

IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS LIMITED,

Petitioners,

vs.

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

Respondent,

and

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

Real Parties in Interest.

Case No.

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Elizabeth A. Brown  
Clerk of Supreme Court

**APPENDIX TO PETITION FOR  
WRIT OF MANDAMUS OR  
ALTERNATIVELY PROHIBITION**

**VOLUME XXXI OF XLIII**

DATED this 20th day of November, 2017.

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DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

WYNN RESORTS LIMITED	.	
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Plaintiff	.	CASE NO. A-656710
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vs.	.	
	.	DEPT. NO. XI
KAZUO OKADA, et al.	.	
	.	
Defendants	.	<b>Transcript of</b>
	.	<b>Proceedings</b>
. . . . .	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON MOTIONS**

THURSDAY, JUNE 4, 2015

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.

TX 656-001



APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.  
DEBRA SPINELLI, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
DAVID KRAKOFF, ESQ.  
WILLIAM R. URGAS, ESQ.  
DONALD JUDE CAMPBELL, ESQ.

LAS VEGAS, NEVADA, THURSDAY, JUNE 4, 2015, 8:55 A.M.

(Court was called to order)

THE COURT: Wynn versus Okada.

(Pause in the proceedings)

MR. PEEK: Your Honor, I don't know if you had a particular order, but --

THE COURT: Hold on a second. I have an issue.

All right. I have on chambers calendar on June 19th and July 10th I have a bunch of motions to seal and/or redact. Do any of you oppose each other's motions to seal and/or redact?

MR. PEEK: We do not, Your Honor.

THE COURT: And I'm going to advance all of the motions currently on that date to today and hear them along with the Aruze party's motion to redact, which is on calendar today. And given the lack of opposition to any of them, I will grant them all.

MR. PEEK: Thank you, Your Honor.

THE COURT: Now what order do you want?

MR. PEEK: We'd like to have the motion for sanctions first and the motion for protective order second and the motion to compel third.

THE COURT: So the motion for expedited discovery.

MR. PEEK: And the status conference I guess --  
pardon?

THE COURT: Motion for expedited discovery.

I wanted to talk about the translation IT protocol first.

MR. PEEK: Well, that's part of our status -- Ms. Spinelli and I have --

THE COURT: It's okay. I'll do it last.

MR. PEEK: We can do that first, if you'd like, Your Honor. Or last.

THE COURT: It has to do with some of the other issues --

MR. PEEK: We can do that first, Your Honor.

THE COURT: -- which is why I wanted to ask about it.

MR. PEEK: I think it'll be quick.

MS. SPINELLI: I think so, too. Yeah. Sure.

THE COURT: How are we doing on our translation IT protocol?

MS. SPINELLI: Well, actually, there's -- we got comments back from all of the parties just relatively recently, and the issues are very minor, Your Honor. And, quite frankly, I don't even know if they need to get into the protocol. I don't know if -- I think they are very minor. I think it'll take a conversation to work them out. And if they're not going to be worked out, I think that if we present the protocol to you as is, you would have zero problems with

it, quite frankly. So I think we're prepared to submit it after a couple of days.

THE COURT: Does that sound good to you, Mr. Peek?

MR. PEEK: It does, yeah.

THE COURT: Okay.

MR. PEEK: We have submitted comments to Ms. Spinelli, and I know she's been in trial, so I'm sure it's been a challenge to get back to us. But I think we can get it worked out.

MS. SPINELLI: It was just a week ago, so --

THE COURT: All right. So I'll --

Yes, Mr. Urga.

MR. URGa: Your Honor, my only comment was it was over a month before we got those comments back from the Okada parties, and they didn't give you any suggestions of the minor issues that need to be corrected. All I'm saying, it's easy to find issues. Let's also try to get up a solution.

THE COURT: You would like solutions?

MR. URGa: Yes.

THE COURT: Okay. Solutions are good. I'm in a problem-solving --

MR. PEEK: We could certainly schedule a conference call with Mr. Urga and Ms. Spinelli if Mr. Urga would like for what he thinks are the need for solutions. I haven't seen any comments from Mr. Urga's side recently.

MS. SPINELLI: Oh, no. They served, as well. I'm dark on Friday in trial, so I can [inaudible] on Friday, if you'd like.

THE COURT: So would you like to have a conference call together on Friday maybe?

MS. SPINELLI: I think that's a great idea.

THE COURT: That sounds like a lovely idea. Sounds like you're going to reach a solution on your translation IT protocol issues on Friday, and I'll schedule it for a week from Friday to hopefully on my chambers calendar see something from you for me to sign.

MS. SPINELLI: I think that that will be done, Your Honor, quite frankly.

THE COURT: Okay. Great. If it's not, we'll call and nag you. That was the only issue I wanted to discuss before I hit the motions, because to me it's interrelated with some of the motions.

MR. PEEK: Frankly, Your Honor, I don't think we have any other issues. We're progressing as we thought we were. There were certain timelines set out. Some of those are still out there. We expect on both sides to try to meet their timelines that we had proposed to the Court. So we'll do our best to meet those.

THE COURT: That's lovely.

Could we go to the motion for expedited discovery.

That's on your side of the table.

MR. PEEK: Mr. Krakoff is going to be arguing that.

THE COURT: Okay.

MR. KRAKOFF: Good morning, Your Honor.

THE COURT: Good morning.

MR. KRAKOFF: Always good to be back in your courtroom.

Your Honor, we're here on the motion for expedited discovery and for sanctions. We brought this motion, Your Honor, based on apparent discovery violations by Wynn Resorts and its director of security, Jim Stern. And we can see from declarations that were filed with the papers by Mr. Stern and by a senior universal accounting manager, Mr. Fujihara [phonetic], that there's more than credible evidence, Your Honor, that Mr. Stern contacted the highest-ranking accounting manager at Universal, defendant in this case, and directly or indirectly through a conduit sought to obtain information and/or obtain documents in an effort to initiate a government investigation and to gain a tactical advantage in this lawsuit.

Wynn's response, Your Honor, is that, yes, Mr. Stern did meet with the conduit, a disgruntled former Universal employee, repeatedly; yes, Mr. Stern did meet with the highest-ranking accounting manager the Universal numerous times. This is the man, Your Honor, who stole 35, at least,

confidential and proprietary documents from Universal. They acknowledge that Mr. Stern set up several meetings for this senior accounting manager with the Department of Justice and with the FBI, that he paid a substantial amount of money, that is, Wynn Resorts paid a substantial amount of money to transport him, travel expenses, hotel expenses, et cetera, and that he met, Mr. Stern met with the senior accounting official both before his meeting with the Justice Department and after. Essentially he chaperoned him while in San Francisco and in Los Angeles. And at that meeting, the first meeting with the Justice Department he showed -- he brought with him the 35 confidential and proprietary Universal documents, and he showed them to the Department of Justice.

THE COURT: And Mr. Stern was not in the room at the time --

MR. KRAKOFF: No, he was not.

THE COURT: -- they were shown to the Department of Justice.

MR. KRAKOFF: No, he was not in the room. And there's no --

THE COURT: I understand. But that I think is an important issue.

MR. KRAKOFF: And we don't -- it is an important issue. It's an important issue because what we are here for today, Your Honor, is really about what the appropriate

discovery should be and when it should be. Because --

So to go on, Your Honor, what Wynn says is that nothing about these efforts had anything to do with this lawsuit. And it's our view, Your Honor, that when you look at the history of the lawsuit, you look at the context of everything that's happened, that there's a totally different picture. As the Court knows, Wynn brought the lawsuit February 19th, 2012, after it had seized \$3 billion of shares owned by the Aruze USA, which is -- which Mr. Okada is the president of.

And beginning, Your Honor -- in the context of this case in 2009, beginning with Mr. Wynn's divorce, the Aruze parties owned 20 percent of the shares of Wynn Resorts, by far the largest shareholder, a threat to Mr. Wynn's control. So by 2010 it is apparent that Wynn Resorts wanted Mr. Okada out. Mr. Stern, the senior vice president, director of security, it appears that part of his responsibilities, Your Honor, was to help that happen. He worked for nearly two years, from the evidence that we can see, that is before the redemption to -- and before this lawsuit to dig up information that was disparaging and damaging about Mr. Okada. Beginning in 2010 his corporate security department did an investigation of Mr. Okada in the Philippines Project and found that there was no impropriety. In 2011 the company, that is, Wynn Resorts, hired another investigator, and that investigator investigated



Mr. Okada and the Philippines Project, and found no impropriety. And still in 2011, months before the redemption, months before the lawsuit, Mr. Stern was making connections with a group of enemies of Mr. Okada, disgruntled former employees, one of whom was the conduit Mr. Kosaka. And it was then, of course, February of 2012 that the lawsuit was filed, the lawsuit seeking -- that seized the shares, redeemed them, and ousted or sought to oust Mr. Okada on the grounds that he was not suitable -- based upon the Freeh Report he was not suitable to hold a gaming license in Nevada.

Your Honor, the very purpose of this lawsuit is judicial ratification of Universal -- of Wynn Resorts' finding that Okada was unsuitable. Undoubtedly a government investigation, undoubtedly a government investigation would damage the Aruze parties and serve Mr. Wynn's interests here. In March of 2010 -- 2012, only a month after the lawsuit was filed, Mr. Stern was encouraging the Justice Department to initiate an investigation, and months after that Mr. Kosaka, the conduit we know, was encouraging Mr. Fujihara, the highest-ranking accounting official at Universal to steal documents and to work against Mr. Okada, to meet with Mr. Stern.

Your Honor, we can see the strategy at work. Having an investigation by the government certainly helps -- helps them here because it would -- serves to establish that the

finding of unsuitability was appropriate. And we can see the strategy at work here. In every one of the pleadings that they file what we see is a reminder of the government investigation. Mr. Stern and Wynn Resorts don't deny that they wanted to initiate a government investigation, they don't -- they freely acknowledge that Mr. Stern worked to gain as much information as he could to turn over to the government, and there is -- we can see, Your Honor, as well, there's substantial agreement on the facts here between the parties.

What there is disagreement about is whether Mr. Stern promoted and encouraged the theft of documents, whether or not he did that directly or indirectly. There's disagreement on whether he reviewed and obtained those documents, and there's disagreement over who else was involved. And that's what, Your Honor, we suggest the unopposed discovery that we seek will help to determine. Interrogatories to Wynn Resorts or document requests, a 30(b)(6) deposition, and a deposition of Mr. Stern, as well as a letter rogatory to obtain the deposition of Mr. Kosaka, who is in Japan.

The only issue, Your Honor, we submit, before the Court today is when Wynn Resorts will meet its discovery obligations. We've been patient, we've been respectful of counsel's other professional obligations, but now we have a pressing need to determine what the facts are so that we can

determine what sanctions, if any, are appropriate.

In our reply, Your Honor, we set out a reasonable schedule for the interrogatories to be completed within five days, the document production within 30 days, the depositions, 30(b)(6) and Mr. Stern, in the month of August if that works for them or shortly thereafter if that is better for their schedules.

Also we've asked for the Court to issue a letter rogatory that we can take to the State Department to seek the deposition of Mr. Kosaka in Japan. That's what's before the Court, that's what we ask the Court to order. At this time, Your Honor, I'm happy to answer any questions. That's our position.

THE COURT: Thank you.

Mr. Pisanelli. And so I'll start with one question. How tough is it to move the Stern ESI up on the rolling schedule?

MR. PISANELLI: Well, I'll tell you how extraordinary this task is.

THE COURT: I'm sorry, Ms. Spinelli. I have to ask him.

MR. PISANELLI: Did you hear that sigh?

THE COURT: I did. I watched it, too.

MR. PISANELLI: Yeah. So put it in context. We're going to talk about some discovery in a moment which includes

from our client alone the ESI that we are managing for the company and the board of directors is approaching 1,000 requests for production of documents. We're going to debate what I think is a very modest objection to 80 of them that are so far afield as to, you know, approach the point of absurdity. But the point is we have, unfortunately, an army of people working to get this done. And because they have burdened us with nearly a thousand requests for production of documents, the task we've used in other contexts is herculean to manage them, to allocate them.

THE COURT: You're not sending people to Macau to look at them, are you?

MR. PISANELLI: Oh. Can you imagine how many people are going back and forth? You need to see what her passport looks like for going back and forth to Macau. So, yes, Your Honor, it is. And it would be an extra burden on top of what has already been I'll use the word "taxing" experience and exercise to begin with.

And let me say a few words of why we shouldn't be entertaining this. This motion -- you know, respectfully, I'm not going to be kind here. I think it's a sham motion that is just gilded with this phony righteous indignation that's coming from these defendants, because it's really some two what appears to me really transparent objectives of what we're really doing here. One, of course, is to shift the focus onto

Wynn and away from their clients, the Aruze party's clients who are the subject of many investigations and allegations about criminal conduct and is an attempt to try and even the playing field to say, oh, no, we don't have just one bad actor here, Wynn is bad, too. It sure feels that way with the mud that I've watched being slung back and forth, sometimes in footnotes, sometimes in headings.

And the second, of course, it certainly appears that this is an attempt to get behind the government investigation by trying to put all of their interests to find out what the government knows here inside this civil litigation without ever drawing the connection between the two.

So how do -- you know, what do we know about this motion that really shows that these are the real motivations and not any of this claim of victimhood that we're getting from this defendant? First of all, this motion, if you just look at it even superficially, asks Your Honor to do things that they could have done on their own. In other words, they didn't need this platform to come up here and stand and sling mud at Wynn and say that Mr. Stern and others are involved in this improper skullduggery. What we know is that you want to depose Mr. Stern, notice it up, go ahead, depose him. We've been trying to depose Mr. Okada since last year. We report to you I think every single status check that we're trying to get his depo noticed. We finally had do it on his own.

THE COURT: We're going to talk about that in a minute. We're not quite there.

MR. PISANELLI: But my point is with work with one another on depo dates. You want to depose him, go ahead, notice it up, and if we think you're doing it unreasonable, we'll come back to the Court. You want to depose Mr. Kosaka and get letters rogatory, go ahead. You want to issue requests for production of documents, they've done that, go ahead. There was no need to step up on this soap box, so to speak, and start saying how bad things are when they really don't know a single thing and it's all based upon this conjecture. Even Counsel today opened up his presentation saying, "apparent" discovery violations. Well, I would have thought before you come in asking for preliminary sanctions and later more draconian sanctions that you would have come in here with something more than "apparent," with some actual evidence.

So we also know, Your Honor, why there are some really ulterior motives here is that the motion itself I'm going to say goes -- is more than reckless and how far that they stretch these allegations. We can just stop -- I'm just going to use a couple of examples here. Right on page 5 of the motion we see the attack against Mr. Stern where they're saying he's making -- starting at line 11, that he's "making ex parte contact with this UE employee Mr. Fujihara with the

explicit purpose of obtaining internal confidential proprietary documents." Obtaining. "Stern persuaded Fujihara to breach his agreements by transmitting such documents to him," to Mr. Stern.

We then flip over -- I'm not going to go through all of them, but I think it's important to point this out.

Footnote 7 they say that -- this is just an interesting side note -- that after all of this motion practice and this cry of victimhood they actually qualify to make sure they're on both sides of the fence and tell you, but, Your Honor, make sure you understand we're not affirming or denying that these really are our documents. In other words, I don't know what the government has seen and so we're not going to admit that they really were our documents although they did come into court today and without qualification adopted them and told Your Honor that they were stolen confidential documents for their company. So I guess we can scratch out Footnote 7.

But, in any event, we look now to page 11, third bullet point. "Stern was introduced to Fujihara by Kosaka. Stern asked for documents regarding the Philippines Project." Again on page 14, "Wynn's unauthorized conduct of viewing the defendants' documents." Here's where I'm going with this. I'm sure you see it already. The only evidence they have of any of this is this Fujihara declaration. And we go to paragraph 16, where it says, "He," referring to Mr. Stern,

"then asked me whether I knew about financial transactions relating to the Philippines Project." You don't find anywhere in this paragraph 16 or Mr. Fujihara's declaration anything that supports those allegations I just told you. They actually tell Your Honor in an introductory paragraph that Mr. Stern is persuading Fujihara to give him documents, that he has viewed these documents, and it was all unsupported by a single citation, because it's unsupported by evidence. They do in passing give a mea culpa in their reply, saying, oops, okay, he didn't ask for documents about the Philippines, he just asked if he knew about the transaction. Oops? We're in a sanctions hearing and they say oops? And all they have is a declaration that says that Mr. Stern asked about a transaction that they have now converted into allegations, unsupported allegations that Stern obtained and viewed them? Well, I would think before you make reckless allegations like that we don't come in here with that oops moment, sorry, Judge, we were overreaching and stretching our position.

Now, here's I think the point of all of this. Defendants come in here with this inflammatory allegation and brief, but forgot one major thing. They forgot to tell Your Honor about any wrongdoing. They like to tell you, we're suspicious, we think that, you know, maybe apparent discovery violations. But they forgot to tell you that we did anything wrong, because we didn't. I'll tell you this up front, and



I'm not going to change my position. We don't deny that we've cooperated with the Department of Justice, nor do we apologize to the defendants for it. This is not an unusual circumstance for a victim of criminal behavior to cooperate with law enforcement in their investigation. And that's exactly what's been going on here. And the law is quite clear that we've cited in our case that there is nothing inappropriate about cooperating with a government investigation, in particular where a company like Wynn has been victimized by someone like Mr. Okada and his teams.

I find it interesting that out of desperation, because they don't have any real allegations of wrongdoing, they actually refer to the Federal Anti-Gratuity Act and acting as if there was some bribes going on because someone's lunch was purchased or the hotel or airfare was purchased to come meet with the DOJ. And we know that the Federal Courts addressing the Anti-Gratuity Act say that reimbursement of food and lodging, quote, "hardly the stuff of bribery," end quote.

THE COURT: Reasonable food and lodging.

MR. PISANELLI: So what it goes to, if anything, Your Honor, is if, if, and this is what I'm going to get to in a minute, this had anything to do with this case, we can talk about whether it has a bias issue the same way we do with experts and witnesses of the like, but hardly an issue that

goes to sanctions and reckless allegations of bribery.

So we know, also, Your Honor, that there's no prohibition against Mr. Stern's communications with Mr. Fujihara. What's lost in the mix here is that Mr. Kosaka and other UE employees contacted Mr. Stern. This allegation to you that he's out there fishing around and trying to get to these high-ranking officers in the company who they distance themselves from only to confirm whether his documents are theirs or not, trying to suggest to you that, you know, it's Mr. Stern that's around there digging around where it's actually the opposite, they came to him. And Mr. Stern has no knowledge whatsoever of what Mr. Kosaka has said to Mr. Fujihara or the documents requested.

I found it interesting that Your Honor asked the same question I did when I started going through this stuff of what are they alleging that we possess, what are they alleging that we have even viewed, "we" being Mr. Stern. And it's a hollow anti response. The answer clearly is, nothing. Because they don't know anything. But they're saying that, we're suspicious, and so now want to turn this case where we're responding to nearly a thousand requests for production of documents already, put all that on hold because now we want to focus -- I think in a phony manner -- focus on Wynn to give the appearance that Wynn is the bad actor here.

Here's another big problem with this case as it

relates to, you know, wrongdoing. There is no allegations and no evidence anywhere here, Your Honor, that we've even seen this stuff. That's Issue Number 1. Mr. Stern is very clear that he never asked Mr. Kosaka or Fujihara for the documents related to the Philippines Project, and he's never seen any of them. And nobody's said he has. And so that's the only evidence before you. They can depose Mr. Stern. Fine. And ask him and see what you can come up with. But most importantly is that they've never tied that criminal investigation of the DOJ and Wynn's cooperation with the DOJ to the extent it could or the DOJ wanted our cooperation, they've never tied it to this litigation. They've never shown you that Mr. Stern's part of our litigation team. You I'm sure don't even know who he is. He's been at one hearing here.

THE COURT: I know Ms. Sinatra. That's it.

MR. PISANELLI: That's it; right? Here's an interesting thing about Mr. Stern. You know who this litigation team is. You see us every time we're here. I can tell you for whatever it's worth to you, Your Honor, I think I've met him once in this hallway when we were here when the DOJ wanted a stay. Certainly not a part of our litigation team. He doesn't attend our litigation meetings, he doesn't have access to our documents. There are two different things going on here. One is the cooperation with the DOJ's

investigation into the criminal behavior of Mr. Okada and his companies, and, secondly, we have a litigation -- civil litigation team that is in front of Your Honor, operating appropriately and as efficiently as we can under difficult circumstances with a lack of tie between these two. Even if they ever did come before you with any real evidence of wrongdoing, rather than the innuendo that they're throwing out there, there's no tie between these cases, and that's a fatal flaw in their attempt to turn this civil litigate upside down because they want to know what's going on on the criminal side.

THE COURT: So how hard is it to move Mr. Stern's ESI up in the rolling production schedule? Because I heard the sigh, but I didn't get the answer.

MS. SPINELLI: It's actually a little bit more difficult, Your Honor, because these requests ask for communications from January 1st, 2011, forward to the present. And, as you know, when we're imaging the hard drives at the start of a litigation the date is not -- my hard drives are not imaged to the present. Obviously we have preservation holds, but this starts a whole new process again. And so I don't know. I'll have to speak with Wynn IT, I'll have to have new images, I'll have to collect additional data, because this just is not within our time -- the time --

THE COURT: Okay. So it's not part of the ESI

that's currently on the rolling production schedule.

MS. SPINELLI: That's right. It has to be gathered.

THE COURT: Okay. That was part of what I needed to know. Okay.

Anything else, Mr. Pisanelli?

MR. PISANELLI: I'm sure Ms. Spinelli will tell you that there is not a resource we are not employing to get everything done.

THE COURT: No. I know how hard I've taxed you guys between this and the Jacobs case, and you're in trial with Judge Scann. So, believe me, I understand on all of the law firms that have been involved in both cases the stress that has been placed because of the scheduling order.

MR. PISANELLI: And I appreciate that, Your Honor.

My final point is that stopping what we're doing, changing what we're doing, or adding more labor to what we're doing on hollow allegations like this, where there is no urgency, there's no basis to even suggest that there's a preliminary sanction or that there's some form of order that is necessary to right our wrong, tells us that we should leave this process exactly where it is. If they want to come back some day with a new motion, fine, we'll have that debate at that point. But it's such hollow allegations. And I should repeat not just hollow, but reckless allegations that stretch their single declaration beyond any credible interpretation.

I think that hardly should be rewarded, and we certainly shouldn't be prejudiced by now having to go back and change the machinery that we've created for this case simply because they want to know what the government's up to.

THE COURT: Okay. Thank you.

Mr. Krakoff, anything else?

MR. KRAKOFF: Just a couple of comments, Your Honor.

This is hardly reckless, hardly hollow. You need look no further than the declarations to see the connection. You need look no further to see -- look no further than at Mr. Stern's declaration itself to see what he wanted to do, and that was to obtain information. And we'll find out what documents. That's what we will find out.

This is not a sham, this is not a pretext, this is not about trying to get information out of the government. The government has nothing to do with this other than Mr. Stern and Wynn Resorts had a purpose, and the purpose was to generate a government investigation. Why? Lots of reasons. But one of them was because it could help them right here with the board's finding of unsuitability. And there is an unmistakable connection, Your Honor. Discovery will find that out. We've waited. We put this on an expedited calendar -- or request why? Because to us it looks pretty egregious. And we're not trying to make allegations that are not founded in the declarations that are before the Court. We just want to

find out what Mr. Stern will tell us. We want to find out what his documents will show us. We don't want to wait until next year, Your Honor, and we don't -- and we certainly shouldn't have to.

THE COURT: Thank you.

MR. KRAKOFF: Thank you, Your Honor.

THE COURT: Based on the information currently before me I'm taking no action on the sanctions.

But with respect to the motion for expedited discovery I'm going to grant it in part. The letters rogatory will be issued. That is a cumbersome and lengthy process. Good luck.

With respect to the interrogatories and requests for production I'm not going to give those an expedited schedule. They are going to be on the 30-day response period. My guess is you're not going to get an extension if you ask for one, so you should be diligent in getting that information and providing it.

If you want to schedule a 30(b)(6) deposition and Mr. Stern's deposition, I would encourage you to wait until you get the responses to the discovery. But because of the length of time I think your letters rogatory is going to take you to get through the Japanese and the State Department processes, I don't think the schedule you've given me is one you're going to actually meet.

So I'm not going to set any further hearing on sanctions. If you want to file a separate sanctions motion and you believe it's appropriate after doing some discovery, do it. But in the meantime serve your discovery requests, and they'll be answered in the normal course.

Ms. Spinelli.

MS. SPINELLI: Just one point of clarification, Your Honor. For the 30-day response to the requests for production of documents, is that -- I understand and what we've been doing before is providing our objections to those responses and producing the documents in response to all the RPDs in the normal course, our deadline being --

THE COURT: My guess is you don't want to do that in this one. My guess is you want to actually respond and object in the 30 days. That's why I asked if this was part of your rolling production; because if it was part of your rolling production, I was going to try and negotiate with you some stuff. But it's not part of your rolling production.

MR. PISANELLI: Well, actually it is, because they've now been incorporated in. And so by saying that we're not going to --

THE COURT: It's not part of the current rolling production.

MS. SPINELLI: I don't even have the documents --

THE COURT: That's why I asked the question about



five times.

MR. PISANELLI: I guess all I'm saying is that -- and Ms. Spinelli will correct me if I get this wrong, but we get 900 or so requests for production of documents, we're creating the process to gather and do all that stuff, they now add more to it, and it's now coming in part of the process. Your Honor's suggestion, and I hope it's not what you intended to say, is that they do get special treatment, that it's not going to be part of the process. So our intention was --

THE COURT: It is a separate --

MR. PISANELLI: -- to take it in part of the rolling process.

THE COURT: It's a separate process, Mr. Pisanelli. That's all I'm saying. It's separate and apart from the rolling production you're currently doing. These are not going to be treated with the same way you've been doing your grand, the large, huge task, herculean, whatever word you want to use ESI. That's why I was hoping we could move it up in the process so I could pull it into the process. You can't do that, that's okay, I understand. So it's going to be separate from that process.

MR. PISANELLI: Well, pulling it into the process I think is the fair thing from our perspective, because what you're asking --

THE COURT: I understand what you're saying --

MR. PISANELLI: -- by making it separate --

THE COURT: -- and I said no.

MR. PISANELLI: I'm just trying to make sure I understand you. Because now we have to create a separate process --

THE COURT: Perhaps.

MR. PISANELLI: -- just for these based upon, in all fairness, nothing. Remember, we're not talking about a represented party and attorneys meeting with them, et cetera. We're talking one employee meeting with another employee. And there's no allegation whatsoever that there's back-door discovery going on in this case. It's the government that's investigating this group of defendants.

THE COURT: Mr. Pisanelli, I am familiar with victims assisting the government in their investigation. I am unfamiliar with victims paying for the travel and lodging for parties associated with the person who's being investigated. I'm not saying it's improper. I'm just saying I'm going to let them do the discovery. And then if they want to bring another motion, they can bring another motion, okay.

MR. PISANELLI: That's fair. And all we'll do is, as we always do with Your Honor, is I think I understand, and if we just can't get it done because of everything else we're doing for them --

THE COURT: Then you're going to tell me.

MR. PISANELLI: -- we'll come to you and let you know.

THE COURT: That's right.

MR. PISANELLI: Okay.

THE COURT: But we're going to do the best we can.

Okay. The next motion I want to do relates to the supplemental responses to the third -- to the second and third sets of requests for production.

Mr. Peek.

MR. PEEK: Thank you, Your Honor.

I think both parties have categorized the documents that the Okada parties seek to have produced. They're documents related to issues in Macau. Issues in Macau have been broken down by each of the parties into four categories, the licensure or the grant of the concession to Wynn, discovery related to the --

THE COURT: So can I stop you and ask you a question. I know it's -- why do I have blacked-out people on my certificate of mailing or my certificate of service?

MR. PEEK: Your Honor, I think that had to do with the fact that there were folks on there that weren't covered by the confidentiality.

MS. SPINELLI: Yeah. There's some non parties on there, Your Honor, have that have signed up with Wiznet.

MR. PEEK: There's some non parties on there. So

we wanted to make sure that those parties didn't get the unsealed --

THE COURT: So you're able to say, no, you're not getting this --

MR. PEEK: Correct.

THE COURT: -- on the people that have signed for eservice? You can say, don't serve this person?

MR. PEEK: Correct. Because they're --

THE COURT: Okay. I didn't know that.

MR. PEEK: -- non parties, Your Honor.

THE COURT: Remember, I don't use that service anymore. There are other people who do that stuff.

MR. PEEK: Yeah. We have to use the eservice, and so Ms. Spinelli pointed out at one time some six, eight months ago that, oh, by the way, guys, you're serving documents that should be otherwise sealed in an unsealed manner to parties who should not get unsealed documents.

THE COURT: Okay. I was just wondering, because I noticed it, and it was like, well, that's odd, what's going on. Thank you. Sorry to interrupt, Mr. Peek.

MR. PEEK: No, no, that's fine, Your Honor.

THE COURT: Thank you for the explanation.

MR. PEEK: Thank you.

The second category, Your Honor, relates to the grant of a concession on 52-plus-or-minus acres in Macau on

the Cotai Strip. And certainly the Court knows and is familiar with the Cotai Strip and how important it is to the operation of any casino in Macau.

THE COURT: I am.

MR. PEEK: The third category, Your Honor, is the University of Macau contribution, and the fourth is the sale of a subconcession. Those are the four items related to the --

THE COURT: Four categories.

MR. PEEK: -- four categories.

Within the other categories are just generalized documents related to, as you've already heard, the government investigation, what activities they undertook with respect to the government, issues related to suitability as to what other parties had been investigated by the Compliance Committee, board meetings, the relationship, and the termination of relationships by Mr. Wynn and Wynn Resorts. So those are the board categories, Your Honor.

But I want to focus, if you will, Your Honor, on what we categorize and characterize within the body of our counterclaim the pretextual activities on the part of Mr. Wynn in seeking and obtaining the redemption of almost \$3 billion worth of stock owned by Aruze USA. And I think it's important, Your Honor, to focus on the timeline of events that led up to that pretextual redemption of Chairman Okada's stock

through -- held by Aruze USA.

What we know, Your Honor, from the facts within the body both of the counterclaim, as well as in the motion, is that from 2005 to 2010 Wynn was seeking a concession on the Cotai Strip in Macau, unsuccessfully, I might add, Your Honor, in that period of time. And actually that goes all the way up to 2011. But starting in 2005 they had announced through various filings with the SEC that they were attempting to seek a concession on the Cotai Strip.

In July 2010, as we know from both the complaint, as well as in the papers on this motion, that management conducted its own investigation. We know from what we just heard Mr. Stern was in charge of that investigation retailed to the Philippines. And it was related generally to the Philippines. It was not focused on Mr. Okada's activities within the Philippines, but it was focused generally on what is the political and economic environment within the country of the Philippines to determine whether or not it would be appropriate or not appropriate for Wynn Resorts to seek a gaming opportunity in the Philippines. Nothing within those reports that management had investigated related to Chairman Okada.

We know in December 2010 that the Arkin Group was retained to commence another investigation about the political and economic environment of the Philippines. We know from the

motion that the scope of the work of the Arkin Group did not include anything related to Chairman Okada within the body of that scope of the retainer letter. We've attached that.

In February 2011 we know that the Arkin report -- Arkin issued five reports to the board. Four of those reports say nothing about Mr. Okada. The fifth report, which was not contained within the opposition, but we referenced it in our reply, was a report by the Arkin Group that Chairman Okada had not in any way been involved in nefarious activities within the Philippines.

Let me back up just a minute in terms of this timeline of events. What we do know is the subject matter of the Freeh Report revolves around activities of UEC in Macau in September of 2010. September 2010, we know from the Freeh Report, that there are allegations of misconduct on the part of Chairman Okada in entertaining certain Philippine officials at the Macau resort in the Philippines. So that was something that was certainly known to both Wynn Resorts Macau and Wynn Resorts Limited, because they certainly, we know from all of the material that they gathered and they gave to Freeh from Wynn Resorts Macau that those activities had been undertaken and were known to both Wynn Resorts Macau and Wynn Resorts Limited.

I say that, Your Honor, because we know from some of the earlier timeline that I just showed you that the Arkin

Group was investigating the Philippines in December 2010 and then issued reports in February 2011.

We know that the Arkin Group reports were submitted to the board in February of 2011. The board met, the board discussed, and the board determined in February of 2011 that Wynn Resorts Limited did not and should not be making an investment in the Philippines, nor seek to operate gaming casinos in the Philippines.

Here's where it now gets a little bit dicey. In April of 2011 at a board meeting Mr. Okada objected to a contribution to the University of Macau, but not directly to the University of Macau, but instead to a foundation supporting the University of Macau, a \$135 million donation. Mr. Okada objected to that. We know in May of 2011 that the donation was approved. We know that shortly after the donation was approved that the donation for the first 25 million was funded. And I say it gets a little dicey now because what we now know is that beginning in the late summer and the early fall of 2011 Steve Wynn and his counsel begin to take action to force Chairman Okada to resign from the board, resign from his position as vice chairman, and to also sell his stock to Steve Wynn under threats of, we will investigate you, we will do bad things to you, we will make your life miserable. My words, not theirs. But that's what you glean and conclude.



We know that in September of 2011, shortly after the contribution to the UMDF, Wynn, after having sought for six previous years, from 2005 to 2011, is suddenly granted a concession. It is not finalized, because it has to be gazetted, published in the newspapers in Macau before it can be finalized and approved.

We know again in that fall period that there are meetings between Chairman Okada that include Mr. Wynn and Ms. Sinatra, as well as their outside counsel, Mr. Shapiro, who's in the courtroom here today, to discuss again, Mr. Okada, you should give up your directorship, you should give up your vice chairmanship, and, oh, by the way, you should sell your stock and if you don't sell your stock we're going to have Mr. Freeh investigate you and he will find out bad things for you -- about you in his investigation, resulting in potentially a redemption of your stock. Those are all events that happened in October -- starting in September and continuing through October of 2011.

We know that Mr. Freeh was retained in October of 2011 to conduct an investigation into the activities of Mr. Okada. But what we also know is in the letter from Mr. Shapiro to representatives of Mr. Okada he lists within his letter all of those items that will be investigated, none of which -- none of which on that list include activities of UEC and Okada and Aruze USA in Macau in September of 2010. That

list didn't include it as a reason for the investigation.

We know that over the course of the next three months -- I say three months because it apparently began sometime in the beginning of November 2011, based on documents sent from Macau Resorts to Mr. Freeh, that he was looking not at activities in the Philippines, but activities related to the entertainment of Philippines officials in Macau at the Macau Resorts -- at the Wynn Resorts in Macau. We know that that February 2011 -- we know that in February 2011 that the issuance of that report and submission of that report to the board resulted in the redemption.

We also know from the allegations of the complaint that that report was not submitted to Mr. Okada either during the board deliberations or even after, despite the numerous requests from Mr. Okada to receive that.

We believe, Your Honor, that all of those facts in that timeline support the inference, not just a suspicion, but an inference that based upon the fact that Mr. Wynn was losing control of Wynn Resorts as a result of his divorce in 2009 and the separation of the stock in 2010 between himself and his now former wife, Elaine Wynn, resulted in his loss of control.

We know from the allegations in the complaint that this was something that had been -- that had happened to Mr. Wynn when he was in charge of Mirage due to the takeover by MGM and Kirk Kerkorian. We know that from the allegations in

the complaint that there were allegations that the investigation or that the takeover by MGM was precipitated in part by MGM's accusation against Mr. Wynn of misuse and misappropriation of corporate benefits.

So all of those, Your Honor, draw inferences that the activities of Mr. Wynn with respect to Mr. Okada were pretextual, that he was concerned about the fact that Mr. Okada's investigation into the contribution of the UMDF might not only disclose improprieties with respect to that contribution, but also might investigate and show improprieties related to licensure or the grant of concession, might also relate to activities in the acquisition of the Cotai Strip, and might also relate to the sale of the subconcession. So it's -- and we have presented to you, Your Honor, documents that support the fact that there were improprieties, and we want to investigate those improprieties.

What do we know about the licensing? We know that there are payments made to the accountant, accounting firm that was involved in the advice to the committee that was going to award the concession; we know that there is a gentleman by the name of Francis Soh, who submitted and was reimbursed for payments that he had made in entertaining Macau officials. Wynn says, well, that was only \$1750. I don't think that FCPA violations are predicated upon the amount of the contribution, the amount of the alleged bribery, because

we do know that there were.

What we also know, Your Honor, we submitted to you and pointed out in our reply, is that the notion that there was only \$1750 is belied by at least a report on the reimbursements to Mr. Soh in the amount of some \$85,000. And when you look at that exhibit, I think it's Exhibit 33, you will see that there are payments made, and what it appears to me is that there is an allocation, if you will, of \$85,000 to the capital contribution of Mr. Wynn based upon his payments to Francis Soh of some \$85,000. We don't know enough about that, but we do know that not only was there \$1750 reimbursed, but there's another \$85,000 reimbursed to Mr. Soh. We don't know what those activities were or what the basis for the nature of those reimbursements were to Francis Soh. They say, well, he went to San Francisco, we paid for his travel to San Francisco, we paid for his travel to Hong Kong, we paid for all this other travel. But what we don't know is exactly what were those travels for. Did those travels include entertainment of Macau officials in Hong Kong or entertainment of officials in San Francisco. That's what we seek discovering.

With respect to the Cotai Strip what do we know about that? We know that there is a very close relationship between Edmund Ho and others in that company that was paid \$50 million. We know that from the documents that we

submitted. And you'll see, Your Honor, that you won't find in our I think it's Exhibit 43 the name Edmund Ho. But what you'll find is the name of Ho Hau Wah. And I don't know if I say that correctly. But we submitted at least evidence of five separate entities into which Mr. Ho is an investor and part of the same group that was receiving the \$50 million in the Cotai Strip.

We don't even know, Your Honor, whether the group, the Tam Chau group even had an interest in the 52 acres. It's not clear both from the disclosures that are submitted by Wynn, nor are they supported by any documents that we could find or have been found in Macau. And we also know that there is anti-corruption group that is at least investigating, and they also wonder, based upon reports from The Wall Street Journal, as to whether or not this entity that was paid \$50 million had any interest whatsoever that it could sell for \$50 million to Wynn Resorts to be able to develop on the Cotai Strip. What we do know, though, is that that group that was paid \$50 million had a very close relationship with Edmund Ho, the senior executive -- or the executive of Macau, if you will, the governor of Macau.

THE COURT: I've heard that name in other hearings.

MR. PEEK: You have heard that name in other hearings.

We certainly do know, Your Honor, that the

contribution to the UMDF was made. They don't debate that. They haven't given us all the documents. There's still some objections related to the UMDF contributions. But what do we know about the UMDF contributions? What we do know is that it was not directly to the university, it was to an entity that is supposedly going to fund the university. We don't know who's involved in that, we don't know why it wasn't made directly to the university, because generally those types of donations are made directly to the university. They say, well, we're just being philanthropic. Certainly we want to know what other contributions Wynn Resorts has made in the state of Nevada to our University of Nevada Las Vegas or to the University of Nevada in Reno, as opposed to outside our country. Because Wynn has certainly been a large part of the Nevada landscape for over 40 years.

So those, Your Honor, I think all support within the body of the allegations the inference of pretextual, and we want to go back and look at, well, were you engaged in improper activities.

They say to you, well, we disclosed all of these things in our 8K, we disclosed all these things to the board. Well, the last time I looked in both shareholder derivative cases, as well as security fraud cases, the defense of I disclosed it in my 8K really supports many inferences of the fraud of the company in its improper disclosures. Many

lawsuits, as the Court knows, have been brought by a number of companies both as shareholder derivative actions as well as in securities fraud cases that the information that you gave us in the 8K is not information that was truthful and that was accurate when it was given and therefore you caused the shareholders harm. In this case we're talking about the same thing. To say that, well, I gave you this information in my 8K does not relieve them of the obligation to produce documents that would support the accuracy and the truthfulness of those statements, as opposed to misrepresentations made in those statements about the Cotai Strip, about the UMDF contribution, about their licensing, and about their sale of the subconcession, all of which we say, Your Honor, supports an inference of pretextual activities on the part of Mr. Wynn and Wynn Resorts Limited.

They say, well, we gave information to the board. But they don't want to give us that information to the board. Well, what's important about that information they gave to the board? Again, did they disclose all information to the board that was necessary for the board to make informed decisions in good faith about contributions to Cotai, a concession agreement and the payment of \$50 million, about contributions to the UMDF? Was all that information given so that that board could make that informed, reasonable, and good-faith decision? If it wasn't, it certainly goes to the pretextual

argument that we make.

We also, Your Honor, in our complaint we do make statements that would support the requested discovery, because they're part of our counterclaim. On page 8, paragraph 32, we say, "Serious questions now exist about how Mr. Wynn used the money --" that's having to do with the money that Mr. Okada gave him in April of 2002, where he made two additional contributions totalling \$120 million, thirty of which apparently went directly to -- for Macau and I guess the other \$90 million went to Valvino. Anyway, "Serious questions now exist about how Mr. Wynn used the money and whether Mr. Wynn used the funds for his personal benefit and/or for other inappropriate purposes." Mr. Soh an inappropriate purpose. So we do have allegations within the complaint.

And I was reminded, Your Honor, as I was reading through the third amended complaint that there was also an order by this Court related to the production of those documents in the books and records case, none of which have been produced -- excuse me, not all of which have been produced. And there's allegations of that, Your Honor. Whether or not Mr. Pisanelli agrees with me is the subject of another discussion at another time.

THE COURT: Always.

MR. PEEK: If he wants to say me he has produced all documents related to --



THE COURT: So can I ask you a question. Can I stop you. Because this relates to that issue.

Documents relating to the formation of Wynn Macau and its acquisition of the original gaming license, a license that was granted in 2002 that relates to at least by one designation Requests Number 89, 114, 123 through 124, 126, and 249. I understand the other issues that are categorized, but that particular group, tell me how that relates or could lead to the discovery --

MR. PEEK: As to the formation?

THE COURT: The formation issues. How does that relate to this litigation?

MR. PEEK: Your Honor, we have a fraud complaint that relates to information that was given to Mr. Okada at the time of the formation about how the money was going to be spent, when the money was going to be spent, who those investors were. We have allegations, Your Honor, that relate to -- all of which surround the amendment to the articles of incorporation and the -- I'm trying to think -- search for the right word, but the -- we know that in June of 2002 there's a contribution agreement, and we know that before the contribution agreement is fully executed that Wynn, while he was still the founder and sole shareholder, before he'd made the contributions to equalize the ownership that he amended the articles to include now this new provision with respect to

redemption. Did that unilaterally.

THE COURT: But how does that relate to WRM?

MR. PEEK: You mean in terms of the licensure, Your Honor?

THE COURT: Yes. The formation --

MR. PEEK: In terms of the receipt of the concession to operate in Macau?

THE COURT: Its acquisition of the original gaming license in 2002.

MR. PEEK: I'm sorry. I missed the point, Your Honor. My apologies. What we have at least pointed out to the Court are two inferences that we've drawn. One is the moneys reimbursed to Francis Soh, who we know from the Exhibit 33 that Francis Soh, at least in his request for reimbursement, says -- I think there's two entries, one for \$250 and one for \$1500 -- that he was entertaining Macau officials. That's at or about the time that the concession is being granted. Concessions were granted, as I recall, in February 2002, and here we have Mr. Soh seeking reimbursement for entertainment of officials related to the grant of that concession to Wynn Resorts Macau.

What we also know from at least what we pointed out in our papers is that there were payments made to an accounting firm, that the accounting firm was a firm that had been retained by the committee for concessions to evaluate

each of the concessions. There was at least points scored -- and I know this actually from other litigation, Your Honor, in which Mr. Pisanelli and I have been involved, that this company made recommendations to the committee that was going to award the concessions. We know that that same firm, that same accounting firm was given payments by Wynn Resorts. So those draw the inference again, Your Honor, that there was misconduct and that we should be permitted based on the pretextual allegations that we've made within our counterclaim that it was to shut up Mr. Okada, not only to shut him up with respect to the UMDF contribution, but to shut him up further with respect to other improprieties of Wynn Resorts and Steve Wynn with respect to the concession, the Cotai Strip. So it's not just the UMDF, but it's also other improprieties.

So, Your Honor, when we look at the second category -- and I know I'm going longer than I had anticipated -- about government investigations, I think that's already been covered by Mr. Krakoff, so I think we're probably square on that one if we get some additional discovery on that one. And I'm sure that they will also now withdraw their objections to documents related to the government investigations and what they provided the government. But, if not, Your Honor, we certainly say that those documents that they gave to or correspondence with or commissions with or to the DOJ, the NDCB, and perhaps even to the DCIJ in Macau are fair game for

discovery in this case.

We come to the suitability issues, Your Honor. And this again goes to the pretextual. What we know is that there was this investigation by Freeh. They characterize it as an investigation beginning in 2010, extending into 2011 both internally and externally with the Arkin Group that went to the suitability of Mr. Okada, and they were looking at it very early on. And we want to know, well, okay, if you're going to be consistent in your investigations, tell us what other investigations you did conduct. I mean, for example, we know from what we've attached, Your Honor, that there is at least a complaint not from just some gadfly, but there's a complaint filed in Massachusetts by the City of Boston in which they point out what they believe in the City of Boston complaint of improprieties of Wynn in dealing with and purchasing property from known felons. That's the allegation in the complaint. What did the compliance committee do about that? What did Governor Miller and his group? And we know that the compliance committee is comprised of Mr. Miller and two senior people from Wynn Resorts. This is not an independent group. This is a group controlled and dominated by Wynn Resorts and Steve Wynn and its general counsel. So what did they do to conduct that investigation? That's important, as well, Your Honor, because it goes to the pretextual argument that we make, that this was done because he was going to lose control

and because of the fact that Mr. Okada threatened to and was going to blow the whistle on other activities.

This goes, Your Honor, not to -- and I know I'll hear this from my colleague, my respected colleague Mr. Pisanelli about we're trying to twist the direction here, were trying to shout out -- and I just heard it from him -- allegations of misconduct of Wynn in order to cover up our own allegations.

I'm reminded, and I won't say from which Shakespeare play, because Flo will correct me if I get it wrong, that we think the lady doth protest too much. What are they afraid of? Why don't they want us to know about these other activities? They say, well, it's unduly burdensome. And you'll hear the thematic of, well, we have a thousand requests for production. Well, we've put it -- we broke them down, Your Honor, in these so as to avoid the argument that, you lack specificity, that these are not focused, that we don't know what you mean, tell us what you mean. So we broke them down into small pieces, into baby steps so that they would understand them. And they say, well, gosh, it's unduly burdensome. Well, unduly burdensome is not a defense when you're dealing with a \$3 billion case, and it's not unduly burdensome when you look at the list of counsel representing Wynn. We know that there is at least the local firm of Pisanelli Bice, we know that we have Glaser Weil, as well.

And the Court's familiar with that firm. Mr. Shapiro's in the courtroom with us today. So you've got two very good firms. And then what do you also have? You have Wachtell Lipton, as well, on the pleadings. Certainly I haven't seen them here, but they're on the pleadings. So when they say, it's unduly burdensome and we can't get this all done, and, oh, by the way, we have all these other cases, well, I have those same cases. I have at least one other case with them that the Court has scheduled for trial and we've done no merits discovery. And I know that Ms. Spinelli and Mr. Pisanelli are very intimately involved in --

THE COURT: And you're going to be ready prior to the expiration of the five year rule unless somebody else orders a stay.

MR. PEEK: I'm going to do my best, Your Honor, to be prepared. But to use that as an excuse, I'm reminded as a young lawyer that I appeared in front of Judge Bruce Thompson -- that is going back, that just shows how old I am -- when a lawyer made sort of the same complaint to the judge, I have all these other things to do, Your Honor, this is too much for me to handle. And Judge Thompson looked down at that lawyer and said, well, then you shouldn't have taken this case. If you can't do the job, if you can't stand the heat, get out of the kitchen.

So to argue when you have three large firms managing

the discovery that it's unduly burdensome is not a good defense, particularly when, as we have shown Your Honor, that all of the documents that we request are not only relevant and for the jury to decide whether it was pretextual, but they are also reasonably calculated to lead to the discovery of additional evidence. That is the standard, not relevance. Because we see a lot of relevance objections here.

So, Your Honor, I would ask the Court to grant our motion, not in part, but in full to require them to produce all of these documents.

THE COURT: Thank you.

Mr. Pisanelli. And if you could be brief. Otherwise, I'm going to ask the two other parties who have short things if they want to go. Short things does not include the R-J and the Las Vegas Sun. Are you going to be brief, or long --

MR. PISANELLI: Whatever Your Honor wants to do.

THE COURT: -- compared to Mr. Peek?

MR. PISANELLI: I'm -- well, that's an easy [inaudible].

THE COURT: Judge Togliatti asked when you were going to stop talking, because I had said I would respond when you stopped talking. So --

MR. PISANELLI: When he stopped talking, or when I did?

THE COURT: No. I'm getting ready to respond to her right now, so --

MR. PISANELLI: I'll get to the point, Your Honor. But it's not going to be two minutes. There's lots of stuff that was thrown out there that has to be addressed, but I won't dwell on it.

The first thing, of course, that comes to mind is never let the facts get in the way of a good argument; right? Counsel tells us that the timeline supports the inference of pretext, "pretext" probably the most used word in the presentation, both in the briefs and today, because apparently that opens up discovery to anything the Okada team wants. Apparently, Your Honor, Mr. Okada, despite his own difficulties and troubles with the law, has appointed himself as the police of this company and the regulator and the auditor and that he's going to turn the company upside down even going back before it was created and long after he was dismissed from the company to try and find anything, whether it was somebody 10 years ago who may have had a citation or a problem with marijuana use to where did every dollar go that he brought into the company. I've yet to find any authority that entitles a party like Mr. Okada, who's no longer associated with this company, that allows him to appoint himself the auditor of this company with a blank check to go in and demand anything he wants. When you put it in the



context that this entire pretext is based upon this timeline then you realize that there really is no factual nor legal reason to allow him to go in and conduct this abusive discovery.

And let's be clear. You have not heard from me once, nor will you hear from me that my team is unable to respond to one of their requests for production of documents or a thousand that he's given us. That will not stop me ever from complaining that they're abusive and have no place in this discovery process or that they are not allowed under the rules. When I did suggest in our last argument that it shouldn't be allowed it's because this group of defendants has given us all of these requests for production of documents and now wants to stop the train and start a new process because they're worried about what the government has in their hands. That's not because we don't have the ability to do it. So I'll leave that issue alone for the time being.

So let me just point out the very big flaw in this pretext argument. First of all I think it's fundamentally flawed in and of itself, that we have to keep this in context. The central issue of this case, and Your Honor has said it before in some we'll call it peculiarly timed motions for summary judgment from these defendants that this is a business judgment rule case. Let's not ever lose focus on that, that we are going to decide that the central issue is whether the

board of directors appropriately exercised their business judgment when deciding that Mr. Okada was unsuitable and that he needed to be removed from the company in order to protect this company's main and primary asset, its gaming licenses. And so this audit to find any bad act before, during, or after his tenure cannot be the basis to sweep aside what the case is really about. It's a business judgment rule case. Is there 2 billion or \$3 billion, whatever the number is, that was in value that was redeemed short? But the dollar value in and of itself means nothing, all right. You have cases all the time that are highly complex that really don't have a lot of money at stake, and you have lots of cases that have the opposite, there's a ton of money and not so complex. And so the money doesn't dictate how much discovery you get. In other words, you don't get a request for production of documents with every dollar you're asking for in the case. We look to what the central issues in the case are, and that's what should govern the behavior of these parties.

So in this central -- or this business judgment rule case we have a party who wants you to say, that has nothing to do with the discovery. They want to audit. It's plain and simple they want to do an audit. And the law doesn't permit it.

Now, even if you were going to allow this type of pretext debate, the pretext doesn't apply here when you

actually put in context how these investigations, including Mr. Okada's behaviors, came about. Counsel has his timeline backwards. We didn't start any investigations or continue and follow up on investigations because of Mr. Okada's objection to the Macau donation. It actually is the other way around. The summer of 2010 is the Stern investigation that Counsel has referenced to where we were investigating the concept of doing business in the Philippines. What Counsel forgot to tell you, Your Honor, is that when that report was presented to the board of directors that's when alarms were going off everywhere because Mr. Okada wouldn't answer and was evasive about his experiences and activities in the Philippines.

Moving in that same year into the fall, that's where the articles, the Reuters articles were coming out about what has been called the midnight deals and certain companies seeking a license there. We went in in December of 2010, January of 2011, and February of 2011 to hire the Arkin firm. The Arkin firm was looking into Mr. Okada's activities in the Philippines. We didn't just get interested in Mr. Okada after he made what he is now characterizing as an objection. And I'll get to that in a minute. We were ahead of him and worried about him. In February of 2011, Your Honor, the same board meeting where Mr. Okada -- this is when the Arkin reports were presented to the board -- Mr. Okada at that time sent alarms throughout the company when he said in casual

terms, and I'm paraphrasing, that what are you so worried about, everybody knows that you just conduct your bribes through third-party conduits, you don't have to be so worried about it, no big deal. What? That is what preceded any of his claimed objection to the Macau donation. The Macau donation didn't come until April of 2011, and that's hardly an objection. This is the person who was objecting at the most to simply the duration of the donation, not the concept of it, and he actually was attending the ceremony, the presentation to the Macau -- to the University of Macau.

This concept, by the way, and this insinuation to Your Honor about the fact that the money was donated to a foundation really is I think outrageous. Any one of us in this room that donates money to our alma maters or otherwise, even our local university, knows that that you do through foundations for the support of any particular university. To claim that there is something nefarious because there was a foundation that supported the University of Macau is supported by nothing and only intended to suggest again to Your Honor, like the rest of this debate, that something is wrong at Wynn Resorts.

And so here's the point. Counsel says that we're trying to shut him up, that this is why he gets to do an audit of this company, because once objected to the University of Macau, then all of his bad behavior having to do with the

Philippines, all of his troubling and bad behavior having to do with his dealings with Philippine officials while in Macau shows an inference that this was just some -- having nothing to do with his bad behavior, but we wanted to shut him up. But we now know that it's the other way around. And since the timeline was so fundamentally flawed, his pretext, the license to go in and audit this company fails, fails factually and fails as a matter of law.

So, Your Honor, no one in this courtroom needs to tell you the standard of discoverability. But what we do know --

(Pause in the proceedings)

THE COURT: Mr. Pisanelli, I am sorry for the interruption, and so are my staff.

MR. PISANELLI: It's all right. That's not a worry, Your Honor.

My point was only this. We have for our company alone, I now have a calculation, we'll call it 918 requests for production of documents covering every possible issue in the history of this company that you can imagine, board and narrow alike. That doesn't count the requests for production of documents that went to Mr. Wynn, doesn't count the ones that went to Mrs. Wynn, which are 100-plus each, as far as I know. And so we have to ask the question -- whether we have one lawyer representing these defendants has nothing to do

with the issue. But we have to ask the question what is this defendant or these group of defendants up to here, what law can they possibly be relying upon that would allow and permit this type of behavior. We can look and we can parse through and see the ones that we've objected to. And you know what, Your Honor, had I come to you saying, I'm objecting to the whole slue of them, all right, different debate. But we're saying that these 80 are just beyond the pale and they're still complaining about them. We have to question whether there is not really just an interest to be the self-appointed auditor of this company, but whether there's actually an intent to inflict pain on this company by way of distraction, by way of attorneys' fees, et cetera. And those are not bad things. Again, I don't care who the party is and how much is at stake. If you are unnecessarily inflicting pain by way of the discovery process, using it as a sword, the law says that that's not permitted.

When we start looking at these many different categories of requests and just filter it through the standard of whether they are discoverable we see that they really are just so far afield that there's no good-faith foundation for them. We know that you cannot get a discovery campaign, I'll use that word, on mere suspicion or speculation. Let's assume there was real evidence, not an upside-down timeline that's been shuffled like a deck of cards to give this false

inference, but let's say that they actually came to you on one specific thing having to do with the exercise of the business judgment of these directors. All right. Let's have that discussion. But every single thing that Counsel went through with you -- and I'm prepared to rebut why every single one of them in their papers is not suspicious if you want to hear that, but every single one of them is just their opinion, the, oh, this looks like there might be something there, oh, that looks a little suspicious, I want to know who that person was that got that donation, I want to know who that person was entertaining for a \$12 reimbursement for a soda or whatever it is that they're complaining about. How about actual evidence on any particular topic that matters to this case? That's what we're asking of you. We took as liberal approach as we could in responding and moving forward with 800-something of these. But at some point these things are so board it has to come to an end.

Now, I don't want to tax your patience with me by going point by point on these categories, but I'll do that to show you that they're not suspicious at all, Your Honor. But the reason I hesitate and even offer it to Your Honor if you want hear it, because their opinion of suspicion with any tie, number one, to real evidence or tie to this actual case has nothing to do with the discovery, whether it be issues surrounding the formation of the company, whether it be these

issues surrounding again the formation of Wynn Macau or even the University of Macau has nothing to do with the business judgment of the directors when they were presented with the Freeh Report in February of 2012.

What we have in Wynn, Your Honor, which I think cannot be lost in this discussion, when they are talking about suspicions two things we should keep in mind. One is because of Mr. Okada in part and because we're a highly regulated company, Wynn Resorts is investigated seemingly by everyone, by Nevada Gaming for sure, by the SEC, and with these very allegations that he has lodged elsewhere not one thing has been found -- have we been found to have done anything wrong. And they ask you, oh, just dismiss that, and they come up with an excuse of why I guess the government agencies are not good at their own investigations. But also keep in mind for this company that they claim to be involved in these suspicious activities, do you notice how Counsel also wanted you to dismiss the fact that Wynn Resorts doesn't keep their business secret. Wynn Resorts is a highly transparent company that discloses all of these things, all of these things that they're claiming we'd like to get behind them and see if they can find some bad doing. We showed how we were disclosing these things at every step along the way in 8Ks and disclosing them in a timely manner. His response is, oh, ignore that, that doesn't mean that it's not suspicious. Suspicious in



whose view, Mr. Okada's? Is that really the standard for discoverability of conducting this audit because this transparent, highly regulated company is disclosing every aspect of these deals that they're hoping they can find some dirt about.

So, again, I defer to Your Honor, whether -- pick one. I don't care. We can show you why all of these different categories that are in the papers are not suspicious at all, are perfectly legitimate, perfectly disclosed in our public filings, and perfectly disclosed to our regulators, who keep an eye on virtually every single thing we do. At some point we have to tell the Okada team here that enough is enough. I certainly have never encountered a case with a thousand requests for production just to one set of defendants, forget the other ones. Not ever. I don't know that I can add up all of my cases currently pending right now that'll get me to a thousand. But we're doing it, and we're going to do it, and we're going to get it done. But that doesn't mean that we're willing to waive our objections. We've objected here on fair and appropriate grounds. They are stretching so far to find dirt -- that's really what this is about, fishing to find dirt. Well, fishing to find dirt, there is no law anywhere that says that you're entitled to do that simply because you come up with the word "pretext." Pretext. Pretext has nothing to do with this case. Business

judgment has something to do with this case. At least let's find some evidence of why these directors should have been suspicious about one transaction or another, or, more importantly, why any of these directors should not have relied upon the information that was brought to their attention or did not rely upon the information that was brought to their attention. Then we can have a fair debate of whether Mr. Okada should be the police here and do this audit. But short of that, this is beyond abusive. We've objected to a very, very small percentage of these. We're going to produce more documents than they ever really were entitled to in the first place, and we're asking Your Honor to just tell this team over here that enough is enough, you've got enough and after you get these rolling productions come back with a real excuse of why you need more and we'll have that discussion then.

THE COURT: Thank you.

Mr. Peek, five minutes or less. Then I'm doing One Trop, Cay Clubs, R-J-Las Vegas Sun while you all take a personal convenience break, and then I will resume with your last motion.

MR. PEEK: Thank you, Your Honor.

I think I'm hearing an argument on a motion for summary judgment, or maybe I'm hearing an argument on a motion in limine, as opposed to discovery, and it is that there's no genuine issue because I tell you --

THE COURT: Tell me why -- and I'm picking one -- Request for Production Number 89, which is in your Exhibit 2, is going to help me get to a decision point in this case some day. Do you want me to read it? Because it's really short. It says, "All documents concerning Steven A. Wynn, Wynn Macau, or WRL's obtaining the Macau land interests and license, including, but not limited to, any communications with consultants, finders, bankers, lobbyists, middlemen, or intermediaries of any type." And this is just the acquisition of the land interest.

MR. PEEK: The land interest in Cotai? Or are you talking about the concession?

THE COURT: I didn't do the question.

MR. PEEK: Well, I'm trying to -- Your Honor.

THE COURT: Land interests and license.

MR. PEEK: Well, because there are two things in there. So that -- I understand. All right.

THE COURT: It's your question, not mine.

MR. PEEK: All right. Let me look at it, Your Honor.

THE COURT: It's Number 89. So it's on page 15 of 46 of Exhibit 2.

MR. PEEK: Your Honor, that is focused on the original licensing, original concession that was granted, as opposed to the Cotai concession.

THE COURT: Correct.

MR. PEEK: So --

THE COURT: My question is how is this particular request going to move this case forward.

MR. PEEK: Okay. I'll go back, Your Honor. And one thing I did not provide you is that we believe that there were improprieties related to that. So if you want -- I want to know what those communications were with others, what those disclosures were with others. For example, what were the communications with the accounting firm, what were the communications with the investment bankers who may have been involved in this transaction? We know, as well, that there was -- and I didn't cover this earlier, but there was what I call the five for \$50 million transaction where an initial group of investors came in with five and two years later -- \$5 million, and two years later they \$50 million. That group still has connections, as well, with the government, so we want to know about that. That would be one of those groups. As to whether that group was bought by an investment banker or other consultants, because they say, well, we had to have a Macanese resident in order to be part of this initial formation and initial ownership, so that would certainly go to, okay, what investment bankers were you talking to, what consultants, who brought them, how did they bring them to you, how did they then up with a \$5 million interest that converted

later, two years later, to a \$50 million. So, yes, that answers that.

THE COURT: Thank you. That was what I had asked twice before. So I was just trying to get an answer to my question.

MR. PEEK: My apologies, Your Honor, if I misunderstood the question.

THE COURT: It's okay. Thank you. Is there anything else you wanted to add?

MR. PEEK: Your Honor, I want to focus on the business judgment rule, because they seem to want to hide behind the business judgment rule and say, that's all you get to find out is what did we know at the time that we made the decision to redeem. And, Your Honor, we're certainly entitled to know whether or not that decision was made on an informed and reasonable basis and made in good faith. And we say, Your Honor, also that the directors are not independent and it's a conflicted board. So when you have those allegations, that it's not informed, it's not reasonable, it's not made in good faith, and it's not made by an independent board, but in fact a board that is conflicted and under the domination and control of Mr. Wynn it takes it out of the business judgment rule and then should allow us, Your Honor, to get behind the curtain.

This is not a motion for summary judgment. This is

not a motion in limine that says all of these things about Cotai, all these things about the concession, all these things about University of Macau are not relevant for your decision, ladies and gentlemen of the jury, or fact finder, Your Honor, because of the fact that we hide behind the business judgment rule. We're entitled to go behind the curtain and look at the exercise.

With respect to the voluminous nature of the requests for admission what Mr. Pisanelli doesn't tell you is that we submitted requests for documents very similar, in fact many of them the same, to the individual members of the board of directors, and we told them that, if you've produced all of these other documents in your initial production by the company, you need not produce these additional ones. But we want to know -- we want to find out what it was that the individuals had that may be different than that which has already been produced. We also want to know what information that board had with respect to -- those board members had with respect to making decisions along the way on the Cotai land concession, on the original concession, as well as on the UMDF contribution.

So, Your Honor, this is not, again, an MSJ, this is not an MIL. This is what the purpose of discovery is, is to look behind the curtain to find out what documents they have that support and argue the pretextual decision made by the

Wynn board dominated by Steve Wynn. Thank you.

THE COURT: Thank you.

The motion is granted. The pretext issue that has been raised by the Aruze parties is one that is subject to discovery. While it may not be something that ultimately has any relevance in the -- after the motion practice in this case, I'm going to permit the discovery on the issue.

Anything else?

MR. PISANELLI: Your Honor, every single one of these?

THE COURT: Yeah. The only one -- after I'm sitting here reading through them again the only one I had serious questions about, Mr. Pisanelli, I had narrowed it down to 89, 122, 124, and I read through all those again and I asked Mr. Peek the question about 89 yet again, which had to do with that category, and he answered. And based upon his response I'm going to permit the discovery.

MR. PISANELLI: I mean, just as an example, we're talking about like every communication ever having to do with an IPO.

THE COURT: I understand, Mr. Pisanelli.

MR. PISANELLI: We're talking millions of pieces of paper per request here on things that -- one thing he's never said to you is why it has anything to do with this case other than this bad act audit.

THE COURT: I understand.

So I'm going to let you guys have a break for personal convenience. I'm going to go to One Trop, and then I'm going to go to Cay Clubs, and then I'm going to go to R-J-Las Vegas Sun, and then I'm going to go back to you and deal with the length of time for Mr. Okada's deposition and the location of his deposition. But you get a break for personal convenience. If you need some coffee, Dan may have some back there, but I'm not sure.

MR. PEEK: So half an hour, Your Honor?

THE COURT: Fifteen minutes.

(Court recessed at 10:28 a.m., until 11:08 a.m.)

THE COURT: Mr. Peek and company. Can somebody go find Mr. Pisanelli and company.

(Pause in the proceedings)

MR. CAMPBELL: May I approach, Your Honor?

THE COURT: Absolutely, Mr. Campbell. How are you doing?

MR. CAMPBELL: Good.

(Pause in the proceedings)

THE COURT: Okay. We are on the last of our -- I'm on the last issue, which is the motion for protective order, essentially, related to Mr. Okada's deposition. Two primary issues, since I dealt with translation earlier, which are how many days and location.



MR. KRAKOFF: We'll right at it, Your Honor.

THE COURT: If I'd known you were arguing, we would have kept going.

MR. KRAKOFF: Thank you very much, Your Honor.

Your Honor, this deposition notice is just unreasonable on its face. Ten days in Las Vegas. There's a presumption that a defendant is going to be deposed at his place of residence or his principal place of business. We have proposed a very reasonable, we think, length of three days. There is a translation issue. We recognize that. The cases say when there's a translation issue then double the amount of time, the one day rule. But we've proposed --

THE COURT: One day rule hasn't applied in my court since it passed. I've suspended it in every case.

MR. KRAKOFF: Understood.

THE COURT: There has yet to be a single case I have where one day works.

MR. KRAKOFF: And I had heard that, Your Honor. But I want to at least reference the rules.

THE COURT: You should have heard my comments when they were considering the amendment. It's like, can I just suspend all your new rules.

MR. KRAKOFF: Well, notwithstanding that, Your Honor, we think that three days is reasonable, it's enough. We have very able counsel on the other side. They're more

than willing -- more than able, I should say, to divide the issues up, to prioritize their issues. In any complex case you always leave some questions on the table. You have to. You've got to get right at the issues. Ten days is absolutely excessive, particularly, Your Honor, when the defendants are lock -- the plaintiffs are in lockstep. They all want the same thing, they all want ratification of the redemption, the finding of unsuitability, they all want -- they're in lockstep on the claims. Only Ms. Wynn has suggested that there is a separate issue that Ms. Wynn needs to address, and that is on the validity of the shareholders agreement in 2002. Surely counsel can find a way to question on that issue in less than one day, which is proposed.

Again, Your Honor, particularly in term -- well, we have addressed earlier the translation issue. The translation issue goes right to the heart of why they claim that they need as much time as they do. And it's different now. We know we're going to have a translation and interpretation protocol shortly. It's going to be presented to the Court for the Court's ratification. In the books and records deposition, which Wynn makes much of in its papers, there were problems. Obviously there were. But here's the difference. There were four different interpreters who were permitted to talk on the record in that case. It was a mess. By all accounts it was a mess. And that's not what we're going to have here, Your

Honor. We're going to have one certified court interpreter that everybody agrees on on a protocol that's going to be presented -- agreed upon by the parties, presented to the Court. So they're making way more about this translation issue. It doesn't apply here, Your Honor. Double the amount of time is enough. We suggest three days.

In addition, Your Honor, I think counsel, as we all do whenever we litigate, we learn from each matter, we learn from each deposition. And it's incumbent upon counsel, particularly when you're using an interpreter, to ask direct, concise, brief questions because of the translation issues. We had some issues with that in the books and records deposition, and I'm confident that counsel will present better questions, more direct, and we won't have those issues again. So, frankly, Your Honor, I think that they've blown this way out of proportion. Three days is plenty.

In terms of location and the presumption --

THE COURT: Where do you get that? Where do you get this presumption? Because it's not how it is in Nevada State Court. It's presumed the defendant will appear for deposition in the state of Nevada, and if the defendant in a civil case doesn't come for trial, that's okay, but they've got to show up for deposition in Nevada.

MR. KRAKOFF: Well, Your Honor, I certainly understand that for the purposes of a plaintiff, a foreign

plaintiff that comes --

THE COURT: No. This is a defendant.

MR. KRAKOFF: I understand that. The Nevada Civil Practice Manual, we quoted the presumption, the general rule is a presumption.

THE COURT: Not here. I understand what you're saying, but it hasn't been in the Eighth Judicial District Court for at least 25 years.

MR. KRAKOFF: And I accept that and respect that. That -- notwithstanding that, the issues that we see in all the cases that address why a foreign defendant should not have to come, particularly from across -- from overseas to a local location is because of the burden, the cost, the time, the time away from home, the time away from business. There's a recognition, Your Honor, in the cases that we cited, and I think it makes sense and I think it's legitimate, that when the defendant didn't bring himself to this courtroom, the defendant didn't --

THE COURT: The defendant started this when he filed the books and record action and the writ two years ago.

MR. KRAKOFF: But that's not the lawsuit we have, Your Honor.

THE COURT: I understand. But that was the beginning of my contact.

MR. KRAKOFF: While it was, this is a lawsuit filed

by the Wynn parties. It's a lawsuit to bring -- that brought him into this court. And he didn't ask for it. They forced the forum on him. And by any -- by any analysis there's a huge burden on someone, particularly when they want two weeks of a deposition, which means three weeks away from home and business, to conduct this deposition.

The points that they make, Your Honor, are that, well, you know, this is a -- that the presumption really doesn't -- I'll put aside the presumption, because I understand the Court's position. But looking at the issues that the Wynn parties have proposed and rely upon is that they say, well, location's controlled by the convenience of counsel. If that's the case -- and all the parties have counsel who are members of this court, and I recognize that and respect that. But that would -- that would mean that no foreign -- that every foreign defendant in every case would never be permitted to have his deposition at their principal place of business or in their residence. And I don't think -- I think, Your Honor, that that's -- that puts the burden, frankly, on the wrong place, again, because the defendant didn't decide upon the forum. Clearly the burden is much more on the defendant.

The Wynn parties complain about the expenses, and that's -- that it would cost overseas. That's kind of ironic, Your Honor, because it's the Wynn parties who want 10 days.

Totally unreasonable. They want 10 days. And when you add up all the billable hours from all of the lawyers for the Wynn parties, I haven't done the math, but it could approach another six-figure number. Moreover, respectfully, I note that the Wynn parties are hardly destitute. Wynn Resorts has a \$10 billion market cap. Mr. Wynn himself is ranked 174 on the Forbes list for -- in the United States with a net worth of \$2.8 billion. They're going to have to go to Japan anyhow, Your Honor, to do other depositions, according to their 16.1 disclosure. And certainly, Your Honor, they complain about the expense. They didn't have any trouble paying for a senior accounting manager at Universal to come to the United States business class and stay in a nice hotel a couple of times. So that is pretty hollow, Your Honor, their concern about expense.

Next they worry, well, Your Honor will not be able to supervise this deposition, and they -- again they make a lot out of, well, we're going to have a lot of discovery disputes.

THE COURT: I sure hope not. I sure hope you're professional and get along.

MR. KRAKOFF: We always -- we plan to be. I'm confident that we can get along, and I'm confident that we will not have to be seeking the Court's involvement. But even if we do, the 16 time zones is not an issue. Why? Because

it's 8:00 a.m. overseas when it's 4:00 p.m. here. And if the Court has time, and I know the Court --

THE COURT: I don't think you understand. I've spoken to Macau before. I know how it works. I know the issues. I've, you know, had people from Hong Kong testify by video conference. I'm aware of the time zone challenges. That's not the issue that concerns me. The issue that concerns me is I have a named party in a case who, admittedly in not the same case, decided to seek the assistance of the State of Nevada, and now you tell me he wants y'all to go to Japan. And that's just something I'm having a hard time with.

MR. KRAKOFF: Well, Your Honor, he -- if what you're -- I understand you to be referring to the fact that he was on the Wynn board, that Aruze USA was incorporated in the state of Nevada, and, as the Wynn parties say, therefore Mr. Okada reached into the state of Nevada.

THE COURT: Well, and he also filed Case Number A-678658 in the state of Nevada as a plaintiff.

MR. KRAKOFF: As a plaintiff, Your Honor. As a plaintiff. And, respectfully -- and I understand the Court has a concern about that -- that's not the lawsuit we have in front of us. When Mr. -- in that piece of litigation the plaintiff's counsel -- or now plaintiff's counsel, Wynn counsel, made the same argument that they're making now. They've said, well, he's the plaintiff, he reached into

Nevada, he subjected himself to the jurisdiction of this Court, he chose the forum, and there was -- the burden is on him. That's not what we have. We've got exactly the opposite. He didn't bring this lawsuit. I understand, Your Honor, when he brought his lawsuit he came to this Court and he invoked this Court. He didn't do that here. Not at all. And that I think is a fundamental difference. And the cases recognize that. They recognize the burden on a foreign defendant. There's lots of cases, Your Honor, that we cited where the depositions of Japanese defendants were held in Japan. And so it's not unusual at all.

One other issue that Wynn raises, Your Honor, is that it would be -- it's the inconvenience. And because Your Honor is so familiar with matters in Macau, Hong Kong, overseas, in Asia, this is probably -- you're probably fully aware of this, but there are issues with the location of a deposition in Japan. Has to be in the Consulate. And they raise the issue, well, you know, there's not a big enough room in Tokyo. Well, there's a bigger room in Osaka and for that matter -- and they also complain that we can't bring our cell phones, our iPhones, our laptops with us. Well, you know, in the old days we didn't have any of that. And I'm sure counsel can find their way to conduct a deposition without their laptops and iPhones. If they want them and need them, we can do it in Hong Kong, which is the residence of Mr. Okada.



Again, Your Honor -- and respectfully I understand the Court's concern that he's a defendant and any defendant should be deposed here. I think that there's a fundamental difference. The burden should not be placed on him. In fact, the cases say that there is a presumption. They also say that the presumption can only be departed from if there are peculiar or unusual circumstances. We don't have that here. What do they say are peculiar or unusual circumstances? They say, well, it's a complex case, there's multi parties, there's a lot of parties. That doesn't distinguish this case from any other case. And I dare say, Your Honor, that plaintiff counsel has many complex multi-party cases before this Court. So that doesn't distinguish it at all.

Your Honor, I think fundamentally the burden -- the cases recognize the burden on foreign defendants and there is a presumption that it should not be departed from other than for peculiar, unusual circumstances. And they have not made any case to establish that.

THE COURT: Thank you.

Mr. Pisanelli.

MR. PISANELLI: Thank you, Your Honor.

Counsel's first phrase in support of his client's motion is that our deposition notice is unreasonable on its face. The irony of that position cannot possibly be lost on the Court in light of today's proceedings. Counsel tells us

that we've learned from each case. Well, I think we all need to learn from each motion. In light of the discovery parameters that they have set through the requests for production of documents we now have discovery in this case going back 15 years, to the year 2000 through the present with multiple parties. And Counsel's response to that is, well, leave questions on the table, split it up so everybody gets to participate. I'm not sure I've ever read any court, any authority, any treatise, any Nevada practice manual that says it is incumbent upon counsel to leave questions on the table because of the convenience of the witness, certainly not anything I'm sure he or any of us have subscribed to as a manner in practicing commercial litigation on behalf of our clients. So the irony is rich indeed for a party who wants virtually every nonprivileged document this company possesses, but then wants a three-day deposition the other side of the planet.

So, Your Honor, one thing that can't be lost is Counsel's continual statement to you that Mr. Okada didn't choose this forum. What perhaps he is forgetting or maybe he doesn't know because he hasn't been here from the beginning as we all have, is that the books and records case, as Your Honor accurately pointed out, Mr. Okada came to this forum for that case. That case isn't over. As a matter of fact, Your Honor has coordinated discovery in that case with this case, and so

he is a plaintiff in this discovery process no different than we are. And so hiding behind the presumptions in other jurisdictions that he's a mere defendant doesn't work here. Even if he was right that Nevada had a different practice where defendants get to stay home, it doesn't work here in light of the history of this case.

You throw into the mix that Mr. Okada's contact -- and I don't mean this in a jurisdictional perspective, but really on the balance of equities, Mr. Okada's contact with this state is not limited to his plaintiff status nor defendant status in this present action. He has and has had --

THE COURT: I'm not worried about jurisdiction. Let's not talk about it --

MR. PISANELLI: Yeah. I'm not talking about jurisdiction. I'm just talking about the equities of him being here.

THE COURT: I understand he has other business activities here.

MR. PISANELLI: Exactly. So the 10 days, Your Honor, is not intended to be abusive. Let's keep one thing in mind. Let's give Counsel benefit of the doubt and I hope on this issue he is exactly correct, that the translation will be different now. It doesn't change the slow process, because what we're attempting to do is eliminate the debating of the

spotters or the checkers. We still have a question that will be posed that will be translated, there will be an answer that will be translated that will come back, and then there will be another question. By any --

THE COURT: Unless there's an objection.

MR. PISANELLI: Yeah. And then we'll go through the process of translating the objection so that the witness can understand what the objections were. So let's not fool ourselves that the best translation protocol that's ever been invented -- and maybe that's what we're doing, is creating the best there ever was -- will still result in an extraordinarily slow process with lots of parties with a 15-year discovery period with millions upon millions of records that we will all have to figure out how to pare down to use in the deposition. So this is not going to be one or two or three days. I've got to be frank on this one, Your Honor. We were being conservative on the 10 days. I fully expect that if this team of counsel -- and I don't mean this in an inflammatory manner, I assure you I don't. But if this group of counsel shows up and behaves the way the last group of counsel did with their obstructionist behavior, I'm certain that the delay associated with those arguments and interruptions will result in a deposition much longer than 10 days. We are taking into consideration the body of evidence, the issues, the amount of now even more documents than we expected, and the slow process

with the translation that we were conservative in our estimate. I don't get the impression that Your Honor is taking seriously that we should pack up all these lawyers and translators and videographers and go to Mr. Okada for his convenience.

THE COURT: I might order you to go to Tokyo under certain circumstances, but this probably isn't one of them.

So can I ask you guys a question.

MR. PISANELLI: Of course.

THE COURT: And this is as a group, because I knew what I was going to do last night. So have you discussed since my general rule in cases, and I have not been convinced to depart from my general rule, is that the defendant shows up and for a corporation one 30(b)(6) shows up in the state of Nevada, have you considered, since you might want more than that, agreeing to a neutral location on U.S. soil in Hawaii, where you have the protection of the U.S. courts for other witnesses beyond these?

MR. KRAKOFF: Your Honor, we haven't had those discussions.

THE COURT: Okay.

MR. KRAKOFF: But actually it is something we thought about proposing and we would be happy to discuss with Mr. Pisanelli and his team.

THE COURT: Okay.

MR. PISANELLI: You're talking about non Mr. Okada witnesses?

THE COURT: Well, no. I was asking if you had considered it. Because if you told me the answer was yes, I was going to ask what your agreement was, and then I was going to ask you a couple more questions. But you've just told me you haven't considered it. So that's okay.

Anything else?

Anything else, Mr. Krakoff?

MR. KRAKOFF: No.

THE COURT: Okay. Here's what --

MR. URGAS: Your Honor, please, if I may. I know I haven't said much in this case so far, so --

THE COURT: Okay. Mr. Urgas. How are you today?

MR. URGAS: I am good, Your Honor. First of all --

THE COURT: I am really sorry you had to wait for three hours to get up to the podium.

MR. URGAS: No, that's quite all right. This was very instructive, and I've kidded around with people, saying I'm getting CLE here even though I don't think I need it anymore. I think the rule is that I'm old enough that I don't -- I'm not required to.

Just another comment. I agree with you. And if you remember, Mr. Hejmanowski and I both objected vehemently to the seven-hour limitation when it was approved or adopted.

I will pass on talking about the location issue for a moment, but I am concerned about the time issue. And I want to emphasize the fact that I totally agree with Mr. Pisanelli that three days is insufficient in this case. But, more importantly, from my client's standpoint we have asked that we have at least one full day, because we are not in lockstep with the other people in this case. There are a lot of other issues that are involved. And I know that Mr. Campbell did not file anything in here, but obviously when it comes to this agreement, the shareholder agreement, there's going to be a lot of issues that have nothing to do with what Wynn Resorts and Mr. Okada may be dealing with separately. This has to do with something that is now going on for a decade or more. And I will say that if we talk about Japan, you're talking about having a very small room, 8:30 to 1:00 o'clock, you then have to leave the room, then you come back and you get 2:30 to 4:30 or 2:00 o'clock to 4:30. And what I don't want to have happen, because these are very competent counsel and they're very good at what they do and they're going to be very careful and very I'll say investigative in their questioning, and I don't want to have a situation where Mrs. Wynn all of a sudden is at the third day and it's 2:00 o'clock and we've got two and a half hours to try and examine somebody.

And I would also point out -- and I know that you just approved today the sealing of Exhibit 8, so I don't want

to go into details in it. But if you read through the transcripts that have been attached, you will realize that I think Mr. Pisanelli was being kind in talking about the issues that are going to be involved. I'm not talking about the counsel -- the prior counsel, which I thought was, you know, very inappropriate, what was going on with those speaking objections, et cetera. I'm talking about if you listen and look at the questions. And I won't go through all the details, but if you look at one of them, for example, apparently there's a Japanese word that applies to both -- either an officer or a director. So let's assume that the translator, the one that we selected, makes a decision that says I think it's director. Well, that may make a difference in the nature of the case of whether it's an officer or a director. So even if the translator says it's a director, I guarantee you there's going to have to be followup questions, either by the person asking the questions or somebody later, because it could make a big difference if it was an officer that did this or it was a director that did that. Those issues. Those are the kind of things that I think is going to make this case go much, much longer when it comes to the deposition process.

So what I'm saying, Your Honor, is I don't want to have a situation where whatever time limit you agree to or you instruct us on --



THE COURT: What day of the 10 days would you like in the best of all possible worlds?

MR. URGAL: Well, as a practical matter, Wynn Resorts is going to go first. They're noticing the depositions.

THE COURT: So you want Day 10 if I give day 10.

MR. URGAL: I would like the last day for sure, a full day, and I don't want to be limited to that if all of a sudden we start seeing, you know, obstruction issues or really problem translation issues. But in our motion we indicate -- or our opposition to this motion we indicated we wanted at least one full day for our protection.

The problem we're going to have, Your Honor, is there's a lot of conversations and a lot of communications that are going on, and we've got to back a decade or more.

THE COURT: I understand, Mr. Urgal.

MR. URGAL: And that's going to take some time. So I don't even want to say I'm limited to one day, but I want to at least make sure that we're aware that we've said we want at least one full day, with the understanding if it goes longer we have the right to go longer. We need to have a fair opportunity to discuss our case and explore our issues.

THE COURT: I understand.

MR. URGAL: And there could be other issues that come up, Your Honor. Even though we're a defendant on the board of directors side, if somebody misses an issue, we should have

the ability to bring that up, too. So from that standpoint, Your Honor, I think that we want to make sure that we're not limited or prevented from having our full and fair opportunity to explore and question Mr. Okada.

If the Court wants to talk about location, I'm willing to talk about it based on --

THE COURT: I really don't, since you haven't agreed.

MR. URGAS: But I agree with the idea that we have it in Las Vegas, Your Honor.

THE COURT: Well, there have been cases where the parties have agreed to take those Asian depositions in Hawaii because it's U.S. soil. But you haven't reached that agreement here, so I'm not going to impose it, although it would be incredibly reasonable. All right.

MR. URGAS: Well, Your Honor, I will reserve any comments on that.

THE COURT: I'm waiting for Mr. Krakoff.

MR. URGAS: But I do object to having it in Japan.

THE COURT: I got that part.

MR. KRAKOFF: Your Honor, I'd just point out one thing.

THE COURT: Uh-huh.

MR. KRAKOFF: And that is that Mr. Okada is not a party to Ms. Wynn's lawsuit against Mr. Wynn. Only a witness

-- and this deposition should not be hijacked to make that -- make it into a deposition in that lawsuit.

THE COURT: Okay. Anything else?

The motion for protective order is denied. The deposition may proceed for up to 10 days, with the last of the up to 10 days being allocated to Ms. Wynn. The deposition may be either shortened or lengthened based upon the following occurrences that may occur during the deposition: harassing techniques, translation issues, or evasive techniques.

Anything else?

MR. PEEK: Your Honor, I --

THE COURT: It's going to occur in Las Vegas --

MR. PEEK: -- the only question that I have is I think Mr. Urga was correct that Mr. Campbell will want to ask some followup questions. So that one day that's allocated, is that also --

THE COURT: Mr. Campbell's part of the nine.

MR. PEEK: Mr. Campbell then will have to be part of that nine and ask whatever questions he needs --

THE COURT: Are you going to wrestle with Pisanelli for it?

MR. PEEK: No. But I know that he's going to -- not going to agree that once Mr. Urga asks questions that he shouldn't be entitled to ask questions, as well.

THE COURT: So do you want to go after Mr. Urga?

MR. CAMPBELL: No, Your Honor, I don't want to go after Mr. Urga. I'm suggesting to the Court that I may in fact need additional time, because I don't know what's going to be coming out of Mr. Okada's mouth with respect to issues that aren't directly involved in the main case. This is really sort of the tail wagging the dog case, and we've said that from day one. Irrespective --

THE COURT: You mean Mr. Urga's case?

MR. CAMPBELL: I'm sorry, Your Honor?

THE COURT: Mr. Urga's case?

MR. CAMPBELL: Yes, Your Honor.

THE COURT: Yes, I understand. I keep telling him that, too.

MR. CAMPBELL: Yeah. And --

THE COURT: His determination in this case is based upon the issues that are dissolved in this case --

MR. CAMPBELL: That's exactly right. So I really don't have any idea of what's going to be happening with Mr. Okada and Ms. Wynn. I'm going to reserve my right to maybe expand the Court's ruling with respect to that. I'd like to think about it some more. Quite frankly, I'm going to be very honest with you, the reason why I didn't file anything separate is that Mr. Pisanelli convinced me that we should just agree upon 10 days. I think 10 days is completely unrealistic. And I've been down this road in multiple civil

and criminal cases. That's just my -- so I didn't say anything.

THE COURT: Well, ask the two of them how my two-day evidentiary hearing went in the Sands case.

MR. CAMPBELL: Right. So I didn't say anything. But, I mean, with everything that's involved in this, with the counsel that are involved in this, with the issues that are involved in this, the number of people involved in this I'm just going to suggest to the Court that we're reserving our right on that, particularly as it involves dealing with issues raised by Mrs. Wynn.

THE COURT: Okay. So my decision is the same. Ten days, one day for Mrs. Wynn. So if you and Mr. Campbell need to arm wrestle Mr. Pisanelli, you will, unless we have the kinds of issues that I discussed. If it appears that the witness is evasive, like other witnesses we have had in other cases, it means the deposition may take longer. Or if it appears that, you know, Mr. Bice is being harassing when he's in the room, then that's a different issue and I'm happy to take a phone call and talk to you guys about it. I included him because he wasn't here.

When is your vacation, Mr. Peek?

MR. PEEK: 20th of June, hopefully to the 8th of July.

THE COURT: Okay. So this is after that.

MR. PEEK: Given your -- given the fact that I may have to prepare for trial, it may shorten my vacation a little bit. That's not -- Your Honor, I'm not arguing with your decision on that. I'm just saying --

THE COURT: You guys can do what you want to do. Go ask them in Carson City.

What? Anything else? Anything else? All right.

MR. PISANELLI: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 11:41 A.M.

\* \* \* \* \*

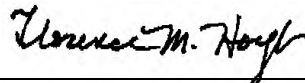
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**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**

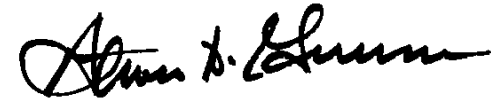


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FLORENCE M. HOYT, TRANSCRIBER

# EXHIBIT 9

# EXHIBIT 9





CLERK OF THE COURT

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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.

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

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

Electronic Filing Case

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

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

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

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

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

23 ///

24 ///

25 ///

26 ///

27 ///


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

DATED this 19<sup>th</sup> day of June, 2015.

  
THE HONORABLE ELIZABETH GONZALEZ  
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

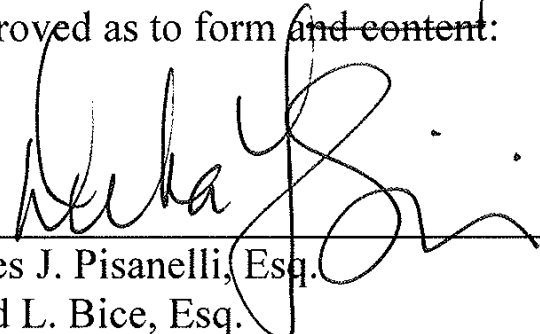
  
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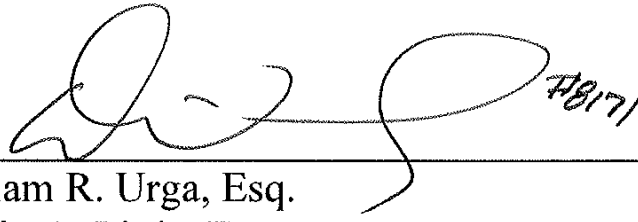
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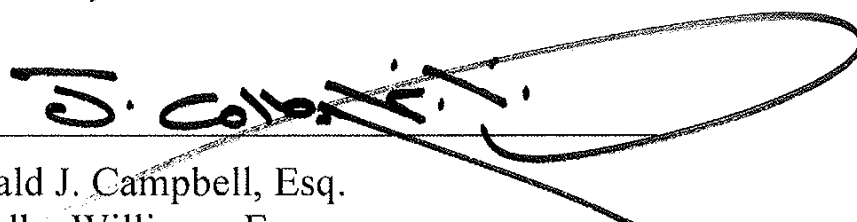
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# EXHIBIT 10

# EXHIBIT 10

IN THE SUPREME COURT OF THE STATE OF NEVADA

---

*Supreme Court Case No.*

---

Electronically Filed  
Jul 20 2015 10:49 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

WYNN RESORTS, LIMITED,

*Petitioner,*

v.

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

*Respondent,*

and

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

*Real Parties in Interest.*

---

**PETITION FOR WRIT OF PROHIBITION OR  
ALTERNATIVELY, MANDAMUS**

---

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**RULE 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the foregoing are persons or entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Petitioner Wynn Resorts, Limited is a publicly-traded Nevada corporation, headquartered in Las Vegas, Nevada.

DATED this 17th day of July, 2015.

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**ROUTING STATEMENT**

The Nevada Supreme Court should retain this writ proceeding because it stems from a case "originating in Business Court." NRAP 17(a)(10); NRAP 17(e). Additionally, this Court should retain this matter because another writ proceeding involving the same case is presently pending before it: Case No. 68310.

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1 **I. OVERVIEW AND RELIEF SOUGHT**

2 Wynn Resorts, Limited ("Wynn Resorts" or the "Company") petitions this  
3 Court under NRAP 21 and NRS Chapter 34 for a writ of prohibition or,  
4 alternatively, mandamus against the District Court's June 22, 2015 order (the  
5 "Order") for the very reasons this Court holds that writ relief is available to restrain  
6 overbroad discovery orders: The Order compels Wynn Resorts, under the threat of  
7 future sanction, to produce "any and all" documents for 78 distinct and sweeping  
8 document requests, untethered to any concept of relevancy to the matters at hand. It  
9 is the definition of a naked blanket discovery order.

10 As if that were not enough, the District Court's Order further transcends this  
11 Court's precedents by compelling the production of documents that both the gaming  
12 laws of Nevada and Macau declare to be confidential. Not only does the District  
13 Court's Order trample these explicit policy directives – of both Nevada and of a  
14 foreign sovereign – it does so without the slightest of findings or rationale. Indeed,  
15 there is no indication that the district court gave any heed to these policy directives.  
16 Respectfully, the judicial branch's control over discovery in litigation  
17 notwithstanding, courts should not run roughshod over explicit public policy and  
18 regulatory restrictions, particularly absent any evidentiary showing of relevancy or  
19 need.

20 The essence of the District Court's approach here – that these are large,  
21 well-heeled litigants with ample resources to comply with unbounded discovery –  
22 ignores this Court's teachings and only undermines the legitimate interest of  
23 litigants and the judicial process. No litigant should be held to have committed  
24 itself to unbounded and irrelevant discovery for the sake of having exercised its  
25 constitutional right to seek redress in Nevada's courts. Because that is what the  
26 District Court's blanket Order does here, Wynn Resorts seeks a writ to set aside that  
27 Order.

1 **II. ISSUE PRESENTED**

2 Does a district court's order compelling broad discovery without regard to  
3 relevancy or proportionality and compelling the production of documents deemed  
4 protected by law warrant this Court's review by writ of prohibition or, alternatively,  
5 mandamus?

6 **III. FACTS RELEVANT TO UNDERSTANDING THIS PETITION**

7 **A. Wynn Resorts' Articles of Incorporation Provide for Redemption**  
8 **of Shares.**

9 The genesis of the underlying litigation derive from provisions of Wynn  
10 Resorts' Articles of Incorporation ("Articles" or "Articles of Incorporation") known  
11 and agreed to by all stockholders, particularly Real Parties in Interest  
12 Aruze USA, Inc. ("Aruze"), its principal, Kazuo Okada ("Okada"), and parent,  
13 Universal Entertainment Corp. (collectively the "Okada Parties"). (Vol. IV PA  
14 752-63.) Pursuant to those Articles, the Wynn Resorts Board of Directors, on  
15 February 18, 2012, redeemed all of the outstanding shares then held by Aruze.  
16 (Vol. III PA 700, Vol. IV PA 752-63.) The Board did so because it learned of  
17 serious misconduct by Okada and entities he controls, including Aruze, involving  
18 improper payments to Philippine gaming officials with regulatory authority over an  
19 Okada-sponsored casino development project in that country. (Vol. III PA 697-  
20 701, 704-750.)

21 As authorized by Article VII of the Articles, the Board redeemed Aruze's  
22 shares in exchange for a promissory note. (Vol. III PA 700-01, Vol. IV PA 752-63,  
23 765-68.) Article VII empowers the Wynn Resorts Board to redeem the shares of  
24 any stockholder who the Board deems, in its sole discretion, to be an "Unsuitable  
25 Person" as the Articles define, most relevantly where the Board determines that  
26 continued ownership would jeopardize Wynn Resorts' existing gaming licenses or  
27 opportunities for additional licenses. (Vol. III PA 700, Vol. IV 758-62.)  
28

1           Upon Wynn Resorts' formation, stockholders – including the Okada Parties –  
2 agreed that the Company's Board shall have the power to redeem any shares held by  
3 any "Unsuitable Person" or its affiliates. (Vol. IV PA 760.) Each of the shares held  
4 by Aruze was emblazoned with a notice of Wynn Resorts' redemption rights upon  
5 their initial issuance. (Vol. IV PA 782, 950-51.) And as Section 2 of Article VII  
6 provides, in relevant part:

7                     Finding of Unsuitability. (a) The Securities Owned or  
8                     Controlled by an Unsuitable Person or an Affiliate of an  
9                     Unsuitable Person shall be subject to redemption by the  
10                    Corporation, out of funds legally available therefor, by  
11                    action of the board of directors, to the extent required by  
                    the Gaming Authority making the determination of  
                    unsuitability or to the extent deemed necessary or  
                    advisable by the board of directors . . . .

12 (Vol. IV PA 759.) "Unsuitable Person" is further defined as:

13                    [A] Person who (i) is determined by a Gaming Authority  
14                    to be unsuitable to Own or Control any Securities or  
15                    unsuitable to be connected or affiliated with a Person  
16                    engaged in Gaming Activities in a Gaming Jurisdiction,  
17                    or (ii) causes the Corporation or any Affiliated Company  
18                    to lose or to be threatened with the loss of any Gaming  
                    License, or (iii) in the sole discretion of the board of  
                    directors of the Corporation, is deemed likely to  
                    jeopardize the Corporation's or any Affiliated Company's  
                    application for, receipt of approval for, right to the use of,  
                    or entitlement to, any Gaming License.

19 (Vol. IV PA 760.)<sup>1</sup> Thus, any stockholder who in the Board's "sole discretion" is  
20 "deemed likely to jeopardize" the Company's existing gaming licenses or the  
21 Company's ability to secure additional licenses in the future qualifies as an  
22 "Unsuitable Person." (*Id.*)

23           Wynn Resorts' Articles of Incorporation not only empower the Board to  
24 redeem the shares but also authorize the Board to determine the "Redemption Price"

25  
26 <sup>1</sup> The Articles of Incorporation define the term "Gaming Licenses" to include  
27 "all licenses, permits, approvals, authorizations, registrations, findings of suitability,  
franchises, concessions and entitlements issued by a Gaming Authority necessary  
28 for or relating to the conduct of Gaming Activities." (Vol. IV PA 758.)



1 to be paid. (Vol. IV PA 759, Vol. II PA 701.) Article VII provides that unless a  
2 gaming regulator mandates a particular price be paid, the price should be an  
3 "amount determined by the board of directors to be the fair value of the Securities  
4 to be redeemed." (Vol. IV PA 759.) In paying this "Redemption Price," the Wynn  
5 Resorts Board has the discretion to compensate the unsuitable stockholder with  
6 either cash or a ten-year promissory note with a prescribed interest rate of 2% per  
7 year (or some combination of the two). (*Id.*)

8 Simply put, Wynn Resorts' Articles of Incorporation reflect Nevada's  
9 fundamental and paramount public interest in gaming: The "probity" of gaming  
10 licensees and their associates. (Vol. III PA 547-49.) And, *all* Wynn Resorts  
11 stockholders – no matter the size of their holdings or perceived self-importance –  
12 are subject to these requirements.

13 **B. Wynn Resorts Uncovers Improprieties by the Okada Parties.**

14 Since sometime in 2007 or 2008, Okada has been engaged in promoting and  
15 financing a projected casino resort in the Philippines. (Vol. III PA 695.) At a  
16 meeting of the Wynn Resorts Board held on November 1, 2011, former Nevada  
17 Governor Robert Miller, the Chairman of Wynn Resorts' Compliance Committee,  
18 discussed the results of two independent investigations into Okada's activities in the  
19 Philippines. (Vol. III PA 697.) These investigations stemmed from concerns about  
20 the general compliance environment in the Philippines, a country where corruption  
21 is perceived to be widespread, and the risk that Okada's entities' activities there  
22 would create compliance-related problems for Wynn Resorts. (Vol. III PA 695-97.)

23 Governor Miller reported to the Wynn Resorts Board that the evidence  
24 uncovered prior to November 1, 2011 raised questions about Okada's suitability.  
25 (Vol. III PA 697.) Governor Miller advised the Board that, in light of the  
26 then-existing findings, the Compliance Committee intended to retain former  
27 federal judge and Director of the Federal Bureau of Investigation Louis Freeh  
28 ("Director Freeh") of Freeh Sporkin & Sullivan, LLP, to investigate Okada's

1 activities. (*Id.*) Following Governor Miller's presentation, the Wynn Resorts Board  
2 ratified the Compliance Committee's decision to retain Director Freeh. (Vol. III  
3 PA 697-98.)

4 The investigation spanned the next three and a half months. (Vol. III  
5 PA 698.) Initially, Okada refused to even be interviewed, but ultimately relented  
6 and made himself available for a day, on February 15, 2012, as Director Freeh's  
7 investigation was concluding. (*Id.*) Shortly thereafter, Director Freeh presented  
8 the investigation's conclusions at a special meeting of the Wynn Resorts Board,  
9 along with a 47-page written report detailing the findings (the "Freeh Report").  
10 (Vol. III PA 698, 704-50.)

11 Director Freeh first described the scope of his investigation, reported on  
12 impressions of the personal interview of Okada, and answered questions from the  
13 directors. (Vol. III PA 698-699.) As reflected in the Freeh Report, he advised the  
14 Board that Okada had not presented any exculpatory evidence – that is, evidence  
15 that would tend to contradict the findings – and that Okada's broad denials of any  
16 personal involvement were not credible in light of the evidence uncovered.  
17 (Vol. III PA 698, 750.)

18 Following the presentation, the Board adjourned for two hours to give the  
19 directors an opportunity to analyze the Freeh Report. (Vol. III PA 699.) The Freeh  
20 Report detailed findings that were incompatible with any legitimate business  
21 operator, much less for a Nevada gaming licensee:

- 22 • "Mr. Okada, his associates and companies appear to have engaged in a  
23 longstanding practice of making payments and gifts to his two (2) chief  
24 gaming regulators at the Philippines Amusement and Gaming  
Corporation," as well as their families and associates, in substantial  
amounts. (Vol. III PA 704.)
- 25 • "In one such instance in September 2010, Mr. Okada . . . paid the  
26 expenses for a luxury stay at [the] Wynn Macau by [PAGCOR]  
Chairman Naguiat," his family, and "other senior PAGCOR officials . .  
27 . . . Mr. Okada and his staff intentionally attempted to disguise this  
particular visit by Chairman Naguiat by keeping his identity 'Incognito'  
28 and attempting to get Wynn Resorts to pay for the excessive costs of  
the chief regulator's stay, fearing an investigation." (Vol. III PA 705.)

- 1 • "[D]espite being advised by fellow Wynn Resorts Board members and  
2 Wynn Resorts counsel that payments and gifts to foreign government  
3 officials are strictly prohibited" – including under the Wynn Resorts  
4 Code of Business Conduct and Ethics – "Mr. Okada has insisted that  
5 there is nothing wrong with this practice in Asian countries." (Vol. III  
6 PA 713.)
- "Mr. Okada has stated his personal rejection of Wynn Resorts  
7 anti-bribery rules and regulations, as well as legal prohibitions against  
8 making such payments to government officials, to fellow  
9 Wynn Resorts Board members." (*Id.*)
- Mr. Okada has "refus[ed] to receive Wynn Resorts requisite FCPA  
10 training provided to other Directors" and "fail[ed] to sign an  
11 acknowledgement of understanding of Wynn Resorts Code of  
12 Conduct." (Vol. III PA 705.)

13 The Board engaged in an extensive discussion of Director Freeh's  
14 presentation and the Freeh Report. (Vol. III PA 700.) During the course of its  
15 deliberations, the Board also considered advice from two highly-experienced  
16 attorneys in the applicable Nevada gaming statutes and regulations, Jeffrey Silver  
17 and David Arrajj. (*Id.*) At the conclusion of these discussions, and in light of the  
18 findings in the Freeh Report, Director Freeh's presentation, and the advice of expert  
19 gaming counsel, the Wynn Resorts Board (excluding Okada) unanimously  
20 determined – pursuant to the Company's Articles – that the Okada Parties were  
21 "Unsuitable Persons" whose continued affiliation with Wynn Resorts was "likely to  
22 jeopardize" the Company's existing and potential future gaming licenses. (Vol. III  
23 PA 700, 770.) Thus, the Board redeemed Aruze's shares.

24 Again, under the terms of Article VII, the redemption price could be paid  
25 wholly in cash, or with a ten-year promissory note bearing an annual interest rate of  
26 two percent, or by some combination of these two options. (Vol. III PA 700,  
27 Vol. IV PA 759.) The Board discussed with the Company's then-chief financial  
28 officer the effect on the Company's financial condition and flexibility under each of  
the alternatives. (Vol. III PA 700-01.) The Wynn Resorts Board also considered its  
duties to the Company's remaining stockholders in determining the method of  
payment. (Vol. III PA 701.) Based on all of these considerations, the Wynn

1 Resorts Board (other than Okada) unanimously determined to pay the full amount  
2 of the redemption price by issuing a promissory note. (Vol. III PA 700-01, Vol. IV  
3 PA 765-68.)<sup>2</sup>

4 **C. Wynn Resorts Reports the Unsuitability Determination and Sues**  
5 **to Enforce its Legal Rights.**

6 That same day, Wynn Resorts informed the Nevada State Gaming Control  
7 Board as to its finding that Okada, Aruze, and Universal were "Unsuitable Persons"  
8 and that it had redeemed Aruze's shares pursuant to Article VII of the Articles of  
9 Incorporation. (Vol. III PA 701.) Wynn Resorts also informed the Gaming  
10 Control Board as to the issuance of the promissory note for the redeemed shares.<sup>3</sup>  
11 Wynn Resorts also acted promptly in pursuing legal relief against the Okada  
12 Parties, filing this action on February 19, 2012, and asserting claims for declaratory  
13 relief, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty.  
14 (Vol. I PA 1-21.)

15 In response, the Okada Parties sought to delay this matter with procedural  
16 maneuvering in the form of an improper removal to federal court that resulted in a  
17 remand and a sanctions award against the Okada Parties. (Vol. I PA 70-76,  
18 192-95.) The Okada Parties also sought to distract from the unsuitability  
19 determination and redemption, and filed a 107-page answer and counterclaim,  
20

21 <sup>2</sup> Article VII required the Wynn Resorts Board to determine the "fair value" of  
22 Aruze's shares in setting the redemption price. (Vol. III PA 700, Vol. IV PA 759.)  
23 The Board received advice from an outside financial advisor, Moelis & Company,  
24 which presented the Board with a written report containing an analysis of a fair  
25 valuation range for Aruze's shares, taking into consideration provisions in a  
26 stockholders agreement that prohibited Aruze from transferring its shares without  
the consent of Mr. Wynn and Ms. Wynn, as well as the overall size of Aruze's block  
of shares. (Vol. III PA 700-01.) Following its review of the Moelis analysis, the  
Board (other than Okada) unanimously determined to apply a blended 30%  
discount to the public trading price of the Company's shares. (*Id.*)

27 <sup>3</sup> At no point has the Gaming Control Board disputed the Wynn Resorts  
28 Board's authority to redeem the shares of any stockholder the Board deems  
unsuitable, or the manner of payment for the redemption. (Vol. III PA 701.)

1 asserting the proverbial kitchen sink affirmative defenses, and twenty claims against  
2 the Company, its-then directors, as well as the Company's General Counsel. (Vol. I  
3 PA 77-191.)

4 The Okada Parties also sought a preliminary injunction from the District  
5 Court, asking it to, among other things, reverse the share redemption. (Vols. I-III  
6 PA 196-511.) The District Court denied the Okada Parties' request, finding that the  
7 business judgment rule applied to the Board's decision and concluding that Wynn  
8 Resorts had the reasonable likelihood of success. (Vol. V PA 1083-88.)

9 The case was also delayed when the United States Department of Justice  
10 intervened and asked the District Court for a stay due to its pending criminal  
11 investigation of the Okada Parties. (Vol. VI PA 1401-11.) That stay lasted  
12 approximately twelve months, and was ultimately lifted by the District Court  
13 despite the United States' request for a further extension as its investigation is  
14 ongoing. (Vol. VI-VII PA 1496-1504, Vol. IV PA 1505-13.)

15 Ever since, the Okada Parties' approach in discovery and to this litigation in  
16 general has become transparent and predictable: Needing to distract from the  
17 dispositive point – the Board's exercise of its business judgment in determining that  
18 the facts presented to it about the Okada Parties' activities (and Okada's refusal to  
19 provide any exculpatory evidence) jeopardized existing and future licensing – the  
20 Okada Parties seek to focus on anything and everything else, beginning with events  
21 preceding the 2002 creation of Wynn Resorts, and continuing through nearly every  
22 transaction and business relationship, and every contemplated transaction and  
23 business relationship since. (Vol. V PA 1089-1124 (1st), Vol. II PA 1514-59 (2d),  
24 Vol. XVII PA 1560-86 (3d), VIII PA 1893-1907 (4th).)

25 **D. The District Court Orders Wynn Resorts to Respond to Every**  
26 **Discovery Request at Issue, Despite the Lack of Any Relevance.**

27 The Okada Parties give new meaning to the phrase "scorched earth" tactics.  
28 To date, they have served over 900 different requests for production of documents

1 to either Wynn Resorts or its individual Board members. Some 326 of these  
2 requests have been directed to the Company alone.<sup>4</sup> (Vol. V PA 1089-1124 (1st),  
3 Vol. II PA 1514-59 (2d), Vol. XVII PA 1560-86 (3d), VIII PA 1893-1907 (4th).)  
4 Consistent with its obligations and recognizing that the rules of discovery are broad,  
5 Wynn Resorts has agreed and is committed to responding to 192 of those requests  
6 in rolling productions as approved by the District Court. (Vol. VI PA 1277-1374  
7 (1st), Vols. VII-VIII PA 1628-1796 (2d), Vol. XI 1797-1872 (3d).)<sup>5</sup>

8 But 78 of those requests – the subject of the District Court's Order – are  
9 breathtaking in their overbreadth and irrelevance. Indeed, these are just *some* of the  
10 matters swept up by the Okada Parties' unbounded requests at issue:

- 11 (1) Any and "all documents" related to the non-party Wynn Resorts  
12 (Macau) S.A.'s ("WRM") acquisition of a Macau gaming license in  
13 2002;
- 14 (2) Any and "all documents" related to Wynn Resorts' efforts to obtain a  
15 land concession in Cotai (a subsidiary's second Macau location);
- 16 (3) Any and "all documents" related to Wynn Resorts' sale of the Macau  
17 gaming sub-concession to a third party more than nine years ago;
- 18 (4) Any and "all documents" related to government investigations with  
19 respect to Wynn Resorts and non-party Wynn Macau, Limited's  
20 activities<sup>6</sup>;

21 <sup>4</sup> The other 500-plus requests are directed to each of the director defendants.  
22 Vol. VIII PA 2698-2731 (Chen), Vol. VIII PA 2732-2765 (Goldsmith), Vol. VIII  
23 PA 2766-99 (Irani), Vol. VIII PA 2800-33 (Miller), Vol. VIII-IX PA 2834-2867  
24 (Moran), Vol. IX PA 2868-2901 (Schorr), Vol. IX PA 2902-35 (Shoemaker), Vol.  
IX PA 2936-70 (Sinatra), Vol. IX PA 2971-3004 (Wayson), Vol. IX PA 3005-38  
(Zeman). This number does not even include the 117 requests propounded by the  
Okada Parties on Mr. Wynn, who is separately represented. (Vol. IX PA 3039-93.)

25 <sup>5</sup> The stipulated deadline to respond to the Fourth Set of Requests is  
26 forthcoming.

27 <sup>6</sup> Wynn Macau, Limited ("Wynn Macau") is a publicly traded company, listed  
28

- (5) Any and "all documents" related to government investigations into the Okada Parties' activities;
- (6) Any and "all documents" related to suitability and licensing issues at Wynn Resorts, regardless of any connection to Okada, as well as documents concerning investigations and regulatory findings;
- (7) Any and "all documents" related to the Wynn Resorts Board and committee meetings, including all Board materials and minutes, from 2002 to the present, regardless of time or topic;<sup>7</sup>
- (8) Any and "all documents" related to the relationship between Okada and Stephen A. Wynn dating back to before 2002; and
- (9) Any and "all documents" related to any of Mr. Wynn's past business relationships (potential, contemplated, successful, or unsuccessful) regardless of with whom or when.

(Vol. II PA 1514-59 (2d), Vol. XVII PA 1560-86 (3d).)

Yet it is not just the facial overbreadth of the individual requests that confirms their impropriety: the requests are also patently irrelevant. In challenging Wynn Resorts' objections, the Okada Parties admitted it was not until Wynn Resorts began looking into Okada's activities that he self-servingly developed his purported "suspicions" of Wynn Resorts' conduct arose. (*E.g.*, Vol. XVII PA 3846.)

The best justification the Okada Parties could muster in support of their limitless requests was the fantastical assertion that there "could" have been some improprieties by Wynn Resorts on any of these far-ranging subjects. (*E.g.*, Vol. XI

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on the Hong Kong Stock Exchange. Okada was a board member of Wynn Macau from the time of its listing on the Hong Kong Stock Exchange in Fall 2009 until his February 24, 2012 removal.

<sup>7</sup> Prior to filing their underlying motion to compel, the Okada Parties withdrew their request for all "notes" related to all Board meetings from 2002 to the present, subject to renewing their request in the future. (Vol. XI PA 1927 n.22.) Needless to say, this minor modification did not address Wynn Resorts' concerns or objections.

1 PA 1920, Vol. XVII PA 3846.) They make that claim despite the fact that Okada  
2 was a board member of both Wynn Resorts and Wynn Macau throughout this entire  
3 time period and never many any such assertions. Now, however, the Okada Parties  
4 contend it is sufficient to speculate – because they are desperate for a diversion –  
5 that it "may be" that individual directors would want to keep secret any purported  
6 past improprieties such that years later they engaged in a "pretext" to get rid of the  
7 Okada Parties to prevent them from "blowing the whistle" on the same. (Vol. XI  
8 PA 1916-17.)

9 This is beyond nonsense. The forced redemption of Aruze's shares would  
10 certainly not discourage him from making specious allegations. It would only  
11 encourage him to make specious allegations to distract from his own misconduct,  
12 which (not coincidentally) is precisely what he has done. Besides, a right to  
13 discovery is not triggered by merely proffering wildly self-serving speculation that  
14 "maybe" there is something somewhere on any topic that would prompt the Board  
15 of Directors to unanimously deem the Okada Parties unsuitable *other than* the facts  
16 uncovered by Director Freeh.

17 But what is even more astonishing is that this guess-work argument actually  
18 prevailed. The District Court summarily ordered Wynn Resorts to respond to all  
19 78 requests to which it had objected, without any distinction, analysis, or restraint.  
20 (Vol. X PA 3949-59). By definition, the District Court issued a blanket discovery  
21 directive without regard to how the actual requests relate to the subject matter of the  
22 action, if they even do, and importantly, without any factual showing that there is a  
23 basis for the inquiry in the first place. Thus, Wynn Resorts petitions this Court.

#### 24 **IV. REASONS WHY THE REQUESTED WRIT SHOULD ISSUE**

##### 25 **A. The District Court's Blanket Discovery Order Warrants** 26 **Extraordinary Writ Relief.**

27 Wynn Resorts does not dispute the proper scope of discovery and that it is  
28 rightly broad. Discovery is proper for information that is "*reasonably calculated* to



1 lead to the discovery of admissible evidence." NRCP 26(B)(1) (emphasis added);  
2 *Harrison v. Falcon Prods., Inc.*, 103 Nev. 558, 560, 746 P.2d 642, 642 (1987). But  
3 the requirement that discovery requests be reasonable and calculated must have  
4 meaning. Discovery is not without limits. *Schlatter v. Eighth Jud. Dist. Ct.*,  
5 93 Nev. 189, 192, 561 P.2d 1342, 1343 (1977). And that is why this Court has  
6 recognized and exercised its discretionary authority for the issuance of  
7 extraordinary writs to review and limit discovery orders that transcend what the law  
8 permits. E.g., *Valley Health Sys., LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. Adv.  
9 Op. 15, 252 P.3d 676, 678-79 (2011) (citing *Wardleigh v. Sixth Jud. Dist. Ct.*,  
10 111 Nev. 345, 350-51, 891 P.2d 1180, 1183 (1995)).

11 As this Court has said in the context of discovery rulings, if "the District  
12 Court acts without or in excess of its jurisdiction, a writ of prohibition may issue to  
13 curb the extra jurisdictional act." *Las Vegas Sands v. Eighth Jud. Dist. Ct.*,  
14 130 Nev. Adv. Op. 13, 319 P.3d 618, 621 (2014); see also *Schlatter*, 93 Nev. at  
15 192, 561 P.2d at 1343 (issuing writ on discovery order); *Vanguard Piping v. Eighth*  
16 *Jud. Dist. Ct.*, 129 Nev. Adv. Op. 63, 309 P.3d 1017, 1019 (2013).

17 This Court has emphasized its discretion to act when a district court's  
18 discovery order: (1) requires the disclosure of privileged information; or  
19 (2) constitutes a "blanket discovery order[] without regard to relevance." *Las Vegas*  
20 *Sands*, 319 P.3d at 621; *Vanguard Piping*, 309 P.3d 1017 (citing *Valley Health Sys.*,  
21 252 P.3d at 678-79). In such instances, there is no "just, speedy and adequate  
22 remedy in the ordinary course of the law," and thus, without writ review, "the order  
23 could result in irreparable prejudice." NRS. 34.170; *Vanguard*, 309 P.3d at 1019.  
24 For a blanket discovery order, writ relief is appropriate because "the disclosure of  
25 irrelevant matter is irretrievable once made, [thus the petitioner] would effectively  
26 be deprived of any remedy from [the District Court's] erroneous ruling if she was  
27 required to disclose the information and then contest the validity of the order on  
28 direct appeal." *Schlatter*, 93 Nev. at 193, 561 P.2d at 1344.

1 When writ review reveals that a discovery order exceeds the jurisdiction of  
2 the district court, a writ of prohibition is the "appropriate" remedy to "prevent" the  
3 "improper discovery." *Rock Bay, LLC v. Eighth Jud. Dist. Ct.*, 129 Nev. Adv.  
4 Op. 21, 298 P.3d 441, 444 (2013); *Valley Health Sys.*, 252 P.3d at 678 n.5;  
5 *Wardleigh*, 111 Nev. at 350, 891 P.2d at 1183; *see also Vanguard*, 309 P.3d at 1019  
6 (holding prohibition is the better choice over mandamus). *See generally*  
7 NRS 34.320 ("[Writs of prohibition] arrest[ ] the proceedings of any tribunal,  
8 corporation, board or person exercising judicial functions, when such proceedings  
9 are without or in excess of the jurisdiction of such tribunal, corporation, board or  
10 person.").

11 Additionally, a writ petition raising a discovery issue is appropriate when "an  
12 important issue of law needs clarification and public policy is served by this court's  
13 invocation of its original jurisdiction." *Aspen Fin. Servs., Inc. v. Eighth Jud.*  
14 *Dist. Ct.*, 129 Nev. Adv. Op. 93, 313 P.3d 875, 878 (2013). This includes, but is  
15 not limited to, an "opportunity to define the precise parameters of [a] privilege . . .  
16 ." or some other protection from disclosure. *Id*; *Diaz v. Eighth Jud. Dist. Ct.*,  
17 116 Nev. 88, 93, 993 P.2d 50, 54 (2000) (considering writ petition for a discovery  
18 issue that "implicate[d] a matter of public importance:" whether a journalist waives  
19 the news shield statute protections with respect to the contents of a published  
20 article).

21 **B. The District Court's Blanket Discovery Order Gives No Regard to**  
22 **Relevance.**

23 The 78 boundless requests are the very definition of blanket discovery; they  
24 are not reasonably calculated to lead to discoverable information concerning claims  
25 and defenses at issue. Indeed, all this Court needs to do is take the Okada Parties at  
26 their own word. They concede that they have no actual facts upon which to base  
27 these requests. (*E.g.*, Vol. XI PA 1920 ("could have raised questions"), 1921 ("may  
28

1 have feared").) Thus, they proffer rank speculation as their only means of  
2 rationalization.

3 Unremarkably, this Court and others recognize that wishful thinking does not  
4 satisfy the requirement that discovery be "reasonably calculated." *See, e.g., Matter*  
5 *of Halverson*, 123 Nev. 493, 517, 169 P.3d 1161, 1177 (2007) (recognizing that  
6 even in the criminal context, this Court has "refused to authorize so-called 'fishing  
7 expeditions.'"); *see also E.I. du Pont De Nemours & Co. v. Phillips Petroleum Co.*,  
8 24 F.R.D. 416, 423 (D. Del. 1959) ("I can see nothing to support this part of the  
9 request *except a hope that the defendant might find something* which will help its  
10 case. . . . I realize that 'fishing expedition' is no longer a ground of objection to  
11 discovery. But, on the other hand, unless the Court requires the moving party to  
12 show that there is *something more than a mere possibility* that relevant evidence  
13 exists, the only appropriate order would be one requiring the party to turn over  
14 every scrap of paper in its files as well as the contents of its waste baskets.")  
15 (emphasis added).

16 Nor is conjecture sufficient. *See Micro Motion, Inc. v. Kane Steel Co.*,  
17 894 F.2d 1318, 1326, 1328 (Fed. Cir. 1990) ("[R]equested information is not  
18 relevant to 'subject matter involved' in the pending action if the inquiry is based on  
19 the party's mere suspicion or speculation. Micro Motion here is unmoored and  
20 trolling . . . . A litigant may not engage in merely speculative inquiries in the guise  
21 of relevant discovery.")<sup>8</sup>; *Bristol v. Trudon*, No. 3:13-CV 911 JBA, 2014  
22 WL 1390808, at \*4 (D. Conn. Apr. 9, 2014) ("The law is well-established that  
23  
24

25 <sup>8</sup> To the District Court, the Okada Parties cited *Micro Motion* for the  
26 proposition that "discovery is allowed to flesh out a pattern of acts *already known*  
27 *to a party* relating to an issue *necessarily* in the case." (Vol. XVII PA 3841.)  
28 Since the Okada Parties' requests are admittedly based on "suspicion" alone  
(Vol. XVII PA 3840), they fail to meet the standard even they recite.

1 discovery requests that are based on pure speculation and conjecture are not  
2 permissible . . .") (internal quotations omitted).

3 Salacious speculation is all the Okada Parties can muster. Indeed, they are  
4 careful never to represent that, as a Board member, Okada *actually* raised concerns  
5 about any of the transactions about which he now seeks "all documents." Coily  
6 avoiding representations where Okada would be exposed, the best the Okada Parties  
7 do is hypothesize that perhaps he "*could have* raised questions" (Vol. XI PA 1920.)  
8 Of course, as a Board member of both Wynn Resorts and non-party Wynn Macau,  
9 Okada had a fiduciary duty to pose any questions *at the time* if he had a legitimate  
10 point. But now that his own misconduct has been exposed, Okada is determined to  
11 smear the very Board members with whom he voted and to impose an incalculable  
12 burden on Wynn Resorts through a multitude of foundationless discovery requests  
13 that wishfully "*may*" reveal some hypothetical wrongdoing, while never articulating  
14 what.

15 The Okada Parties truly outdo themselves when they bluster that  
16 Wynn Resorts was out to prevent Okada "from blowing the whistle on the  
17 Wynn Parties' potentially corrupt activities in Macau." (Vol. XI PA 1916-17.) But  
18 of course, they never identify what these purported activities are or how Wynn  
19 Resorts was somehow concerned about what manufactured whistle Okada would  
20 blow. Indeed, the only thing the Okada Parties are blowing is smoke. Their  
21 argument is circular. Nonsensically, they suggest that the Wynn Resorts Board  
22 members were concerned about Okada "blowing the whistle" on some supposed  
23 wrongdoing that even Okada presently says he cannot identify.

24 That Okada is desperate to distract from his conduct in the Philippines is  
25 more than apparent. And, contrary to the Okada Parties' hopes and wants, wild  
26 hyperbole is not a "factual predicate" to support any "suspicion" much less his  
27  
28

1 desired fishing expedition into matters that have nothing to do with this business  
2 judgment case. *Matter of Halverson*, 123 Nev. at 517, 169 P.3d at 1177.<sup>9</sup>

3 The Tenth Circuit addressed similarly reckless rhetoric in *Koch v. Koch*  
4 *Industries, Inc.*, 203 F.3d 1202 (10th Cir. 2000). There, the plaintiffs argued that  
5 their "extraordinarily expansive discovery requests" related to "two broad,  
6 non-specific allegations contained in their Second Amended Complaint." *Id.* at  
7 1238. The Tenth Circuit aptly held that "[w]hen a plaintiff first pleads its  
8 allegations in entirely indefinite terms, without in fact knowing of any specific  
9 wrongdoing by the defendant, and then bases massive discovery requests upon  
10 those nebulous allegations, in the hope of finding particular evidence of  
11 wrongdoing, that plaintiff abuses the judicial process." *Id.* The appellate court  
12 applauded the district court for "appropriately recogniz[ing] that the likely benefit  
13 of this attempted fishing expedition was speculative at best." *Id.* (noting also that  
14 the "massive amount of documents requested, first weeding out privileged and  
15 confidential records, would impose a serious burden and expense . . . [that] far  
16 outweighed their likely benefit").

17 As the Eighth Circuit has likewise noted: "[w]hile the standard of relevance  
18 in the context of discovery is broader than in the context of admissibility . . . , this  
19 often intoned legal tenet should not be misapplied so as to allow fishing expeditions  
20 in discovery. Some threshold showing of relevance must be made before parties are  
21 required to open wide the doors of discovery and to produce a variety of  
22 information which does not reasonably bear upon the issues in the case." *Hofer v.*  
23 *Mack Trucks, Inc.*, 981 F.2d 377, 380 (8th Cir. 1992). This well-stated principle is  
24  
25

26 <sup>9</sup> It is charitable to even characterize the Okada Parties' position as speculation  
27 as even they do not actually assert this conclusion. Rather, they launch the  
28 discovery campaign on the concept of "what if" there are bad acts that support their  
naked theory of pretext.

1 on all fours with this Court's requirement as to the necessity for a factual predicate  
2 as held in *Matter of Halverson*, 123 Nev. at 517, 169 P.3d at 1177.

3 The requests' lack of legitimacy is underscored by the District Court's failure  
4 to identify the purported relevancy for any of the disputed requests. *See Clark v.*  
5 *Second Jud. Dist. Court*, 101 Nev. 58, 64, 692 P.2d 512, 516 (1985)  
6 ("The district court exceeded its jurisdiction under our ruling in *Schlatter* in  
7 ordering the production of the decedent's entire tax returns *without specifying the*  
8 *items requested and the relevancy thereof.*") (emphasis added). Blanket discovery  
9 orders without addressing the relevancy of the actual request (especially such  
10 overly broad requests that essentially seek all of the records of two different  
11 publicly traded gaming companies – one of which is not even a party to this case) or  
12 detailing how the request can lead to the discovery of admissible evidence,  
13 constitutes error. *Id.*

14 In short, the Okada Parties failed to establish any factual predicate remotely  
15 establishing their burden of demonstrating the purported relevance for any of the 78  
16 requests to the claims at issue. And, while "[m]uch of discovery is a fishing  
17 expedition of sorts, [the rules of civil procedure] allow the Courts to determine the  
18 pond, the type of lure, and how long the parties can leave their lines in the water."  
19 *Myers v. Prudential Ins. Co. of Am.*, 581 F. Supp. 2d 904, 913 (E.D. Tenn. 2008).  
20 Here, the District Court's blanket discovery order disregards these obligations.  
21 It instead allows for carte blanche discovery of "all documents" sought for each and  
22 all of the 78 requests despite the Okada Parties' inability to articulate a factual  
23 predicate for a single one of them. This is an improper discovery order under any  
24 standard.

25 **C. This Blanket Discovery Order Also Disregards Serious Policy and**  
26 **Privacy Concerns as it Relates to Nevada Gaming Licensees.**

27 The impropriety of such a blanket discovery order is particularly acute here,  
28 considering that the ordered production includes sweeping categories of documents

1 that companies like Wynn Resorts are required to maintain and share with  
2 government regulators, solely due to their status as a gaming licensee.

3 As the Nevada Legislature makes clear, "[t]he gaming industry is vitally  
4 important to the economy of the State and the general welfare of its inhabitants."  
5 NRS 463.0129(a). And, a gaming license in Nevada is not a right; but rather a  
6 privilege. NRS 463.0129(d). With that privilege comes heightened responsibilities  
7 owed to the public and to the State of Nevada. Indeed, Nevada gaming licensees  
8 are "strictly regulated" to, among other things, "ensure that gaming is free from  
9 criminal and corruptive elements" and to maintain "[p]ublic confidence and trust."  
10 NRS 463.0129(b)-(c). Like other licensees, Wynn Resorts is charged by law to  
11 strictly comply with the gaming regulations to which it is subject. This includes,  
12 among other things, an open door relationship with state regulators, creating and  
13 implementing a self-policing policy, and taking any and all other steps necessary to  
14 be compliant with the gaming regulations.

15 The Nevada Legislature enacted NRS 463.140, which outlines the broad  
16 power and duties of the Gaming Control Board and the Nevada Gaming  
17 Commission. Stated bluntly, the state gaming regulators are afforded  
18 unprecedented access to the licensee's business, records, and information.  
19 Regulators can inspect all gaming premises, "summarily seize and remove. . .  
20 documents or records," and "demand access to and inspect, examine, photocopy and  
21 audit all papers, books and records" of any licensee. NRS 463.140(2)(a), (c), (d),  
22 (e). Of course, the regulators also can issue subpoenas or compel the attendance  
23 and testimony of witnesses. NRS 463.140(5). Because the licensee must do as  
24 asked or instructed by the regulators, the more common scenario is that the  
25 regulators ask, and the licensee provides any and all requested information.

26  
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28

1                   ***1. The District Court's blanket discovery order ignores the***  
2                   ***statutory presumption of confidentiality.***

3                   Because of the aforementioned open door and the "can't say no" policy  
4                   between the regulators and licensees, the Nevada Legislature afforded statutory  
5                   protections to licensees, in NRS 463.120, among others. The main statutory  
6                   provision provides:

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

9                   a) ***Required by the Board or Commission to be***  
10                  ***furnished to it*** under chapters 462 to 466,  
11                  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;

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

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

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

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

23                  are ***confidential*** and may be revealed in whole or  
24                  in part only in the course of the necessary administration  
25                  of this chapter or upon the lawful order of a court of  
26                  competent jurisdiction. . . . Notwithstanding any other  
                    provision of state law, such information may not be  
                    otherwise revealed without specific authorization by the  
                    Board or Commission.

27                  5. Notwithstanding any other provision of state  
28                  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 . . . . .

NRS 463.120 (emphasis added).

These confidentiality and privilege protections go hand in glove with the open relationship between the regulators and gaming licensees, and recognize Nevada's strong interest in maintaining confidential investigations related to its licensees. *See, e.g., In re Smith*, 397 B.R. 124, 126 (Bankr. D. Nev. 2008). But the District Court's blanket discovery order below tramples these regulatory concerns.

And, the Okada Parties make no secret of their desire to circumvent these regulatory requirements so as to learn what the gaming authorities know about them. They propounded broad requests seeking, among other things, "All Documents" between Wynn Resorts and the Nevada Gaming Control Board (as well as other governmental entities) about Okada, Universal, Aruze, or "their affiliates":

**REQUEST FOR PRODUCTION NO. 215:**

All Documents concerning 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.

(Vol. VIII PA 1767.)

Wynn Resorts objected to Request No. 215, citing NRS 463.120, among other things. (*Id.*) Of course, Wynn Resorts does not dispute that these "confidential" documents by and between Wynn Resorts and Gaming may be compelled "upon the lawful order of a court of competent jurisdiction." NRS 463.120(4). But, the law obviously requires the "court of competent

1 jurisdiction" to do more than issue a blanket discovery granting the motion, as the  
2 District Court did here.<sup>10</sup>

3 "Where a court of competent jurisdiction is authorized to order discovery of  
4 confidential records, the court must balance the public interest in avoiding harm  
5 from disclosure against the benefits of providing relevant evidence in civil  
6 litigation . . . ." *In re Smith*, 397 B.R. at 129 (discussing compelling documents that  
7 are "confidential" pursuant to NRS 463.120) (quoting *Laxalt v. McClatchy*,  
8 109 F.R.D. 632, 635 (D. Nev.1986) (*Laxalt I*) (discussing compelling confidential  
9 records in general)). In considering NRS 463.120 and the necessary analysis to  
10 compel "presumptively confidential records," the Nevada federal bankruptcy court  
11 in *In re Smith* looked to a Nevada federal district court decision and to the  
12 Ninth Circuit's four-part test:

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

17 *In re Smith*, 397 B.R. at 130 (citing *Laxalt v. McClatchy*, 116 F.R.D. 455, 459  
18 (D. Nev. 1986) (*Laxalt II*) (citing *Fed. Trade Com'n v. Warner Commc'ns, Inc.*,  
19 742 F.2d 1156, 1161 (9th Cir. 1984)). Nevada's federal district court expressly  
20 noted that sister courts with similar review processes "believe when a claim of  
21

22 <sup>10</sup> While Wynn Resorts recognizes that the District Court Order compels Wynn  
23 Resorts and not the Gaming authorities to produce these confidential records,  
24 the confidentiality and the purposes for the statutory protection are not eliminated.  
25 Nevertheless, it bears noting that the Nevada Legislature expressly stated that "[t]he  
26 Commission and the Board may refuse to reveal, in any court or administrative  
27 proceeding except a proceeding brought by the State of Nevada, the identity of an  
informant, or the information obtained from the informant, or both the identity and  
the information." NRS 463.144. While the Okada Parties seek to circumvent the  
Gaming Control Board by issuing a Rule 34 request in the instant litigation, the  
gaming authorities should still be able to invoke their separate statutory right to  
refuse to reveal any information that they may have received from Wynn Resorts.

1 privilege, confidentiality or irrelevance is raised the court has a duty to conduct an  
2 *in camera* inspection to separate and permit discovery of only the relevant  
3 documents, thereby protecting against unnecessary and damaging disclosure of  
4 irrelevant confidential material." *Id.* (quoting *Berst v. Chipman*, 653 P.2d 107, 113  
5 (Kan. 1982).)

6 Yet, the District Court here gave no consideration to these policies either at  
7 the hearing or in the Order. (Vol. X PA 3949-59, Vols. IX-X PA 3861-3948.)  
8 Indeed, the purpose of the statutory protections afforded gaming licensees, the  
9 powers and duties of the gaming authorities, and, most generally, the overall policy  
10 behind the statutory framework designed to regulate the gaming industry – while  
11 also balancing the public policy that recognizes its unmatched contribution to  
12 Nevada – are not addressed or even mentioned by the District Court's blanket  
13 discovery order. (*Id.*)

14 **2. *The District Court's blanket discovery Order ignores that***  
15 ***Macau gaming licensees are statutorily mandated to keep their***  
16 ***tender and concession-related records confidential.***

17 Similarly, the government of Macau has enacted a statutory framework that  
18 regulates its gaming concessionaires and their affiliates. Macanese law also  
19 provides for confidentiality of documents and data related to the regulatory entities'  
20 role, duties, and authority. Specifically, Macanese Law 16/2001 establishes the  
21 legal framework for the operation of games of chance in casinos. Article 16 of Law  
22 16/2001 (unofficially) translates as follows:

23 The bidding processes, the documents and data included  
24 therein, as well as all documents and data relating to the  
25 tender, are confidential and access to or consultation of  
26 such documents by third parties is prohibited, and for this  
27 purpose the provisions of article 63 to 67 and 93 to 98 of  
28 the *Codigo de Procedimento Administrativo* ("Code of  
Administrative Proceedings"), approved by Decree-Law  
no. 57/99/M of October 11 are not applicable.

Macau Law 16/2001, Art. 16.

1 Pursuant to this law, documents related to the bidding process, tender, and  
2 concession are confidential, and third parties are prohibited from access to or  
3 consultation of those documents. This law is buttressed by the language of the  
4 concession agreement itself. Clause 92 of the concession agreement provides  
5 additional confidentiality protections to concessionaires beyond the bidding and  
6 tender process. The clause breaks down into three parts, which (unofficially)  
7 translate as follows:

- 8 1. The documents produced by the Government or by the concessionaire,  
9 in keeping with the conditions of law or the present concession  
10 contract, have a confidential character, and can only be made available  
11 to third parties with the authorization of the other Party.
- 12 2. The Government and the concessionaire take all the necessary steps to  
13 ensure that, respectively, the workers of the Public Administration of  
14 the Macau Special Administrative Region, and the workers of the  
15 concessionaire are bound by the duty of secrecy.
- 16 3. The Government and the concessionaire undertake to enforce the duty  
17 of secrecy on other persons who have had or who might have access to  
18 confidential documents, namely through consulting services and other  
19 contracts.

20 (Vol. XVI PA 3526-27.)

21 Similar to the Nevada Legislature empowering the Nevada gaming regulatory  
22 authorities to enact gaming regulations, the Macanese gaming regulatory arm, the  
23 Direcção de Inspeção e Coordenação de Jogos ("DICJ"), enacted what it calls  
24 instructions. Article 8 of DICJ's Instruction 1/2014 provides for the confidentiality  
25 of personal information gathered by gaming concessionaires and  
26 sub-concessionaires.<sup>11</sup> Article 8 of DICJ Instruction 1/2014 (unofficially) translates  
27 as follows:

28 Without prejudice to the legal framework for the  
protection of personal data set forth in Law 8/2005, the

<sup>11</sup> This instruction is specific to the Macau gaming concessionaires and sub-concessionaires, and is distinct from the Macau Personal Data Privacy Act which this Court addressed in *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 61, 331, P.3d 876 (2014).

1 personal data collected by the gaming concessionaires  
2 and sub-concessionaires is subject to the confidentiality  
3 regimen set out in the legal framework governing the  
4 concession of the exploration of games of chance in a  
5 casino which includes law 16/2001, Administrative  
6 Regulation 6/2002 as revised and re-published by  
Administrative Regulation 27/2009, Law 5/2004, and  
Law 10/2012, as well as the respective gaming  
concession and sub-concession agreements, with any  
transfer of personal data being prohibited without the  
prior authorization of the competent public entities.

DICJ Instruction 1/2014, Article 8.

7 But again, the District Court gave no consideration of these restrictions. The  
8 point Wynn Resorts makes here is that the District Court failed to consider gaming  
9 policy and the duties of a licensee (or concessionaire under Macau law) when it  
10 issued its blanket discovery Order that compels a licensee/concessionaire to  
11 produce statutorily protected documents without any relevancy analysis to the  
12 issues in dispute.

13 Specifically, the Okada Parties propounded six requests seeking documents  
14 related to Wynn Resorts' affiliate, non-party WRM's, bidding and tender process.  
15 (Vol. VII 1641 (Req. No. 89), 1665 (Req. No. 114), 1676 (Req. No. 123), 1677  
16 (Req. No. 124), 1679-80 (Req. No. 126), Vol. XI PA 1805 (Req. No. 249).)  
17 Of course, if non-party WRM violates Law 16/2001, it will be subject to sanctions  
18 in Macau. Law 16/2001 was passed by the legislative council of Macau and signed  
19 into effect by the Chief Executive. The regime for handling infractions is set out in  
20 Article 43 of Law 16/2001 and contemplates both administrative proceedings  
21 (fines) and possible criminal proceedings (sub-section (3)). The Okada Parties  
22 failed to assert any factual basis to connect WRM's bidding and tender process to  
23 this case, and failed to provide a factual predicate for any purported wrongdoing by  
24 this non-party. Yet, the blanket discovery Order sweeps this third party into the  
25 mix, compels the production of records that are statutorily protected by a foreign  
26 sovereign and which may result in sanctions against foreign, non-party WRM,  
27 without providing any analysis or discussion.  
28

1 In addition, the Okada Parties propounded **52 individual requests** desperately  
2 seeking to gather documents related to Wynn Resorts' efforts to obtain a concession  
3 for land (akin to a lease) in the part of Macau called the Cotai Strip. (Vol. VII  
4 PA 1665 (Req. No. 114), 1669 (Req. No. 118), 1672 (Req. No. 120), 1674  
5 (Req. No. 122), 1678 (Req. No. 125), 1650-1709 (Req. Nos. 127-149), 1711  
6 (Req. No. 152), 1726 (Req. No. 166), 1727 (Req. No. 167), Vol. XVIII PA 1759  
7 205, 1760 206, Vol. XV PA 1805 (Req. No. 249), 1806-07 (Req. No. 250), 1817-26  
8 (Req. Nos. 259-266), 1829-39 (Req. Nos. 269-277).) The Okada Parties would like  
9 to argue that Wynn Resorts did something wrong or improper in the process to  
10 obtain that land concession for a new casino development. But, there is no factual  
11 predicate to connect the land concession to the subject matter at issue in this action.  
12 And, there is no factual predicate to support the notion that there was any  
13 wrongdoing in the first instance. The process by which Wynn Resorts obtained the  
14 land concession commenced in 2005, took place over several years, and was fully  
15 disclosed in multiple Wynn Resorts public SEC filings, (*E.g.*, Vol. XVI PA 3573-  
16 75, 3576-78, 3579, 3606-07), and from the time it listed on the Hong Kong Stock  
17 Exchange in 2009, multiple Wynn Macau public Hong Kong Stock Exchange  
18 filings. (*E.g.*, Vol. XVI PA 3583-84, 3606-07.) Moreover, Okada was a Wynn  
19 Resorts and Wynn Macau director when WRM and an affiliate accepted the land  
20 concession in September 2011, and there was no argument or evidence offered that  
21 he ever questioned the transaction at any step during the process. (*See* Vol. XVII  
22 PA 3831-34.)

23 Similarly, the Okada Parties now want to scrutinize Wynn Resorts' 2006 sale  
24 of its Macau gaming sub-concession to a third party, Publishing &  
25 Broadcasting, Ltd., propounding **seven more requests** demanding records related to  
26 the sub-concession and the sale process. (Vol. VII PA 1665 (Req. No. 114), 1669  
27 (Req. No. 118), 1671 (Req. No. 119), 1672 (Req. No. 120), 1674 (Req. No. 122),  
28 1678 (Req. No. 125), Vol. XI PA 1839 Req. No. 278).) The Okada Parties argue

1 that they want to know why and how Wynn Resorts was able to get a third party to  
2 pay \$900 Million for the sub-concession, which is one of only six licenses to legally  
3 operate gaming establishments in Macau. (*E.g.*, Vol. XVI PA 3583.) The inquiry  
4 is silly, and the answer can be provided by basic microeconomics. However, for the  
5 instant debate about the impropriety of the blanket discovery Order, the sale of the  
6 sub-concession relates to no issue in this litigation. (Vol. VI PA 1375-1400, 1401-  
7 1412-95.)

8 And, there is no factual predicate upon which to base an argument of  
9 wrongdoing through the sale of the valuable sub-concession. Of course, the  
10 sub-concession process was disclosed in the Company's public filings. And, once  
11 again, Okada was a director of Wynn Resorts during the relevant time period and  
12 never inquired into or questioned the transaction (a transaction that benefitted the  
13 Wynn Resorts stockholders, including Aruze, and which the Okada Parties have  
14 never disputed, much less offered any evidence to the contrary). (Vol. XIV  
15 PA 3104.)

16 None of these requests were considered individually, nor were the gaming  
17 related policies, laws, and obligations that are expressly implicated by the requests.  
18 Instead, they were swept up into the District Court's blanket discovery Order. The  
19 District Court exceeded its jurisdiction by entering the improper blanket order  
20 without regard to any of the above-stated issues, most importantly, whether any of  
21 them are relevant to this case or whether there is a factual predicate for the Okada  
22 Parties' speculative arguments made in support thereof.

23 **3. *The District Court's blanket discovery Order ignores that***  
24 ***Nevada gaming licensees are statutorily mandated to create***  
25 ***and implement a compliance program, and report its results to***  
***the gaming regulators.***

26 Such a blanket discovery order is particularly problematic vis-à-vis  
27 Nevada's highly regulated gaming industry, since gaming regulators require  
28 licensees to maintain extensive records on transactions and people with whom the

1 licensee does business. Tellingly, the Okada Parties do not seek discovery as to  
2 Wynn Resorts' knowledge about transactions or matters involving the Okada  
3 Parties. No, as the Okada Parties themselves described their requests, they seek  
4 (i) all "documents regarding *any* suitability investigations conducted by the  
5 Compliance Committee [of the Wynn Resorts board], or suitability concerns raised  
6 by regulatory authorities," (Vol. XI PA 1926 n.19 (identifying Request Nos. 230-  
7 234, 240-242, and 289)), and (ii) all documents regarding "specific persons who  
8 should have raised suitability concerns," (*id.* at n.20 (identifying Request Nos.  
9 230-234, 289) (emphasis added).)

10 While some of these requests impinge upon the same confidentiality  
11 provisions discussed above, some also seek the same type of documents related to  
12 this Nevada gaming licensee's licensing process in other jurisdictions (which would  
13 have similar if not the same purpose as the Nevada policy discussed above).  
14 Examples are:

15 **REQUEST FOR PRODUCTION NO. 230:**

16 All Documents concerning the loss or potential  
17 loss or revocation of gaming licenses held by WRL or  
any Counterdefendant from any state or local gaming  
regulatory body in the United States.

18 **REQUEST FOR PRODUCTION NO. 231:**

19 All Documents concerning any determination of  
20 unsuitability of WRL or any Counterdefendant by any  
gaming regulatory body not located in the United States.

21 **REQUEST FOR PRODUCTION NO. 232:**

22 All Documents concerning any potential or  
23 threatened determination of unsuitability of WRL or any  
Counterdefendant by any gaming regulatory body not  
located in the United States.

24 **REQUEST FOR PRODUCTION NO. 233:**

25 All Documents concerning the loss or revocation  
26 of gaming licenses held by WRL or any  
Counterdefendant from any gaming regulatory body not  
located in the United States.

27 (Vol. VIII PA 1783-86.)  
28



**REQUEST FOR PRODUCTION NO. 240:**

All Documents concerning any Investigation conducted by WRL's Gaming Compliance Committee pursuant to the requirement (referred to in Paragraph 14 of the Second Amended Complaint) that it "investigate senior officers, directors, and key employees to protect WRL from becoming associated from [sic] any unsuitable persons."

**REQUEST FOR PRODUCTION NO. 241:**

Documents sufficient to identify all subjects of Investigations conducted by WRL's Gaming Compliance Committee related to the Committee's requirement (referred to in paragraph 14 of the Second Amended Complaint) that it "investigate senior officers, directors, and key employees to protect WRL from becoming associated from [sic] any unsuitable persons."

**REQUEST FOR PRODUCTION NO. 242:**

All Documents concerning any Investigation conducted by WRL's Gaming Compliance Committee concerning the potential determination of Stephen A. Wynn as an unsuitable party by any gaming regulatory body.

(Vol. VIII PA 1792-95.)

**REQUEST FOR PRODUCTION NO. 289:**

All Documents Concerning any consideration or decision whether or not to seek a finding from any Gaming Authority of the suitability of any of the following: Stephen A. Wynn, any member of the WRL Board (except Mr. Okada), any counterdefendant, or WRL.

(Vol. XI PA 1849-50.) Trying to rationalize these requests, the Okada Parties resort to claiming that Wynn Resorts' commitment to compliance and the protection of its gaming licenses "is a sham because WRL routinely associated with potentially unsuitable persons without any investigation by the Compliance Committee." (Vol. XI PA 1926.)<sup>12</sup>

But of course, Okada made no such noise when he served on the Board. His current hyperbole is as specious as it is desperate. All Nevada gaming licensees,

<sup>12</sup> Wynn Resorts agreed from the time of its original objections and responses to produce some documents in response to the requests in this category – namely, documents that relate to the compliance fallout from the Okada Parties' misconduct and therefore documents that relate to the subject matter of this action. (Vol. VIII PA 1782-87 (Responses to Req. Nos. 230-34).)

1 including Wynn Resorts, are obligated to police themselves through a  
2 statutorily-mandated compliance committee and compliance program. The Okada  
3 Parties present no evidence of any supposed "sham" regarding Wynn Resorts'  
4 compliance obligations. Rather, the actions the Wynn Resorts Board took *were*  
5 *required* to fulfill the Company's obligations under Nevada's gaming regulations.

6 As previously explained to the District Court, Nevada law affirmatively  
7 requires licensees and registrants to take independent and proactive steps toward  
8 ridding themselves of unsuitable persons before gaming regulators have to do it for  
9 them. Indeed, for this reason, other public companies have "unsuitable person" and  
10 redemption provisions in their organizational documents that are essentially  
11 identical to the provisions in Article VII of the Wynn Resorts Articles of  
12 Incorporation. (Vol. III PA 549-50.)

13 In addition, the Gaming Commission and Gaming Control Board, exercising  
14 authority under Gaming Commission Regulation 5.045, requires Wynn Resorts to  
15 maintain and follow a "Compliance Program" that is reviewed and approved by the  
16 Commission and the Control Board. (Vol. III PA 547-49.) That program  
17 specifically states that its purpose is to mitigate the "dangers of unsuitable  
18 associations and compliance with regulatory requirements," and it defines an  
19 "Unsuitable Person" as anyone "that the Company determines is unqualified as a  
20 business associate of the Company or its Affiliates based on, without limitation, that  
21 Person's antecedents, associations, financial practices, financial condition, or  
22 business probity." (Vol. III PA 585, 588.)

23 The Compliance Program affirmatively requires the Company's Compliance  
24 Committee to *investigate* all senior executives, directors, and key employees, "in  
25 order to protect the Company from becoming associated with an Unsuitable  
26 Person." (Vol. III PA 592.) The program also requires the Company to report to  
27 Nevada gaming authorities to keep them "advised of the Company's compliance  
28 efforts in Nevada and other jurisdictions." (Vol. III PA 585.) In particular, the

1 Compliance Program requires that "any known acts of wrongdoing" by any  
2 executive or director that are reported to the Wynn Resorts Board must also be  
3 reported to the Chairman of the Nevada State Gaming Control Board within ten  
4 business days of the report to the Board. (Vol. III PA 595.)

5 Thus, under the Nevada gaming regulations, Wynn Resorts has an affirmative  
6 obligation to self-police. The documents it is required to generate and provide to  
7 the Gaming authorities in this respect are highly confidential, highly sensitive, and  
8 – most notably – have absolutely nothing to do with the Okada Parties' claims.  
9 Again, the Okada Parties have not provided a single factual predicate for this  
10 invasive fishing expedition. The fact that there may exist thousands of documents  
11 as a result of Wynn Resorts' compliance with Nevada law – to maintain the  
12 privilege of being a gaming licensee – does not, without a factual predicate, grant  
13 its litigation adversaries access to those documents. The District Court erred in  
14 entering a blanket ruling that would compel the production of confidential and  
15 sensitive documents that a gaming licensee is required to prepare and maintain  
16 about those with whom a licensee does business.

17 **4. *The District Court's Blanket Discovery Order ignores the lack***  
18 ***of relevancy of the financial information in the compelled***  
***documents.***

19 Likewise, the information gathered for applications, investigations, suitability  
20 inquiries, and compliance programs is highly sensitive, personal and financial  
21 information. The District Court's blanket discovery Order compels the production  
22 of personal financial information of Wynn Resorts' Board members, as well as any  
23 other third party who may be swept up in the net of the Compliance Committee's  
24 procedures and investigations. (*Compare* Vol. X PA 3949-59, *with* Vols. VII-VIII  
25 PA 1628-1796, *and* Vol. XI PA 1797-1872.) There is no basis to allow the Okada  
26 Parties access to the financial records of these Board members and third parties, yet  
27 the blanket discovery order does just that. On this point alone, the District Court's  
28 Order constitutes error pursuant to this Court's decision in *Schlatter* and its progeny.

1 In *Schlatter*, this Court recognized that when a litigant puts her income at  
2 issue, and there is a showing that the financial information is not otherwise  
3 obtainable, then "a court may require disclosure of matter contained in tax records  
4 which is relevant to this issue." 93 Nev. at 192, 561 P.2d at 1343. However,  
5 respecting the privacy of the party whose financial records were ordered produced  
6 (rather than just third parties), this Court was quick to note that the District Court's  
7 "order went beyond this and permitted carte blanche discovery of all information  
8 contained in these materials without regard to relevancy." *Id.*, 561 P.2d at 1343-44.  
9 Noting that the "discovery rules provide no basis for such an invasion," this Court  
10 issued a writ, holding that the district court exceeded its jurisdiction by ordering  
11 disclosure of information neither relevant to the tendered issues nor leading to  
12 discovery of admissible evidence." *Id.*, 561 P.2d at 1344.

13 Here, the effect of the District Court's blanket discovery order is to compel  
14 Wynn Resorts to produce, among many, many other things, personal financial  
15 information of the Board member defendants (whose business judgment as a  
16 director is their only act at issue) as well as hundreds or thousands of individuals  
17 who have been swept into the Company's self-policing compliance investigations  
18 and procedures required of a gaming licensee. This blanket Order, of course, was  
19 entered without regard to subject matter much less to whether the information in the  
20 materials sought would be relevant to the subject matter at issue. It is not.

21 **D. The District Court's Blanket Discovery Order Allows Unfettered**  
22 **Discovery to a Competitor.**

23 The District Court's blanket discovery Order further ignores the unfettered  
24 discovery allowed to a competitor, who already has shown a disregard for the  
25 protective order in place in this action.<sup>13</sup> Where a competitor seeks broad access to

26  
27 <sup>13</sup> Specifically, and despite Wynn Resorts' best efforts, the Okada Parties have  
28 given documents deemed confidential under the Protective Order to third parties,

1 a company's records, a writ of mandamus properly issues where a "protective order  
2 does not adequately safeguard the confidentiality of the" records. *Ex parte Miltope*  
3 *Corp.*, 823 So.2d 640, 645 (Ala. 2001).

4 In *Miltope*, the defendant, who worked for Miltope's competitor, demanded  
5 discovery of "all documents which relate, refer to or reflect meetings of Miltope's  
6 Board of Directors, division reviews or the equivalent between October 28, 1998  
7 and the present, including, but not limited to all meeting minutes, notes and  
8 materials presented during such meetings[.]" *Id.* at 642. The trial court ordered  
9 Miltope to produce the documents but entered a protective order limiting the uses  
10 and dissemination of the documents. *Id.* The Alabama Supreme Court determined  
11 that the minutes of the board constituted a trade secret as they were used in  
12 business; embodied in a compilation not publicly known; could not be readily  
13 ascertained from public knowledge; were secreted from the public; and had  
14 economic value. *Id.* at 644. Thus, even with the protective order in place, the court  
15 concluded that the trial court abused its discretion in compelling Miltope to produce  
16 the minutes of its board of directors. *Id.* at 645.

17 Similarly here, the Okada Parties asked for and the District Court ordered  
18 production of "all documents, presentations, reports, notes, and minutes Concerning  
19 each meeting of the WRL Board from 2002 to the present" with oft-repeated  
20 assurances that there would be no public dissemination given the protective order in  
21

22  
23 and the information has appeared in news articles, among other things. (Vol. VIII  
24 PA 1884 n.7; Vol. VII PA 1599-1600; *see also* Vol. V PA 1126-1127.) The Okada  
25 Parties' assurances regarding protecting highly confidential or sensitive  
26 information are near meaningless under these circumstances, especially when  
27 given to an adversary who has publicly stated his desire and intent to "beat" Wynn  
28 Resorts. (Vol. V PA 1130.)

1 place. (Vol. XI PA 1843; Vol. XVII PA 3855 n.13.)<sup>14</sup> However, the protective  
2 order is insufficient to protect the disclosure of Wynn Resorts' confidential,  
3 proprietary, and non-public information from the Okada Parties, which are  
4 admittedly developing their own gaming operation and are a Wynn Resorts  
5 competitor. The Okada Parties' cries of "maybe" finding something to recast as  
6 supposed "pretext" are insufficient to overcome the irreparable harm that Wynn  
7 Resorts suffers if forced to disclose all of its Board of Directors packets from its  
8 inception.

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26 <sup>14</sup> The Okada Parties proposed withdrawing "notes" from this Request. *See*  
27 *supra* note 7.  
28

1 **V. CONCLUSION**

2 The District Court's unbounded order of production for 78 different discovery  
3 requests is the definition of blanket discovery Order. The District Court made no  
4 relevancy analysis whatsoever. That is hardly remarkable considering that the party  
5 propounding these overbroad requests – the Okada Parties – could themselves not  
6 articulate any actual factual predicate for the requests. Thus, all they could proffer  
7 self-serving speculation couched in the tell-all terms of "maybe", "could have" or  
8 "possibly." None of that provides a basis for discovery, let alone the scorched earth  
9 approach advanced by the Okada Parties. That they are in need of a deflection for  
10 the facts considered by Wynn Resorts' Board of Directors in redeeming the shares –  
11 facts that cannot be attacked because this is a matter that falls within the Board's  
12 business judgment – only highlights the impropriety of these requests and the Order  
13 compelling Wynn Resorts to produce. This is on top of the impropriety of an order  
14 requiring the production of confidential and protected information, including that of  
15 unrelated third-parties. Thus, this Court should enter a writ setting aside the District  
16 Court's blanket discovery Order.

17 DATED this 17th day of July, 2015.

18 PISANELLI BICE PLLC

19  
20 By: /s/ Todd L. Bice  
James J. Pisanelli, Esq., Bar No. 4027  
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22 Las Vegas, Nevada 89101

23 Attorneys for Petitioner Wynn Resorts, Limited  
24  
25  
26  
27  
28

VERIFICATION

I, Todd L. Bice, declare as follows:

1. I am one of the attorneys for Wynn Resorts, Ltd., the Petitioner.

2. I verify that I have read and compared the foregoing PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS and that the same is true to my own knowledge, except for those matters stated on information and belief, and as those matters, I believe them to be true.

3. I, as legal counsel, am verifying the petition because the question presented is a legal issue as to the proper scope of a discovery order under this Court's precedence which is a matter for legal counsel.

4. I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

This declaration is execution on 17th day of July, 2015 in Las Vegas, Nevada.

By: /s/ Todd L. Bice  
Todd L. Bice, Esq., Bar No. 4534



**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office Word 2007 in size 14 font in double-spaced Times New Roman.

I further certify that I have read this brief and that it complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and 10, 659 words.

Finally, I hereby certify that to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires that every assertion in this brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 17th day of July, 2015.

PISANELLI BICE PLLC

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Attorneys for Petitioner Wynn Resorts, Limited

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 17th day of July 2015, I electronically filed and served a true and correct copy of the above and foregoing **PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS** properly addressed to the following:

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/s/ Shannon Thomas  
An employee of PISANELLI BICE PLLC

# EXHIBIT 11

# EXHIBIT 11

IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS, LIMITED,  
Petitioner,  
vs.

No. 68439

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

**FILED**

NOV 12 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

Respondents,  
and

KAZUO OKADA; UNIVERSAL  
ENTERTAINMENT CORPORATION;  
AND ARUZE USA, INC.,  
Real Parties in Interest.

**ORDER DENYING PETITION**

This original petition for a writ of prohibition or mandamus challenges a district court order granting a motion to compel discovery.<sup>1</sup>

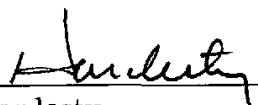
Having considered the petition, supporting documents, and the oral argument of counsel, we are not persuaded that petitioner has met its burden of demonstrating clear legal error in the district court's discovery determination thus warranting our interlocutory intervention at this time. NRS 34.160; NRS 34.320; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991);

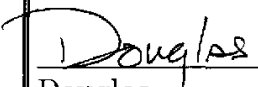
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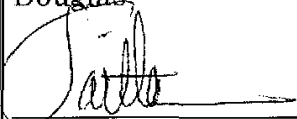
<sup>1</sup>The Honorable James E. Wilson, Jr., District Judge in the First Judicial District Court, and the Honorable Steve L. Dobrescu, District Judge in the Seventh Judicial District Court, were designated by the Governor to sit in place of the Honorable Ron Parraguirre, Justice, and the Honorable Kristina Pickering, Justice, who voluntarily recused themselves from participation in the decision of this matter. Nev. Const. art. 6, § 4(2).

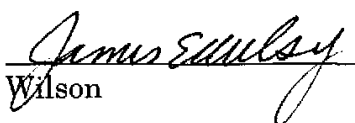
see *Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 128 Nev., Adv. Op. 21, 276 P.3d 246, 249 (2012) (recognizing that “[d]iscovery matters are within the district court’s sound discretion, and [this court] will not disturb a district court’s ruling regarding discovery unless the court has clearly abused its discretion”). As petitioner has not demonstrated that the district court “clearly abused its discretion” in granting the motion to compel discovery, *Club Vista*, 128 Nev., Adv. Op. 21, 276 P.3d at 249; *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 225, 88 P.3d 840, 841 (2004), we


ORDER the petition DENIED.

  
Hardesty, C.J.

  
Douglas, J.

  
Saitta, J.

  
Wilson, D.J.

  
Cherry, J.

  
Gibbons, J.

  
Dobrescu, D.J.

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
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# EXHIBIT 12

# EXHIBIT 12

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 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

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

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

1 Plaintiff/Counterdefendant Wynn Resorts, Limited ("Wynn Resorts" or the "Company")  
2 and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A.  
3 Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan  
4 Zeman (collectively, the "Wynn Parties"), hereby move this Court pursuant Nevada Rules of Civil  
5 Procedure ("NRCPP") 60(b) to grant relief from the Order Granting the Aruze Parties' Motion to  
6 Compel Supplemental Responses to Their Second and Third Set of Requests for Production of  
7 Documents to Wynn Resorts, Limited docketed June 22, 2015 ("the Order") based upon newly  
8 discovered evidence from both Aruze 's 30(b)(6) deposition and the deposition of Kazuo Okada.  
9 Additionally, the Wynn Parties seek an order shifting the cost of the discovery based upon the  
10 proportionality rule contained in the Federal Rules of Civil Procedure ("FRCP") 26(b)(2)(C) based  
11 upon the excessive cost for documents of limited (if any) relevance.

12 This Motion is based upon the Nevada Rules of Civil Procedure NRCPP 60(b), and is  
13 supported by the attached Memorandum of Points and Authorities, the Declaration of Debra L.  
14 Spinelli, Esq., attached hereto as Exhibit A, the papers and pleadings on file in this action, and any  
15 oral argument this Court may allow.

16 DATED this 8th day of December, 2015.

17 PISANELLI BICE PLLC

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19 James J. Pisanello, Esq., Bar No. 4027  
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26 and  
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and Allan Zeman

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The Wynn Parties are moving under NRCP 60(b), asking this Court for relief from its June 22, 2015 order regarding the Okada Parties' Motion to Compel Supplemental Responses. The recent depositions of the Kazuo Okada and Aruze have confirmed what the Wynn Parties have long known, that the vast majority of the 78 (out of over nearly 1000 served on the Wynn Parties collectively) Requests for Production ("RFPs") stem not from the Okada Parties' contemporaneous knowledge, but from their counsel's wishful but unsupported theories about this case. The deposition testimony, of course, is new evidence that could not have been obtained in April, 2015 when the Okada Parties brought their motion to compel.

Mr. Okada's deposition testimony is of particular note because, under oath, he contradicted his counsel's "pretext" argument as he said that he only became "suspicious" of the Wynn Parties involvement in Macau *after* he was under scrutiny over his involvement in the Philippines. (Ex. B, Okada Dep. Tr., Vol. VII, 680:8-13.) Importantly, Mr. Okada was unable to point to any facts whatsoever that support the broad assertion that the Wynn Parties were involved in inappropriate activities in Macau or related to Cotai. (*See id.* at 671:23-703:10.) Thus, the fundamental bases for the Okada Parties' extraordinarily broad RFPs are flawed, to say the least.

If the Court were to find, despite the new evidence, that the Wynn Parties are compelled to respond to the RFPs, they ask this Court to use its fundamental power to direct discovery and order the costs shifted the Okada Parties. Specifically, because of the extreme overbreadth of nearly all of the RFPs, whether in time or in scope, and hence the limited, if any, admissible evidence that would result from the multiple fishing expeditions, this Court should consider the "proportionality rule" as examined by Fed. R. Civ. P. 26(b)(2). The Okada Parties are not entitled to the results of their fishing expedition at no cost to themselves.

1 **II. RELEVANT BACKGROUND**

2 **A. The Center of this Case.**

3 When considering the new evidence against the overly broad 78 requests on a variety of  
4 subject matters, it bears noting what this case is actually about: On February 18, 2012, the  
5 Wynn Resorts board of directors unanimously exercised its business judgment, and (1) determined  
6 that the Okada Parties were unsuitable persons under the Wynn Resorts Articles of Incorporation,  
7 and (2) redeemed the Wynn Resorts shares held by Aruze USA, Inc. Pursuant to NRS 78.138, the  
8 board's business decisions are *presumed* to have been done in good faith, on an informed basis, and  
9 to be in the Company's best interest. The Okada Parties are challenging the Board's exercise of its  
10 business judgment. Thus, the issues that relate to the Board's decision are quite narrow. And,  
11 therefore, the Okada Parties asserted a "pretext defense" to try to access information that is entirely  
12 unrelated to the Board's exercise of its business judgment. The problem for the Okada Parties is  
13 that the subject matters they wish to bring into this "pretext" defense are unsupported by any  
14 evidence (rather than argument). The Okada Parties were not deterred.

15 **B. The June 22, 2015 Order.**

16 On June 22, 2015, the Court entered an Order Granting the Aruze Parties' Motion to Compel  
17 Supplemental Responses to Their Second and Third Set of Request for Production of Documents  
18 to Wynn Resorts, Limited. Specifically, the Court required the Wynn Parties to produce all  
19 non-privileged documents responsive to the Okada Parties' Requests Nos. 82, 86, 89, 90, 93, 114,  
20 118-120, 122-149, 152, 166-167, 205-206, 215, 230-234, 235, 236, 238, 239, 240-242, 249-250,  
21 259-266, 269-278, 283, 289, and 294. (Order, June 22, 2015, on file.)<sup>1</sup>

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<sup>1</sup> All Requests for Production referenced in this Motion refer to Defendant Kazuo Okada and  
26 Counterclaimants-Defendants Aruze USA, Inc. and Universal Entertainment Corporation's Second  
27 Request for Production of Documents to Wynn Resorts, Limited, served August 8, 2014 and  
28 Defendant Kazuo Okada and Counterclaimants-Defendants Aruze USA, Inc. and Universal  
Entertainment Corporation's Third Request for Production of Documents to Wynn Resorts,  
Limited, served September 19, 2014.

1           **C.     The Deposition of Aruze's 30(b)(6) Witness.**

2           After much debate, briefing, and argument, the Wynn Parties deposed Aruze's 30(b)(6)  
3 witness, Toji Takeuchi, for five days. Two of these days took place prior to Mr. Okada's deposition,  
4 while the other three followed Mr. Okada's ten-day deposition. Aruze designated Mr. Takeuchi to  
5 give binding testimony on its behalf even though he is not, and has never been, an Aruze employee.  
6 Mr. Takeuchi is an employee of Universal. (Ex. C, Takeuchi Dep. Tr., Vol. I, 12:15-20.)

7           Despite over 100 hours of preparation and review of hundreds of documents (including  
8 Highly Confidential documents) to become knowledgeable about Aruze's positions, Mr. Takeuchi  
9 had remarkably little to say about the areas of discovery in the 78 RFPs. For example, Aruze's  
10 NRCP 30(b)(6) designee knew no facts about Cotai, and only offered erroneous facts provided to  
11 him by counsel, which he claimed to confirm by reviewing the Wynn website.<sup>2</sup> (Ex. D, Takeuchi  
12 Dep. Tr., Vol. II, at 122:17-22 (testifying about a Cotai license).) In addition, and refuting any  
13 argument of pretext, the 30(b)(6) designee admitted that he did not know why the Wynn Resorts  
14 board of directors passed the resolution to redeem the Aruze shares on February 18, 2012.<sup>3</sup> (Ex. E,  
15 Takeuchi Dep. Tr., Vol. IV, 373:15-374:2.) In other words, Aruze's designee could not offer one  
16 word of support to its counsel's argument that the Wynn Resorts board redeemed the shares because  
17 of a pretext to avoid the exposure of some bad or otherwise embarrassing facts. The pretext  
18 argument was and is a fiction.

19           **D.     The Deposition of Kazuo Okada.**

20           After months of wrangling, Mr. Okada was deposed for ten days beginning on October 26,  
21 2015. As a defendant, long-time board member of Wynn Resorts, and the sole director of Aruze,  
22 the deposition of Mr. Okada was the perfect time for the Okada Parties to offer the evidentiary  
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24  
25           <sup>2</sup> The erroneous facts fed to the witness by counsel are discussed more thoroughly in  
Section II.2.c herein.

26           <sup>3</sup> While the Okada Parties may claim that Takeuchi would not be able to read the minds of  
27 the Wynn Resorts' board members at the time, Aruze's NRCP 30(b)(6) designee is certainly the  
28 witness who should be able to speak to the Company's wide-sweeping pretext defense, if it was  
valid. The pretext defense remains wholly devoid of any factual nexus to reality.

1 support for the legal arguments they have made throughout the case. If any individual could provide  
2 the facts to connect the RFPs to the issues in this case, it would be Mr. Okada.

3 Without addressing the difficulties surrounding the deposition (some of which this Court is  
4 already acquainted with), Mr. Okada, like the Aruze NRCP 30(b)(6) designee, did not provide any  
5 facts whatsoever that support the pre-text theory, or any other of the theories behind the  
6 Okada Parties' 78 broad, expansive requests for discovery. Instead, the deposition confirmed the  
7 Wynn Parties' suspicions that the Okada Parties were and are seeking this discovery (*i.e.*, fishing)  
8 without having sufficient factual much less evidentiary basis.

9 **III. DISCUSSION**

10 **A. Relief is Allowed Under NRCP 60 Based on Newly Collected Evidence.**

11 The Nevada Rules of Civil Procedure provide a process for a party to obtain relief from a  
12 judgement or an order made by the court in its regular proceedings. NRCP 60; *Killip v. Empire*  
13 *Mill Co.*, 2 Nev. 34 (1866). This rule often operates to relieve the harshness of rigid form by  
14 applying the flexibility of discretion. *La-Tex P'ship v. Deters*, 111 Nev. 471, 893 P.2d 361 (1995).  
15 This is a remedial rule that should be liberally construed. *Heard v. Fisher's & Cobb Sales &*  
16 *Distribs, Inc.*, 88 Nev. 566, 502 P.2d 104 (1972).

17 Motions brought under NRCP 60(b) are addressed at the sound discretion of the trial court,  
18 and the grant or denial of such motions is not to be disturbed on appeal absent an abuse of discretion.  
19 *Heard v. Fisher's & Cobb Sales & Distribs, Inc.*, 88 Nev. 566, 568, 502 P.2d 104, 105 (1972);  
20 *Union Petrochemical Corp. v. Scott*, 96 Nev. 337, 338, 609 P.2d 323, 323 (1980). NRCP 60(b)  
21 provides various reasons for granting relief including mistakes, inadvertence, excusable neglect,  
22 newly discovered evidence, and fraud. Specifically, NRCP 60(b) states:

23 (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered  
24 Evidence; Fraud, Etc. On motion and upon such terms as are just,  
25 the court may relieve a party or a party's legal representative from a  
26 final judgment, order, or proceeding for the following reasons: (1)  
27 mistake, inadvertence, surprise, or excusable neglect; (2) *newly*  
28 *discovered evidence which by due diligence could not have been*  
*discovered in time to move for a new trial under Rule 59(b)*; (3) fraud  
(whether heretofore denominated intrinsic or extrinsic),  
misrepresentation or other misconduct of an adverse party; (4) the  
judgment is void; or, (5) the judgment has been satisfied, released, or

1 discharged, or a prior judgment upon which it is based has been  
2 reversed or otherwise vacated, or it is no longer equitable that an  
injunction should have prospective application. . . .

3 NRCP 60(b) (emphasis added). In addition, "[t]he Motion shall be made within a reasonable time,  
4 and for reasons (1), (2), and (3) not more than 6 months after the proceeding was taken or the date  
5 that written notice of entry of the judgment or order was served." NRCP 60(b). Where there is a  
6 motion for relief or modification premised on mistake, newly discovered evidence, or fraud and is  
7 filed more than six months after final judgment, the motion is untimely and must be denied. *Doan*  
8 *v. Wilkerson*, 327 P.3d 498 (2014). The alleged newly discovered evidence must be material or  
9 important to the party seeking a new trial. *Whise v. Whise*, 131 P. 967, 36 Nev. 16 (1913).

10 The Wynn Parties are requesting relief from the Order entered on June 22, 2015 based upon  
11 NRCP 60(b)(2). This motion is timely because it has been brought within 6 months of the notice  
12 of entry of order on June 22, 2015. The Wynn Parties have only recently obtained new evidentiary  
13 support from Aruze's NRCP 30(b)(6) deposition and Mr. Okada's deposition, evidence that could  
14 not have been discovered any other way and was not available when the original motion to compel  
15 was argued in April. Therefore, the Wynn Parties ask this Court to provide relief from the June 22,  
16 2015 Order.

17 **B. Based Upon the Newly Discovered Evidence from the Depositions, the**  
18 **Discovery Granted in the June 22, 2015 Order Should be Modified.**

19 Before the depositions of Mr. Okada and the Aruze NRCP 30(b)(6) witness, the  
20 discoverability of the Requests for Production was primarily a debate between attorneys. The  
21 Wynn Parties argued that the extremely broad RFPs were a fishing expedition, not supported by  
22 facts. (Wynn Resorts, Limited's Opp. to the Okada Parties Mot. to Compel Supp. Responses to  
23 their Second and Third Sets of Requests for Production, May 19, 2015, on file). The Okada Parties  
24 argued that there were "credible suspicions" that there was wrongdoing by WRL, and therefore the  
25 RFPs were reasonably calculated to lead to discoverable evidence. (The Aruze Parties' Reply in  
26 Support of their Mot. to Compel at p. 2, May 28, 2015, on file).

1           Thereafter, the long-requested depositions took place. For the first time, the Wynn Parties  
2 heard from actual witnesses with knowledge of the events. And, despite the broad representations  
3 of counsel, the Okada Parties admitted during sworn testimony that they have no facts to support  
4 those representations. What were once tenuous arguments for discoverability in support for the  
5 blanket discovery order no longer enjoy even the most liberal benefit of the doubt.

6                   ***I. Mr. Okada admits that the timeline does not support the pretext argument.***

7           No one questioned whether WRL acted appropriately in obtaining the Macau licensing  
8 procedure. That is, until Mr. Okada realized that the Wynn Parties were concerned about his  
9 involvement in the Philippines. When asked what year he began investigating how the money was  
10 spent in Macau, Mr. Okada stated: "I do not recall. However, in 2010 or 2011 or thereabouts, it  
11 seemed that Steve Wynn became distrustful of me and so he had an investigator look into matters.  
12 And so I thought that we also needed to look into things. I would think that the timing was about  
13 then as well." (Ex. B, Okada Dep. Tr., Vol. VII, 680:8-13.)

14           The Okada Parties' narrative has consistently been that the Wynn Parties used the  
15 investigation of Okada's dealings in the Philippines as a "pretext" to prevent Mr. Okada from doing  
16 further investigation into the Wynn Parties' dealings in Macau or elsewhere. The Okada Parties  
17 relied heavily on the pretext argument in support of their motion to compel;<sup>4</sup> in fact it was their  
18 only real argument to the otherwise irrelevant subject matters. That narrative, however, is not  
19 supported by Mr. Okada's understanding of the timeline.

20           In the Okada Parties' Motion to Compel Discovery Responses, they argued that they need  
21 the responses to the Requests for Production related to Government Investigations and  
22 Communications to "show that the Wynn Parties . . . were motivated to keep Mr. Okada from  
23 uncovering their [WRL's] misdeeds . . . ." <sup>5</sup> (The Aruze Parties' Mot. to Compel Supp. Responses to  
24

25                   <sup>4</sup> See pages 4, 5, 8, 9, 12, 13, 14, 15, 19, and 20 of The Aruze Parties' Motion to Compel  
26 Supplemental Responses, April 28, 2015, on file with the Court, for references by the Okada Parties  
that the Wynn Parties viewed Mr. Okada's investigation as a threat.

27                   <sup>5</sup> Footnote 16 identifies the relevant requests as identified by the Okada Parties as "114, 118,  
28 124, 125, 139, 142-143, 152, 249, 250 and 269."

1 their Second and Third Set of Requests for Production of Documents to Wynn Resorts, Limited  
2 at p. 15, April 28, 2015, on file.) During the deposition, the Wynn Parties learned that in or around  
3 2010 or 2011, Mr. Okada directed Mr. Takeuchi, the NRCP 30(b)(6) designee, to investigate how  
4 the 12 billion yen was used. Since that time, Takeuchi *has found no facts to support Okada's*  
5 *assertions.* (See generally Ex. B, Okada Dep. Tr., Vol. VII.)

6 This is a key fact: *The Okada Parties have no facts to support their counsel's theory that*  
7 *the Wynn Parties pursued government investigations as a motivation to distract from some*  
8 *purported Wynn Resorts' misdeed.* There was no way the Wynn Parties could have known prior  
9 to the June 2015 hearing that, at Okada's direction, Takeuchi conducted an *internal* investigation  
10 and came up with absolutely nothing to provide the Okada Parties' lawyers to support their desired  
11 theory. Nor could the Wynn Parties have known this information during the writ proceedings. It  
12 was Mr. Okada and Aruze's NRCP 30(b)(6) designee's own words that confirm the Wynn Parties'  
13 arguments that these RFPs are wildly speculative and not based in fact. The Wynn Parties should  
14 not be compelled to respond to such broad Requests unless and until the Okada Parties provide  
15 some factually supported causal link in the first instance. The Okada Parties are unable to make  
16 such a showing here.

17 **2. Mr. Okada admits that he has no facts regarding Macau.**

18 Wynn Resorts (Macau), S.A. ("WRM") had been an important part of Wynn Resorts'  
19 business since WRM obtained a gaming license in June 2002 and subsequently opened the hotel  
20 and casino resort in 2006. The Okada Parties represented to this Court that "there are serious  
21 questions about whether WRM made improper payments in connection with obtaining its license."  
22 (The Aruze Parties' Mot. to Compel Supp. Responses to their Second and Third Set of Requests for  
23 Production of Documents to Wynn Resorts, Limited at p. 10, April 28, 2015, on file.)<sup>6</sup> They needed  
24 the discovery, they argued, to gain more information about how WRM was able to secure its license.  
25 The innuendo was clear: some wrongdoing occurred that resulted in the license. Now that the Okada  
26

27 <sup>6</sup> Footnote 6 of Aruze's Motion to Compel Discovery Responses identifies the requests  
28 relating to Macau and the formation WRM as 89, 114, 123-24, 126, and 249.



1 Parties have been able to depose Mr. Okada, it is abundantly clear that these were not just  
2 speculative questions, but invented arguments. The Okada Parties have now confirmed in sworn  
3 testimony that they never had "serious questions" about events that took place over a decade ago;  
4 they certainly have no evidence to support this mantra.

5 a. Mr. Okada admits he does not know any facts to support his assertion  
6 that money was spent inappropriately or unlawfully in Macau.

7 As discussed above, Mr. Okada did not become suspicious of the Wynn Parties' activities  
8 in Macau until after he became aware they were concerned about his activities in the Philippines.  
9 Nearly four years have passed since the board redeemed Aruze's shares after the finding of  
10 unsuitability. Mr. Okada testified that Universal investigated how WRM spent company money  
11 in Macau, and he believed Mr. Takeuchi was in charge of the investigation. (Ex. B, Okada Dep.  
12 Tr., Vol. VII, 676:22-679:21.) Despite the years spent in litigation and the enormous resources  
13 expended by the Okada Parties to investigate the Wynn Parties, Mr. Okada knows nothing about  
14 how the money was spent. When asked whether there was money, separate from the Macau  
15 donation, that he believes was spent inappropriately or unlawfully in Macau by Wynn Resorts,  
16 Okada said "I cannot clarify that yet, nor do I have enough information about that." (*Id.*  
17 at 671:23-672:3.)

18 Mr. Okada was asked during the deposition: "I'm not asking if you have a suspicion. I'm  
19 asking if you are aware of any facts to support an inference that Wynn gave a single dollar to a  
20 government official in Macau in any inappropriate manner?" (*Id.* at 695:5-9.) Mr. Okada was  
21 unable or unwilling to provide any specific facts, instead stating "[w]ell, it's a ridiculous question,  
22 so I'm angry; however, I will answer. I don't know." (*Id.* at 695:12-14.) Mr. Okada also admitted  
23 that he knows no facts to support the Okada Parties' argument that the Wynn Parties inappropriately  
24 entertained Macanese government officials. (*Id.* at 701:16-19.)

25 The Okada Parties are specifically seeking "[a]ll Documents concerning Communication  
26 with the Government of Macau or any Government Official in Macau concerning the licensing,  
27 acquisition, concession, or similar grant to WRL, Stephen A. Wynn, Wynn Macau, or any related  
28

1 entities" in RFP 114. The Okada Parties are also seeking "[a]ll Documents concerning  
2 Investigations by regulatory agencies involving alleged irregularities and/or corruption in the 2002  
3 Macau concession tender process" in RFP 124. Requests for Production 29, 123, 126, and 249 also  
4 broadly seek documents relating to alleged corruption relating to WRM obtaining a license in  
5 Macau. The Okada Parties propounded these (overly broad) requests despite the fact that  
6 Mr. Okada was unable to articulate anything close to a fact to support the Okada Parties' wild  
7 speculation.

8 The Okada Parties will likely argue that the difficulties they have encountered and  
9 Mr. Okada's inability to specify any fact to support his assertions is exactly why this discovery is  
10 necessary. That is not enough for at least two obvious reasons: (1) Mr. Okada's testimony is new  
11 evidence to support the Wynn Parties' longstanding assertion that this is just a fishing expedition,  
12 intended to embarrass the Wynn Parties and require them to expend extraordinary amounts of  
13 money in the process; and (2) the Wynn Parties were not seeking Mr. Okada or Aruze's knowledge  
14 about Wynn Resorts' records. The Wynn Parties asked Mr. Okada multiple questions about what  
15 conduct he had serious questions about, when he questioned the conduct, when he asked a question  
16 that went unanswered, who said or did something that raised his concern, and what, if anything, he  
17 did about it in his fiduciary role. His testimony revealed that he questioned absolutely nothing,  
18 spoke to no one, and did nothing. Put simply, he has no facts whatsoever that Wynn Resorts did  
19 anything wrong in Macau, that he questioned that conduct, or that anyone at Wynn Resorts would  
20 have expected him to question any conduct so that the board needed to rush him off the board and  
21 redeem his shares. Without meeting this very basic threshold, discovery into these irrelevant  
22 subject matters is not permissible.

23 b. Mr. Okada is unaware of any improprieties between Mr. Wynn and  
24 the Kwan investors or Wong Chi Seng.

25 The same evidentiary confirmation that the Okada Parties have no facts to support their  
26 search for purported wrongdoings flows to many other of the 78 RFPs. RFP 126 requests:  
27  
28

1 All Documents concerning Communications between Stephen A.  
2 Wynn, WRL, or Wynn Macau on the one hand, and the original  
3 shareholders of Wynn Macau on the other, to include: Wong Chi Seng  
4 ("CS Wong"), Yani Kwan (aka Kwan Yan Chi), Li Tai Foon, Kwan  
5 Yan Ming "Wilson," S.H.W. & Co Ltd, SKKG Ltd, L'Arc de  
Triomphe Ltd, and Classic Wave Ltd, to include but not limited to  
Documents concerning Communications concerning the Share  
Subscription and Shareholders Agreement dated October 15, 2002.

6 The Court and opposing counsel are aware of the process of obtaining documents from Macau. It  
7 is labor intensive, and it is costly. The Wynn Parties have already devoted significant time and  
8 resources to obtaining discoverable documents from a non-party's records in Macau and understand  
9 that the additional discovery sought by the Okada Parties may necessitate another extended trip for  
10 numerous counsel and support staff.

11 The key is, however, that there must be some basis for seeking discovery. And here,  
12 Mr. Okada cannot provide the facts to show that there is a basis for discovery. If anyone should  
13 know, it is Mr. Okada, who is a former member of the board of directors of both WRL and WRM,  
14 a defendant in this case, and the sole officer of Aruze. And yet he does not know who the Kwan  
15 investors are. (Ex. B, Okada Dep. Tr., Vol. VII, 702:16-20.) He has heard of CS Wong, but is not  
16 aware of any facts to support the inference that the Wynn Parties engaged in any illegal or  
17 inappropriate transactions with him. (*Id.* at 702:22-703:10.) To require the Wynn Parties to engage  
18 in burdensome discovery without any support from Mr. Okada is unreasonable.

19 c. Mr. Okada has no direct evidence to support the allegations about  
20 inappropriate conduct regarding Cotai.

21 The Okada Parties have a remarkable number of Requests for Production relating to the  
22 Wynn Parties' involvement in Cotai.<sup>7</sup> The Okada Parties argue that the timing of the \$135 million  
23 donation to the University of Macau "may appear suspicious" in relation to the award of the long  
24 awaited land concession, and Mr. Okada's suspicions resulted in the Wynn Parties creating the  
25 pretext to remove Mr. Okada from the board. (The Aruze Parties' Mot. to Compel Supp. Responses  
26

27 <sup>7</sup> Footnote 9 of Aruze's Motion to Compel Discovery Responses identifies the requests  
28 relating to the Cotai land concession and related matters as "Requests 114, 118, 120, 122, 125,  
127-149, 152, 166-167, 205-206, 249-250, 259-266, and 269-277."

1 to their Second and Third Set of Requests for Production of Documents to Wynn Resorts, Limited  
2 at p. 11, April 28, 2015, on file; Ex. 36 to Aruze Parties' Mot. to Compel, on file.) Again,  
3 Mr. Okada's own testimony calls into question the veracity of this argument. Taking the  
4 Okada Parties' narrative at face value, one would expect some substance behind the suspicions that  
5 would require the Wynn Parties to take the extraordinary measures alleged by the Okada Parties.

6 The extent of Mr. Okada's knowledge regarding illegal payments in Cotai comes from  
7 former Universal President, Mr. Tokuda. (Ex. B, Okada Dep. Tr., Vol. VII, 696:22-698:1.)  
8 Mr. Okada said "It wasn't me who heard it, but I heard that there were several money exchanges  
9 that were inappropriate that happened in Cotai district in Macau. I did not hear it myself, but I  
10 heard from others." (*Id.*) Mr. Okada did not know any specifics about the transactions. (*Id.*)

11 Mr. Takeuchi, the Aruze NRCP 30(b)(6) designee who conducted Universal's investigation  
12 also discussed his knowledge of the Wynn Parties' involvement in Cotai. Mr. Takeuchi only  
13 became aware of involvement in Cotai from the attorneys during his preparation for the deposition.  
14 "Information Wynn Resorts disclosed was as follows: Wynn Macau acquired a casino license in a  
15 region called Cotai, and it disclosed that fact on March 2nd. I heard from Buckley Sandler about  
16 that fact." (Ex. D, Takeuchi Dep. Tr., Vol. II, 122:18-22.) The extent of his confirmation regarding  
17 Cotai was to look at the Wynn Resorts website. (*Id.* at 122:25-123:1.) But Mr. Takeuchi's  
18 information, whether it was what Buckley Sandler told him or he misunderstood, is wrong. There  
19 are not two Wynn gaming licenses in Macau; there is only one, awarded in 2002. The Company  
20 acquired two land concessions, one on the peninsula (Wynn Macau) and one on Cotai. Even if  
21 Mr. Takeuchi had testified to accurate facts related to Macau, he still did not testify to any  
22 wrongdoing by the Wynn Parties related to Cotai.

23 It has consistently been the Wynn Parties' position that there is no support for these vast  
24 RFPs. A vague allegation that Mr. Okada said that he heard from another person, without any  
25 specifics or confirmation, is not sufficient to require the Wynn Parties to produce documents  
26 responsive to over 50 extremely broad RFPs.

1 d. Mr. Okada has no facts to support the allegation that Wynn Resorts  
2 did anything improper regarding the sub-concession in 2006.

3 The Okada Parties have significant questions about the "Melco-PBL Sub-concession,"  
4 including seeking "[a]ll documents concerning the sub-concession awarded to Melco-PBL  
5 Entertainment in 2006" in RFP 278, and more specific questions in RFPs 114, 118-20, 122, and  
6 125. As with other topics, the Okada Parties represented to this Court that Mr. Okada's concerns  
7 about the sub-concession sale contributed to the Wynn Parties' decision to take action against  
8 Mr. Okada before he could uncover the alleged corruption. And, as with the other topics, once  
9 Mr. Okada was asked specifically about his concerns about the sub-concession, the Okada Parties'  
10 pretext story falls apart.

11 When asked if he believed the sale of the sub-concession was unlawful or inappropriate,  
12 Mr. Okada said he did not know. (Ex. B, Okada Dep. Tr., Vol. VII, 698:9-10.) Pressed further,  
13 Mr. Okada said that there might have been some problems with the payment of taxes on the sale,  
14 but he admitted he has no facts to support that Wynn Resorts did anything improper as it relates to  
15 the payment of taxes. (*Id.* at 701:16-19.) Mr. Okada confirmed that he received \$240 million in  
16 dividends as a result of the sub-concession, and he had no suspicions about the dividends at the  
17 time. (*Id.* at 700:22-701:14.) He never discussed any concerns with the board either. (*Id.*)

18 The Okada Parties' arguments regarding the sub-concession ring false in light of the new  
19 evidence gained from the depositions of Mr. Okada and Aruze's 30(b)(6) designee. The arguments  
20 of the Okada Parties' counsel cannot stand regarding the timeline of investigation, the allegations  
21 of inappropriate spending in Macau, the allegations of improper dealings with the Kwan investors  
22 and CS Wong, or the allegations of purported conduct in Cotai. Based on the deposition testimony  
23 of Mr. Okada, he does not know about any alleged misconduct after years of investigation.

24 And, this is not an instance where the documents are exclusively in the Wynn Parties'  
25 possession. While the Okada Parties argue time and again that they cannot know the facts that are  
26 in the documents solely in the Wynn Parties' possession, this is unavailing for two very important  
27 reasons. First, the Okada Parties have a good deal of information and Wynn Parties' documents  
28

1 from the Okada Parties' long tenure with the Wynn Parties, yet they point to none of them. And,  
2 more importantly, inasmuch as the Okada Parties have asserted fraud-based allegations and  
3 defenses, they must come forth with some evidence to support whatever their story is on the who,  
4 what, when, where, and how. *The depositions of Mr. Okada and Aruze prove that they simply*  
5 *cannot do that.*

6 Without any substance, much less support, to connect the discovery requests to this case, it  
7 is improper to require the Wynn Parties to respond to massive amounts of irrelevant Requests for  
8 Production.

9 e. Mr. Okada acknowledged gaming companies' self-reporting obligation.

10 For the first time in this case, through Mr. Okada's sworn testimony, *the Okada Parties*  
11 *acknowledged the self-policing and self-reporting obligation that comes with the privilege of a*  
12 *gaming license.* In his deposition, Mr. Okada admitted that gaming companies have an obligation  
13 to self-police and self-report, and admitted that the Okada Parties, too, had such an obligation.  
14 (Ex. F, Okada Dep. Tr., Vol. I, 112:13-114:7.) He also admitted that Universal failed to act  
15 consistent with its gaming obligations when he acknowledged that Universal's compliance  
16 committee should have but did not conduct a background investigation into Mr. Soriano or any of  
17 his affiliated companies before entering into a vendor/consulting agreement with him that resulted  
18 in cash payments of millions of dollars. (Ex. G, Okada Dep. Tr. Vol. III, 295:4-300:7.) But, most  
19 gaming licensees proceed with greater caution, and take their self-policing and self-reporting  
20 obligations much more seriously. Wynn Resorts certainly does.

21 This new and important evidence has a ripple effect on many of the RFPs designed to dig  
22 into "any and all documents" related to Wynn Resorts' compliance committee's conduct and duties  
23 and, combined with other evidence recently learned via the Defendants' depositions, compel relief  
24 from the June 22, 2015 Order.

25 First, despite being on the boards of both Wynn Resorts and Wynn Macau, Mr. Okada could  
26 not recall any instance where he or anyone else reported any prohibited activity. He could not  
27 identify any time when any senior officer, director, or employee was being investigated related to  
28

1 suitability concerns. So, with his requests, specifically 240 and 241, the Okada Parties are  
2 apparently trying to prove a negative – that no one was investigated by Wynn Resorts under the  
3 self-policing and self-reporting policies but for him. But, Okada was never a member of the  
4 compliance committee. And, Mr. Okada testified that he was not aware of what was occurring  
5 during the board meetings, talk to his co-directors, or even read the board materials because he does  
6 not speak English. (Ex. H, Okada Dep. Tr. Vol. VI, 560:4-7, 563:19-22.) Apparently, Okada has  
7 no awareness or understanding of the wide-sweeping work of a gaming compliance committee – to  
8 investigate and report, if necessary – of a company that takes its gaming obligations seriously. The  
9 lack of knowledge of Okada or his counsel does not entitle the Okada Parties to unlimited access  
10 "All Documents concerning any Investigation conducted by WRL's Gaming Compliance  
11 Committee pursuant to the requirement (referred to in Paragraph 14 of the Second Amended  
12 Complaint) that it "investigate senior officers, directors, and key employees to protect WRL from  
13 becoming associated from [sic] any unsuitable persons." (RFP 240; *see also* RFP 241.)

14 The Okada Parties' ability to link a grossly overbroad request to an allegation in the Second  
15 Amended Complaint does not automatically render the entirety of the request discoverable. The  
16 Company's self-policing and reporting obligation is a much more ordinary and routine process than  
17 the aspect of the obligation that relates to this case – though the processes are quite extensive and  
18 the subject matter invasive. For instance, like most gaming operators on the Las Vegas strip,  
19 Wynn Resorts must conduct background investigations on all potential vendors, with which they  
20 seek to do over \$350,000 in business with a year. These investigations include research into the  
21 vendors' officers and directors, any vendor employee that is to come on property.<sup>8</sup> These routine  
22 investigations, and the documents associated with the many third party individuals and businesses  
23 have nothing to do with the subject matter of this case, the claims, or defense. Yet, the requested  
24 documents from 2002 to the present related to all of these vendors – some with which Wynn Resorts

25  
26 \_\_\_\_\_  
27 <sup>8</sup> This is just one example of compliance related investigations. Others include investigations  
28 into all employees, entertainers, independent agents, and junkets, to name a few that have nothing  
whatsoever to do with this case.

1 does business, some of which were rejected – are all documents that, without relief from this order,  
2 will need to be reviewed and heavily redacted to protect extensive third party financial, strategic,  
3 and proprietary information.

4 The same is true about "all documents" related to background investigations into current  
5 and former directors since 2002, all key employees, all executive officers, and even employees of  
6 all levels swept up into random compliance checks from 2002 to the present. The documents  
7 encompassed by this overbroad request will include these individuals' private information, that they  
8 either provided to Wynn Resorts or permitted Wynn Resorts to obtain in order to be able to work  
9 with or for the Company. The documents will likewise need to be heavily redacted to protect these  
10 individuals' private information. The Okada Parties have failed to explain the stated purpose or  
11 need for the private information of these third parties, let alone an identifiable evidentiary basis to  
12 support such an expansive request.<sup>9</sup>

13 Moreover, to the extent the documents were gathered to provide to gaming or provided to  
14 gaming, many of the "documents concerning any investigation" by Wynn Resorts' compliance  
15 committee from 2002 to the present and similar compliance/suitability related requests, are  
16 privileged. Newly learned during the Defendants' recent depositions, the Okada Parties agree with  
17 the privilege assertion. For example, the Okada Parties have asserted the gaming privilege when  
18 Mr. Okada and Aruze's designee were asked questions about communications with the Nevada  
19

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20 <sup>9</sup> Wynn Resorts is not taking the unreasonable position that there are no compliance-related  
21 documents related to this case. But, without some narrowing or particularity, the scope of the  
Requests are incredibly vast for a gaming licensee that actually complies with its obligations.

22 As an illustration, as discussed above, Wynn Resorts conduct vendor investigations as part  
23 of its compliance obligations. Similarly, the Okada Parties admitted that they should have done a  
24 background check on Mr. Soriano and/or his companies before entering into a vendor/consulting  
25 agreement and/or providing them with exorbitant sums of money. (Ex. G, Okada Dep. Tr. Vol. III,  
26 298:14-23.) But, unlike the Okada Parties who admitted that they did not do a vendor background  
27 check on Soriano, (*Id.* at 295:4-14.) Wynn Resorts does conduct these investigations, and has since  
its inception. While the background investigation into Soriano would have been relevant and  
discoverable had Universal complied with its compliance obligations, most of the other background  
investigations that the Okada Parties' compliance committee performed (or should have performed)  
are neither discoverable nor relevant. Similarly, Wynn Resorts' many routine compliance  
investigations are not discoverable nor relevant.



1 Gaming Control Board. (*see e.g.* Ex. F, Okada Dep. Tr. Vol. I, 102:15-16; Ex. I, Takeuchi Dep.  
2 Tr. Vol. V, 558:21-559:5.) Mr. Takeuchi, noted that information relating to the Universal's  
3 compliance committee is privileged because some of the members are attorneys. (Ex. J, Takeuchi's  
4 Translated Notes, p. 18.)

5 Thus, the Okada Parties are asking that the Wynn Parties review and prepare a massive  
6 privilege log for "all documents concerning any investigation" by Wynn Resorts' compliance  
7 committee from 2002 to the present. Because of the Okada Parties' assertion of privilege to prevent  
8 the discovery of gaming, suitability, and compliance related subject matters, and the massive  
9 privilege log associated with "any document" related to the work of the compliance committee from  
10 Wynn Resorts' inception, the Wynn Parties seek relief from the Order related to RFPs 230-34,  
11 240-42, 283-84, 283, and 289. In the very least, Wynn Parties are entitled to relief in the form of  
12 narrowed requests that seek documents actually related to the subject matter of this case; not any  
13 and all compliance or suitability related documents, or in the order of discovery such that the  
14 Okada Parties must propound interrogatories or ask questions at depositions to lay the foundation  
15 for a more narrowed requests. The RFPs as propounded, and the Order, based upon the newly  
16 learned evidence and positions entirely disregard the operations, obligations, and reality of gaming  
17 licensees.

18 f. The Okada Parties failed to offer any evidence as to the  
19 remaining RFPs.

20 The long soliloquys during Mr. Okada's deposition prevented inquiry into all topics  
21 identified in the 78 RFPs but those speeches also did not include any factual support for them either.  
22 The deposition of Aruze's designee also requires more time. And, the Wynn Parties reserved the  
23 right to seek leave of the Court for additional examination time, both follow-up and additional  
24 topics, as to Okada and Aruze. (Ex. K, Okada Dep. Tr., Vol. X, 1073:5-13; Ex. E, Takeuchi Dep.  
25 Tr. Vol. IV, 422:1-22.)

26 But, given the wealth of new evidence that demonstrates the lack of factual basis for many  
27 of the 78 RFPs and the overbreadth of others, the Wynn Parties seek relief from the Order as to all  
28 remaining RFPs unless and until the Okada Parties can present a *factual* connection (not lawyer

1 argument of unsubstantiated and wishful "facts") to the issues in this action can be made. (RFPs 82,  
2 86, 90, 93, 215, 235, 236, 237, 238, and 239.) Specifically, the Wynn Parties seek relief in the form  
3 of an order of discovery as it relates to any and all remaining of the 78 RFPs such that via  
4 interrogatory response and/or deposition, the Okada Parties can demonstrate a factual nexus of the  
5 RFP to the subject matter in dispute in this action.

6 **C. The Aruze Parties Should be Required to Pay for the Overly Broad Discovery.**

7 If the Court determines that the Wynn Parties are required to produce documents under  
8 some or all of the Requests for Production, the Court should shift the fees and costs to the parties  
9 seeking extraordinarily broad discovery with only a minimal likelihood of uncovering admissible  
10 evidence. Under NRCP 26(b)(2), the court has the authority to limit the rules of discovery either  
11 by motion or under its own initiative. This includes the authority to order that discovery "be had  
12 only on specified terms and conditions . . . ." NRCP 26(c). Under the circumstances related to the  
13 78 RFPs, the specific terms or conditions should include cost-shifting.

14 To assess whether to shift costs in discovery based on proportionality, the federal courts  
15 provide sound guidance for complex cases such as this. Recognizing the trends in the federal cases  
16 related to e-discovery and proportionality, the Federal Rules of Civil Procedure were recently  
17 amended, effective December 1, 2015, to require that discovery be "proportional to the needs of the  
18 case." These amendments reflect the new reality of large and complex litigation, and that the power  
19 and availability of ESI render discovery related to overly broad and tenuously connected requests  
20 unnecessarily intrusive and extraordinarily burdensome. This Court can and should use its inherent  
21 discretionary power to order a condition on the production of the remaining 78 RFPs: that the  
22 anticipated costs of review and production (and privilege logs) be shifted to the Okada Parties.

23 **1. *Guidance on Fee Shifting Considerations from the Federal Rules of Civil***  
24 ***Procedure.***

25 The general presumption has been that each party bears its own fees and costs, thus the party  
26 seeking fee-shifting bears the burden to overcome the presumption. *See Oppenheimer Fund, Inc. v.*  
27 *Sanders*, 437 U.S. 340, 358 (1978); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 33 (1991); *Last Atlantis*

1 *Capital, LLC v. AGS Specialist Partners*, No. 04 C 0397, 2011 WL 6097769, at \*2 (N.D. Ill. Dec. 5,  
2 2011). Courts have discretion under FRCP 26(c) to shift the cost from the responding party to the  
3 requesting party. Fed. R. Civ. P. 26(c); *see also Foreclosure Mgmt. Co. v. Asset Mgmt.*  
4 *Holdings, LLC*, No. 07-2388-DJW, 2008 WL 3822773, at \*7 (D. Kan. Aug. 13, 2008)  
5 ("Notwithstanding this presumption [that the responding party will bear the cost of production], a  
6 court has discretion under Rule 26(c) to condition discovery on the requesting party's payment of  
7 the costs of the discovery.").

8 Federal Rule of Civil Procedure 26(b)(2)(B) governs the scope and limits of discovery.  
9 Under Rule 26(b)(2)(B), a responding party need not produce ESI from sources that it identifies as  
10 not reasonably accessible because of undue burden or cost. *Id.* If the requesting party moves to  
11 compel discovery of such information, the responding party must show that the information is not  
12 reasonably accessible because of undue burden or cost. *Id.* Once that showing is made, a court may  
13 order discovery only for good cause, subject to the provisions of rule 26(b)(2)(C). *Id.*  
14 FRCP 26(b)(2)(B) states:

15 *Specific Limitations on Electronically Stored Information.* A party  
16 need not provide discovery of electronically stored information from  
17 sources that the party identifies as not reasonably accessible because  
18 of undue burden or cost. On motion to compel discovery or for a  
19 protective order, the party from whom discovery is sought must show  
20 that the information is not reasonably accessible because of undue  
burden or cost. If that showing is made, the court may nonetheless  
order discovery from such sources if the requesting party shows good  
cause, considering the limitations of Rule 26(b)(2)(C). The court may  
specify conditions for the discovery.

21 The court's cost-benefit analysis under Rule 26(b)(2)(C) that involves weighing the burden or  
22 expense of the proposed discovery against its benefit has become known as the "proportionality  
23 rule." Fed. R. Civ. P. 26(b)(2)(C)(iii). This is the rule that many courts have relied upon to order  
24 cost-shifting or cost-sharing in lieu of limiting discovery. *Id.* FRCP 26(b)(2)(C) states:

25 **(C) When Required.** On motion or on its own, the court must limit the  
26 frequency or extent of discovery otherwise allowed by these rules or  
27 by local rule if it determines that:  
28 (i) the discovery sought is unreasonably cumulative or duplicative, or  
can be obtained from some other source that is more convenient, less  
burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or  
(iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

The 2006 Amendments for Rule 26(b)(2)(C) suggest there are certain factors for the court to consider when looking to see if the production is from not reasonably accessible sources. Fed. R. Civ. P. 26(b)(2)(C) advisory committee's note to the 2006 amendments; *see also Nogle v. Beech Street Corp.*, No. 2:10-CV-01092-KJD-GWF, 2012 WL 3687570, at \*7 (D. Nev. Aug. 27, 2012).

The *Nogle* factors include: (1) the specificity of the discovery request; (2) the quantity of information available from other and more easily accessed sources; (3) the failure to produce relevant information that seems likely to have existed but is no longer available on more easily accessed sources; (4) the likelihood of finding relevant, responsive information that cannot be obtained from other, more easily accessed sources; (5) predictions as to the importance and usefulness of the further information; (6) the importance of the issues at stake in the litigation; and (7) the parties' resources. *Id.*

Some courts have focused on the inaccessibility of documents being the only grounds for fee-shifting. *See, e.g., Peskoff v. Faber*, 240 F.R.D. 26, 31 (D.D.C. 2007); *Pipefitters Local No. 636 Pension Fund v. Mercer Human Res. Consulting, Inc.*, No. 05-CV-74326, 2007 WL 2080365, at \*2 (E.D. Mich. July 19, 2007). Other courts are expanding the concept of cost-shifting to ESI that isn't necessarily inaccessible through a review of the burdens associated with accessing the documents.

In *Adair v. EQT Production Company*, accessibility of the ESI was not the issue before the court; the issue was whether the cost of reviewing the ESI should be shifted to the requesting party. *Adair v. EQT Prod. Co.*, No. 1:10cv00037, 2012 WL 1965880, at \*4 (W.D. Va. May 31, 2012). The court stated FRCP 26(b)(2)(C)(iii) gives courts the ability to limit the frequency or extent of discovery "regardless of accessibility—whenever the burden or expense of the proposed discovery outweighs its likely benefit." *Id.* Based on Rule 26(b)(2)(C)(iii) and the court's "wide latitude in

1 controlling discovery," that court held the cost of reviewing ESI may be considered in determining  
2 whether discovery imposes an undue burden or cost on a responding party and whether to shift costs  
3 of such review, either in whole or in part, to the requesting party. *Id.*

4 The court in *F.D.I.C. v. Brudnicki* found that several reasons justified the defendants' paying  
5 some of the cost of producing the ESI, even assuming the document management system database  
6 did not fall within the definition of inaccessible ESI. 291 F.R.D. 669, 676 (N.D. Fla. 2013). First,  
7 the FDIC had already incurred more than \$624,000 in costs for collection, processing, and  
8 uploading of the files and documents of the bank into the DMS database. *Id.* at 671-72. The  
9 defendants would be required to pay a reduced per page charge for converting a document to a TIFF  
10 format and a nominal charge for uploading the data to the relativity database. *Id.* at 676. Second,  
11 the court noted that Rule 26(b)(2)(C) provides authority for shifting costs as part of the enforcement  
12 of proportionality limits. *Id.* Among the factors the court may consider in enforcing proportionality  
13 limits are (1) the specificity of the discovery requests, (2) the likelihood of discovering critical  
14 information, (3) the purposes for which the responding party maintains the requested data, (4) the  
15 relative benefit to the parties of obtaining the information, (5) the total cost associated with the  
16 production, (6) the relative ability of each party to control costs and its incentive to do so, and (7)  
17 the resources available to each party. *Id.* at 676-77. Despite the accessibility of the information  
18 being sought, Rule 26(c) permits cost shifting as part of enforcing the proportionality limits.  
19 *Id.* at 676.

20 **2. This Court should shift the fees and costs under the "proportionality rule"  
interpretation of FRCP 26(b)(2)(C).**

21 If the Court determines that the Wynn Parties are required to produce documents under some  
22 or all of the Requests for Production, the costs of any such review and production should be shifted  
23 to the Okada Parties. *F.D.I.C. v. Brudnicki* set forth factors for shifting costs when considering  
24 proportionality limits of broad ESI discovery. 291 F.R.D. 669, 676-77 (N.D. Fla. 2013). Here, this  
25 case also involves a significant amount of ESI discovery, with the additional burden of the Macau  
26 Data Privacy Act. In reviewing the factors, shifting the cost to the Okada Parties is appropriate.

1 a. The specificity of the discovery requests.

2 This Motion concerns only 78 RFPs out of the nearly 1,000 that the Okada Parties  
3 propounded on the Wynn Parties. Setting aside the Wynn Parties' argument that these RFPs are not  
4 relevant or likely to produce discoverable evidence, there is no possible argument that these are  
5 specific discovery requests. They are not designed to clarify the circumstances surrounding a  
6 particular incident, or to provide supporting evidence for a specific assertion. Instead, the  
7 Okada Parties are asking for the Wynn Parties to comb through all of their documents to provide  
8 information that the potential for relevancy is at best speculative. The Okada Parties' requests are  
9 not specific.

10 b. The likelihood of discovering critical information.

11 The Court must determine whether the Okada Parties have made a showing that they are  
12 likely to discovery critical evidence. As the Wynn Parties have long argued, the Okada Parties have  
13 failed to make the showing that the RFPs are likely to result in any significant evidentiary value.  
14 The additional evidence resulting from Aruze and Mr. Okada's depositions, discussed above,  
15 emphasize the low likelihood of discovering critical information. In the end, the Wynn Parties  
16 would be tasked with creating a massive privilege log. This significantly reduces the likelihood of  
17 discovering critical information.

18 c. The purposes for which the responding party maintains the requested  
19 data.

20 Many of the documents, such as meeting minutes are maintained in the ordinary course of  
21 business. Based on the subject matter of the RFPs, it is likely that the location of many of these  
22 documents is in Macau. Therefore, these documents come with the additional burden of complying  
23 with Macau data privacy laws.

24 d. The relative benefit to the parties of obtaining the information.

25 The issue in evaluating the relative benefit to the parties is that the Okada Parties still have  
26 no basis to argue that there will be beneficial information obtained through the discovery process.  
27 As discussed above, the documents will be highly redacted or completely withheld because of  
28

1 privilege. The Okada Parties will, at best, have a minimal benefit from the extremely burdensome  
2 exercise of reviewing these documents.

3 e. The total cost associated with the production.

4 As everyone associated with the case is aware, the nature of this case is such that discovery  
5 for all parties is costly and burdensome. Here, the Okada Parties are propounding broad,  
6 speculative RFPs that would relate to documents only available in Macau. As a result, the  
7 Wynn Parties' counsel would spend significant time in the region of Macau redacting, because of  
8 the Macanese data restrictions and the fact that many of the documents the Okada Parties are  
9 requesting are privileged. Add this to the technical costs associated with the productions, and the  
10 costs are extraordinary.

11 As discussed above, the Wynn Parties understand that in litigation, some discovery is  
12 necessary and appropriate. The Wynn Parties' vehement objections come when one party moves  
13 to require another to produce likely irrelevant documents at significant costs. While the  
14 Wynn Parties still contend the Court should not require production responsive to the 78 RFPs based  
15 on the new evidence, the Court should at the very least shift the costs to the Okada Parties who are  
16 engaging in the fishing expedition.

17 f. The relative ability of each party to control costs and its incentive to  
18 do so.

19 In general, parties have the incentive to control costs and try to do so. With the  
20 Okada Parties' seemingly innumerable requests related to Wynn Macau, a non-party in this case,  
21 Wynn Resorts previously incurred fees and costs for travel, review, production and a privilege log  
22 for documents responsive to the Okada Parties' requests that had a factual nexus with this case. The  
23 additional round of travel (for vendors, multiple attorneys, and support staff) and the time necessary  
24 to review for responsiveness, privilege, and others Macau-related concerns related to the 78 RFPs,  
25 will resort in further exorbitant costs. While Wynn Resorts can try to control, and has great  
26 incentive to control, the related fees and costs, the travel, review and technology are expensive and  
27 extraordinary costs for the non-party document review.

28

g. The resources available to each party.

Both the Wynn Parties and the Okada Parties have access to resources. And this is one of the main arguments repeatedly put forth by the Okada Parties: this case is high stakes, about high dollar values, and thus the parties can expect to pay high fees and costs. But, simply because a party has access to resources to be able to search for and produce irrelevant discovery does not mean that the law requires it to do so. The discoverability and production analysis should not be focused on whether a party can afford the associated costs surrounding the irrelevant discovery. And it is not here. This factor considers the resources available to *each* party, and the Okada Parties have the resources. Therefore, for any of the RFPs for which production from non-party Wynn Macau is required, the fees and costs should be shifted to the Okada Parties.

#### IV. CONCLUSION

For the foregoing reasons, the Wynn Parties ask that this Court grant its Motion for Relief from the June 22, 2015 Order and limit the Requests for Production sought by the Okada Parties based on the new evidence provided during Mr. Okada's deposition. It is clear that the Okada Parties have no factual basis for these discovery requests. The Court should not condone the Okada Parties' attempt to have a court sanctioned fishing expedition.

In addition, the Wynn Parties ask that this Court apply the reasoning of the "proportionality rule" under FRCP 26(b)(2)(C) and shift the costs to the Okada Parties. If the Okada Parties seek to have such broad and expansive discovery, with such tenuous relevance, they should bear the burden of the costs.

DATED this 8th day of December, 2015.

PISANELLI BICE PLLC

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and Allan Zeman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 8th day of December, 2015, I caused to be electronically served through the Court's filing system true and correct copies of the foregoing THE WYNN PARTIES' MOTION FOR RELIEF FROM ORDER GRANTING THE ARUZE PARTIES' MOTION TO COMPEL SUPPLEMENTAL RESPONSES TO THEIR SECOND AND THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO WYNN RESORTS to the following:

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# EXHIBIT A

DECLARATION OF DEBRA L. SPINELLI, ESQ.

I, DEBRA L. SPINELLI, Esq., being first duly sworn, hereby declare as follows:

1. I am a resident of the State of Nevada, and a partner with the law firm Pisanelli Bice PLLC, counsel for Plaintiff/Counter-defendant Wynn Resorts, Limited ("Wynn Resorts" and/or the "Company") and Counter-defendants 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 (collectively, the "Wynn Parties") in the above-captioned matter pending before this Court. I make this Declaration in support of the Wynn Parties' Motion for Relief from Order Granting the Aruze Parties' Motion to Compel Supplemental Responses to their Second and Third Sets of Requests for Production of Documents to Wynn Resorts Limited on an Order Shortening time. ("Wynn Parties' Motion"). I have personal knowledge of the facts stated herein and I am competent to testify to.

2. This Court held a status check on November 19, 2015 following the Nevada Supreme Court's order denying Wynn Parties' writ petition related to the June 2015 order on 78 of the Okada Parties' requests for production, Supreme Court Case Number 68439. At that status check, the Wynn Parties informed the Court and the Okada Parties that they would be filing a motion based on new information gained from the recent depositions of the defendants.

3. The Motion for Order Shortening Time is necessary because the Okada Parties made representations at the November 19, 2015 hearing that they would be moving to compel the production of documents shortly. An Order Shortening Time is in the best interests of both the Wynn and Okada Parties.

4. This Motion for Order Shortening Time is made in good faith and is not intended to vex or harass the opposing parties or their counsel or to unreasonably delay these proceedings.

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

Dated this 8th day of December, 2015.

  
DEBRA L. SPINELLI, ESQ.

# EXHIBIT B

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

AND ALL RELATED CLAIMS.

DEPOSITION OF KAZUO OKADA

VOLUME VII

PAGES 637 THROUGH 755

VIDEOTAPED

LAS VEGAS, NEVADA

TUESDAY, NOVEMBER 3, 2015

REPORTED BY:

CARRE LEWIS, CCR NO. 497, CSR NO. 13337

JOB NO. 268438

1 DEPOSITION OF KAZUO OKADA,  
2 taken at 400 South 7th Street, Las Vegas, Nevada, on  
3 Tuesday, November 3, 2015, at 10:00 a.m., before  
4 Carre Lewis, Certified Court Reporter, in and for  
5 the State of Nevada.

6

7 APPEARANCES:

8 For Wynn Resorts, Limited; Linda Chen; Russell  
9 Goldsmith; Ray R. Irani; Robert J. Miller; John A.  
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6 Sadaaki Matsutani, Interpreter  
7 Minoru Akuhara, Interpreter  
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1 Q. So in other words, that never happened?

2 A. It's not the case that I heard that in  
3 particular.

4 Q. Did you ever state to Mr. Wynn that you  
5 were sympathetic to Elaine Wynn?

6 A. I never said that. I thought so, but --  
7 INTERPRETER MATSUTANI: Interpretation  
8 correction: "I never said that, but I thought so."

9 BY MR. PISANELLI:

10 Q. Did there ever come a time when you and  
11 Mr. Wynn specifically talked about a desire of  
12 Ms. Wynn to transfer her shares to some -- her  
13 shares of Wynn Resorts to some new owner?

14 A. It never happened. What's it got to do  
15 with this?

16 Q. You told us yesterday that you viewed this  
17 case as involving two issues: One was the Macau  
18 donation, which we have already talked about; and  
19 the other was questions concerning 12 billion yen,  
20 and that was brought to Macau, and how it was spent.

21 Do you recall that testimony?

22 A. I think so, and I remember that too.

23 Q. Is it your position, Mr. Okada, that  
24 separate and apart from the Macau donation, that  
25 money was spent inappropriately or unlawfully in

1 Macau by Wynn Resorts?

2 A. I cannot clarify that yet, nor do I have  
3 enough information about that.

4 Q. Do you have any reason to believe that any  
5 portion of this 12 billion yen that you have been  
6 referring to was spent inappropriately or  
7 unlawfully?

8 MR. KRAKOFF: Objection. Asked and  
9 answered.

10 THE WITNESS: I do have a reason or reasons  
11 to believe that.

12 BY MR. PISANELLI:

13 Q. Tell me all of the reasons you have.

14 A. Well, as for Macau, after we formed  
15 partners -- we became partners in 2001, he  
16 established a company on his own as individual.

17 I don't know about what manipulation he may  
18 have done, that whether or not he might have sold a  
19 part of his stock for that purpose.

20 He -- ignoring the issue of 50/50 and our  
21 being partners, he -- he ignored that two of us --  
22 and he ignored it and established his own individual  
23 company by borrowing money on his own.

24 INTERPRETER MATSUTANI: Interpretation  
25 correction: "He established his own individual

1 company, borrowing money from me -- using money from  
2 me."

3 THE WITNESS: Also, further, 9 billion yen  
4 was additionally funded in April 2002 between --  
5 based on the discussions between Shoji and Steve  
6 Wynn in the manner that that would not be understood  
7 by me.

8 When there was a discussion about this 3  
9 billion yen, I had a discussion that it may -- there  
10 may be a risk in case when this money was to be used  
11 in order to obtain a license, but there is a  
12 possibility that license would not be granted, and  
13 in such a case, if the license is not granted, there  
14 would be a risk.

15 INTERPRETER MATSUTANI: Interpretation  
16 correction: "I had a discussion at the board of  
17 directors' meeting that there may be a risk in case  
18 when a license may not be obtained, even though this  
19 money was to be used to obtain a license."

20 THE WITNESS: Well, after this money,  
21 12 billion yen, was used and after that company  
22 obtained the license, he said it was his  
23 investment-in-kind, and then he engaged in  
24 fraudulent activity same.

25 That is precisely why I want the

1 investigation done looking into 12 billion yen.  
2 Well, in order to get a license, it is difficult to  
3 imagine that 12 billion yen -- as much as 12 billion  
4 yen would be needed in a pure sense.

5 Well, this should be pursued why -- when  
6 the company name was changed, say, between Barbino  
7 [sic] and Wynn Resorts. As of that time, he --  
8 Valvino and Wynn Resort -- he acted as if it was his  
9 own money that was invested by investment-in-kind.

10 I asked my attorneys to look into this.  
11 Well, I'm talking about -- I'm saying this until  
12 then.

13 BY MR. PISANELLI:

14 Q. So the 12 billion yen that you just  
15 described to us was expended in 2002; is that right?

16 A. That's correct.

17 Q. And is it your position that the 12 billion  
18 yen that was expended in Macau was your money?

19 A. Please consider it as company money -- our  
20 company money.

21 Q. Money that you invested into the company?

22 A. That's not correct. I explained it's our  
23 company's money.

24 Q. You testified just a few moments ago that  
25 Mr. Wynn used your money in committing a fraud.

1     Isn't that what you just said?

2           A.     Well, if I were talking about as a company  
3     representative, I would use those words. Well, if I  
4     were to talk about it as director of Universal's  
5     board, then it's correct to call that company money.

6           Q.     When was it, to your knowledge, that the  
7     company obtained a license in Macau?

8           A.     I know all the investigations conducted by  
9     the company's internal investigation committee;  
10    however, I don't know when it was now.

11          Q.     Well, you testified a moment ago that it's  
12    difficult to imagine that 12 billion yen would be  
13    needed to pursue a license.

14                 So my question to you is this: What did  
15    you say to the board of directors of Wynn Resorts  
16    about this issue prior to the initiation of this  
17    lawsuit?

18          A.     Well, as for the board of directors'  
19    meetings of Wynn Resorts in 2011, the circumstances  
20    were such that only unilateral conclusions were  
21    discussed in conversations, and no conversations or  
22    explanations could not be given -- could not be held  
23    by me. Please understand the circumstances were  
24    like that.

25          Q.     Well, whether or not the board would

1 discuss it or the company would investigate it, did  
2 you ever raise this issue to the board of directors  
3 prior to the initiation of this lawsuit?

4 A. It was something that should be done, say,  
5 way before the board of directors, so I did not talk  
6 about it with the board of directors.

7 Q. Did you talk about it with anyone?

8 INTERPRETER MATSUTANI: Interpretation  
9 correction: "It's something that should be done  
10 before the board of directors' meeting."

11 Okay. "It's something that should be done  
12 before the board of directors' meeting, so I did not  
13 talk about it with the board of directors."

14 BY MR. PISANELLI:

15 Q. Did you talk about it to anyone?

16 A. Well, after we were sued around that time,  
17 say 2010-2011 time frame, I felt a lot of  
18 investigation was done, but we examined, say, past  
19 shareholders' agreement, past investment, Wynn's  
20 investment and our investment. We examined these  
21 issues.

22 Q. Who is "we"?

23 A. I'm talking about myself, including the  
24 investigative committee -- our investigative  
25 committee.

1 Q. Investigative committee for Universal?

2 A. That's correct.

3 Q. When did the investigative committee for  
4 Universal look into the issue concerning the  
5 12 billion yen, as you have described here today?

6 A. Well, I don't know that either.

7 Q. Did the investigative committee for  
8 Universal actually conduct an investigation?

9 A. I think it actually did. I think the first  
10 job that the investigative committee did was to read  
11 the shareholders' agreement.

12 Q. Who was in charge of the investigative  
13 committee at the time it was looking into the  
14 12 billion yen?

15 A. Well, I don't know whether the expression  
16 "the investigative committee" was correct at the  
17 beginning. I think it became -- took the form of  
18 investigation committee in stages, and finally in  
19 the end, it took that form. So I don't -- I think  
20 ultimately took the form of investigative committee.

21 Q. Well, let me ask it differently. Who was  
22 in charge of the investigation into the 12 billion  
23 yen?

24 A. Well, currently we have asked the internal  
25 investigative committee and attorneys, our



1 attorneys.

2 Q. How many investigations have there been  
3 into the 12 billion yen?

4 A. I don't know any such thing as how many  
5 times. Well, I don't know how many times there may  
6 have been investigations into that. The  
7 investigative committee may have a view that this is  
8 good enough or because it's not clearly known how it  
9 was spent. For that reason, I think the attorneys  
10 were asked to investigate.

11 Q. What did your internal investigative  
12 committee report about its investigation into the 12  
13 million yen and how it was spent?

14 MR. KRAKOFF: Objection. Calling for  
15 privileged communications.

16 MR. PISANELLI: What privilege is that?

17 MR. KRAKOFF: Attorney-client and work  
18 product.

19 As you know, Jim, this was an attorney  
20 investigation. He has testified to that at  
21 Line 33:16 [of the realtime transcript]. He's  
22 already testified about that previously, as has the  
23 30(b)(6) deponent.

24 BY MR. PISANELLI:

25 Q. So what I'm asking for now is the name of

1 the person in charge of the internal  
2 investigation -- internal investigation committee  
3 that looked into the 12 billion yen.

4 A. Ultimately it was Mr. Takeuchi. However, I  
5 asked our Japanese attorneys to ask the attorneys in  
6 Macau to look into how the funds were used, and so  
7 we are not in a position to have an understanding  
8 about it.

9 Q. Who directed Mr. Takeuchi to head up an  
10 investigation into the 12 billion yen?

11 A. I was the one that was cognizant of the  
12 fact that I was directly involved in the 12 billion  
13 yen.

14 Q. And --

15 A. And so I was the one that directed him to  
16 do so.

17 INTERPRETER AKUHARA: Excuse me. I would  
18 like to give a -- I would like to give an alternate  
19 interpretation to that answer.

20 Answer: "So I was the one that asked him  
21 to do so."

22 BY MR. PISANELLI:

23 Q. When did you ask Mr. Takeuchi to look into  
24 the 12 billion yen?

25 A. I do not recall.

1 Q. What year was it?

2 A. I do not recall. However, in 2010 or 2011  
3 or thereabouts, it seemed that Steve Wynn had  
4 questions about me and so he had an investigator  
5 look into me.

6 INTERPRETER AKUHARA: I would like to give  
7 an alternate interpretation of that.

8 Answer: "I do not recall. However, in  
9 2010 or 2011 or thereabouts, it seemed that Steve  
10 Wynn became distrustful of me and so he had an  
11 investigator look into matters. And so I thought  
12 that we also needed to look into things. I would  
13 think that the timing was about then as well."

14 BY MR. PISANELLI:

15 Q. And did you direct Mr. Takeuchi to look  
16 into the 12 billion yen because of this distrust  
17 that had developed between you and Mr. Wynn?

18 A. Your expression is incorrect. Initially it  
19 was Steve Wynn who had the distrust of I. After  
20 that, to depose that, I had everything looked into.  
21 It came in steps.

22 Q. When did Mr. Takeuchi first report to you  
23 his findings concerning his investigation into the  
24 12 billion yen?

25 A. Rather than to say when that was, I heard

1 from him that certain things were written in or  
2 expressed in --

3 INTERPRETER AKUHARA: Excuse me. I will  
4 begin again.

5 Answer: "Rather than to say when that was,  
6 I heard from him that certain things were written in  
7 the shareholders' agreement or certain things were  
8 expressed in some manner. However, with regards to  
9 the 12 billion yen, it's an incident that took place  
10 for Steve Wynn in his Valvino days.

11 "Those that were involved were people in  
12 accounting, the president, there were others that  
13 were involved. So I had that looked into. Also I  
14 had the matters -- all the matters looked into with  
15 regards to Macau."

16 THE WITNESS: With regards to Macau, as  
17 long as we could understand what was taking place  
18 there, that would be fine. However, with regards to  
19 discovery, we have made a request in discovery to  
20 Steve Wynn as to how the 12 billion have been used.

21 BY MR. PISANELLI:

22 Q. Did Mr. Takeuchi ever report to you  
23 findings of his investigation as to how the  
24 12 billion yen was used?

25 MR. KRAKOFF: Objection. He may answer yes

1 or no to that question.

2 THE WITNESS: Mr. Takeuchi does not know  
3 how the 12 billion was used. I think that it only  
4 goes to the extent of he having uncovered materials  
5 pertaining to the 12 billion and Steve Wynn.

6 MR. KRAKOFF: Jim, we'd like to take the  
7 lunch break now.

8 INTERPRETER AKUHARA: I would like to give  
9 an alternate interpretation of that answer.

10 "I think that it only goes to the extent of  
11 he having uncovered materials that show there was  
12 12 billion used by Steve Wynn."

13 BY MR. PISANELLI:

14 Q. Does that mean that Mr. Takeuchi did not  
15 uncover any facts about how the 12 billion was used?

16 MR. KRAKOFF: Objection. Objection.  
17 That's privileged and it goes -- and it calls for  
18 privileged communications. Same objection I had  
19 before, attorney-client and work product.

20 MR. PISANELLI: David, so help me  
21 understand how an investigation by a nonlawyer  
22 inside this company years before this lawsuit was  
23 initiated somehow falls within attorney work  
24 product.

25 MR. KRAKOFF: It's not by a nonlawyer, it's

1 a nonlawyer working with lawyers, as was testified  
2 to by the 30(b)(6) deponent, by Mr. Okada previously  
3 at Line 33:16 [of the realtime transcript] today.

4 So we have been down this road, Jim. You  
5 know what we are talking about and you are trying to  
6 get at it yet another way.

7 MR. PISANELLI: I don't know what you are  
8 talking about. You are attempting, I think, to mix  
9 these investigations into one. I have been doing my  
10 best to get all the foundational information out  
11 concerning this investigation, and I don't agree  
12 with you that there is anything in the record of  
13 this deposition that this investigation by  
14 Mr. Takeuchi is any way related to the preparation  
15 of a defense or prosecution of a claim in this case.  
16 There is nothing in the record to suggest that.

17 MR. KRAKOFF: We've asserted privilege.

18 MR. PISANELLI: I will continue to get  
19 questions out, and assert your instructions and  
20 objections as you deem appropriate.

21 MR. KRAKOFF: Okay. Fair enough. We would  
22 like to take a lunch break.

23 MR. PISANELLI: Okay.

24 THE VIDEOGRAPHER: Off the record at 12:22.

25 (Off the record for lunch recess.)

1 MR. PISANELLI: David, the reason we are  
2 running a little late and you saw us huddling out  
3 there, we've just been notified of a subpoena for  
4 this transcript and other records, and pursuant to  
5 our confidentiality order, you are obviously  
6 entitled to know about that, so I wanted to make  
7 sure I understood what the subpoena was and the  
8 return date, et cetera.

9 We do have a return date of December 1st.  
10 We will all have time to look at it and respond, but  
11 I wanted to take time and let you know that has  
12 occurred just minutes ago at least as far as I know.

13 MR. CAMPBELL: Grand jury subpoena.

14 MR. HELM: Grand jury subpoena.

15 MR. CAMPBELL: District of Nevada.

16 MR. PISANELLI: Grand jury subpoena.

17 BY MR. PISANELLI:

18 Q. Mr. Okada, before we broke, we were talking  
19 about investigations that you requested into the  
20 12 billion yen that was expended in Macau.

21 You told us in addition to the internal  
22 investigative committee, that you had asked your  
23 Japanese attorneys to ask attorneys in Macau to look  
24 into this issue.

25 Did I understand you correctly?

1 A. I think you correctly understood it.

2 Q. Which investigation occurred first, the  
3 internal investigation headed up by Mr. Takeuchi, or  
4 the outside investigation by the Japanese and  
5 Macanese attorneys?

6 A. I explained that looking into the -- as for  
7 the internal investigation, it was -- they were  
8 looking into the Shareholders' agreement. That was  
9 a beginning point. I explained that already.

10 Q. When did you request your Japanese  
11 attorneys to begin an investigation into the  
12 12 billion yen?

13 A. U.S. lawsuit was also filed with respect to  
14 the issue of 12 billion yen, and that was a starting  
15 point. And the -- how the -- how it was accounted,  
16 how 12 billion yen was accounted in the United  
17 States, how the money flowed to Macau and how it was  
18 spent, you would -- one would not know that unless  
19 some professional investigation is done. Right?

20 Q. My question is when did you ask the  
21 Japanese lawyers to begin the investigation?

22 A. Well, I don't remember clearly, but first  
23 lawsuit in Nevada is to be filed and then discovery  
24 is conducted. And it would be the best if that, you  
25 know, is learned; American movements in the U.S. are



1 discovered in the discovery, that would be the best.

2 Well, as for the -- how it was spent in  
3 Macau, I'm thinking it is something I -- that would  
4 not be uncovered unless attorneys in Macau were  
5 asked.

6 Well, consultation was held with Japanese  
7 attorneys and by having them introduce attorneys in  
8 Macau, and in that connection, discovery on this  
9 issue would be -- I asked that discovery on this  
10 issue would be made.

11 Q. When did you make the request for that  
12 discovery?

13 A. Very recently. I'm talking about issue in  
14 Macau.

15 Well, so before that, though, I would like  
16 to learn from the discovery in the U.S. and then we  
17 would have the Macau. So in that order, I thought  
18 about this.

19 Q. Has the investigation in Macau commenced?

20 A. Well, I think not. After the things become  
21 a little more visible through the discovery, I  
22 believe the investigation would be more effective.

23 Q. What is the --

24 A. After the American issues become a little  
25 more visible through the discovery, I believe the

1 investigation would be more efficient.

2 Q. What is the name of the Macau lawyers that  
3 you have engaged to conduct this investigation?

4 A. I have not been told the name yet.

5 Q. What is the name of your Japanese lawyers?

6 A. I have asked the attorneys, including  
7 Attorney Arai.

8 INTERPRETER MATSUTANI: A-R-A-I.

9 BY MR. PISANELLI:

10 Q. So do I understand you correctly that your  
11 plan is to uncover what you can in the discovery in  
12 this case, and then from there, take that  
13 information to help support the investigation in  
14 Macau?

15 MR. KRAKOFF: Objection. Mischaracterizes  
16 the testimony.

17 THE WITNESS: Well, basically by  
18 understanding it, the information on that -- that --  
19 to the effect that there is no problem, would be  
20 conveyed, and by doing so, the content of it could  
21 be more quickly conveyed -- could be investigated.

22 BY MR. PISANELLI:

23 Q. Have you personally reviewed any of the  
24 discovery that has been produced in this case?

25 A. I have not reviewed it; however, I have

1     been told a little bit about.

2           Q.     Has Mr. Takeuchi reviewed the discovery in  
3     this case to assist him in his internal  
4     investigation?

5           A.     Please don't ask something that I --  
6     that -- which there is no way that I would know.  
7     Please ask Mr. Takeuchi.

8           Q.     Well, has Mr. Takeuchi informed you that he  
9     is reviewing the discovery in this case to assist in  
10    his investigation?

11           MR. KRAKOFF:   Objection.   Asked and  
12    answered.

13           THE WITNESS:   I don't know.   I'm not  
14    Takeuchi.

15    BY MR. PISANELLI:

16           Q.     I didn't ask you if you were Takeuchi.  
17                   I asked you if he told you whether he is  
18    reviewing the discovery in this case to be used in  
19    the investigation that he is conducting.

20           MR. KRAKOFF:   Objection.   Asked and  
21    answered now twice.

22           MR. PISANELLI:   Well, it has been twice.  
23    If you would like to direct me in the transcript to  
24    where he actually told me what Takeuchi told him, I  
25    would be happy to reconsider the question.

1 MR. KRAKOFF: What he did was say he didn't  
2 know, which is at 18: "The Witness: I don't know."  
3 43:18 [of the realtime transcript]. Excuse me.

4 "I don't know." That's what he said.

5 MR. PISANELLI: "I don't know" is  
6 nonresponsive to whether Mr. Takeuchi told him  
7 something. Either he told him or he didn't. So I'm  
8 going to ask it again.

9 BY MR. PISANELLI:

10 Q. Has Mr. Takeuchi told you that he is  
11 reviewing the discovery in this case for assisting  
12 his investigation?

13 MR. KRAKOFF: Objection. Asked and  
14 answered.

15 THE WITNESS: Well, I'm saying this over  
16 and over again. I'm not Takeuchi. I did not hear  
17 about it.

18 And also what Takeuchi looked into,  
19 Shareholders' agreement, and also he checked into  
20 agreements that Shoji entered into going back into  
21 the past. He looked into these issues. And I did  
22 not review them.

23 INTERPRETER MATSUTANI: Interpretation  
24 correction: "I'm saying this over and over again.  
25 I'm not Takeuchi. I did not hear about it. I did

1 not review it.

2 "And also what Takeuchi looked into is  
3 shareholders' agreements, and also he checked into  
4 agreements that Shoji entered into going back into  
5 the past."

6 THE WITNESS: What I asked Mr. Takeuchi to  
7 look into was the investment amount and  
8 investment-in-kind that Wynn Resorts and Steve Wynn  
9 came up with, and whether -- to what extent that's  
10 correct, and whether such investment is equal or  
11 fair, or if not, how unfair.

12 Those are the issues I asked him to look  
13 into.

14 BY MR. PISANELLI:

15 Q. And has he reported to you any answers or  
16 conclusions about those questions?

17 INTERPRETER MATSUTANI: The interpreter  
18 stands corrected. The interpreter realizes: "And I  
19 have been told a report about these."

20 BY MR. PISANELLI:

21 Q. What were you told in that report?

22 MR. KRAKOFF: Objection. That's privileged  
23 information because Mr. Takeuchi was part of the  
24 internal investigation where he was with lawyers.

25 So he cannot answer that question, and I'm

1 instructing him not to answer that question.

2 BY MR. PISANELLI:

3 Q. Mr. Okada, tell us all of the facts that  
4 you are aware of concerning how the \$12 billion --  
5 12 billion yen was used in Macau.

6 A. Well, it's more correct to ask this of  
7 Steve Wynn. I think you are asking me a wrong  
8 question.

9 Q. Well, you have told us about different  
10 investigations about the 12 billion yen, your  
11 questions about it, and so I want to know as you sit  
12 here today, do you merely have a question about how  
13 the money was spent, or do you actually -- are you  
14 actually aware of facts that the 12 billion yen was  
15 spent inappropriately or illegally?

16 And that's why my question to you is this:  
17 What facts are you aware of concerning the manner in  
18 which the 12 billion yen was spent?

19 A. Well, what I know is I approved of a 3  
20 billion yen, and I negotiated as a party. I believe  
21 9 billion yen was additionally spent I think either  
22 by the arrangement or discussions between Shoji and  
23 Steve Wynn.

24 I heard that the remittance was made in  
25 April 2002. And I heard that the company was

1 incorporated about a year earlier, around June  
2 of 2001.

3 I think 12 billion yen was not fair. The  
4 person who was handling this at that time by the  
5 name of Ohba wrote me a letter -- sent me a letter  
6 that Wynn was unilaterally unfair, not fair,  
7 demanding unfair conditions.

8 So the first issue's whether or not the  
9 Wynn side also came up with \$12 billion likewise, or  
10 the money, \$12 billion -- 12 billion yen, our money,  
11 was the only money that was used to engage in  
12 activities in Macau. That was the first issue.

13 INTERPRETER MATSUTANI: Interpretation  
14 correction: "So the first issue whether or not Wynn  
15 side also came up with 12 billion yen, or the money,  
16 12 billion yen, we came up with was the only money  
17 that was used engaged in actives in Macau. That was  
18 the first issue."

19 THE WITNESS: And the \$12 billion that was  
20 spent to obtain a --

21 INTERPRETER MATSUTANI: Interpretation:  
22 "12 billion yen that was spent to obtain a license  
23 in Macau, that was such a huge amount in terms of  
24 the monetary amount that I cannot understand."

25 THE WITNESS: In addition if it's an

1 individual company and if we are partners, then I  
2 think, properly speaking, it should be joint  
3 investment; like a partners, a proper amount should  
4 be invested.

5 Well, in any case, at the time it was  
6 Valvino that accepted this and it was Wynn's  
7 predecessor. And for how much it was sold to  
8 Valvino, I heard it was considered to be  
9 investment-in-kind.

10 And using our own money, and by doing so  
11 creating the value, himself he would take the  
12 investment-in-kind, treatment of investment-in-kind,  
13 and he would not accord us the same treatment. That  
14 is clearly a fraudulent activity.

15 The introduction was much, much later, but  
16 in the meantime, by having a person named Baron --  
17 Mr. Baron have some shareholdings -- by having a  
18 third person become the shareholder, the original  
19 shareholding ratio, 50 percent each, that  
20 shareholding ratio changed somewhat as a result of  
21 it.

22 So again, it was supposed to be equal  
23 partners, but in order to deceive that, to hide  
24 that, he was doing this -- what he thought was a  
25 smart move on his own. I heard -- I have been told



1 up to this point.

2 Well, as for Macau's activities, I would  
3 like to pursue them until after the discovery is  
4 over and the content is learned, and until the point  
5 when there is no longer any problem, until how the  
6 12 billion yen was spent in Macau could be learned.

7 What I know is just up to this point.

8 BY MR. PISANELLI:

9 Q. You are not aware of any other facts that  
10 you haven't told us about how the 12 billion yen was  
11 spent in Macau?

12 A. I already answered clearly, and there is  
13 nothing more beyond that.

14 Q. You are not aware of any facts to support  
15 an inference that any portion of the 12 billion yen  
16 was inappropriately remitted to government  
17 officials, are you?

18 A. It's wrong for you to ask me about such  
19 inferences.

20 Q. Go ahead and answer my question, please.

21 MR. KRAKOFF: Objection. Calls for legal  
22 conclusion.

23 THE WITNESS: I feel you are asking the  
24 question which there is no way for me to answer.

25 You asked me if I have suspicions, and you

1 asked me if I have suspicions based on the  
2 assumption. I don't know if that's a correct way of  
3 asking questions or not.

4 BY MR. PISANELLI:

5 Q. I'm not asking if you have a suspicion.  
6 I'm asking if you are aware of any facts to support  
7 an inference that Wynn gave a single dollar to a  
8 government official in Macau in any inappropriate  
9 manner?

10 MR. KRAKOFF: Objection. Asked and  
11 answered.

12 THE WITNESS: Well, it's a ridiculous  
13 question, so I'm angry; however, I will answer. I  
14 don't know.

15 BY MR. PISANELLI:

16 Q. Are you aware of a single fact to support  
17 an inference that Wynn did anything illegal with the  
18 12 billion yen?

19 MR. KRAKOFF: Objection. Asked and  
20 answered.

21 THE WITNESS: Well, I stated -- I stated  
22 that what Wynn did with respect to the investment,  
23 accounting, the -- in connection with the company  
24 that was created using that money, treating that  
25 investment -- treating that as investment-in-kind,

1 as investment, that activity by Wynn, I said, is an  
2 illegal activity, clearly.

3 BY MR. PISANELLI:

4 Q. You did -- you did testify as to the  
5 accounting. And so let me rephrase my question so  
6 it's clear.

7 Other than what you have already told us,  
8 are you aware of any additional facts to support an  
9 inference that Wynn did anything illegal with the  
10 12 billion yen?

11 MR. KRAKOFF: Objection. Vague and  
12 ambiguous.

13 THE WITNESS: I think I answered this  
14 earlier too, but I don't know any other facts. I  
15 told you all that I know.

16 BY MR. PISANELLI:

17 Q. Thank you.

18 The questions that I have been asking have  
19 been focused on the 12 billion yen. I want to ask  
20 you now a few questions that are broader than just  
21 that amount of money.

22 Other than what you have already testified  
23 to, are you aware of any facts to support an  
24 inference that Wynn Resorts has conducted or engaged  
25 in any illegal activity in connection with its Macau

1 project?

2 A. I do not want to answer questions that  
3 relate -- that are unclear to me.

4 It wasn't me who heard it, but I heard that  
5 there were several money exchanges that took place  
6 that were inappropriate that happened in Cotai  
7 district in Macau. I did not hear it myself, but I  
8 heard from others.

9 Q. Heard from whom?

10 A. Either this was something that Mr. Tokuda,  
11 executive officer, looked into, or it may be that he  
12 heard it. I'm not sure, but I heard to that effect.

13 Q. Everything you know about this topic you  
14 learned from Mr. Tokuda?

15 A. What I just stated is the scope of that is  
16 what I heard from Mr. Tokuda.

17 Q. Mr. Tokuda tell you anything more specific  
18 than what you just told us?

19 A. No, I was not told.

20 Q. So in other words, if I were to ask you  
21 details about these alleged money exchanges, you  
22 wouldn't know anything about that; is that fair?

23 A. That's correct. You asked me a broad  
24 question and I answered a broad question, gave you a  
25 broad answer. And I told you what I heard, and I

1 don't know beyond that.

2 Q. Are you of the opinion that the sale of the  
3 subconcession in 2006 was inappropriate or unlawful?

4 A. I don't know.

5 Q. Do you know any facts about the sale of the  
6 subconcession?

7 A. By that do you mean sublicense?

8 Q. Yes.

9 A. Well, about the sublicense sale, it was  
10 sold for a high price, such as 100 billion yen. And  
11 no tax was paid to either Macau government or to the  
12 U.S. government, and it was approved in that manner.  
13 I heard -- I was told that by Mr. Wynn.

14 Q. What did Wynn Resorts do with the proceeds  
15 from the sale of the subconcession?

16 A. I think a half of it -- as much as a half  
17 may be used as dividends, although it's possible  
18 that the money used may not be less than -- might be  
19 less than half. But other than that, I think it  
20 might have been used for -- to obtain a borrowing or  
21 it might be used as a construction money, funding  
22 for construction.

23 Q. Is it possible that all of it was  
24 distributed through dividends?

25 A. Well, I answered an assumption -- the

1 question based on assumption, based on -- I answered  
2 based on assumption. So I don't know -- as to  
3 dividends and money used for construction, I don't  
4 know what ratio dividends comprised.

5 Q. Do you recall --

6 A. I don't have a clear understanding of  
7 those.

8 Q. Does it refresh your recollection that you  
9 received approximately \$240 million in dividends  
10 from a sale of the sublicense?

11 INTERPRETER MATSUTANI: \$240 million?

12 MR. PISANELLI: Dollars, yes.

13 THE WITNESS: Well, as for such details, I  
14 don't really -- I'm not aware of such details --

15 INTERPRETER MATSUTANI: Interpretation  
16 correction: "As for that amount, I'm not aware of  
17 such details. Perhaps something that should be  
18 explained to me was explained to someone else, I  
19 think."

20 BY MR. PISANELLI:

21 Q. When you received the \$240 million in  
22 dividends from the sale of the subconcession, did  
23 you complain to the board of directors that you were  
24 concerned that some unlawful behavior had occurred?

25 A. As for this issue as to whether taxes were

1 paid in Macau or tax payment issue in the United  
2 States, I -- there was -- I asked a reasonable  
3 measure -- if reasonable measure was taken, and I  
4 thought there would be no problem if a reasonable  
5 measure was taken. And Steve Wynn explained to me  
6 about this, and I thought there was no problem.

7 Q. And you still think there is no problem as  
8 you sit here today?

9 A. I have a slight question about how that  
10 might have been possible.

11 Q. What question is that?

12 A. Well, if that was reported as income in  
13 Macau, some tax should have been paid.

14 Q. Well, you voted to approve the dividend we  
15 just talked about, correct?

16 A. The expression that you use, "voting," is  
17 incorrect. Well, Steve Wynn already decided, made  
18 up his mind, and just told us do this and do that,  
19 and there was no sense in opposing it. And at the  
20 time I did not think of him as a bad man, as I think  
21 now today.

22 Q. Well, you testified during your deposition  
23 how you objected to the donation to the University  
24 of Macau.

25 My question is: Did you ever object to

1 this dividend which resulted in about \$240 million  
2 being paid to you?

3 MR. KRAKOFF: Objection. Asked and  
4 answered.

5 THE WITNESS: The taxation in Macau is the  
6 lowest in the world. If I'm not mistaken, I heard  
7 it's around 6 percent.

8 Well, whether or not it was paid, I already  
9 explained that it was over by not paying. And so I  
10 thought -- I was told that it resulted in that  
11 manner as a result of negotiations with tax  
12 authorities. And that was -- that -- so at the  
13 time -- so I had no -- it's not the case that I had  
14 any suspicions about that at the time.

15 BY MR. PISANELLI:

16 Q. So have you learned any facts since that  
17 time to support that Wynn Resorts did anything  
18 improper as it relates to the payment of tax?

19 A. I have not.

20 Q. Are you aware of any facts that Wynn  
21 Resorts inappropriately entertained any government  
22 officials in Macau?

23 And to be clear, the question should be  
24 entertain government officials from Macau, not in  
25 Macau.



1           A.     I have already answered that I don't know.  
2     So earlier when I made reference to what I was told  
3     by Mr. Tokuda, it was not that I verified any of it.  
4     I only told you to the extent of what he told me.

5           Q.     Are you aware of any facts to support an  
6     inference that any unlawful activity occurred  
7     between Wynn Resorts and the Macau government  
8     related to the Cotai land concession?

9           MR. KRAKOFF:  Objection.  Vague and  
10    ambiguous.  Calls for several legal conclusions.

11          THE WITNESS:  So earlier I did say that I  
12    heard something along those lines from Mr. Tokuda;  
13    however, I was only answering in a broad manner  
14    given how broad the question itself is.

15    BY MR. PISANELLI:

16          Q.     Have you ever heard of a group referred to  
17    as the Kwan investors, K-W-A-N?

18          A.     I have not.

19          INTERPRETER AKUHARA:  This is the  
20    interpreter speaking:  "I don't know."

21    BY MR. PISANELLI:

22          Q.     Are you familiar about a person by the name  
23    of Mr. Wong Chi Seng, W-O-N-G, C-H-I, S-E-N-G?

24          A.     I'm not familiar with that person; however  
25    if you are asking if I have heard of that name, yes,

1 I have heard of that name.

2 Q. Are you aware of any facts to support an  
3 inference that Wynn Resorts engaged in any illegal  
4 or inappropriate transactions with Mr. Wong Chi  
5 Seng?

6 MR. KRAKOFF: Objection. Vague and  
7 ambiguous. Calls for a legal conclusion.

8 THE WITNESS: Please stop asking me the  
9 same question. I have heard only the name. That is  
10 what I have stated.

11 MR. KRAKOFF: Jim, would this be a good  
12 time for our break?

13 MR. PISANELLI: Yes.

14 THE VIDEOGRAPHER: Off the record at 2:37.

15 (Recess taken.)

16 THE VIDEOGRAPHER: Back on the record at  
17 3:00.

18 BY MR. PISANELLI:

19 Q. Mr. Okada, have you developed an opinion as  
20 to why Wynn Resorts redeemed the stock of Aruze USA?

21 A. When you say "developed an opinion," what  
22 sort of thing do you have in mind?

23 Q. I just want to know what you believe the  
24 reason was that Wynn Resorts voted to redeem stock  
25 of Aruze USA.

CERTIFICATE OF REPORTER

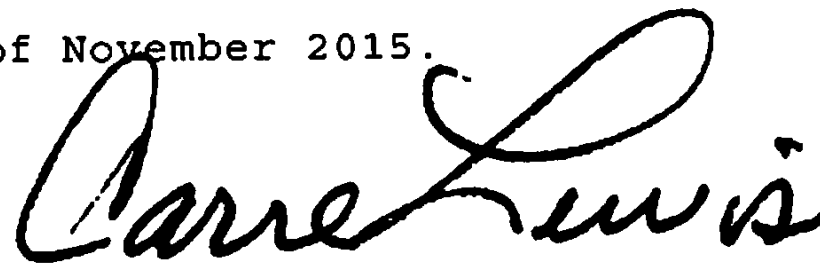
1  
2 STATE OF NEVADA )  
3 COUNTY OF CLARK ) SS:

4 I, Carre Lewis, a duly commissioned and licensed  
5 Court Reporter, Clark County, State of Nevada, do  
6 hereby certify: That I reported the taking of the  
7 deposition of the witness, Kazuo Okada, commencing  
8 on Tuesday, November 4, 2015, at 10:00 a.m.

9 That prior to being examined, the witness was,  
10 by me, duly sworn to testify to the truth. That I  
11 thereafter transcribed my said shorthand notes into  
12 typewriting and that the typewritten transcript of  
13 said deposition is a complete, true and accurate  
14 transcription of said shorthand notes.

15 I further certify that I am not a relative or  
16 employee of an attorney or counsel of any of the  
17 parties, nor a relative or employee of an attorney  
18 or counsel involved in said action, nor a person  
19 financially interested in the action.

20 IN WITNESS HEREOF, I have hereunto set my hand,  
21 in my office, in the County of Clark, State of  
22 Nevada, this 4th day of November 2015.

23  
24 

25 CARRE LEWIS, CCR NO. 497

# EXHIBIT C

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

DEPOSITION OF TOJI TAKEUCHI

ARUZE USA, INC. 30(B)(6) DESIGNEE

VOLUME I

PAGES 1 THROUGH 108

VIDEOTAPED

LAS VEGAS, NEVADA

MONDAY, OCTOBER 5, 2015

REPORTED BY:

CARRE LEWIS, CCR NO. 497, CSR NO. 13337

JOB NO. 268426

1 DEPOSITION OF TOJI TAKEUCHI,  
2 taken at 400 South 7th Street, Las Vegas, Nevada, on  
3 Monday, October 5, 2015, at 10:13 a.m., before Carre  
4 Lewis, Certified Court Reporter, in and for the  
5 State of Nevada.

6  
7 APPEARANCES:

8 For Wynn Resorts, Limited; Linda Chen; Russell  
9 Goldsmith; Ray R. Irani; Robert J. Miller; John A.  
Moran; Marc D. Schorr; Alvin V. Shoemaker; Kimmarie  
Sinatra; D. Boone Wayson; and Allan Zeman:

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21 BUCKLEY SANDLER LLP  
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1 APPEARANCES (continued):

2 For Elaine Wynn:

3 JOLLEY, URG, WIRTH, WOODBURY & STANDISH  
4 BY: WILLIAM R. URG, ESQ.  
5 3800 Howard Hughes Parkway, 16th Floor  
6 Las Vegas, Nevada 89109  
(702) 699-7500  
wru@juww.com  
ls@juww.com

7 Also Present:

8 Kimmarie Sinatra  
9 Rubenstein Bledstein, Interpreter  
10 Sadaaki Matsutani, Interpreter  
Michiru Suzuki, Interpreter  
Bruce Holcomb, Interpreter

11 The Videographer:

12 Litigation Services & Technologies  
13 By: Dustin Kittleson  
14 3770 Howard Hughes Parkway, Suite 300  
Las Vegas, Nevada 89169  
(800) 330-1112

15

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25

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1 testify today.

2 A. First, attorneys from Buckley Sandler --  
3 Mr. Krakoff, Mr. Klubes, Mr. Miller -- and several  
4 others, and all together I had 16 meetings.

5 These meetings were held in Tokyo, Hong  
6 Kong, Washington, and -- and also the rest were held  
7 by way of video conferences. And the hours, number  
8 of hours, spent on -- on them was approximately 80  
9 hours.

10 And at these meetings, Bruce, seated behind  
11 me right now, he served as the interpreter at these  
12 meetings.

13 Also, in addition, I spent approximately 25  
14 hours doing my own preparations.

15 In addition, I belong to Universal  
16 Entertainment, but over the past -- course of past  
17 three years, I was involved in documenting the  
18 investigation relating to this U.S. lawsuit the  
19 last -- approximately last three years as general  
20 manager of foreign affairs division.

21 In the course of such activities, I had  
22 conversation with -- conversations with several  
23 employees and several members of the board.

24 For example, Mr. Fujimoto, who is current  
25 president of Universal Entertainment; also former



1 CERTIFICATE OF REPORTER

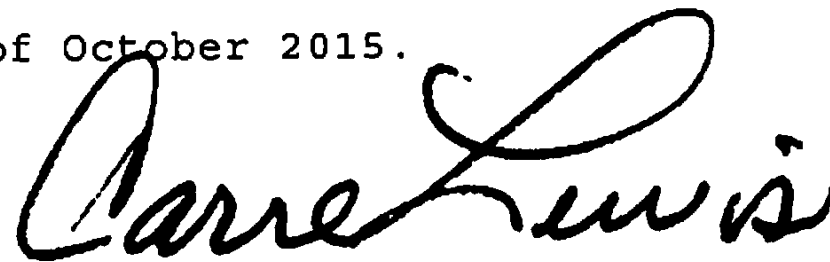
2 STATE OF NEVADA )  
3 ) SS:  
4 COUNTY OF CLARK )

5 I, Carre Lewis, a duly commissioned and licensed  
6 Court Reporter, Clark County, State of Nevada, do  
7 hereby certify: That I reported the taking of the  
8 deposition of the witness, Toji Takeuchi, commencing  
9 on Monday, October 6, 2015, at 10:13 a.m.

10 That prior to being examined, the witness was,  
11 by me, duly sworn to testify to the truth. That I  
12 thereafter transcribed my said shorthand notes into  
13 typewriting and that the typewritten transcript of  
14 said deposition is a complete, true and accurate  
15 transcription of said shorthand notes.

16 I further certify that I am not a relative or  
17 employee of an attorney or counsel of any of the  
18 parties, nor a relative or employee of an attorney  
19 or counsel involved in said action, nor a person  
20 financially interested in the action.

21 IN WITNESS HEREOF, I have hereunto set my hand,  
22 in my office, in the County of Clark, State of  
23 Nevada, this 6th day of October 2015.

24 

25 CARRE LEWIS, CCR NO. 497

# EXHIBIT D

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

DEPOSITION OF TOJI TAKEUCHI  
ARUZE USA, INC. 30(B)(6) DESIGNEE  
VOLUME II  
PAGES 109 THROUGH 237  
VIDEOTAPED  
LAS VEGAS, NEVADA  
TUESDAY, OCTOBER 6, 2015

REPORTED BY:

CARRE LEWIS, CCR NO. 497, CSR NO. 13337

JOB NO. 268427

1 DEPOSITION OF TOJI TAKEUCHI,  
2 taken at 400 South 7th Street, Las Vegas, Nevada, on  
3 Tuesday, October 6, 2015, at 9:00 a.m., before Carre  
4 Lewis, Certified Court Reporter, in and for the  
5 State of Nevada.

6  
7 APPEARANCES:

8 For Wynn Resorts, Limited; Linda Chen; Russell  
9 Goldsmith; Ray R. Irani; Robert J. Miller; John A.  
Moran; Marc D. Schorr; Alvin V. Shoemaker; Kimmarie  
Sinatra; D. Boone Wayson; and Allan Zeman:

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16 For Aruze USA, Inc.:

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18 9555 Hillwood Drive, 2nd Floor  
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20 BUCKLEY SANDLER LLP  
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BY: BENJAMIN B. KLUBES, ESQ.  
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25 amiller@buckleysandler.com

1 APPEARANCES (continued):

2 For Elaine Wynn:

3 JOLLEY, URG, WIRTH, WOODBURY & STANDISH  
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5 3800 Howard Hughes Parkway, 16th Floor  
6 Las Vegas, Nevada 89109  
7 (702) 699-7500  
8 wru@juww.com  
9 ls@juww.com

10 For Steve Wynn:

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12 BY: DONALD CAMPBELL, ESQ.  
13 BY: COLBY WILLIAMS, ESQ.  
14 700 South 7th Street  
15 Las Vegas, Nevada 89101  
16 (702) 382-5222

17 Also Present:

18 Kimmarie Sinatra, Esq.  
19 Yuki Arai, Esq.  
20 Linda Rubenstein Bledstein, Interpreter  
21 Sadaaki Matsutani, Interpreter  
22 Michiru Suzuki, Interpreter  
23 Bruce Holcombe, Interpreter

24 The Videographer:

25 Litigation Services & Technologies  
By: Dustin Kittleson  
3770 Howard Hughes Parkway, Suite 300  
Las Vegas, Nevada 89169  
(800) 330-1112

1           A.    Are you talking about the information after  
2   the board of directors meeting on February 18?

3           Q.    We may have had a misunderstanding, so let  
4   me try to clarify.

5                    So a moment ago you testified about  
6   important information that was disclosed. From a  
7   timing perspective, did Buckley Sandler tell you  
8   about the disclosure of this information that  
9   occurred during the February 18th meeting or  
10   disclosed after that meeting?

11          A.    I didn't quite understand that.

12                   There was a board of dir- -- Wynn Resorts  
13   board of directors meeting on February 18th, 2012,  
14   and within less than a month from that board  
15   meeting, Wynn Resorts disclosed certain information,  
16   and I heard from Buckley Sandler about that fact.

17          Q.    What information are you talking about?

18          A.    Information Wynn Resorts disclosed was as  
19   follows: Wynn Macau acquired a casino license in a  
20   region called Cotai, and it disclosed that fact on  
21   March 2nd. I heard from Buckley Sandler about that  
22   fact.

23          Q.    What did you do to confirm the accuracy of  
24   that fact, if anything?

25          A.    If I'm not mistaken, I think I saw an area

1 of release in Wynn Resorts home page.

2 Q. What else did Buckley Sandler tell you  
3 during your preparation meetings that you did not  
4 already know?

5 A. Just a minute, please. I'm looking at my  
6 notes. I -- I probably would recall if I look at my  
7 notes.

8 As for others, well, I was provided the --  
9 with the information that in the operation contract  
10 with Valvino, a company called Valvino, a so-called  
11 redemption provision was included there at the  
12 beginning, and this is something I did not know  
13 about.

14 Q. Is this part of your notes on Page 12?

15 A. Page 12? No.

16 That's referenced in Page 6 and then  
17 Page 4.

18 Q. And what did you do to confirm the accuracy  
19 of what Buckley Sandler told you about the  
20 redemption clause?

21 A. I actually checked the operation contract.

22 Q. Did you talk to Mr. Okada about anything  
23 that Buckley Sandler had told you to confirm the  
24 accuracy?

25 A. I did not.

CERTIFICATE OF REPORTER

1  
2 STATE OF NEVADA )  
3 ) SS:  
4 COUNTY OF CLARK )

5 I, Carre Lewis, a duly commissioned and licensed  
6 Court Reporter, Clark County, State of Nevada, do  
7 hereby certify: That I reported the taking of the  
8 deposition of the witness, Toji Takeuchi, commencing  
9 on Tuesday, October 6, 2015, at 9:00 a.m.

10 That prior to being examined, the witness was,  
11 by me, duly sworn to testify to the truth. That I  
12 thereafter transcribed my said shorthand notes into  
13 typewriting and that the typewritten transcript of  
14 said deposition is a complete, true and accurate  
15 transcription of said shorthand notes.

16 I further certify that I am not a relative or  
17 employee of an attorney or counsel of any of the  
18 parties, nor a relative or employee of an attorney  
19 or counsel involved in said action, nor a person  
20 financially interested in the action.

21 IN WITNESS HEREOF, I have hereunto set my hand,  
22 in my office, in the County of Clark, State of  
23 Nevada, this 7th day of October 2015.

24 

25 CARRE LEWIS, CCR NO. 497



# EXHIBIT E

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

AND ALL RELATED CLAIMS.

DEPOSITION OF TOJI TAKEUCHI  
ARUZE USA, INC. 30(B)(6) DESIGNEE

VOLUME IV

PAGES 352 THROUGH 466

VIDEOTAPED

LAS VEGAS, NEVADA

FRIDAY, NOVEMBER 13, 2015

REPORTED BY:

CARRE LEWIS, CCR NO. 497, CSR NO. 13337

JOB NO. 268429

1 DEPOSITION OF TOJI TAKEUCHI,  
2 taken at 400 South 7th Street, Las Vegas, Nevada, on  
3 Friday, November 13, 2015, at 9:08 a.m., before  
4 Carre Lewis, Certified Court Reporter, in and for  
5 the State of Nevada.

6  
7 APPEARANCES:

8 For Wynn Resorts, Limited; Linda Chen; Russell  
9 Goldsmith; Ray R. Irani; Robert J. Miller; John A.  
Moran; Marc D. Schorr; Alvin V. Shoemaker; Kimmarie  
Sinatra; D. Boone Wayson; and Allan Zeman:

10 PISANELLI BICE, PLLC  
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22 JOLLEY, URGAS, WIRTH, WOODBURY & STANDISH  
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6 For Aruze USA, Inc.:

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1 APPEARANCES (continued):

2 Also Present:

3 Kimmarie Sinatra, Esq.  
4 Linda Rubenstein Bledstein, Interpreter  
5 Sadaaki Matsutani, Interpreter  
6 Michiru Suzuki, Check Interpreter  
7 Hiroko Baker, Check Interpreter  
8 Bruce Holcombe, Check Interpreter

9 The Videographer:

10 Litigation Services & Technologies  
11 By: Dustin Kittleson  
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13 Las Vegas, Nevada 89169  
14 (800) 330-1112

15 (All references to page and line number  
16 refer to the realtime transcript.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 what you spoke to Buckley Sandler about during your  
2 prep session?

3 A. I remember, now that I read this, we talked  
4 about the schedule. I, you know -- we talked about  
5 there was such a communication about the schedule.  
6 I remember it now. Even --

7 INTERPRETER MATSUTANI: Interpretation  
8 correction: "If I didn't have these notes, I  
9 probably would not even remember even that."

10 BY MR. PISANELLI:

11 Q. So I asked you a moment ago about why Aruze  
12 shares in Wynn Resorts were redeemed. So let's get  
13 back to that topic.

14 What do you -- strike that.

15 What was the board of directors' reason for  
16 the passing of the resolution to redeem Aruze USA's  
17 shares?

18 MR. KLUBES: Objection. Foundation.  
19 Speculation.

20 THE WITNESS: You are asking the reason why  
21 Wynn Resorts board of directors passed that  
22 resolution?

23 BY MR. PISANELLI:

24 Q. Yes.

25 A. Since I was not present at that board of

1 directors' meeting, nor am I a member of that board,  
2 my answer is I don't know.

3 Q. You understand that the board of directors  
4 found Mr. Okada to be unsuitable?

5 A. In the notification regarding the  
6 redemption of the shares that was sent right after  
7 the February 2012 board of directors' meeting, that  
8 notification that was sent by Wynn Resorts indicated  
9 that.

10 Q. Did you review any board meetings from the  
11 February 2012 board of directors' meeting of Wynn  
12 Resorts -- board meeting minutes?

13 A. February, I haven't seen them -- oh, wait.  
14 Just a minute.

15 If I'm not mistaken, I think that Buckley  
16 Sandler showed me something in my previous  
17 preparation that were minutes from which quite a lot  
18 of information had been deleted, and I think that's  
19 probably what that was.

20 Q. Did you ever see any version of those  
21 meeting minutes that were not redacted in any  
22 manner?

23 A. No, I haven't. I would like to see that.

24 Q. Just to clarify your testimony, you said  
25 that you don't know the reason why Wynn Resorts

1 MR. PISANELLI: At this point, I believe  
2 that I am out of time in light of the court's order  
3 on reservation of time for other counsel to examine  
4 the witness. I will reserve our rights to call the  
5 witness back on several grounds, including the fact  
6 that the pace of the examination has not resulted in  
7 the adequate time to complete the examination, and  
8 also on grounds that documents have not been  
9 produced in a timely fashion to allow us to complete  
10 our examination. Documents were produced in the  
11 middle of the examination in Japanese, and even  
12 those that were produced in English were not  
13 produced in adequate time to review and prepare.

14 Additionally, the witness has not answered  
15 some of my questions, and instructions not to answer  
16 have inappropriately been asserted.

17 I'm guessing there's a few other reasons  
18 that I can't think of right now, but at the risk of  
19 stereotypical lawyer redundancy, I won't repeat  
20 myself. We will reserve our rights to seek leave  
21 from the court to bring the witness back, and we'll  
22 pass the witness at this time.

23 MR. KLUBES: I would just like to respond  
24 briefly. We can agree to disagree. I think the  
25 witness has been extremely forthcoming, extremely



## 1 CERTIFICATE OF REPORTER

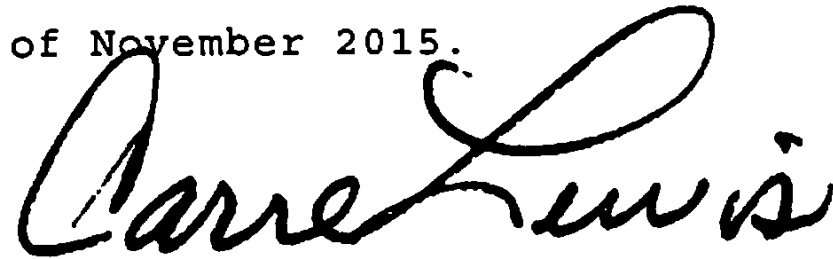
2 STATE OF NEVADA )  
 ) SS:  
3 COUNTY OF CLARK )

4 I, Carre Lewis, a duly commissioned and licensed  
5 Court Reporter, Clark County, State of Nevada, do  
6 hereby certify: That I reported the taking of the  
7 deposition of the witness, Toji Takeuchi, commencing  
8 on Friday, November 13, 2015, at 9:08 a.m.

9 That prior to being examined, the witness was,  
10 by me, duly sworn to testify to the truth. That I  
11 thereafter transcribed my said shorthand notes into  
12 typewriting and that the typewritten transcript of  
13 said deposition is a complete, true and accurate  
14 transcription of said shorthand notes.

15 I further certify that I am not a relative or  
16 employee of an attorney or counsel of any of the  
17 parties, nor a relative or employee of an attorney  
18 or counsel involved in said action, nor a person  
19 financially interested in the action.

20 IN WITNESS HEREOF, I have hereunto set my hand,  
21 in my office, in the County of Clark, State of  
22 Nevada, this 15th day of November 2015.

23   
24

25 CARRE LEWIS, CCR NO. 497

# EXHIBIT F

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

DEPOSITION OF KAZUO OKADA

VOLUME I

PAGES 1 THROUGH 123

VIDEOTAPED

LAS VEGAS, NEVADA

MONDAY, OCTOBER 26, 2015

REPORTED BY:

CARRE LEWIS, CCR NO. 497, CSR NO. 13337

JOB NO. 268430

1 DEPOSITION OF KAZUO OKADA,  
2 taken at 400 South 7th Street, Las Vegas, Nevada, on  
3 Monday, October 26, 2015, at 9:15 a.m., before Carre  
4 Lewis, Certified Court Reporter, in and for the  
5 State of Nevada.

6  
7 APPEARANCES:

8 For Wynn Resorts, Limited; Linda Chen; Russell  
9 Goldsmith; Ray R. Irani; Robert J. Miller; John A.  
Moran; Marc D. Schorr; Alvin V. Shoemaker; Kimmarie  
Sinatra; D. Boone Wayson; and Allan Zeman:

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1 the last question and answer under the Nevada Gaming  
2 privilege law to the question and the answer and  
3 potentially to any future questions as to what, if  
4 anything, was reported to the NGCB.

5 BY MR. PISANELLI:

6 Q. So the last couple questions, Mr. Okada,  
7 I'm not sure you responded to what it was that I was  
8 asking so I'm going to repeat it and see if we can't  
9 clarify your position.

10 So first with dealing with just government  
11 officials broadly, have you or anyone from Universal  
12 communicated with any government officials about the  
13 allegations in this case?

14 INTERPRETER MATSUTANI: Is there an  
15 objection?

16 MR. KRAKOFF: There is an objection under  
17 the Nevada Gaming Control privilege. But he can  
18 answer other than that.

19 THE WITNESS: I have never talked to Nevada  
20 Gaming at all about this lawsuit.

21 BY MR. PISANELLI:

22 Q. Have you or anyone from Universal spoken to  
23 any law enforcement agencies anywhere about the  
24 allegations in this lawsuit?

25 A. Well, I have not. However, if you are

1 I conveyed to him that this matter had  
2 ended by the fact that this person had been  
3 terminated before Freeh's investigation. So the  
4 fact that he wrote this in his report -- rather than  
5 Freeh investigating it, he just wrote what I -- the  
6 words that I conveyed to him.

7 What's important is that the Araki and  
8 Shoji were in agreement and Shoji approved of it and  
9 this matter ended right there.

10 As soon as I heard about Araki, he was  
11 terminated. But I did not hear -- I was not told  
12 about -- about Shoji at that point.

13 Well, later when I heard that Shoji had  
14 approved it, I told Shoji, "Preposterous. You are a  
15 preposterous man. You know, you're a compliance  
16 officer. What the hell? What are you doing?" And  
17 then immediately fired him.

18 INTERPRETER MATSUTANI: Interpretation  
19 correction.

20 "What -- I said, 'What are you doing?' And  
21 then immediately I fired him."

22 BY MR. PISANELLI:

23 Q. Why did you fire him?

24 A. It's preposterous for a compliance officer  
25 to approve of such a thing.



1           And then one other thing, and in connection  
2       with a variety of matters arranged with Wynn about a  
3       lot of items he did not explain to me. For these  
4       two reasons, I fired him.

5           Q.    Did you fire him because he had authorized  
6       unlawful expenditures for the PAGCOR groups?

7           A.    One other thing, including the fact he did  
8       not report, including that, I fired him.

9           Q.    So you fired him because he authorized  
10      unlawful expenditures, he didn't report, and because  
11      of something having to do with the Wynn? Those  
12      three reasons?

13          A.    Well, there was no report, you know. There  
14      were these issues. And Araki's matter came up  
15      before Wynn's lawsuit, and he had not reported on  
16      that.

17                Also one other thing is with respect to  
18      arrangements with Wynn, he did not make a report at  
19      all on those arrangements properly for as long as  
20      ten years.

21          Q.    Are you talking about Araki?

22          A.    Well, he was a compliance officer. He had  
23      a -- as such he had a reporting obligation. And  
24      because of being in that position, he had -- he was  
25      obligated under the spirit of a law-abiding --

1 law-abiding spirit, and he did not comply with that.

2 Q. What would you have done had Shoji reported  
3 to you that Universal was hosting PAGCOR officials  
4 and paying for their expenditures?

5 A. I would have made sure that there would be  
6 no deviations from appropriate amounts and  
7 appropriate scope.

8 Q. Were the expenditures that were identified  
9 in the Freeh report beyond the appropriate amounts  
10 and scope for company policy?

11 A. I have a sense that there was a part that  
12 was -- that did not seem appropriate.

13 However, one thing I would like to say.  
14 Well, however, to the extent that PAGCOR hosting us  
15 was -- say hosting us or entertaining us was more  
16 than necessary, to that extent I always told them to  
17 consider from the past -- long-time past to have the  
18 accounts offset by accommodating mutually to balance  
19 out the accounts.

20 Q. In other words, when PAGCOR hosts you, they  
21 establish some form of credit whereby you would host  
22 them in the future to balance out the expenses?

23 MR. KRAKOFF: Objection. That  
24 mischaracterizes the testimony.

25 You may answer as best you can.

CERTIFICATE OF REPORTER

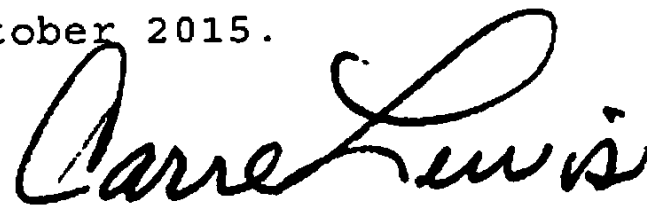
STATE OF NEVADA )  
 )SS:  
COUNTY OF CLARK )

I, Carre Lewis, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of the witness, Kazuo Okada, commencing on Monday, October 26, 2015, at 9:15 a.m.

That prior to being examined, the witness was, by me, duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS HEREOF, I have hereunto set my hand, in my office, in the County of Clark, State of Nevada, this 27th day of October 2015.



CARRE LEWIS, CCR NO. 497

# EXHIBIT G

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

AND ALL RELATED CLAIMS.

DEPOSITION OF KAZUO OKADA

VOLUME III

PAGES 241 THROUGH 346

VIDEOTAPED

LAS VEGAS, NEVADA

WEDNESDAY, OCTOBER 28, 2015

REPORTED BY:

CARRE LEWIS, CCR NO. 497, CSR NO. 13337

JOB NO. 268432

1 DEPOSITION OF KAZUO OKADA,  
2 taken at 400 South 7th Street, Las Vegas, Nevada, on  
3 Wednesday, October 28, 2015, at 9:37 a.m., before  
4 Carre Lewis, Certified Court Reporter, in and for  
5 the State of Nevada.

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1 the -- his undertaking -- with his undertaking,  
2 there was a plan to build houses together with Miura  
3 Design, so that was discontinued completely.

4 Q. Prior to becoming associated him, did you  
5 or anyone in your company conduct a background  
6 investigation into Boysie?

7 A. It was not such a state wherein we could  
8 possibly investigate the background, in particular;  
9 although he did betray us and bring a huge amount of  
10 money. But at the beginning he did not -- he did  
11 not seem like a bad person at all.

12 And also as for the chairman of PAGCOR,  
13 after the -- he was indicted, you know, they alleged  
14 that chairman was a bad person, but not before then.

15 Q. Did you conduct a background investigation  
16 into Shimada?

17 A. Even though he's a Japanese and speaks  
18 Japanese, I did not talk to him at all. You know,  
19 we were present together several times, say three or  
20 four times, but I did not really talk to him at all.  
21 I did not have any opportunity. So I did not talk  
22 to him about business or I did not associate myself  
23 with him at all.

24 MR. PISANELLI: A couple of objections to  
25 the translation, and it may just also be a rough