

IN THE SUPREME COURT OF NEVADA

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

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE ELIZABETH
GONZALEZ, DISTRICT JUDGE,
DEPT. 11,

Respondents,

and

WYNN RESORTS, LIMITED et al.,

Real Parties in Interest.

Electronically Filed
Nov 02 2017 01:29 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO.:

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

**VOLUME II OF II
(PA225-325)**

**(PORTIONS FILED REDACTED AND
UNDER SEAL)**

**PETITIONERS' APPENDIX TO PETITION FOR WRIT OF
PROHIBITION, OR IN THE ALTERNATIVE MANDAMUS**

Steve Morris, Esq. (#1543)
Akke Levin, Esq. (#9102)
Rosa Solis-Rainey, Esq. (#7921)
Morris Law Group
411 E. Bonneville Ave., Ste. 360
Las Vegas, NV 89101
Telephone: (702) 474-9400

J. Randall Jones, Esq. (#1927)
Mark M. Jones, Esq. (#267)
Ian P. McGinn, Esq. (#12818)
Kemp, Jones & Coulthard LLP
3800 Howard Hughes Pkwy, 17th Fl.
Las Vegas, NV 89169
Telephone: (702) 385-6000

David S. Krakoff, Esq.
(*Admitted Pro Hac Vice*)
Benjamin B. Klubes, Esq.
(*Admitted Pro Hac Vice*)
Adam Miller, Esq.
(*Admitted Pro Hac Vice*)
Buckley Sandler LLP
1250 24th Street NW, Suite 700
Washington, DC 20037
Tel: (202) 349-8000

*Attorneys for Petitioners Aruze USA, Inc.,
Kazuo Okada, and Universal Entertainment
Corp.*

J. Stephen Peek, Esq. (#1758)
Bryce Kunimoto, Esq. (#7781)
Robert J. Cassity, Esq. (#9779)
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Telephone: (702) 669-4600

Attorney for Petitioner Kazuo Okada

CHRONOLOGICAL INDEX

DATE	DOCUMENT	VOLUME NO.	PAGE NOS.
2/19/2012	Complaint	I	PA1-68
4/22/2013	Second Amended Complaint	I	PA69-94
11/26/2013	Fourth Amended Counterclaim of Aruze USA, Inc. and Universal Entertainment Corp.	I	PA95-178
8/8/2014	Defendant Kazuo Okada and Counterclaimants-Defendants Aruze USA, Inc. and Universal Entertainment Corporation's Second Request for Production of Documents to Wynn Resorts, Limited	I	PA179-224
6/12/2017	Senate Bill No. 376	II	PA225-28
9/14/2017	Defendants' Motion to Compel Director Robert Miller's Testimony and Production of Documents Regarding Pre-Redemption NGCB Contacts on OST	II	PA229-58 (PORTIONS REDACTED AND FILED UNDER SEAL)

DATE	DOCUMENT	VOLUME NO.	PAGE NOS.
9/22/2017	Wynn Resorts, Limited's Opposition to Motion to Compel Director Robert Miller's Testimony Regarding Pre- Redemption NGCB Contacts on Order Shortening Time	II	PA259-66
9/25/2017	Defendants' Reply in Support of Their Motion to Compel Director Robert Miller's Testimony and Production of Documents Regarding Pre- Redemption NGCB Contacts on OST	II	PA267-73
9/25/2017	Transcript : Hearing on Motions	II	PA274-318

DATE	DOCUMENT	VOLUME NO.	PAGE NOS.
10/26/2017	Order Regarding Elaine P. Wynn's Motion To Compel Stephen A. Wynn And Wynn Resorts, Limited To Produce Documents Withheld Under Claim Of Gaming Privilege And Defendants' Motion To Compel Director Robert Miller's Testimony And Production Of Documents Regarding Preremption NGCB Contacts	II	PA319-25

ALPHABETICAL INDEX

DATE	DOCUMENT	VOLUME NO.	PAGE NOS.
2/19/2012	Complaint	I	PA1-68
8/8/2014	Defendant Kazuo Okada and Counterclaimants-Defendants Aruze USA, Inc. and Universal Entertainment Corporation's Second Request for Production of Documents to Wynn Resorts, Limited	I	PA179-224
9/14/2017	Defendants' Motion to Compel Director Robert Miller's Testimony and Production of Documents Regarding Pre-Redemption NGCB Contacts on OST	II	PA229-58 (PORTIONS REDACTED AND FILED UNDER SEAL)
9/25/2017	Defendants' Reply in Support of Their Motion to Compel Director Robert Miller's Testimony and Production of Documents Regarding Pre-Redemption NGCB Contacts on OST	II	PA267-73
11/26/2013	Fourth Amended	I	PA95-178

DATE	DOCUMENT	VOLUME NO.	PAGE NOS.
	Counterclaim of Aruze USA, Inc. and Universal Entertainment Corp.		
10/26/2017	Order Regarding Elaine P. Wynn's Motion To Compel Stephen A. Wynn And Wynn Resorts, Limited To Produce Documents Withheld Under Claim Of Gaming Privilege And Defendants' Motion To Compel Director Robert Miller's Testimony And Production Of Documents Regarding Preremption NGCB Contacts	II	PA319-25
4/22/2013	Second Amended Complaint	I	PA69-94
6/12/2017	Senate Bill No. 376	II	PA225-28
9/25/2017	Transcript : Hearing on Motions	II	PA274-318

DATE	DOCUMENT	VOLUME NO.	PAGE NOS.
9/22/2017	Wynn Resorts, Limited's Opposition to Motion to Compel Director Robert Miller's Testimony Regarding Pre- Redemption NGCB Contacts on Order Shortening Time	II	PA259-66

CERTIFICATE OF SERVICE

I certify that I am an employee of MORRIS LAW GROUP; I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the following document to be deposited with the U.S. Postal Service at Las Vegas, Nevada, in a sealed envelope, with first class postage prepaid, on the date and to the addressee(s) shown below I hereby certify that on the 1st day of November, 2017, at true and correct copy of the foregoing **PETITIONERS' APPENDIX TO PETITION FOR WRIT OF PROHIBITION, OR IN THE ALTERNATIVE MANDAMUS, VOLUME II OF II (PA225-325)** was served by the following method(s):

☒ United States Postal Service:

James J. Pisanelli, Esq.
Todd L. Bice, Esq.
Debra L. Spinelli, Esq.
Pisanelli Bice PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Paul K. Rowe, Esq.
Bradley R. Wilson, Esq.,
Grant R. Mainland, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Robert L Shapiro, Esq, (*pro hac vice*)
Glaser Weil Fink Howard Avchen &
Shapiro, LLP
10529 Constellation Blvd., 19th Floor
Los Angeles, California 90067

Gareth T. Evans, Esq.
Gibson, Dunn & Crutcher LLP
3161 Michelson Drive
Irvine, CA 92612

*Attorneys for Wynn Resorts, Limited,
Linda Chen, Russell Goldsmith, Ray R.
Irani, Robert J. Miller, John A. Moran,
Marc D. Schorr, Alvin V. Shoemaker,
Kimmarré Sinatra, D. Boone Wayson, and
Allan Zeman*

Melinda Haag, Esq. (*pro hac vice*)
James N. Kramer, Esq. (*pro hac vice*)
Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94015

Attorneys for Kimmie Sinatra

Donald J. Campbell, Esq.
J. Colby Williams, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89109

Attorneys for Stephen A. Wynn

Courtesy Copy Hand Delivered

To:

Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

William R. Urga, Esq.
David J. Malley, Esq.
Jolley Urga Woodbury Holthus & Rose
330 S. Rampart Suite 380
Las Vegas, Nevada 89145

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Pkwy Ste 600
Las Vegas, NV 89169

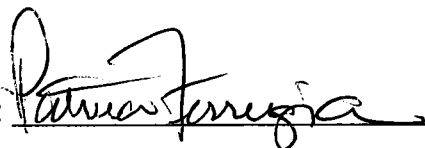
Mark E. Ferrario, Esq.
Tami D. Cowden, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Pkwy Ste. 400
Las Vegas, NV 89169

James M. Cole, Esq.
Sidley Austin, LLP
1501 K Street, N.W.
Washington, D.C. 20005

Scott D. Stein, Esq.
Sidley Austin, LLP
One South Dearborn St.
Chicago, IL 60603

Attorneys for Elaine P. Wynn

Dated this 1st day of November, 2017.

By:  _____

Senate Bill No. 376—Committee on Judiciary

CHAPTER.....

AN ACT relating to gaming; revising provisions relating to the confidentiality of certain information and data provided by gaming applicants and licensees to state agencies that regulate gaming; clarifying the privileged nature of such information and data; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that certain information and data provided by gaming applicants and licensees to state agencies that regulate gaming are confidential and privileged. (NRS 463.120) **Sections 1.4, 1.7 and 2** of this bill clarify the privileged nature of such information and data when it is provided by gaming applicants and licensees to those state agencies in connection with their regulatory, investigative or enforcement authority. However, **section 2.5** of this bill also clarifies that the provisions of this bill do not affect any occupation, profession, business or industry other than the gaming industry regulated pursuant to the Nevada Gaming Control Act. (Chapter 463 of NRS)

EXPLANATION – Matter in *bolded italics* is new; matter between brackets {~~omitted material~~} is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. (Deleted by amendment.)

Sec. 1.4. NRS 463.120 is hereby amended to read as follows:

463.120 1. The Board and the Commission shall cause to be made and kept a record of all proceedings at regular and special meetings of the Board and the Commission. These records are open to public inspection.

2. The Board shall maintain a file of all applications for licenses under this chapter and chapter 466 of NRS, together with a record of all action taken with respect to those applications. The file and record are open to public inspection.

3. The Board and the Commission may maintain such other files and records as they may deem desirable.

4. Except as otherwise provided in this section, all information and data:

(a) Required by the Board or Commission to be furnished to it under chapters 462 to 466, inclusive, of NRS or any regulations adopted pursuant thereto or which may be otherwise obtained relative to the finances, earnings or revenue of any applicant or licensee;



79th Session (2017)

PA225

(b) Pertaining to an applicant's or natural person's criminal record, antecedents and background which have been furnished to or obtained by the Board or Commission from any source;

(c) Provided to the members, agents or employees of the Board or Commission by a governmental agency or an informer or on the assurance that the information will be held in confidence and treated as confidential;

(d) Obtained by the Board from a manufacturer, distributor or operator, or from an operator of an inter-casino linked system, relating to the manufacturing of gaming devices or the operation of an inter-casino linked system; or

(e) Prepared or obtained by an agent or employee of the Board or Commission pursuant to an audit, investigation, determination or hearing,

↪ are confidential and may be revealed in whole or in part only in the course of the necessary administration of this chapter or upon the lawful order of a court of competent jurisdiction. The Board and Commission may reveal such information and data to an authorized agent of any agency of the United States Government, any state or any political subdivision of a state or the government of any foreign country. Notwithstanding any other provision of state law, such information may not be otherwise revealed without specific authorization by the Board or Commission.

5. Notwithstanding any other provision of state law, any and all information and data prepared or obtained by an agent or employee of the Board or Commission relating to an application for a license, a finding of suitability or any approval that is required pursuant to the provisions of chapters 462 to 466, inclusive, of NRS or any regulations adopted pursuant thereto, are confidential and absolutely privileged and may be revealed in whole or in part only in the course of the necessary administration of such provisions and with specific authorization and waiver of the privilege by the Board or Commission. The Board and Commission may reveal such information and data to an authorized agent of any agency of the United States Government, any state or any political subdivision of a state or the government of any foreign country.

6. *Notwithstanding any other provision of state law, if any applicant or licensee provides or communicates any information and data to an agent or employee of the Board or Commission in connection with its regulatory, investigative or enforcement authority:*

(a) All such information and data are confidential and privileged and the confidentiality and privilege are not waived if



the information and data are shared or have been shared with an authorized agent of any agency of the United States Government, any state or any political subdivision of a state or the government of any foreign country in connection with its regulatory, investigative or enforcement authority, regardless of whether such information and data are shared or have been shared either before or after being provided or communicated to an agent or employee of the Board or Commission; and

(b) The applicant or licensee has a privilege to refuse to disclose, and to prevent any other person or governmental agent, employee or agency from disclosing, the privileged information and data.

7. Before the beginning of each legislative session, the Board shall submit to the Legislative Commission for its review and for the use of the Legislature a report on the gross revenue, net revenue and average depreciation of all licensees, categorized by class of licensee and geographical area and the assessed valuation of the property of all licensees, by category, as listed on the assessment rolls.

~~{7-}~~ 8. Notice of the content of any information or data furnished or released pursuant to subsection 4 may be given to any applicant or licensee in a manner prescribed by regulations adopted by the Commission.

~~{8-}~~ 9. The files, records and reports of the Board are open at all times to inspection by the Commission and its authorized agents.

~~{9-}~~ 10. All files, records, reports and other information pertaining to gaming matters in the possession of the Nevada Tax Commission must be made available to the Board and the Nevada Gaming Commission as is necessary to the administration of this chapter.

11. *For the purposes of this section, "information and data" means all information and data in any form, including, without limitation, any oral, written, audio, visual, digital or electronic form, and the term includes, without limitation, any account, book, correspondence, file, message, paper, record, report or other type of document, including, without limitation, any document containing self-evaluative assessments, self-critical analysis or self-appraisals of an applicant's or licensee's compliance with statutory or regulatory requirements.*

Sec. 1.7. NRS 49.015 is hereby amended to read as follows:

49.015 1. Except as otherwise required by the Constitution of the United States or of the State of Nevada, and except as otherwise



provided in this title or title 14 of NRS, or NRS 41.071 ~~+~~ *or 463.120 or any other specific statute*, no person has a privilege to:

- (a) Refuse to be a witness;
- (b) Refuse to disclose any matter;
- (c) Refuse to produce any object or writing; or
- (d) Prevent another from being a witness or disclosing any matter or producing any object or writing.

2. This section does not:

(a) Impair any privilege created by title 14 of NRS or by the Nevada Rules of Civil Procedure which is limited to a particular stage of the proceeding; or

(b) Extend any such privilege to any other stage of a proceeding.

Sec. 2. The confidentiality and privilege set forth in the amendatory provisions of this act apply to any request made on or after the effective date of this act to obtain any information or data, as defined in section 1.4 of this act, that is or has been provided or communicated by an applicant or licensee to an agent or employee of the Nevada Gaming Control Board or the Nevada Gaming Commission in connection with its regulatory, investigative or enforcement authority.

Sec. 2.5. The confidentiality and privilege set forth in the amendatory provisions of this act must not be construed as:

1. A legislative declaration or pronouncement of the public policy of this State with regard to any occupation, profession, business or industry other than the gaming industry regulated pursuant to the Nevada Gaming Control Act in chapter 463 of NRS; or

2. A legislative bar or barrier that limits or precludes a court or agency from recognizing, interpreting or applying any confidentiality and privilege pursuant to any other statute or the common law, including, without limitation, any confidentiality and privilege for self-evaluative assessments, self-critical analysis or self-appraisals of a person's compliance with statutory or regulatory requirements.

Sec. 3. This act becomes effective upon passage and approval.





1 **MCOM**

J. Randall Jones, Esq. (#1927)

2 Mark M. Jones, Esq. (#267)

Ian P. McGinn, Esq. (#12818)

3 KEMP, JONES & COULTHARD, LLP

3800 Howard Hughes Parkway, 17th Floor

4 Las Vegas, NV 89169

Telephone: (702) 385-6000

5 Facsimile: (702) 385-6001

Email: kjc@kempjones.com

6 David S. Krakoff, Esq. (*Admitted Pro Hac Vice*)

7 Benjamin B. Klubes, Esq. (*Admitted Pro Hac Vice*)

Adam Miller, Esq. (*Admitted Pro Hac Vice*)

8 Buckley Sandler LLP

1250 24th Street NW, Suite 700

9 Washington DC 20037

Tel: (202) 349-8000

10 Fax: (202) 349-8080

dkrakoff@buckleysandler.com

11 bklubes@buckleysandler.com

amiller@buckleysandler.com

12 *Attorneys for Defendant/Counterclaimants Aruze USA, Inc.,*
13 *and Universal Entertainment Corp.*

14 J. Stephen Peek, Esq. (1758)

Bryce K. Kunimoto, Esq. (7781)

15 Robert J. Cassity, Esq. (9779)

Holland & Hart LLP

16 9555 Hillwood Drive, 2nd Floor

Las Vegas, Nevada 89134

17 Tel: (702) 669-4600

Fax: (702) 669-4650

18 speek@hollandhart.com

bkunimoto@hollandhart.com

19 bcassity@hollandhart.com

20 *Attorneys for Defendant Kazuo Okada*

21 **DISTRICT COURT**

22 **CLARK COUNTY, NEVADA**

23 WYNN RESORTS, LIMITED, a Nevada
24 corporation,

25 Plaintiff,
26 v.

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

CASE NO.: A-12-656710-B

DEPT. NO.: XI

**DEFENDANTS' MOTION TO COMPEL
DIRECTOR ROBERT MILLER'S
TESTIMONY AND PRODUCTION OF
DOCUMENTS REGARDING PRE-
REDEMPTION NGCB CONTACTS ON
ORDER SHORTENING TIME**

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

1 Defendants.

Electronic Filing Case

Hearing Date:

Hearing Time:

4 AND ALL RELATED CLAIMS.

5 Universal Entertainment Corp. ("Universal"), Aruze USA, Inc. ("Aruze USA"), and
6 Kazuo Okada (together, the "Defendants"), by and through their counsel of record, and pursuant
7 to NRCP 26, hereby move the Court to compel testimony from Director Robert Miller regarding
8 his pre-Redemption contacts with the Nevada Gaming Control Board, along with any records
9 made regarding those communications.

10 This Motion is based upon the following Memorandum of Points and Authorities, the
11 papers and pleadings on file in this action, and any oral argument this Court may allow.

12 DATED this 13th day of September 2017.

13 By 

J. Randall Jones, Esq. (#1927)

Mark M. Jones, Esq. (#267)

Ian P. McGinn, Esq. (#12818)

KEMP, JONES & COULTHARD, LLP

3800 Howard Hughes Parkway, 17th Floor

Las Vegas, NV 89169

18 David S. Krakoff, Esq. (*Admitted Pro Hac Vice*)

Benjamin B. Klubes, Esq. (*Admitted Pro Hac Vice*)

19 Adam Miller, Esq. (*Admitted Pro Hac Vice*)

Buckley Sandler LLP

1250 24th Street NW, Suite 700

Washington DC 20037

20 *Attorneys for Defendants/Counterclaimants Aruze*
21 *USA, Inc., and Universal Entertainment Corp.*

23 J. Stephen Peek, Esq. (#1758)

Bryce K. Kunitomo, Esq. (#7781)

24 Robert J. Cassity, Esq. (#9779)

Holland & Hart LLP

9555 Hillwood Drive, 2nd Floor

26 Las Vegas, Nevada 89134

27 *Attorneys for Defendant Kazuo Okada*

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

EX PARTE APPLICATION FOR ORDER SHORTENING TIME

Pursuant to EDCR 2.26, the Defendants apply to the Court ex parte for an Order Shortening Time for the hearing of the Defendants' Motion to Compel Director Robert Miller's Testimony and Production of Documents Regarding Pre-Redemption NGCB Contacts (the "Motion").

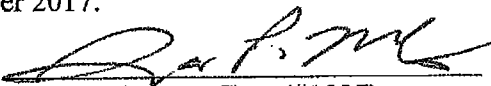
Good cause supports Defendants' request for an order shortening time. As set forth in the accompanying Declaration of Adam Miller, Governor Miller's deposition is currently scheduled for October 10, 2017 and fact discovery closes on November 3, 2017. A hearing on shortened time is necessary because Defendants need the requested documents in advance of the upcoming deposition, and a hearing on the normal timeline would not allow sufficient time for production of such documents prior to the deposition.

Furthermore, on September 11, 2017, Elaine Wynn filed a Motion to Compel Stephen A. Wynn and Wynn Resorts, Limited to Produce Documents Withheld Under Claim of Gaming Privilege on Order Shortening Time. The Court set that motion to be heard on September 18, 2017. Because this Motion pertains to the same issue regarding the scope of the gaming privilege and because the date of the further deposition is quickly approaching, it would be appropriate for it to also be heard on September 18, 2017.

Accordingly, the Defendants respectfully request that the Court set the Motion for hearing on September 18, 2017.

DATED this 13th day of September 2017.

By


J. Randall Jones, Esq. (#1927)
Mark M. Jones, Esq. (#267)
Ian P. McGinn, Esq. (#12818)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

David S. Krakoff, Esq. (*Admitted Pro Hac Vice*)
Benjamin B. Klubes, Esq. (*Admitted Pro Hac Vice*)
Adam Miller, Esq. (*Admitted Pro Hac Vice*)
Buckley Sandler LLP
1250 24th Street NW, Suite 700
Washington DC 20037

*Attorneys for Defendants/Counterclaimants Aruze
USA, Inc., and Universal Entertainment Corp.*

J. Stephen Peck, Esq. (#1758)
Bryce K. Kunimoto, Esq. (#7781)
Robert J. Cassity, Esq. (#9779)
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

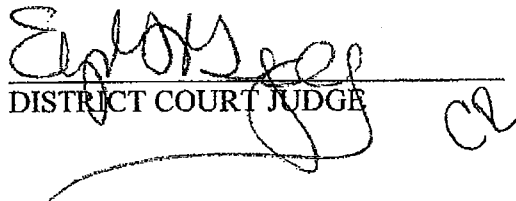
Attorneys for Defendant Kazuo Okada

ORDER SHORTENING TIME

Having considered the Ex Parte Application for Order Shortening Time Filed by the
Defendants, and good cause appearing,

IT IS HEREBY ORDERED that the DEFENDANTS' MOTION TO COMPEL
DIRECTOR ROBERT MILLER'S TESTIMONY AND PRODUCTION OF DOCUMENTS
REGARDING PRE-REDEMPTION NGCB CONTACTS shall come for hearing before
Department XI of the above-entitled Court on the 25th day of September 2017 at the hour of 8
a.m./p.m.

DATED this 14th day of September 2017.


DISTRICT COURT JUDGE

DECLARATION OF ADAM MILLER

I, Adam Miller, declare as follows:

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

2. I am an attorney at Buckley Sandler LLP, counsel for Defendants and Counterclaimants Universal Entertainment Corp. ("Universal") and Aruze USA, Inc. ("Aruze USA") in this action.

3. I make this Declaration in support of the Defendants' Motion to Compel Director Robert Miller's Testimony and Production of Documents Regarding Pre-Redemption NGCB Contacts (the "Motion").

4. Governor Miller was deposed in this case on February 9-11, 2016. Following that deposition, the Defendants filed a motion seeking additional time to question Gov. Miller, which the Court granted in an Order dated July 28, 2016. The parties have now agreed that Gov. Miller's deposition will resume on October 10, 2017.

5. On August 15, 2017, I spoke with counsel for WRL, Debbie Spinelli, regarding the information we seek in the Motion. Ms. Spinelli requested specific details about the information we intended to seek in this Motion and an explanation of our particular theory.

6. On September 13, 2017, I emailed Ms. Spinelli with an explanation of our Motion and that we intended to seek the complete substance and context of the two pre-Redemption communications Gov. Miller had with the NGCB.


7. On September 11, 2017, Elaine Wynn filed a Motion to Compel Stephen A. Wynn and Wynn Resorts, Limited to Produce Documents Withheld Under Claim of Gaming Privilege on Order Shortening Time. The Court set that motion to be heard on September 18, 2017. Because this Motion pertains to the same issue regarding the scope of the gaming privilege and because the date of the further deposition is quickly approaching, it would be appropriate for it to also be heard on September 18, 2017.

8. Attached as Exhibit A are true and accurate excerpts of the transcript of Gov. Miller's February 9-11, 2016 deposition testimony.

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. Attached as Exhibit B are true and accurate excerpts of WRL's Privilege Log.


Adam Miller

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants and Counterclaimants Aruze USA, Inc. and Universal Entertainment Corporation and Defendant Kazuo Okada ("Defendants") move to compel the testimony of Wynn Resorts, Limited ("WRL") Director Robert Miller regarding his pre-Redemption contacts with the Nevada Gaming Control Board ("NGCB" or "Board"), along with disclosure of any records made regarding those communications because they are directly relevant to critical issues in this case and are not protected by Nevada statute from disclosure.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] – is not subject to Nevada's gaming privilege or any other privilege. Furthermore, even if the testimony was within the scope of the gaming privilege, it is still discoverable because it is highly relevant to determining whether the Redemption was justified, the evidence is not available from any other source, and disclosing it would not have a chilling effect on communications to the gaming regulators. The impact on the gaming regulators is particularly minimal in this case because [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Accordingly, Defendants are entitled to question Gov. Miller on this topic during the further deposition already ordered by this Court, and WRL should be required to produce any

1 records made regarding Gov. Miller's Pre-Redemption communications with the NGCB prior to
2 that deposition.

3 **II. FACTUAL BACKGROUND**

4 Defendants took the deposition of Gov. Miller on February 9 and 10, 2016. Prior to the
5 deposition, the parties agreed to a two day deposition for Gov. Miller,¹ but because of improper
6 instructions not to answer numerous questions based on claims of privilege that this Court had
7 already ruled invalid, Defendants only used nine hours of testimony over the course of the two
8 days. See May 16, 2016 Aruze Parties' Mot. to Compel Further Dep. of Gov. Robert J. Miller.
9 On July 28, 2016, this Court granted Defendants' motion to compel further testimony from Gov.
10 Miller. The further testimony has been scheduled for October 10, 2017.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Further, Defendants have identified at least three relevant documents described on WRL's
25 privilege logs that have been withheld pursuant to the "Gaming Privilege" and that appear to
26
27
28

¹ Gov. Miller was deposed for an additional day on February 11, 2016 by Elaine Wynn.

1 relate to the communications with the Nevada gaming regulators described by Gov. Miller in his
2 testimony:

- 3 • A January 12, 2012 email and attachment from Shannon Nadeau to Jacob Abba
4 “reflecting protected communications with Nevada gaming regulatory agency re
5 GCB investigation.” Ex. B (WRL Privilege Log), WYNN-PRIV083721-39.
- 6 • A January 19, 2012 email exchange among A.G. Burnett, Kevin Tourek, Mark
7 Lipparelli, and Shawn Reid “reflecting protected communications with Nevada
8 gaming regulatory agency re Okada’s conduct and corporate governance.” Ex. B
9 (WRL Privilege Log), WYNN-PRIV084544-45.
- 10 • A February 13, 2012 email from Kim Sinatra to Mark Lipparelli, cc Kevin Tourek,
11 Robert Miller, and Shannon Nadeau “providing confidential information needed
12 to render legal advice and reflecting protected communications with Nevada
13 gaming regulatory agency re SEC filing.” Ex. B (WRL Privilege Log), WYNN-
14 PRIV094314-19.

15 **III. ARGUMENT**

16 **A. Gov. Miller’s Communications With the NGCB and the Associated 17 Documents Are Not Subject to Nevada’s Gaming Privilege**

18 Nevada’s gaming privilege is set forth in two statutory provisions – NRS 463.120 and
19 NRS 463.3407 – neither of which protect Gov. Miller’s communications with the NGCB and the
20 associated documents from discovery.

21 NRS 463.120 protects certain “records of the Board and [Nevada Gaming] Commission”
22 as confidential and privileged. Specifically, NRS 463.120(4) protects “information and
23 data...prepared or obtained by an agent or employee of the Board or Commission pursuant to an
24 audit, investigation, determination or hearing.” NRS 463.120(4)(e). [REDACTED]

1 [REDACTED] Therefore, NRS 463.120 does not provide protection to WRL to avoid
2 disclosing the details of those voluntary disclosures to the Nevada gaming regulators.²

3 NRS 463.3407 also does not apply to Gov. Miller's communications at issue here. NRS
4 463.3407(1)(c) states:

5 Any communication or document of an applicant or licensee, or an affiliate
6 of either, which is made or transmitted to the Board or Commission or any
7 of their agents or employees to: Assist the Board or Commission in the
8 performance of their respective duties is absolutely privileged and does not
impose liability for defamation or constitute a ground for recovery in any
civil action.

9 NRS 463.3407(1)(c). The intent of this provision is to protect against liability for defamation
10 based on reports made to the regulators, not to block disclosure of information relevant to a
11 dispute having nothing to do with a defamation claim. *See In re Smith*, 397 B.R. 124, 129 (D.
12 Nev. 2008) ("Here, given the reference to the law of defamation, it is probable that the Nevada
13 legislature intended to make a policy statement that communications to the Board, given as part
14 of its investigative process, are immune from later defamation suits by ensuring that they would
15 be deemed to be privileged communications. To assume otherwise would be to assume that the
16 Nevada's legislature intended that the interest in confidentiality in licensure proceedings to
17 preempt perjury as well as the ability to impeach a person for telling the Board one thing and
18 telling another in litigation."). Thus, as articulated in *In re Smith*, NRS 463.3407 does not set
19 forth an absolute privilege over all of an applicant's communications with the Board and there is
20 no basis, statutory or otherwise, for WRL to withhold this relevant information.³

21 **B. Gov. Miller's Testimony Regarding his Contacts with the NGCB and the**
22 **Associated Documents are Highly Relevant, and Defendants Have no Other**
23 **Means of Obtaining the Information.**

24 The fact that the statutory provisions described above do not protect the testimony and
25 documents at issue here is determinative, because there is no other basis on which WRL can

26
27 ² This Motion does not address the validity of the Gaming Privilege, as asserted by both parties,
regarding documents that are part of an "audit, investigation, determination or hearing."

28 ³ The non-waiver provision of NRS 463.3407(2) does not apply to Gov. Miller's Pre-
Redemption communications with the regulators or the associated documents. That statute

1 withhold this clearly relevant information. However, even if the statutory provisions did apply,
2 the information would still be discoverable here because the need for it overrides any interest in
3 non-disclosure and there would be no impact on the agency's investigative function because the
4 communications at issue took place well before the NGCB initiated an investigation of the
5 Defendants.

6 Courts have allowed litigants to obtain discovery *from the NGCB* in certain circumstances.
7 *Laxalt v. McClatchy*, 116 F.R.D. 455, 459 (D. Nev. 1986); *In re Smith*, 397 B.R. at 130 (ordering
8 the NGCB to produce certain documents). In *Laxalt*, the Court adopted a balancing test in which
9 courts weigh the following factors in determining whether to require disclosure of documents
10 from the NGCB:

11 Initially, the relevance of the evidence must be taken into account. Further,
12 the availability of other evidence and the government's role in the litigation
13 must be considered. Finally, the court noted that the extent to which
14 disclosure would hinder frank and independent discussion regarding the
agencies contemplated decisions and policies would factor into the court's
decision.

15 *Laxalt*, 116 F.R.D. at 459 (citing *F.T.C. v. Warner Comms., Inc.*, 742 F.2d 1156 (9th Cir. 1984)).
16 To be clear, information about the communications at issue is discoverable without regard to this
17 test for the reasons stated above. But even if the test did apply, it would support Defendants'
18 efforts to discover information about the communications at issue.

19 *First*, the testimony is clearly highly relevant. Throughout this litigation, WRL has
20 justified the Redemption by asserting that its Board was required to redeem Aruze USA's shares
21 because WRL's license was at risk with the Nevada gaming authorities based on Mr. Freeh's
22 report. WRL Second Amended Complaint ¶ 53 ("Having found Mr. Okada, Universal, and Aruze
23

24 provides that for documents or communications that contain "any information which is
25 privileged pursuant to chapter 49 of NRS, that privilege is not waived or lost because the
26 document or communication is disclosed to the Board or Commission or any of its agents or
27 employees." NRS 463.3407(2). This provision means that a party does not forfeit an existing
28 privilege merely by providing information to the regulators, but it does not create a privileged
status in the first place. There is no basis to claim that any of the communications with the
Board were subject to a privilege initially and thus this provision is inapplicable here.
Regarding the documents over which WRL asserts an attorney client privilege, those email
communications were communications directly with the regulators – a third party – which are
not protected by the attorney client privilege.

1 USA unsuitable under the Articles, the Board had an affirmative obligation under the applicable
2 gaming laws and regulations to take action to protect the gaming licenses and approvals of Wynn
3 Resorts and its affiliates.”). Defendants vigorously dispute WRL’s assertion for a number of
4 reasons, including that WRL’s gaming license was not in imminent jeopardy even if Mr. Freeh’s
5 report was correct, and so WRL was not required to immediately redeem the shares. Instead of
6 seeking input from the Nevada gaming regulators regarding whether WRL’s license was indeed
7 in jeopardy, WRL acted preemptively to redeem Aruze USA’s shares – without giving the NGCB
8 an opportunity to complete an investigation, afford Aruze USA due process, make its own
9 findings regarding Defendants’ suitability, opine on whether the Redemption was required, and/or
10 permit an orderly sale process that would have avoided the “fire sale” pricing that WRL
11 unilaterally imposed (to its own benefit) on the redeemed shares. Therefore, Defendants have a
12 great need for the testimony of Gov. Miller to be able to refute WRL’s assertion that its license
13 was in imminent jeopardy and that it was required to immediately redeem the shares.

14 *Second*, there is no other means for Defendants to obtain evidence about Gov. Miller’s
15 communications. Only the participants in the communications and any contemporaneous records
16 of the conversations would be able to provide details regarding the information that was provided
17 to the NGCB and the NGCB’s response. Defendants are aware of no other evidence that can
18 provide such details.

19 *Third*, the Board and Commission are not parties to this case, nor are Defendants seeking
20 testimony or records from those entities.

21 *Finally*, disclosure of Gov. Miller’s testimony would not hinder frank and independent
22 discussion regarding the Nevada gaming regulators’ contemplated decisions and policies. The
23 testimony and evidence sought by this Motion is narrowly tailored to obtain key evidence that is
24 extremely important to this case while not impacting open communications with the Nevada
25 gaming regulators in the future. [REDACTED]

26 [REDACTED] Thus,
27
28

1 by definition, the regulators could not have revealed confidential information about their
2 investigative and decision-making processes.

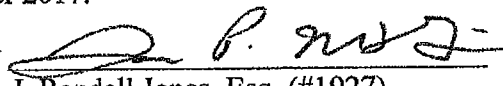
3 Considering these factors – the significant relevance of the testimony, the lack of other
4 available evidence, and the minimal, if any, impact on the Nevada gaming regulators – the need
5 for the testimony clearly outweighs any legitimate interest in preventing discovery of this
6 important information. Therefore, even if the Defendants were required to satisfy the test in
7 *Laxalt* (and they are not), the Defendants are entitled to Gov. Miller's testimony regarding his
8 pre-Redemption contacts with the Nevada gaming regulators regarding Defendants as well as any
9 contemporaneous records of those communications.

10 **IV. CONCLUSION**

11 For the foregoing reasons, Defendants respectfully request that this Court grant their
12 motion to compel testimony regarding Governor Miller's Pre-Redemption contacts with the NGC
13 and NGCB and production of records made regarding those communications.

14 DATED this 13th day of September 2017.

15 By


J. Randall Jones, Esq. (#1927)
Mark M. Jones, Esq. (#267)
Ian P. McGinn, Esq. (#12818)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169

19 David S. Krakoff, Esq. (*Admitted Pro Hac Vice*)
20 Benjamin B. Klubes, Esq. (*Admitted Pro Hac Vice*)
21 Adam Miller, Esq. (*Admitted Pro Hac Vice*)
22 Buckley Sandler LLP
1250 24th Street NW, Suite 700
Washington DC 20037
23 Attorneys for Defendants/Counterclaimants Aruze
24 USA, Inc., and Universal Entertainment Corp.

25 J. Stephen Peek, Esq. (#1758)
26 Bryce K. Kunimoto, Esq. (#7781)
27 Robert J. Cassity, Esq. (#9779)
28 Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Attorneys for Defendant Kazuo Okada

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September 2017, a true and correct copy of the foregoing **DEFENDANTS' MOTION TO COMPEL DIRECTOR ROBERT MILLER'S TESTIMONY AND PRODUCTION OF DOCUMENTS REGARDING PRE-REDEMPTION NGCB CONTACTS ON ORDER SHORTENING TIME** was served by the following method(s):

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

James J. Pisanelli, Esq.
Todd L. Bice, Esq.
Debra L. Spinelli, Esq.
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Paul K. Rowe, Esq. (*pro hac vice*)
Bradley R. Wilson, Esq. (*pro hac vice*)
Grant R. Mainland, Esq. (*pro hac vice*)
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, NY 10019

Robert L. Shapiro, Esq. (*pro hac vice*)
GLASER WEIL FINK HOWARD AVCHEN &
SHAPIRO, LLP
10529 Constellation Blvd., 19th Floor
Los Angeles, California 90067

Mitchell J. Langberg, Esq.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106

Gareth T. Evans, Esq.
GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive
Irvine, CA 92612

William R. Urga, Esq.
David J. Malley, Esq.
JOLLEY URGA WOODBURY & LITTLE
330 S. Rampart Suite 380
Las Vegas, Nevada 89145

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway Ste 600
Las Vegas, NV 89169

Mark E. Ferrario, Esq.
Tami D. Cowden, Esq.
GREENBERG TRAURIG, LLP
3773 Howard Hughes Pkwy Ste. 400
Las Vegas, NV 89169

James M. Cole, Esq.
SIDLEY AUSTIN, LLP
1501 K Street, N.W.
Washington, D.C. 20005

Scott D. Stein, Esq.
SIDLEY AUSTIN, LLP
One South Dearborn St.
Chicago, IL 60603

Attorneys for Elaine P. Wynn

*Attorneys for Wynn Resorts, Limited, Linda
Chen, Russell Goldsmith, Ray R. Irani,
Robert J. Miller, John A. Moran, Marc D.*

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

1 *Schorr, Alvin V. Shoemaker, Kimmarie*
2 *Sinatra, D. Boone Wayson, and Allan Zeman*

3 Melinda Haag, Esq. (*pro hac vice*)
4 James N. Kramer, Esq. (*pro hac vice*)
5 ORRICK, HERRINGTON & SUTCLIFFE LLP
6 405 Howard Street
7 San Francisco, CA 94015

8 *Attorneys for Kimmarie Sinatra*

9 G. Mark Albright, Esq.
10 William H. Stoddard, Jr. Esq.
11 ALBRIGHT, STODDARD, WARNICK &
12 ALBRIGHT
13 801 South Rancho Drive, Ste D-4
14 Las Vegas, NV 89106

15 *Attorneys for Intervenor*

16 J. Stephen Peck, Esq. (1758)
17 Bryce K. Kunitomo, Esq. (7781)
18 Robert J. Cassity, Esq. (9779)
19 HOLLAND & HART LLP
20 9555 Hillwood Drive, 2nd Floor
21 Las Vegas, Nevada 89134
22 Tel: (702) 669-4600
23 Fax: (702) 669-4650
24 speak@hollandhart.com
25 bkunitomo@hollandhart.com
26 bcassity@hollandhart.com

27 *Attorneys for Defendant Kazuo Okada*

Richard A. Wright, Esq.
WRIGHT STANISH & WINCKLER
300 S. 4th Street Ste 701
Las Vegas, NV 89101

Attorneys for Defendant Kazuo Okada and
Defendants/Counterclaimants Aruze USA,
Inc., and Universal Entertainment Corp.

Donald J. Campbell, Esq.
J. Colby Williams, Esq.
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, Nevada 89109

Attorneys for Stephen A. Wynn

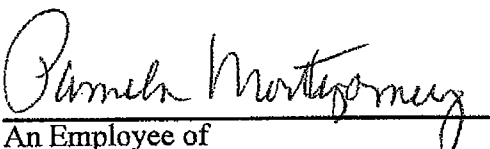

An Employee of
KEMP, JONES & COULTHARD, LLP

EXHIBIT A

FILED UNDER SEAL

EXHIBIT A

EXHIBIT B

EXHIBIT B

PISANELLIBICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

SUPP

James J. Pisanelli, Esq., Bar No. 4027

JJP@pisanellibice.com

Todd L. Bice, Esq., Bar No. 4534

TLB@pisanellibice.com

Debra L. Spinelli, Esq., Bar No. 9695

DLS@pisanellibice.com

PISANELLI BICE PLLC

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Telephone: 702.214.2100

Facsimile: 702.214.2101

Mitchell J. Langberg, Esq., Bar No. 10118

mlangberg@bhfs.com

BROWNSTEIN HYATT FARBER SCHRECK

100 North City Parkway, Suite 1600

Las Vegas, Nevada 89106

Telephone: 702.382.2101

Robert L. Shapiro, Esq. (*pro hac vice admitted*)

RS@glaserweil.com

GLASER WEIL FINK HOWARD

AVCHEN & SHAPIRO LLP

10250 Constellation Boulevard, 19th Floor

Los Angeles, CA 90067

Telephone: 310.553.3000

Attorneys for Wynn Resorts, Limited, Linda Chen,

Russell Goldsmith, Ray R. Irani, Robert J. Miller,

John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,

Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman

DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED CLAIMS

Case No.: A-12-656710-B

Dept. No.: XI

**THE WYNN PARTIES' AMENDED
FIFTEENTH SUPPLEMENTAL
PRIVILEGE LOG**

1 Plaintiff/Counterdefendant Wynn Resorts, Limited and Counterdefendants Linda Chen,
2 Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V.
3 Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman (collectively,
4 the "Wynn Parties"), by and through their undersigned counsel of record, hereby submit their
5 amended fifteenth supplemental log of privileged documents attached hereto as **Exhibit A**.
6 Attached as **Exhibit B** is the names key, identifying the title and affiliation of the parties included
7 on the supplemental log of privileged documents. Attached as **Exhibit C** is the cross-reference
8 chart of documents no longer included on the amended supplemental log.¹

9 The Wynn Parties reserve the right to amend, supplement or otherwise revise their
10 privilege log.

11 DATED this 6th day of June, 2016.

12 PISANELLI BICE PLLC

13 By: /s/ Debra L. Spinelli

14 James J. Pisanelli, Esq., Bar No. 4027
15 Todd L. Bice, Esq., Bar No. 4534
16 Debra L. Spinelli, Esq., Bar No. 9695
17 400 South 7th Street, Suite 300
18 Las Vegas, Nevada 89101

19 and

20 Mitchell J. Langberg, Esq.
21 BROWNSTEIN HYATT FARBER
22 SCHRECK
23 100 N. City Parkway, Suite 1600
24 Las Vegas, Nevada 89106

25 and

26 Robert L. Shapiro, Esq. (*pro hac vice admitted*)
27 GLASER WEIL FINK HOWARD
28 AVCHEN & SHAPIRO, LLP
10250 Constellation Boulevard, 19th Floor
Los Angeles, California 90067

*Attorneys for Wynn Resorts, Limited, Linda Chen,
Russell Goldsmith, Ray R. Irani, Robert J. Miller,
John A. Moran, Marc D. Schorr, Alvin V.
Shoemaker, Kimmarie Sinatra, D. Boone Wayson,
and Allan Zeman*

¹ The chart includes the Produced Bates Range of previously withheld documents that have been produced. Within ten days, the Wynn Parties will supplement their production, and include additional previously withheld documents, along with an updated cross-reference chart.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 6th day of June, 2016, I caused to be electronically served through the Court's e-service/e-filing system true and correct copies of the foregoing **THE WYNN PARTIES' AMENDED FIFTEENTH SUPPLEMENTAL PRIVILEGE LOG** properly addressed to the following:

J. Stephen Peck, Esq.
Bryce K. Kunimoto, Esq.
Robert J. Cassity, Esq.
Brian G. Anderson, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134
Attorneys for Defendants/Counterclaimants

David S. Krakoff, Esq.
Benjamin B. Klubes, Esq.
Joseph J. Reilly, Esq.
BUCKLEY SANDLER LLP
1250 - 24th Street NW, Suite 700
Washington, DC 20037
Attorneys for Defendants/Counterclaimants

Donald J. Campbell, Esq.
J. Colby Williams, Esq.
CAMPBELL & WILLIAMS
700 South 7th Street
Las Vegas, NV 89101
Attorneys for Stephen A. Wynn

Richard A. Wright, Esq.
WRIGHT STANISH & WINCKLER
300 South 4th Street, Suite 701
Las Vegas, NV 89101
Attorneys for Defendants/Counterclaimants

Melinda Haag, Esq.
James N. Kramer, Esq.
ORRICK, HERRINGTON & SUTCLIFFE
405 Howard Street
San Francisco, CA 94105
Attorneys for Kimmarie Sinatra

William R. Urga, Esq.
Martin A. Little, Esq.
JOLLEY URGa WOODBURY & LITTLE
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, NV 89169
Attorneys for Elaine P. Wynn

John B. Quinn, Esq.
Michael T. Zeller, Esq.
Jennifer D. English, Esq.
Susan R. Estrich, Esq.
QUINN EMANUEL URQUHART &
SULLIVAN LLP
865 Figueroa Street, Tenth Floor
Los Angeles, CA 90017
Attorneys for Elaine P. Wynn

/s/ Kimberly Peets
An Employee of PISANELLI BICE PLLC

Bar# Range	Date Recd	Author/Trans	Recipient(s)	CC	Description	Privilege	Production Status
WYNN-PRIV083622- WYNN-PRIV083679	01/12/2012	Marcus Thurmer, CPA, Roxane Peper	Kim Sinatra, Esq.; Marcus Thurmer, CPA; Roxane Peper	Roxane Peper	Email exchange and attachment(s) reflecting confidential legal advice with Kim Sinatra, Esq. and reflecting confidential communications for the purpose of facilitating the rendition of professional accounting services re regulatory issues.	Accountant Client; Attorney Client	Privilege Withhold
WYNN-PRIV083680- WYNN-PRIV083681	01/12/2012	James Stern; Joel Friedman, Esq.	Joel Friedman, Esq.; Kim Sinatra, Esq.; Louis Fresh, Esq.; Robert Shapiro, Esq.	Ben Scotti, Esq.; James Buchman, Esq.; James Stern; Louis Fresh, Esq.; Michael McCall; Shannon Nadeau	Email exchange providing confidential information needed to render legal advice re Fresh investigation.	Attorney Client	Privilege Withhold
WYNN-PRIV083682- WYNN-PRIV083683	01/12/2012	James Stern	Ben Scotti, Esq.; Joel Friedman, Esq.; Louis Fresh, Esq.; Michael McCall	Kim Sinatra, Esq.; Shannon Nadeau	Email providing confidential information needed to render legal advice re Fresh investigation.	Attorney Client	Privilege Withhold
WYNN-PRIV083684- WYNN-PRIV083685	01/12/2012	James Stern; Joel Friedman, Esq.; Teri Peters, CPA	Ben Scotti, Esq.; James Stern; Joel Friedman, Esq.; Michael McCall	Kim Sinatra, Esq.; Maria Redondo; Shannon Nadeau	Email exchange requesting confidential information needed to render legal advice and prepared in anticipation of litigation re Fresh investigation.	Attorney Client; Work Product	Privilege Withhold
WYNN-PRIV083686- WYNN-PRIV083720	01/12/2012	Ellen Schulhofer, Esq.; Kevin Tourak, Esq.; Shannon Nadeau	Ben Scotti, Esq.; Jay Schall, Esq.; Joel Friedman, Esq.; Jonathan Layne, Esq.; Kevin Tourak, Esq.; Kim Sinatra, Esq.; Mary Ann Nicholson; Matt Maddox; Michael McCall; Robert Shapiro, Esq.; Shannon Nadeau		Email exchange providing confidential information needed to render legal advice and prepared in anticipation of litigation re Fresh investigation.	Attorney Client; Work Product	Privilege Withhold
WYNN-PRIV083721- WYNN-PRIV083739	01/12/2012	Shannon Nadeau	Jacob Abba		Email and attachment(s) reflecting protected communications with Nevada gaming regulatory agency re GCB investigation.	Gaming Privilege	Privilege Withhold
WYNN-PRIV083742- WYNN-PRIV083743	01/12/2012	James Stern; Joel Friedman, Esq.	Cindy Michum; Kim Sinatra, Esq.; Louis Fresh, Esq.; Robert Shapiro, Esq.	Ben Scotti, Esq.; James Buchman, Esq.; James Stern; Michael McCall	Email exchange reflecting confidential legal advice re Fresh investigation.	Attorney Client	Privilege Withhold
WYNN-PRIV083744- WYNN-PRIV083746	01/12/2012	James Stern; Teri Peters, CPA	James Stern; Teri Peters, CPA		Email exchange and attachment(s) reflecting confidential communications for the purpose of facilitating the rendition of professional accounting services re corporate governance and business matters regarding city ledgers.	Accountant Client	Privilege Withhold
WYNN-PRIV083766- WYNN-PRIV083781	01/12/2012	James Stern; Joel Friedman, Esq.	Ben Scotti, Esq.; James Stern; Joel Friedman, Esq.; Kim Sinatra, Esq.; Michael McCall; Robert Shapiro, Esq.; Shannon Nadeau	Ben Scotti, Esq.; James Buchman, Esq.; James Stern; Kim Sinatra, Esq.; Louis Fresh, Esq.; Maria Redondo; Michael McCall; Shannon Nadeau	Email exchange and attachment(s) providing confidential information needed to render legal advice and prepared in anticipation of litigation re Fresh investigation.	Attorney Client; Work Product	Privilege Withhold
WYNN-PRIV083792- WYNN-PRIV083801	01/12/2012	James Stern; Joel Friedman, Esq.	Ben Scotti, Esq.; James Stern; Joel Friedman, Esq.; Kim Sinatra, Esq.; Michael McCall; Robert Shapiro, Esq.; Shannon Nadeau	Ben Scotti, Esq.; James Buchman, Esq.; James Stern; Kim Sinatra, Esq.; Louis Fresh, Esq.; Maria Redondo; Michael McCall; Shannon Nadeau	Email exchange and attachment(s) providing confidential information needed to render legal advice and prepared in anticipation of litigation re Fresh investigation.	Attorney Client; Work Product	Privilege Withhold
WYNN-PRIV083802- WYNN-PRIV083818	01/12/2012	James Stern	Ben Scotti, Esq.; Joel Friedman, Esq.; Michael McCall	Kim Sinatra, Esq.; Maria Redondo; Shannon Nadeau	Email and attachment(s) providing confidential information needed to render legal advice and prepared in anticipation of litigation re Fresh investigation.	Attorney Client; Work Product	Privilege Withhold

Exhibit A
The Wynn Parties' Fifteenth Supplemental Privilege Log (WYNN Documents) - March 14, 2016

Case Name	Document Date	Author/From	Excluded To	CC	Description	Privilege	Production Status
WYNN-PRIV084519- WYNN-PRIV084527	01/18/2012	Shannon Nadau	Kevin Tourak, Esq.		Email and attachment(s) providing confidential information needed to render legal advice and prepared in anticipation of litigation re Aruze 13d filing	Attorney Client; Work Product	Privilege Withhold
WYNN-PRIV084528- WYNN-PRIV084540	01/18/2012	Wynn Resorts Legal Department			Draft agreement reflecting confidential legal advice with counsel for Wynn Resorts, Limited regarding Buy-Sell Agreement	Attorney Client	Privilege Withhold
WYNN-PRIV084541- WYNN-PRIV084541	01/18/2012	Marcus Trummer, CPA			Draft report reflecting confidential legal advice with Jay Schall, Esq. and reflecting confidential communications for the purpose of facilitating the rendition of professional accounting services re PCPA issues	Accountant Client; Attorney Client	Privilege Withhold
WYNN-PRIV084542- WYNN-PRIV084542	01/18/2012	Marcus Trummer, CPA			Chart reflecting confidential legal advice with Wynn Legal Department and reflecting confidential communications for the purpose of facilitating the rendition of professional accounting services re PCPA issues	Accountant Client	Privilege Withhold
WYNN-PRIV084543- WYNN-PRIV084543	01/18/2012	Marcus Trummer, CPA			Draft spreadsheet reflecting confidential communications for the purpose of facilitating the rendition of professional accounting services re PCPA issues	Accountant Client	Privilege Withhold
WYNN-PRIV084544- WYNN-PRIV084545	01/19/2012	A. G. Burnett, Esq.; Kevin Tourak, Esq.	A. G. Burnett, Esq.; Mark Lipparelli; Shawn Reid		Small exchange reflecting protected agency re Okada's conduct and corporate governance	Attorney Client; Gaming Privilege	Privilege Withhold
WYNN-PRIV084546- WYNN-PRIV084547	01/19/2012	Andre Ong; Jay Schall, Esq.	Andre Ong; Jay Schall, Esq.	Jay Schall, Esq.	Small exchange providing confidential legal advice re regulatory issues	Attorney Client	Privilege Withhold
WYNN-PRIV084548- WYNN-PRIV084613	01/19/2012	Jay Schall, Esq.	Debra Wong Yang, Esq.; Kelly Austin, Esq.	Jay Schall, Esq.	Small exchange and attachment(s) providing confidential information needed to render legal advice re UMAC donation	Attorney Client	Privilege Withhold
WYNN-PRIV084616- WYNN-PRIV084618	01/19/2012	Samantha Stewart	Jay Schall, Esq.		Small exchange and attachment(s) providing confidential information needed to render legal advice re Aruze board of directors' nominations	Attorney Client	Privilege Withhold
WYNN-PRIV084619- WYNN-PRIV084696	01/19/2012	Roxane Peper	Clady Ku		Small exchange and attachment(s) reflecting confidential legal advice with Wynn Legal	Attorney Client	Privilege Withhold
WYNN-PRIV084697- WYNN-PRIV084698	01/19/2012	Kevin Tourak, Esq.	Oberyl Palmer		Department re corporate records	Attorney Client	Privilege Withhold
WYNN-PRIV084701	01/19/2012	Kim Suatra, Esq.; Wynn Las Vegas Executive Office	Kim Suatra, Esq.; Matt Maddox; Paul Krautholt; Samantha Stewart	Michael Weaver	Small exchange and attachment(s) providing confidential information needed to render legal advice re Okada matter	Attorney Client	Privilege Withhold
WYNN-PRIV084702- WYNN-PRIV084784	01/19/2012	Ivy Lee	John Palancio	Marcus Trummer, CPA; Oscar Lam	Small exchange and attachment(s) providing confidential legal advice re Okada matter	Attorney Client	Privilege Withhold
WYNN-PRIV084785- WYNN-PRIV084827	01/19/2012	Ivy Lee	John Palancio	Marcus Trummer, CPA; Oscar Lam	Small exchange and attachment(s) reflecting confidential communications for the purpose of facilitating the rendition of professional accounting services re PCPA issues	Accountant Client	Privilege Withhold
WYNN-PRIV084828- WYNN-PRIV084849	01/19/2012	Ivy Lee	John Palancio	Marcus Trummer, CPA; Oscar Lam	Small exchange and attachment(s) reflecting confidential communications for the purpose of facilitating the rendition of professional accounting services re PCPA issues	Accountant Client	Privilege Withhold

Exhibit A
The Wynn Parties' Fifteenth Supplemental Privilege Log (WYNN Documents) - March 14, 2016

Exhibit A	Document ID	Author/From	Revised/To	CC	Description	Privilege	Exemption
WYNN-PRIV094210- WYNN-PRIV094292	02/13/2012	Roxane Peper	James Stern	Roxane Peper	Email and attachment(s) providing confidential information needed to render legal advice re Code of Conduct	Attorney Client	Privilege Withhold
WYNN-PRIV094293- WYNN-PRIV094295	02/13/2012	Karina Ashworth; Kevin Tourek, Esq.; Roxane Peper	Karina Ashworth; Kevin Tourek, Esq.; Roxane Peper	Doris Young; Kevin Tourek, Esq.; Michael Weaver	Email exchange reflecting confidential legal advice with Kevin Tourek, Esq. re Okada restaurant name change	Attorney Client	Privilege Withhold
WYNN-PRIV094296- WYNN-PRIV094302	02/13/2012	Jay Schall, Esq.; Linda Chen	Jay Schall, Esq.; Linda Chen	Jan Coughlan; Kim Sinatra, Esq.	Email exchange and attachment(s) providing confidential legal advice re UMAC donation	Attorney Client	Privilege Withhold
WYNN-PRIV094303- WYNN-PRIV094304	02/13/2012	Jay Schall, Esq.; Roxane Peper	Jay Schall, Esq.; Roxane Peper		Email exchange providing confidential legal advice re UMAC donation	Attorney Client	Privilege Withhold
WYNN-PRIV094305- WYNN-PRIV094306	02/13/2012	Jay Schall, Esq.	Roxane Peper	Roxane Peper	Email and attachment(s) providing confidential legal advice and prepared in anticipation of litigation re UMAC donation	Attorney Client; Work Product	Privilege Withhold
WYNN-PRIV094307- WYNN-PRIV094309	02/13/2012	Jay Schall, Esq.	Roxane Peper	Roxane Peper	Email exchange and attachment(s) providing confidential legal advice and prepared in anticipation of litigation re UMAC donation	Attorney Client; Work Product	Privilege Withhold
WYNN-PRIV094310- WYNN-PRIV094311	02/13/2012	Jay Schall, Esq.	Kim Sinatra, Esq.; Roxane Peper		Draft letter reflecting confidential legal advice with Wyn Legal Department and prepared in anticipation of litigation re UMAC donation	Attorney Client; Work Product	Privilege Withhold
WYNN-PRIV094312- WYNN-PRIV094313	02/13/2012	Shannon Nadeau			Email providing confidential information needed to render legal advice and reflecting protected communications with Nevada gaming regulatory agency re SEC filing	Attorney Client	Privilege Withhold
WYNN-PRIV094314- WYNN-PRIV094319	02/13/2012	Kim Sinatra, Esq.	Mark Lipparelli	Kevin Tourek, Esq.; Robert Miller; Shannon Nadeau	Report form reflecting confidential information needed to render legal advice re revisions to Code of Business Conduct Ethics	Attorney Client	Privilege Withhold
WYNN-PRIV094320- WYNN-PRIV094320	02/13/2012		Allan Zeman; Alvin Shoenmaker; Bruce Rockowitz; Charity Dailey; D. Boone Wayson; Elaine Wynn; Jan Coughlan; Jeffrey Lam; John Moran; Linda Chen; Marc Schott; Nicholas Salinas-Smith; Ray Irani; Robert Miller; Russell Goldsmith; Tim Foster		Email exchange and attachment(s) reflecting confidential legal advice with Kim Sinatra, Esq. re media investigation	Attorney Client	Privilege Withhold
WYNN-PRIV094321- WYNN-PRIV094323	02/13/2012	Kim Sinatra, Esq.; Marc Schott			Draft filing reflecting confidential legal advice with Wyn Legal Department and prepared in anticipation of litigation re SEC filing	Attorney Client; Work Product	Privilege Withhold
WYNN-PRIV094324- WYNN-PRIV094324	02/13/2012	Victor Goldfeld, Esq.			Draft letter reflecting confidential legal advice with Kim Sinatra, Esq. and prepared in anticipation of litigation re Okada's records request	Attorney Client; Work Product	Privilege Withhold
WYNN-PRIV094325- WYNN-PRIV094326	02/13/2012	Stephen Wynn		Mark Maddox	Draft letter reflecting confidential legal advice and prepared in anticipation of litigation re Okada's conduct and corporate governance	Attorney Client; Work Product	Privilege Withhold
WYNN-PRIV094327- WYNN-PRIV094328	02/13/2012	Stephen Wynn	Kim Sinatra, Esq.	Mark Maddox	Draft letter reflecting confidential legal advice and prepared in anticipation of litigation re Okada's conduct and corporate governance	Attorney Client; Work Product	Privilege Withhold
WYNN-PRIV094329- WYNN-PRIV094330	02/13/2012	Stephen Wynn			Chart providing confidential information needed to render legal advice re Fresh investigation	Attorney Client; Work Product	Privilege Withhold
WYNN-PRIV094331- WYNN-PRIV094334	02/13/2012	Shannon Nadeau			Draft report reflecting confidential legal advice with Kevin Tourek, Esq. and prepared in anticipation of litigation re internal investigation	Attorney Client; Work Product	Privilege Withhold
WYNN-PRIV094335- WYNN-PRIV094342	02/13/2012	Kevin Tourek, Esq.		Shannon Nadeau		Attorney Client; Work Product	Privilege Withhold

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

Electronically Filed
9/22/2017 9:26 PM
Steven D. Grierson
CLERK OF THE COURT



James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com

Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com

Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com

PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, NV 89101
Telephone: 702.214.2100

Robert L. Shapiro, Esq. (*pro hac vice* admitted)
RS@glaserweil.com

GLASER WEIL FINK HOWARD
AVCHEN & SHAPIRO LLP
10250 Constellation Boulevard, 19th Floor
Los Angeles, CA 90067
Telephone: 310.553.3000

Mitchell J. Langberg, Esq., Bar No. 10118
mlangberg@bhfs.com
BROWNSTEIN HYATT FARBER & SCHRECK LLP
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106
Telephone: 702.382.2101

Attorneys for Wynn Resorts, Limited, Linda Chen,
Russell Goldsmith, Ray R. Irani, Robert J. Miller,
John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
Kimmarré Sinatra, D. Boone Wayson, and Allan Zeman

DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Plaintiff,

vs.

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

Defendants.

AND RELATED CLAIMS

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

**WYNN RESORTS, LIMITED'S
OPPOSITION TO DEFENDANTS'
MOTION TO COMPEL
DIRECTOR ROBERT MILLER'S
TESTIMONY REGARDING
PRE-REDEMPTION NGCB CONTACTS
ON ORDER SHORTENING TIME**

Hearing Date: September 25, 2017

Hearing Time: 8:00 am

1 **I. INTRODUCTION**

2 Universal Entertainment Corp. ("Universal") and Aruze USA, Inc. ("Aruze") ignore the
3 recent amendments to NRS 463.120 in an effort to breach the confidentiality and privilege of
4 communications between Wynn Resorts, Limited ("Wynn Resorts") and gaming regulators.
5 Under the amended statute, all such communications are *absolutely* privileged and Aruze has no
6 right to the information.

7 That said, even under the other applicable provisions of Nevada's gaming laws, Universal
8 and Aruze are not entitled to the information they seek. It has always been privileged and Aruze
9 and Universal cannot meet their burden to overcome that privilege under those other applicable
10 gaming laws.

11 Finally, Universal and Aruze's entire line of inquiry is barred by the Business Judgment
12 Rule, as recently explained by the Nevada Supreme Court in this very case.

13 **II. ARGUMENT**

14 **A. The Discovery Universal and Aruze Seek is Barred by the Business Judgment**
15 **Rule.**

16 Beginning with the last point, while the discovery Universal and Aruze seek is absolutely
17 privileged under applicable gaming law, the Court need not get that far in the analysis. The
18 inquiries Universal and Aruze want to make into Governor Miller's communications with gaming
19 regulators are barred by the Business Judgment Rule.

20 Universal and Aruze admit that their purpose in seeking the privileged gaming
21 communications is to refute Wynn Resorts' contention that its Board was concerned that the
22 misconduct by the Okada Parties could jeopardize Wynn Resorts' current and future gaming
23 licenses. *See* Motion 11:19-12:13. As Universal and Aruze would have it, discovery about the
24 communications with gaming regulators might reveal that there was no such threat.

25 However, this is exactly the type of discovery that is inappropriate under the
26 Nevada Supreme Court's recent ruling regarding the Business Judgment Rule.
27 The Nevada Supreme Court expressly held that because of the presumption of good faith created
28 by the rule, "Nevada's statutory business judgment rule precludes courts from reviewing the

1 substantive reasonableness of a board's business decision." *Wynn Resorts, Ltd. v.*
2 *Eighth Jud. Dist. Court in & for Cty. of Clark*, 399 P.3d 334, 343 (Nev. 2017). Therefore, "[a]s a
3 general rule, courts may not inquire into the merits of a determination." *Id.* But, *that* is exactly
4 what Universal and Aruze are attempting to do with this discovery – challenge the merits of the
5 Board's decision by inquiring into the reasonableness of its perception of threat to the Company's
6 gaming license. But, in Nevada, "a reasonableness review of a director's actions" is forbidden.
7 *Id.*

8 Universal and Aruze will predictably argue that they are entitled to make inquiries to rebut
9 the presumption of good faith. But, the determination of whether a director acted in good faith
10 must be made "without seeking substantive information." *Id.* The Nevada Supreme Court
11 announced the exclusive factors that can be considered in determining whether directors acted in
12 good faith when making their decisions:

13 inquiry into the identity and qualifications of any sources of
14 information or advice sought which bear on the decision reached,
15 the circumstances surrounding selection of these sources, the general
16 topics (but not the substance) of the information sought or imparted,
whether advice was actually given, whether it was followed, and if
not, what sources of information and advice were consulted to reach
the decision in issue.

17 *Id.* Universal and Aruze already know all of the sources of information on which the Board
18 relied. They know their qualifications. They know the general topics of information that were
19 sought and imparted. And, they know what action the Board took based on those things.
20 Universal and Aruze are not permitted to make an end-run on the factors set forth by the Nevada
21 Supreme Court by seeking confidential information regarding communications with gaming
22 regulators.

23 Because knowledge of the substantive communications with gaming regulators is not
24 reasonably calculated to lead to a determination regarding good faith, it is not discoverable. *Id.*

25 **B. The Discovery Universal and Aruze Seek is Barred by the Absolute Privilege**
26 **and Confidentiality for a Licensee's Communications with Gaming Regulators.**

27 NRS 463.120(6) prevents Universal and Aruze from conducting any discovery into
28 Wynn Resorts' communication with gaming regulators:

1 6. Notwithstanding any other provision of state law, *if any*
2 *applicant or licensee* provides or communicates *any information*
3 *and data* to an agent or employee of the Board or Commission in
4 connection with its regulatory, investigative or enforcement
5 authority:

6 (a) *All such information and data are confidential and privileged*
7 and the confidentiality and privilege are not waived if the
8 information and data are shared or have been shared with an
9 authorized agent of any agency of the United States Government,
10 any state or any political subdivision of a state or the government of
11 any foreign country in connection with its regulatory, investigative
12 or enforcement authority, regardless of whether such information
13 and data are shared or have been shared either before or after being
14 provided or communicated to an agent or employee of the Board or
15 Commission; and

16 (b) *The applicant or licensee has a privilege to refuse to disclose,*
17 *and to prevent any other person or governmental agent, employee or*
18 *agency from disclosing, the privileged information and data.*

19 NRS 463.120 (emphasis added). Subsection 11 of that same section makes clear that the privilege
20 is broad, covering "all information and data in any form," whether it is "oral, written, audio,
21 visual, digital or electronic."

22 The privilege and confidentiality of NRS 463.120(6) is broader than those of
23 NRS 463.120(4). Subsection 6 is absolute, providing no exception for the Court's to apply.
24 Subsection 4 allows courts, in appropriate circumstances, to order disclosure. These provisions
25 are not inconsistent. The absolute confidentiality and privilege of Subsection 6 is limited only to
26 "applicants and licensees." On the other hand, the confidentiality of Subsection 4 applies to a
27 host of people who might provide information to gaming regulators, including for example
28 information about criminal records of applicants obtained by regulators "from any source"
(Subsection 4(b)) and information provided by "an informer" (Subsection 4(c)).

The communications with gaming regulators that Universal and Aruze seek to obtain by
way of this motion are expressly privileged and confidential. Universal and Aruze's motion
should be denied in its entirety.

C. Universal and Aruze's Discovery is Also Barred by the Confidentiality
Protections of NRS 463.120(4).

Even if there was no absolute privilege, as addressed above, Universal and Aruze's
discovery would still be barred by the confidentiality protections of NRS 463.120(4). Aruze's

1 contention that Governor Miller's communications with gaming regulators are not protected by
2 these privileges is based on an incomplete reading of the statute. Universal and Aruze rest their
3 entire argument on their conclusion that because Governor Miller voluntarily provided
4 information to gaming regulators, such communications could not possibly be "pursuant to an
5 audit, investigation, determination, or hearing." See Motion, 9:24-10:2. Respectfully,
6 Wynn Resorts disagrees. But, the Court need not resolve this disagreement. Universal and
7 Aruze *ignore* the entire portion of NRS 463.120(4) that provides confidentiality with respect to
8 information and data provided "by a governmental agency or an *informer*." NRS 463.120(4)(c)
9 (emphasis added).

10 At the very least, based on Universal and Aruze's own characterizations, Governor Miller
11 was alerting gaming regulators to issues about Mr. Okada that were described in the draft
12 Freeh Report. This certainly falls under the statute's protection of communications by an
13 informer.

14 As Universal and Aruze admit, communications governed by NRS 463.120 must remain
15 confidential and cannot be obtained in discovery, unless there is a lawful order from the Court.
16 The Nevada Supreme Court has never provided instruction about what considerations a court
17 should make before compelling production of otherwise confidential information. However,
18 helpful standards were announced in *Laxalt v. McClatchy*, 116 F.R.D. 455, 459 (D. Nev. 1986).
19 There, the court held that a court should only compel the production of otherwise confidential
20 gaming information after employing a weighing process:

21 Initially, the relevance of the evidence must be taken into account.
22 Further, the availability of other evidence and the government's role
23 in the litigation must be considered. Finally, the court noted that the
24 extent to which disclosure would hinder frank and independent
discussion regarding the agencies' contemplated decisions and
policies would factor into the court's decision.

25 *Id.*

26 Universal and Aruze cannot show that their need for the information outweighs the respect
27 that is typically given to the confidentiality of communications with gaming regulators. First, the
28 relevance of the discovery Universal and Aruze seek is marginal, at best. As discussed above,

1 the discovery should be barred by the Business Judgment Rule. Even if it were not, the
2 communications Governor Miller had with gaming regulators has very little to do with whether
3 the Wynn Resorts Board rightfully interpreted its own contractual suitability standards (as
4 contained in the operative articles of confederation) and exercised its "sole discretion"¹ in a
5 manner consistent with its rights and obligations under the Articles of Incorporation.

6 That minimal relevance must be weighed against the availability of other evidence. To be
7 sure, there is no shortage of that in this case. Universal and Aruze have been granted wide
8 latitude in conducting discovery. *If* the reasonableness of Wynn Resorts' concern about negative
9 action by gaming regulators is something Universal and Aruze will be permitted to test at trial,
10 they will have plenty of evidence from their discovery efforts and from their own gaming expert.

11 The minimal relevance must also be weighed against the government's role in this
12 litigation. There can be no dispute here – gaming regulators are not involved in this litigation.

13 Finally, the minimal relevance must be weighed against the extent to which disclosure
14 would hinder frank and independent discussion regarding the agencies' contemplated decisions
15 and policies. To put it simply, the entire Nevada gaming regulatory scheme is dependent on the
16 concept of self-policing. Allowing a third party to conduct discovery into confidential
17 communications between a licensee and gaming regulators – particularly communications about
18 that third party – could only have a stifling effect on the willingness of potential informers to
19 come forward. The goal is to have system that supports gaming regulators' goal of preserving the
20 integrity of gaming and the reputation of the gaming industry. Knowing that any report to
21 gaming regulators about potential gaming issues might become part of discovery in a future
22 lawsuit can only inhibit the process.

23 Because the relevance (if any) of Universal and Aruze's discovery is minimal and the
24 consequences of such disclosure weigh heavily against it, Universal and Aruze cannot meet their
25 burden to overcome the confidentiality provisions of NRS 463.120(4).

26
27
28 ¹ *Wynn Resorts, Ltd.*, 399 P.3d at 339.

1 **III. CONCLUSION**

2 The discovery Universal and Aruze seek with respect to Governor Miller's
3 communications with gaming regulators is barred by the Business Judgment Rule and the
4 absolute confidentiality and privilege of NRS 463.120(6). For that reason and for all of the other
5 reasons set forth above, Wynn Resorts respectfully requests that Universal and Aruze's motion be
6 denied.

7 DATED this 22nd day of September, 2017.

8 PISANELLI BICE PLLC

9 By: 

10 James J. Pisanelli, Esq., Bar No. 4027
11 Todd L. Bice, Esq., Bar No. 4534
12 Debra L. Spinelli, Esq., Bar No. 9695
13 400 South 7th Street, Suite 300
14 Las Vegas, Nevada 89101

15 Robert L. Shapiro, Esq. (*pro hac vice admitted*)
16 GLASER WEIL FINK HOWARD
17 AVCHEN & SHAPIRO LLP
18 10250 Constellation Boulevard, 19th Floor
19 Los Angeles, California 90067

20 Mitchell Langberg, Esq., Bar No. 10118
21 BROWNSTEIN HYATT FARBER &
22 SCHRECK, LLP
23 100 North City Parkway, Suite 1600
24 Las Vegas, Nevada 89106

25 Attorneys for Wynn Resorts, Limited, Linda Chen,
26 Russell Goldsmith, Ray R. Irani, Robert J. Miller,
27 John A. Moran, Marc D. Schorr, Alvin V.
28 Shoemaker, Kimmarie Sinatra, D. Boone Wayson,
and Allan Zeman

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 22nd day of September, 2017, I caused to be electronically served through the Court's filing system true and correct copies of the foregoing WYNN RESORTS, LIMITED'S OPPOSITION TO DEFENDANTS' MOTION TO COMPEL DIRECTOR ROBERT MILLER'S TESTIMONY REGARDING PRE-REDEMPTION NGCB CONTACTS ON ORDER SHORTENING TIME to the following:

Donald J. Campbell, Esq.
J. Colby Williams, Esq.
CAMPBELL & WILLIAMS
700 South 7th Street
Las Vegas, NV 89101
Attorneys for Stephen A. Wynn

Melinda Haag, Esq.
James N. Kramer, Esq.
ORRICK, HERRINGTON & SUTCLIFFE
405 Howard Street
San Francisco, CA 94105
Attorneys for Kimmie Sinatra

J. Stephen Peek, Esq.
Bryce K. Kunitomo, Esq.
Robert J. Cassidy, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134
Attorneys for Kazuo Okada

David S. Krakoff, Esq.
Benjamin B. Klubes, Esq.
Adam Miller, Esq.
BUCKLEY SANDLER LLP
1250 - 24th Street NW, Suite 700
Washington, DC 20037
Attorneys for Aruze USA, Inc. and Universal Entertainment Corp.

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
MORRIS LAW GROUP
411 E. Bonneville Avenue, Suite 360
Las Vegas, NV 89101
Attorneys for Defendants

J. Randall Jones, Esq.
Mark M. Jones, Esq.
Ian P. McGinn, Esq.
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
Attorneys for Aruze USA, Inc. and Universal Entertainment Corporation


William R. Urga, Esq.
David J. Malley, Esq.
JOLLEY URGÁ WOODBURY HOLTHUS & ROSE
330 S. Rampart Boulevard, Suite 380
Las Vegas, NV 89145
Attorneys for Elaine P. Wynn

Mark E. Ferrario, Esq.
Tami D. Cowden, Esq.
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400
Las Vegas, NV 89169
Attorneys for Elaine P. Wynn

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Attorneys for Elaine P. Wynn

James M. Cole, Esq.
SIDLEY AUSTIN LLP
1501 K. Street N.W.
Washington, D.C. 20005

Scott D. Stein, Esq.
SIDLEY AUSTIN, LLP
One South Dearborn St.
Chicago, IL 60603
Attorneys for Elaine P. Wynn


An employee of PISANELLI BICE PLLC

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

RIS

J. Stephen Peek, Esq. (1758)
Bryce K. Kunimoto, Esq. (7781)
Robert J. Cassity, Esq. (9779)
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Tel: (702) 669-4600
Fax: (702) 669-4650
Attorneys for Defendant Kazuo Okada

Randall Jones, Esq. (1927)
Mark M. Jones, Esq. (267)
Ian P. McGinn, Esq. (12818)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

David S. Krakoff, Esq. (*Admitted Pro Hac Vice*)
Benjamin B. Klubes, Esq. (*Admitted Pro Hac Vice*)
Adam Miller, Esq. (*Admitted Pro Hac Vice*)

BUCKLEY SANDLER LLP
1250 24th Street NW, Suite 700
Washington, DC 20037
Tel: (202) 349-8000
Fax: (202) 349-8080
*Attorneys for Defendants/
Counterclaimants Aruze USA, Inc.
and Universal Entertainment Corp.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada
corporation,

Plaintiff,

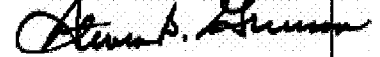
v.

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

Defendants.

AND ALL RELATED CLAIMS.

Electronically Filed
9/25/2017 9:02 AM
Steven D. Grierson
CLERK OF THE COURT



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

**DEFENDANTS' REPLY IN SUPPORT
OF THEIR MOTION TO COMPEL
DIRECTOR ROBERT MILLER'S
TESTIMONY AND PRODUCTION OF
DOCUMENTS REGARDING PRE-
REDEMPTION NGCB CONTACTS ON
ORDER SHORTENING TIME**

Electronic Filing Case

Hearing Date: September 25, 2017

Hearing Time: 8:00 a.m.

1 Defendant Kazuo Okada and Defendants/Counterclaimants Aruze USA, Inc. and
2 Universal Entertainment Corp. (the “Defendants”), by and through undersigned counsel of record,
3 respectfully submit this Reply in Support of Their Motion to Compel Director Robert Miller’s
4 Testimony and Production of Documents Regarding Pre-Redemption NGCB Contacts (the
5 “Motion”). Wynn Resorts, Limited (“Wynn Resorts”) filed its Opposition to the Motion
6 (“Opposition” or “Opp.”) on September 22, 2017.

7 **I. INTRODUCTION**

8 Wynn Resorts’ Opposition asserts that the Defendants ignored a new amendment to NRS
9 463.120(6) (the “Amendment”). Defendants did not discuss the Amendment because it does not
10 apply to the request Defendants made in February 2016 – sixteen months *before* the Amendment
11 became effective on June 12, 2017. The Amendment expressly sets forth that it applies only to
12 requests made on or after the date the Amendment was signed into law. Therefore, the Court
13 need not address the Amendment in deciding this Motion because it does not apply to
14 Defendants’ request. If anything, the fact that the Amendment broadens the scope of the gaming
15 privilege demonstrates that the Defendants were correct in interpreting NRS 463.120 prior to the
16 Amendment (the law that governs here) as being inapplicable to Gov. Miller’s pre-Redemption
17 contacts with the NGCB.

18 **II. ARGUMENT**

19 **A. The Amendment Does Not Apply to Defendants’ Motion Because Their**
20 **Request for Gov. Miller’s Testimony was Timely Pursuant to the Timeframe**
21 **for Applicability Expressly Set Forth in the Amendment to NRS 463.120(6).**

22 Nevada Supreme Court precedent is clear that, in Nevada, statutes are presumed to
23 “operate prospectively, unless the Legislature clearly manifests an intent to apply the statute
24 retroactively, or it ‘clearly, strongly, and imperatively appears from the act itself’ that the
25 Legislature’s intent cannot be implemented in any other fashion.” *Pub. Employees’ Benefits*
26 *Program v. Las Vegas Metro. Police Dep’t*, 124 Nev. 138, 154-56 (2008) (quoting *Matter of*
27 *Estate of Thomas*, 116 Nev. 492, 495-96 (2000)); *see also Sandpointe Apts. V. Eighth Jud. Dist.*
28 *Ct.*, 313 P.3d 849, 857-58 (2013). Furthermore, when the Legislature amends a statute, as it did

1 here, “there is a general presumption in favor of prospective application.” *Delucchi v. Songer*,
2 396 P.3d 826, 829 (Nev. 2017) (citing *McKellar v. McKellar*, 110 Nev. 200, 203 (1994)).¹

3 The amendment in NRS 463.120(6) was signed into law on June 12, 2017, and it
4 expressly sets the timeframe for the application of the new amendment: “The confidentiality and
5 privilege set forth in the amendatory provisions of this act apply to any request made on or after
6 the effective date of this act to obtain any information or data, as defined in [the new amendment
7 to NRS 463.120(6)], that is or has been provided or communicated by an applicant or licensee to
8 an agent or employee of the Nevada Gaming Control Board or the Nevada Gaming Commission
9 in connection with its regulatory, investigative or enforcement authority.” 2017 Nevada Senate
10 Bill No. 376, Nevada Seventy-Ninth Regular Session, adopted June 12, 2017. The Defendants
11 requested details about Gov. Miller’s communications in Gov. Miller’s deposition on February 9-
12 11, 2016, well before the amendment was signed into law. In response to that request, Wynn
13 Resorts’ counsel asserted the gaming privilege, which was inapplicable to Gov. Miller’s
14 communication pursuant to NRS 463.120(4). *See* Ex. A to Defendants’ Motion (Excerpts of Gov.
15 Miller Testimony) at 112, 313.² Because Defendants made the request *prior* to the applicable
16 timeframe identified in the Amendment, the Amendment does not apply to the Defendants’
17

18 ¹ Case law indicates that, where the amendment is a mere clarification of existing law,
19 retroactive application may be appropriate. *Id.* The amendment to NRS 463.120(6) was much
20 more than a minor clarification of the existing law. It was a substantive change to the law that
21 broadly expanded the scope of the privilege and offered the protection to a new category of
22 documents. Thus, the Amendment is presumed to apply prospectively.

23 ² Defendants’ requests regarding communications with the NGCB date back even further
24 than the February 9-11, 2016 deposition of Governor Miller. As early as August 8, 2014,
25 Defendants served Requests for Production on Wynn Resorts, seeking documents concerning
26 communications with the NGCB. *See, e.g.,* Aruze Parties Second Set of Requests for Production,
27 dated August 8, 2014, RFPs 78, 79, 215 (RFP No. 215 requests “[a]ll Documents concerning
28 Communications between WRL and the NGCB, the FBI, DOJ, and/or the Philippine Department
of Justice concerning Mr. Okada, Universal, and/or Aruze USA and their affiliates.”).
Defendants made similar inquiries in Interrogatories submitted in April of 2017, two months
before the Amendment became effective. *See, e.g.,* April 14, 2017 Defendant Okada’s First Set
of Interrogatories to Wynn Resorts, (Interrogatory No. 3 asks Wynn Resorts to “Identify all
Communications that WRL had with any Nevada Gaming Regulator regarding the Aruze Parties
from 2008 to the present. For each such Communication, specify the date, location, all
participants, and the nature and substance of the discussion.”)

1 Motion now pending before the Court.³ The applicable law is NRS 463.120 prior to the
2 Amendment.

3 **B. The Scope of the Amendment Confirms that NRS 463.120 Did Not Apply to**
4 **Governor Miller's Communications.**

5 Wynn Resorts concedes that the Amendment is an expansion of NRS 463.120 and is
6 broader than NRS 463.120(4). Opp. at 4. The fact that the Legislature deemed it necessary to
7 pass such an amendment means that it provides a new protection for applicants and licensees that
8 did not exist under NRS 463.120(4). This supports Defendants' original interpretation of NRS
9 463.120 in their Motion that the statute did not protect Gov. Miller's testimony regarding his pre-
10 redemption contacts with the NGCB.

11 **III. CONCLUSION**

12 For the foregoing reasons, as well as those set forth in their Motion, Defendants
13 respectfully request that this Court grant their motion to compel testimony regarding Governor
14 Miller's pre-Redemption contacts with the NGC and NGCB and production of records made
15 regarding those communications.

16 DATED this 24nd day of September 2017.

17 By /s/ Robert J. Cassity
18 J. Stephen Peek, Esq. (1758)
19 Bryce K. Kunitomo, Esq. (7781)
20 Robert J. Cassity, Esq. (9779)
21 HOLLAND & HART LLP
22 9555 Hillwood Drive, 2nd Floor
23 Las Vegas, Nevada 89134
24 *Attorneys for Defendant Kazuo Okada*

25 J. Randall Jones, Esq. (1927)
26 Mark M. Jones, Esq. (267)
27 Ian P. McGinn, Esq. (12818)
28 KEMP JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

3 Mr. Wynn anticipates the retroactivity argument in Ms. Wynn's motion regarding the
gaming privilege, but his arguments fail because he ignores the express timeframe regarding the
applicability prescribed by the Amendment.

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

David S. Krakoff, Esq. (*Admitted Pro Hac Vice*)
Benjamin B. Klubes, Esq. (*Admitted Pro Hac Vice*)
Adam Miller, Esq. (*Admitted Pro Hac Vice*)
BUCKLEY SANDLER LLP
1250 24th Street NW, Suite 700
Washington, DC 20037

Attorneys for Defendants/Counterclaimants
Aruze USA, Inc. and Universal Entertainment Corp.

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of September 2017, a true and correct copy of the foregoing **DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO COMPEL DIRECTOR ROBERT MILLER'S TESTIMONY AND PRODUCTION OF DOCUMENTS REGARDING PRE-REDEMPTION NGCB CONTACTS ON ORDER SHORTENING TIME** was served by the following method(s):

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

James J. Pisanelli, Esq.
Todd L. Bice, Esq.
Debra L. Spinelli, Esq.
Pisanelli Bice PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Paul K. Rowe, Esq. (*pro hac vice*)
Bradley R. Wilson, Esq. (*pro hac vice*)
Grant R. Mainland, Esq. (*pro hac vice*)
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Robert L. Shapiro, Esq. (*pro hac vice*)
Glaser Weil Fink Howard Avchen & Shapiro,
LLP
10529 Constellation Blvd., 19th Floor
Los Angeles, California 90067

Mitchell J. Langberg, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106

Gareth T. Evans, Esq.
Gibson, Dunn & Crutcher LLP
3161 Michelson Drive
Irvine, CA 92612

*Attorneys for Wynn Resorts, Limited, Linda
Chen, Russell Goldsmith, Ray R. Irani, Robert
J. Miller, John A. Moran, Marc D. Schorr,*

William R. Urga, Esq.
David J. Malley, Esq.
Jolley Urga Woodbury & Little
330 S. Rampart Suite 380
Las Vegas, Nevada 89145

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway Ste. 600
Las Vegas, NV 89169

Mark E. Ferrario, Esq.
Tami D. Cowden, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Pkwy Ste. 400
Las Vegas, NV 89169

James M. Cole, Esq.
Sidley Austin, LLP
1501 K Street, N.W.
Washington, D.C. 20005

Scott D. Stein, Esq.
Sidley Austin, LLP
One South Dearborn St.
Chicago, IL 60603

Attorneys for Elaine P. Wynn

Richard A. Wright, Esq.
Wright Stanish & Winckler
300 S. 4th Street Ste. 701

1 Alvin V. Shoemaker, Kimmarré Sinatra, D.
2 Boone Wayson, and Allan Zeman
3 Melinda Haag, Esq. (*pro hac vice*)
4 James N. Kramer, Esq. (*pro hac vice*)
5 Orrick, Herrington & Sutcliffe LLP
6 405 Howard Street
7 San Francisco, CA 94015
8
9 *Attorneys for Kimmarré Sinatra*
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
G. Mark Albright, Esq.
William H. Stoddard, Jr. Esq.
Albright, Stoddard, Warnick & Albright
801 South Rancho Drive, Ste. D-4
Las Vegas, NV 89106

Attorneys for Intervenor

Las Vegas, NV 89101

*Attorneys for Defendant Kazuo Okada and
Defendants/Counterclaimants Aruze USA,
Inc., and Universal Entertainment Corp.*

Donald J. Campbell, Esq.
J. Colby Williams, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89109

Attorneys for Stephen A. Wynn

/s/ Valerie L. Larsen

An Employee of Holland & Hart LLP

Electronically Filed
9/27/2017 10:20 AM
Steven D. Grierson
CLERK OF THE COURT



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

WYNN RESORTS LIMITED .

Plaintiff .

vs. .

KAZUO OKADA, et al. .

Defendants .
.....

CASE NO. A-12-656710-B

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

MONDAY, SEPTEMBER 25, 2017

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.
TODD L. BICE, ESQ.
DEBRA L. SPINELLI, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
ROBERT J. CASSITY, ESQ.
DAVID KRAKOFF, ESQ.
ADAM MILLER, ESQ.
JON RANDALL JONES, ESQ.
WILLIAM R. URGAS, ESQ.
MARK E. FERRARIO, ESQ.
JAMES COLE, ESQ.
DONALD JUDE CAMPBELL, ESQ.
COLBY WILLIAMS, ESQ.
JAMES KRAMER, ESQ.

ALSO PRESENT:

DAVID CHESNOFF, ESQ.
For Mr. Timothy Poster

1 LAS VEGAS, NEVADA, MONDAY, SEPTEMBER 25, 2017, 8:04 A.M.

2 (Court was called to order)

3 THE COURT: Good morning. Sorry. My law clerk is
4 out sick, so Dan and I are managing without her.

5 What are you doing here, Mr. Chesnoff?

6 MR. CHESNOFF: May I explain?

7 THE COURT: Yes.

8 MR. CHESNOFF: Thank you.

9 Last week the lawyers -- Mr. Campbell let me know
10 that there had been a Rule 34 request regarding materials that
11 affect Mr. Poster, who you may remember I represent. I need
12 to once again seek some relief from the Court with respect to
13 this, almost like an intervenor.

14 I spoke to Mr. Ferrario and counsel for Ms. Wynn and
15 asked if could have just a week from today to get a motion for
16 protective order on file before Your Honor. They asked me to
17 address you and ask you for permission.

18 THE COURT: Are they okay with that?

19 MR. FERRARIO: Your Honor, we'd just like an
20 opportunity to respond.

21 So, David, if you could get that on by Wednesday, we
22 could respond by Friday, we can show up next week on Monday.

23 MR. CHESNOFF: Okay. I can do that, Your Honor.

24 THE COURT: File a motion on an OST for Wednesday,
25 they file a response on Friday, we argue on Monday.

1 MR. CHESNOFF: Very good.
2 THE COURT: Okay.
3 MR. CHESNOFF: I appreciate their courtesy, Your
4 Honor. Thank you.
5 THE COURT: Everybody is very courteous. Isn't that
6 nice?
7 MR. CHESNOFF: How about I'm the one who engendered
8 the courtesy.
9 THE COURT: Okay. We'll shoot for that. Pleasure
10 seeing you.
11 All right. What do you guys want to start with
12 today? Does anybody have a preference? Because, as you can
13 see, I have a very well-organized pile of stuff, and the only
14 issue that seems to overlap has to do with work product issues
15 with Ms. Wynn and some other kind of issues.
16 MR. PISANELLI: Your Honor, what's your plan on the
17 allocation of time?
18 THE COURT: You have eight motions in ten minutes.
19 MR. PISANELLI: I mean per side.
20 THE COURT: Ten.
21 MR. PISANELLI: Is it 15/15?
22 THE COURT: No, 10/10/10.
23 MR. PISANELLI: That leaves us five for each of
24 these parties' motions against 10 -- okay.
25 MR. PEEK: Your Honor, I think from our perspective

1 the status report along with the Steve Wynn and Elaine Wynn
2 motions for more time would be a way to start, Your Honor.

3 MR. PISANELLI: Your Honor, from our perspective the
4 status report is a waste of time. It's an attempt to jump
5 ahead of our motion that's going to be heard next --

6 THE COURT: Yes. So I'm not going to do the status
7 report as a separate issue, because it doesn't count against
8 your time.

9 MR. PISANELLI: Thank you.

10 MR. PEEK: That's fine, Your Honor.

11 THE COURT: Okay. I might do it on the end, given
12 how you're doing.

13 So I would like to start, then, with the request to
14 clarify by Ms. Sinatra on Ms. Wynn's deposition time.

15 Good morning.

16 MR. KRAMER: Good morning, Your Honor. James Kramer
17 on behalf of Kimmarré Sinatra.

18 Your Honor, the motion simply seeks parity. It
19 simply seeks the same amount of time for Ms. Sinatra as Ms.
20 Wynn wants with Ms. Sinatra, one day. That's all we want.
21 The reason we framed it as a motion for clarification is the
22 Court granted the motion for five days and then indicated to
23 Mr. Peek that he could have two hours, and Mr. Peek indicated
24 he'd be filing a motion.

25 THE COURT: And he did. He asked for 11 hours.

1 MR. KRAMER: Which is why we responded the way we
2 did today. Rather than do it as piecemeal, Your Honor, and
3 then respond and have this heard next week, we could get this
4 done in 33 hours, five days times seven hours minus the two.

5 THE COURT: They're seven-and-a-half-hour days.

6 MR. KRAMER: Okay. Well, then we could get it done
7 in 35 hours, Your Honor. But the point is Elaine Wynn has
8 said she needs one day with Ms. Sinatra. Ms. Sinatra should
9 get the same. And that's the basis of our request. She's a
10 litigant both as a defendant and as a plaintiff, and if they
11 want to say that Ms. Wynn can take less time with Ms. Sinatra,
12 we'll meet and confer with them in good faith. But otherwise,
13 Your Honor, as a litigant she should be entitled to the same
14 presumptive amount of time as Ms. Wynn.

15 THE COURT: Interesting.

16 Mr. Peek.

17 MR. PEEK: Your Honor, I don't know if you want me
18 to just go right to the motion for the 11 hours.

19 THE COURT: You want 11 hours.

20 MR. PEEK: Pardon?

21 THE COURT: You want 11 hours.

22 MR. PEEK: Yes.

23 THE COURT: You're not getting 11 hours. So do you
24 want to have a fallback position?

25 MR. PEEK: Well, I guess, Your Honor, as a fallback

1 position would be I'd like at least seven and a half hours. I
2 do think I need more time than that, but a lot of it depends
3 upon how much of the cross-claim and the issues extant in the
4 cross-claim are addressed in those first four days. If
5 they're addressed in the first four days, then I would hope to
6 be able to get it done in seven and a half. But I can't do it
7 in the three and a half or less that the Court had offered me
8 the last time. But, as I said, a lot of this depends upon how
9 this process is going to go forward after next Monday.

10 THE COURT: Okay. Anything else from anybody else?

11 MR. FERRARIO: Your Honor, in the interest of
12 conserving time, it's the same thing we argued last week.

13 THE COURT: Okay. 'Bye.

14 MR. FERRARIO: Thank you.

15 THE COURT: Mr. Peek, you can have up to six hours.
16 Ms. Sinatra will share time with the other Wynn parties.

17 Anything else?

18 MR. PEEK: No, Your Honor. I'll address the other
19 issues in the status report when we come to that, because this
20 is not enough time if the case gets severed.

21 THE COURT: Okay. So let's go to the motion for
22 more time for Mr. Wynn and the issue related to the gaming
23 privilege on the Schreck letter.

24 I said six hours for the Okada parties.

25 MR. FERRARIO: Within the five days that you already

1 allocated. Right.

2 THE COURT: In the five days I already allocated.

3 MR. CAMPBELL: I thought you wanted to talk to me,
4 Your Honor. That's why --

5 THE COURT: I do. I want to talk to you about Mr.
6 Wynn's deposition and how much time you want -- or how much
7 time --

8 MR. CAMPBELL: Talk to that man, Your Honor.

9 MR. PEEK: There were two --

10 THE COURT: You want not more than three and a half
11 hours, and he wants lots of time.

12 MR. PEEK: Your Honor --

13 THE COURT: I feel like a discovery referee.

14 MR. PEEK: Well, you had really put two topics
15 together. One was the Schreck letter --

16 THE COURT: And the Schreck letter.

17 MR. PEEK: -- which I had not addressed. So I think
18 that's why Mr. Campbell stood up. And I don't know whether
19 you want me to just go ahead and address the time --

20 THE COURT: They're together in my mind.

21 MR. PEEK: Okay. Well, Your Honor, you know, since
22 the time Mr. Wynn was deposed there have been thousands of
23 pages of documents produced. We have at least identified 1700
24 of those documents, and in addition the Court has ordered the
25 product of the Freeh pre-redemption documents. However, we've

1 not yet received the pre-redemption documents even though the
2 stay of the order expired on September 15th.

3 As you know, you recently ordered, of course, some
4 of my clients to come back together or some of Mr. Krakoff's
5 clients to come back together for multiple days because of the
6 fact that some documents had been produced after their
7 depositions. The Wynn offer of one half day, which we
8 considered in good faith, is not enough time given the volume
9 of documents, the new issues that have emerged, and the fact
10 that Mr. Okada and Universal will now need to question Mr.
11 Wynn separately.

12 Your Honor, I know that --

13 THE COURT: Probably not going to share time.

14 MR. PEEK: Well, I'm trying to share time. I
15 understand the sharing of time, Your Honor. But that doesn't
16 mean that I don't get to ask questions that go unique to --

17 THE COURT: I didn't say you don't get to ask
18 questions.

19 MR. PEEK: -- breach of fiduciary duty and the
20 removal as a director, as opposed to the redemption. But I
21 understand, Your Honor. But we need at least one full day of
22 Mr. Wynn in order to address the new documents and the topics
23 that are extant from the Elaine Wynn cross-claim.

24 THE COURT: Okay. Do you want to address the Gaming
25 Control issue for me?

1 MR. PEEK: Your Honor, that's actually not my issue.

2 That was --

3 THE COURT: Okay. Then I guess you won't.

4 MR. PEEK: -- a separate motion with Mr. --

5 THE COURT: So now I'm -- who am I going to only on
6 time for Mr. Wynn?

7 MR. PEEK: David, do you want to address the --

8 MR. KRAKOFF: Yeah, I can -- I can --

9 THE COURT: No. I'm going to Colby now. I had a
10 plan. You guys are -- that's why I don't really try and
11 implement my plans.

12 MR. PEEK: Well, we divided up our time, too, Your
13 Honor.

14 MR. WILLIAMS: Your Honor, it's simple. I don't
15 want to waste a lot of time. We offered a half day, they want
16 a full day. We did so based on what you've awarded for the
17 other directors. Unlike the other directors, Mr. Wynn has
18 already sat for four days of deposition by the Okada parties.
19 We're not even talking about the deposition days for Ms. Wynn,
20 which will be addressed at a later point in time. Four and a
21 half days is more than sufficient for what they need to ask
22 him. It's consistent with what you've already ordered. We
23 submit a half day.

24 THE COURT: Thank you.

25 Not to exceed 3.5 hours to be shared between the

1 Okada and Universal parties.

2 So that takes me maybe to the Gaming Control issue.

3 MR. KRAKOFF: Your Honor, actually there are two.
4 There's ours and Ms. Wynn's.

5 THE COURT: One deals with Governor Miller, one
6 deals with Mr. Wynn.

7 MR. KRAKOFF: Yes. So we'll deal with Governor
8 Miller first.

9 Your Honor, in the interest of time I'll be brief.
10 This issue is all about the redemption of -- the lawsuit is
11 all about the validity of the redemption of 20 percent --
12 Aruze's 20 percent stake in Wynn Resorts. And we submitted
13 our brief, you've got the pleadings. I'm not going to belabor
14 them. I do want to emphasize this point, Your Honor. And
15 that is the new amendment that was passed in June 2017
16 expanding the privilege, if you will, does not apply to this
17 situation, because we requested the information that we want
18 from Mr. -- Governor Miller at his deposition some 16 months
19 before. The effective date for the amendment is June 12th,
20 2017. The Wynn -- or Mr. Wynn in his opposition to Ms. Wynn's
21 motion acknowledges --

22 THE COURT: Mr. Jones.

23 MR. KRAKOFF: Saved by the bell, Your Honor. Do I
24 get 10 more seconds?

25 THE COURT: No. You wasted time telling me what the

1 case was about.

2 MR. KRAKOFF: But, Your Honor, so 120(6) does not
3 apply here. The other provisions in the gaming rules or
4 gaming statutes do not apply, as well. Mr. Miller -- Governor
5 Miller voluntarily of his own initiation contacted the NGCB a
6 couple of times in communications both personally and then
7 three other times in emails before the redemption on February
8 18th, 2012. He did that voluntarily. There was no pending
9 investigation, no audit, no hearing regarding the Okada
10 parties at that time. And so that does -- the 120(4) does not
11 apply, as well.

12 The rest of the motion, Your Honor, I'll submit on
13 the papers.

14 THE COURT: Thank you.

15 Mr. Urga.

16 MR. URGa: Your Honor, I'm going to argue on behalf
17 of Elaine Wynn, and I'm going to take a few minutes, and I
18 apologize and I don't want to run over our 10 minutes, because
19 we've got other motions. So how much time do I --

20 THE COURT: Dan says you don't have much.

21 MR. URGa: Give me 10 minutes.

22 THE COURT: Dan says be very brief.

23 MR. URGa: Well, it's very difficult, Your Honor.

24 MR. FERRARIO: I feel like I'm watching Terry Fader
25 here.

1 MR. URGAS: You know, we're seeking documents both
2 from Steve Wynn and from the company, and the company's got
3 this gaming privilege, and I'll talk about that in a little
4 bit. But Mr. Wynn has raised three reasons why we can't get
5 this letter that was issued on April 16th under 49.025, under
6 463.120, and under 463.3407. We start with the proposition
7 that privileges are narrowly construed. You start with that.
8 So let's just take a look at the three statutes. First of
9 all, 49.025, that is limited to returns and reports, and there
10 is no caselaw that supports somehow a letter that's being
11 submitted that would fall under a report. They're trying to
12 argue it's a report. They cite to a Supreme Court case, that
13 Schindler Elevator case, but that was a False Claim Act case,
14 and then in the false claim area the government wants to have
15 a huge definition of "reports," because it stops all those
16 qui tam actions. And that's what they want. Nevada has
17 looked at that in the Tidvall case, which is 91 Nev. 520, and
18 that's 1975. And the court exercised its right there by
19 saying this was a bank report that had to be prepared, by law
20 it had to be prepared. Judge Markell in the Smith case looked
21 at it, and he cites in Footnote 6 in his first opinion several
22 cases, and they all talk about the same thing, reports.

23 So I don't think 49.025 has any bearing on this.
24 And it's beyond the stretch of the imagination that the letter
25 would somehow be a report.

1 The next argument is .3407, 463.3407. Similarly, it
2 doesn't apply. This was intended to protect somebody who
3 submits something to the Gaming Control Board from being sued
4 for doing that, defamation, false imprisonment, and those
5 types of things. The one case that's been decided in that
6 case was Hamp versus Foot. Goes back to 2002, 118 Nev. And
7 that's where the government was called in from the casino
8 saying, we think the dealer and some patron are doing
9 something improper. So he was detained, and he files a
10 lawsuit for false imprisonment, malicious prosecution, and
11 defamation. The court held that, no, that was protected under
12 .3407 because it was something that was under the statute to
13 protect that. But it's an immunity statute, not a disclosure
14 statute.

15 Coincidentally, under the Zermano case, which Mr.
16 Pisanelli and Debbie Spinelli were involved, the casino
17 suspected some cheating again. And so they reported it, he
18 was detained, and Judge Dawson in the 2010 case likewise found
19 that it was statutory immunity. So I don't think either one
20 of those statutes has any bearing on this letter.

21 That brings us to the -- I guess the 800-pound
22 gorilla in today's argument, 463.120. And I don't believe
23 that supports either position. And I'm going to tell the
24 Court why. Clearly the Court has the ability to order
25 something produced, and that's under 463.120(4). And if you

1 look at (4), it goes (a) through (e). And the one that's
2 probably the most important one is under (e), which provides
3 "prepared or obtained by an agent or employee of the Board
4 pursuant to an audit, investigation, determination, or
5 hearing." They are confidential, and they can be disclosed in
6 some proceedings, administrative proceedings or upon an order
7 of the court.

8 And I think that is the key to this whole thing.
9 We're not asking the Gaming Control Board to produce anything
10 that just has not already been produced. And I think it's
11 interesting and I have to take a minute or two to tell you
12 about why I think this is important. If you go back to 2008,
13 when the Smith case came down, which Mr. Campbell was involved
14 in, by the way, coincidentally, the judge ordered both Mr.
15 Adelson's application to look at and the Board's work product,
16 the report. And so Dennis Nylander, who was the chairman of
17 the Gaming Control Board and had been there -- you know, he's
18 a 10-year chairman of the Board, every two years they come up
19 -- the Gaming Control Board comes up with an omnibus gaming
20 bill that covers all the things that took place in the last
21 two years.

22 I'm done already? It hasn't been 10 minutes.

23 THE COURT: Come on. Wrap it up.

24 MR. URGAS: Well, the point is that if you go and
25 look at what the -- if you look at what Dennis Nylander said,

1 in very clear response said, we do not care if the court
2 orders something, all we want to do when you add section (5)
3 is to protect our work product. And that's what happened.
4 And so for the last eight or nine years that's been the case.
5 Now all of a sudden this last-minute thing comes up in this
6 new section under there, which, by the way, was not part -- in
7 my opinion part of the omnibus bill. It came up on the last
8 day of the legislature after it was -- after there was a bill
9 for air finders' fees. It was never heard. There's been no
10 committee reports on it at all. But if you look at that
11 statute, you will see that you have to read it together with
12 section (4). It does not wipe out Section 4, because if it
13 did, you've got a serious problem, because now you can't be
14 harmonious with the statute. And, furthermore, it doesn't
15 apply retroactively. And all of the stuff that we've looked
16 at takes place way before the statute was effective. So I
17 don't think it has any application. To read them together I
18 think you still have the authority as a court to order
19 something produced. All that new section said was, we're
20 protecting a waiver argument, if the government in Nevada
21 decides to give it to another agency or give it to another
22 regulator, it's still protected, there's no waiver. That's
23 what it says. And that was the intent of it. You can't
24 overrule something without the legislature doing it. And I
25 don't think they ever did it in this case. And, like I said,

1 if you look at what Dennis Nylander said in front of Terry
2 Care and in front of Tick Segerblom, they specifically asked
3 him, is the court order still allowed to have documents
4 produced. And Chairman Nylander said, absolutely, all we want
5 to do is protect our work product.

6 THE COURT: No one here is asking me to order the
7 regulators to produce anything, only the parties.

8 MR. URGAS: Exactly. This is only the letter, Your
9 Honor.

10 And similarly with the Wynn Resorts. They've got
11 this privilege, this gaming privilege. And if you look at
12 their log, you can't tell anything. And I think the very
13 minimum before you look at anything if you can't order it, we
14 need a better privilege log. I can't tell from some sort of
15 thing that says it's question of suitability. You need more
16 information. We don't have it, Your Honor.

17 If you have any questions, please let me know.

18 THE COURT: Thank you.

19 Mr. Campbell.

20 MR. CAMPBELL: Good morning, Your Honor.

21 Your Honor, in our response you'll see that we
22 advanced multiple reasons why there's a privilege here. We
23 saved the best for last, and that is the new statutory
24 addition of subsection (6), which I note, not parenthetically
25 so, that they didn't even bother to cite in the moving papers.

1 But while we saved it for --

2 THE COURT: It's hard to keep track of the new
3 statutes when LCD doesn't actually update the statute. So
4 unless you were involved in the legislative process, it's
5 really hard sometimes to keep track.

6 MR. CAMPBELL: I wasn't involved in the legislative
7 process at all. Moreover, Your Honor, with respect to that
8 last argument that we advanced, I'm just going to focus on
9 that, because I think that that's the most important one. And
10 simply stated, it declares all of these materials absolutely
11 privileged. In pertinent subsection (6) in pertinent part it
12 says, and it's very clear, if a licensee provides or
13 communicates any, any information, Your Honor, or data to an
14 agent in conjunction with the agent's regulatory,
15 investigative, or enforcement authority, then "(a) all such
16 information and data is confidential and privileged," there's
17 no exception, and "(b) the applicant or here the licensee has
18 a privilege to refuse to disclose and to prevent any other
19 person from disclosing the privileged information." That
20 could not be more absolute, Your Honor. And that is somewhat
21 different than subsection (4).

22 And he's right, I did in fact advance the position
23 that I did with respect to Mr. Smith, John L. Smith, the
24 reporter, in the Adelson case. But to suggest that Adelson
25 wasn't also claiming that privilege is nonsense. He

1 absolutely was. He didn't have the documents, but he was
2 certainly objecting to the Gaming Control Board turning it
3 over, and was very vociferously objecting through his counsel
4 in the in-chambers hearing that I had -- or that I attended
5 with Judge Markel, where I went over his entire gaming file
6 and its entire history. He didn't like that very much, and
7 that's why he settled immediately thereafter and in fact
8 dismissed his complaint. He didn't settle, because we
9 wouldn't allow him to dismiss without paying us.

10 So, Your Honor, that's what we're really looking at
11 here. It's also clear, Your Honor, that the --

12 THE COURT: Mr. Campbell, let me see if I understand
13 what your position is, because after being involved in the
14 legislative process this year I was aware of the change, but
15 my understanding of it is slightly different than yours. And,
16 admittedly, I was not present at any of the hearings or
17 anything where it was apparently discussed or added.

18 My understanding was that it was proposed simply to
19 protect any document that already had a privilege that was
20 being provided to Gaming so that there was not a waiver of a
21 privilege for any material being shared with Gaming.

22 MR. CAMPBELL: I think it's more expansive just by
23 the mere language of it, Your Honor. I mean, the very
24 language of it is very expansive and includes everything,
25 literally, that could be subject to any sort of disclosure

1 that has any connection or nexus with a previous turnover or
2 submission by a licensee. It's just as simple as that. It
3 doesn't get any more expansive and inclusive than that, Your
4 Honor. I don't think it's in any way limited in any way,
5 shape or form. And it says, Your Honor, in the addition of
6 (11), Your Honor, it says -- now provides "all information,
7 all information and data in any form without limitation." I
8 don't know what could be more expansive than that.

9 With respect to their argument saying, well, you
10 know what, the request was made long ago. No. The request is
11 made now. We've declared privilege. The request is now being
12 advanced to you, Your Honor. It is absolutely timely for us
13 to raise it at this time, and the statute applies at this
14 time. We cited three different cases for that. The most
15 important one is the Madison versus Pullion [phonetic] case,
16 the Vermont case. Directly on point. Directly on point.

17 With respect to the argument concerning Governor
18 Miller, Governor is a former District Attorney. He appointed
19 Gaming Control Board members. He's probably more
20 knowledgeable about the Gaming Control system than any of us.
21 More importantly, Your Honor, as this Court I'm sure knows and
22 was certainly aware of as a result of the formation of the
23 gaming laws and the compulsion that really exists for a
24 licensee initiation of disclosure to the gaming authorities,
25 that may be anathema or somewhat unusual in the experience of

1 Mr. Krakoff, but it is very, very important. It's very usual
2 and customary in our jurisdiction that compels us to go
3 forward and disclose something that we think is important to
4 gaming authorities whether it's good, bad, or indifferent from
5 our perspective. Thank you, Your Honor.

6 THE COURT: Thank you..

7 Anybody else want to say anything?

8 MR. BICE: Yes, Your Honor, just on behalf of Wynn
9 Resorts just briefly on [inaudible].

10 THE COURT: So, Mr. Bice, are you of the position
11 that my prior rulings in cases you and I have had, and I can't
12 remember how many of them have been, where I've taken the
13 position that it's a privilege similar to what Judge Markel
14 took in the Smith case that section (6) should modify my
15 thinking on those?

16 MR. BICE: Your Honor, section (6) -- let me just
17 cut to the chase on section (6).

18 THE COURT: Yep.

19 MR. BICE: Section (6) grows directly out of the
20 Jacobs case.

21 THE COURT: I knew that.

22 MR. BICE: And anyone who pretends that it isn't --

23 THE COURT: That was the gossip that I heard.

24 MR. BICE: There's no debate about it. It is the
25 Jacobs case. Las Vegas Sands had sought this amendment. I

1 think everybody in the state, quite frankly, knows that. And
2 here's ultimately what it does. Section (6) was designed --
3 the law had always been that if you provided privileged
4 information to the Board, it remained privileged. That's
5 always been the law. Section (6) isn't about that. Section
6 (6) is about if you provide information to the Board, that
7 information -- as part of some sort of an investigation
8 process, that information not only remains privileged, it
9 remains privileged even if you share it with federal
10 regulators. Because, remember, that was what was getting Las
11 Vegas Sands into some issue in the Jacobs case, because all of
12 the federal circuits had taken the position that when you --
13 the federal government is your adversary and if you give
14 documents to the federal government it is free game. That's
15 the law. So the legislature --

16 THE COURT: And you argued that very effectively.

17 MR. BICE: Well, I hope I did. I never got the
18 documents, but, nonetheless -- but that is the basis for the
19 statute, and thus I have to concur with Mr. Campbell that the
20 statute is quite broad and it applies to this particular
21 situation.

22 Your Honor, all I want to say on the issue about the
23 communications between Mr. Miller -- or Governor Miller and
24 the Board, in addition to subsection (6) the statute protects
25 anyone basically informing the Board of wrongdoing by another

1 person.

2 THE COURT: But don't they protect them from
3 defamation claims and other types of claims?

4 MR. BICE: No. Not only that -- no. The answer to
5 that is not only does it protect them against that; the
6 statute says that it's -- there's a separate part of the
7 statute that says it is a privilege against claims for
8 defamation. I understand that, an absolute privilege.
9 However, the statute also makes clear under subsection (4)
10 that if you provide -- if you inform on an individual, like
11 Governor Miller was doing, that information, what you told the
12 Board is absolutely privileged. And it's not just a privilege
13 against liability, it's a privilege against disclosure. I
14 thank the Court for its time.

15 THE COURT: Thank you.

16 Anyone else want to speaking on the gaming issues?

17 Given the addition by the legislature of subsection
18 (6), my prior interpretation that the statutory scheme was
19 primarily designed to protect the Gaming Control from having
20 to disclose information that was provided to us, as well as
21 the absolute privilege related to defamation claims by anyone
22 submitting information to the Gaming Control Board has been
23 modified. Regardless of how that statutory amendment came
24 into effect, the adoption of it by the legislature has
25 impacted those cases. I find that the issue of retroactivity

1 does not need to be addressed by this Court because the motion
2 is being heard now, after the new statute has come into
3 existence.

4 For that reason the motions related to Governor
5 Miller and the Schreck letter are both denied.

6 All right. You guys have --

7 MR. PEEK: Your Honor, are you finding that those
8 are privileged?

9 THE COURT: They're protected under section (6) of
10 the new statute.

11 MR. FERRARIO: The new statute.

12 MR. PEEK: Of the new statute, which --

13 MR. URGAS: You're talking about the Senate bill.
14 Section (6) -- you're talking about the Senate bill; is that
15 right, Your Honor?

16 THE COURT: Whatever the new legislative section is
17 with the new -- the one that we all know happened at the last
18 minute and just occurred.

19 MR. PEEK: I just want to make sure whether you're
20 saying that those letters -- the Governor Miller letter was in
21 fact a privileged -- falls under a claim of privilege.

22 THE COURT: Yes. And protected and confidential.

23 MR. PEEK: Okay.

24 THE COURT: All right. Any of other questions about
25 that, or did I get them? Now you can run the writ and you can

1 ask the Supreme Court what they think, because there's not
2 much legislative history on that issue, since it happened the
3 way it did.

4 I have reviewed the Virtue email. Who cares about
5 Virtue email?

6 MR. FERRARIO: We do.

7 MR. PEEK: And so do we, Your Honor.

8 THE COURT: The Virtue email will be produced with
9 one redaction. The one redaction, Ms. Spinelli, do you want
10 to come up here so I can show you where it is.

11 See where it says "that if the --"

12 MS. SPINELLI: Uh-huh.

13 THE COURT: Remainder of that can be redacted.

14 MR. PEEK: So it begins with what, Your Honor, and
15 ends with what?

16 THE COURT: I'm not telling you, because it's
17 redacted.

18 MR. PEEK: I know. I'm not -- all right. Well, the
19 beginning of it --

20 THE COURT: The last word you will see will be the
21 word "conflict" with the period, and then the next thing you
22 will see will be the name "Kim."

23 MR. PEEK: Thank you, Your Honor.

24 THE COURT: All the remaining portions are
25 unredacted. I am going to give this to -- I did read the

1 declaration of Ms. Sinatra. I am giving it to my clerk, who
2 will seal it. Here's the special envelope. But I reviewed it
3 in camera. All right.

4 MR. PEEK: Your Honor, can we get a date for
5 production of that?

6 MS. SPINELLI: I can produce it today, Your Honor.

7 THE COURT: She's says she's going to get it to you
8 today, because it's not very much.

9 MR. PEEK: That's fine.

10 THE COURT: So I still have an issue related to Ms.
11 Wynn's notes. Somebody want to tell me why on earth Ms.
12 Wynn's notes would ever be work product when Ms. Wynn did them
13 all on her own as part of her divorce to refresh her memory.

14 MR. FERRARIO: No. Go ahead.

15 MR. COLE: Your Honor, with that introduction I
16 realize that I have a bit of a hill to climb.

17 THE COURT: Yes.

18 MR. COLE: But I think that the declaration that Ms.
19 Wynn put in does climb that hill, and it does it -- and I'll
20 be very, very brief, because I know you read this all. This
21 was -- this is a situation where this came to her. It came to
22 her attorney in the course of her divorce proceedings with Mr.
23 Wynn, and it concerned issues that were very much involved in
24 that divorce proceeding, and she was doing the inquiry
25 pursuant to the issues in that litigation. These were not

1 just for her own edification.

2 THE COURT: Making notes yourself to refresh your
3 memory for purposes of your litigation is not work product.

4 MR. COLE: But she did, as her declaration points
5 out, share the substance of what she learned with her
6 attorneys for the purposes of that litigation. And so we
7 would submit that these were in fact -- and they can be taken
8 without the direction of an attorney, but we would submit that
9 these were done for the purpose of the litigation, the divorce
10 litigation, and her declaration --

11 THE COURT: And to refresh her memory so her memory
12 would remain fresh.

13 MR. COLE: Well, sometimes that's what work product
14 is done, Your Honor, so that you can have some sort of
15 recording of events so that you can use them in the
16 litigation.

17 THE COURT: Okay. So I'm going to advance your
18 motion to redact her opposition to today and I'm going to
19 grant your request to seal Exhibit A and B and redact.

20 But the motion is granted, and Ms. Wynn's notes will
21 be produced.

22 How was that? Was that your easiest argument today?

23 MR. PISANELLI: Timing on that production, Your
24 Honor?

25 MR. FERRARIO: We may run a writ on that.

1 THE COURT: You can run a writ if you want.
2 MR. FERRARIO: We need a stay.
3 THE COURT: Sure. How long do you need?
4 MR. FERRARIO: Thirty days.
5 THE COURT: No.
6 MR. FERRARIO: Fifteen.
7 THE COURT: Ten.
8 MR. FERRARIO: What? You gave them -- you gave them
9 45 days last time.
10 THE COURT: No, I didn't give them 45 days.
11 MR. FERRARIO: You gave them 30 and 15. That's 45.
12 THE COURT: Okay. You can have 15.
13 Okay. So now I'm on the eighth supplemental
14 disclosure, the Whennen and Glassford information. Anything
15 anybody wants to tell me?
16 MR. PISANELLI: Is this the motion for de-
17 designation of confidentiality?
18 THE COURT: Yes.
19 MR. PISANELLI: A few points, Your Honor. We're in
20 opposition, but I assume I go first because they're out of
21 time. Is that your point?
22 So there's a couple of fundamental flaws in this
23 brief, the first of which is that Ms. Wynn continues to
24 mistakenly believe that she's entitled to see records that
25 were available to her when she was affiliated with the

1 company. She's no longer affiliated with the company. Those
2 rights were left behind when she left the company.

3 Second, she continues to conflate public relations
4 campaigns with litigation. You'll note that all of these
5 topics on confidentiality are untied to any claim in the case.
6 This is all what we have seen time and time again for her
7 campaign to smear her ex-husband and anyone else in her wake.

8 And let's be frank about this, Your Honor. This is
9 the one party in this case who is still subject to an
10 evidentiary hearing for sanctions for violating the
11 confidentiality order. She's dodged her deposition for that
12 hearing for over a year, postponed it, as well. And it's the
13 same party who took the stand in this case and gave sworn
14 testimony that she stole records from this company,
15 confidential records, and improperly distributed them to other
16 people, resulting in a permanent injunction against her and
17 the loss of her counsel. Trust her? No, I don't think so.
18 We will trust this Court and we'll trust our confidentiality
19 order.

20 But that said, Your Honor, even if she was Mother
21 Theresa, the topics we're talking about here are highly
22 confidential. She wants to get into Laurie Glassford's
23 testimony about how she assists Mr. Wynn because of his
24 handicap. That should go to the heart of an issue in this
25 case, I'm sure. Or maybe it just allows her with more

1 ammunition to embarrass her ex-husband.

2 Same thing with the Whennen issue. Has nothing to
3 do with this litigation at all, yet she names the accuser, she
4 talks openly about the accusations. Remember, Quinn Emanuel
5 had more discretion the way they're handling than Ms. Wynn's
6 new counsel does, and that's really a strong statement, that
7 Quinn Emanuel was at a higher level of behavior.

8 So, Your Honor, we have some very important issues
9 today, tomorrow, and the next day that we present to you on a
10 daily basis. Ms. Wynn's request to you to continue to
11 downgrade confidentiality designations so she could use them
12 in the press and as weapons against people should not be
13 taking up your time, should not be taking up our time, and I'd
14 ask Your Honor not to encourage her with any relief at all.
15 This is important confidential information that belongs in
16 this case. She has no additional super uber rights because
17 she used to be in this company. She's like everybody else.
18 She is no longer in this company and has no rights to this
19 information.

20 THE COURT: So let me, as I try to be, be
21 consistent. Let's talk about how I make sure that we treat
22 her the same as we treat Mr. Okada, where I said previously
23 that Mr. Okada was entitled to review information for
24 committees and board meetings that he attended and downgraded
25 it to confidential. Why shouldn't I treat Ms. Wynn the same,

1 other than the conduct we've observed?

2 MR. PISANELLI: The other than becomes --

3 THE COURT: I understand.

4 MR. PISANELLI: -- a big giant hole that swallows
5 everything. So, Your Honor, what we did with Mr. Okada, as I
6 recall, is to make sure that any claim that his counsel were
7 making that they were handcuffed and not able to adequately
8 represent their client was addressed. And we volunteered to
9 downgrade many, if not all, of the things so that their
10 counsel could see things. And that's the same here. Ms. Wynn
11 is arguing that she used to be on the board and therefore gets
12 everything. And that's just simply not the case.

13 So I'm not sure what else to say on that topic but
14 that she doesn't have additional rights now that she's gone.

15 THE COURT: You have help. Help is coming.

16 MR. PISANELLI: Feel free.

17 MS. SPINELLI: We have downgraded, Your Honor,
18 documents from the board where she attended, consistent with
19 your opinion on Mr. Okada. We did not agree to downgrade
20 documents for committees to which she was not a member unless
21 they related to her claims.

22 THE COURT: Okay.

23 MR. PISANELLI: Most of which what she asks for does
24 not.

25 THE COURT: Right.

1 MR. PISANELLI: That's the PR campaign.
2 THE COURT: Thank you.
3 MR. PISANELLI: Thank you.
4 THE COURT: Anything else anybody wants to say on
5 this issue?
6 MR. FERRARIO: Do we get to say anything?
7 THE COURT: I said anything else anybody wants to
8 say.
9 MR. FERRARIO: Well --
10 THE COURT: You can be part of that group of anyone.
11 MR. FERRARIO: Well, he trumped us because we ate up
12 our time.
13 THE COURT: Well, no. Because you were winning.
14 Never mind.
15 MR. FERRARIO: If I'm winning, I'm shutting up.
16 THE COURT: Okay.
17 MR. FERRARIO: Okay.
18 THE COURT: So the motion is granted to the extent
19 that any information of a board meeting which Ms. Wynn
20 attended will be provided to her. It will be downgraded to
21 confidential. However, if there is any disclosure at all, the
22 penalties will be rather significant given the prior history
23 in this case.
24 MR. FERRARIO: Your Honor, there's --
25 THE COURT: Wait.

1 Second, if there a committee of the board, like the
2 executive committee, which Ms. Wynn served on for any period
3 of time, the information that was provided to Ms. Wynn and the
4 other members of the committee when she was participating on
5 that committee will be downgraded to confidential.

6 To the extent she was not participating on a
7 committee or was not a member of the board it will remain as
8 highly confidential.

9 Anything else?

10 MR. FERRARIO: There's other information that we're
11 -- we addressed --

12 THE COURT: You're looking for the board book. And
13 I'm not giving you board book.

14 MR. FERRARIO: Well, no. There were -- the Whennen
15 depo, there's all sorts of things where these -- the Wynn
16 parties are overdesignating under the confidentiality. You've
17 commented on that. That's the only reason we're here.
18 They're trying to tie everybody's hands. We can't even talk
19 to our client about basic information we're generating in a
20 lawsuit.

21 THE COURT: Why on earth do you want to talk to Mr.
22 Wynn's assistant about the ways that his disability is
23 accommodated for him to do his business?

24 MR. FERRARIO: They're speculating as to what we're
25 doing with it. We have a right to talk to our client. We're

1 asking for a designation down from highly -- how would that
2 ever be highly confidential under your rule?

3 THE COURT: Because it has to do with a personal
4 medical condition.

5 MR. CAMPBELL: Exactly, Your Honor. That's exactly
6 right.

7 MR. FERRARIO: We can't talk to Ms. Wynn about that?

8 MR. CAMPBELL: They've got no --

9 Excuse me.

10 THE COURT: Guys.

11 MR. CAMPBELL: And that's what I've advanced before,
12 and that's what I've told him before.

13 THE COURT: Guys.

14 MR. FERRARIO: You know what, Your Honor --

15 MR. PEEK: It's not your turn, Don.

16 THE COURT: Can we just stop.

17 MR. FERRARIO: If that's -- if that's the Court's
18 finding because that --

19 THE COURT: I also gave that benefit to Ms. Wynn
20 during the time where we were having her documents reviewed.
21 I gave her the same treatment.

22 MR. FERRARIO: With that clarification I'm cool with
23 that, Judge, okay. But there's other information in there, as
24 well, that we addressed in our motion.

25 THE COURT: Well, we all know about the other

1 information.

2 MR. CAMPBELL: Your Honor, with respect to the help,
3 that's confidential. She -- they can talk to her about the
4 health information. She just can't go out and start talking
5 to everybody else as she has done.

6 MR. FERRARIO: We don't want a whole lot of talk
7 about it.

8 MR. CAMPBELL: She does it all the time.

9 MR. FERRARIO: No, she doesn't.

10 THE COURT: Guys.

11 MR. FERRARIO: You guys make --

12 THE COURT: Guys. Stop. We've had issues where
13 there have been communications that might have been
14 appropriate. That's why I scheduled an evidentiary hearing on
15 sanctions related to that. Remember? Some day I'm going to
16 get there.

17 MR. FERRARIO: Uh-huh.

18 THE COURT: Okay.

19 MR. FERRARIO: Yeah. We would already have been
20 there had they availed themselves of the deposition that I
21 offered --

22 THE COURT: Guys.

23 MR. FERRARIO: -- a month ago to undercut the
24 argument that we're running from it.

25 THE COURT: Are we done?

1 MR. FERRARIO: Yes.

2 THE COURT: Thank you.

3 So to the extent the information in the depositions
4 relates to a personal medical condition it will remain
5 protected and will not be disclosed in violation of the
6 protective orders to anyone.

7 MR. FERRARIO: With that clarification we're fine,
8 Judge.

9 THE COURT: Okay. With respect to Ms. Whennen I
10 have previously made a ruling about her notes. I think you
11 guys have run a writ, so it's premature for me to rule on some
12 of the information related to Ms. Wynn.

13 MR. PISANELLI: Thank you.

14 THE COURT: Okay. Anything else? Did you have
15 anything else today before I see you next Monday?

16 MR. PISANELLI: No, Your Honor. Thank you very
17 much.

18 MS. SPINELLI: Yes.

19 THE COURT: All of the motions to seal -- wait. All
20 of the motions --

21 Yes?

22 MR. KRAKOFF: There's one other motion on the
23 calendar for today.

24 THE COURT: Which one?

25 MR. KRAKOFF: The post-redemption Freeh documents.

1 MR. FERRARIO: Your Honor --

2 THE COURT: It is on the calendar for today.

3 MR. FERRARIO: -- on that last one, the settlement
4 -- there was a whole litany of things in there. We can't
5 address it in 30 seconds. There was the settlement agreement,
6 there's all sorts of stuff that was addressed.

7 THE COURT: There is. And I am very concerned given
8 the original brief that was filed by your side that wasn't
9 sealed timely that we had some issues, and I want to make sure
10 we don't disclose that information. So I'm concerned about
11 it.

12 MR. FERRARIO: No. Remember we did seal that
13 timely.

14 THE COURT: I know.

15 MR. FERRARIO: We just hadn't provided you with --

16 THE COURT: No. The second one.

17 MR. FERRARIO: I don't remember that one. But the
18 first one when you raised that issue we in fact had done it
19 appropriately and we just hadn't given you a copy. There have
20 been no issues that I'm aware of in that regard. So we need a
21 ruling on that, as well.

22 THE COURT: Okay. Anything else?

23 MR. FERRARIO: Nope.

24 THE COURT: All right. So given the pendency of the
25 writ on those issues I am not going to rule on that yet. I'm

1 going to wait for a resolution on that.

2 You said you have one more, Mr. Krakoff.

3 MR. KRAKOFF: Yeah. It's the post-redemption Freeh
4 documents, Your Honor.

5 The problem we have, Your Honor, is that --

6 THE COURT: And you know you're out of time; right?
7 Because your friend Mr. Peek used it all. But you can say
8 something really quick.

9 MR. KRAKOFF: Okay. Really quick. Here's the
10 problem. Wynn's privilege cause in its privilege logs are
11 totally unreliable. There's no way to trust them. And we've
12 demonstrated that, Your Honor, in our motion and the exhibits
13 that we attached to our motion that show that at least
14 50 documents that we can tell from those privilege logs, that
15 is, the descriptions are not privileged. That's what the
16 Court asked us to do when we were here before. We've done
17 that, and there's just no way to trust their cause. And we
18 know when the Court gave us the opportunity to select
19 25 documents ourselves from their totally vague privilege logs
20 that 11 out of 25, 44 percent were not privileged.

21 Our position, Your Honor, is that that says that
22 Wynn should no longer be the arbiter of what is produced here
23 or not. Unfortunately, it leads to the odious situation where
24 we ask the Court respectfully to conduct a review of a
25 statistically valid --

1 THE COURT: I can't do a statistically valid sample
2 anymore. The Nevada Supreme Court said in Footnote Number I
3 think it was 6 in the last writ issued to me that I can no
4 longer do that.

5 MR. KRAKOFF: Okay. Well --

6 THE COURT: It was a good try, though. Well, when
7 it's even in this case, you know.

8 MR. KRAKOFF: Well, okay. We don't even have to
9 have a statistically valid one. But, Your Honor, we ask and
10 implore the Court to go behind the privilege cause. Because
11 what we see and what they produced is -- there's documents
12 that they haven't produced that are the same as documents they
13 have produced. There are documents that are word-for-word
14 notes of interviews, which aren't protected by work product.
15 So time and time again, even from the little we can see from
16 the privilege logs, they're not reliable.

17 So we had suggested 330, because that's
18 statistically valid. Okay. Don't have to go there. But we
19 would ask the Court to select -- to review at least between 50
20 and a hundred randomly selected documents.

21 THE COURT: I can't do that, Mr. Krakoff.

22 So it's either all or nothing is the way that it has
23 to work now. And the question that has been raised by the
24 Wynn parties is you need to specifically identify those
25 documents that you want me to review. Since I have to review

1 all of the documents, according to the Supreme Court's latest
2 missive in this case, then you will do a better job at
3 identifying the documents.

4 MR. KRAKOFF: Here's the problem, Your Honor,
5 respectfully. The privilege logs of some 2400 documents are
6 vague, they're general. We've done our best based upon what
7 we've seen. And we've provided to the Court -- because we
8 don't want to --

9 THE COURT: I cannot do a representative sample.

10 MR. KRAKOFF: Okay.

11 THE COURT: Can't do it.

12 MR. KRAKOFF: All right.

13 THE COURT: I need you to better identify the
14 specific documents that you are challenging the privilege out
15 of the ones that you claim, rather than telling me to review a
16 statistically relevant sample, which I used to agree with you,
17 I thought I could do. But not anymore.

18 MR. KRAKOFF: Well, we've identified 50. We're
19 trying to be professional and respect our professional
20 obligations and not overload the Court with more than is
21 necessary. But really we have --

22 THE COURT: I don't want you to do that. I want you
23 to identify for me those that you have a challenge to.

24 MR. KRAKOFF: Okay.

25 THE COURT: And if it's all of them but two, that's

1 okay, I will deal with it. It just takes longer when it's
2 2400 or 4,000 or whatever.

3 MR. KRAKOFF: Understood. Understood. We will do
4 that.

5 THE COURT: Okay. When will you do that by?

6 MR. KRAKOFF: We will do that by the end of this
7 week.

8 THE COURT: No, you won't.

9 Mr. Cassity, how long is it going to take?

10 MR. PEEK: Actually, look at Mr. Miller, Your Honor.

11 THE COURT: Okay. Mr. Miller and Mr. Cassity are
12 talking.

13 MR. CASSITY: A week, Your Honor.

14 THE COURT: How much?

15 MR. CASSITY: A week.

16 MR. KRAKOFF: You see? My estimate wasn't that bad.

17 MR. PEEK: And, Your Honor, frankly, what you'll
18 also see is that the descriptions are so vague that the entire
19 privilege is waived.

20 THE COURT: Mr. Peek, you will remember that I've
21 already done an in-camera review on these documents. I just
22 didn't review them all.

23 MR. KRAKOFF: Thank you, Your Honor.

24 MS. SPINELLI: Your Honor, I must for the record
25 speak.

1 THE COURT: And?

2 MS. SPINELLI: And I have to say that the comments
3 about our vague privilege log is wrong. Your Honor directed
4 us -- we gave --

5 THE COURT: Ms. Spinelli, I'm not yelling at you
6 today.

7 MS. SPINELLI: No, I understand that. But for
8 purposes of a record, because it will likely go up from
9 whomever, we reviewed all of the post-redemption documents and
10 gave the seventh supplemental privilege log. I don't
11 understand why it's so confounding that these descriptions
12 actually go into great detail even from their select ones that
13 they never gave me but they gave Your Honor, talking about
14 legal services related to things, legal services and
15 information needed for the provision of legal services
16 regarding scheduling of interviews. The scheduling documents
17 were released, Your Honor. That's why they want you to review
18 everything. Because in good-faith meet and confers we
19 actually acted in good faith.

20 The air travel request, legal services related to
21 them, legal advice about what you can and cannot do for
22 witnesses. It is not so confounding that people seek legal
23 advice before they act, especially when the circumstances are
24 so high stakes. So, yes, the logistical information was
25 produced because Your Honor told us to. We're not releasing

1 -- producing our privileged communications with requests for
2 legal advice. We're just not doing it. And Your Honor
3 already ruled that there was a privileged relationship between
4 Freeh post-redemption and pre-redemption there was, too,
5 except it was waived.

6 THE COURT: I ruled there was an attorney-client
7 relationship.

8 MS. SPINELLI: That's right, Your Honor.

9 THE COURT: Okay. So you're going to give me
10 another list, and you're going to then make sure a copy goes
11 to Ms. Spinelli so that she then has the opportunity to put a
12 second set of eyes on any of those, see if she wants to
13 release any of them before I review them. And then we'll talk
14 about -- at our next hearing we will talk about a timing
15 issue. Okay?

16 MS. SPINELLI: Depending upon how many they give me?

17 THE COURT: Correct.

18 MS. SPINELLI: Thank you, Your Honor.

19 THE COURT: You understand how it works sometimes.

20 So is it okay if I advance all of the motions to
21 redact and seal that were on calendar in addition to the one
22 I've already ruled on and grant them?

23 MR. PEEK: Yes, Your Honor.

24 THE COURT: Okay. Anything else anybody wants to
25 tell me?

1 MR. PISANELLI: No, Your Honor. Thank you.
2 MR. PEEK: Your Honor, the status reports?
3 THE COURT: I'm not going to discuss your status
4 report until we have the hearing on that issue next week,
5 although I am interested to see that your discovery master
6 related to the Wynn production and the Okada production is
7 moving at a slower pace than you'd thought. Okay.
8 MS. SPINELLI: Slower pace?
9 THE COURT: Slower.
10 MR. MILLER: Your Honor, he is continuing to make
11 progress.
12 THE COURT: I understand. It's just it's a lot of
13 work.
14 Mr. Peek, can you give this to somebody on the other
15 team, the other team being Ferrario's people.
16 Is that Wynn's, or is it Elaine Wynn's? It looks
17 like Elaine Wynn's to me, Mr. Ferrario. Is it Elaine Wynn, or
18 Pisanelli, the document Mr. Peek just handed you.
19 I thought it was his. It's Ferrario's.
20 MR. PEEK: Yeah. You told me to give it to
21 Ferrario, so I am.
22 THE COURT: So I'm also advancing the motion to
23 redact filed by Wynn Resorts. I'm advancing it today. I'd
24 really like us not to do that anymore. Okay.
25 THE PROCEEDINGS CONCLUDED AT 8:54 A.M.

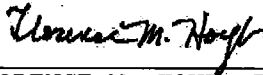
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

9/26/17

DATE



ORDR

CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (1216)
djc@cwlawlv.com
J. COLBY WILLIAMS, ESQ. (5549)
jcw@cwlawlv.com
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

*Attorneys for Counterdefendant/
Crossdefendant Stephen A. Wynn*

DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada
corporation,

Plaintiff,

vs.

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

Defendants.

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

**ORDER REGARDING ELAINE P.
WYNN'S MOTION TO COMPEL
STEPHEN A. WYNN AND WYNN
RESORTS, LIMITED TO PRODUCE
DOCUMENTS WITHHELD UNDER
CLAIM OF GAMING PRIVILEGE AND
DEFENDANTS' MOTION TO COMPEL
DIRECTOR ROBERT MILLER'S
TESTIMONY AND PRODUCTION OF
DOCUMENTS REGARDING PRE-
REDEMPTION NGCB CONTACTS**

Hearing Date: September 25, 2017
Hearing Date: 8:00 a.m.

AND ALL RELATED CLAIMS

This matter came before the Court on September 25, 2017, concerning Elaine P. Wynn's Motion to Compel Stephen A. Wynn and Wynn Resorts, Limited to Produce Documents Withheld under Claim of Gaming Privilege and Defendants' Motion to Compel Director Robert Miller's Testimony and Production of Documents Regarding Pre-Redemption NGCB Contacts (the "Motions"). James J. Pisanelli, Esq., Todd L. Bice, Esq., and Debra L. Spinelli, Esq., of

1 Pisanelli Bice PLLC, appeared on behalf of Plaintiff/Counterdefendant Wynn Resorts, Limited
2 ("Wynn Resorts") and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert
3 J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone
4 Wayson, and Allan Zeman (collectively, with Wynn Resorts, the "Wynn Parties"). Donald J.
5 Campbell, Esq. and J. Colby Williams, Esq., of Campbell & Williams, appeared on behalf of
6 Counterdefendant/Cross-defendant Stephen A. Wynn ("Mr. Wynn"). James Kramer, Esq., of
7 Orrick Herrington & Sutcliffe LLP, appeared on behalf of Counterdefendant/Counter-
8 Crossclaimant Kimmarie Sinatra ("Ms. Sinatra"). William R. Urga, Esq., of Jolley Urga
9 Woodbury Holthus & Rose, Mark E. Ferrario, Esq., of Greenberg Traurig, LLP, and James Cole,
10 Esq. and Scott D. Stein, Esq. of Sidley Austin LLP appeared on behalf of
11 Counterdefendant/Counterclaimant/Crossclaimant Elaine P. Wynn ("Ms. Wynn"). J. Stephen
12 Peek, Esq. and Robert J. Cassity, Esq. of Holland & Hart LLP appeared on behalf of Defendant
13 Kazuo Okada ("Mr. Okada"), and David S. Krakoff, Esq. and Adam Miller of Buckley Sandler
14 LLP and J. Randall Jones of Kemp, Jones & Coulthard LLP appeared on behalf of
15 Defendants/Counterclaimants/Counterdefendants Aruze USA, Inc. ("Aruze USA") and
16 Universal Entertainment Corp. ("Universal") (collectively the "Aruze Parties").
17
18

19 Having considered the Motions, and all related briefing from the parties, as well as the
20 arguments of counsel presented at the hearing, and good cause appearing,
21

22 IT IS HEREBY ORDERED, ADJUGED and DECREED that the Motions are DENIED.
23 In light of the Nevada State Legislature's recent amendment of NRS 463.120 to include
24 Subsection (6), the documents and testimony sought by the Motions are confidential, privileged
25 and not subject to disclosure as a matter of law. In addition, the Court need not reach the issue of
26 retroactivity because the Motions
27
28

.....

.....

.....
are being heard after the effective date of NRS 463.120(6).

IT IS SO ORDERED.

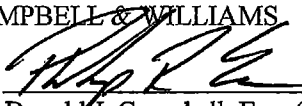
DATED this 26th day of October 2017.



THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT
CR

Respectfully submitted by:

CAMPBELL & WILLIAMS

By: 

Donald J. Campbell, Esq. (NV Bar No. 1216)
J. Colby Williams, Esq. (NV Bar No. 5549)
700 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Stephen A. Wynn

Approved as to form and content:

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

*Attorneys for Wynn Resorts, Limited, Linda Chen,
Russell Goldsmith, Ray R. Irani, Robert J. Miller,
John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
Kimmie Sinatra, D. Boone Wayson, and Allan Zeman*

HOLLAND & HART LLP

By: _____
J. Stephen Peek, Esq. (NV Bar No. 1758)
Robert J. Cassity, Esq. (NV Bar No. 9779)
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Kazuo Okada

.....
are being heard after the effective date of NRS 463.120(6).

IT IS SO ORDERED.

DATED this ____ day of October 2017.

THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

CAMPBELL & WILLIAMS

By: _____
Donald J. Campbell, Esq. (NV Bar No. 1216)
J. Colby Williams, Esq. (NV Bar No. 5549)
700 South Seventh Street
Las Vegas, Nevada 89101


Attorneys for Stephen A. Wynn

Approved as to form and content:

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

*Attorneys for Wynn Resorts, Limited, Linda Chen,
Russell Goldsmith, Ray R. Irani, Robert J. Miller,
John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman*

HOLLAND & HART LLP

By:  _____
J. Stephen Peek, Esq. (NV Bar No. 1758)
Robert J. Cassity, Esq. (NV Bar No. 9779)
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Kazuo Okada

.....
are being heard after the effective date of NRS 463.120(6).

IT IS SO ORDERED.

DATED this ____ day of October 2017.

THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

CAMPBELL & WILLIAMS

By: _____
Donald J. Campbell, Esq. (NV Bar No. 1216)
J. Colby Williams, Esq. (NV Bar No. 5549)
700 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Stephen A. Wynn

Approved as to form and content:

By: *James J. Pisanelli* (12698)
James J. Pisanelli, Esq. (NV Bar No. 4027)
Todd L. Bice, Esq. (NV Bar No. 4534)
Debra L. Spinelli, Esq. (NV Bar No. 9695)
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

*Attorneys for Wynn Resorts, Limited, Linda Chen,
Russell Goldsmith, Ray R. Irani, Robert J. Miller,
John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
Kimmie Sinatra, D. Boone Wayson, and Allan Zeman*

HOLLAND & HART LLP

By: _____
J. Stephen Peek, Esq. (NV Bar No. 1758)
Robert J. Cassity, Esq. (NV Bar No. 9779)
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Kazuo Okada

1 By: 

2 David S. Krakoff, Esq.
3 Benjamin B. Klubes
4 Adam Miller, Esq.
5 BUCKLEY SANDLER LLP
6 1250 24th Street NE, Suite 700
7 Washington D.C. 20037

8 and

9 J. Randall Jones, Esq. (NV Bar No. 1927)
10 Mark M. Jones, Esq. (NV Bar No. 267)
11 Ian P. McGinn, Esq. (NV Bar No. 12818)
12 3800 Howard Hughes Center, 17th Floor
13 Las Vegas, Nevada 891694

14 *Attorneys for Aruze USA, Inc., and*
15 *Universal Entertainment Corp.*

16 By: _____

17 William R. Urga, Esq. (Nev. Bar No. 1195)
18 David J. Malley, Esq. (Nev. Bar No. 8171)
19 Tivoli Village, 330 S. Rampart Blvd., St. 380
20 Las Vegas, NV 89145

21 Mark E. Ferrario, Esq. (Nev. Bar No. 1625)
22 Tami D. Cowden, Esq. (Nev. Bar No. 8994)
23 GREENBERG TRAURIG, LLP
24 3773 Howard Hughes Parkway, Suite 400 North
25 Las Vegas, NV 89169

26 James M. Cole, Esq.
27 SIDLEY AUSTIN LLP
28 1501 K. Street, N.W.
Washington, D.C. 20005

Scott D. Stein, Esq.
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, IL 60603

*Counsel for Counter-Defendant/
Counter-Claimant/Cross-Claimant Elaine P. Wynn*

1 By: _____
2 David S. Krakoff, Esq.
3 Benjamin B. Klubes
4 Adam Miller, Esq.
5 BUCKLEY SANDLER LLP
6 1250 24th Street NE, Suite 700
7 Washington D.C. 20037

8 and

9 J. Randall Jones, Esq. (NV Bar No. 1927)
10 Mark M. Jones, Esq. (NV Bar No. 267)
11 Ian P. McGinn, Esq. (NV Bar No. 12818)
12 3800 Howard Hughes Center, 17th Floor
13 Las Vegas, Nevada 891694

14 *Attorneys for Aruze USA, Inc., and*
15 *Universal Entertainment Corp.*

16 By: _____
17 William R. Urga, Esq. (Nev. Bar No. 1195)
18 David J. Malley, Esq. (Nev. Bar No. 8171)
19 Tivoli Village, 330 S. Rampart Blvd., St. 380
20 Las Vegas, NV 89145

21 Mark E. Ferrario, Esq. (Nev. Bar No. 1625)
22 Tami D. Cowden, Esq. (Nev. Bar No. 8994)
23 GREENBERG TRAURIG, LLP
24 3773 Howard Hughes Parkway, Suite 400 North
25 Las Vegas, NV 89169

26 James M. Cole, Esq
27 SIDLEY AUSTIN LLP
28 1501 K. Street, N.W.
Washington, D.C. 20005

Scott D. Stein, Esq
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, IL 60603

*Counsel for Counter-Defendant/
Counter-Claimant/Cross-Claimant Elaine P. Wynn*