatedly, to make sure that no one is prejudiced, including us. We've asked the Court to quash the subpoena so as to take Ms. Whennen out of the equation. We have a copy of the notes. And so everything that can happen to preserve Ms. Wynn's rights to the extent she has any the documents have been preserved. Anything needed from Your Honor's perspective to direct a party who's before you, Wynn Resorts, we have them. We have asserted privilege over them. You can do whatever analysis that you deem appropriate. Everyone is protected by our proposal.

But, Elaine Wynn, on the other hand, seeks to do

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everything she can to prejudice everyone but herself.
1
   put Ms. Whennen in the middle of this, who doesn't need to be
2
          She has interfered with Ms. Whennen's contract with
 3
 4
   Wynn Resorts by rushing an hour after I openly declared that
5
   the notes were company property quickly get a subpoena out
   there so that they can try and get their hands on a document
 6
7
   outside of the Court's protective order and outside of
8
   anyone's interest about our privileges.
                                             That's the game that
9
    was being played here.
10
              Now, I would suspect, Your Honor, Elaine Wynn's
```

opposition that came into this case -- I have to guess it's the single most shameful thing.

THE COURT: You think that document was filed under seal?

MR. PISANELLI: I'm sorry?

THE COURT: Do you think that document was filed under seal?

MR. PISANELLI: I would hope so, but it wouldn't surprise me if it wasn't. You remember how Quinn Emanuel came in here with Pat Lundvall trying to sully this record with these exact allegations, and Your Honor said no. And this shameful exercise from the Sidley firm came in here and actually did what none of us thought was possible and bring this litigation to a lower level. That's what this exercise is about. I think they adopted the philosophy they'd rather

```
ask you for forgiveness than seek permission. Because they saw what happened to Quinn Emanuel when they sought permission to denigrate this process. Your Honor said no. So here we are. And the Sidley firm can correct me if I'm wrong. If they actually have done more shameful things in other cases, he can describe those to us. But I suspect this is now the single worst thing that's ever come out of this law firm.
```

So what are the real legal issues that could have been addressed in a few pages? First ownership. really be a serious argument over who owns these documents. high-ranking executive takes notes during the course of her job responsibilities about an event, a very serious event that is occurring on the job while she was there. There is nothing ordinary about this. And she took the notes and she preserved them at the company until she walked out the door. How anyone could seriously suggest that this is anything other than company property is beyond me, but I suspect ownership debate was nothing that the Sidley firm really wanted to do. this is an attempt to smear Mr. Wynn and the company generally, not really to get their hands on the company They had an avenue for that if that's all they property. really wanted to do.

And the same thing, Your Honor, about the privilege. We know from the recent opinion that came out of this case that we're going to look at the totality of circumstances of

```
the because of test. And what we're talking about here are
allegations of assault by a company executive.
                                                That's what
we're talking about here. There's never been anything like
    This was not ordinary course type of stuff.
allegations were raised in the most suspicious of
circumstances for everyone involved. And so these top
executive, including Ms. Whennen, did what they could to
fulfill their job responsibilities, and this product came out
of the fulfillment of those job responsibilities.
be lost on anyone, Your Honor, that lawyers were involved the
same day, it can't be lost on anyone that lawyers resolved the
issue 30 days later, there is no plausible argument, even with
the smut that the Sidley Austin firm put in their brief, there
is no plausible argument that any person involved in this
process didn't expect imminent litigation.
                                            It is not a
serious argument to suggest, Your Honor.
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So what we know what really is going on here, Your Honor, this sounds, though much, much worse, in the same nonsense we heard about Rolex watches and Ferraris. You remember how you wouldn't allow that in here, either. Let's talk for one moment about how truly serious this issue was for Elaine Wynn and her new law firm, because they know everything I know and they know what I'm about to say that's in our papers. Elaine Wynn knew about these very serious allegations nine years ago. What did she do with them when she learned?

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She did absolutely nothing. Did she go to the board?
Did she raise issues about tone at the top?
                                            No. Did she say
the CEO needs to be removed? No. Did she say that general
counsel needs to be fired? No.
                                 What she did was make sure
that she obtained millions of dollars for herself.
                                                    And once
her coffers were lined, this issue was dead, period, and it
was over until deep into this case Elaine Wynn was frustrated
that she was making no progress, that she wasn't getting the
extortionate settlement out of her divorce that she needed,
and so Ouinn Emanuel tried this tactic and Your Honor shut
them down, and now the Sidley firm tried this tactic before
Your Honor could shut them down. It has nothing to do with
          I've used the word "shameful" more than once
anything.
because that's truly what it is.
                                 And this exercise and the
                                 This is not an issue in this
opposition is as bad as it gets.
      This issue has nothing to do with this case.
notes never should have taken more than two minutes of
conversation between me and Mr. Ferrario. He, in his defense,
I could tell was handcuffed by the Sidley firm. And Your
Honor should put an end to this now. We quash is the
appropriate thing to do. We have the notes, we have put them
on a privilege log, they can challenge them, and Your Honor
can rule on our privilege, and then we can take it from there.
What happened in this briefing was nothing short of
disgusting, and I hope Your Honor doesn't reward the Sidley
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firm or Ms. Wynn for this tactic.
 1
 2
                         Mr. Ferrario, my first question for you
              THE COURT:
 3
    is was the Elaine Wynn opposition to Wynn Resorts Limited's
 4
   motion for protective order filed under seal?
 5
              MR. FERRARIO: It was filed in a redacted form, Your
 6
           We just looked it up.
    Honor.
 7
              THE COURT: I haven't seen the redactions, so I
    don't know.
 8
 9
              MR. FERRARIO: And then I think we even filed one of
10
    these crazy motions --
              THE COURT: I have your motion. I set it for this
11
12
   morning.
13
              MR. FERRARIO: Right. So we did -- we looked at it
14
    up on the --
15
              THE COURT: Did you redact all of the personal
16
    identifying information?
17
              MR. FERRARIO: I believe it was all redacted
18
    appropriately. I don't do those things, but it wouldn't say
19
    "Filed redacted" if it wasn't redacted.
              THE COURT: Dulce confirms it's redacted.
20
21
              MR. FERRARIO:
                             There you go.
22
                         Better than last time.
              THE COURT:
23
              MR. FERRARIO: Well, it's been redacted. So can we
24
    get rid of that shameful thing?
25
              THE COURT: Well, no. Usually when you file the
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motion to seal you give me the redacted version so I can
 1
 2
    approve it.
 3
              MR. FERRARIO:
                             Okay. Well, happened quickly.
 4
              THE COURT: Okay. So let's go to your opposition.
                             I really don't quite know where to
 5
              MR. FERRARIO:
 6
    begin, because --
 7
                          Is Ms. Whennen here?
              THE COURT:
                                                 Okay.
                                                        She hasn't
 8
    asked me for any relief from the subpoena.
 9
              MR. FERRARIO:
                             No.
                                  Mr. Leslie was supposed to be
10
    here, but --
              THE COURT:
                          Which Mr. Leslie?
11
12
              MR. FERRARIO: He is her attorney.
13
              THE COURT:
                          Which Mr. Leslie?
14
              MR. FERRARIO:
                             Bruce Leslie. I'm sorry.
                                                         But he was
15
    hiking in the wilderness in Tahoe, and not seeing him here I'm
16
    just wondering what happened, because he said he was going to
17
    be out on Sunday.
              At any rate, let's put this in perspective.
18
                                                            We sat
19
    down, took the deposition of Ms. Whennen, asked a few
20
    questions. During the course of the deposition she disclosed
21
    she had notes.
                    The deposition proceeded as you would expect.
22
    At the time that we ceased our questioning, normally you would
23
    go to right, Mr. Campbell jumped in, started questioning Ms.
24
    Whennen, and then the next thing that happened Mr. Pisanelli
25
    -- and there was a break in between so they could talk about
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these notes -- stood up and said, oh, we got notes, we're terminating the deposition. There was discussion about how you could terminate a deposition because someone had notes at home that weren't there that weren't the topic of the deposition, and after some exchange back and forth the Wynn counsel simply got up and walked out of the deposition.
```

Now, I've searched the rules, I've searched cases. I don't find anything that supports that. It was made clear to them at that time that we were going to subpoen the notes, okay. There was a disagreement between counsel, me included, as to whether they had the right to control the production of these notes. It was pretty clear to us that they don't want these notes out. So that set in motion a dialogue between Mr. Pisanelli and myself to try to reduce the motion practice, somewhat unsuccessfully, I might say, in terms of access to these notes. And we agreed on a process. And that's what brings us here today.

So the issue in front of Your Honor is who has access to these notes. Because they can't say that we violated any rule, they can't say we didn't properly follow Rule 45, they can't say we didn't accommodate them and extend them a courtesy. I could have very easily said, you know what, file your motion, we want her to show up, we want to produce the notes. But to accommodate their concerns, which to this day I don't understand, because if Ms. Whennen had

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these notes in her possession, I'm entitled to subpoena them and get them. And there's no case, there's no rule that says I can't do that.
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THE COURT: But you have them.

MR. FERRARIO: I don't have them. This is the point. I gave them an opportunity to screen them for a privilege even though I knew from the testimony -- because they never asked the salient question of the witness did you prepare these in anticipation of litigation. They hinted around it. Mark Schorr's affidavit doesn't support that. What we know now is --

THE COURT: He says Frank Schreck called him the next day.

MR. FERRARIO: Ah. But wait a minute. When were the notes prepared? And what does Mr. Schorr say? Does he say anywhere in there these notes were prepared in anticipation of litigation? No. And under all the cases, the most recent interpretation from the Supreme Court, I call it the daily case, the HCA case they can't meet that burden. But we gave them an opportunity. Why? I'll tell you why, Judge. I would have never done this in any normal case. But because of all the hoorahing here about us supposedly getting access to confidential information, I said, you know what, we don't need another sideshow. But that's all we have here, sideshows. So I said, you know what, we'll take the cautious

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route, we'll let you screen them, maybe, just maybe there's
1
   something in there that says Kim Sinatra told me to do this or
2
3
   I did this to Kim Sinatra, whatever, or Mark Rubenstein at the
4
  time or whoever it was. But guess what. It's not there.
5
  then what do I get? A half-baked assertion, at most a half-
  baked assertion on work product.
6
7
                         It says "Handwritten notes prepared in
             THE COURT:
8
  anticipation of litigation concerning employee allegation work
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product."

MR. FERRARIO: Read Ms. Whennen's depo.

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THE COURT: No, I understand. I'm looking at a privilege.

MR. FERRARIO: Right. Which does not in any way --THE COURT: I read the excerpts of the depo you guys gave me.

MR. FERRARIO: And it doesn't in any way comport with what happened, okay. So the issue here is have they properly asserted a privilege. But I'm not even sure that's the issue, because I could have gotten the documents from Ms. What these were, Judge, were notes that she took at Whennen. the time somebody reported this serious incident to her. was the first reporter. Now, if you really want to end all of this, look at their sexual harassment policy, which says, when you report an incident we will investigate. So guess what. This was part of the normal course at Wynn Resorts.

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don't think they'll stand up and say it wasn't. Because at the end of the day this was simply a report about sexual harassment.
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And you know what's even more troubling? That report says -- or that policy says "confidentiality will be maintained." Guess what we learned in Mr. Schorr's affidavit. You know how confidential this was? Do you know who the first person he reported it to was? His superior. That's interesting. Is that confidentiality under any sexual harassment policy you have ever heard of in your life? I suspect not.

So no matter how you cut it, whether it's looking at their sexual harassment policy, whether it's looking at Ms.

Whennen's testimony, it doesn't qualify as a document covered by the work product privilege.

And I take offense at the notion that we did anything wrong on our side. We properly noticed Ms. Whennen's deposition. We were as surprised as anybody that she had the notes. They had no right to walk out of the deposition. They did. Because we were talking about having her retrieve the notes and bringing them at the time, but that was going to be problematic because she lived in Green Valley. Then we properly subpoenaed the notes, and then we worked with them. What I didn't agree with Mr. Pisanelli on was this notion that they had a right to control this, that it was company

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property. Because you know what really struck me as odd,
Judge? This investigation that they supposedly -- they never
asked Ms. Whennen once if she had notes. They never talked to
her after she reported this up the chain. She was never
involved in the investigation. So you tell me that's work
product, Judge? You tell me she never talked to an attorney,
she never did anything other than write these notes
contemporaneously and stick them in her drawer and that's the
only document she took with her when she left? And you know
who was threatening Ms. Whennen, you know who's putting her in
the middle of it? They were. When they talked about, oh,
we've had this issue in the case, Ms. Elaine Wynn took
documents, and all these veiled threats to Ms. Whennen that
we're going to come after you, we're going to sue you, another
intimidation tactic that they use. Why?
                                         To squelch the
       And now they get up today and rehash the arguments
they've made on the motions to dismiss. And I saw you wince.
When you liken this to Rolexes and other stuff, this isn't
Rolexes, this isn't plane logs, this is serious conduct.
               So at the end of the day when we strip away all
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of the name calling and pointing fingers and what have you, we followed the rules under the caselaw, under the facts that exist in front of you today. There is no reason to quash this subpoena. We are entitled to the notes, and they should be provided to us promptly. We'll talk about whether or not they

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have a right to reexamine Ms. Whennen in the future, because I'm not aware of any rule that says when I'm sitting at a deposition and there's one of these OS moments that I can simply get out and walk out. Now, maybe that's how it works and maybe I'll find that rule at the end of today. But I'm not aware of it as I understand in front of you.

So let's get back to the rules. We followed the
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So let's get back to the rules. We followed the rules, I gave them an opportunity to assert a privilege, there is no support for that privilege under the new cases, under the old cases, under any rationale and especially in light of the sexual harassment policy that was in place which actually says this would be all done in the ordinary course.

I'll be happy to answer any questions you have, Your Honor.

THE COURT: Thank you.

Mr. Pisanelli, do you intend to do any additional briefing related to the legal or factual issues surrounding your privilege log?

MR. PISANELLI: Your Honor, you saw that we put the brief in this weekend. Our apologies for the timing of that.

THE COURT: It's okay. I came in and read it this morning.

MR. PISANELLI: Part of that is that Mr. Schorr was -- had surgery during the week, so getting access to him. So, given the opportunity, I think the answer should probably be

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There were an army of lawyers that surrounded this issue
 1
 2
    immediately. So if I want a full picture, rather than
 3
    bombast, then I'd like that opportunity to develop this.
              THE COURT: Well, I'd like a complete record before
 4
 5
    I decide the privilege issue.
 6
              MR. PISANELLI: Very good. On the ownership issue,
 7
    if may, Your Honor --
 8
              THE COURT:
                          I don't have jurisdiction over Ms.
 9
              She's not here, her lawyer's not here.
10
              MR. PISANELLI: You don't. But you don't need it.
    But you don't need it.
11
                          That's the quash issue, not the company
12
              THE COURT:
13
    property issue.
14
              MR. PISANELLI:
                              Right.
                                      But it's -- you can direct
15
    all these parties to behave themselves, you can quash the
16
    subpoena, and I as company counsel am now in possession of the
17
    notes. So I listened intently through the adjective and
    through the attacks to Mr. Ferrario just as closely as I read
18
19
    his brief to listen to what his prejudice is if we now take
20
    Ms. Whennen out of the mix, we quash the subpoena, and we have
21
    the parties deal with this issue.
                                       Never addressed.
22
    listened even closer, just as I read his brief even closer, to
23
    listen to the relevance. Shockingly, he uses the word
24
    "sideshow," but doesn't say anything other than he's
25
    disappointed that you winced when we brought up the other
```

```
sideshows that they had brought into this issue about Rolexes and Ferraris. Still nothing, no argument whatsoever of why this matters other than that it fits into a nice campaign of extortion against Mr. Wynn to get Ms. Wynn out of her divorce agreement. Obviously that's not a legitimate reason to be before, not a legitimate reason to be running up everyone's attorneys' fees in this case. So no relevance and no prejudice.
```

The easy option here, Your Honor, is take Ms. Whennen out of the mix, quash the subpoena, and you now control everything about this dispute.

THE COURT: You have the original notes?

MR. PISANELLI: I have a copy of the notes. Mr. -
THE COURT: Okay. Ms. Whennen still has the original notes.

MR. PISANELLI: Yeah. Mr. Leslie has informed me that he's going to do what the Court says. If he has no Court-ordered obligation, which includes a Rule 45 subpoena, then I will deal with him directly about the return of the originals. It doesn't even need to be inside this court. And just as the point that you made, the reason I didn't ask for the return of the originals is you don't have jurisdiction over Ms. Whennen. I'll deal with Mr. Leslie on how to fix that problem. But as between these parties, Ms. Wynn and her improper motive and the irrelevance of all of this stuff, that

```
is squarely on your desk and you can control all of this
 1
 2
    nonsense just like you controlled Quinn Emanuel --
 3
              THE COURT: Speak of the devil. Good morning, Mr.
 4
    Leslie.
            How are you?
 5
                         Good morning.
              MR. LESLIE:
              THE COURT: How was Tahoe?
 6
 7
                         Beautiful. Thank you for asking.
              MR. LESLIE:
 8
              THE COURT: All right. We're talking about -- we're
 9
    talking about your client.
10
              MR. LESLIE: Good. I'd be very interested in
    hearing what's happening to her property.
11
              MR. PISANELLI: So, Your Honor, you didn't allow
12
13
    Quinn Emanuel to go down this path, you didn't allow Pat
14
    Lundvall to go down this path, and simply because we have a
15
    new law firm here doesn't mean that the rules have changed.
    Quash the subpoena and we'll all be resolved, and Mr. Leslie
16
17
    will determine whose property it really is.
18
                         Okay. Mr. Leslie, I'm inclined to
              THE COURT:
19
    suspended your client's obligations under the currently issued
20
    subpoena while I resolve the privilege issues.
                                                     Is there
21
    anything you want to tell me before I make that ruling?
22
              MR. LESLIE: No, Your Honor, as long as we're not
23
    deciding ownership of the property.
24
              THE COURT:
                          I am not deciding ownership of the
25
   property.
```

```
[Inaudible].
 1
              MR. LESLIE:
                                          Thank you.
                          So I am going to suspended Ms. Whennen's
 2
              THE COURT:
 3
    obligations to comply with the subpoena duces tecum pending a
 4
    resolution of the privilege issue.
 5
              Mr. Pisanelli, how much time do you need to get me
 6
    supplemental briefing on the privilege issue?
 7
              MR. FERRARIO: Did you say they filed something over
 8
    the weekend on that?
 9
              THE COURT:
                          Yes.
              MR. PISANELLI: Ten days would be great, seven days
10
    would be manageable.
11
                          Seven days it is.
12
              THE COURT:
13
              How long do you need, Mr. Ferrario, after their
14
    seven days?
15
                         Another seven days, Your Honor.
              MR. COLE:
16
              THE COURT:
                          So, Dulce, if we could put it on in
17
    three weeks, please.
18
                          Your Honor, there's a holiday in --
              THE CLERK:
19
              MR. FERRARIO:
                              I think they're all going to be Hong
20
    Kong.
21
                          How about September 11th?
              THE COURT:
22
    going to be in Washington, D.C., in trial on September 11th.
23
    What am I going to do about hearings while you're in
24
    Washington, D.C., trying that case? Am I allowed to have
25
    hearings?
```

```
MR. PEEK:
                         That's a new one that counsel --
 1
 2
              MR. PISANELLI: You finished?
 3
              MR. PEEK:
                         I am, Mr. Pisanelli.
 4
              MR. PISANELLI: Your Honor, you set hearings --
 5
    hopefully they're not going to be evidentiary hearings, but
 6
    we're going to lean on each other, as we try to do.
 7
              THE COURT: So can I do this issue on September
 8
    11th?
 9
              MR. PISANELLI:
                              That's when I would probably --
10
              THE COURT:
                          So the week before are you guys back
    from the Far East and your deposition trip?
11
              MR. PISANELLI: I don't believe so, Your Honor.
12
13
              MR. FERRARIO: Your Honor, we don't need -- why do
14
    they need seven days? This issue's been percolating.
15
    know, we gave -- this is like three weeks already. So let's
    do it --
16
17
                             Still waiting for relevance.
              MR. PISANELLI:
              THE COURT: Guys.
18
19
              MR. FERRARIO: I'll tell you what the -- you want to
    hear the relevance?
20
21
              MR. PISANELLI:
                             I do.
22
              THE COURT: Can we stop fighting.
23
              MR. FERRARIO:
                            Your Honor --
24
              THE COURT: Wait.
                                 Wait. It's okay. We don't need
25
    to fight. My question is can I do it the week -- end of the
```

```
week before. When do you get back from your trip to the Far
 1
 2
   East for the depos?
 3
              MS. SPINELLI: Your Honor, some of us get back
 4
    September 8th. Mr. Pisanelli flies straight to Washington,
 5
    D.C.
                         So he's not going to be here on the 8th.
 6
              THE COURT:
 7
              MS. SPINELLI:
                             No.
                                  I'm checking about the week
 8
   before for Mr. Bice, who I don't think at this time is going
 9
    to Hong Kong.
10
              THE COURT:
                         So are you able to finish the briefing
   by the end of this week?
11
              MR. PISANELLI:
12
                              Yes.
              THE COURT: Mr. Ferrario, can you give me any
13
14
    additional briefing you want by the 23rd?
15
              MR. FERRARIO:
                             Sure.
              THE COURT: And I'll see you at --
16
17
              MR. FERRARIO: You actually have a hearing on the
18
    23rd in the sanctions thing.
19
              THE COURT: Yes, we do.
20
              MR. FERRARIO: If we could hear this the morning of
21
    that.
22
              THE COURT:
                          Only if you get me the brief the day
23
   before.
24
              MR. FERRARIO: So they'll supplement, what, by the
25
    17th or 18th, and we'll get you one by the 22nd?
```

```
At the close of business.
              THE COURT:
 1
 2
              MR. COLE:
                         We can do that.
 3
              MR. FERRARIO:
                             Let's do it.
 4
              THE COURT: And then I can see you guys at 8:30 on
 5
    the 23rd?
                         Why can't we do this on the 25th?
 6
              MR. BICE:
 7
              THE COURT:
                          23rd?
                                 Because remember Mr. Peek doesn't
 8
    want to come in on the 25th.
 9
              MS. SPINELLI: I know. But if this isn't a Mr. Peek
    issue, are the rest of the people -- he can send Mr. Cassity.
10
              THE COURT: Well, Mr. Peek's over here talking about
11
    the briefing schedule, guys. He's over there -- he's part of
12
    this mix.
13
14
              MR. PEEK:
                         Your Honor, this is -- we have a dog in
15
    this fight.
                             So then he should be available on the
16
              MS. SPINELLI:
17
    25th, Your Honor, because Mr. Schall --
18
              MR. PEEK:
                         Oh, boy. Here we go again.
19
              MS. SPINELLI:
                             Just for the morning.
20
                         Ms. Spinelli. Ms. Spinelli, don't go
              THE COURT:
21
   back.
           We did that -- we started with that, remember? Okay.
22
              So we'll calendar it -- continue this issue related
23
    to the notes to the 23rd at 8:30 in whatever courtroom I'm
24
    ever able to secure.
25
              MS. SPINELLI: And, Your Honor, about staying later
```

```
-- because Mr. Schall's availability on the 23rd --
 1
 2
                          Hold on.
                                     I need to finish the motions.
              THE COURT:
 3
              So now I'm to the motion related to the experts.
 4
    Can somebody explain to me when someone serving as an
 5
    independent member of a compensation committee equals an
               I thought "independent" meant you weren't an
 6
 7
    employee.
                         Compliance, Your Honor.
 8
              MR. PEEK:
 9
              MR. FERRARIO:
                             Compliance committee.
                                                     And you're
10
    right.
                            Your Honor, our position is solely
11
              MS. SPINELLI:
    that we wanted the name. And it's fee for services.
12
                                                           And I
    understand the compliance committee has some sort of
13
14
    independent obligation, which we hope that everyone upholds,
15
    and our point is not that they're not allowed to retain this
            But this individual, whoever he or she may be, is a
16
17
    person that is paid for -- who provides services to whoever
18
    the competitor may be for payment. It may be that it's no
19
    issue.
            It was no issue when we said as much to the Okada
20
              We just want to make sure that we're protected, and
21
    that was it, Your Honor.
22
              THE COURT: All right.
                                       So since it is still a
23
    consultant at this point, if you would please send the
24
    information to me in camera along with the CV so I can make a
```

determination as to whether they are employed by a competitor

```
or if they merely are serving as independent member of the
 1
 2
    compliance committee.
 3
              MS. SPINELLI:
                             Thank you, Your Honor.
 4
              MR. FERRARIO:
                              Thank you, Your Honor.
 5
                          When are you going to get me that, all
              THE COURT:
 6
    of you who joined?
 7
              MR. URGA:
                          Today or tomorrow.
 8
              MR. BICE:
                          Pardon?
 9
              MR. URGA: Are you an MGM employee, Mr. Urga?
10
                        Absolutely not.
              MR. URGA:
                             He wanted to say something on this,
11
              MR. FERRARIO:
12
    so -- and now you've given him the opportunity.
                          I know. I was going to ask about it.
13
              THE COURT:
14
              MR. URGA:
                          This whole thing has been very
15
    troublesome to me, Your Honor, quite frankly. But I'm not
16
    going to say anything.
17
              THE COURT: Okay. So when are you going to get it
    to me to look at? When are you going to get it to me?
18
19
              MR. URGA: Your Honor, I can get it to you by
20
    tomorrow.
                          That would be lovely. Can you put it on
21
              THE COURT:
22
    my --
23
              MR. URGA:
                          You want a CV and --
24
              THE COURT:
                          The CV will tell me the name of the
25
    compliance committee they serve on --
                                   30
```

```
1
              MR. URGA:
                         Yes, yes.
 2
              THE COURT:
                          -- if there are other compliance
 3
    committees, as well.
 4
              MR. URGA:
                         Yes.
 5
              THE COURT: When? Can you put it on Friday's
    chambers calendar.
 6
 7
              I'll decide it as soon as you get it to me.
 8
    you're submitting it in camera, please, because it's still a
 9
    consultant at this point.
10
              That takes me to Ms. Wynn's request not to have her
    deposition happen.
11
              MR. FERRARIO:
                             That's not what I said.
12
13
              THE COURT:
                         Not to have her deposition happen yet.
14
              MR. FERRARIO:
                             That's not what I said.
              THE COURT: Okay.
15
16
              MR. FERRARIO:
                            It's to have her deposition happen on
17
    topics that remain to be addressed. And after having gone
18
    through the transcripts and looked at the scope of your orders
19
    and reviewed the prior briefing and pleadings on this matter,
20
    we're down to really very discrete topics. And that --
21
              THE COURT: Don't you think the deposition in the
22
    case should happen before the trial?
23
              MR. FERRARIO: Yes, since the other day you said you
24
    wanted to get it done.
25
                          There are no longer any issues -- any
              THE COURT:
```

```
reason to bifurcate any issues related to her deposition, are
 1
 2
    there?
 3
              MR. FERRARIO:
                             I'm fine with that.
 4
              THE COURT: Just take the whole deposition and get
 5
    it done.
                            Then let's do a merits -- we're
 6
              MR. FERRARIO:
 7
    talking about scheduling her merits deposition to wrap it up.
 8
              THE COURT:
                         No.
                               Just do it.
 9
              MR. FERRARIO:
                             They're going to do it in one day?
              THE COURT: Well, I don't know if they'll do it in
10
              Do you think they can do anything in a day?
11
    one day.
                            If you tell us that you want this
12
              MR. FERRARIO:
    wrapped up into her merits deposition, I'm fine wrapping it
13
14
    into the merits deposition.
15
              THE COURT: It needs to be finished so that we can
16
    go to trial next spring.
17
              MR. FERRARIO: Okay. Then who's --
              MR. COLE: Not on Thursday for the merits --
18
19
              MR. FERRARIO:
                            But not on Thursday.
20
              MR. PISANELLI:
                              Yes, on Thursday.
21
              THE COURT:
                         Why not?
22
                         It's the day they gave us.
              MR. BICE:
23
                             They want nine days.
              MR. FERRARIO:
24
              How many days do you want?
25
              MS. SPINELLI: We got -- the company has asked for
                                   32
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```
two, Kim two. You guys agreed. Mr. Okada would get 2.5, and
 1
 2
    Mr. Wynn would like two.
 3
              MR. FERRARIO:
                            Eight and a half days.
              THE COURT: I haven't ruled on that.
 4
                             I know.
              MR. FERRARIO:
 5
              THE COURT: Okay.
 6
 7
                             So if you want it to wrap in the
              MR. FERRARIO:
 8
    merits, we can do that.
                            We can put it in there.
                                                       If we're
 9
    doing it on sanctions only, which is what the original notice
    said, then my motion speaks to what's already been done on the
10
    sanctions. And the only thing left that was covered by the
11
    whistleblower writ was who the trusted sources were and what
12
    -- and that's really it, and what they may have said to her.
13
14
    That is a very, very brief deposition.
                                            I didn't -- this came
    out right after the whistleblower writ came down.
15
    you're telling us wrap it up into the merits, we can add a
16
17
    half a day to that and make it a whopping nine days or
    whatever you end up saying. I'm fine with doing it that way.
18
19
    I think that makes a lot more sense.
20
                          There's no limitation on scope to her
              THE COURT:
21
    deposition.
22
                             Well, then we can't do it on
              MR. FERRARIO:
23
    Thursday.
24
              MR. PISANELLI:
                              There's no motion for protective
25
    order.
```

```
THE COURT:
 1
                          Okay.
                            Come on, Judge. This is -- you want
 2
              MR. FERRARIO:
 3
    to talk about rules? Let's talk about some rules here.
 4
    offered her up on the sanctions depo two weeks ago. They said
 5
    they couldn't take it because you had outstanding discovery.
 6
    I then go about and get a date for the sanctions depo, which
 7
    is the only one pending. It says "Deposition, Sanctions."
 8
    They don't have a motion in here to expand it beyond that.
                                                                 Do
 9
    they?
10
                         I don't have the notice, so I don't
              THE COURT:
11
    know.
              MR. FERRARIO: It says "Sanctions" on it.
12
    don't think they'll stand up and say it doesn't. And they
13
14
    said, this is a continuation of the sanctions proceeding.
15
              THE COURT: Oh, you're right. It says "Sanctions"
16
    in parentheses.
17
              MR. FERRARIO: Yes, it does. So that's why we're
18
          And so if we're going to do a sanctions motion, if they
19
    want to get on another sideshow, then we're going to limit it
    to what's at issue in the sideshow.
20
21
              THE COURT: You've got 2 seconds.
                                                 You want to wrap
22
    up?
23
                            We said it in our pleading.
              MR. FERRARIO:
24
              THE COURT:
                          Thanks.
25
              Who's on Ms. Wynn's depo?
```

```
I am, Your Honor.
              MR. BICE:
 1
 2
              THE COURT:
                          So given the withdrawal of the writ
 3
    related to whistleblower --
 4
              MR. BICE: Right.
 5
              THE COURT: -- why do you want to take the depo
 6
    separately from her whole depo?
 7
              MR. BICE:
                         Because we want to get this sanctions
 8
    issue resolved.
                     This deposition was supposed to have been
 9
    completed a year ago, but Ms. Wynn obtained a stay of it,
10
    claiming that she was a whistleblower.
                                            It's -- actually it
    will be exactly a year and two days on Thursday, the date she
11
12
    agreed to appear for her deposition.
13
              Here's the issue, Your Honor. We are going to take
14
    her merits deposition, that is true. But she is claiming
15
    unavailability I think until later in the discovery phase as
16
    to appearing for her merits deposition.
                                             She's available on
17
    Thursday. We've already crammed enough in.
                                                 If they want us
18
    to start her merits deposition on Thursday so that we can
19
    proceed and get some of this stuff knocked out, that's fine.
20
    But we shouldn't just simply keep kicking the can down the
21
    road on this, because we're going to run into scheduling
22
    problems.
23
              With respect to their arguments, Your Honor, about,
24
    well, it should be limited to 2 hours, I mean, Ms. Wynn
```

completely frustrated that the first deposition. And the

```
Court knows that. She picked and choose [sic] what she wanted
 1
 2
    to answer, she -- and, contrary to the representations, she
 3
    didn't just refuse to answer questions about her so-called
 4
    sources; she refused to answer a whole host of questions
    surrounding her activities and what we believe were her
 5
    activities in trying to violate protective order.
 6
                                                        So there
 7
    just isn't any basis for this limitation on the duration of
 8
    her deposition.
 9
              THE COURT:
                          So is Dave Wall sitting through the
    deposition?
10
              MR. BICE:
                         I don't believe we've asked him.
11
              THE COURT: Don't you remember that was the rules I
12
13
    set up for her deposition?
```

MR. BICE: Your Honor, I don't -- that was when they were asserting the whistleblower protection so that he could calls balls and strikes on this claim of privilege that they had. But now that that's been withdrawn, we did not see any need to burden the special master with an obligation to appear on that, because she's withdrawn that claim. She's presumably going to actually answer these questions now, a year later.

THE COURT: Thanks.

14

15

16

17

18

19

20

21

22

23

24

25

MR. BICE: Thank you, Your Honor.

THE COURT: Anything else?

MR. FERRARIO: The only other thing we didn't address is we had outstanding discovery, we asked for the

```
discovery, same thing they asked before the deposition, answer
 1
    the discovery, and we were called sequencers and bad faithers
 2
 3
    and they intimate that we're going to change her testimony.
 4
              THE COURT: Do you know that your time was up?
 5
              MR. FERRARIO:
                             I -- okay.
              THE COURT: Okay. So the motion is granted in part.
 6
 7
    There is no longer going to be a deposition related to
 8
    sanctions issues given the withdrawal of the whistleblower
 9
    writ. And while I certainly understand the need to get the
10
    deposition completed prior to that sanctions hearing being
    scheduled given the parties' schedule, I am not concerned
11
    about that deposition occurring. However, the deposition of
12
13
    Ms. Wynn will occur prior to the end of September.
14
              MR. FERRARIO: Okay. Thank you, Your Honor.
15
              THE COURT: Okay. So, Mr. Schall.
                                                  You wanted to
16
    ask me for extended hours. You wanted to ask me for extended
17
    hours.
                             I did, Your Honor.
18
              MS. SPINELLI:
                                                 We'd extended
19
    hours, especially because now we have an argument in the
20
    morning that isn't confined to the parties who --
21
              THE COURT: At 8:30.
22
              MS. SPINELLI:
                             Yes.
23
              THE COURT: Anybody objecting besides my staff?
24
                         I have no objection, Your Honor.
              MR. PEEK:
25
              THE COURT:
                         Okay. So is this at the expense of the
```

```
Wynn parties?
 1
 2
              MS. SPINELLI: I would think it would be both, since
 3
    it's their motion.
 4
              MR. PEEK:
                         They made the request, Your Honor.
 5
              MS. SPINELLI: We're happy to, because we like to
 6
    get things done and we don't have an [inaudible].
                                                        We'll bear
 7
    it all.
                          So when you say extended hours how late
 8
              THE COURT:
 9
    are you talking about, Ms. Spinelli?
10
              MS. SPINELLI: I'm talking until however long Mr.
    Peeks takes to examine this witness about what I do in
11
    discovery. So I think it's probably going to go very long,
12
13
    unfortunately. We're happy to do it on Monday and Wednesday,
14
    Your Honor, probably until --
15
              THE COURT: Well, let me ask my staff.
              How late are you comfortable staying?
16
17
              THE COURT RECORDER: What are the dates?
              THE COURT: Monday and Wednesday, August 21 and
18
19
    August 23.
20
                         How long can you stand us, Jill?
                (Off-record colloquy - Court and Staff)
21
22
              THE COURT:
                          So we'll plan to go at least until 6:00,
23
    6:30, but I'm going to have to -- it will depend on who the
24
    court recorder is that is here, because I forgot I gave Jill
25
    time off.
```

```
MS. SPINELLI:
                              Thank you, Your Honor.
 1
              THE COURT:
 2
                          'Bye.
 3
              MR. PEEK: Your Honor, just a question because of
 4
    Ms. Wynn's deposition.
                            The Court hasn't ruled on the length
 5
    of her deposition --
              THE COURT: That's correct.
 6
 7
                         -- and the parties have not agreed, and
              MR. PEEK:
 8
    you want it to occur before the end of September.
 9
              THE COURT:
                          Prior to the end of September.
10
                         So I would like at least to have some
              MR. PEEK:
    briefing schedule associated with the length that they want
11
    for her deposition so that we can all weigh in on that.
12
              THE COURT: You should file a motion.
13
14
              MR. PEEK:
                         It's their deposition.
15
              MR. FERRARIO:
                              I think it's all --
                         I'll file a motion if that's --
16
              MR. PEEK:
17
              MR. FERRARIO:
                            I think it's all in the works.
18
    Somebody's going to file a motion on this, because I don't
19
    think --
20
                         I just need to --
              MR. PEEK:
21
              MR. FERRARIO:
                            I understand.
22
                         Because we're going to be in Hong Kong
              MR. PEEK:
23
    for a long time.
24
              THE COURT: You're either going to reach an
25
    agreement or you're going to file a motion. Okay.
```

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000118
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| 1  | MR. PEEK: Thank you, Your Honor.       |
|----|--|
| 2  | MR. PISANELLI: Thank you, Your Honor.  |
| 3  | THE PROCEEDINGS CONCLUDED AT 8:47 A.M. |
| 4  | * * * *                                |
| 5  |  |
| 6  |  |
| 7  |  |
| 8  |  |
| 9  |  |
| 10 |  |
| 11 |  |
| 12 |  |
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| 22 |  |
| 23 |  |
| 24 |  |
| 25 |  |
|    | 40                                     |

#### **CERTIFICATION**

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

#### **AFFIRMATION**

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

FLORENCE HOYT Las Vegas, Nevada 89146

Three M. Hoyf, TRANSCRIBER

8/14/17

DATE

## Case No. 74063

# In the Supreme Court of Nevada

WYNN RESORTS, LIMITED,

Petitioner,

us.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark; and THE HONORABLE ELIZABETH GONZALEZ, District Judge,

Respondents,

and

ELAINE P. WYNN,

Real Party in Interest.

Electronically Filed Nov 01 2017 08:11 a.m. Elizabeth A. Brown Clerk of Supreme Court

District Court No. A656710

# ELAINE P. WYNN'S APPENDIX VOLUME 1 PAGES 1-119

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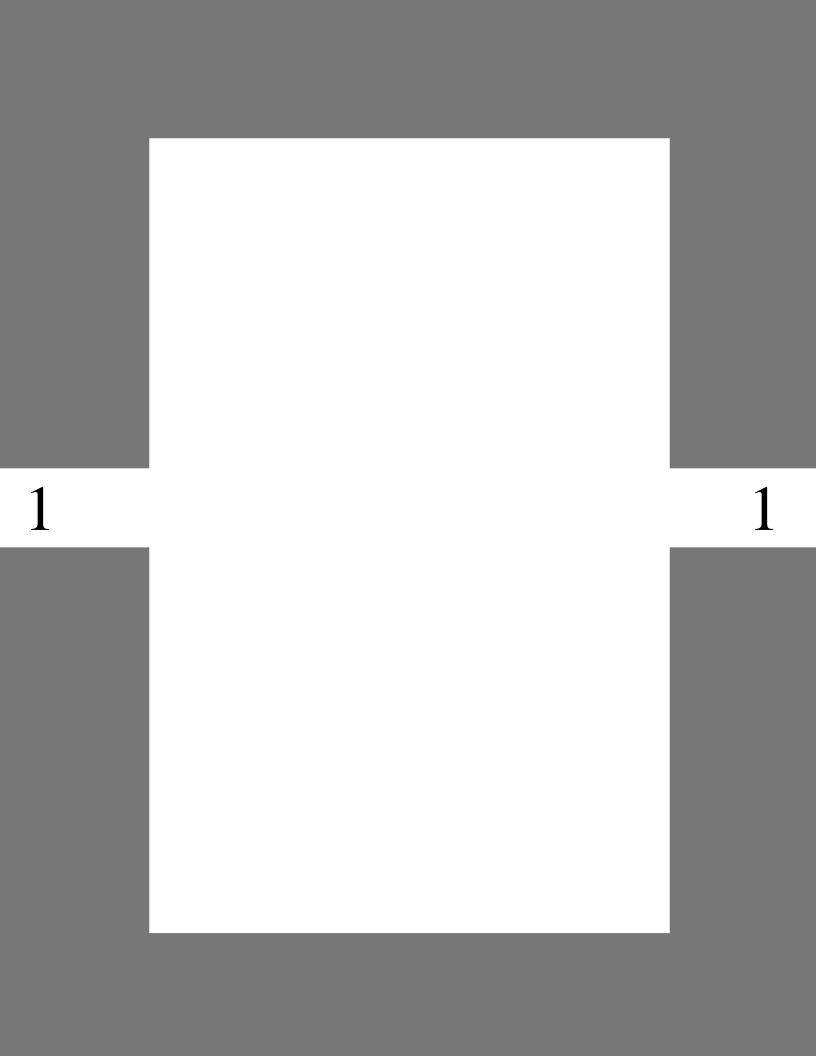
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| 2   | Transcript of Hearing on Motions for<br>Protective Orders  | 08/14/17 | 1    | 79–119 |

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5/17/2017 5:39 PM Steven D. Grierson CLERK OF THE COURT 1 **AACC** MARK E. FERRARIO, ESQ. (NV BAR NO. 1625) TAMI D. COWDEN, ESQ. (NV BAR NO. 8994) GREENBERG TRAURIG, LLP 3 3773 Howard Hughes Parkway, Suite 400 North Las Vegas, Nevada 89169 4 Telephone: (702) 792-3773 Facsimile: (702) 792-9002 5 Email: ferrariom@gtlaw.com; cowdent@gtlaw.com 6 JAMES M. COLE, ESO.\* Email: jcole@sidley.com SIDLEY AUSTIN, LLP 1501 K. Street, N.W. 8 Washington, D.C. 20005 Telephone: (202) 736-8246 9 Facsimile (202)736-8711 SCOTT D. STEIN, ESQ.\* 10 Email: sstein@sidley.com One South Dearborn Street 11 Chicago, IL 60603 Telephone No. (312) 853-7520 12 Facsimile (312) 753-7036 13 WILLIAM R. URGA, ESQ. (NV BAR NO. 1195) DAVID J. MALLEY, ESQ. (NV BAR NO. 8171) 14 JOLLEY URGA WOODBURY & LITTLE 330 South Rampart Boulevard 15 Tivoli Village, Suite 380 Las Vegas, Nevada 89145 16 Telephone: (702) 699-7500 Facsimile: (702) 699-7555 17 Email: wru@juww.com; djm@juww.com Counsel for 18 Counter-Defendant/Counter-Claimant/Cross-Claimant Elaine P. Wynn 19 \*admitted pro hac vice 20 DISTRICT COURT CLARK COUNTY, NEVADA 21 22 WYNN RESORTS, LIMITED, a Nevada CASE NO. A-12-656710-B Corporation, 23 DEPT. NO: XI Plaintiffs, 24 ELECTRONIC FILING CASE VS. 25 FIRST AMENDED ANSWER OF ELAINE KAZUO OKADA, an individual, ARUZE P. WYNN TO ARUZE AND 26 UNIVERSAL'S FOURTH AMENDED USA, Inc., a Nevada corporation, UNIVERSAL ENTERTAINMENT **COUNTERCLAIM; SIXTH AMENDED** 27 CORPORATION, a Japanese corporation, COUNTERCLAIM AND CROSSCLAIM

LV 420919087v1

Defendants.

28

OF ELAINE P. WYNN

UNIVERSAL ENTERTAINMENT CORPORATION, a Japanese corporation, Counterclaimants.

WYNN RESORTS, LIMITED, a Nevada Corporation, STEPHEN A. WYNN, an individual, KIMMARIE SINATRA, an individual, LINDA CHEN, an individual, RAY R. IRANI, an individual, RUSSELL GOLDSMITH, an individual, ROBERT J. MILLER, an individual, JOHN A. MORAN, an individual, MARC D. SCHORR, an individual, ALVIN V. SHOEMAKER, an individual, D. BOONE WAYSON, an individual, ELAINE P. WYNN, an individual, ALLAN ZEMAN, an

Counterdefendants.

ELAINE P. WYNN, an individual,

Counterclaimant and Crossclaimant,

STEPHEN A. WYNN, an individual, WYNN RESORTS, LIMITED, a Nevada Corporation, KIMMARIE SINATRA, an individual,

Crossdefendants,

ARUZE USA, INC., a Nevada Corporation,

Counterdefendant.

Complaint Filed: Trial Date: None Set

LV 420919087v1

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#### **ANSWER**

Elaine P. Wynn hereby answers the Fourth Amended Counterclaim of Defendants and Counterclaimants Aruze USA, Inc. ("Aruze" or "Aruze USA") and Universal Entertainment Corporation ("Universal") (collectively, "Counterclaimants") in the above-captioned action.

Ms. Wynn denies all allegations in the headings (which are quoted here verbatim though they are denied), tables, and photographs of the Fourth Amended Counterclaim, in part because she lacks information sufficient to form a belief as to their truth.

Ms. Wynn is not required to respond, and does not respond, to the allegations that were not asserted against her, including: Count V by Aruze USA against Wynn Resorts (paragraphs 210-219); Count VII by Aruze USA against Wynn Resorts (paragraphs 233-237); Count VIII by Aruze USA against Wynn Resorts (paragraphs 23 8-245); Count IX by Aruze USA against Wynn Resorts, Steve Wynn, and Kimmarie Sinatra (paragraphs 246-256); Count X by Aruze USA against Wynn Resorts, Steve Wynn, and Kimmarie Sinatra (paragraphs 257-268); Count XI by Aruze USA against Steve Wynn and Kimmarie Sinatra (paragraphs 269-282); Count XII by Aruze USA against Wynn Resorts, Steve Wynn, and Kimmarie Sinatra (paragraphs 283-292); Count XIII by Aruze USA against Steve Wynn (paragraphs 293-308); Count XIV by Aruze USA against Steve Wynn (paragraphs 309-324); Count XV by Aruze USA against Steve Wynn (paragraphs 325-334); Count XVI by Aruze USA against Steve Wynn (paragraphs 335-345); Count XVII by Aruze USA against Steve Wynn (paragraphs 346-355); Count XVIII by Aruze USA against Wynn Resorts, Linda Chen, Russel Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Boone Wayson, and Allan Zeman (paragraphs 356-364); Count XIX by Aruze USA against Wynn Resorts (paragraphs 365-372).

As to the allegations against Ms. Wynn set forth in enumerated paragraphs in the Fourth Amended Counterclaim, Ms. Wynn responds in correspondingly numbered paragraphs as follows:

#### **JURISDICTION AND VENUE**

1. Ms. Wynn admits that the Court has jurisdiction and that venue is proper in this Court. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 1, in part because she lacks information sufficient to form a belief as to their truth.

2. Ms. Wynn admits that this matter is properly designated as a business matter and assigned to the Business Docket under EDCR 1.61(a). Ms. Wynn denies that any business tort was committed.

#### NATURE OF THE ACTION

- 3. On information and belief, Ms. Wynn admits that Wynn Resorts filed a complaint against Aruze USA shortly after the Board voted to redeem Aruze's stock at a meeting that took place on February 18, 2012. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegation that Wynn Resorts understood Aruze USA would sue upon being sued and denies that allegation on that basis. Ms. Wynn admits the allegations of footnote 1. Except as expressly admitted or otherwise denied, Ms. Wynn denies the allegations of paragraph 3.
- 4. Ms. Wynn admits that Wynn Resorts redeemed Aruze USA's shares at an approximately 30% discount to the market price in exchange for a promissory note of around \$1.9 billion to be paid in 10 years. On information and belief, Ms. Wynn admits that Wynn Resorts' complaint was filed on February 19, 2012. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 4, in part because she lacks information sufficient to form a belief as to their truth.
- 5. The allegations contained in paragraph 5 are legal conclusions which require no response. In the event these conclusions can be deemed allegations of fact, Ms. Wynn denies the allegations of paragraph 5.
- 6. Ms. Wynn avers that she entered into the Amended and Restated Stockholders Agreement dated January 6, 2010 ("January 2010 Stockholders Agreement") with Mr. Wynn and Aruze USA. Ms. Wynn avers that the Stockholders Agreement dated April 11, 2002 ("April 2002 Stockholders Agreement") and the January 2010 Stockholders Agreement speak for themselves and that the quoted excerpts of those agreements have been taken out of context, and denies any allegations inconsistent with the April 2002 Stockholders Agreement and January 2010 Stockholders Agreement. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies any allegations inconsistent with the Articles of Incorporation. On information and belief, Ms. Wynn denies that Mr. Wynn unilaterally amended the Articles of Incorporation without

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Aruze's consent. Ms. Wynn denies that the right of redemption does not apply to Aruze USA's shares of Wynn Resorts stock, and further denies that the Stockholders Agreement precludes redemption of Aruze USA's stock. The remainder of the allegations contained in paragraph 6 are legal conclusions which require no response. In the event these conclusions can be deemed allegations of fact, Ms. Wynn denies the remaining allegations of paragraph 6.

- 7. Ms. Wynn denies the allegations of paragraph 7.
- 8. Ms. Wynn denies the allegation that there was no legitimate factual or legal basis to invoke the redemption provision. Ms. Wynn further denies the allegations of paragraph 8, in part because she lacks information sufficient to form a belief as to their truth.
  - 9. Ms. Wynn denies the allegations of paragraph 9.
  - 10. Ms. Wynn denies the allegations of paragraph 10.
  - 11. Ms. Wynn denies the allegations of paragraph 11.
- 12. The allegations contained in paragraph 12 are legal conclusions which require no response. In the event these conclusions can be deemed allegations of fact, Ms. Wynn denies the allegations of paragraph 12.

## **PARTIES**

- 13. Ms. Wynn denies that Aruze is currently a stockholder of Wynn Resorts. Except as expressly denied, on information and belief, Ms. Wynn admits the allegations of paragraph 13.
  - 14. On information and belief, Ms. Wynn admits the allegations of paragraph 14.
  - 15. Ms. Wynn admits the allegations of paragraph 15.
- 16. Ms. Wynn admits that Stephen A. Wynn is the Chairman of the Board and Chief Executive Officer of Wynn Resorts. Ms. Wynn admits that Stephen A. Wynn is a resident of Nevada. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 16, and denies the allegations on that basis.
- 17. Ms. Wynn admits that Kimmarie Sinatra is the General Counsel, Secretary, and a Senior Vice President of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 17, and denies the allegations on that basis.

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| 18.        | Ms. Wynn admits that she is a director of Wynr    | Resorts and is Stephen Wynn's |
|------------|---|-------------------------------|
| ex-spouse. | Ms. Wynn admits that she is a resident of Nevada. | On information and belief, Ms |
| Wynn admi  | ts that she owns 9,742,150 shares of Wynn Resorts | stock as of March 1, 2012.    |

- 19. Ms. Wynn admits that Linda Chen was a director of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 19, and denies the allegations on that basis.
- 20. Ms. Wynn admits that Ray R. Irani is a director of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 20, and denies the allegations on that basis.
- 21. Ms. Wynn admits that Russell Goldsmith was a director of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 21, and denies the allegations on that basis.
- 22. Ms. Wynn admits that Robert J. Miller is a director and Chair of the Gaming Compliance Committee of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 22, and denies the allegations on that basis.
- 23. Ms. Wynn admits that John A. Moran is a director of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 23, and denies the allegations on that basis.
- 24. Ms. Wynn admits that Marc D. Schorr was a director and Chief Operating Officer of Wynn Resorts, and that Mr. Schorr had stepped down from the Board. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 24, and denies the allegations on that basis.
- 25. Ms. Wynn admits that Alvin V. Shoemaker is a director of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 25, and denies the allegations on that basis.

27

GREENBERG TRAURIG, LLP 3 Howard Hughes Parkway, Suite 400 N Las Vegas, Nevada 89169 Telephone: (702) 792-3773 Facsimile: (702) 792-9002 26. Ms. Wynn admits that D. Boone Wayson is a director of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 26, and denies the allegations on that basis.

27. Ms. Wynn admits that Allan Zeman was a director of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 27, and denies the allegations on that basis.

#### **GENERAL ALLEGATIONS**

## I. <u>Kazuo Okada and Steve Wynn Launch Wynn Resorts</u>

- A. Turned Out By Mirage Resorts, Steve Wynn Turns to Kazuo Okada to Finance
  the New Wynn Project
- 28. Ms. Wynn admits that Mr. Wynn developed Mirage Resorts, Inc., which owned and operated the Mirage, Treasure Island, and the Bellagio, and that Mr. Wynn ceased being Chief Executive Officer after Mirage Resorts, Inc. merged with MGM Grand, Inc. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 28, and on that basis denies the allegations.
- 29. Ms. Wynn admits that Mr. Wynn purchased the Desert Inn casino and planned to build a new casino on that site, and that he contacted Mr. Okada about funding. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 29, and on that basis denies the allegations.
- 30. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 30, and on that basis denies the allegations.
- 31. Ms. Wynn admits that Valvino Lamore, LLC ("Valvino") was a Nevada limited liability company used to develop the Desert Inn project. Ms. Wynn admits that Aruze USA contributed \$260 million to Valvino in October 2000. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 31, in part because Ms. Wynn lacks information sufficient to form a belief as to the truth of those allegations.

32. Ms. Wynn admits that Aruze USA contributed \$120 million to Valvino in April 2002. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 32, and on that basis denies those allegations.

#### B. The Stockholders Agreement

- 33. Ms. Wynn admits on information and belief that in 2002 steps were taken in anticipation of Wynn Resorts going public. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 33, and on that basis denies those allegations.
- 34. Ms. Wynn admits that Mr. Wynn, Aruze USA, and Baron Asset Fund entered into the April 2002 Stockholders Agreement dated April 11, 2002. Ms. Wynn admits that the April 2002 Stockholders Agreement purported to establish certain restrictions on the sale of stock the signatories were to receive in "NewCo." Ms. Wynn admits that NewCo was a predecessor to Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 34, and on that basis denies those allegations.
- 35. Ms. Wynn avers that the April 2002 Stockholders Agreement speaks for itself, and denies any allegation inconsistent with that agreement.
- 36. Ms. Wynn avers that the April 2002 Stockholders Agreement speaks for itself and that the quoted excerpts of that agreement have been taken out of context, and denies any allegation inconsistent with that agreement. Ms. Wynn avers that the January 2010 Stockholders Agreement speaks for itself, and denies any allegation inconsistent with that agreement.
- 37. Ms. Wynn admits that the April 2002 Stockholders Agreement purported to establish certain restrictions on the transfer of shares of Wynn Resorts common stock held by the parties to that agreement. Ms. Wynn avers that Wynn Resorts share certificates speak for themselves, and denies any allegation inconsistent with the share certificates. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 37, and on that basis denies those allegations.
- 38. Ms. Wynn denies that the Stockholders Agreement removed Aruze USA from the purview of later-adopted redemption provisions in Wynn Resorts' Articles of Incorporation. Ms.

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Wynn avers that the April 2002 Stockholders Agreement speaks for itself, and denies any allegation inconsistent with that agreement. Ms. Wynn further lacks information sufficient to form a belief as to the truth of the remaining allegations of paragraph 38, and on that basis denies those allegations.

39. Ms. Wynn avers that the April 2002 Stockholders Agreement speaks for itself, and denies any allegation inconsistent with that agreement. Ms. Wynn further lacks information sufficient to form a belief as to the truth of the remaining allegations of paragraph 39, and on that basis denies those allegations. In addition, the allegations contained in the last sentence of paragraph 39 are legal conclusions which require no response. In the event those conclusions can be deemed allegations of fact, Ms. Wynn denies the allegations of the last sentence of paragraph 39.

## C. Wynn Resorts' Original Articles of Incorporation

- 40. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 40, and on that basis denies those allegations.
- 41. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 41, and on that basis denies those allegations.

## D. The Contribution Agreement

- 42. On information and belief, Ms. Wynn admits that the Valvino interests were converted to interests in the new Wynn Resorts entity, and that Aruze USA had contributed approximately \$380 million for its Valvino interests. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 42, and on that basis denies those allegations.
- 43. On information and belief, Ms. Wynn avers that Wynn Resorts' public filings include a document that purports to be a Contribution Agreement among Mr. Wynn, Aruze, Baron Asset Fund, Kenneth R. Wynn Family Trust, and Wynn Resorts, the contents of which speak for itself. Except as expressly averred, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 43, and on that basis denies those allegations.
- 44. Ms. Wynn avers that the Contribution Agreement speaks for itself and denies any allegation inconsistent with the Contribution Agreement. Except as expressly averred, Ms. Wynn

lacks information sufficient to form a belief as to the truth of the allegations in paragraph 44, and on that basis denies those allegations.

# E. <u>After Securing Aruze USA's Contribution, Steve Wynn Unilaterally Amends</u> the Articles of Incorporation

- 45. Ms. Wynn admits that the Articles of Incorporation contain a provision that allows Wynn Resorts to redeem stock under certain circumstances, and that Wynn Resorts and Mr. Wynn applied that provision to Aruze's stock in 2012. On information and belief, Ms. Wynn denies that Mr. Wynn added the redemption provision unilaterally without Aruze's consent. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 45, and on that basis denies those allegations.
- 46. Ms. Wynn avers that the April 2002 Stockholders Agreement and the Contribution Agreement speak for themselves, and denies any allegation inconsistent with those agreements. Ms. Wynn lacks information sufficient to form a belief as to the truth of the additional allegations of paragraph 46, and on that basis denies those allegations.
- 47. Ms. Wynn admits that the Articles of Incorporation of Wynn Resorts includes a provision that provides for redemption of stock held by unsuitable persons. Ms. Wynn avers that the Articles of Incorporation speaks for itself and denies any allegation inconsistent with the Articles. On information and belief, Ms. Wynn denies that Mr. Wynn added the redemption provision unilaterally without Aruze's consent. Except as expressly admitted, denied, or averred, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 47, and on that basis denies those allegations.
- 48. Ms. Wynn avers that the April 2002 Stockholders Agreement and the Contribution Agreement speak for themselves, and denies any allegation inconsistent with those agreements. The remaining allegations of paragraph 48 are legal conclusions which require no response. To the extent the remaining allegations can be deemed allegations of fact, Ms. Wynn denies them in part because she lacks information sufficient to form a belief as to their truth.
- 49. Ms. Wynn avers that the Stockholders Agreement speaks for itself, and denies any allegation inconsistent with that agreement. Ms. Wynn denies that she, Mr. Wynn, Wynn Resorts,

and Wynn Resorts' individual directors "improperly applied" the redemption provision to Aruze's shares of Wynn Resorts stock in February 2012. Ms. Wynn also denies that by voting to redeem Aruze's shares of Wynn Resorts stock, she and Mr. Wynn breached, and that Wynn Resorts and the individual directors interfered with, the Stockholders Agreement. On information and belief, Ms. Wynn denies that Aruze was not and could not have been aware that the redemption provision could potentially be applied to Aruze. Ms. Wynn further denies the other allegations of paragraph 49, in part because she lacks information sufficient to form a belief as to their truth.

50. Ms. Wynn admits that in February 2012, Wynn Resorts redeemed Aruze's stock for a note of approximately \$1.936 billion, which reflected a discount of around 30% to the trading price. The remainder of the allegations contained in paragraph 50 are legal conclusions which require no response, and in the event they can be deemed allegations of fact, Ms. Wynn denies them.

#### F. Wynn Resorts Goes Public

- 51. Ms. Wynn admits that Mr. Okada became a board member of Wynn Resorts in October 2002. Ms. Wynn admits that the LLC interests of Valvino were contributed to Wynn Resorts in September 2002. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 51, and on that basis denies those allegations.
- 52. On information and belief, Ms. Wynn admits that on October 25, 2002, Wynn Resorts conducted an initial public offering on NASDAQ at \$13 per share, and that shortly thereafter, Mr. Okada became Vice Chairman of Wynn Resorts' Board of Directors. On information and belief, Ms. Wynn further admits that Aruze made an additional investment in or provided further funding to Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 52, and on that basis denies those allegations.
- 53. Ms. Wynn admits that Wynn Las Vegas, Wynn Macau, Encore Las Vegas, and Encore Macau have been successful. On information and belief, Ms. Wynn admits that Mr. Okada has contributed financially to the casinos' success. Except as expressly admitted, Ms. Wynn lacks

information sufficient to form a belief as to the truth of the allegations of paragraph 53, and on that basis denies those allegations.

- 54. Ms. Wynn admits the allegations of paragraph 54.
- G. The Close and Trusting Relationship of Steve Wynn and Kazuo Okada
- 55. On information and belief, Ms. Wynn admits that Mr. Wynn considered Mr. Okada a close friend and a partner. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 55, and on that basis denies those allegations.
- 56. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 56, and on that basis denies those allegations.
- 57. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 57, and on that basis denies those allegations.
- 58. On information and belief, Ms. Wynn avers that, in 2006, Mr. Wynn asked Mr. Okada and Aruze to enter into an Amendment to the April 2002 Stockholders Agreement. Ms. Wynn avers that the Amendment dated November 8, 2006 ("2006 Amendment") speaks for itself, and denies any allegation inconsistent with that amendment. Except as expressly averred, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 58, and on that basis denies those allegations.
- 59. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 59, and on that basis denies those allegations.

## II. <u>Universal Discloses and Ultimately Pursues Foreign Development Projects</u>

- A. <u>In 2007, Universal Fully Discloses to Wynn Resorts Its Interest In Pursuing a</u>

  <u>Casino Project in the Philippines</u>
- 60. On information and belief, Ms. Wynn avers that Mr. Okada has been involved with business efforts in the Philippines since around 2008. Except as expressly averred, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 60, and on that basis denies those allegations.

| 61.         | Ms. Wynn la     | acks information  | sufficient to  | form a belief   | as to the truth | of the |
|-------------|-----------------|-------------------|----------------|-----------------|-----------------|--------|
| allegations | of paragraph 61 | , and on that bas | is denies thos | se allegations. |                 |        |

- 62. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 62, and on that basis denies those allegations.
- 63. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 63, and on that basis denies those allegations.
- 64. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 64, and on that basis denies those allegations.
- 65. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 65, and on that basis denies those allegations.
- 66. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 66, and on that basis denies those allegations.
- 67. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 67, and on that basis denies those allegations.

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

- 68. On information and belief, Ms. Wynn admits that Universal and/or its affiliates went about acquiring land in the Philippines for a planned casino. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 68, and on that basis denies those allegations.
- 69. On information and belief, Ms. Wynn admits that an entity or entities affiliated with Universal or Mr. Okada purchased land near Manila Bay. On information and belief, Ms. Wynn denies that Universal complied with the laws of the Philippines regarding citizenship for landholding. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 69, and on that basis denies those allegations.
- 70. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 70, and on that basis denies those allegations.

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#### C. Steve Wynn and Elaine Wynn Divorce

- 71. Ms. Wynn admits that she and Mr. Wynn began divorce proceedings in March 2009. Ms. Wynn admits that by early 2010, Ms. Wynn and Mr. Wynn had reached an agreement regarding division of their community assets, including the Wynn Resorts stock then held in Mr. Wynn's name. On information and belief, Ms. Wynn admits that Aruze was Wynn Resorts' largest shareholder after the division of assets between Mr. Wynn and Ms. Wynn. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 71, in part because she lacks information sufficient to form a belief as to the truth of the allegations.
- 72. Ms. Wynn admits that she, Mr. Wynn, and Aruze entered into the January 2010 Stockholders Agreement. Ms. Wynn avers that the January 2010 Stockholders Agreement speaks for itself, and denies any allegation inconsistent with that agreement. Except as expressly admitted or averred, Ms. Wynn denies the allegations in paragraph 72, because she lacks information sufficient to form a belief as to the truth of the allegations.
- 73. Ms. Wynn avers that the January 2010 Stockholders Agreement speaks for itself, and denies any allegation inconsistent with that agreement. Except as expressly averred, Ms. Wynn denies the allegations of paragraph 73, because she lacks information sufficient to for a belief as to the truth of the allegations.
- 74. Ms. Wynn avers that the January 2010 Stockholders Agreement speaks for itself, and denies any allegation inconsistent with that agreement. Except as expressly averred, Ms. Wynn denies the allegations of paragraph 74, because she lacks information sufficient to form a belief as to the truth of the allegations.
- 75. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 75, and on that basis denies those allegations.
  - D. Steve Wynn and Kazuo Okada Visit the Philippines in 2010, as Wynn Resorts **Considers Involvement with the Philippine Project**
- 76. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 76, and on that basis denies those allegations.

77. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 77, and on that basis denies those allegations.

78. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 78, and on that basis denies those allegations.

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

- 79. Ms. Wynn denies that the duration of Wynn Resorts' donation to Macau is "suspiciou[s]." On information and belief, Ms. Wynn admits the other allegations of paragraph 79.
- 80. Ms. Wynn admits that Mr. Okada, in his capacity as a Wynn Resorts director, voted against the donation to the University of Macau Development Foundation. Ms. Wynn admits that Mr. Okada raised objections to the size and the term of the donation. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 80.
- Ms. Wynn lacks information sufficient to form a belief as to the truth of and therefore denies the allegation that the alleged fact is "[n]otabl[e]," and avers that she believes she was unaware of the alleged fact at the time. Ms. Wynn admits that the head of Macau's government is also the chancellor of the University of Macau. Ms. Wynn lacks sufficient information to form a belief as to whether that individual has "ultimate oversight of gaming matters," and therefore denies that allegation. Ms. Wynn avers that Wynn Resorts' SEC filings speak for themselves and deny any allegation regarding the contents of those filings that is inconsistent with the filings themselves. Except as expressly admitted and averred, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 81, and on that basis denies those allegations.
- 82. Ms. Wynn admits that Wynn Resorts received a legal opinion that sanctioned the donation to the University of Macau Development Foundation. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 82, and on that basis denies those allegations.
- 83. On information and belief, Ms. Wynn admits that Wynn Resorts has received a letter from the Securities Exchange Commission regarding its Macau donation and that the SEC has made inquiries. On information and belief, Ms. Wynn avers that a regional office of the SEC has notified

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Wynn Resorts that the investigation had been completed with the office not intending to recommend any enforcement action against Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 83, and on that basis denies those allegations.

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

- 84. Ms. Wynn admits that Mr. Wynn married his current wife in or around April 2011. On information and belief, Ms. Wynn avers that Mr. Wynn contacted Mr. Okada regarding a potential sale of Ms. Wynn's stock. Except as expressly admitted or averred, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 84, and on that basis denies those allegations.
- 85. On information and belief, Ms. Wynn admits that, sometime in 2011, Mr. Wynn asked Mr. Okada to consent to a transfer of Ms. Wynn's shares. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 85, and on that basis denies those allegations.
- 86. On information and belief, Ms. Wynn admits that Mr. Okada was amenable to allowing Ms. Wynn to transfer her stock. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 86, and on that basis denies those allegations.
- 87. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 87, and on that basis denies those allegations.
- 88. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 88, and on that basis denies those allegations.
- 89. Ms. Wynn denies the allegations of paragraph 89, in part because she lacks information sufficient to form a belief as to their truth.
- 90. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 90, and on that basis denies those allegations.

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|        | 91.       | On information and belief, Ms. Wynn admits that Mr. Okada signed a waiver and              |
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| conse  | nt granti | ng her the option to transfer her stock. Except as expressly admitted, Ms. Wynn lacks      |
| inforn | nation su | afficient to form a belief as to the truth of the allegations of paragraph 91, and on that |
| basis  | denies th | nose allegations.  |

- 92. On information and belief, Ms. Wynn admits that Mr. Okada signed a waiver and consent granting her the option to transfer her stock. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 92, and on that basis denies those allegations.
- 93. Ms. Wynn admits that Wynn Resorts has SOX compliance policies. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 93, and on that basis denies those allegations.
- 94. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 94, and on that basis denies those allegations.
- 95. On information and belief, Ms. Wynn admits that Aruze stated that it would allow her to transfer her shares. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 95, and on that basis denies those allegations.
- 96. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 96, and on that basis denies those allegations.
- 97. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 97, and on that basis denies those allegations.
- 98. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 98, and on that basis denies those allegations.
- 99. Ms. Wynn admits that Bob Miller is a member of Wynn Resorts' Compliance Committee. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 99, in part because she lacks information sufficient to form a belief as to the truth of the allegations of paragraph 99.

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| G. | The Chair of Universal's and Aruze Gaming America's Con | <u>ıpliance</u> |
|----|---|-----------------|
|    | Committee Resigns                                       |                 |

- 100. Ms. Wynn admits that Mr. Schreck has a long-standing relationship with Mr. Wynn and acted as a lawyer for Mr. Wynn or Wynn Resorts, that Mr. Schreck worked for Mr. Okada and/or entities affiliated with Mr. Okada, and that Mr. Schreck eventually left his position with Mr. Okada. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 100, and on that basis denies those allegations.
- 101. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 101, and on that basis denies those allegations.
- 102. Ms. Wynn admits that Mr. Schreck's law farm acted as counsel for Wynn Resorts in the Nevada state court action regarding Mr. Okada's document inspection demand. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 102, in part because she lacks information sufficient to form a belief as to the truth of those allegations.

#### 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

- 103. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 103, and on that basis denies those allegations.
- 104. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 104, and on that basis denies those allegations.
- 105. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 105, and on that basis denies those allegations.
- 106. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 106, and on that basis denies those allegations.
- 107. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 107, and on that basis denies those allegations.

| 108.           | Ms. Wynn la  | icks information | n sufficient to | form a bel   | lief as to th | e truth of the |
|----------------|--------------|------------------|-----------------|--------------|---------------|----------------|
| allegations of | naragraph 10 | 8, and on that b | asis denies the | ose allegati | ions.         |                |

- 109. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 109, and on that basis denies those allegations.
- 110. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 110, and on that basis denies those allegations.

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

- 111. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 111, and on that basis denies those allegations.
- 112. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 112, and on that basis denies those allegations.
- 113. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 113, and on that basis denies those allegations.
- 114. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 114, and on that basis denies those allegations.
- 115. Ms. Wynn lacks information sufficient to form a belief as to what "characterizations" Mr. Wynn made, and on that basis denies that allegation. On information and belief, Ms. Wynn denies the additional allegations of paragraph 115.
- 116. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 116, and on that basis denies those allegations.
- 117. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 117, and on that basis denies those allegations.
  - C. <u>A Letter From Steve Wynn's Outside Lawyer Confirms that, While Wynn</u>

    Resorts Had Already Determined the Outcome, a Pretextual "Investigation"

    Was Only Just Starting
- 118. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 118, and on that basis denies those allegations.

119. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 119, and on that basis denies those allegations.

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

120. Ms. Wynn denies the allegations of paragraph 120, in part because Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations.

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

- 121. Ms. Wynn admits that Mr. Miller and/or others made an oral presentation regarding Mr. Okada's activities at a meeting on or around November 1, 2011. Ms. Wynn avers that Mr. Okada participated in the meeting. Except as expressly admitted or averred, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 121, and on that basis denies those allegations.
- 122. Ms. Wynn admits that the Compliance Committee retained Freeh Sporkin & Sullivan LLP ("Free Sporkin") to conduct an investigation with respect to Mr. Okada's activities overseas. Ms. Wynn admits that the Board voted to eliminate the position of Vice Chairman and accepted the Compliance Committee's retention of Freeh Sporkin. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 122.

#### F. <u>Kazuo Okada Seeks More Information Regarding Wynn Macau</u>

123. On information and belief, Ms. Wynn admits that Mr. Okada has filed an action in Nevada state court to seek access to Wynn Resort's records. Ms. Wynn denies that any actions by the Board were "highly suspicious." Except as expressly admitted or denied, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 123, and on that basis denies those allegations.

# G. <u>Aruze USA Nominates Directors, But Steve Wynn Refuses to Endorse Them</u> <u>Despite His Obligation to Do So</u>

124. Ms. Wynn denies the allegation that Mr. Wynn "refused" Aruze's request to endorse its slate of directors, but avers on information and belief that written communications in response to Aruze declined to take a position on the slate and said the subject would be addressed later; she

2) 792-3773 2) 792-9002 further avers that Mr. Wynn indicated at the time behind the scenes that he had no intention of supporting the Aruze slate and did not endorse it. Except as expressly denied or averred, Ms. Wynn admits the allegations of paragraph 124.

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

- 125. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 125, and on that basis denies those allegations.
- 126. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 126, and on that basis denies those allegations.
- 127. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 127, and on that basis denies those allegations.
- 128. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 128, and on that basis denies those allegations.

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

- 129. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 129, and on that basis denies those allegations.
- 130. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 130, and on that basis denies those allegations.
- 131. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 131, and on that basis denies those allegations.

## J. <u>Kazuo Okada Voluntarily Sits For A Full-Day Interview With Freeh Sporkin</u>

- 132. On information and belief, Ms. Wynn admits that Mr. Okada sat for an interview with Mr. Freeh on February 15, 2012. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 132, and on that basis denies those allegations.
- 133. On information and belief, Ms. Wynn admits that Mr. Freeh asked Mr. Okada about expenses paid by Universal and/or its agents or affiliates for lodging and meals at Wynn Resorts

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properties, and about compliance with Philippine landownership requirements. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 133, and on that basis denies those allegations.

134. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 134, and on that basis denies those allegations.

#### K. Wynn Resorts Allows No Opportunity for A Reasonable Response

- 135. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 135, and on that basis denies those allegations.
- 136. Ms. Wynn avers that the Second Amended Complaint filed by Wynn Resorts speaks for itself and denies any allegation inconsistent with the Second Amended Complaint.
- 137. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 137, and on that basis denies those allegations.
- 138. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 138, and on that basis denies those allegations.
- 139. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 139, and on that basis denies those allegations.
- 140. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 140, and on that basis denies those allegations.
- 141. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 141, and on that basis denies those allegations.
- 142. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 142, and on that basis denies those allegations.
- 143. Ms. Wynn admits that the Board voted to redeem Aruze's shares, at a valuation that reflected a discount to the trading price, on the day the directors received the Freeh Sporkin report. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 143, in part because she lacks information sufficient to form a belief as to their truth.
- 144. Ms. Wynn denies the allegations of paragraph 144, in part because she lacks information sufficient to form a belief as to their truth.

#### L. Steve Wynn Hurriedly Schedules Board of Directors Meeting

145. Ms. Wynn admits that a board meeting of Wynn Resorts took place on Saturday, February 18, 2012, and that the Freeh Sporkin report was on the agenda. On information and belief, Ms. Wynn admits that Freeh Sporkin interviewed Mr. Okada on February 15, 2012. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 145, in part because she lacks information sufficient to form a belief as to their truth.

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

- 146. Ms. Wynn admits that Wynn Resorts redeemed Aruze's shares of Wynn Resorts stock at a valuation that reflected a discount to the trading price. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 146, and on that basis denies those allegations.
- 147. On information and belief, Ms. Wynn avers that Mr. Doumani had invested in one of Mr. Wynn's properties, and that Mr. Wynn had expressed concern about Mr. Doumani's association with certain individuals. Except as expressly averred, Ms. Wynn denies the allegations of paragraph 147, in part because she lacks information sufficient to form a belief as to their truth.

# IV. Wynn Resorts' Unfounded and Unprecedented Redemption of More Than \$2.9 Billion of Aruze USA's Shares

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

- 148. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 148, and on that basis denies those allegations.
- 149. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 149, and on that basis denies those allegations.

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

150. Ms. Wynn avers that Mr. Okada's counsel purportedly sent a letter dated February 17, 2012 to a representative of Wynn Resorts. Ms. Wynn avers that the letter speaks for itself and denies any allegation inconsistent with the letter.

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Ms. Wynn lacks information sufficient to form a belief as to the truth of the 151. allegations of paragraph 151, and on that basis denies those allegations.

- 152. Ms. Wynn admits that Mr. Wynn yelled at Mr. Okada's counsel when he introduced himself. Ms. Wynn admits that Mr. Wynn said that Mr. Okada's counsel should not be present. Ms. Wynn admits that Mr. Okada was told that he needed to enter into a nondisclosure agreement in order to receive a copy of the Freeh Sporkin report. Ms. Wynn admits that Mr. Okada did not agree to enter into a nondisclosure agreement. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 152, in part because she lacks information sufficient to form a belief as to their truth.
- 153. On information and belief, Ms. Wynn admits that a copy of the Freeh Sporkin report is attached to Wynn Resorts' Complaint. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 153, and on that basis denies those allegations.
- Ms. Wynn admits that there were translation problems during the Board meeting. Ms. Wynn admits that Mr. Okada requested that the translation be provided sequentially rather than simultaneously, and that the request was denied. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 154, and on that basis denies those allegations.
- 155. Ms. Wynn admits that Mr. Freeh made a presentation in English. Ms. Wynn admits that after Mr. Freeh completed his presentation, the Board asked if Mr. Okada had any questions. Ms. Wynn admits that Mr. Okada asked the Board to delay making any resolutions. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 155, in part because she lacks information sufficient to form a belief as to their truth.
- 156. Ms. Wynn avers that there were technical difficulties during the Board meeting. Ms. Wynn admits that the connection with Mr. Okada was lost at some point during the meeting, and that no other contact was made with Mr. Okada. Except as expressly admitted or averred, Ms. Wynn denies the allegations of paragraph 156, in part because she lacks information sufficient to form a belief as to their truth.

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Ms. Wynn admits that Wynn Resorts gave Aruze notice that Aruze's stock was 157. redeemed for a note of approximately \$1.936 billion, which reflected a discount of around 30% to the trading price. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 157, and on that basis denies those allegations.

- 158. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 158, and on that basis denies those allegations.
- 159. Ms. Wynn admits that Wynn Resorts filed a complaint that attached a copy of the report without exhibits but is without information sufficient to form a belief about the timing and form of the filing and on that basis denies those allegations of paragraph 159.
- 160. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 160, and on that basis denies those allegations.

#### C. Aruze USA Disputes That Redemption Has Occurred

161. Ms. Wynn admits that the redemption has taken place, and that Wynn Resorts has so stated. Ms. Wynn admits that Aruze disputes the validity of the redemption. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 161.

#### D. The Board Redeems on False Premises

- 162. Ms. Wynn avers that Aruze is bound by the redemption provision, and admits that Aruze disputes that it is bound by the redemption provision. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies any allegation inconsistent with the Articles of Incorporation.
- Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies 163. any allegation inconsistent with the Articles of Incorporation. On information and belief, Ms. Wynn admits that Aruze had been found previously to be "suitable" by the Nevada Gaming Commission as a shareholder of Wynn Resorts and that she did not understand the redemption to be based on a finding of unsuitability by a gaming authority. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 163, and denies the allegations on that basis.

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164. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies any allegation inconsistent with the Articles of Incorporation. On information and belief, Ms. Wynn admits that Wynn Resorts and its affiliates have not lost, and have not been threatened by a gaming authority with the loss of, a gaming license, and that she did not understand the redemption to be based on such a loss or threatened loss. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 164, and denies the allegations on that basis.

- 165. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies any allegation inconsistent with the Articles of Incorporation. Except as expressly averred, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 165, and denies those allegations on that basis.
- 166. Ms. Wynn denies the allegations of paragraph 166, in part because she lacks information sufficient to form a belief as to their truth.
  - E. Even if Aruze USA Were Subject to the Redemption Provision (Which it is not), the Wynn Parties are Still Liable for Breaching and/or Tortiously Interfering with the Stockholders Agreement and Amended Stockholders Agreement
- 167. Ms. Wynn avers that the April 2002 Stockholders Agreement and the January 2010 Stockholders Agreement speak for themselves, and denies any allegation inconsistent with those agreements. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies any allegation inconsistent with the Articles of Incorporation. On information and belief, Ms. Wynn denies that Mr. Wynn unilaterally amended the Articles of Incorporation without Aruze's consent. Except as expressly averred or otherwise denied, Ms. Wynn denies the remaining allegations of paragraph 167.
  - F. Even if Aruze USA Was Subject to the Redemption Provision (Which it is Not), the Unilateral Blanket 30% Discount that Wynn Resorts Applied to the Stock Is Erroneous and the Promissory Note is Unconscionably Vague, Ambiguous, and Oppressive
- 168. Ms. Wynn admits that Wynn Resorts issued a promissory note in the amount of approximately \$1.9 billion. On information and belief, Ms. Wynn admits that the price reflected an approximately 30% discount to the trading price of Wynn Resorts stock on NASDAQ at or around

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the time of the redemption. On information and belief, Ms. Wynn admits that Wynn Resorts issued a press release on February 19, 2011 regarding the redemption. Ms. Wynn avers that the press release speaks for itself, and denies any allegation inconsistent with the press release. Ms. Wynn denies that the Stockholders Agreement precludes the redemption of Aruze's stock. Ms. Wynn denies that she and Mr. Wynn breached the Stockholders Agreement by voting to redeem Aruze's shares of Wynn Resorts stock. Ms. Wynn admits that some of the purported contractual transfer restrictions could be found to constitute unreasonable restraints on alienability. Ms. Wynn denies that contractual transfer restrictions could not "legitimately impact" the value of Aruze's shares at the time the redemption occurred. Except as expressly admitted, averred, or otherwise denied, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 168, and denies those allegations on that basis.

- 169. Ms. Wynn avers that the press release speaks for itself, and denies any allegation inconsistent with the press release. On information and belief, Ms. Wynn denies that Mr. Wynn unilaterally added the redemption provision to the Articles of Incorporation without Aruze's consent. Except as expressly averred or denied, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 169, and on that basis denies those allegations.
- 170. Ms. Wynn admits that the Board of Wynn Resorts considered a valuation opinion from Moelis & Company. Ms. Wynn admits that Moelis & Company had done business with Wynn Resorts in the past. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 170.
- 171. Ms. Wynn admits that Mr. Wynn has a long-standing professional relationship with Mr. Moelis. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 171, in part because she lacks information sufficient to form a belief as to their truth.
- 172. On information and belief, Ms. Wynn admits that Moelis & Company opined that a 30% discount was appropriate. Ms. Wynn avers that the Stockholders Agreement speaks for itself, and denies any allegation inconsistent with the Stockholders Agreement. Except as expressly admitted or averred, Ms. Wynn denies the allegations of paragraph 172, in part because she lacks information sufficient to form a belief as to their truth.

| 173. Ms. Wynn admits that the \$1.936 billion promissory note issued to Aruze bears 2%               |
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| interest per annum and is subordinate to other Wynn Resorts debt obligations as set forth in the     |
| promissory note. Ms. Wynn avers that the promissory note speaks for itself and denies any            |
| allegation inconsistent with the promissory note. Ms. Wynn avers that the Articles of Incorporation  |
| speak for themselves, and denies any allegation inconsistent with the Articles of Incorporation. Ms. |
| Wynn admits that Wynn Resorts issued notes in March 2012 with principal amount of                    |
| approximately \$900 million and bearing interest at 5.375%. Ms. Wynn avers that Mr. Okada did not    |
| participate in the Board's discussion of the terms of the promissory note during the Board meeting   |
| of February 18, 2012. Except as expressly admitted or averred, Ms. Wynn denies the allegations of    |
| paragraph 173, in part because she lacks information sufficient to form a belief as to their truth.  |
|  |

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

- 174. On information and belief, Ms. Wynn admits the allegations of paragraph 174.
- 175. Ms. Wynn avers that the Form 8-K speaks for itself and denies any allegation inconsistent with that document.
- 176. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 176, and denies those allegations on that basis.
- 177. Ms. Wynn avers that the Form 8-K speaks for itself and denies any allegation inconsistent with that document.
- 178. Ms. Wynn denies the allegations of paragraph 177, in part because she lacks information sufficient to form a belief as to their truth.

#### **CLAIMS FOR RELIEF**

#### **COUNT I**

#### **Declaratory Relief**

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

179. Ms. Wynn reasserts her responses to paragraphs 4 through 178 above, as if fully set forth below.

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| 180.         | Ms. Wynn admits that Aruze and Universal are purportedly seeking a judicial          |
|--------------|--|
| declaration. | Ms. Wynn denies that the declaration Aruze and Universal seek is appropriate. Except |
| as expressly | admitted, Ms. Wynn denies the allegations of paragraph 180.                          |

- 181. Ms. Wynn admits that Aruze and Universal are purportedly seeking a judicial declaration. Ms. Wynn denies that the declaration Aruze and Universal seek is appropriate. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 181.
- 182. Ms. Wynn admits that Aruze and Universal are purportedly seeking a judicial declaration. Ms. Wynn denies that the declaration Aruze and Universal seek is appropriate. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 182.
- 183. Ms. Wynn admits that Aruze and Universal are purportedly seeking a judicial declaration. Ms. Wynn denies that the declaration Aruze and Universal seek is appropriate. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 183.
- 184. Ms. Wynn admits that Aruze and Universal are purportedly seeking a judicial declaration. Ms. Wynn admits that the valuation opinion Mr. Moelis presented to the Board did not consider whether the transfer restrictions were valid as to Aruze. Ms. Wynn denies that the declaration Aruze and Universal seek is appropriate. Ms. Wynn denies that she and Mr. Wynn breached the Stockholders Agreement by voting for the redemption of Aruze's shares of Wynn Resorts stock. Except as expressly admitted and otherwise denied, Ms. Wynn denies the allegations of paragraph 184, in part because she lacks information sufficient to form a belief as to their truth.
- 185. The allegations of paragraph 185 are legal conclusions that do not require a response. In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on the ground that she lacks information sufficient to form a belief as to their truth.
- 186. Ms. Wynn admits that an actual controversy exists between the parties, and that the dispute is ripe for adjudication. Ms. Wynn denies that Wynn Resorts acted unlawfully when it redeemed Aruze's stock.
  - 187. Ms. Wynn denies the allegations of paragraph 187.

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#### **COUNT II**

#### **Permanent Prohibitory Injunction**

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

- 188. Ms. Wynn reasserts her responses to paragraphs 4 through 178 above, as if fully set forth below.
- 189. Ms. Wynn admits that Aruze is purportedly seeking a permanent injunction. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 189.
  - 190. Ms. Wynn denies the allegations of paragraph 190.
  - 191. Ms. Wynn denies the allegations of paragraph 191.
  - 192. Ms. Wynn denies the allegations of paragraph 192.
- 193. The allegations of paragraph 193 are legal conclusions that do not require a response. In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on the ground that she lacks information sufficient to form a belief as to their truth.
  - 194. Ms. Wynn denies the allegations of paragraph 194.

#### **COUNT III**

#### **Permanent Mandatory Injunction**

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

- 195. Ms. Wynn reasserts her responses to paragraphs 4 through 178 above, as if fully set forth below.
- 196. Ms. Wynn admits that Aruze is purportedly seeking a permanent injunction. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 196.
  - 197. Ms. Wynn denies the allegations of paragraph 197.
  - 198. Ms. Wynn denies the allegations of paragraph 198.
  - 199. Ms. Wynn denies the allegations of paragraph 199.
- 200. Ms. Wynn admits that Aruze is purportedly seeking damages. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 200.

| 1 | 201. The allegations of paragraph 201 are legal conclusions that do not require a response.           |
|---|---|
| 2 | In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on |
| 3 | the ground that she lacks information sufficient to form a belief as to their truth.                  |
| 4 | 202. Ms. Wynn denies the allegations of paragraph 202.  |
| 5 | <u>COUNT IV</u>   |
| 6 | Breach of Contract in Connection with Wynn Resorts' Involuntary Redemption                            |
| 7 | (By Aruze USA Against Steve Wynn and Elaine Wynn)   |
| 8 | 203. Ms. Wynn reasserts her responses to paragraphs 4 through 178 above, as if fully set              |

204. Ms. Wynn avers that the April 2002 Stockholders Agreement and the January 2010 Stockholders Agreement speak for themselves, and denies any allegations inconsistent with those agreements.

205. Ms. Wynn avers that the April 2002 Stockholders Agreement and the January 2010 Stockholders Agreement speak for themselves and that the quoted excerpts of those agreements have been taken out of context, and denies any allegations inconsistent with those agreements. Ms. Wynn denies that those agreements prohibit the redemption of Aruze's stock.

206. Ms. Wynn denies the allegations of paragraph 206.

207. The allegations of paragraph 207 are legal conclusions that do not require a response. In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on the ground that she lacks information sufficient to form a belief as to their truth.

208. The allegations of paragraph 208 are legal conclusions that do not require a response. In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on the ground that she lacks information sufficient to form a belief as to their truth.

209. Ms. Wynn denies the allegations of paragraph 209.

forth below.

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| <b>COUNT VI</b>                 |
|---------------------------------|
| <b>Breach of Fiduciary Duty</b> |

## (By Aruze USA Against the Wynn Directors)

- 220. Ms. Wynn reasserts her responses to paragraphs 4 through 178 above, as if fully set forth below.
  - 221. The allegations of paragraph 221 are legal conclusions that do not require a response.
  - 222. The allegations of paragraph 222 are legal conclusions that do not require a response.
- 223. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies any allegations inconsistent with the Articles of Incorporation.
  - 224. Ms. Wynn denies the allegations of paragraph 224.
  - 225. Ms. Wynn denies the allegations of paragraph 225.
  - 226. Ms. Wynn denies the allegations of paragraph 226.
  - 227. Ms. Wynn denies the allegations of paragraph 227.
  - 228. Ms. Wynn denies the allegations of paragraph 228.
  - 229. Ms. Wynn denies the allegations of paragraph 229.
  - 230. Ms. Wynn denies the allegations of paragraph 230.
- 231. The allegations of paragraph 231 are legal conclusions that do not require a response. In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on the ground that she lacks information sufficient to form a belief as to their truth.
  - 232. Ms. Wynn denies the allegations of paragraph 232.

## **AFFIRMATIVE DEFENSES**

Ms. Wynn asserts the following affirmative defenses:

## FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Each of Counterclaimants' claims against Ms. Wynn fails to state a claim upon which relief can be granted.

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| SECOND | AFFIRMATIVI | E DEFENSE |
|--------|-------------|-----------|
|        |             |           |

#### (Unclean Hands)

Counterclaimants' claims against Ms. Wynn are barred in whole or in part due to their unclean hands, including but not limited to their conduct and the conduct of their affiliates in the Philippines and Korea.

#### THIRD AFFIRMATIVE DEFENSE

#### (Estoppel)

Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the doctrine of estoppel.

#### FOURTH AFFIRMATIVE DEFENSE

#### (Laches)

Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the doctrine of laches.

#### FIFTH AFFIRMATIVE DEFENSE

#### (Waiver)

Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the doctrine of waiver.

#### **SIXTH AFFIRMATIVE DEFENSE**

#### (Election of Remedies)

Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the doctrine of election of remedies, because *inter alia* Counterclaimants seek inconsistent remedies with respect to the Stockholders' Agreement.

#### SEVENTH AFFIRMATIVE DEFENSE

#### (Limitation on Liability)

Counterclaimants' claims against Ms. Wynn are barred in whole or in part because Ms. Wynn's liability, if any, is limited by Wynn Resorts' Articles of Incorporation, Bylaws, and Nevada law, including N.R.S. § 78.138.

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## 2 (Authorization by Articles of Incorporation) 3 Counterclaimants' claims against Ms. Wynn are barred in whole or in part because Ms. 4 Wynn's actions are authorized by and comport with Wynn Resorts' Articles of Incorporation, 5 Bylaws, and Nevada law. 6 NINTH AFFIRMATIVE DEFENSE 7 (Ratification) 8 9 10 the Articles of the Incorporation. 11 12 (Statute of Limitations) 13 14 statute(s) of limitations. 15 16 (Adequate Remedy at Law) 17 18 part by the availability of adequate remedies at law. 19 20 (Consent) 21 22 23 24 (Privilege)

EIGHTH AFFIRMATIVE DEFENSE

Counterclaimants' claims against Ms. Wynn are barred in whole or in part because Counterclaimants and Mr. Okada ratified the Counterdefendants' actions, including amendments to

#### **TENTH AFFIRMATIVE DEFENSE**

Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the applicable

### **ELEVENTH AFFIRMATIVE DEFENSE**

Counterclaimants' claims for injunctive relief against Ms. Wynn are barred in whole or in

#### TWELFTH AFFIRMATIVE DEFENSE

Counterclaimants' claims are barred in whole or in part because Mr. Okada consented to the Counterdefendant's actions, including amendments to the Articles of Incorporation.

#### THIRTEENTH AFFIRMATIVE DEFENSE

The alleged acts or omissions of Ms. Wynn that allegedly give rise to liability herein, if any such acts or omissions occurred, were legally privileged and cannot give rise to any liability on the part of Ms. Wynn.

#### FOURTEENTH AFFIRMATIVE DEFENSE

(Justification)

The alleged acts and omissions of Ms. Wynn that allegedly give rise to liability herein, if any such acts or omissions occurred, were legally justified and cannot give rise to any liability on the part of Ms. Wynn.

#### FIFTEENTH AFFIRMATIVE DEFENSE

(Lack of Standing)

Counterclaimants' claims against Ms. Wynn are barred in whole or in part because they lack standing to assert some or all of their claims.

#### SIXTEENTH AFFIRMATIVE DEFENSE

(Release and Indemnification)

Counterclaimants' claims against Ms. Wynn are barred in whole or in part because

Counterclaimants are required under the Articles of Incorporation to indemnify and hold harmless

Wynn Resorts for any losses, including attorney's fees, resulting from their conduct.

#### SEVENTEENTH AFFIRMATIVE DEFENSE

(Contributory Negligence)

Counterclaimants' claims against Ms. Wynn are barred in whole or in part by their and Mr. Okada's own actions, omissions, negligence, and/or malfeasance.

#### EIGHTEENTH AFFIRMATIVE DEFENSE

(Comparative Negligence)

Counterclaimants' claims against Ms. Wynn are barred in whole or in part because Counterclaimants' damages, if any, were caused by Counterclaimants' and Mr. Okada's own negligence, and such negligence was greater than any negligence, which is expressly denied, on the part of Ms. Wynn.

#### NINETEENTH AFFIRMATIVE DEFENSE

(Res Judicata)

Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the doctrine of res judicata.

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#### TWENTIETH AFFIRMATIVE DEFENSE

#### (Collateral Estoppel)

Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the doctrine of collateral estoppel.

#### **RESERVATION**

Ms. Wynn reserves the right to amend her answer to plead additional affirmative defenses as they become known and appropriate during the course of this litigation.

#### **JURY DEMAND**

Ms. Wynn demands trial by jury on all issues so triable.

WHEREFORE, Ms. Wynn prays that judgment be entered as follows:

- 1. that Counterclaimants take nothing from Ms. Wynn by virtue of their Fourth Amended Counterclaim;
- 2. that the Fourth Amended Counterclaim and each purported cause of action set forth therein against Ms. Wynn be dismissed with prejudice;
- that Ms. Wynn be awarded her costs and reasonable attorney's fees incurred herein 3. as allowed by law; and
- for such further relief is deemed just and equitable. 4.

## SIXTH AMENDED COUNTERCLAIM AND CROSSCLAIM

#### I. Introduction

- 1. With these crossclaims, Elaine P. Wynn seeks a declaration that the January 2010 Stockholders Agreement, which purports to prohibit her from selling shares that she owns absent the permission of her ex-husband Stephen Wynn, is invalid and unenforceable as a matter of law. She also seeks damages for Mr. Wynn's breach of his obligations under the January 2010 Stockholders Agreement, including for his failure to support her renomination and reelection to the Board of Directors, and for Wynn Resorts' tortious interference with that contract. Furthermore, and in the alternative, to the extent that the January 2010 Stockholders Agreement is deemed valid and enforceable, Ms. Wynn seeks specific performance ordering Mr. Wynn to comply with his contractual obligations, as explicitly required by the January 2010 Stockholders Agreement.
- 2. Ms. Wynn raises these issues reluctantly: she had hoped, for the sake of her family and of the Company she helped to build, that the issues plaguing the operation of Wynn Resorts and the reckless risk-taking of its Chairman and CEO Mr. Wynn could be addressed through proper corporate processes and channels. They cannot be. Mr. Wynn has intentionally kept the Wynn Resorts Board in the dark with the deliberate help of his co-conspirator, Kimmarie Sinatra, the General Counsel of the Company. He has engaged in reckless, risk-taking behavior, leaving himself vulnerable to allegations of serious wrongdoing including allegations that he made a multi-million dollar payment and used Company resources in response to threats that neither he nor Ms. Sinatra properly disclosed to the Board of Directors. This and other such decisions have left the directors and the Company vulnerable to potential liability and regulatory exposure.
- 3. Every time Elaine Wynn sought information, as a director should, she confronted a "tone at the top" that punished inquiry, even by her, a major shareholder, director and co-founder of Wynn Resorts. Mr. Wynn operates the Company without the effective checks and balances that the law requires, beginning with independent and effective Board members. Ms. Wynn and her fellow Board members were intentionally provided either no information or misinformation by Mr. Wynn and Ms. Sinatra, a process that depended on the deficiencies in the internal controls and their intentional circumvention with regard to the decisions of the Chairman and CEO. Although

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required by provisions in the January 2010 Stockholders Agreement obligating Mr. Wynn to support Elaine Wynn's director candidacy, Mr. Wynn, with the active participation of and in conspiracy with Ms. Sinatra, engineered Ms. Wynn's removal from the Board in retaliation for her challenging their decisions and questioning their judgment. Among other actions, Mr. Wynn and Ms. Sinatra, with the intentional assistance of others at Wynn Resorts, manufactured pretextual reasons for ousting Ms. Wynn and engineered the scheme to reduce the size of the Board in order to make it far easier for investors to vote against Ms. Wynn by simply voting the usual slate.

- 4. The ostensible purpose of the January 2010 Stockholders Agreement was to place restrictions on the stock held by Mr. Okada (through his company, Aruze USA, Inc.) to preserve the Wynn-Okada alliance and avoid the kind of takeover that the Wynns faced at the Mirage. Mr. Wynn induced Ms. Wynn to sign the January 2010 Stockholders Agreement by a series of false representations, both professional and personal, including that the purpose was to restrict Mr. Okada, not her, and that she would serve on the Board for at least as long as the restrictions applied so that she could protect her stock in the Company, which is Ms. Wynn's largest asset.
- 5. Now that the shares held by Mr. Okada's company have been redeemed, the ostensible purpose of the January 2010 Stockholders Agreement has been frustrated. If the purpose was indeed to impose limits on Mr. Okada, as Mr. Wynn and his counsel maintained, then there is no legitimate basis for continuing to enforce the Agreement's restrictions on Ms. Wynn's shares.
- 6. As is now clear, Mr. Wynn is misusing the January 2010 Stockholders Agreement to exert full and perpetual control over his former wife's life and legacy. A contract restricting alienability in perpetuity is unreasonable and unlawful. In this case, Ms. Wynn's agreement was also fraudulently induced. Ms. Wynn entered into the Agreement reasonably believing that Mr. Wynn would of course provide for their family. Mr. Wynn actively promoted that impression and misrepresented his intentions. Only later did Mr. Wynn share with his daughters through conversations that they, and their families, should expect only Ms. Wynn to provide support and any inheritance, and that he did not plan to include them in his will. At the same time as he has been delivering this message to his daughters, Mr. Wynn has refused Ms. Wynn's requests to enter into the kind of responsible joint estate planning that would provide a legacy for their family and also for

the community; if he has a will or other instrument that provides for his family, he has refused to acknowledge it or reveal any of its terms so that Ms. Wynn can reasonably plan her own estate. By refusing to allow Ms. Wynn to sell or transfer her stock, Mr. Wynn would force their daughters to liquidate most of or all of Ms. Wynn's other assets to pay estate tax on stock that they cannot sell either. In her own lifetime, Ms. Wynn, who is a committed philanthropist, is further denied the right to spend what is hers in support of the causes she passionately believes in. To the extent that the January 2010 Stockholders Agreement imposes restrictions on the sale of Ms. Wynn's shares, it is unreasonable and constitutes an unenforceable, perpetual and unlawful restraint on alienability.

- 7. If the January 2010 Stockholders Agreement is found to have any continuing validity (and it should not be), Mr. Wynn materially breached that Agreement. Ms. Wynn agreed to restrictions on her stock to help her partner of 41 years and the father of her children maintain the alliance with, and the restrictions on, Mr. Okada. Mr. Wynn in turn agreed that Ms. Wynn would be able to oversee and protect her interests as a major investor and shareholder with a seat on the Board. Among other things, Mr. Wynn was obligated to endorse and support Ms. Wynn's nomination and election for director of Wynn Resorts, which he failed to do.
- 8. Neither Mr. Wynn nor Ms. Sinatra made any effort to hide their antipathy for Ms. Wynn's insistence on carrying out her duties as a director. For her part, Ms. Wynn became increasingly concerned about the pattern of reckless risk-taking by the Chairman and CEO, unconstrained by proper internal controls and concealed by the General Counsel; the "tone at the top" that discouraged any challenge to Mr. Wynn; the fact that Mr. Wynn and Ms. Sinatra decided what would and would not be disclosed to the Board to serve the personal purposes of the CEO; and the fact that they made decisions based not on what was best for the shareholders, but what was best for management, specifically the Chairman and CEO and the General Counsel. No other plausible explanation could justify their decision to keep secret from the Board and other Company counsel besides Ms. Sinatra the fact that the Chairman and CEO had engaged in alleged misconduct on Company property against at least one Company employee serious enough to warrant a multi-million dollar payment and thereby to expose the Company and other directors to liability without their knowledge or consent.

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9. The Wynn Board may be the most compliant board of any major public company. In only three instances in the history of the Company has a director voted against Mr. Wynn's position on any issue. The only time Mr. Wynn's purported position has ever been "defeated" was when it came to electing Ms. Wynn to the Board of Directors in 2015. She is a near 10 percent shareholder. If her name were not "Wynn," and if she did not know as much as she does and had not raised proper questions about the management of the Company, she would of course have a seat on the Board. Although Mr. Wynn formally voiced that he was voting the shares he controlled in Ms. Wynn's favor, he and Ms. Sinatra intentionally conspired and acted to engineer the Nominating Committee's recommendation to reduce the Board's size and not to renominate Ms. Wynn and the Board's decision to follow that recommendation. Ms. Wynn is the only director in the Company's history who was involuntarily "retired." She is the only director to seek renomination and not to receive it. Dogged by a campaign that "Steve wanted her off" – a campaign Mr. Wynn and his co-conspirators devised and executed – Ms. Wynn no longer sits on the Board; Mr. Wynn maintains complete voting control over her stock; and the vast bulk of her stock is totally restricted from transfer, including to the point that she cannot protect herself or provide for a reasonable estate plan for the benefit of her children. Elaine Wynn is a sophisticated business woman. This is not the agreement she made. She sought to protect the Company and her family and to do no harm to her children's father. It is impossible to draw any conclusion other than that Mr. Wynn intentionally sought to do just the opposite.

## II. Case Designation

10. This matter is properly designated as a business court matter and assigned to the Business Docket under EDCR 1.61(a) as the claims alleged herein are based on or will require decision under Chapter 78 of the Nevada Revised Statutes or other similar statutes, and arise from a stockholder's right to engage in the purchase or sale of the stock of a business.

#### III. The Parties

11. Counterdefendant, counterclaimant, and crossclaimant Elaine P. Wynn is and was, at all relevant times, a citizen of Nevada.

- 12. Counterdefendant and crossdefendant Stephen A. Wynn is and was, at all relevant times, a citizen of Nevada.
- 13. Counterdefendant and crossdefendant Kimmarie Sinatra is and was, at all relevant times, a citizen of Nevada.
- 14. Plaintiff, counterdefendant, and crossdefendant Wynn Resorts Limited ("Wynn Resorts") is a company organized and existing under the laws of Nevada.
- 15. Defendant, counterclaimant, and counterdefendant Aruze USA, Inc. ("Aruze") is a company organized and existing under the laws of Nevada. On information and belief, Aruze is and was controlled by Kazuo Okada at all relevant times, and is the entity Mr. Okada used to hold shares in Wynn Resorts.

#### IV. General Allegations

- 16. Elaine Wynn married Stephen Wynn in 1963, when they were both 21. They divorced in 1986, and remarried in 1991. They divorced again eighteen years later, in 2010.
- 17. Ms. Wynn made major contributions to the success of Wynn Resorts. She worked tirelessly to turn visions into reality, to help create the unique ambiance and experience that have made Wynn Resorts so successful. Mr. Wynn never contested, at the time of divorce, that Ms. Wynn was entitled to 50 percent of the stock in Wynn Resorts.
  - 18. Between 1977 and 2000, Ms. Wynn served as a director of Mirage Resorts.
  - 19. Ms. Wynn served as a director of Wynn Resorts from October 2002 until April 2015.

#### A. Creation of Wynn Resorts

- 20. In 2000, Mr. Wynn purchased the Desert Inn in Las Vegas. The Desert Inn site eventually was rebuilt as Wynn Resorts. The entity Mr. Wynn used to hold the Desert Inn property was the Nevada limited liability company Valvino Lamore, LLC ("Valvino"), which Mr. Wynn formed in April 2000.
- 21. Mr. Wynn turned to Mr. Okada to help finance this new project. In October 2000, Aruze contributed \$260 million to Valvino and became a member of Valvino.
  - 22. In April 2002, Aruze contributed a further \$120 million to Valvino.

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|       | 23.     | As of April 2002, Mr. Wynn and Aruze each held a 47.5 percent interest in Valvino   |
|-------|---------|---|
| Baron | Asset F | nd ("Baron"), a Massachusetts business trust, held a 5 percent interest in Valvino. |

- 24. Mr. Wynn, Aruze and Baron agreed to contribute their interests in Valvino to a new entity, to be named Wynn Resorts. On April 11, 2002, Mr. Wynn, Aruze, and Baron executed a Stockholders Agreement (the "April 2002 Stockholders Agreement") with respect to their shares in the new entity.
- 25. Mr. Wynn became Wynn Resorts' Chairman and Chief Executive Officer in June 2002.
- 26. In October 2002, Ms. Wynn became a director, Mr. Okada became Vice Chairman, and Wynn Resorts conducted an initial public offering of Wynn Resorts stock (ticker symbol WYNN) on the NASDAQ exchange.

#### В. The 2002 and 2006 Stockholders Agreements

- 27. In 2002 and 2006, the stockholders executed two agreements intended to ensure that their unified voting strength would be used to keep control in the hands of the Wynn-Okada alliance. A third agreement was signed in 2010 after the Wynns divorced.
- 28. Section 2(a) of the April 2002 Stockholders Agreement sets forth a voting agreement between Mr. Wynn and Aruze. Section 2(a) provides that Mr. Wynn would designate a majority of all nominees to the Board of Wynn Resorts; Aruze would designate a minority slate of directors; and Mr. Wynn and Aruze would vote the shares held by them to elect the designated nominees.
- 29. Section 9 of the April 2002 Stockholders Agreement set forth a right-of-first-refusal restriction on the transfer of stock by Mr. Wynn, Aruze and Baron. Generally, Section 9 provided that each contracting party who wished to sell stock must, with certain exceptions, provide notice of the proposed terms of sale to the other parties to the agreement, and that each other party would have the right to purchase the offered shares according to certain procedures.
- 30. Section 4 of the April 2002 Stockholders Agreement stated that "Shares may not be transferred or sold by any Stockholder unless the transferee (including a Permitted Transferee) both executes and agrees to be bound by this Agreement."

31. On March 15, 2005, Wynn Resorts stated in its Form 10-K filing that "Mr. Wynn and Aruze USA, Inc. each own approximately 25% of our outstanding common stock. As a result, Mr. Wynn and Aruze USA, Inc., to the extent they vote their shares in a similar manner, effectively are able to control all matters requiring our stockholders' approval, including the approval of significant corporate transactions."

- 32. In the same Form 10-K, Wynn Resorts further stated: "Mr. Wynn and Aruze USA, Inc., together with Baron Asset Fund, have entered into a stockholders' agreement. Under the stockholders' agreement, Mr. Wynn and Aruze USA, Inc., have agreed to vote their shares of our common stock for a slate of directors, a majority of which will be designated by Mr. Wynn, of which at least two will be independent directors, and the remaining members of which will be designated by Aruze USA, Inc. As a result of this voting agreement, Mr. Wynn, as a practical matter, controls the slate of directors to be elected to our board of directors."
- 33. In or about 2006, Mr. Wynn asked Mr. Okada to agree to further restrictions on Aruze's ability to sell Wynn Resorts stock. On November 8, 2006, Mr. Wynn and Aruze executed an Amendment to Stockholders Agreement ("2006 Amendment").
- 34. The 2006 Amendment added the following: "Mutual Restriction on Sale of Shares. Neither [Mr.] Wynn nor Aruze (nor any of their respective Permitted Transferees) shall Transfer, or permit any of their respective Affiliates to Transfer, any Shares Beneficially Owned by such Person without the prior written consent of both [Mr.] Wynn and Aruze." This type of restriction on stock transfers is known as a consent restriction and purported to apply to all shares subject to the agreement.

#### C. <u>Division of the Wynn Shares</u>

- 35. Elaine and Stephen Wynn finalized their divorce in 2010 after having been married for a total of 41 years. Under Nevada law, Ms. Wynn was entitled to an equal division of community assets, including their Wynn Resorts stock.
- 36. Mr. Wynn insisted that he could not transfer shares to Ms. Wynn unless she signed the January 2010 Stockholders Agreement. Mr. Wynn and his lawyers represented to Ms. Wynn that because the shares to be divided between Mr. Wynn and Ms. Wynn were subject to the 2002 and

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2006 Agreements, Ms. Wynn had no choice but to be added as a party to the pre-existing Stockholders Agreement and to execute the Irrevocable Proxy in order to maintain the restrictions on Mr. Okada; that the purpose of the restrictions was to restrict *Mr. Okada* 's transfer of his shares, not Ms. Wynn's; that if she did not agree to the same restrictions that applied to Mr. Okada, Mr. Okada would seize that as an opportunity to reopen negotiations; and that Mr. Okada's doing so could undermine their joint control of Wynn Resorts and potentially diminish the value of their holdings.

- 37. Mr. Wynn also led Ms. Wynn to believe that he would engage in responsible joint estate planning with Ms. Wynn to provide a legacy for their family and also for the community. These representations were false.
- 38. Mr. Wynn also made certain business commitments to Ms. Wynn, who now separately held nearly 10 percent of the stock in the Company: that is, like any such large stakeholder, and particularly one restricted from freely selling the vast majority of her stake, she was entitled to serve, and he committed to her serving, on the Board of Directors.
- 39. In reliance on the representations made to her by Mr. Wynn and his counsel, Ms. Wynn signed the January 2010 Stockholders Agreement, as described further below.

#### D. The January 2010 Stockholders Agreement

- 40. On January 6, 2010, Mr. Wynn and Ms. Wynn, on the one hand, and Mr. Okada's company Aruze, on the other hand, signed the Amended and Restated Stockholders Agreement ("January 2010 Stockholders Agreement"). As represented to Ms. Wynn, the purpose of the January 2010 Stockholders Agreement was to ensure that Mr. Okada did not transfer his shares without the permission of Mr. Wynn and Ms. Wynn.
  - 41. Section 2(a) of the January 2010 Stockholders Agreement provides as follows:

<u>Voting Agreement</u>. On any and all matters relating to the election of directors of Wynn (including the filling of any vacancies), the Designated Stockholders each agree to vote all Shares held by them and subject to the terms of this Agreement (or the holders thereof shall consent pursuant to an action by written consent of the holders of capital stock of Wynn) in a manner so as to elect to Wynn's Board of Directors each of the nominees contained on each and every slate of directors endorsed by [Mr. Wynn].

[Mr. Wynn] agrees to include [Ms. Wynn] as one of his endorsed nominees so long as she is not "unable to serve" or "unfit to serve." As used herein, "unable to serve" shall mean medically incapacitated so as to be unable to serve as a director, and "unfit to serve" shall mean a violation of rules and laws so as to prohibit one from serving as a director of a public company engaged in the gaming business. In the event of a disagreement between [Mr. Wynn] and [Ms. Wynn] regarding these matters, determination of either of the preceding conditions shall be made and confirmed by an independent third party to be jointly selected by [Mr. Wynn] and [Ms. Wynn].

[Mr. Wynn] also agrees to endorse a slate of directors that includes nominees approved by Aruze and to vote [Mr. Wynn's] and [Ms. Wynn's] Shares in favor of such directors so long as such slate results in a majority of all directors at all time being director candidates endorsed by [Mr. Wynn].

- 42. The Irrevocable Proxy, attached as Exhibit A to the January 2010 Stockholders Agreement and executed by both Ms. Wynn and Aruze, grants Mr. Wynn voting rights to all shares subject to the Agreement and provides that such proxy is to be exercised "for the election of directors as more specifically provided and in a manner consistent with this Agreement."
- 43. Section 2(b) of the January 2010 Stockholders Agreement provides that, with certain exceptions, "none of [Ms. Wynn], [Mr. Wynn,] or Aruze (nor any of their respective Permitted Transferees) shall Transfer, or permit any of their respective Affiliates to Transfer, any Shares Beneficially Owned by such Person without the prior written consent of each of the others." The restrictions of Section 2(b) contain no time limitation.
- 44. Section 4 of the January 2010 Stockholders Agreement states that "[s]hares may not be transferred or sold by the Designated Stockholder unless the transferee (including a Permitted Transferee) both executes and agrees to be bound by both this Agreement and the Proxy." The restrictions of Section 4 contain no time limitation and provide that any transferee must be bound by the restrictions in the agreement.
- 45. Section 9 of the January 2010 Stockholders Agreement provides for a right-of-first-refusal restriction on stock transfers. Generally, Section 9 provides that each party who wishes to sell stock must, with certain exceptions, provide notice of the proposed terms of sale to the other parties to the Agreement, and that each other party will then have the right to purchase the offered shares according to a specified procedure. The restrictions of Section 9 contain no time limitation and provide that the transferee must be bound by the restrictions in the agreement.

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46. Section 14(b) of the January 2010 Stockholders Agreement requires that the stock certificates bear the "following restrictive legend" that includes: "ANY PERSON ACCEPTING ANY INTEREST IN SUCH SHARES SHALL BE DEEMED TO HAVE AGREED TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF THE STOCKHOLDERS AGREEMENT."

47. Section 14(c) of the January 2010 Stockholders Agreement provides that "[a]ny transfer or sale of any Shares in violation of this Agreement shall be null and void *ab initio*."

#### E. Wynn Resorts' Redemption of Aruze's Stock

- 48. On or about October 29, 2011, Wynn Resorts' Compliance Committee retained Louis Freeh, former Director of the Federal Bureau of Investigation, to investigate Mr. Okada's activities overseas, including his activities in the Philippines.
- 49. On February 18, 2012, Mr. Freeh made a presentation to the Board of Wynn Resorts regarding Mr. Okada's overseas activities. Based on Mr. Freeh's presentation, the Board of Wynn Resorts adopted a resolution finding Aruze, Mr. Okada, and Universal Entertainment Corporation to be Unsuitable Persons under Wynn Resorts' Second Amended and Restated Articles of Incorporation ("Articles"). The Board caused Wynn Resorts to redeem Aruze's shares in Wynn Resorts.
- 50. With the redemption of Mr. Okada's interest, the purpose and intent of the January 2010 Stockholders Agreement fails. Mr. Wynn does not need Ms. Wynn's shares to protect him from Mr. Okada. The risk posed by Mr. Okada and his shareholdings simply does not exist in light of the redemption. The January 2010 Stockholders Agreement was never intended to give Mr. Wynn a perpetual unlimited "get out of jail free" card, guaranteeing Ms. Wynn's support against any and all comers. This was an agreement with its roots and its execution in the Wynn-Okada alliance. With Mr. Okada out of the picture, the January 2010 Stockholders Agreement no longer serves its purpose and is invalid and unenforceable.

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#### F. Mr. Wynn's Abandonment of His Promises to Ms. Wynn and Pattern of Reckless Behavior

- 51. Working very long days, and trusting that (whatever Mr. Wynn might do in his personal life) Mr. Wynn would not put the Company they had co-founded and so painstakingly worked to build at risk, Ms. Wynn cannot say with any certainty when Mr. Wynn's reckless risk-taking began or accelerated. But beginning at the time of her divorce, and for obvious reasons, Ms. Wynn began examining the extent to which Mr. Wynn was withholding information from the Board on critical issues and using a public company to fund his lavish lifestyle and personal politics. Mr. Wynn, along with Ms. Sinatra, effectively undermined the role and proper decision-making authority of the Board by withholding information from or affirmatively misleading the Board, including on matters that indisputably should have been reported by the Board, and by retaliating against Ms. Wynn for raising proper inquiries into the conduct of the Company, including by Mr. Wynn.
- 52. Among other things, Ms. Wynn learned that Mr. Wynn, using the services of a private criminal defense attorney and a private gaming attorney, had years earlier made a multimillion dollar payment after apparently being threatened with allegations of serious misconduct occurring on Company property against a Wynn Resorts employee. When Ms. Wynn inquired of this, Ms. Sinatra falsely led her to believe that it had been properly handled by the Company – even though Mr. Wynn, the Chairman and CEO of a public company, had exposed himself to sufficiently serious allegations of wrongdoing that he had been forced to pay millions of dollars and had used Company personnel and resources to conceal the allegations. Ms. Sinatra intentionally put Mr. Wynn's personal interests above those of the Company when they were clearly in conflict. This is only one example of the many instances where Ms. Sinatra acted to protect or advance Mr. Wynn's personal interests that were contrary to the Company's best interests.
- 53. Ms. Wynn also learned, from Mr. Wynn himself, that his prior representations to her about providing for their family – misrepresentations made to secure her signature on the January 2010 Stockholders Agreement – and all the assumptions upon which they were based were a sham. Mr. Wynn has rebuffed her efforts even to discuss what would be an appropriate approach to

give back to the community. Mr. Wynn has now repeatedly confirmed to both Ms. Wynn and their two children that the children should look to Ms. Wynn, and only Ms. Wynn, for support and that he has no intention of including them in any significant way in his will or otherwise. He has refused Ms. Wynn's requests that they meet together to discuss estate planning for the benefit of their family and their foundation, leaving no doubt that he knew at the time he secured her signature on the January 2010 Stockholders Agreement that he would never do so. Even if Mr. Wynn has created a will or other mechanism to provide for his family, he has refused to acknowledge it or reveal any of its terms so that Ms. Wynn can reasonably plan her own estate.

54. Ms. Wynn also learned that Mr. Wynn's judgment as to the promotion and retention

balancing the legacy they leave for their family with the responsibility Ms. Wynn has long felt to

- of senior officials of the Company was dangerously flawed, with potentially serious implications for the Company, its directors and its gaming licenses. Mr. Wynn surrounded himself with senior management many of whom, it has emerged, were elevated more for their loyalty than their integrity and ability. For example, for many years, Marc D. Schorr, Mr. Wynn's hand-picked selection for Chief Operating Officer ("COO") of Wynn Resorts in 2001, was one of Mr. Wynn's closest associates. When Ms. Wynn objected to Mr. Schorr's election to the Board because of questions about his ethics, Mr. Wynn and Ms. Sinatra rebuffed her and retaliated against her. As it turned out, Ms. Wynn's concerns were well-founded, but Mr. Wynn and Ms. Sinatra misled the Board about the reason for Mr. Schorr's sudden decision to retire. The Board relied on Mr. Wynn and Ms. Sinatra to bring wrongdoing by company executives and other employees to their attention, and they relied on their representations to them. Nonetheless, Ms. Sinatra, conspiring with Mr. Wynn, purposefully did precisely the opposite they hid misconduct from the Board and falsely represented information to the Board.
- 55. Mr. Schorr's misconduct came to light as a result of the actions of a former Wynn executive named Tim Poster, who was as close to Mr. Schorr as Mr. Schorr was to Mr. Wynn. Mr. Poster initially was hired to explore potential business opportunities for Wynn Resorts in internet gambling; when Mr. Wynn decided not to pursue that direction, he assigned Mr. Poster to a prominent position in casino marketing. Shortly thereafter, Mr. Wynn personally chose and

announced Mr. Poster's promotion to COO of Wynn Las Vegas. But before Mr. Poster could even begin to assume his full duties, Mr. Wynn was forced to accept his resignation when it was revealed that Mr. Poster was under investigation for participating in illegal gambling. The Nevada Gaming Control Board subsequently rejected Mr. Poster's application based upon preliminary findings of unsuitability for this reason and other misconduct.

- 56. Mr. Schorr's and Mr. Poster's well-known pattern of joint betting activity then raised concerns about whether Mr. Schorr might have participated in similar illegal activities. Within weeks, Mr. Wynn announced to the Board that Mr. Schorr, despite having recently received on February 27, 2013 a multi-year contract extension through December 31, 2016 and additional compensation at Mr. Wynn's direction, had decided on March 11, 2013 to "resign" voluntarily because he was ready to retire. This same claim was made in SEC filings. In its subsequent SEC Form 8-K filed March 28, 2013, and echoing Mr. Wynn's misrepresentation to the Board, Wynn Resorts falsely and deceptively reported that Mr. Schorr's departure from Wynn Resorts was the result of Mr. Schorr's notice to the Company of his "his intention to retire." In fact, Mr. Schorr was terminated by Mr. Wynn because of his participation in illegal gambling, something every gaming executive knows will not be tolerated by authorities. Even after these events, Mr. Wynn again hired Mr. Schorr as a paid consultant for Wynn Resorts. When Ms. Wynn voiced her concerns about Mr. Schorr's retention as a consultant, she again was made to feel her concerns were baseless. When she brought her concerns to the attention of other senior management, Mr. Schorr's consultancy was suspended – but since then Mr. Schorr has again been engaged by Wynn Resorts to consult periodically.
- 57. Furthermore, in order to advance Mr. Wynn's own personal interests ahead of the Company's and without proper disclosures to the Board, Mr. Wynn and Ms. Sinatra chose to vest 200,000 of Mr. Schorr's unvested shares and to pay him associated accrued cash dividends, even though, as an executive who was terminated for cause, Mr. Schorr was not entitled to either. Mr. Wynn and Ms. Sinatra did so not only because Mr. Schorr was a close personal friend of Mr. Wynn, but also because Ms. Sinatra owed him for the above-any-average compensation she received while working for Mr. Schorr as well as access to the perks Mr. Wynn treated himself to, such as personal

use of Company aircraft and unchecked reimbursement for personal expenses. In her third year as General Counsel and Secretary of the Company, Ms. Sinatra made approximately \$10.4 million, making her among the highest paid corporate counsel in the United States. That was 2009, the middle of the recession, the year when Ms. Wynn asked Ms. Sinatra about the multi-million dollar payment and was lied to (she was told it was properly handled when in fact company counsel at the time was excluded) and generally rebuffed because Mr. Wynn, with Ms. Sinatra's complicity, decided what the Board needed to know.

- Board. This included deciding what information the Board should never be told (as with the multi-million dollar payment) and what misinformation should be provided. In March 2014, the Company issued a proxy statement announcing the Board's approval of a change to Mr. Wynn's compensation package, altering the mix of cash and equity by decreasing the cash and increasing the equity. Mr. Wynn wanted the additional shares he was receiving to be free from the contractual restrictions that applied to them under the 2010 Stockholders Agreement and sought Ms. Wynn's agreement to waive the contractual restriction as to these shares. After negotiations, however, they could not reach an agreement. Ms. Sinatra falsely told the Board that because of Ms. Wynn's refusal to agree, the Company would need to amend the proxy statement that had been issued to state that the additional shares Mr. Wynn was receiving were subject to the contractual restrictions of the 2010 Stockholders Agreement. Ms. Sinatra made these deliberately false statements knowing that the prospect of preparing and releasing an amended proxy statement would not be well received by the Board and was ultimately used as a pretextual reason to oust Ms. Wynn.
- 59. Both Wynn Resorts and Mr. Wynn entertain lavishly, which is common in the gaming industry. The dollar volume of such entertaining, not to mention the costs of a fleet of jets, and the overlap between what is personal and what should be a business expense, demand effective internal controls including careful review by the Audit Committee. Mr. Wynn misused Company resources to support his legendary lifestyle. There was no effective protocol, or at least none approved by the Board, to oversee entertainment and travel expenditures, and Ms. Wynn's inquiries were rebuffed. On information and belief, on no occasion did the Audit Committee of the Board

ever investigate or even conduct an in-depth review of the Company's internal controls governing such large expenditures; certainly, no such reports have been produced, and there is evidence of regular shredding of audit committee materials and notes. The tone at the top of senior management, in particular Mr. Wynn and Ms. Sinatra, was to discourage even Board members from questioning the unilateral apportionment decisions of Mr. Wynn. Again, Ms. Wynn's efforts to act as a truly independent director were stonewalled: she was, for example, specifically barred from sitting in on a meeting of the Audit Committee.

- 60. The knowledge that dissent was not tolerated at the Board level means that it was not tolerated anywhere. Mr. Wynn, with Ms. Sinatra's aid and participation, intentionally created a tone at the top that was not and is not conducive to proper functioning of internal controls. This is true as well with respect to Mr. Wynn's increasing profile in partisan politics, conveyed in media interviews that were often conducted on Company property. As an individual, Mr. Wynn is free to support whatever party or candidate he chooses, whether or not that serves the Company's interest. But acting as Chairman and CEO, and using Company resources, he is responsible to the Board and ultimately to the shareholders; the issue is not whether Stephen Wynn supports the Republican Party, but whether it is in the best interests of the Company to take sides in partisan politics. Ms. Wynn expressed her concerns to Company counsel, which likewise were rebuffed. At least one other director, on information and belief, expressed similar concerns. Nevertheless, the issue was never addressed at the Board level, and Mr. Wynn has only increased the Company's partisan profile to the detriment of the Company.
- 61. Mr. Wynn has exerted, and continues to exert, control over his Board, including by exercising control over their access to information and by retaliating against Ms. Wynn for her proper inquiries into Company matters, as described previously. All Wynn Resorts directors who have ever served on the Board have been, without exception, selected by Mr. Wynn. In only three instances in the history of the Company with one of them being Ms. Wynn's renomination (where the board was following Mr. Wynn's signals but not his vote) and the other two being lone dissenting votes from Ms. Wynn on one occasion and Mr. Okada on the other has a director voted against Mr. Wynn's intentions at any time or on any subject.

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On information and belief, Mr. Wynn and Ms. Sinatra, including by using the 62. Nominating and Governance Committee, engineered the 2015 removal of Elaine Wynn from the Board of the Company she co-founded, worked tirelessly to create, and in which she owns a significant shareholder stake. They did so intentionally, in retaliation for her efforts to expose their operation of the Company as if it were Mr. Wynn's private dominion. Removing Ms. Wynn from the Board violated both the written and oral agreements between the Wynns, of which Ms. Sinatra was fully aware. Ms. Sinatra purposefully and intentionally conspired and acted with Mr. Wynn to disrupt the provision of the agreements which obligated Mr. Wynn to support and ensure Ms. Wynn's Board position. Mr. Wynn no longer wanted Ms. Wynn on the Board, even though the January 2010 Stockholders Agreement obligated him to support her Board membership and even as he insisted on his absolute right to control her property under that same Agreement. Neither did Ms. Sinatra – she had been culpable in covering up, at the very least, two separate instances of employee misconduct at the highest levels of management that put the Company and its shareholders in jeopardy. Her protection of these employees, as well as her attempts to pressure Ms. Wynn to waive her rights under the January 2010 Stockholders Agreement, resulted in Ms. Sinatra's misrepresentations to the Board and in SEC filings. Ms. Wynn's refusal to go along with the decisions that were questionable or detrimental to the Company put both Mr. Wynn and Ms. Sinatra at personal risk.

- 63. Renomination was routine at Wynn Resorts until February 24, 2015, when the Nominating and Corporate Governance Committee of Wynn Resorts voted to recommend that Ms. Wynn not be renominated to the Board, recommending instead that the size of the Board be decreased by one and that only directors J. Edward Virtue and John J. Hagenbuch be renominated.
- 64. On February 26, 2015, the Board of Wynn Resorts voted in favor of reducing the size of the Board by one, the one being Ms. Wynn. On information and belief, Ms. Sinatra, conspiring with Mr. Wynn, concocted the scheme to reduce the size of the Board by one seat, a further attempt to ensure Ms. Wynn would not be renominated. Although Mr. Wynn professed to vote formally

GREENBERG TRAURIG, LLP 3 Howard Hughes Parkway, Suite 400 N Las Vegas, Nevada 89169 Telephone: (702) 792-3773 Farsimile: (70) 79, 2007 against this act of expulsion, he made it clear that the only reason he did not vote with the directors he had hand-selected and guided was because he was contractually obligated to vote otherwise. The message was lost on no one. Mr. Wynn carried the day. Invoking the false and pretextual justifications created and advanced by Mr. Wynn and Ms. Sinatra, the Nominating Committee recommended against the renomination of Ms. Wynn as director, and the Board controlled by Mr. Wynn ratified that recommendation. The pretextual and false reasons include without limitation: falsely telling that Board that Ms. Wynn knew about her nephew's purchase of a tract of land which she knew she was supposed to disclose to the Board but deliberately withheld it from them; falsely telling the Board that that Ms. Wynn's sale of stock during a "blackout" period violated the Company's Trading Policy; falsely telling the Board that Ms. Wynn breached her fiduciary duties by conditioning her agreement to grant Mr. Wynn's request to waive the restriction provision in the January 2010 Stockholders Agreement as to certain stock he was receiving on receiving a reciprocal agreement from him; and claiming that Ms. Wynn's facial expressions and demeanor were inappropriate and should not be tolerated.

- 65. Although Ms. Wynn then attempted to solicit proxies in order to obtain reelection to the Board, the effort was doomed. Board members and members of management actively solicited investors to vote against Ms. Wynn, including based on the false, pretextual reasons concocted and advanced by Ms. Sinatra. Mr. Wynn failed to take reasonable steps during the ensuing proxy contest to communicate to shareholders any endorsement of Ms. Wynn's candidacy. To the contrary, he undermined support for Ms. Wynn. For example, after Mr. Wynn stated in a televised interview on April 15, 2015 that he did not agree with the Board's decision not to renominate Ms. Wynn, Ms. Wynn issued a press release thanking him for his endorsement. Rather than leave it at that, Wynn Resorts quickly issued a press release stating that Mr. Wynn's comments should not be misconstrued and that he had great respect for the care the Board took in making its decisions. Or, as the AP reported on April 17, 2015, Mr. Wynn was not in fact endorsing Ms. Wynn.
- 66. Mr. Wynn, with active participation by and in conspiracy with Ms. Sinatra, wanted Ms. Wynn expelled from the Board in retaliation for her proper inquiries into Company activities, including without limitation those described above. Indeed, in the entire history of the Company,

Ms. Wynn was the only director who wanted to stay on the Board who was not renominated and reelected.

# V. Claims for Relief

# **FIRST CAUSE OF ACTION**

# **DECLARATORY RELIEF**

# (Discharge and/or Rescission for Frustration of Purpose)

- 67. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 above.
- 68. An actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to the validity and/or enforceability of the January 2010 Stockholders Agreement. The controversy is ripe for adjudication.
- 69. The redemption of Aruze's stock has frustrated the purpose of the January 2010 Stockholders Agreement and its predecessor agreements (*i.e.*, the April 2002 Stockholders Agreement and the 2006 Amendment).
- 70. The stated purpose of the January 2010 Stockholders Agreement was for Aruze to support and avoid undermining Mr. Wynn's position as controlling shareholder and to support the existing alliance and agreement between Mr. Wynn and Mr. Okada—an alliance and agreement predicated on the substantial holding of Wynn Resorts stock by Mr. Okada's company Aruze. On information and belief, all parties to the agreement understood this was the purpose of the January 2010 Stockholders Agreement and its predecessor agreements.
- 71. Following the redemption of Aruze's shares, Mr. Okada (through Aruze) no longer holds Wynn Resorts stock, and there is no longer a need for an alliance between Mr. Okada's and Mr. Wynn's stockholdings. Therefore, the purpose of the January 2010 Stockholders Agreement and its predecessor agreements has been eliminated.
- 72. In light of the above, performance by other parties of the January 2010 Stockholders Agreement has become valueless for Ms. Wynn and the purpose of all parties has been defeated.
- 73. Ms. Wynn bore no fault for the events that gave rise to the unforeseeable Aruze redemption. She did nothing in her capacity as a director or otherwise that was a but for cause of the redemption. Nor did she take any action with respect to the redemption as a result of any purpose or

desire to affect the obligations of any parties under any stockholders agreement; any actions she took in that regard resulted from the discharge of her fiduciary duties in the best interests of the corporation.

74. Accordingly, Ms. Wynn seeks a declaration that all of Ms. Wynn's contractual duties under the January 2010 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders Agreement is subject to rescission and is rescinded.

# **SECOND CAUSE OF ACTION**

#### **DECLARATORY RELIEF**

#### (Unreasonable Restraint on Alienability in Violation of Public Policy)

- 75. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 above.
- 76. An actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to the validity and/or enforceability of the January 2010 Stockholders Agreement. The controversy is ripe for adjudication.
- 77. The January 2010 Stockholders Agreement contains unreasonable and onerous restrictions on the alienability of Ms. Wynn's stock, including without limitation:
- (i) Section (2)(b), which provides that, with certain exceptions, "none of [Ms. Wynn], [Mr. Wynn,] or Aruze (nor any of their respective Permitted Transferees) shall Transfer, or permit any of their respective Affiliates to Transfer, any Shares Beneficially Owned by such Person without the prior written consent of each of the others." This provision continued the consent restriction agreed to by Mr. Wynn and Mr. Okada's company Aruze in the 2006 Amendment.
- (ii) Section 4, which states that: "Shares may not be transferred or sold by the Designated Stockholder unless the transferee . . . both executes and agrees to be bound by" the January 2010 Stockholders Agreement.
- 78. The restrictions are an unlawful and unenforceable restraint on alienation. There are no temporal limits to the material restrictions. They purport to burden the shares in perpetuity by tying up the shares and preventing Ms. Wynn or her estate from disposing of the shares during her lifetime and beyond. The restrictions are unenforceable as they unduly interfere with the alienability of Ms. Wynn's shares.

|          | 79.      | The restrictions are independently unlawful and unenforceable pursuant to statute,   |
|----------|----------|--|
| includi  | ng with  | out limitation pursuant to NRS 78.355, which provides that proxies are not effective |
| for a te | rm of m  | ore than 7 years, and pursuant to NRS 78.365, which provides that voting agreements  |
| are not  | effectiv | ve for a term of more than 15 years.   |

80. For these reasons, Ms. Wynn seeks a declaration that the restrictions are unenforceable as an unreasonable restraint on alienation in violation of public policy and statute.

# **THIRD CAUSE OF ACTION**

#### **DECLARATORY RELIEF**

#### (Forfeiture)

- 81. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 above.
- 82. An actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to the validity and/or enforceability of the January 2010 Stockholders Agreement. The controversy is ripe for adjudication.
- 83. The restrictions set forth in the January 2010 Stockholders agreement are invalid as effecting an unlawful forfeiture. They purport unduly to restrict, and indeed to prevent altogether absent the inevitably withheld consent of an ex-husband, Ms. Wynn's ability to dispose of her shares of Wynn Resorts common stock during her lifetime and beyond.
- 84. Mr. Wynn continues to contend that the restrictions are valid and that Ms. Wynn's ability to sell the vast majority of her shares does not exist absent his consent.
- 85. The practical effect of the restrictions is that Ms. Wynn is unable to sell her shares of common stock in Wynn Resorts. Accordingly, Ms. Wynn seeks a declaration that the restrictions are unenforceable as an unlawful forfeiture in violation of public policy.

#### **FOURTH CAUSE OF ACTION**

# **DECLARATORY RELIEF**

#### (Unilateral Mistake)

86. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 above.

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87. An actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to the validity and/or enforceability of the January 2010 Stockholders Agreement. The controversy is ripe for adjudication.

- 88. At the time the parties entered into the January 2010 Stockholders Agreement, Ms. Wynn made a mistake as to fundamental assumptions on which she agreed to the restrictions set forth therein. Specifically, the fundamental assumptions about which Ms. Wynn was mistaken were that: (1) Mr. Wynn would provide for their children as part of his estate planning and otherwise; and (2) the purpose of the January 2010 Stockholders Agreement was to restrict the transfer of Mr. Okada's shares, thereby ensuring Mr. Wynn's continued control of the Company, and not to independently to restrict Ms. Wynn's ability to transfer the vast majority of her shares if Mr. Okada was no longer a party to the January 2010 Stockholders Agreement.
- 89. These mistaken fundamental assumptions made by Ms. Wynn had a material effect on the agreed exchange of performances that is adverse to Ms. Wynn. Ms. Wynn did not knowingly bear the risk of this mistake.
- 90. Mr. Wynn knew of Ms. Wynn's mistake – namely because he had assured her repeatedly that he had the intention of providing for their children's interests, whereas in reality he had no such intent, and because Mr. Wynn represented to Ms. Wynn that the purpose of the January 2010 Stockholders Agreement was to restrict Mr. Okada's shares, not hers. Mr. Wynn's fault caused Ms. Wynn's mistake.
- 91. Accordingly, Ms. Wynn seeks a declaration that the restrictions in the January 2010 Stockholders Agreement are voidable by Ms. Wynn so that she can transfer her shares, including without limitation to provide for her children.

# <u>FIFTH CAUSE OF ACTION</u>

# **DECLARATORY RELIEF**

(Discharge and/or Rescission for Failures of Consideration or Performance)

92. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 above.

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93. An actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to the validity and/or enforceability of the January 2010 Stockholders Agreement. The controversy is ripe for adjudication.

- 94. At the time the parties entered into the January 2010 Stockholders Agreement, Ms. Wynn was in the process of divorcing Mr. Wynn and was entitled to ownership of the shares of Wynn Resorts common stock that were transferred to her under the agreement pursuant to the community property laws of the State of Nevada.
- 95. In exchange for Ms. Wynn's performance of the continuing covenants of the January 2010 Stockholders Agreement, Ms. Wynn was supposed to receive as valuable consideration the performance agreed to by the other Designated Stockholders – including Aruze's continuing performance and Mr. Wynn acting to ensure the renomination and reelection of Ms. Wynn to the Wynn Resorts Board. Ms. Wynn would never have agreed to enter the voting agreement, execute the Irrevocable Proxy in favor of Mr. Wynn, and agree to restrictions on the sale or transfer of the vast majority of her shares of Wynn Resorts common stock without Aruze's participation and without Mr. Wynn's contractual agreement that he would endorse and support Ms. Wynn's nomination and election as director, which he failed to do.
- 96. The failures of other Designated Stockholders to perform their continuing obligations under the January 2010 Stockholders Agreement had a material effect on the agreed exchange of performances that is adverse to Ms. Wynn and resulted in the unilateral imposition of burdensome covenants on Ms. Wynn without any corresponding, bargained-for, and beneficial covenants being performed by the other Designated Stockholders. The failures of consideration or performance include, without limitation, Mr. Wynn's, Aruze's, and Wynn Resorts' (as Aruze's successor) failures to comply with their continuing contractual obligations under the January 2010 Stockholders Agreement.
- 97. Ms. Wynn is under no continuing obligation to perform her covenants under the January 2010 Stockholders Agreement because failures of consideration excuse her performance. The failures of other Designated Stockholders to perform concerned matters of prime importance.

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Ms. Wynn would not have entered into the January 2010 Stockholders Agreement if she had expected or contemplated such failures.

98. Accordingly, Ms. Wynn seeks a declaration that her contractual duties under the January 2010 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders Agreement is subject to rescission and is rescinded.

# **SIXTH CAUSE OF ACTION**

#### FRAUDULENT INDUCEMENT

#### (Against Stephen Wynn)

- 99. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 above.
- 100. An actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to the validity and/or enforceability of the January 2010 Stockholders Agreement. The controversy is ripe for adjudication.
- Stockholders Agreement, Mr. Wynn led Ms. Wynn to believe that he would jointly provide for their children and concealed from Ms. Wynn the fact that he had no intention of leaving anything of value to their children upon his passing, and that their children would actually be required to obtain all future financial support from Ms. Wynn. Mr. Wynn also led Ms. Wynn to believe that the purpose of the January 2010 Stockholders Agreement was to restrict Mr. Okada's (Aruze's) shares, but concealed from Ms. Wynn that the actual purpose of the January 2010 Stockholders Agreement was, in fact, to ensure Mr. Wynn's control of Ms. Wynn's shares.
- Mr. Wynn's materially misleading statements and material omissions, combined with the restrictions prohibiting alienability of Ms. Wynn's shares of Wynn Resorts common stock as set forth in the January 2010 Stockholders Agreement, mean that upon Ms. Wynn's death, their children will have no testamentary support because the restrictions make it impossible for Ms. Wynn to leave their children any material sum. More specifically, Ms. Wynn's estate will owe substantial inheritance tax on Ms. Wynn's shares of Wynn Resorts common stock—stock that even her children cannot sell because of the purported continuing effect of the restrictions. Such tax will

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need to be funded from the other assets of Ms. Wynn's estate, thereby depleting virtually the entirety of her estate.

- 103. In forming the January 2010 Stockholders Agreement, Mr. Wynn had a duty to be candid with Ms. Wynn and to disclose to Ms. Wynn material facts known or accessible only to him because such facts were uniquely known to him. Mr. Wynn knew that the facts regarding his true intentions relating to the children were not known to or reasonably discoverable by Ms. Wynn. Mr. Wynn also knew the facts relating to his actual intent in inducing Ms. Wynn to enter into the January 2010 Stockholders Agreement – to control Ms. Wynn's shares – were not known to or reasonably discoverable by Ms. Wynn.
- 104. Ms. Wynn would not have entered into the January 2010 Stockholders Agreement containing restrictions that, in effect, limited her ability properly to plan her testamentary estate if she had known that Mr. Wynn had no intention of providing for their children upon his death, and that Ms. Wynn would be the sole source of future financial support for their children. Ms. Wynn also would not have entered into the January 2010 Stockholders Agreement if she had known that Mr. Wynn's true purpose of inducing her to enter into the agreement was to ensure Mr. Wynn's full and perpetual control over Ms. Wynn's shares.
- 105. Mr. Wynn misled Ms. Wynn and concealed these material facts from Ms. Wynn with the intent to induce her to enter into the January 2010 Stockholders Agreement.
- 106. In addition, Mr. Wynn made a further affirmative misrepresentation of material fact to Ms. Wynn with the intention of inducing her to enter into the January 2010 Stockholders Agreement. Specifically, during negotiation of the January 2010 Stockholders Agreement, Mr. Wynn made an oral representation to Ms. Wynn that he would use his control of Wynn Resorts to assure that she would continue to be a director of the Company. This representation was false.
- 107. At the time Mr. Wynn made this representation to Ms. Wynn, he had knowledge of and believed that the representation was false because Mr. Wynn intended all along to remove Ms. Wynn from the Board in retaliation for, among other things, her having raised questions about Mr. Wynn's risk-taking and Mr. Wynn's misconduct.

GREENBERG TRAURIG, LLP 3773 Howard Hughes Parkway, Suite 400 Nor Las Vegas, Novada 89169 Telephone: (702) 792-3773 Facsimile: (702) 792-002 108. Mr. Wynn's false representations to Ms. Wynn were made with the intention to induce her to enter into and to consent to the January 2010 Stockholders Agreement.

- 109. Ms. Wynn justifiably relied upon Mr. Wynn's misrepresentations and material omissions in entering into the January 2010 Stockholders Agreement.
- 110. Mr. Wynn willfully and knowingly acted to damage Ms. Wynn's interests. He did so with malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's rights.
- 111. As a result of Mr. Wynn's intentional misrepresentations and material omissions, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an award of said damages, as well as an award of punitive damages.
- 112. In addition to compensatory and punitive damages, Ms. Wynn seeks a declaration that the January 2010 Stockholders Agreement was procured by fraud and therefore is voidable.

# **SEVENTH CAUSE OF ACTION**

#### **DECLARATORY RELIEF**

### (Discharge by Aruze)

- 113. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 above.
- 114. An actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to the validity and/or enforceability of the January 2010 Stockholders Agreement. The controversy is ripe for adjudication.
- 115. In this action, Aruze has filed claims against Mr. Wynn (Counts XV and XVI of Aruze's Fourth Amended Counterclaim) alleging breach of contract and seeking to be excused and discharged from any further performance of its obligations with respect to the January 2010 Stockholders Agreement. In those claims, Aruze asserts that the purpose of the January 2010 Stockholders Agreement has been frustrated.
- 116. The stated purpose of the January 2010 Stockholders Agreement was to support the existing alliance and agreement between Mr. Wynn and Mr. Okada—an alliance and agreement predicated on the substantial holding of Wynn Resorts stock by Mr. Okada's company, Aruze. On information and belief, all parties to the agreement understood this was the purpose of the January 2010 Stockholders Agreement and its predecessor agreements.

GREENBERG TRAURIG, LLP 3 Howard Hughes Parkays, Suite 400 N Las Vegas, Nevada 89169 Telephone. (702) 792-3773 Facsimile: (702) 792-9002 117. If Aruze successfully obtains a discharge of its obligations under the January 2010 Stockholders Agreement and is no longer bound thereby, then Ms. Wynn seeks a corresponding declaration that her duties under the January 2010 Stockholders Agreement are likewise discharged or, alternatively, that the January 2010 Stockholders Agreement is subject to rescission and is rescinded.

# **EIGHTH CAUSE OF ACTION**

#### **BREACH OF CONTRACT**

# (Against Stephen Wynn)

- 118. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 above.
- 119. Ms. Wynn alleges that Mr. Wynn breached the January 2010 Stockholders

  Agreement in two respects: by violating his obligations under the voting agreement contained in section 2(a) and under the consent restriction contained in section 2(b).
- 120. Mr. Wynn's obligation to "include [Ms. Wynn] as one of his endorsed nominees" required him to "endors[e]" Ms. Wynn's candidacy, before the Board of Directors and its relevant committees in their deliberations concerning her renomination and before the shareholders in the contested proxy contest. This endorsement obligation required that he take reasonable affirmative steps to persuade the Board, the relevant Board committees, and the shareholders that she be renominated and reelected and to secure her renomination and reelection. It further prohibited him from taking steps to undermine her candidacy.
- 121. Because Mr. Wynn controlled the Board of Wynn Resorts, Mr. Wynn's promises to support and endorse Ms. Wynn amounted to assurances that she would, at a minimum, continue to be nominated as a director of the Company. The reason Ms. Wynn agreed to permit Mr. Wynn to vote her stock to elect Mr. Wynn's nominees pursuant to Section 2(a) of the January 2010 Stockholders Agreement was because of these assurances that Ms. Wynn would be included in the endorsed nominees and would remain a director.
- 122. Mr. Wynn failed to endorse Ms. Wynn and failed to take reasonable steps to persuade the Nominating Committee and the members of the Board to renominate Ms. Wynn. To the contrary, on information and belief, Mr. Wynn communicated to the Nominating Committee and