

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

**VOLUME XLI OF XLIII**

DATED this 20th day of November, 2017.

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1 was director until June of this year, 2017.

2 Q What happened in June of 2017?

3 MR. PEEK: Objection. Relevance, Your Honor.

4 THE COURT: Overruled. You may answer.

5 THE WITNESS: There was a general shareholders  
6 meeting, and I would have been elected at that general  
7 shareholders meeting. But at the board of directors meeting  
8 at Universal there was a coup d'etat, and I was not elected,  
9 and the board of directors ended in that way.

10 BY MR. PISANELLI:

11 Q You told us, sir, in your deposition that you  
12 resigned from that position. Do you recall that?

13 A Well, maybe the wording was otherwise, but what  
14 happened was I was not elected.

15 Q Okay. Did you serve as a director for a company by  
16 the name of Aruze USA?

17 A Regarding Aruze USA, if I'm not mistaken, although I  
18 don't remember the timing, I think I left after this lawsuit  
19 had been filed. I think that it may have been in 2015 that I  
20 left.

21 Q Do you recall telling us that you resigned as  
22 president of Aruze USA in June of 2017?

23 A I don't remember saying that it was 2017. I  
24 certainly didn't intend to answer that it was 2017. So if the  
25 answer is -- if my answer was that it was 2017, then there



1 must have been some misunderstanding.

2 Q Okay. So as to make your position perfectly clear,  
3 when was it that you no longer served in the role as president  
4 of Aruze USA?

5 A I did not do the job as president after I left in  
6 2015. What I'm saying is that I think it was 2015, but I  
7 don't know what the exact date was. I don't remember what  
8 that is right here and now.

9 Q Did you resign or were you dismissed from that  
10 position?

11 A I left on my own.

12 Q Are you familiar with a company by the name of Aruze  
13 Gaming Macau?

14 A I'm familiar with it.

15 Q What role do you have with that company?

16 A I'm in the position of owner of that company, and I  
17 don't believe that I am a director of that company in Macau.

18 Q You're a 100 percent owner of that company?

19 A That's correct.

20 Q And what role do you have overseeing the operations  
21 of that company?

22 A I am not in the position of overseeing anything in  
23 the company. I am the person who comes up with ideas and  
24 plans. But I do not have anything to do with overseeing the  
25 company itself or the business of the company.

1           Q     How is it that you go about sharing your ideas and  
2 plans for the company?

3           A     There are occasions when I would get together with  
4 certain people within the company to talk with them about such  
5 things as how the company might go forward in the future and  
6 to get their opinions. And sometimes I would make suggestions  
7 or proposals to them. But rather than actually doing anything  
8 actual within the company, it would be more in the form of  
9 talking about the direction the company might proceed in in  
10 the course of conversations.

11          Q     And who is it that operates that company which you  
12 share these thoughts and give this advice to?

13               MR. PEEK: Your Honor, before we go forward, just a  
14 correction. Rather than certain people, key people.

15               THE INTERPRETER: The interpreter accepts that.

16               THE COURT: Okay. Interpreter says, sure.

17               MS. SPINELLI: Your Honor, our check interpreter,  
18 Ms. Suzuki, said that he just said "to certain people within  
19 the company" and didn't say key individuals.

20               THE COURT: I'm not sure that it makes any  
21 difference to me.

22               MS. SPINELLI: Just for the record, Your Honor.

23               THE COURT: Okay. Was there a question pending, Mr.  
24 Pisanelli?

25               MR. PISANELLI: There is, Your Honor.

1 THE COURT: Oh. Let's let the interpreter finish  
2 looking at it and translate it.

3 MR. PISANELLI: I can repeat it if it's easier.

4 THE COURT: She has it on the screen.

5 THE WITNESS: Well, in particular, there is someone  
6 named Mr. Usui, U-S-U-I, who is handling that. He is a  
7 director now, and many of such conversations would be with  
8 him.

9 BY MR. PISANELLI:

10 Q Okay. Now taking all of these companies together  
11 and your role that you played for each of them, did you always  
12 understand, Mr. Okada, that you had a fiduciary duty that you  
13 owed to these companies?

14 MR. PEEK: Vague and compound.

15 THE COURT: Overruled. You may answer.

16 THE INTERPRETER: Excuse me, Your Honor. The  
17 interpreter wants to be sure of the translation of one term.

18 THE COURT: Okay.

19 THE WITNESS: I don't quite understand the question.  
20 I don't know what responsibility the question is asking about,  
21 what the question is asking. I can't answer unless you are  
22 more specific. Could you please ask in more detail.

23 BY MR. PISANELLI:

24 Q I would be happy to ask you a very specific  
25 question. Did you understand that you owed a fiduciary duty

1 to each of these companies to do what you could to ensure that  
2 they did not violate any laws that govern their business?

3 A I understand that very well.

4 Q As a matter of fact, your position has been that it  
5 was your duty to ensure that these companies didn't even come  
6 close to violating the law; is that correct?

7 A That is a level of detail that is used by attorneys.  
8 We don't think in those terms. It is our job to do a good job  
9 in our -- in the job that we're doing, and it consists of  
10 planning and creating and thinking about the direction of the  
11 company. So it's more a matter of what we can imagine. That  
12 is what my job consists of, and I have a strong awareness that  
13 that is what my job is. So I myself feel very strongly about  
14 observing the law and follow that belief. But in a company  
15 where there are so many employees mistakes can happen or rules  
16 can be broken, those things can happen easily. And we make an  
17 effort to be attentive to that, be responsible about that and,  
18 if necessary, dismiss people.

19 Q So part of your duties to ensure that these  
20 companies follow the law, is one of those laws Foreign Corrupt  
21 Practices Act?

22 MR. PEEK: Objection, Your Honor. Relevance.

23 THE COURT: Overruled.

24 THE WITNESS: Of course.

25 //

1 BY MR. PISANELLI:

2 Q And it was also part of your duties to ensure that  
3 none of these companies violated Philippine law regarding land  
4 ownership; is that correct?

5 MR. PEEK: Same objection, Your Honor. Relevance.

6 THE COURT: Overruled. You may answer.

7 THE WITNESS: Of course it was.

8 BY MR. PISANELLI:

9 Q And it's also part of your duty to make sure none of  
10 the companies you're affiliated with violated the Macau  
11 Personal Data Protection Law; isn't that correct?

12 A Well, that's something that either I, myself, was  
13 not directly involved in whether or not if something had to do  
14 with the individual Data Protection Act, that Personal Data  
15 Protection Act. This is something that exists in the world of  
16 attorneys or in the world of our legal department. This is  
17 not something that we get involved in.

18 Q You did, however, expect the companies you were  
19 involved with to do everything it could to be careful, in  
20 other words, to always comply with the Macau Personal Data  
21 Protection Act; isn't that true, sir?

22 A Well, as far as that Personal Data Protection Act is  
23 concerned, well, it pertains to, as the name indicates, what  
24 an individual does, and that's the scope of it. But as to  
25 questions regarding that, I, myself, am not directly involved

1 in that. Those are issues that must be attended to by the  
2 lawyers or the legal department. So it's not something that I  
3 am particularly aware of if there are no problems.

4 Q Didn't you personally instruct the companies you  
5 were involved with to be careful about complying with the  
6 Macau Personal Data Protection Act?

7 A Well, since I don't know what's going on in Macau  
8 and there are no discussions in Macau about that, nor have I  
9 gotten explanations from lawyers in detail regarding Macau, I  
10 don't understand the question.

11 Q Are you familiar with the policies of Aruze Gaming  
12 Macau?

13 A Since I don't get involved in the actual running of  
14 the business, as an owner I do not know much about the  
15 details. So as I almost never am careful about that unless  
16 there has been some event within the company.

17 Q So is it your testimony, then, that you've never  
18 personally spoke to anyone at Aruze Gaming Macau about being  
19 careful to follow and obey the Macau Personal Data Protection  
20 Act?

21 MR. PEEK: Your Honor, can the interpreter instruct  
22 that he's not to answer with respect to instructions to  
23 lawyers.

24 THE COURT: So, Mr. Okada, conversations that you  
25 had with your lawyers are called privileged. To the extent

1 that the attorneys ask a question that may involve an answer  
2 and includes a conversation with your attorney you may tell us  
3 you had a conversation with an attorney but not the subject  
4 matter of that communication.

5 THE WITNESS: Regarding Macau, I have almost no  
6 involvements with that. And I go to Macau only once or twice  
7 a year. And even within that context I don't have -- nothing  
8 comes up about the business in Macau or the nature of this  
9 personal data protection law, so I don't have any particular  
10 awareness of that. [And. It's unclear to me whether this is  
11 referring to my position at Universal or my position at Aruze  
12 USA or my position at Aruze Gaming, and in what context the  
13 Personal Data Protection Act is coming up. What I have said  
14 in my answer is that the nature of my job is to work on  
15 planning or concept. Those are the areas of interest for my  
16 job. And regarding anything else, in terms of knowledge or  
17 expertise, I do understand that such a law exists. But I do  
18 not -- my answer is that I do not have any discussions or  
19 conversations regarding those issues.

20 MR. PISANELLI: Your Honor, permission to publish  
21 Mr. Okada's deposition.

22 THE COURT: You can. The date?

23 MR. PISANELLI: July 18th, 2017.

24 THE COURT: Thank you.

25 Mr. Okada, we are unsealing the original of your

1 deposition transcript. Counsel will now take you to a page in  
2 your deposition transcript. Please feel free to read with the  
3 interpreter before and after the question and answer you are  
4 referred to to give yourself context if you should need it.

5 BY MR. PISANELLI:

6 Q Page 71, line 3. Mr. Okada --

7 THE COURT: Hold on a second.

8 MR. PEEK: Yeah. So we want to read the question  
9 and answer.

10 MR. PISANELLI: Oh. It's just to translate the  
11 instruction. Sorry.

12 MR. PEEK: Linda, she's -- is she doing the  
13 instruction of the Judge?

14 MR. PISANELLI: Your Honor, so the record is clear.  
15 When Mr. Okada speaks directly to the interpreter can we have  
16 it interpreted what it is that he is saying to them.

17 THE COURT: Sure.

18 THE INTERPRETER: Mr. Okada just requested that he  
19 is not able to read the documents.

20 THE COURT: Correct.

21 THE INTERPRETER: So Mr. Okada just has asked me to  
22 read and translate before proceeding.

23 THE COURT: Thank you. If you could read at page  
24 71, line 3.

25 MR. PISANELLI: Line 3 through 16.



1           MR. PEEK: Your Honor, I don't think she read  
2 everything.

3           THE COURT: Okay. If you could translate what Mr.  
4 Okada said to you, please.

5           THE INTERPRETER: He would like to explain one more  
6 time if that's okay.

7           THE COURT: Hold on a second.

8           THE WITNESS: We are going back from the first  
9 question.

10          MR. PEEK: Your Honor, the whole thing hasn't  
11 been --

12          THE COURT: Ms. Interpreter, if you could translate  
13 what Mr. Okada said for all of the rest of us.

14          THE WITNESS: During this matter I came to the  
15 matter of the privacy personal data act came to attention to  
16 me, however, my role within the organization did not involve  
17 with this in a normal matter. I was personally aware that  
18 let's say for hotel or what the customer's name or the casino  
19 sales or the number of the dollar amount, I was aware that it  
20 is against the law that we are disclosing this number. As I  
21 say, repeatedly, this was about the legal department and  
22 attorneys area, and I was not personally involved within this  
23 matter.

24          THE COURT: Did the check interpreters believe the  
25 entire answer was translated?

1           MR. PEEK: Your Honor, I believe that the entire  
2 question and answer from the transcript --

3           THE COURT: Okay. Hold on a second. No. We're  
4 going to start over.

5           So, Mr. Okada and counsel, it is very important for  
6 the interpreters that we speak in sound bites.

7           Translate, please.

8           So if you can all -- so if everyone can pause after  
9 a phrase or two to allow the interpreters to keep up while  
10 they have the real time that is assisting them. We cannot  
11 allow them simply to rely on the real time or the answers will  
12 be lost as part of the time that goes between the question and  
13 the answer and the translation. So if counsel would try and  
14 pause as you're asking your question to allow the interpreter  
15 to keep up with you.

16           And, Mr. Okada, if you would pause to allow the  
17 interpreters to keep up with you.

18           THE WITNESS: Yes.

19           THE COURT: Thank you, sir.

20           Thank you, counsel. You want to go back to the  
21 deposition.

22           MR. PISANELLI: I would, but I think Mr. Peek still  
23 has a concern over the interpreter reading the entire block  
24 that I intend to read into the record.

25           THE COURT: Okay.

1 MR. PISANELLI: Is that right?

2 MR. PEEK: Yes. Yeah. We understand she did not  
3 translate the entire lines 3 through 16. Perhaps she could go  
4 slowly, do the first Q and A so that she understands the  
5 question and then read the answer after.

6 THE COURT: So if you could read all of page 71,  
7 lines 3 through 16, please, to Mr. Okada.

8 THE WITNESS: Yes, that is correct.

9 MR. PISANELLI: So, Your Honor, for the record. The  
10 question that was read to -- or that was asked to Mr. Okada  
11 during his deposition is as follows.

12 Question, "Does Aruze Gaming Macau have any policies  
13 concerning compliance with the Macau Personal Data  
14 Protection Act?"

15 Answer, "Unlike hotels, like a hotel, you know,  
16 which is in the service industry that, relatively  
17 speaking, the opportunities of such violations are  
18 far fewer. However, we did talk about -- we did  
19 have discussions about say, 'let's be careful about  
20 that' about such a law."

21 Question, "When you say 'be careful' does that mean  
22 you expect Aruze Gaming Macau to always comply with  
23 the Macau Personal Data Protection Act?"

24 Answer, "That's correct. You may understand it that  
25 way."

1           THE COURT: Did you have a followup question to that  
2 portion you read? If you don't, then I'm going to take a 10-  
3 minute recess to allow the interpreters and everyone else to  
4 get their biologic or convenience breaks taken care of before  
5 we come back and go into 1:00 o'clock.

6           MR. PISANELLI: That's fine.

7           THE COURT: Okay.

8           MR. PISANELLI: Thank you.

9           THE COURT: Because we've been going about an hour.  
10 When I have interpreters I try and break every hour --

11          MR. PEEK: Thank you, Your Honor.

12          THE COURT: -- even though you guys are breaking --  
13 doing it yourself.

14          (Court recessed at 11:29 a.m., until 11:39 a.m.)

15          THE COURT: So if the interpreters could translate  
16 the sound bites so that Mr. Okada's responses -- so we can get  
17 them in shorter bursts, that will help all the lawyers who are  
18 trying to listen.

19          MR. PEEK: Perhaps it would help to make shorter  
20 questions and more pointed.

21          THE COURT: No, Mr. Peek, that never works.

22          MR. PEEK: Okay.

23          MR. PISANELLI: Your Honor, may we also respectfully  
24 ask you to ask the interpreter to speak up so that all check  
25 interpreters can hear her.

1           THE COURT: And if the interpreters could speak up,  
2 that would be lovely.

3           All right. We had finished with the deposition  
4 transcript or we're moving to a new area I think?

5           MR. PISANELLI: Yes, Your Honor.

6 BY MR. PISANELLI:

7           Q     So, Mr. Okada, we've spoken about your efforts to  
8 make sure the companies you're affiliated with followed the  
9 Philippine law, the FCPA, and the Macau Personal Data  
10 Protection Act. I now have a few questions about those topics  
11 for you.

12           MR. PEEK: Your Honor, before he -- before he  
13 proceeds. I certainly understand the MPDPA as being at issue  
14 here, but the questions of the Philippine law and the FCPA are  
15 matters of merits and when we get to a trial on the merits.

16           THE COURT: I concur with you, Mr. Peek. However,  
17 they also go to the issue of prejudice. So.

18           MR. PEEK: Perhaps -- I don't mean to be obtuse or  
19 lack of understanding, but I don't understand where the FCPA  
20 or Philippine law goes to prejudice in this context.

21           THE COURT: One of the remedies that you have asked  
22 me for in your motion is that I use evidentiary sanctions for  
23 purposes of the substantive law determinations, both factual  
24 and substantive, and that includes a number of different  
25 options that you have provided me in that brief. And to

1 evaluate what options I may give you I'm going to listen to  
2 the answer about Philippine law and the FCPA, since both are  
3 involved in one of the pieces of evidence that you are asking  
4 me to be part of your remedy.

5 MR. PEEK: That is true. I've asked you to not  
6 allow the Freeh report to be --

7 THE COURT: That is true.

8 MR. PEEK: I will stand on my objection.

9 THE COURT: Thank you.

10 MR. PISANELLI: Thank you, Your Honor.

11 THE COURT: So we'll finish the question and then  
12 hopefully get an answer.

13 BY MR. PISANELLI:

14 Q Mr. Okada, you're familiar with a document that is  
15 referred to as the Freeh report?

16 A I have the overall idea of the document.

17 Q And do you understand, Mr. Okada, that the Freeh  
18 report details two series of -- two separate and distinct  
19 series of violations of law?

20 A I am aware of the fact that I was being sued because  
21 of these violations.

22 Q Okay. One of the violations detailed in the Freeh  
23 report has to do with violation of Philippines law concerning  
24 land ownership. You're aware of that?

25 A Around 2008 to about 2010, or it was probably 2011

1 in the Philippine the interpretation of the idea of the land  
2 ownership has been changed.

3 Q Okay. My question to you, Mr. Okada, is that you  
4 understand that Director Freeh concluded that the companies  
5 you're affiliated with violated the Philippines Constitution  
6 in connection with its purchase of Philippine land?

7 A When it comes to it's against Philippines  
8 Constitution I don't believe the top attorney of the  
9 Philippine would do something like that. I believe it was  
10 just about the interpretation or the translation of the idea.

11 Q Do you understand, Mr. Okada, that Director Freeh  
12 neither cited nor relied upon any documents obtained from Wynn  
13 Resorts in reaching its conclusions about the Philippines land  
14 violations?

15 A I have no idea what the question is about.

16 Q Let me ask --

17 THE COURT: Could you try again.

18 MR. PISANELLI: Yes. I'll ask it another way.

19 BY MR. PISANELLI:

20 Q You are in need of no documents from Wynn Macau in  
21 order to defend against Director Freeh's conclusions that your  
22 companies violated the Philippines Constitution, are you?

23 MR. PEEK: Objection. Calls for legal conclusion,  
24 Your Honor.

25 THE COURT: Overruled. You may answer.

1           THE WITNESS: I don't understand. What does it have  
2 to do with Wynn Macau?

3 BY MR. PISANELLI:

4           Q     It has nothing to do with Wynn Macau; isn't that  
5 right?

6           A     What does this question means?

7           Q     Sure. Wynn Macau has nothing to do -- had nothing  
8 to do with your companies' purchase of property in the  
9 Philippines; isn't that correct?

10          A     It has nothing to do with it.

11          Q     Now, Director Freeh's report also detailed certain  
12 violations of the Foreign Corrupt Practices Act. Do you  
13 understand that?

14          A     I am aware of the investigation reports from a Freeh  
15 report. My understanding was that Universal employees were  
16 also interviewed and involved. I am aware of that the  
17 violation was because of the expenses -- entertainment  
18 expenses. That is what I have heard. Are we talking about  
19 this matter?

20          Q     You understand that Director Freeh detailed certain  
21 gifts and cash and accommodations that were given to PAGCOR  
22 officials at Wynn Macau?

23          A     Before the Freeh report was received I obtained the  
24 information, I believe it was around 2012, Araki employee, he  
25 had spent too much expenses, so I dismissed Araki. After



1 Freeh report came, and I did explain that situation to them.

2 Q You ordered an investigation into the Freeh report  
3 allegations; isn't that true?

4 A That is absolutely not true. As for Freeh report,  
5 Mr. Steve Wynn asked to make the Freeh report.

6 Q I think you misunderstood my question. Let me try  
7 it again. After learning of Mr. Freeh's report you ordered  
8 your own investigation to either confirm or deny Mr. Freeh's  
9 findings; isn't that true?

10 MR. KRAKOFF: Objection. That misstates the  
11 evidence, Your Honor.

12 THE COURT: Overruled. You can answer.

13 THE WITNESS: When Mr. Freeh came for the  
14 investigation Araki was already let go, he was no longer with  
15 the company. So I did explain the situation when Mr. Freeh  
16 came.

17 BY MR. PISANELLI:

18 Q So, in other words, you explained to Mr. Freeh that  
19 the expenses he uncovered were true but it was Mr. Araki who  
20 had approved them and not you; is that correct?

21 MR. PEEK: Objection. Assumes facts not in  
22 evidence, Your Honor.

23 THE COURT: Overruled. You may answer.

24 THE WITNESS: In addition to Mr. Araki, there is  
25 another person. His name is Mr. Shoji. He was in charge of

1 managing the bank account, and Shoji also serves as my  
2 interpreter. At that time there was a discussion that Araki  
3 has spent too much, and that is against companies' bylaw. And  
4 it was reported to me, and it was consulted with me if it's  
5 okay to dismiss Mr. Araki. And myself I said, yes, it is okay  
6 to let Mr. Araki go.

7 BY MR. PISANELLI:

8 Q So my question, Mr. Okada, is that you did not  
9 dispute the expenses that Director Freeh uncovered. Your  
10 position was that Mr. Araki had approved them and you had  
11 terminated him for doing so; isn't that correct?

12 A I said, when these expenses were uncovered I was  
13 consulted if it's okay to dismiss Araki. And my decision was  
14 to say yes to dismiss and approved it.

15 Q Mr. Takeuchi conducted an investigation into these  
16 expenses, as well; isn't that correct?

17 A Yes.

18 Q And Mr. Takeuchi reported to you that Mr. Freeh's  
19 report was correct, that the expenses had been incurred; isn't  
20 that true?

21 A Yes. That was actually later on after receiving the  
22 Freeh report, and then we did conduct our investigation.

23 Q And Mr. Takeuchi actually even informed you that  
24 Director Freeh had missed one expense that he, Mr. Takeuchi,  
25 had uncovered himself; isn't that right?

1           A     I must say that is I initiated these investigation  
2 myself and when we received the Freeh report the matter was  
3 already resolved. But I initiated my investigation.

4           Q     And your investigation found that Mr. Araki had  
5 violated company policy by approving the expenses itemized in  
6 the Freeh report; is that right?

7           A     It is very difficult for me to answer, because it is  
8 -- these questions are very confusing to me. I would like to  
9 make it clear that Freeh report has nothing to do with this  
10 matter. I was consulted about Mr. Araki. He approved the  
11 expenses, which was against the company policy, and I was  
12 consulted to -- I was not in the position to testify. I was  
13 consulted -- I have no choice to -- I was not --

14                     Interpreter correction. I was not in the position  
15 to approve --

16                     THE INTERPRETER: The interpreter will start again.

17           THE WITNESS: The discussion with Mr. Freeh had  
18 nothing to do with this issue of Mr. Araki. Previously  
19 someone had come to me telling me that Mr. Araki had spent too  
20 much on entertainment expenses and asked if it would be okay  
21 to dismiss him. And I said that if what he did was a  
22 violation of the company rules, then it can't be helped. But  
23 I was not in a position to give approval. Someone came to me  
24 and asked if that would be okay, and that's what I answered.  
25 But I don't know whether that constitutes approval, because I

1 was not in a position to approve. What I did say was that if  
2 that's the case it can't be helped.

3 BY MR. PISANELLI:

4 Q So when you met with Mr. Freeh you told him that  
5 Araki had approved these entertainment expenses and that Araki  
6 had been terminated and that should end the matter; is that  
7 right?

8 A That's correct. But there's just one point that I  
9 would like to clarify regarding who approved this, regarding  
10 the person who gave his approval. This is something that I  
11 came to understand later when someone came to ask me about  
12 this. I said that, well, it can't be helped, and my answer  
13 was, okay, it can't be helped. But then Mr. Freeh came and --  
14 so when Mr. Freeh came and asked me about this at that point  
15 in time I did not know who it was who had given the approval.

16 And the one who looked into this afterward was Mr.  
17 Takeuchi. And I got the report on his investigation later  
18 from Mr. Takeuchi. There was an account containing  
19 Universal's cash that was held by Wynn. And all of management  
20 of that account was being done by Mr. Shoji. So this was  
21 conducted between Mr. Shoji and Mr. Araki, and the one who  
22 approved it was Mr. Shoji.

23 So Mr. Araki was the one who had spent too much on  
24 entertainment expenses, and for that he was dismissed. Mr.  
25 Shoji was the person who approved those expenses and who was

1 also the manager of that account. Shoji as the manager of the  
2 account was also the person who would transfer funds to Macau.  
3 At the time there was someone at Wynn Las Vegas who was --

4 THE INTERPRETER: Excuse me. The interpreter's  
5 going to clarify this part with the witness.

6 THE COURT: Sure.

7 THE WITNESS: So Mr. Shoji was also the person  
8 handling that account at Wynn Las Vegas. So it was probably  
9 Mr. Shoji who gave the approval.

10 BY MR. PISANELLI:

11 Q When you found out later that Mr. Shoji had approved  
12 those expenses, you had some harsh words for him; isn't that  
13 true?

14 A That's correct.

15 Q You told him --

16 A I immediately dismissed Mr. Shoji.

17 Q You told him that his actions were preposterous and  
18 that he was a preposterous man for approving those expenses?

19 A Of course that's correct.

20 Q Okay. So as it relates to Mr. Freeh and his report  
21 your position has been that Mr. Freeh made only one error, and  
22 that was assuming that you were the person who had approved  
23 the expenses; is that right?

24 MR. PEEK: Objection, Your Honor. Misstates the  
25 evidence and assumes facts not in evidence.

1 THE COURT: Overruled. You may answer.

2 THE WITNESS: As the chairman of a public -- a  
3 person in the position of chairman of a public company I have  
4 absolutely no involvement in the -- or provide any instruction  
5 regarding entertainment expenses.

6 BY MR. PISANELLI:

7 Q And so my question is that you identified that Judge  
8 Freeh or Director Freeh had made one error in his report, and  
9 that was his assumption that you were the one who had approved  
10 the expenses; correct?

11 MR. KRAKOFF: Objection. Misstates the evidence,  
12 Your Honor.

13 THE COURT: Overruled.

14 THE INTERPRETER: The interpreter is clarifying the  
15 subject of the last verb, as the witness hadn't made clear.

16 THE WITNESS: -- that that was one mistake. As I  
17 have been saying, there is no fact basis regarding my making  
18 decisions or having involvement in entertainment expenses. I  
19 have had absolutely no involvement in those expenses or the  
20 actual business, as I have said.

21 BY MR. PISANELLI:

22 Q Well --

23 A Mr. Freeh did not understand that.

24 Q Okay. And my point to you, Mr. Okada, it's not that  
25 his assumption that you were involved is one mistake. You

1 have told us that that was his only error in his report, was  
2 assuming that you had approved those expenses; is that true?

3 MR. PEEK: Objection. Asked and answered, Your  
4 Honor, now I think three times.

5 THE COURT: Overruled.

6 THE WITNESS: Well, I think the fact that he says  
7 that that was in the investigation, that was not something  
8 that he investigated. That is something that he heard or  
9 learned from our report. He learned of that after it was  
10 already finished. So regarding this issue, although he says  
11 that he investigated it, I believe that that is a mistake.

12 BY MR. PISANELLI:

13 Q And you're referring to investigating your personal  
14 involvement with the approval of these expenses? That was his  
15 mistake?

16 A So the investigation that I'm referring to now, as  
17 to that the Freeh report came out, and we heard about it. And  
18 within that there is a reference to entertainment expenses.  
19 And those were not all entertainment expenses. It was an  
20 amount of -- so 11 million were used over the course of three  
21 years.

22 MR. PEEK: Again --

23 THE INTERPRETER: Your Honor, the interpreter has  
24 tried to clarify with the witness if this was yen or dollars.  
25 The interpreter would like to clarify one more time.

1 THE COURT: Okay.

2 THE WITNESS: So 11 million yen.

3 THE COURT: Thank you. Over three years.

4 THE WITNESS: Yes.

5 THE COURT: Thank you.

6 THE WITNESS: Mr. Takeuchi checked whether or not  
7 this was a violation of the rules for entertainment expenses  
8 and confirmed by a report to me by Mr. Takeuchi that that was  
9 not a fact.

10 BY MR. PISANELLI:

11 Q Well, as a result of the entertainment expenses as  
12 detailed by Director Freeh, both Mr. Araki and Mr. Shoji were  
13 terminated; correct?

14 A Mr. Araki was dismissed before Mr. Freeh came.

15 Q He was nonetheless dismissed because of the  
16 entertainment expenses he had approved; correct?

17 A It's difficult for me to understand that expression  
18 of his approving the expenses. In my thinking it was Mr.  
19 Shoji who approved the expenses.

20 Q Yet they were both terminated?

21 A They were both dismissed. Mr. Araki was dismissed  
22 first, and after that it became known that Mr. Shoji was  
23 involved. And so after -- it became clear that Mr. Shoji was  
24 involved, and after that he was dismissed.

25 Q You're familiar with land that was purchased by Wynn



1 Macau in the area referred to as Cotai?

2 A Although I am aware that land was purchased, I am  
3 not familiar with the details.

4 Q Do you recall, Mr. Okada, that you were a member of  
5 the board of directors for Wynn Macau Limited when that  
6 purchase occurred -- or that transaction occurred, I should  
7 say?

8 A I have no recollection of having been a member of  
9 the board of Wynn Macau.

10 Q Do you recall that you were a member of the board of  
11 Wynn Resorts during that time period?

12 A It is a fact that I was a member of the board of  
13 directors of Wynn Las Vegas, but I have absolutely no  
14 awareness of having been a director at Macau.

15 Q Well, as a director for the company you never voiced  
16 any objection to any of the expenditures or transactions  
17 concerning the Cotai land; isn't that true?

18 A Well, I didn't know about the purchase of the land  
19 in Cotai at the time the land was purchased. I didn't hear  
20 about it then. I heard about it much later because if it's  
21 not reported at a board of directors of meeting, I have no  
22 opportunity to learn about it.

23 I also would not be aware of that fact if the person  
24 who was interpreting didn't convey it to me accurately. I  
25 came to learn that the land had been purchased in Cotai quite

1 a bit after it had been purchased.

2 Q You learned about the Cotai land purchase after you  
3 instructed Mr. Takuda to investigate the transaction; is that  
4 right?

5 A Rather than that, regarding this purchase of the  
6 land in Cotai I actually actual heard about this fact around  
7 the time that I was dismissed, around the time that this  
8 lawsuit was filed.

9 Q Who did you learn that from?

10 A Well, first I heard a rumor that Wynn Resorts had  
11 purchased land, and then -- but up until the time that I was  
12 dismissed in 2012 there had been almost no reports at board of  
13 directors meetings regarding the circumstances or situation in  
14 Macau, so I knew almost nothing.

15 Q And everything you learned you learned from Mr.  
16 Takuda; isn't that true?

17 A So after I had been dismissed and this lawsuit was  
18 filed that I first asked that there be an investigation about  
19 Macau to the extent that it was possible.

20 Q So, in other words, prior to being dismissed from  
21 Wynn Resorts you never had any knowledge nor communications  
22 with anyone about the Cotai land; is that your testimony?

23 MR. PEEK: Objection. Mischaracterizes the  
24 testimony, Your Honor. He testified otherwise.

25 THE COURT: Overruled. You can answer.

1 THE WITNESS: That's correct.

2 BY MR. PISANELLI:

3 Q So you'll agree with me, then, that the Wynn Resorts  
4 directors could not have had a motive for terminating you to  
5 keep you quiet about this land purchase, because you didn't  
6 know anything about it anyway; right?

7 MR. PEEK: Objection, Your Honor. Counsel well  
8 knows --

9 THE COURT: Overruled. No speaking objections, Mr.  
10 Peek.

11 Keep going. You can answer.

12 MR. PEEK: Your Honor, we have -- we have a check  
13 interpreter issue.

14 THE COURT: If there's an issue with interpretation,  
15 let me know.

16 MR. PEEK: Can we have her do it again, Your Honor?

17 MS. SPINELLI: I think it was just incomplete, Your  
18 Honor.

19 THE INTERPRETER: Yes. The interpreter realizes  
20 that it wasn't complete.

21 MR. PEEK: My apologies, then, to Linda.

22 THE INTERPRETER: The interpreter will reinterpret  
23 the question.

24 THE COURT: Right. Thanks.

25 THE WITNESS: The purchase of the land may not be a

1 direct reason for my dismissal. But the purchase of the land  
2 -- because the purchase of the land could be seen as a  
3 contribution, it could be seen as a bribe, and it was for that  
4 -- so it was because of that that I was the only one at the  
5 board of directors who opposed that contribution that was in  
6 the amount of 13 billion -- 13 billion yen.

7 BY MR. PISANELLI:

8 Q Okay. We're going to get to the University of Macau  
9 donation in a moment. But the fact of the matter is, Mr.  
10 Okada, you believed that the shares were redeemed and you were  
11 removed from the company because Steve Wynn didn't want you to  
12 be the biggest shareholder; isn't that true?

13 A Yes. I think that there were -- there was a  
14 difference in the significance of my dismissal and the issue  
15 of the shares.

16 My answer will be based not on anything that I have  
17 heard, but what I guess based on my position.

18 Q And you believe that the other directors voted to  
19 remove you from the company because they are yes men to Mr.  
20 Wynn; correct?

21 MR. PEEK: Objection, Your Honor. Relevance.

22 THE COURT: Overruled.

23 THE WITNESS: I think what happened at the board of  
24 directors was at a time that I was not present there was a  
25 discussion between Mr. Wynn and the directors and it was

1 decided that I should be removed. And at the board of  
2 directors meeting they agreed with what Mr. Wynn had said, and  
3 that was how I was removed from the board of directors.

4 BY MR. PISANELLI:

5 Q Well, my question's a little different. The point  
6 is this, Mr. Okada. You believed that you were removed from  
7 the company because Mr. Wynn didn't want you to be the biggest  
8 shareholder and the other directors just simply did what Mr.  
9 Wynn told them to do; isn't that true?

10 A I said before that I was guessing about this. As to  
11 why Mr. Wynn was removing me, I suspect that he was afraid of  
12 something. I was the one who was opposed to the contribution.

13 So it was -- for him it was an obstacle that I be a  
14 board member or the time have -- that I be a majority  
15 shareholder.

16 Q Do you recall, Mr. Okada --

17 MR. PEEK: He was not finished.

18 THE COURT: Was there more that you wanted to add,  
19 sir?

20 THE WITNESS: So whether -- which was the most  
21 significant motive for him, whether it was my being a member  
22 of the board or my being opposed to the 13 billion yen  
23 donation I can't say. But they were all things that pertained  
24 to Steve Wynn.

25 //

1 BY MR. PISANELLI:

2 Q So, Mr. Okada, do you recall --

3 MR. KRAKOFF: Your Honor --

4 THE COURT: Yes.

5 MR. KRAKOFF: -- I have an interpretation issue at  
6 4023. At the end of that he also said, I was nominating new  
7 -- and I was nominating new board members.

8 THE INTERPRETER: The THE INTERPRETER:  
9 stands corrected. Thank you.

10 THE COURT: All right.

11 BY MR. PISANELLI:

12 Q Mr. Okada, do you recall that I asked you this very  
13 question at your deposition?

14 A I may have been asked it.

15 Q And do you recall that you did not tell us then that  
16 there are a number of reasons for your removal from the  
17 company, but that there was only one? Do you remember that?

18 MR. PEEK: Objection, Your -- Your Honor --

19 THE WITNESS: Well, depending on the way that I  
20 phrased the answer at that time it may have come out as there  
21 was only one or that there were two.

22 BY MR. PISANELLI:

23 Q Okay.

24 MR. PEEK: Your Honor, my objection is this is  
25 argumentative unless he actually shows him the deposition.

1 THE COURT: Overruled.

2 MR. PISANELLI: Everybody will be happy. I'm happy  
3 with the overruled, and I'm going to read it anyway.

4 BY MR. PISANELLI:

5 Q So let's go to page 711.

6 THE COURT: Same deposition that's previously been  
7 published?

8 MR. PISANELLI: Actually, no. I need another  
9 transcript.

10 MR. PEEK: Which deposition now?

11 MR. PISANELLI: This is the deposition from  
12 November 3rd, 2015.

13 THE COURT: So we need to publish that?

14 MR. PISANELLI: Yes.

15 MR. PEEK: Okay.

16 THE COURT: So we'll use the same process. If you  
17 could read the question and answer, soon as I get the cite to  
18 it, to Mr. Okada.

19 MR. PEEK: Are you going to have it on the screen?  
20 I didn't bring all the depo transcripts with me.

21 THE COURT: He said he's going to publish the  
22 deposition, and you're going to hand it to the interpreter.  
23 She is going to read the page and lines you tell her to to Mr.  
24 Okada. I'm trying to short circuit the problem we had last  
25 time.

1 MR. PISANELLI: And then I will read out loud, or --

2 THE COURT: That would be lovely.

3 MR. PISANELLI: May I approach?

4 THE COURT: You may. What page and line, Mr.

5 Pisanelli?

6 MR. PISANELLI: Page 711, line 19, through 712,

7 line 11.

8 THE COURT: All right. Ms. Interpreter, please  
9 enjoy reading that to Mr. Okada and let us know when you have  
10 completed.

11 (Interpreter reads requested portion)

12 MR. PEEK: Your Honor, we need to have that -- for  
13 the record the actual English, because she read it in  
14 Japanese.

15 THE COURT: We're going to do that now. I was  
16 asking --

17 MR. PEEK: Oh.

18 THE COURT: I asked that the interpreter read --

19 MR. PEEK: Okay.

20 THE COURT: -- that to Mr. Okada first so he could  
21 decide if he needed to read before or after.

22 MR. PEEK: Oh. Okay.

23 THE COURT: I'm now going to ask Mr. Pisanelli to  
24 read it to all of us in English.

25 MR. PEEK: Thank you very much, Your Honor. My



1 apologies. I misunderstood the --

2 THE COURT: You were busy trying to get a copy of  
3 the transcript while I was setting the rules.

4 Please go.

5 MR. PISANELLI: I can publish what I'm reading, if  
6 you would like.

7 THE COURT: No. You can just read it.

8 MR. PISANELLI: Okay. Very good.

9 BY MR. PISANELLI:

10 Q So, Mr. Okada, I asked you during your deposition  
11 the following questions.

12 Question, "So is it your testimony, then, that Steve  
13 Wynn wanted to redeem Aruze USA's shares because he  
14 was afraid that you would look into past  
15 transactions?"

16 Answer, "It is slightly different. If I become the  
17 leading shareholder, the biggest shareholder, he  
18 would have to listen to my views. Perhaps that he  
19 was afraid of."

20 Question, "And that's the reason why you believe the  
21 shares of Aruze USA were redeemed?"

22 Answer, "There is no other reason."

23 Question, "Well, what was the reason for the other  
24 board members, in your mind, to vote to redeem  
25 shares of Aruze USA?"

1 Answer, "I believe they are yes men of Wynn's."

2 Question, "In other words, they did what Mr. Wynn

3 told them to do. Is that what you're saying?"

4 And you answered, "I believe so."

5 So let's talk now, Mr. Okada, about the University

6 of Macau donation. Now, you did not ever object that no

7 donation should be given to the University of Macau; correct?

8 THE INTERPRETER: Your Honor, the interpreter would  
9 like to clarify with Counsel --

10 THE COURT: Yes.

11 THE INTERPRETER: -- because there's a double  
12 negative in the question.

13 THE COURT: So you have an ambiguity in your  
14 question, Mr. Pisanelli. You want to fix it before the  
15 interpreter translates?

16 MR. PISANELLI: Yes. Maybe.

17 THE COURT: By the way, you're not finishing before  
18 lunch, are you?

19 MR. PISANELLI: No.

20 THE COURT: Okay.

21 MR. PISANELLI: But close. Maybe an hour after. So  
22 I guess that's not that close. All right. It's more than an  
23 hour after.

24 MR. PEEK: Horseshoes.

25 MR. PISANELLI: I'm trying to do this without a

1 double negative.

2 BY MR. PISANELLI:

3 Q Mr. Okada, you offered some limited objection to the  
4 donation to the university; is that right?

5 A What do -- when you say limited what do you mean by  
6 limited?

7 Q In other words, you were in support of giving money  
8 to the university; correct?

9 A I probably would have been in approval of it if it  
10 had been a small amount of money.

11 Q Right. Your objection was over the duration of the  
12 donation; correct?

13 MR. PEEK: Objection, Your Honor. Mischaracterizes  
14 what he just -- mischaracterized what he just said.

15 THE COURT: Overruled.

16 THE WITNESS: No. It was the amount. Well, there  
17 was also the length of it, because the duration was to be for  
18 10 years. And over the course of 10 years there could be  
19 changes taking place in the world that might make it  
20 unsustainable. That was a long time to maintain that risk.  
21 And so it was for that reason.

22 BY MR. PISANELLI:

23 Q Very good. You never voiced any objection or  
24 opinion that the donation was a bribe to the government;  
25 correct?

1 MR. PEEK: Objection. At that time, or any time?

2 THE COURT: At that time. That's how the question  
3 was.

4 MR. PISANELLI: At that time.

5 THE WITNESS: May I answer?

6 THE COURT: You may. Sorry.

7 THE WITNESS: Although I didn't believe that I  
8 should say anything about a bribe or anything else, if that  
9 were not clear, but I did think of the possibility of a bribe.  
10 BY MR. PISANELLI:

11 Q So you thought it might have been a bribe, but never  
12 actually said it. Is that your testimony?

13 A Well, yes. What I thought was that this would be --

14 THE INTERPRETER: Excuse me, Your Honor. The  
15 interpreter would like to check one word in the dictionary.

16 THE COURT: Okay.

17 (Pause in the proceedings)

18 THE INTERPRETER: The interpreter will start again.

19 THE WITNESS: I thought that an amount of 10  
20 billion, over 10 billion yen, 13.5 billion yen was an  
21 extraordinary amount for a donation, and if there were a  
22 donation to the university in that amount, that would be top  
23 news.

24 BY MR. PISANELLI:

25 Q My question to you, Mr. Okada, is never once while

1 you were still in the company did you ever voice a concern or  
2 an opinion that the donation was a bribe or that it was in any  
3 way illegal; isn't that correct?

4 A I did not express any suspicion, but I said that  
5 there couldn't be a donation in the amount of 10 billion yen.

6 Q You also never voiced any expression or objection or  
7 even concern that the donation to the university was in any  
8 way related to the Cotai land concession, did you?

9 A I didn't say anything because even though I could  
10 imagine that that could be the case, since I had not heard  
11 anything to confirm that, I did not express anything to that  
12 effect.

13 MR. PISANELLI: Your Honor, I know we have a minute  
14 or two left, but I'm on a new topic, so maybe this is a good  
15 point --

16 THE COURT: All right. So we'll break. And if we  
17 could come back at 10 minutes after 2:00.

18 MR. PEEK: And, Your Honor, do I have to now at  
19 2:00 o'clock deal with the objections to the exhibits?

20 THE COURT: You have until we finish this witness to  
21 do the objections to this witness [sic].

22 MR. PEEK: Thank you, Your Honor.

23 (Court recessed at 12:54 p.m., until 2:17 p.m.)

24 THE COURT: You can sit down.

25 Mr. Pisanelli, if you could resume, please.

1 MR. PISANELLI: Thank you, Your Honor.

2 BY MR. PISANELLI:

3 Q Mr. Okada, do you understand why you've been called  
4 to testify here today?

5 A I am not aware of that reason that I am here to  
6 testify today. I was just called because there is going to be  
7 deposition.

8 Q When we conducted your deposition do you recall  
9 telling me that you had heard during that deposition for the  
10 first time that a motion had been filed on your behalf to  
11 issue sanctions against Wynn Resorts? Do you recall that?

12 THE INTERPRETER: Interpreter having technical  
13 issues here on the screen.

14 THE COURT: Okay. Can we refresh it, or --

15 MR. PISANELLI: I don't think mine's working. It  
16 might be all of them. Mine's not working, either.

17 THE COURT: I'm not using it, so it's not bothering  
18 me. I'm listening and writing with a pen.

19 (Pause in the proceedings)

20 MR. PEEK: Mine is actually working.

21 THE COURT: Really?

22 (Pause in the proceedings)

23 MR. PISANELLI: I'm happy to proceed without mine,  
24 as well.

25 MR. PEEK: Well, the interpreter may need mine, Your

1 Honor.

2 THE COURT: The interpreter needs it.

3 MR. PISANELLI: No. I mean if we only have one.

4 (Pause in the proceedings)

5 THE COURT: There's a reason we don't let you touch  
6 things, Mr. Peek.

7 MR. PEEK: Your Honor, I was thinking the same  
8 thing.

9 THE COURT: Is it working now?

10 THE INTERPRETER: Yes. It's going now. Thank you.

11 THE COURT: Great. That's wonderful.

12 Mr. Pisanelli, if you could resume your questioning.

13 BY MR. PISANELLI:

14 Q Did a question come up? We have a question pending,  
15 Your Honor.

16 THE COURT: I know. That's what I was trying to get  
17 it you to resume it just in case.

18 THE WITNESS: Yes.

19 BY MR. PISANELLI:

20 Q So have you since that deposition learned, Mr.  
21 Okada, that a motion has been filed on your behalf seeking to  
22 impose sanctions against Wynn Resorts for, among other things,  
23 not following the Macau Data Protection Act? Are you aware of  
24 that?

25 MR. PEEK: Your Honor, I have an objection. That

1 mischaracterizes the evidence. And maybe it's just an extra  
2 negative in there that I see. It says "sanction for not  
3 following the Macau..."

4 THE COURT: That's what he said.

5 MR. PEEK: Okay. Objection. Mischaracterizes --

6 THE COURT: Objection's overruled.

7 MR. PEEK: -- the nature of the motion.

8 THE COURT: It's overruled.

9 MR. PISANELLI: You're right, Stephen. Thank you  
10 for the clarification. I'll withdraw the question, Your  
11 Honor, and restate it. So I did add an extra negative, and so  
12 let me restate it the proper way.

13 BY MR. PISANELLI:

14 Q You understand, Mr. Okada, that you -- a motion has  
15 been filed on your behalf to impose sanctions against Wynn  
16 Resorts for following the decision of its affiliate Wynn  
17 Macau's decision to obey and abide by the Macau Personal Data  
18 Protection Act?

19 A I would have to say I am a little bit worried to  
20 answer this, because I have heard that things are vague and I  
21 would have to say it's vague, and I cannot say if it's very  
22 accurate about this matter.

23 Q Let me see if I can rephrase it. It is your  
24 position here today that Wynn Macau and Wynn Resorts should  
25 violate the very same law that you told us that you insist



1 your own company follow; isn't that correct?

2 MR. PEEK: Objection, Your Honor. Irrelevant.

3 THE COURT: Overruled. You can answer.

4 THE INTERPRETER: Interpreter correction.

5 THE WITNESS: That is so hard to understand the  
6 reason I am being asked this question.

7 BY MR. PISANELLI:

8 Q Let me ask it another way, see if I can help.

9 It is your -- you recall testifying, Mr. Okada --

10 THE COURT: Hold on a second, Mr. Pisanelli. Mr.  
11 Peek thinks he has a different answer.

12 MR. PEEK: Well, I have an interpretation correction  
13 or understanding. My check interpreter is suggesting to me  
14 that the question was not asked in Japanese the way -- it was  
15 not interpreted correctly.

16 THE COURT: Do you want us to try the question  
17 again?

18 MR. PEEK: I would -- because of my check  
19 interpreter's concerns, Your Honor, yes, I would ask that she  
20 ask the question again.

21 THE COURT: I'll ask the interpreter to ask the  
22 question again before Mr. Pisanelli continues.

23 MR. PEEK: Thank you, Your Honor.

24 THE COURT: If we could do it again.

25 MR. PEEK: I don't know if she's found it, but it

1 appears at line 5013 through 5017.

2 THE COURT: Hold on a second. I'm going to have the  
3 interpreters -- the check interpreters consult real quick and  
4 see if there's a particular phrase that gives both of them  
5 concern. So the two check interpreters talk to each other.

6 MR. PEEK: Yeah. They know each other pretty well,  
7 Your Honor.

8 THE COURT: I know. I'm not worried about that  
9 part.

10 (Pause in the proceedings)

11 THE COURT: Okay. So, Linda, go talk to them real  
12 quick. Let's see if we can figure out where the issue is.  
13 And then Amy, we're going to bring you into it and have Linda  
14 come consult with you. But that way you don't have to get up  
15 from where you are.

16 (Pause in the proceedings)

17 THE COURT: Okay. Do all the interpreters --  
18 they're now going to consult with Amy to see if Amy has a  
19 different phrase she can use.

20 (Pause in the proceedings)

21 (Interpreter re-asks pending question)

22 THE WITNESS: It is little difficult for me to  
23 understand the word "should" violate -- that "should" part.  
24 So does that mean you're saying Wynn Macau and Resorts should  
25 violate the same law?

1 BY MR. PISANELLI:

2 Q Let me ask a different way, see if I can help.

3 THE INTERPRETER: Oh. Should follow the law.

4 Interpreter correction, not should violate, but should follow  
5 the law.

6 BY MR. PISANELLI:

7 Q You believe, Mr. Okada, that Wynn Resorts Macau and  
8 Wynn Resorts Limited should both comply with the Macau  
9 Personal Data Protection Act; isn't that right?

10 A I believe that all service industry companies has --  
11 needs to follow that Personal Data Protection Act.

12 Q Okay. So that means you believe that the Wynn  
13 entities should follow the Act and protect your personal data;  
14 is that right?

15 MR. PEEK: Objection, Your Honor. Relevancy. I  
16 think we're getting off track here, if I'm --

17 THE COURT: Overruled. Because I'm coming to my  
18 question. I have three of them written down, and I'm hoping  
19 Mr. Pisanelli asks one of them.

20 MR. PISANELLI: Well, I'll ask all three of them.

21 MR. PEEK: Perhaps all three of them should address  
22 the three parts of your order, because the three parts of the  
23 order --

24 THE COURT: Mr. Peek, we're not making speaking  
25 objections; remember?

1 MR. PEEK: I know. You said it's not going to be  
2 interpreted.

3 THE COURT: Well, but let's not make speaking  
4 objections anyway.

5 MR. PEEK: I'd like to approach.

6 THE COURT: Okay. How about we go in the hallway.  
7 Excuse us for a minute.

8 (Off-record bench conference in hallway)

9 THE COURT: See how quiet we can be?

10 The objection is overruled. If we could continue on  
11 this issue with being mindful that you said you would be done  
12 before lunch.

13 MR. PISANELLI: I said without objections, albeit in  
14 jest.

15 So we're ready to interpret that question, Linda,  
16 please.

17 THE WITNESS: Yes, that's correct.

18 BY MR. PISANELLI:

19 Q And you also believe that the Wynn entities should  
20 do all it can to comply with the Personal Data Protection Act  
21 to protect everyone's personal data, not just yours; isn't  
22 that right?

23 A I think that's correct. But to -- I might express  
24 it a little differently in that I think that it's particularly  
25 important to protect the individual information of customers.

1           Q     My only question is intended to confirm that you  
2 believe the Wynn entities should protect your personal data,  
3 as well as everyone else's personal data that they possess;  
4 correct?

5           A     I think that's correct.

6           Q     And you're aware, Mr. Okada, that Wynn Resorts has  
7 redacted and protected personal data in this litigation?

8           A     I am aware of that, but I think that that is  
9 different from the question you're asking now.

10          Q     That's correct. This is a different question.

11                So in the times in this case when Wynn Resorts has  
12 redacted for personal data pursuant to the Personal Data  
13 Protection Act you will agree with me that you have never been  
14 prejudiced or harmed in any way by that; isn't that true?

15          A     I don't think so.

16          Q     You'll also agree with me that Universal has never  
17 been harmed by the Wynn entities' protection of personal data  
18 in this case under the Macau Personal Data Protection Act?

19          A     Well, if there was any harm, it would have been in  
20 the calling in former employees who had retired from the  
21 company or current employees being called by Wynn Resorts Las  
22 Vegas and being asked about a variety of information which  
23 should be protected by the Personal Data Information Act, and  
24 that collecting of a variety of information by the company  
25 itself I think is an illegal act.

1           Q     So perhaps you didn't understand me, Mr. Okada. You  
2 sound like you're talking about what happened with the Freeh  
3 report when data was not protected. My question to you is  
4 simply to confirm that neither you nor Universal were ever  
5 harmed when the Wynn entities did protect the personal data,  
6 your personal data.

7           A     So in terms of harm I think that if information has  
8 been redacted or if there is no paperwork reflecting something  
9 that we have the authority to know but can't find out about it  
10 because of the redaction, then I think that it could be said  
11 that we have been harmed.

12          Q     Do you recall, Mr. Okada, that I asked you these  
13 same questions during your deposition?

14          A     I don't remember the details. The question covers a  
15 broad range, and it could also be that my memory is weakened,  
16 but it pertains to some things that I could not anticipate.

17          Q     Okay. Let's take a look at your deposition.

18               MR. PISANELLI: That's the deposition, Your Honor,  
19 of July 18th, 2017. I'm starting on page 42.

20               THE COURT: Okay. If the interpreter could read the  
21 section 42.

22               Lines what?

23               MR. PISANELLI: Lines -- beginning at line 18 and  
24 ending at page 44, line 17.

25               THE COURT: So if you could read those sections to

1 Mr. Okada before I have Mr. Pisanelli read it out loud in  
2 English.

3 THE INTERPRETER: Yes, Your Honor.

4 (Interpreter reads requested section)

5 THE INTERPRETER: Excuse me, Your Honor. The  
6 interpreter requests clarification. There is an objection  
7 here. Shall I read that?

8 THE COURT: You don't need to read the objection.  
9 Skip it.

10 MR. PISANELLI: You want me to skip it?

11 (Interpreter continues reading)

12 THE INTERPRETER: Your Honor, for your information  
13 it appears to the interpreter that the portion of the  
14 testimony to be interpreted would actually end on line 8,  
15 since below that it's Mr. Peek --

16 THE COURT: Mr. Pisanelli?

17 THE INTERPRETER: -- and then a back-and-forth  
18 regarding Mr. Peek's objection. So the interpreter has  
19 interpreted up to line 8.

20 THE COURT: Or you could just skip all the attorney  
21 interplay.

22 MR. PEEK: Well, Your Honor, I -- if I could speak.

23 THE COURT: Sure. Just tell us where to stop  
24 reading.

25 MR. PEEK: Well, I think --

1 MR. PISANELLI: From my perspective it's my  
2 question. It would be page 44, line 17.

3 THE COURT: So can she skip the interplay of the  
4 lawyers arguing?

5 MR. PISANELLI: Yes.

6 MR. PEEK: And can she skip line --

7 THE INTERPRETER: Oh. 44, line 17. I'm sorry. The  
8 interpreter didn't finish.

9 MR. PEEK: I don't know if she can, but can she skip  
10 43 [sic] through 25 on line 43? Because we had that issue of  
11 interpretation, and then you asked the same question again.

12 MR. PISANELLI: Yeah. 43, line 9, all the way to  
13 44, line 7, can be skipped.

14 THE INTERPRETER: Okay.

15 THE COURT: Is that okay?

16 THE INTERPRETER: Yes. I understand. Thank you.

17 THE COURT: Awesome.

18 (Interpreter continues reading)

19 BY MR. PISANELLI:

20 Q So during your deposition, Mr. Okada, I asked you  
21 the following questions.

22 "Have you ever been harmed in any way by Wynn  
23 Resorts or Wynn Macau's compliance with the Macau  
24 Personal Data Protection Act?"

25 MR. PEEK: Your Honor, can we start with -- they



1 started I thought at line 10 on page 42.

2 THE COURT: I don't think so.

3 MR. PISANELLI: That's a different topic, Steve.

4 THE COURT: Mr. Pisanelli, if you'd continue.

5 MR. PISANELLI: Thank you.

6 BY MR. PISANELLI:

7 Q So the question, "Have you ever been harmed..."

8 The answer, "I have not."

9 "Has Universal Entertainment ever been harmed by  
10 Wynn Macau's compliance with the Macau Personal Data  
11 Protection Act?"

12 MR. PEEK: Your Honor, there was an objection.

13 BY MR. PISANELLI:

14 Q Answer --

15 THE COURT: Mr. Peek, I told him he didn't have to  
16 read it.

17 MR. PEEK: It's a legal -- it's asking for attorney-  
18 client communication, Your Honor. So I made an objection.

19 MR. PISANELLI: Not on this question he didn't.

20 THE COURT: Guys.

21 MR. PEEK: On the previous objection I did, Your  
22 Honor.

23 THE COURT: It's really hard for everybody else in  
24 the room, especially those who are trying to interpret, the  
25 way you guys are going.

1           So I told Mr. Pisanelli he could skip the objection.  
2 If you have an objection to the question that he's reading,  
3 you can tell me what that is. But I'm having him read it in  
4 English now for purposes of our record. I already had the  
5 interpreter read the questions and answers, but not the  
6 attorney interplay.

7           So, Mr. Pisanelli, if we could read the question and  
8 answer in the deposition you have problems with -- or that you  
9 believe is inconsistent with Mr. Okada's testimony, then I  
10 will be happy to listen, and if there's an objection, Mr. Peek  
11 will tell me.

12           MR. PISANELLI: Thank you, Your Honor.

13           MR. PEEK: Your Honor, then --

14 BY MR. PISANELLI:

15           Q     Question, "Have you ever been harmed in any way by  
16                 Wynn Resorts' or Wynn Macau's compliance with the  
17                 Macau Personal Data Protection Act?"

18           MR. PEEK: And there was an --

19 BY MR. PISANELLI:

20           Q     Answer, "I have not."

21                 Has Universal Entertainment ever been harmed by Wynn  
22                 Macau's compliance with the Macau Personal Data  
23                 Protection Act?"

24                 "It has not."

25                 "And has Aruze USA ever been harmed by Wynn Macau's

1 compliance with the Macau Personal Data Protection  
2 Act?"

3 "I don't think Aruze USA has been. But wasn't there  
4 something in a lawsuit United States?"

5 THE COURT: All right. Mr. Peek, you have an  
6 objection to that portion you want to tell me about.

7 MR. PEEK: Your Honor, the first question beginning  
8 on 32, line 18, I made an objection that it would invade the  
9 attorney-client privilege as to whether or not he has sought  
10 any advice or heard from any lawyers about that issue.

11 MR. PISANELLI: That's not what that question was.

12 MR. PEEK: I think --

13 MR. PISANELLI: Oh. I'm sorry. Go ahead.

14 MR. PEEK: I think that, you know, because it -- the  
15 question itself, "Have you ever been harmed in any way by Wynn  
16 Resorts' or Wynn Macau's compliance with the Macau Personal  
17 Data Protection Act does invade and does ask for advice that  
18 he sought from lawyers as to whether it did or did not.

19 I made the same objection, Your Honor, to the  
20 followup question, and I made the same objection to the third  
21 question.

22 THE COURT: Thank you. The fact of whether he has  
23 or Universal has suffered harm is not subject of attorney-  
24 client privilege. However, if he had communications with the  
25 attorneys, that would be something that would be protected.

1 But the existence or nonexistence of harm is not privileged.

2 Anything else, Mr. Peek?

3 MR. PEEK: It would be, Your Honor, if it came from  
4 the lawyer.

5 THE COURT: No, Mr. Peek. It's a fact. It's either  
6 it is or it isn't.

7 MR. PEEK: Okay. Understood.

8 THE COURT: Okay.

9 MR. PISANELLI: Thank you, Your Honor.

10 BY MR. PISANELLI:

11 Q So, Mr. Okada, now you told us that the exact  
12 opposite is also true, and that is that you have been harmed  
13 under a circumstance where the Wynn entities failed to comply  
14 with the Personal Data Protection Act; isn't that right?

15 A I have a feeling that there's a slight difference in  
16 the nuance of what we're talking about now.

17 In terms of complying with the Individual  
18 Information Protection Act it is a matter, of course, that  
19 that must be complied with in the course of the usual  
20 business.

21 So in terms of the redaction that we were discussing  
22 earlier regarding information that has been requested to be  
23 disclosed in the course of this lawsuit there's a legal issue  
24 of which is more important, the disclosure of the equipment --  
25 of the information or the compliance with the Individual Data

1 Protection Act. So I think what's being sought here is that  
2 what should be disclosed be disclosed while at the same time  
3 being in compliance with the Personal Data Protection Act.

4 Q So in the time, Mr. Okada, when the Wynn entities  
5 did not protect your personal data you filed a lawsuit against  
6 them as a result of that action, did you not?

7 A Filed a lawsuit. That's correct. I believe that I  
8 objected to what was -- should have been disclosed in the  
9 lawsuit.

10 Q And as part of that lawsuit you asked to be awarded  
11 billions of U.S. dollars in damages; isn't that right?

12 A Well, I have left those details up to the attorney  
13 or attorneys, so I can't say myself about those details. But  
14 I believe that in some way it was decided upon by the attorney  
15 or attorneys.

16 Q You also filed a lawsuit seeking to revoke Wynn  
17 Macau's charter and license to do business in Macau; isn't  
18 that right?

19 A I have -- the attorney or attorneys have not  
20 explained to me the details of Wynn Macau ceasing to do  
21 business.

22 Q You also filed a --

23 A Stopping Wynn Macau from doing business.

24 Q You also initiated a criminal complaint against Mr.  
25 Wynn personally and the Wynn companies for violating the Macau

1 Personal Data Privacy Act as it relates to your personal data;  
2 isn't that right?

3 A This is something that was also done by the attorney  
4 or attorneys, and I myself don't know about it.

5 Q Well, you also made it clear to us in your  
6 deposition, did you not, Mr. Okada, that if the Wynn entities  
7 violate your rights again by not protecting your personal data  
8 you reserve the right to sue to them again; isn't that  
9 correct?

10 A That was a little bit difficult to understand.  
11 Could you please restate the question.

12 Q Sure. You told us in your deposition that if Wynn  
13 -- the Wynn entities violate your rights under the Macau  
14 Personal Data Protection Act that you reserve the right to  
15 prosecute another criminal complaint against the company and  
16 others; isn't that true?

17 A If the normal course of business is followed, then  
18 the law pertaining to the protection of individual information  
19 must be followed. We're currently also addressing the issue  
20 of redaction along with the issue of disclosure of  
21 information, and in the lawsuit there is the issue that the  
22 Individual Information Protection Act must be followed. But  
23 if the scope of that -- of the redaction is too big, then  
24 there -- there is a -- if the protection of the information  
25 according to the Protection of Individual Information Act is

1 -- if the scope of that is too broad, then there would need to  
2 be a third person to determine how to balance those two of the  
3 protection of individual information versus the need to  
4 disclose.

5 Q And when you say, Mr. Okada, third person, you're  
6 intending to confirm, as you said in your deposition, that you  
7 reserve the right to seek a criminal proceeding against Wynn  
8 for violating your personal data rights; isn't that true?

9 A So the expression for this is difficult. Simply  
10 put, it's a matter of course that usually the Protection of  
11 Personal Information Act should be followed. But the question  
12 is in the case of a lawsuit and information has been requested  
13 to be disclosed how is that balanced against the need to  
14 protect personal information.

15 Q So let's take a look at your deposition --

16 MR. PEEK: He wasn't done.

17 THE INTERPRETER: The witness hasn't finished his  
18 answer.

19 BY MR. PISANELLI:

20 Q Oh. Sorry. My apologies.

21 A So in a lawsuit if it's impossible to perfectly  
22 follow the Protection of Personal Information Act because, if  
23 so, then the lawsuit cannot proceed, so -- so in that sense I  
24 don't think that it makes sense for there to be redaction at  
25 the same time as the Protection of Individual Information Act

1 is being complied with.

2 Q Let's take a look at your deposition, page 62, on  
3 July 18th, 2017.

4 THE COURT: And what pages?

5 MR. PISANELLI: Page 62, the actual question starts  
6 on line 8, and the answer ends on line 20.

7 THE COURT: So, Ms. Interpreter, if you could read  
8 that to Mr. Okada first, translate that for him, then I will  
9 have Mr. Pisanelli read it out loud. And if Mr. Peek has an  
10 objection, I will deal with that.

11 THE INTERPRETER: Just a confirmation. Counsel, it  
12 appears to me on page 62 the question begins on line 7.

13 MR. PISANELLI: You can go ahead and read that.  
14 It's more of a prefatory statement --

15 THE INTERPRETER: Oh. I see. I see.

16 MR. PISANELLI: -- so it's fine to read the entirety  
17 starting on line 7.

18 (Interpreter reads requested portion)

19 BY MR. PISANELLI:

20 Q The question starting on line 7 asked in your  
21 deposition, Mr. Okada, is as follows.

22 "Well, you say that no criminal action has been  
23 taken yet. Is that to say if Wynn Macau were to  
24 violate the Macau Personal Data Protection Act in  
25 the future you would reserve the right to file a



1 criminal complaint against Wynn Macau for that?"

2 Answer, "When you say reserve I don't really have a  
3 -- really a real sense of that word, so I don't  
4 quite really understand. However, because of a  
5 violation I think that can be taken up as a -- as a  
6 case. I would think so."

7 So let me ask you this last question, Mr. Okada. As  
8 you sit here right now you still have not consented the  
9 release of your personal data by the Wynn entities for use in  
10 this litigation; isn't that true?

11 A I'm having trouble understanding that question. Why  
12 is this question about my personal data? Why is the question  
13 about me, myself?

14 This is between Wynn Resorts and Universal or Aruze  
15 USA. It's among the companies. I don't understand why it  
16 would have to do anything with my -- we me personally.

17 Q Am I correct, Mr. Okada, that you still have not  
18 consented to the release of your personal data?

19 A I don't understand the question.

20 THE COURT: Mr. Okada, you don't need to understand  
21 the purpose of the question, only answer it.

22 THE WITNESS: There are occasions when the  
23 information must be revealed when there's an issue in the  
24 lawsuit regarding a violation of the Personal Data Protection  
25 Act.

1           But it's a matter of course that in the usual course  
2 of business that at the very least personal data must be  
3 protected. And if that's violated, then I believe that one  
4 has a right to sue.

5           Q     And my question to you now, Mr. Okada, is simply to  
6 confirm that you have not consented for the release of your  
7 personal data by the Wynn entities; correct?

8           A     I think that there must be times in the course a  
9 lawsuit when it's clear based on the nature of the issues in  
10 dispute that information needs to be protected.

11                It's difficult for me to answer unless the question  
12 is phrased regarding each and every individual issue and what  
13 -- regarding what aspect of the case are you asking the  
14 question. Otherwise it's difficult for me to answer.

15           Q     My question is as simple as I can make it, Mr.  
16 Okada. Isn't it true that you have never executed nor  
17 communicated your consent to the Wynn entities for the release  
18 of your personal data in this litigation?

19           A     I just don't understand at all. You say that it's  
20 simple, but it's not simple at all.

21                There's no way to make a judgment and answer this  
22 unless it's clear whether you're asking about this particular  
23 part, is this part okay or is there a problem with this part.  
24 If this part has nothing to do with it, how do we interpret  
25 that? And unless we clarify those things, there's no way to

1 answer.

2 MR. PISANELLI: I would move to strike, Your  
3 Honor --

4 THE COURT: Granted.

5 MR. PISANELLI: -- as nonresponsive.

6 THE COURT: So, Mr. Okada, I'm going to try from a  
7 different perspective, because this is one of the questions I  
8 have had written down for the last several months to ask you.

9 MR. PEEK: Before you do that, just an  
10 interpretation correction. And I know you don't have this on  
11 a screen. But on lines 68, 9 through 10, I'll read the whole  
12 answer, and then I'll tell you where the correction is.

13 "I think that there must be times in the course of a  
14 lawsuit when it's clear based on the nature of the issues in  
15 dispute that information needs to be protected."  
16 Interpretation correction was "cannot be protected."

17 THE COURT: Okay. Thanks.

18 Mr. Okada --

19 MR. PEEK: Is that acceptable to the --

20 THE INTERPRETER: Unfortunately, the official  
21 interpreter is having difficulty scrolling back to those  
22 lines, so --

23 THE COURT: Let's start over. And I'm going to ask  
24 the question a different way than Mr. Pisanelli did in an  
25 attempt to try and get an answer.

1 THE WITNESS: Yes.

2 THE COURT: Mr. Okada, why have you not consented to  
3 the release of your information by Wynn Macau?

4 THE WITNESS: Whether or not I have consented to the  
5 release of the information, I don't think that I've ever had  
6 any conversation about whether or not I consented to that.

7 THE COURT: So has no one ever asked you to consent  
8 to the release of your information by Wynn Macau?

9 THE WITNESS: I have not been.

10 And another thing is I would like to understand the  
11 reason why I must disclose this information, particularly if  
12 the disclosure of that information is -- would infringe upon  
13 the Personal Data Protection Act.

14 THE COURT: Well, I'm not here to answer your  
15 questions, sir. I am here to make a factual determination as  
16 to whether I'm going to grant the request that you apparently  
17 made, even though you don't know about it, to sanction Wynn  
18 for the failure to produce documents without redactions. So  
19 let me ask the question again.

20 Do you consent to the release of your personal  
21 information by Wynn Macau?

22 THE WITNESS: It's all right for me to consent to  
23 that if it -- if the information involves issues related to  
24 the lawsuit.

25 THE COURT: So, sir, are you consenting to the

1 release of your personal information by Wynn Macau in this  
2 litigation?

3 THE WITNESS: I ask again is it necessary. If it's  
4 necessary, I consent.

5 THE COURT: Thank you.

6 May I see counsel in the hallway.

7 (Off-record bench conference in hallway)

8 THE COURT: Mr. Okada, thank you for giving us that  
9 break. I was inquiring of counsel the volume of information  
10 that is impacted by your consent.

11 So, Mr. Okada, given the fact that you have now  
12 consented, there will be much fewer documents that are  
13 redacted or withheld by Wynn Macau on the basis of the Macau  
14 data privilege.

15 THE WITNESS: I understand.

16 THE COURT: Can you tell me how that impacts the  
17 prejudice, if any, that you as an individual believe you will  
18 suffer as a result of those documents that are now still  
19 withheld?

20 MR. PEEK: Your Honor, may I --

21 THE COURT: You can object to my question.

22 MR. PEEK: Well, it's because of the implication it  
23 has with respect to confidential and the highly confidential.  
24 I would -- I don't want to be accused of making a speaking  
25 objection.

1 THE COURT: Okay. So let's let him answer. Because  
2 if it's only confidential or highly confidential, we can deal  
3 with that in a minute.

4 MR. KRAKOFF: And, Your Honor, if I could be --  
5 there is a distinction here between prejudice to him --

6 THE COURT: I haven't got to Universal yet. I said  
7 him as an individual.

8 MR. KRAKOFF: Okay. Thank you, Your Honor.

9 THE COURT: So if you could interpret my question  
10 now that I've dealt with the objections to my question.

11 THE INTERPRETER: Once again, Your Honor, the  
12 interpreter's having difficulty going --

13 MR. PISANELLI: Your Honor, while she's doing that  
14 may I offer an objection, as well?

15 THE COURT: Sure.

16 MR. PISANELLI: I think your question, respectfully,  
17 assumes facts not in evidence. Mr. Okada testified --

18 THE COURT: I know.

19 MR. PISANELLI: -- that neither he nor the company  
20 suffered any --

21 THE COURT: I said prejudice, if any.

22 MR. PISANELLI: Okay.

23 MR. PEEK: Well, that's --

24 MR. PISANELLI: You did. You're right.

25 THE WITNESS: I don't in particularly -- I can't

1 right now particularly think of any prejudice or any  
2 information that would be problematic if it were to leak out.

3 THE COURT: Okay. Let me ask him one question from  
4 me.

5 Tell me what your understanding of the lawsuit in  
6 Macau's current status is.

7 THE WITNESS: I don't understand well about the  
8 lawsuit in Macau. I think that the attorneys are doing things  
9 regarding that. But I myself don't have a complete  
10 understanding of the content.

11 THE COURT: Thank you, sir.

12 Mr. Pisanelli, did you have any additional  
13 questions?

14 MR. PISANELLI: Yes, Your Honor.

15 DIRECT EXAMINATION (Continued)

16 BY MR. PISANELLI:

17 Q Mr. Okada, would it refresh your recollection if I  
18 were to tell you that your attorneys have filed an appeal of  
19 that lawsuit in Macau?

20 A I myself don't have any meetings or conversations  
21 directly with the attorney or attorneys in Macau, so I don't  
22 recall anything about any discussions regarding that.

23 Q Mr. Okada, you told Her Honor that no one ever asked  
24 you to consent to the release of your personal data. But do  
25 you remember almost exactly three months ago during your

1 deposition I asked you that exact question of whether you  
2 would consent to the release of your personal information?

3 A I'm sorry, but lately there have been a variety of  
4 things in the company or companies in Japan that have been  
5 wearing down my nerves, and lately my memory has been  
6 weakening regarding this matter.

7 Q Okay. Well, let's just look at one question from  
8 your deposition, and then we'll be finished.

9 On page 61 of your depo from July 18th, 2017, lines  
10 3 to 5.

11 THE COURT: And, Ms. Interpreter, if you could read  
12 that to Mr. Okada.

13 THE INTERPRETER: Yes, Your Honor.

14 (Interpreter reads requested portion)

15 BY MR. PISANELLI:

16 Q During your deposition, Mr. Okada, I asked you,  
17 quote, "Do you consent as you sit here today for the release  
18 of your personal information?" And you answered, "I do not."

19 MR. PISANELLI: Thank you, Your Honor. That's all I  
20 have at this time.

21 THE COURT: Thank you.

22 Mr. Peek, do you have any questions you'd like to  
23 ask Mr. Okada?

24 MR. PEEK: I do, Your Honor, but I would like a  
25 short break before we start --



1 THE COURT: Sure, we can have a short break.  
2 MR. PEEK: -- for ourselves, as well as --  
3 THE COURT: How long do you need, 10, 12?  
4 MR. PEEK: Twelve is better than ten.  
5 THE COURT: How about 12? So that'll put us at  
6 3:45.  
7 MR. PEEK: I hope to be done by 4:00.  
8 THE COURT: Mr. Krakoff, how long have you got?  
9 MR. KRAKOFF: I don't anticipate questions, Your  
10 Honor.  
11 THE COURT: Thank you.  
12 Mr. Malley, how long have you got?  
13 MR. MALLEY: I have no questions, Your Honor.  
14 THE COURT: Isn't that lovely. So go to the  
15 restroom, get something to drink, if you'd like. I'm going to  
16 sit here, because my office is on a different floor and it  
17 takes me longer than 12 minutes to get to my office and back.  
18 (Court recessed at 3:32 p.m., until 3:45 p.m.)  
19 THE COURT: We've lasted a lot longer than you guys  
20 estimated. It's not your fault.  
21 MR. PEEK: Oh. I know.  
22 THE COURT: I'm just letting you know that I  
23 recognize for once it's not your fault. Because I rarely tell  
24 you it's not your fault.  
25 MR. PEEK: I know.

1 MR. PISANELLI: I'm sitting right here.

2 MR. PEEK: Oh, James.

3 MR. PISANELLI: I can hear you both.

4 (Pause in the proceedings)

5 THE COURT: Okay. Let's get this done, please.

6 MR. PEEK: All right. Your Honor, I have questions  
7 of Mr. Okada.

8 CROSS-EXAMINATION

9 BY MR. PEEK:

10 Q Mr. Okada, do you recall that in January 2012 you  
11 filed an action against Wynn Resorts seeking financial  
12 information in what's called the books and records lawsuit?

13 A Yes, I do recall.

14 Q And did you file that lawsuit because you had  
15 concerns about the donation to the UMDF and other financial  
16 dealings by Wynn Resorts?

17 MR. PISANELLI: Objection. Leading, Your Honor.

18 THE COURT: Overruled. I'd like to get done today.

19 THE WITNESS: Yes, that is true.

20 BY MR. PEEK:

21 Q And is it your understanding that in the Freeh  
22 report that personal data of UEC employees and Philippine  
23 nationals was provided to Director Louis Freeh?

24 A Yes.

25 Q Do you believe that Wynn Resorts should comply with

1 the many orders of Judge Gonzalez that Wynn Resorts must  
2 produce Macau documents about the UMDF contribution and the  
3 Cotai land concession?

4 MR. PISANELLI: Objection, Your Honor. Leading.  
5 Lack of foundation that he even knows what your orders are.

6 THE COURT: Sustained. Can you rephrase your  
7 question, please.

8 BY MR. PEEK:

9 Q You understand that Judge Gonzalez has issued orders  
10 regarding production of documents from -- in Wynn Macau?

11 I'll rephrase the question.

12 THE COURT: Great.

13 BY MR. PEEK:

14 Q You understand that Judge Gonzalez has issued orders  
15 compelling Wynn Resorts to produce documents from Wynn Macau?

16 A Yes. Yes. Yes.

17 Q Do you believe that Wynn Resorts should comply with  
18 those orders of Judge Gonzalez?

19 MR. PISANELLI: Same objections, Your Honor. Lack  
20 of foundation.

21 THE COURT: Overruled.

22 THE WITNESS: Yes. Yes. It is certainly correct.

23 BY MR. PEEK:

24 Q You understand that some of those documents that the  
25 Judge has ordered be produced relate to the University of

1 Macau Development Fund contribution and the Cotai land  
2 concession?

3 MR. PISANELLI: Objection, Your Honor. Assumes  
4 facts not in evidence. Lack of foundation that he knows any  
5 of these documents.

6 THE COURT: Overruled.

7 MR. PISANELLI: And leading.

8 THE COURT: You can answer.

9 THE WITNESS: Yes, I do understand.

10 MR. PEEK: And, Your Honor, I would also, since we  
11 have open and publish -- well, it's already been opened and  
12 published, but I would like to ask the witness if he gave --  
13 these questions and these answers were given by him in his  
14 deposition of July 18th. Those appear on line 19 on page 44  
15 and continue through page 45, line 4.

16 THE COURT: And for what purpose are you offering  
17 them?

18 MR. PEEK: Rehabilitation.

19 THE COURT: Okay.

20 MR. PISANELLI: Your Honor, it's hearsay coming from  
21 his own counsel.

22 THE COURT: Well, you impeached him with it, so Mr.  
23 Peek's entitled to rehabilitate him with the same testimony.

24 MR. PISANELLI: I don't think it is as broad as  
25 that. I think if there's a completion issue or there's

1 something misleading about the particular topic -- but just  
2 now wanting to go into the deposition and use it, there's not  
3 a suggestion of recent fabrication or any foundation for him  
4 to use his own hearsay statements as evidence. It's available  
5 to an opposing party, not to the party's own counsel.

6 THE COURT: And you've used it already, so Mr. Peek  
7 can use it for rehabilitation for purposes of showing that  
8 there was more than one version testified to in the  
9 deposition.

10 Page?

11 MR. PEEK: Page 44, Your Honor, beginning on line  
12 19, through line 21 is the question.

13 MR. PISANELLI: Which transcript?

14 MR. PEEK: July 18th, 2017.

15 THE COURT: If the interpreter would please read  
16 that to Mr. Okada first before Mr. Peek reads it to me.

17 MR. PEEK: And then the answer is lines 1 through 4  
18 on page 45.

19 THE COURT: Thank you.

20 (Interpreter reads requested portion)

21 BY MR. PEEK:

22 Q The witness was asked, Your Honor, the following  
23 question and gave the following answer.

24 Question, "Have you or other defendants ever been  
25 harmed by Wynn Macau's failure to comply with the

1 Macau Personal Data Protection Act?"

2 Answer, "I don't know very well, but there was  
3 information from Macau that Freeh used in his  
4 report. So if that constitutes harm, then there  
5 probably was harm."

6 MR. PEEK: And I have one more reading, Your Honor,  
7 from deposition.

8 THE COURT: Same volume?

9 MR. PEEK: No, Your Honor. This is Volume 9 of the  
10 deposition of Mr. Okada taken on November 5th, 2015.

11 THE COURT: Page? So we need the deposition to be  
12 published. Dulce said we don't have that one, Mr. Peek.

13 MR. PEEK: I do not have it, because it's -- not  
14 been filed, but it's in the possession of Wynn Resorts, and  
15 Mr. Pisanelli said I may use a copy.

16 THE COURT: Is it okay if we use a copy, Mr.  
17 Pisanelli?

18 MR. PISANELLI: May I get the cite first to see if I  
19 have an objection?

20 MR. PEEK: Yes. Citation is page 941, line 12,  
21 through page 943, line 14, those two pages.

22 MR. PISANELLI: To what line on -42 [sic]?

23 MR. PEEK: Line 14.

24 MR. PISANELLI: That's the middle of an answer, line  
25 14, Steve, if I'm on the right page.

1 MR. PEEK: Excuse me, Your Honor, just a minute.

2 (Pause in the proceedings)

3 MR. PISANELLI: 943? Oh. Sorry.

4 MR. PEEK: May I give the transcript to the witness?

5 THE COURT: You can.

6 MR. PEEK: Or to the interpreter.

7 MR. PISANELLI: So, Your Honor, the utilization of a  
8 copy is fine with us, but same objections, that this is  
9 hearsay and not --

10 THE COURT: So have we given the copy to Dulce so  
11 she can publish it?

12 MR. PEEK: I will, Your Honor. May I approach?

13 THE COURT: Yes. So after Dulce stamps it, Steve,  
14 we're going to have you give it to the interpreter, who's  
15 going to then read the portion to Mr. Okada, understanding Mr.  
16 Pisanelli's making the same objection and I'm making the same  
17 ruling.

18 Page?

19 MR. PEEK: It begins on page 941, line 12, through  
20 page 943, line 14.

21 (Interpreter begins reading requested portion)

22 THE COURT: Page number again, Mr. Peek, just so  
23 we're all on the same page.

24 MR. PEEK: Page 941, Your Honor, line 12.

25 THE COURT: Okay. Thank you.

1 MR. PEEK: And this is by Mr. Pisanelli.

2 MR. PISANELLI: No, it's not.

3 MR. PEEK: Oh. Excuse me. I think it's by Mr.

4 Helm. My apologies. Or Mr. Urga.

5 MR. PISANELLI: That's Helm on 940, Steve.

6 MR. PEEK: Helm. Okay. I saw Urga's name, that's

7 why --

8 Whenever she's ready.

9 (Interpreter reads requested portion)

10 THE COURT: Does that conclude the reading?

11 THE INTERPRETER: Yes.

12 BY MR. PEEK:

13 Q So the questions of you, Mr. Okada, were those the  
14 questions asked of you and the answers that you gave in your  
15 deposition on November 5th, 2015?

16 A Yes, that's correct.

17 MR. PEEK: I'll read them now, Your Honor, in  
18 English.

19 THE COURT: Thank you.

20 BY MR. PEEK:

21 Q Question beginning on line 12 on page 941.

22 "Now, what was the next instance you recall in which  
23 a representative of Aruze made a request to Wynn  
24 Resorts concerning the nomination of Aruze  
25 nominees?"



1 Answer, "Well, in 2011 there was a phenomenon going  
2 on within Wynn Resorts that I was almost in a  
3 condition of having been removed. This email was  
4 sent July 2010, so I think that thinking that  
5 focused on was board of directors meeting to be held  
6 in January 2011. Given the close of the fiscal  
7 year, that's what I would think. Well, so it was --  
8 rather in 2011 I felt I was complete ignored in  
9 terms of conclusion and there was -- it was more  
10 criticism. Ambience was such that there was a  
11 criticism of me and that problems with me were being  
12 raised and saying that the Philippines was a country  
13 that is filled with corruption so investment in that  
14 country would not be approved by board of directors.  
15 So it was just totally ridiculing me.

16 "At least I wanted to get along with Steve Wynn  
17 until 2010. So along that line I showed him -- I  
18 took him to the Philippines and South Korea and I  
19 showed him. Aside from his intent I took him to the  
20 Philippines and South Korea thinking that we could  
21 do it still together.

22 "I think it was around the end of 2010 the nuance  
23 that the -- his divorce from Elaine was formally  
24 decided on. That was conveyed to me around the end  
25 of 2010.

1 "I felt apprehension then that if a person with a  
2 conscience is removed from Wynn Resorts and then  
3 this company may not be a conscientious company  
4 anymore. Well, I thought there should be a purpose  
5 for donating a huge amount such as 13.5 million  
6 [sic] yen."

7 I think that should -- well --

8 "-- whether one is doing that for his own sake or  
9 one is doing it for the company, there should be a  
10 purpose, and in that sense I felt I should not make  
11 a compromise. And I think that led to this fight.  
12 In other words, in terms of the timing of things --  
13 well, in terms -- in other words, in terms of the  
14 timing a variety of things there was -- there was a  
15 variety of things, say we wanted new board members  
16 elected, and our views became stronger or we would  
17 investigate regarding things going -- going backward  
18 in time given those circumstances. So the decision  
19 was made earlier to remove me, oust."

20 And Mr. Matsutani made an interpretation correction,

21 Your Honor.

22 "So the decision was made -- came first to oust me  
23 at whatever the cost, and the Freeh report was made  
24 with the conclusion already in existence. That is  
25 what I think at present."

1 MR. PISANELLI: Your Honor, I would move to strike  
2 this portion of the testimony. It had nothing to do with the  
3 topics that I was discussing with him, and, again, it's just  
4 hearsay.

5 MR. PEEK: Your Honor --

6 THE COURT: Okay. That objection is overruled. It  
7 went to the issues of whether he had raised the problems  
8 before.

9 Okay. Anything else, Mr. Peek?

10 MR. PEEK: That is all that I have.

11 THE COURT: Mr. Krakoff?

12 MR. KRAKOFF: No, Your Honor, I have no questions.  
13 Thank you.

14 THE COURT: Mr. Malley?

15 MR. MALLEY: I have no questions, Your Honor. Thank  
16 you.

17 THE COURT: Mr. Pisanelli, any followup?

18 MR. PISANELLI: Yes, ma'am.

19 THE COURT: Thank you.

20 REDIRECT EXAMINATION

21 BY MR. PISANELLI:

22 Q Mr. Okada, during the lunch break, the break, after  
23 my examination did you have an opportunity to speak with Mr.  
24 Peek and your other counsel?

25 A No, there was nothing like that at all during lunch.

1           Q     Well, I saw you speaking right there in the  
2 courtroom with Mr. Peek and the other gentleman in the back  
3 row and the woman in the middle row. You don't recall that  
4 conference with Mr. Peek prior to taking the stand?

5           MR. PEEK: Your Honor, I'm going to object to this  
6 line of questions. My understanding from Coyote Springs and  
7 of course Mr. Pisanelli, and you know better than I because  
8 you lived it, that lunch breaks when they talk without concern  
9 of invasion of communications between the attorney and the  
10 client on a lunch break --

11          THE COURT: But he's not there yet.

12          MR. PEEK: I know. But I --

13          THE COURT: He's just asking if there was a  
14 conference.

15          MR. PEEK: I know he's going to go there.

16          THE COURT: Well, he might. And we'll address the  
17 issue --

18          MR. PEEK: Yeah.

19 BY MR. PISANELLI:

20          Q     Do you recall meeting right here in the courtroom  
21 during the break, sir?

22          A     There wasn't any discussion about anything in  
23 particular. I don't recall any such conversation.

24          Q     Mr. Peek remind you of some facts that you should  
25 adopt as part of your testimony when he asked you questions?

1 MR. PEEK: Now he's getting to the --

2 THE COURT: Sustained. It was not a requested  
3 break.

4 MR. PISANELLI: Well, there was one, Your Honor,  
5 right after my examination.

6 THE COURT: That was Mr. Peek's requested break, but  
7 that wasn't the lunch break that you're talking about.

8 BY MR. PISANELLI:

9 Q Mr. Okada, during the break between my examination  
10 and Mr. Peek's did he offer some facts to you or remind you of  
11 some facts that he wanted you to put out in your testimony  
12 once he asked you questions?

13 A No, there wasn't anything in particular.

14 Q Did he tell you what he was going to ask you?

15 A No, there wasn't much of a conversation about things  
16 like that.

17 Q Who is the gentleman in the back row there that you  
18 were conferring with?

19 A Attorney Nakayama, N-A-K-A-Y-A-M-A.

20 Q And he represents you personally, sir?

21 A That's correct.

22 Q And did he assist you on formulating what your  
23 responses would be to Mr. Peek's questions?

24 A No, he didn't do that. There was nothing.

25 Q All right. Mr. Okada, you mentioned to Mr. Peek

1 that you recall the books and records lawsuit that was filed  
2 in 2012. Let me ask you a question about that. You  
3 understand that nothing in that books and records lawsuit  
4 asked for any documents relating to the Cotai land concession;  
5 right?

6 A Well, at that point in time although there were  
7 questions regarding the contribution in the amount of 13.5  
8 billion Yen I didn't raise any questions at that time  
9 regarding Cotai.

10 Q You told us earlier you didn't know anything about  
11 Cotai at that time; right?

12 A I sensed that there was a possibility that a  
13 contribution or donation may have been made in some form  
14 either through the Cotai land concession or otherwise. I  
15 answered as I did in the sense that I was not clearly pursuing  
16 about that in particular because I did not, at that time, have  
17 a grasp of the stats regarding that.

18 Q So three documents have been identified in this  
19 proceeding, Mr. Okada, that have been redacted for which  
20 Universal and Aruze claims to have been prejudiced by. Have  
21 you seen those three documents?

22 MR. PEEK: Objection, Your Honor. Beyond the scope.

23 THE COURT: Overruled.

24 THE WITNESS: I have not seen the redacted documents  
25 yet.

1 BY MR. PISANELLI:

2 Q So you don't even know what these three redacted  
3 documents are about; correct?

4 A I have answered that I have not received a detailed  
5 explanation about them from my attorneys.

6 Q And you've never read them?

7 A No. What I have heard is that it is so -- almost  
8 completely redacted, that there's almost nothing that can be  
9 -- that is legible.

10 Q And who told you that?

11 MR. PEEK: Objection, Your Honor. Attorney-client.

12 THE COURT: Overruled. He opened the door.

13 THE WITNESS: Attorney Krakoff.

14 BY MR. PISANELLI:

15 Q Okay. And Mr. Krakoff told you that one or all of  
16 these three documents are so completely redacted that there's  
17 nothing that can be discerned from them. Is that what you  
18 just said?

19 MR. PEEK: Your Honor, I'm going to renew my  
20 objection. I understand he said he received a detailed  
21 explanation about them from attorney. I understand he opened  
22 the door. I didn't even have a chance to really get it --

23 THE COURT: Mr. Peek, of all of the --

24 MR. PEEK: -- objection there to make sure --

25 THE COURT: Keep going.

1 MR. PEEK: -- that he understood not to answer  
2 something that the attorney told him.

3 THE COURT: I gave him that cautionary instruction  
4 earlier today. And given all of the incomplete answers that  
5 he's previously given I thought that I would get a different  
6 answer than the one he gave. So.

7 Mr. Krakoff, did you want to say something?

8 MR. KRAKOFF: Yeah. I want to make an attorney-  
9 client privilege objection. Actually, Your Honor, could I  
10 approach the bench.

11 THE COURT: Yes, we all can approach the bench. How  
12 about we go in the hallway. Come on. Come to my back  
13 hallway. We'll be back.

14 (Off-record bench conference in hallway)

15 THE COURT: Mr. Pisanelli, if you could briefly wrap  
16 this up.

17 He's not even here. How did you lose him?

18 Mr. Pisanelli, if you could briefly wrap this up.

19 MR. PISANELLI: Nothing further, Your Honor.

20 THE COURT: Thank you, sir.

21 Nothing else, right, gentlemen?

22 MR. PEEK: Your Honor, there certainly is a subject  
23 and we can we deal with it of --

24 THE COURT: I'm asking about questions for the  
25 witness before I let him sit down. Any more?



1 MR. PEEK: I have no more questions of this witness,  
2 Your Honor.

3 THE COURT: Malley said no, Pisanelli said no,  
4 Krakoff said no, Peek said no.

5 Sir, we appreciate your time testifying. Thank you  
6 very much for coming.

7 THE WITNESS: Thank you very much.

8 THE COURT: And, lady interpreters, thank you so  
9 much for your hard work today. I know it's a challenge.

10 MS. BLEDESTEN: Thank you, Your Honor.

11 MS. RIOS: Thank you, Your Honor.

12 THE COURT: All right. So if I could go back to the  
13 issue we started with this morning, which were Proposed  
14 Exhibits by Wynn, 9, 10, 16, 19, 23 through 53, 55 through 62,  
15 65, 68, 70, 106, 139, 140, 163, 171, 172, 174, 175.

16 MS. SPINELLI: Your Honor, I spoke with Mr. Kunimoto  
17 and I inadvertently omitted 107, but I let him know, 106 and  
18 107, they're the same document, just one in English and one in  
19 Portuguese.

20 THE COURT: So you wanted to talk about the  
21 exhibits.

22 MR. KUNIMOTO: Your Honor, I can address our  
23 objections to certain of the --

24 THE COURT: How about this. Are there any you don't  
25 object to?

1 MR. KUNIMOTO: Yes, there are.

2 THE COURT: Tell me which ones those are.

3 MR. KUNIMOTO: 9, 10, 16 --

4 MS. SPINELLI: Wait. I'm sorry.

5 THE COURT: He's not objecting. In a minute I'm  
6 going to say admitted, but I'm not there yet.

7 MR. KUNIMOTO: 19, 20, 23 through 52, 53, 55, 56  
8 through 62, 65. And, Debbie, if I can clarify. With respect  
9 to 68 and 70, those are the Portuguese and the translation  
10 certification for 69?

11 MS. SPINELLI: 68 is the Portuguese notification.  
12 The English version was 69, that was already admitted.

13 MR. KUNIMOTO: Okay.

14 MS. SPINELLI: This is just the original.

15 MR. KUNIMOTO: And that's fine. 68, 70, 139, 140,  
16 and the rest are objections, Your Honor.

17 THE COURT: So 9, 10, 16, 19, 20, 23 through 52, 53,  
18 55 through 62, 65, 68, 70, and 139 and 140 are admitted.

19 (Plaintiff's Exhibits 9, 10, 16, 19, 20, 23 through 52,  
20 53, 55 through 62, 65, 68, 70, 139, and 140 admitted)

21 MS. SPINELLI: Thank you, Your Honor.

22 THE COURT: Did you have some discussion you want to  
23 have with me on the ones that were not stipulated to, which  
24 would be 106, 107, 163, 171, 172, 174 and 175?

25 MS. SPINELLI: I would, Your Honor.

1 THE COURT: All right.

2 MS. SPINELLI: Proposed 106 and 107 is the official  
3 English -- or the unofficial English translation of the  
4 judgement in the Macau civil action. And 107 is the original,  
5 in Chinese, of that judgement in Macau civil action. We think  
6 that it certainly relates to the wilfulness and prejudice or  
7 harm in this case, and we think it should be admitted. Mr.  
8 Okada was a party, as is Universal, obviously. It's still  
9 ongoing. It was one of the questions you posed, and therefore  
10 we think that it should be --

11 THE COURT: And we talked about it with both Mr.  
12 Takeuchi and Mr. Schall.

13 MR. KUNIMOTO: Our objection would be, Your Honor,  
14 that it's not relevant and doesn't go to willfulness or  
15 prejudice.

16 THE COURT: Admitted.

17 (Plaintiff's Exhibits 106 and 107 admitted)

18 THE COURT: 163?

19 MS. SPINELLI: 163 is on my list to weigh, Your  
20 Honor. Excuse me one second, Your Honor.

21 THE COURT: And then, Mr. Kunimoto, the next option  
22 is going to be your proposed exhibits that have not been  
23 admitted that we want to get finalized.

24 MR. KUNIMOTO: Understood, Your Honor.

25 THE COURT: Remember, you were supposed to provide

1 that to Ms. Spinelli on the break, the lunch break. That was  
2 a Mr. Peek thing.

3 We're at 163.

4 MS. SPINELLI: 163, Your Honor, is a translation  
5 certification for a document that was already admitted,  
6 Exhibit 162. It just makes it official as required by your  
7 protocol.

8 MR. KUNIMOTO: We'll stipulate, Your Honor.

9 THE COURT: 163 be admitted.

10 (Plaintiff's Exhibit 163, admitted)

11 MS. SPINELLI: 171 and 172, Your Honor -- yes, 171  
12 and 172 is the Chinese and Portuguese and also the English  
13 versions of the notification letter regarding the civil appeal  
14 and the Macau civil action. They relate similarly to the  
15 civil action we just talked about for Exhibit 106 and 107.  
16 They're also Exhibits 3 and 4 to our post-hearing brief.

17 THE COURT: Mr. Kunimoto, any additional objection?

18 MR. KUNIMOTO: Objection as to relevance. Doesn't  
19 go to the issue of willfulness or prejudice, Your Honor.

20 THE COURT: Overruled. Be admitted.

21 (Plaintiff's Exhibits 171 and 172 admitted)

22 MS. SPINELLI: Exhibit 174, Your Honor, and 175 are  
23 respectively Aruze and Universal's responses to Wynn Resorts  
24 tenth request for production. They relate to documents that  
25 were redacted by Wynn Macau under the MPDPA for every document

1 that Aruze, Universal, or Mr. Okada was in with a "to" -- or a  
2 "to" or a "received." We asked them to produce those  
3 documents, and their response, as we discussed in our post-  
4 hearing brief, were, either we don't have them for some  
5 reason, or, we are producing now, or, we may have produced a  
6 few before. And it goes to the issue of harm, Your Honor.

7 THE COURT: And those were produced the other day?

8 MS. SPINELLI: Yes.

9 THE COURT: Like two days ago?

10 MS. SPINELLI: They were -- yeah, last Wednesday or  
11 Thursday, yes.

12 THE COURT: Mr. Kunimoto?

13 MR. KUNIMOTO: Same objection on the grounds --

14 THE COURT: Overruled.

15 MR. KUNIMOTO: -- of wilfulness or prejudice, Your  
16 Honor.

17 THE COURT: They're admitted.

18 (Plaintiff's Exhibits 174 and 175 admitted)

19 So then there were some Okada-related documents that  
20 you wanted to discuss me including?

21 MR. KUNIMOTO: Well, Your Honor, if I could --

22 THE COURT: Okay. While you're waiting to find Mr.  
23 Peek, let me ask a question of Ms. Spinelli, Mr. Pisanelli.  
24 Do you have any additional evidence you want the Court to  
25 consider as part of this?

1 MR. PISANELLI: No, Your Honor.

2 THE COURT: What'd you do with Peek? Is he in the  
3 men's room. Don't go in there. We can wait.

4 MR. KUNIMOTO: Oh. Okay. Your Honor, in the  
5 meantime can I ask --

6 THE COURT: I once got sent in to look for a partner  
7 who was supposedly in the men's room, and it's like, you know,  
8 judges do that when you're in trial. You open the door and  
9 you holler. You don't go in.

10 MR. PEEK: I thought there were enough grown-ups in  
11 the room, Your Honor, to handle whatever they needed.

12 THE COURT: Mr. Peek, do you remember, you said you  
13 had some other exhibits for cleanup purposes that you wanted  
14 me to admit?

15 MR. PEEK: Yes. Those are all the ones identified  
16 in the appendix, Your Honor. Because remember I started to go  
17 through each of the exhibits and then --

18 THE COURT: I told you it was very painful and  
19 stopped.

20 MR. PEEK: It was very painful and to stop, and so I  
21 said to the Court, I will deal with it in a declaration. And  
22 we have a declaration of my favorite partner, Mr. Kunimoto,  
23 identifying those.

24 MR. KUNIMOTO: He doesn't mean it, Your Honor.

25 THE COURT: Wow. Reilly, Akridge, all of those

1 other people, and you've got Kunimoto as your favorite this  
2 week, huh?

3 MR. PEEK: Yeah.

4 THE COURT: Okay.

5 MR. PEEK: He's the flavor of the day. Flavor du  
6 jour, Your Honor. But, Your Honor, he's gone to great  
7 lengths, Your Honor, to -- he and Ms. Champion, who is also  
8 here, who's my favorite associate of the day, identified those  
9 exhibits that we think -- or that we want to have the Court  
10 consider and admit. And that's the way we handle it is  
11 through the declaration process. I don't have that list, but  
12 they are certainly part of the appendix. And I guess we could  
13 deal with that right now.

14 THE COURT: Well, hold on. I was actually on more  
15 substantive things. Were there any exhibits that have been  
16 marked that are in the binders that you want admitted that  
17 have not previously been admitted?

18 MR. PEEK: Yes. They're identified in the appendix,  
19 Your Honor.

20 THE COURT: No. Other than that?

21 MR. PEEK: Oh.

22 THE COURT: Other than the appendix. For the  
23 record --

24 MR. PEEK: No. Do we have additional exhibits --  
25 and I'm looking at Mr. Kunimoto, who is quickly --

1 THE COURT: For the record, the appendix contains  
2 documents with Tabs 1 through looks like 107. Is that right,  
3 Ms. Champion?

4 MS. CHAMPION: Yes, it is.

5 THE COURT: Okay. And Mr. Kunimoto's declaration --

6 MR. PEEK: Very lengthy.

7 MS. CHAMPION: It's Exhibit 25.

8 THE COURT: Exhibit which?

9 MS. CHAMPION: 25.

10 THE COURT: So it's part of the appendix.

11 MR. PEEK: So would it be Tab 25 or --

12 MR. KUNIMOTO: Tab 25, Your Honor, yes.

13 THE COURT: All right. So you're asking me to  
14 consider the appendix and declaration in part of my fact  
15 finding?

16 MR. PEEK: Yes.

17 MR. KUNIMOTO: That is correct, Your Honor.

18 THE COURT: Are you asking me to admit it for  
19 purposes of this hearing?

20 MR. PEEK: I am, Your Honor.

21 THE COURT: Ms. Spinelli?

22 MS. SPINELLI: Your Honor, we may -- Mr. Bice made  
23 the objections the last time about the privilege logs and the  
24 disclosures, most of which have nothing to do with the  
25 arguments that were put forth in their sanctions motion but



1 were modified at the evidentiary hearing. We stated our  
2 objection -- we stated our objection that information that is  
3 confidential or highly confidential in the substantive parts  
4 of those logs would be admitted into the record. You gave the  
5 Okada parties the opportunity to submit an appendix and a  
6 post-hearing brief on that, which they did, in order to  
7 protect and redact under seal those confidential exhibits. So  
8 we would object on relevancy grounds for all of the  
9 supplemental disclosures and privilege logs that are on there.  
10 It's not all of the documents in the list that they gave me.

11 And I don't think you gave me the entire list of  
12 your appendix to consider on the lunch break.

13 But we do have that objection.

14 THE COURT: Other than that objection do you have  
15 any others?

16 MS. SPINELLI: Besides relevancy and the  
17 confidentiality and taking advantage of the confidentiality  
18 protection order, for every individual document there's  
19 probably a different relevance objection, because some of them  
20 don't even relate to Macau law or the MPDPA. But that would  
21 be it, Your Honor.

22 THE COURT: Understanding that there are  
23 confidential and highly confidential information that appear  
24 to be part of the appendix, which is Tabs 1 through 107, I am  
25 not going to admit it for purposes of this hearing. But I am

1 going to review and consider the declaration as part of my  
2 decision-making process.

3 Mr. Kunitomo, can you please file the appendix with  
4 an accompanying motion to file under seal at the front counter  
5 of the Clerk's office so they will seal it.

6 MR. KUNITOMO: Your Honor, I heard from Mr. Peek's  
7 favorite associate of the day that we believe that has already  
8 been filed.

9 MR. PEEK: We did do that, because the favorite  
10 associate of the day knows how to do it, Your Honor.

11 THE COURT: Did she listen to my speech this morning  
12 to Mr. poor Mark Jones?

13 MR. PEEK: You know what, Your Honor, I thought that  
14 speech was more intended for Mr. Jones, who's brand new to the  
15 case. Because I think we've all been on both sides of the  
16 aisle today very diligent about doing it in the manner --

17 THE COURT: Well, not Mr. Ferrario, because he's not  
18 here. Mr. Malley can tell him I said bad things about him,  
19 again.

20 MR. PEEK: Right. It's -- yeah --

21 THE COURT: Okay. Well, I'm on the last page of my  
22 note packet that I started with.

23 MR. PEEK: But could we address the -- and maybe  
24 this may not be the right forum to do that, Your Honor, but I  
25 remember earlier this year that the Court said to Wynn Resorts

1 that at some time they had to make a decision on  
2 confidentiality and highly confidential.

3 THE COURT: Yep.

4 MR. PEEK: And that decision should have been made a  
5 long time ago, because it is still, to this day, tying my  
6 hands in being able to prepare for trial with my client. And  
7 I'm sure Mr. Ferrario would echo that. I'm sure that Mr.  
8 Krakoff would echo that, because so many of the documents that  
9 have been marked as highly confidential are documents that we  
10 know will be introduced at trial. And if we're going to have  
11 a fair trial we need, at some time, Your Honor, to have the  
12 Court make that decision. We talked about an SPO. And SPO  
13 now is kind of beyond that. We're beyond the SPO and those  
14 designations. And there ought to be sometime very soon, Your  
15 Honor, when we should be permitted to show highly confidential  
16 documents. I'm not saying here today that you should make  
17 that ruling with respect to the introduction and the public  
18 unsealing of those. I'm happy to follow that SPO, Your Honor,  
19 although I don't think it applies in an evidentiary hearing.  
20 And I don't think it should be applied to this evidentiary  
21 hearing, but I understand you're going to do it, because  
22 you've asked us to file it under seal. But --

23 THE COURT: So for those reading at home or in  
24 Carson City, SPO stands for stipulated protective order.

25 MR. PEEK: Yes. My apologies --

1 THE COURT: Not me.

2 MR. PEEK: -- for using an acronym.

3 THE COURT: I'm not worried about me.

4 Ms. Spinelli, some day you're going to make an  
5 election?

6 MS. SPINELLI: Your Honor, we did. We negotiated  
7 the order with BuckleySandler when they represented both  
8 parties, including Mr. Peek's client. We followed your order,  
9 Your Honor. We have designated or de-designated or lowered  
10 the designation to confidential of a number of documents that  
11 relate to the redemption. We did that months ago, Your Honor.  
12 We've had conversations since about mutual downgrades of  
13 highly confidential documents, including translations and  
14 interpretations that had been had that they obviously or may  
15 obviously think are important but have not provided to us to  
16 be able to talk to our clients about.

17 I think that that conversation ended at some point  
18 in time. Mr. Peek wasn't involved, but I don't know what he's  
19 talking about.

20 THE COURT: Okay. So let me say it a different way.  
21 The discovery cutoff is on November 3rd.

22 MS. SPINELLI: Yes.

23 THE COURT: Shortly after the discovery cutoff you  
24 guys are going to figure out what exhibits you intend to use  
25 at trial. When are you going to do that?

1 MS. SPINELLI: Probably right after discovery  
2 cutoff, because everything's so crazy until then.

3 THE COURT: Okay. And I assume at that point in  
4 time you're going to identify what documents you intend to  
5 use?

6 MS. SPINELLI: I think all parties are, yes.

7 THE COURT: And Mr. Peek's going to intend to tell  
8 us what documents he intends to use.

9 MS. SPINELLI: I assume so.

10 THE COURT: And you all understand that if any  
11 document you intend to use is on that list they're not going  
12 to be able to have confidential or highly confidential  
13 treatment anymore.

14 MS. SPINELLI: If they're used at trial?

15 THE COURT: No. On the list.

16 MR. PISANELLI: But what if you have a will use and  
17 may use list? Do the -- designation that never comes off?

18 THE COURT: If you've got a may-use list it's coming  
19 off -- the highly confidential, because they've got to be able  
20 to talk to their client about it.

21 MR. PISANELLI: This is --

22 THE COURT: I'll give you the confidential for a  
23 little bit, but I -- I mean, once you put it on the may-use  
24 they've got to review it with their clients to see about trial  
25 prep.

1           MR. PISANELLI: I have to admit, Your Honor, I'm not  
2 familiar with any law on this topic of whether it can be  
3 properly excluded or not. I'd like to take a look at it. We  
4 have some time, because you're not making us do it today. But  
5 we'd like to just reserve --

6           THE COURT: No, I'm not making you do it today.

7           MR. PISANELLI: -- some rights to see, you know,  
8 what the fair options are for both of our sides. I mean,  
9 we're both going with the same --

10          THE COURT: Remember, the statute says I'm supposed  
11 to work with you to find ways for you to protect the  
12 confidentiality. But once I have a juror that is involved in  
13 this case there is no way that you get to protect anything,  
14 because jurors can't be bound by confidentiality order.

15          MR. PISANELLI: The problem I have that I'm  
16 anticipating -- the reason I want to look at this is we're not  
17 really going to know, any of us, of what we're going to  
18 present until summary judgment and motions in limine are  
19 finished.

20          THE COURT: Oh. Yes, you are.

21          MR. PEEK: I've been starting now, Your Honor.

22          MR. PISANELLI: I've got about 65 motions in limine  
23 that I'm going to file against him. And so he won't know if  
24 it's coming in or not.

25          THE COURT: Don't call it -- don't call an omnibus

1 motion, please. Each one --

2 MR. PISANELLI: Oh, never.

3 MS. SPINELLI: We will not.

4 THE COURT: -- gets its own number.

5 MR. PISANELLI: No. I'm obviously being facetious.

6 But the point is --

7 THE COURT: Not much though.

8 MR. PISANELLI: -- some ambiguity.

9 MS. SPINELLI: Not much.

10 MR. PISANELLI: There's ambiguity to what this trial  
11 will look like until all that motion practice is finished.  
12 That's all I'm saying.

13 MR. PEEK: Your Honor, just --

14 THE COURT: I understand that there's going to be  
15 ambiguity, but that doesn't mean you don't have to pick.

16 MR. PEEK: My biggest concern is the highly  
17 confidential, because I can share the confidential with my  
18 client. But it's the highly confidential that has --

19 THE COURT: I got that, Mr. Peek.

20 MR. PEEK: -- really troubled me.

21 MR. PISANELLI: Well, there may be some middle  
22 ground here -- we'll talk to them -- for instance, highly  
23 confidential that goes on a list so that they can barely  
24 prepare for trial but doesn't release it out into the world.

25 THE COURT: Well, but highly confidential never gets

1 released to the world. Confidential --

2 MR. PISANELLI: But you're saying that it loses that  
3 designation --

4 MR. PEEK: Confidential doesn't, either.

5 THE COURT: No.

6 MR. PISANELLI: -- once it's on the list.

7 MR. PEEK: Confidential doesn't get --

8 THE COURT: Highly -- wait. What I am saying and --  
9 just in case, because it's been a long day, and, like the  
10 interpreter, my brain's pretty close to being fried, because I  
11 was trying to figure out Japanese and couldn't -- I don't have  
12 an ear for that tone of language. So if you put it on the may  
13 use list, it is likely I will tell you the impact of that is  
14 it is no longer highly confidential, it now downgrades to  
15 confidential so that they can review it for purposes -- do you  
16 understand what I'm saying?

17 MS. SPINELLI: Yes.

18 MR. PISANELLI: Yeah. I misunderstood you.

19 THE COURT: I'm not trying to say you lose all  
20 protection. I'm saying it goes from highly confidential to  
21 confidential, so they have the opportunity to meet with their  
22 client, talk about it and do their trial prep, too.

23 MR. PISANELLI: Okay. So I understand that will be  
24 the default setting. we'll come up with a fair date for that  
25 to happen. And if I think that there's some other relief or



1 protection we're entitled to I'll file a motion with you and  
2 mention that.

3 THE COURT: Soon.

4 MR. PISANELLI: Yeah.

5 THE COURT: Soon.

6 MR. PEEK: Yeah. I would ask for soon as well, Your  
7 Honor.

8 THE COURT: Who's coming tomorrow morning, and what  
9 is the motion that's on?

10 MS. SPINELLI: The motion for protective order, Your  
11 Honor, related to the 30(b)(6) deposition set on Brownstein  
12 Hyatt Farber Schreck.

13 MR. PISANELLI: Yes, it's a very narrow motion. I  
14 think we just filed our opposition.

15 MS. SPINELLI: And Mr. Langberg is appearing for  
16 Wynn.

17 THE COURT: Okay. Mr. Kunimoto, anything else,  
18 since you are the partner flavor of the day?

19 MR. KUNIMOTO: I'm honored, Your Honor. One  
20 question about tomorrow's closing. I understand with respect  
21 to the exhibits that are referenced in the appendix that have  
22 not yet been admitted for purposes of this hearing is going to  
23 -- will be considered by the Court. In the closing arguments  
24 in any PowerPoint presentations we may do can we reference or  
25 show those exhibits onto a screen?

1           THE COURT: I will tell you not to show them on the  
2 screen, because I am going to make you mark your PowerPoint as  
3 a demonstrative exhibit, which arguably becomes publicly  
4 available. But you can then have me refer to this kindly  
5 prepared box of 1 through 107, and I will flip through it.  
6 But when you flash it up on the screen there's an issue about  
7 its confidentiality.

8           So somebody brought up the depositions earlier  
9 today. To the extent that a portion of a deposition was read  
10 during this proceeding it has lost its confidential  
11 protection. However, the remainder of the deposition that was  
12 not read into the proceeding is still protected, and those  
13 will be sequestered. That means you're going to keep them in  
14 the vault separately and safely and have a little special seal  
15 that says, these are secret.

16           MR. PEEK: Your Honor --

17           THE COURT: Yes.

18           MR. PEEK: As opposed to showing a PowerPoint --

19           THE COURT: You understand I can't watch a  
20 PowerPoint in this courtroom.

21           MR. PEEK: No. No. I do. I know the judges -- the  
22 court is not -- I've heard you many times say I'm not  
23 impressed with PowerPoints necessarily. But I -- what I'm  
24 thinking is -- because there are only going to be a few  
25 demonstratives -- or a few that we would have put on the

1 PowerPoint, and maybe they can tell me, Andy and Bryce can  
2 tell me that I would just make a copy of that and give it to  
3 the Court. Would that then make it court record, too?  
4 Because it's already court record as it is.

5 THE COURT: It's filed under seal. It's protected.  
6 So you tell me --

7 MR. PEEK: So if I show it to you --

8 THE COURT: No.

9 MR. PEEK: -- does it retain that?

10 THE COURT: Tell me where to turn in this big box.

11 MR. PEEK: Okay.

12 THE COURT: I've got all the tabs right here.

13 MR. PEEK: Okay. I'll do that.

14 THE COURT: Right, Ms. Champion, it's all in here in  
15 this box?

16 MS. CHAMPION: Yes, Your Honor.

17 THE COURT: See how handy that is?

18 MR. PEEK: Well, that plus the exhibits. We'll  
19 figure it out, Your Honor, between now and 1:00 o'clock.

20 THE COURT: I have all the other exhibits here.

21 MR. PEEK: I know. So we'll -- we will do our best.  
22 I'm taking a limited part of the Mr. Krakoff's time, so --

23 THE COURT: You said 10 or 15 minutes.

24 MR. PEEK: I did.

25 THE COURT: Okay.

1           Mr. Pisanelli, you looked funny when I said  
2 something about confidentiality.

3           MR. PISANELLI: No. I was only -- after laughing,  
4 because that was my question on the depos, and then I was  
5 flashing back to my own PowerPoints that you were not overly  
6 impressed with. That's all I'm laughing about.

7           MR. PEEK: We've all learned.

8           THE COURT: Just so you know. When I teach judges I  
9 use PowerPoints. They're not overly impressed either, but  
10 they always ask for them later so they can find that part  
11 they've heard about but they weren't paying attention on.

12          MR. PEEK: You know, Your Honor, one thing that you  
13 learned as a trial lawyer, because I know you did it, is there  
14 are aural learners and there are visual learners.

15          THE COURT: There are two different types.

16          MR. PEEK: And you are an oral as --

17          THE COURT: And you're teaching to all of them.

18          MR. PEEK: Yeah. You are an aural and oral learner.

19          MR. KUNIMOTO: Your Honor, on the PowerPoint --

20          THE COURT: You're welcome to use a PowerPoint, it  
21 doesn't bother me. I just am in a courtroom where I'm not  
22 going to be able to see it.

23          MR. KUNIMOTO: Could I give you a hard copy?

24          THE COURT: You may. And I will mark it as a  
25 Court's Exhibit.

1 MR. PEEK: But if it's highly confidential you have  
2 a problem. Is that what you said?

3 MR. KUNIMOTO: No. I'm not using highly  
4 confidential.

5 THE COURT: No. You can give me the PowerPoint. I  
6 will hold onto it. I will then give it to Dulce. She'll put  
7 a sticker on it and put it in the vault so it's there for  
8 everybody to see in case somebody wants to look at it. And I  
9 will never look at it again unless it has damages figures in  
10 it, and those I usually do look at it again, because I can't  
11 keep up with the lawyers while they're giving closing argument  
12 doing damages, because they don't -- they're too fast.

13 MR. PISANELLI: That's the one I was laughing about.

14 THE COURT: Oh. yeah. I know what case that was.  
15 That was that Coyote Springs case that none of us want to talk  
16 about.

17 MR. PISANELLI: That's the one.

18 THE COURT: Did you settle that case?

19 MR. PISANELLI: No.

20 THE COURT: Okay. That means I'm going to get  
21 reversed again.

22 MS. SPINELLI: We don't think so.

23 THE COURT: I got reversed recently on \$708 in  
24 teleconference costs.

25 MR. PEEK: Your Honor, one question that was asked

1 by Ms. Champion as my favorite associate of the day is maybe  
2 we can leave our stuff here. Because I know there were -- I'm  
3 not going back till 1:00 o'clock.

4 THE COURT: So what I'm going to ask you to do is to  
5 put them below that narrow table.

6 MR. PEEK: Okay.

7 THE COURT: The Pisanelli Bice side does not have a  
8 narrow table. So if we could stack them neatly so that the  
9 lawyers -- and there's only like six sets of lawyers coming in  
10 -- don't trip over them, fall and hurt themselves. Because  
11 Judge Vega will be here hearing a calendar, and I have to  
12 figure out how to clean up my area, too. This box has to stay  
13 here, and I'm going to put my notes, except for the ones from  
14 my lunch meeting -- I think we now are having an 8:30 hearing  
15 on the secret grand jury thing. I didn't sign an emergency  
16 order. I told them they had to have it heard. And I don't  
17 know what the answer was to that.

18 My notes are in that box. I guess I should take my  
19 findings of fact and conclusions of law out. They are secret,  
20 and we don't want anybody sneaking into my box. Maybe I'll  
21 work on them tomorrow between the break.

22 So I'll see you guys at 1:00 o'clock tomorrow.

23 Thank you, Reisdell [phonetic], for your hospitality.  
24 I'm just really sorry how long we take. You heard them say  
25 they would be done by noon; right?

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THE MARSHAL: I did.

THE COURT: Do you see it's five till 5:00?

Goodbye, teams. See you tomorrow at 1:00.

(Court recessed at 4:55 p.m., until the following day,  
Tuesday, October 17, 2017, at 1:00 p.m.)

\* \* \* \* \*

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\* \* \*

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
--------------------	-----------------

PLAINTIFF'S EXHIBIT NO.

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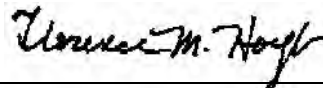
**CERTIFICATION**

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

**AFFIRMATION**

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

**FLORENCE HOYT  
Las Vegas, Nevada 89146**



\_\_\_\_\_  
FLORENCE M. HOYT, TRANSCRIBER

10/17/17

\_\_\_\_\_  
DATE

TRAN

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

WYNN RESORTS LIMITED	.	
	.	
Plaintiff	.	CASE NO. A-12-656710-B
	.	
vs.	.	
	.	
KAZUO OKADA, et al.	.	DEPT. NO. XI
	.	
Defendants	.	<b>Transcript of</b>
	.	<b>Proceedings</b>
. . . . .	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 7**

TUESDAY, OCTOBER 17, 2017

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
BRYCE KUNIMOTO, ESQ.  
DAVID KRAKOFF, ESQ.

1 LAS VEGAS, NEVADA, TUESDAY, OCTOBER 17, 2017, 8:56 A.M.

2 (Court was called to order)

3 THE COURT: Mr. Pisanelli, have you got your ducks  
4 in a row? Are you ready to start?

5 MR. PISANELLI: We are. Thank you, Your Honor.

6 THE COURT: All right. I am not imposing time  
7 limits, because I know that you will all be reasonable in your  
8 use of time. But we are leaving here prior to 5:00 o'clock.

9 MR. PISANELLI: That's enough time for me.

10 MR. PEEK: Yeah. I thought my argument was short,  
11 but Bryce made it long, Your Honor. Then I made it even  
12 longer.

13 THE COURT: Okay. Let's go.

14 MR. KRAKOFF: Just one second, Your Honor. Just got  
15 to get a little tiny bit more organized.

16 THE COURT: Does anybody have an demonstrative  
17 exhibits that you would like Dulce to mark for purposes of our  
18 record?

19 MR. KRAKOFF: I did, Your Honor, but I listened to  
20 Mr. Pisanelli and Your Honor yesterday, and it became clear to  
21 me that demonstratives may not be that effective. So I don't.

22 MR. PISANELLI: We're not going to use any, either.

23 THE COURT: Well, I have Bryce's box here just in  
24 case somebody wants to refer to any of that.

25 MR. PISANELLI: Thing only thing I might put up is

1 just like a picture on the monitor of transcript testimony,  
2 but not a demonstrative [inaudible].

3 THE COURT: I'm not --

4 All right. Well, I am three minutes early, so you  
5 don't have to start early.

6 MR. KRAKOFF: Well, I'm good to go, Your Honor.

7 (Pause in the proceedings)

8 THE COURT: Is everybody ready yet?

9 MR. KRAKOFF: Just about.

10 THE COURT: Two more minutes.

11 MR. PISANELLI: Your Honor, while we're getting  
12 ready just as a matter of courtesy to everyone, if we were in  
13 front of a jury, of course, we're obligated to object so as to  
14 preserve our record. Do you want objections during people's  
15 arguments --

16 THE COURT: I don't care.

17 MR. PISANELLI: -- or just reserve them all?

18 THE COURT: You can reserve them all, if you want.

19 MR. PISANELLI: I would stipulate with counsel to  
20 reserve our objections so we don't interrupt each other.

21 THE COURT: Okay. So you're not going to --

22 MR. PISANELLI: So no one's prejudiced by the  
23 courtesy. Fair enough?

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

25 THE COURT: Okay. So you're not going to interfere

1 with each other's flows.

2 MR. KRAKOFF: Yeah. I agree.

3 THE COURT: And there are no additional documentary  
4 exhibits to be addressed. We've all already addressed all the  
5 documentary exhibits; correct?

6 MR. PISANELLI: Yes.

7 THE COURT: Okay.

8 MR. PEEK: We have, Your Honor.

9 THE COURT: Does anybody feel the need to check with  
10 Dulce to ensure that all of the exhibits you think are  
11 admitted have in fact been admitted?

12 MR. PEEK: Your Honor, I made my record yesterday of  
13 offering those on the appendix. And I think the Court has  
14 said that she wasn't going to --

15 THE COURT: They're part of my record.

16 MR. PEEK: -- it's part of your record, not  
17 necessarily admitted, but at least something that you will  
18 review.

19 THE COURT: But it's not part of the record that  
20 will go to the vault and be publicly available.

21 MR. PEEK: Yeah. And I understood that was the  
22 reason why we maintained the highly confidential nature.

23 THE COURT: Okay.

24 MR. PEEK: Welcome back, Jill. We missed you  
25 yesterday.

1 DEFENDANTS ARUZE PARTIES' CLOSING ARGUMENT

2 MR. KRAKOFF: So -- good afternoon, Your Honor.

3 THE COURT: 'Afternoon.

4 MR. KRAKOFF: Your Honor, over the course of this  
5 hearing you've heard a lot about the MPDPA, so I want to start  
6 with this fundamental point. The MPDPA is a red herring.  
7 Why? Because we have heard directly and repeatedly from Mr.  
8 Schall, the global head of compliance for Wynn Resorts, that  
9 Wynn Macau is still violating the MPDPA even in this very  
10 sanctions hearing. When it suits Wynn Resorts' -- when it  
11 suits Wynn Resorts' interest they send personal data outside  
12 of Macau anytime they want. But when it doesn't suit Wynn  
13 Resorts' interests those documents stay in Macau and it  
14 doesn't matter how many times this Court and the Supreme Court  
15 order Wynn to produce the Macau documents to Universal. That  
16 doesn't happen, because it wouldn't help Wynn, it hurts Wynn.

17 For over six days of testimony, Your Honor, you  
18 heard a determined and unabashed litigation strategy from Wynn  
19 to turn this sanctions proceeding on its head. According to  
20 Wynn, their refusal to produce the Macau documents which they  
21 own and they control is our fault, not theirs. The issues the  
22 Court laid out for this proceeding, Wynn's control, Wynn's  
23 wilfulness, Wynn's harm to Universal, Wynn says, we have no  
24 responsibility, it's their fault, not ours, a clear and  
25 unequivocal attempt to hijack this hearing from its real

1 purpose.

2 But the bottom line is that we are here today only  
3 because Wynn Resorts has chosen to reject five court orders  
4 requiring it to produce the Macau documents. This isn't about  
5 the MPDPA anymore. That was resolved years ago in the Sands  
6 case. Litigants cannot use foreign privacy statutes to avoid  
7 their discovery obligations. That holding controls. Wynn  
8 Resorts controls the documents, so it must produce them  
9 whether that is a violation of the MPDPA or not.

10 This sanctions proceeding is about Wynn Resorts'  
11 litigation decision not to order its Macau subsidiary to turn  
12 over the Macau documents so the parent could comply with  
13 numerous court orders. Trying to blame my clients today  
14 cannot excuse Wynn Resorts' wilful violation of the Court's  
15 orders.

16 So I'd like to focus, Your Honor, on the actual  
17 legal issues that are in dispute and the evidence relevant to  
18 those issues. We're here to answer four questions, first  
19 whether Wynn Resorts has complied with the orders of this  
20 Court requiring it to produce documents in Macau. Even Wynn  
21 concedes this. They have not complied with the Court's  
22 orders. They have withheld hundreds of documents entirely.  
23 They have redacted many others, and they have refused to  
24 produce unredacted versions.

25 Second, Your Honor, whether Wynn had control over



1 the Macau documents; third, whether Wynn Resorts' failure to  
2 produce the Macau documents is wilful; and, fourth, whether  
3 Wynn Resorts' failure to produce the Macau documents has  
4 harmed Universal, Aruze, and Mr. Okada.

5 I'll start with control. The evidence of Wynn  
6 Resorts' control over Wynn Macau and its documents is  
7 overwhelming. All this evidence comes straight from wry.  
8 Wynn Resorts owns over 70 percent of the shares of Wynn Macau.  
9 Wynn Resorts has the power to nominate, elect, and replace the  
10 entire board of directors of Wynn Macau, as Mr. Schall  
11 testified. Steve Wynn is the chairman of both companies.  
12 Half of the rest of the Macau board report directly to Steve  
13 Wynn. He has four Wynn executives who are direct reports to  
14 him, giving him a majority of the Macau board. He can fire  
15 them tomorrow, and that means he controls the board.

16 And just because Wynn Resorts doesn't own all of  
17 Macau and shares are traded in Hong Kong doesn't mean --  
18 doesn't change the fact that Wynn Resorts is the controlling  
19 shareholder. And that's straight out of Wynn Macau's public  
20 filings. Indeed, when Wynn Macau issued its IPO the  
21 subsidiary told any and all potential investors Wynn Resorts  
22 can exert significant control over Wynn Macau's operations, it  
23 can even control Wynn Macau in ways that disadvantage the  
24 minority shareholders. Wynn Macau can't even control a change  
25 of its own control. Wynn Resorts controls that, too. That is

1 control.

2           And when it comes to the documents in Macau there's  
3 no question that Wynn Resorts controls those documents. When  
4 Wynn Resorts needs information from Macau to conduct routine  
5 business it gets those documents upon request. When it  
6 benefits Wynn Resorts to direct Wynn Macau to turn over  
7 unredacted documents that is what it does. When Wynn Resorts  
8 wanted Mr. Freeh to have unredacted inculpatory documents,  
9 considering to Mr. Schall, to recommend Mr. Okada's removal  
10 from the company Wynn Resorts snapped its fingers and made it  
11 happen. As Ms. Sinatra, the worldwide general counsel of Wynn  
12 Resorts, and Mr. Schall both testified, she directed Wynn  
13 Macau to provide the unredacted documents to Mr. Freeh. And  
14 that's what Wynn Macau did. Again, when Wynn Resorts needed  
15 documents to fend off the SEC's Macau bribery investigation it  
16 directed Macau to produce those unredacted documents. All it  
17 took was another email from Ms. Sinatra to the Mr. Schall with  
18 the SEC's request.

19           And Wynn Macau didn't do anything required by Macau  
20 law before producing the documents. It didn't ask permission  
21 of the OPDP, it didn't ask any Macau officials named in the  
22 documents for their consent. Mr. Schall acknowledged that  
23 repeatedly. And in fact in his testimony, Your Honor, he  
24 said, we took the view with respect to all government or quasi  
25 government officials if we're going to call the UMDf people

1 that we would not ask them for consents, because they're our  
2 regulators, it would put them in a bad position, it was  
3 inconvenient, and we just didn't ask them.

4           Wynn has total control of Macau's documents in this  
5 litigation, too. It demanded that Macau comply with the  
6 litigation hold, it hired the lawyers to review Macau's  
7 documents, and, what's worse, Mr. Schall admitted to you that  
8 Wynn Macau is still violating the MPDPA, sending protected  
9 information to the United States to use in this very hearing.  
10 Wynn violated the MPDPA rights of the very people in Macau  
11 with -- who are charged with enforcing the MPDPA. Why?  
12 Because it benefitted Wynn to have unredacted documents for  
13 this proceeding.

14           Your Honor, the law is clear that a parent company  
15 controls its subsidiary for purposes of Rule 34 if it has the  
16 right, the authority, and the practical -- or the practical  
17 ability to obtain the documents. Whether you look at cases on  
18 legal right or cases on the practical ability, courts consider  
19 the same facts and the actual and entire relationship between  
20 the two entities in a fact-specific determination. That's  
21 exactly what the evidence established here.

22           So the bottom line is, Your Honor, Wynn Resorts has  
23 control over Wynn Macau. Wynn Resorts controls Wynn Macau's  
24 documents, and Wynn Macau made a strategic decision in this  
25 litigation not to exercise that control, to obtain the

1 unredacted documents in violation of five court orders. When  
2 parties like Wynn make decisions like this they are -- they  
3 are sanctioned even when exercising that control might violate  
4 a foreign privacy law.

5           So that takes us to the third question, wilfulness.  
6 We all know that Wynn Resorts' refusal to produce the  
7 documents wasn't an accident and it wasn't an oversight. It  
8 was and it is a considered litigation strategy. It was over  
9 two years that the Court first ordered them to produce the  
10 documents about their activities in Macau, but Wynn didn't  
11 comply with the first, second, or third order of this Court or  
12 two orders by the Supreme Court. That is wilful.

13           Now Wynn Resorts claims that its subsidiary's fear  
14 of violating Macau law absolves Wynn Resorts of any  
15 responsibility for its own failure to comply with your orders.  
16 We didn't see this fear, Your Honor, until last December,  
17 after Wynn Resorts had defied the five court orders and had  
18 nowhere left to turn. It makes you wonder about the  
19 litigation strategy of Wynn Resorts to defy and delay with  
20 impunity.

21           Your Honor, respectfully, this is very simple. Wynn  
22 Resorts is a party here. Rule 34 requires Wynn Resorts to  
23 produce documents it controls. It doesn't matter that Wynn  
24 Macau is not a party here. Wynn Resorts controls the  
25 documents held by its subsidiary, so it must produce them.

1 Wynn Resorts can't stand behind the Macau Data Privacy statute  
2 as a shield. That is the law in Nevada. And while this may  
3 cause a dilemma for Wynn Macau, the law is clear.

4           So we have to look at what Wynn Resorts is and what  
5 it isn't. And one thing is for sure. Wynn Resorts is no  
6 amateur on the world gaming scene whatsoever. Wynn Resorts is  
7 a sophisticated international casino company with two decades  
8 in Macau. Undoubtedly Wynn Resorts, Mr. Schall, and Ms.  
9 Sinatra are fully aware that the laws of the United States and  
10 Macau are very different and can create conflicts and  
11 dilemmas. But one thing an international gaming company like  
12 Wynn Resorts must do is it must comply with court orders  
13 wherever they are in the world. This time they're right here  
14 in Nevada. Macau's laws do not give Wynn Resorts a pass on  
15 numerous orders of this Court and the Supreme Court. That is  
16 wilful.

17           I must say, Your Honor, that the testimony of Mr.  
18 Schall, who's responsible for this public company's compliance  
19 with the law and court orders all over the world, was nothing  
20 short of remarkable. His testimony revealed Wynn Resorts's  
21 wilfulness over and over and over again. I couldn't tell,  
22 really, who he was here for. But it seemed like he was really  
23 here to defend -- to defend the Macau board.

24           But what about Wynn Resorts' responsibilities to  
25 this Court? You would think, you would think that the global

1 head of compliance for Wynn Resorts would stand up and salute  
2 this Court's orders and the Supreme Court's orders. But he  
3 didn't. Instead he confessed to repeated violations of the  
4 Macau Data Privacy laws and the repeatedly concealment and  
5 misleading of Macau Government officials. That's the portrait  
6 of wilful.

7           So let's -- I'd like to look now at how Wynn Macau  
8 and Wynn Resorts really, really view Macau Data Privacy, and I  
9 want to look at the truth about Mr. Schall's claim of a very  
10 important relationship with our regulators, the officials at  
11 OPDP and DICJ. First Mr. Schall gave a long song and dance  
12 story about how the OPDP was a sleepy, backwater agency, no  
13 one at Wynn Resorts or Wynn Macau paid attention to it or even  
14 thought about complying with the MPDPA until they turned over  
15 unredacted documents to Mr. Freeh at Ms. Sinatra's direction  
16 to help him write his inculpatory report to the board. And  
17 this is truly amazing. Mr. Bice, when he was here he said  
18 that Wynn Macau shouldn't have had to comply with Wynn Data --  
19 with Macau data privacy at all, it was only because Universal  
20 sicced the OPDP on poor Wynn Macau or it was just Universal's  
21 inconvenient lawsuit and complaint from three data privacy  
22 violations, which the defendants have every right to do, that  
23 brought scrutiny on Macau. That is a truly disingenuous  
24 excuse, not to mention the fact that it is belied by Mr.  
25 Schall's own testimony that he went on to say that the OPDP in

1 fact came down on all, on all of the casino companies, the  
2 gaming companies in Macau. And Wynn's story conveniently  
3 ignores that it was Wynn Resorts that initiated the scrutiny  
4 of its own subsidiary when it proclaimed its violations to the  
5 world by attaching the Freeh report to the complaint in this  
6 lawsuit and then hand-delivering it to The Wall Street  
7 Journal. That's wilful, Your Honor.

8           At the last hearing Your Honor asked about the  
9 impact of the change in the OPDP's enforcement process.  
10 Wynn's claim that its hand are tied because of this change  
11 crumbles when you look at Mr. Schall's actual timeline to see  
12 just how wilful that Wynn Resorts is. He testified that in  
13 early spring 2012, March or early April -- this is a month  
14 after the Freeh report and the redemption -- the OPDP summoned  
15 him and said, we are investigating Wynn Macau because of the  
16 Freeh report so cut it out, follow the MPDPA. And Mr. Schall  
17 said, that's when we got the message.

18           But now they say, please don't come down on us for  
19 that little footfault. Even if -- even with that unequivocal  
20 warning did Wynn Resorts or Wynn Macau follow the orders of  
21 the Macau officials? You'd think that as a publicly traded  
22 international gaming company that's just what they would do.  
23 Did they? No way. They knowingly and wilfully violated the  
24 MPDPA just two months later, in early June when they turned  
25 over to the SEC all the unredacted Macau documents that the

1 government was asking for. So Mr. Schall's claim that he and  
2 Wynn Macau got religion in March of 2012 is simply false.

3 And what does that say about Wynn Resorts' newfound,  
4 self-proclaimed respect for the law in this proceeding? It  
5 says it doesn't give a darn. Wynn Resorts needed these  
6 documents to get out from under a pending SEC investigation of  
7 Macau bribery. Wynn Resorts does whatever it needs to get  
8 whatever it wants no matter what the law in Macau says or what  
9 the Court's order in Nevada say. This is textbook wilfulness.

10 And what else did we learn from Mr. Schall's  
11 testimony that shows Wynn's disrespect and disregard for Macau  
12 law again showing Wynn's wilfulness in this proceeding?  
13 First, Mr. Schall admitted to the data privacy violations  
14 sending unredacted documents to Mr. Freeh and the SEC. And to  
15 answer the Court's second question from our last day here in  
16 July, the impact of violating the MPDPA was to provide  
17 inculpatory documents for Mr. Freeh's report that formed the  
18 sole basis for redeeming Aruze's shares.

19 Second, Mr. Schall admitted that Wynn Macau did not  
20 get consent four years later, in 2016, from the very officials  
21 who are their regulators and sent their letters to -- the OPD  
22 and DICJ letters unredacted to use in this litigation, all  
23 after Wynn supposedly got the message. And, again, these are  
24 the same officials they were legally required to obey. That  
25 is wilful, Your Honor.



1           Third, Mr. Schall admitted other emails with  
2 personal data were sent outside Macau without any redactions  
3 by himself or other Macau employees, again after they got the  
4 message. Schall's excuse this time? He didn't think he had  
5 to. That is wilful.

6           Fourth, Mr. Schall admitted he didn't tell the Macau  
7 officials about any of Wynn's violations. Instead they  
8 concealed this information. That is wilful.

9           Fifth, Mr. Schall admitted even last year when he  
10 went to the Macau Government to see if they would approve the  
11 use of the Macau documents in this litigation he didn't even  
12 tell them what documents were being requested. That's wilful.

13           Sixth, Mr. Schall admitted Wynn Macau did not even  
14 try to exhaust all the possible ways of complying with the  
15 MPDPA before Wynn Resorts came in here and said, oh, the MPDPA  
16 means that we can't turn this information over. That's  
17 wilful.

18           And finally, Mr. Schall admitted that he didn't even  
19 seek consents from any Macau officials, from any PAGCOR  
20 officials, or any Universal employees other than Mr. Okada,  
21 just Wynn Macau employees. That is wilful. I guess he must  
22 have been listening to Wynn's discourse on how all the  
23 consents were the responsibility of Universal. Maybe they  
24 would be if they were our documents and we sent them out of  
25 Macau. That didn't happen. Another false narrative, Your

1 Honor. That's the height of wilful disregard and disrespect  
2 for Macau data privacy laws up to and including this hearing  
3 and shows their wilfulness right here. So there can be no  
4 doubt, Your Honor, about Wynn Resorts' wilfulness.

5 That takes us, Your Honor to the final issue, which  
6 is prejudice. Bottom line here, Your Honor, is that Wynn  
7 Resorts has purposefully deprived us of evidence we're  
8 entitled to for over two years. That was their strategy, and  
9 so far they have succeeded. The evidence goes to a key aspect  
10 of our case, that Steve Wynn engineered the removal of Mr.  
11 Okada and the redemption of Aruze's shares because he feared  
12 exposure of improprieties over the Cotai land concession and  
13 its connection to the \$135 million donation to the University  
14 of Macau Development Fund that Mr. Okada opposed and later  
15 brought a lawsuit over. So of course it's our -- it's an  
16 important part of the defendants' strategy to gather as much  
17 information as we can about what Wynn Resorts did in Macau and  
18 then pursue it.

19 I respectfully submit, Your Honor, there can be no  
20 question that Wynn's denial to us of all Macau documents,  
21 whether entirely withheld or by redacting key information  
22 regarding meetings and communications with Macau officials  
23 harmed the defendants by impeding our ability to pursue our  
24 case. Improperly withheld responsive documents is the  
25 definition of prejudice.

1           There's three categories, Your Honor, of the  
2 documents that are issue. I'm going to get into them in just  
3 a few minutes and tell you about what prejudice we find in  
4 each one. But before I get into the categories I'd like to  
5 address some points up front that came up yesterday in Mr.  
6 Okada's testimony.

7           Mr. Pisanelli spent a lot of time trying to make the  
8 point that there was no prejudice because Mr. Okada -- because  
9 Mr. Okada said that in his deposition. But his testimony  
10 yesterday made the harm clear. When Mr. Pisanelli presented  
11 Mr. Okada and clarified his question to Mr. Okada he said, and  
12 I'm paraphrasing now, Your Honor, in terms of harm I think  
13 that if information has been redacted or if there is no  
14 paperwork reflecting something that we have the authority to  
15 know but can't find out about because of the redaction, I  
16 think it could be said that we have been harmed. And he  
17 talked about that several times. That's just one reference.  
18 But he talked about that several times during his testimony  
19 yesterday.

20           And Mr. Pisanelli even suggested there was no  
21 evidence of a pretext for his termination, Mr. Okada's  
22 termination, because Mr. Okada testified that he was dismissed  
23 because he had more shares than Mr. Wynn. But first that is  
24 part of our pretext theory. And he testified at his  
25 deposition and here that there was a lot more, Your Honor;

1 there was the contribution he opposed, there was the board  
2 slate he demanded, there was the lawsuit he filed before the  
3 redemption, and there was -- and there was his concern over  
4 the contribution itself, was it a bribe. And Mr. Pisanelli  
5 even suggested through his questions that Mr. Okada was  
6 letting Wynn off the hook on prejudice because he supported  
7 Wynn Macau's compliance with the MPDPA. But when Mr.  
8 Pisanelli kept up his examination, Your Honor, Mr. Okada said,  
9 and again I'm paraphrasing because we don't have an official  
10 transcript, we are currently addressing the issue of redaction  
11 along with the issue of disclosure and in the lawsuit there is  
12 the issue that that Individual Information Protection Act must  
13 be followed, but if the scope of the redaction is too broad,  
14 there would need to be a third person to balance MPDPA against  
15 the need to disclose.

16 Your Honor, Mr. Okada isn't a lawyer, and he's not  
17 litigating this sanctions hearing, so he does not appreciate  
18 the legal nuances that Your Honor does and the lawyers do.  
19 But I respectfully submit that this is where you come in as  
20 the third person. Mr. Okada said and we agree that Wynn Macau  
21 should protect the personal data of its customers and others  
22 and Wynn should follow the Court's -- and he also said that  
23 Wynn should follow the Court's orders and produce all of the  
24 Macau documents. And one thing we know about Wynn Macau and  
25 Wynn Resorts, they don't follow the MPDPA. The question now

1 is whether Wynn Macau decides or does Your Honor. And you  
2 have already decided this three times.

3           So I'd like to turn now to the three categories of  
4 documents and their prejudice. First category is about  
5 500 documents that Wynn has withheld entirely under Macau law  
6 or the MPDPA, and we know, of course, that Your Honor and the  
7 Supreme Court have said that Wynn may not withhold the  
8 documents under the so-called Macau law privilege. But Wynn  
9 did it anyway. We have no indication, none whatsoever, of  
10 what is in those documents of what they're about. We can't  
11 pull them out and show them to Your Honor. We couldn't show  
12 them to Mr. Takeuchi. We just know that by definition they  
13 relate to Macau and we have been prevented from furthering our  
14 case regarding Macau. That is prejudice for each and every  
15 one of those 500 documents.

16           The second category is hundreds of documents that  
17 Wynn produced in redacted form but they put a highly  
18 confidential designation on them so we couldn't show them to  
19 Mr. Takeuchi. That is prejudice for each and every document  
20 designated highly confidential.

21           And the third category, Your Honor, is the one that  
22 Wynn spent most of its time complaining about and that we did  
23 not show Mr. Takeuchi each one of around 2,000 redacted  
24 confidential only documents. And let me start with this.  
25 Wynn concedes these redacted documents are relevant, they are

1 responsive, and the information in them was removed to keep it  
2 from the defendants. By definition withholding relevant and  
3 responsive information in such a wilful manner in spite of the  
4 Court's orders is prejudicial. That applies to all of the  
5 redacted documents at issue, not just those shown to Mr.  
6 Takeuchi.

7           When Mr. Bice was conducting the evidentiary  
8 hearing, Your Honor, he spent half his time complaining that  
9 Mr. Takeuchi didn't tell him how each redacted document caused  
10 the defendants prejudice so Wynn is left not knowing what the  
11 prejudice is and the defendants have failed to prove  
12 prejudice. But the fact is here, Your Honor, there is no  
13 surprise, there is no confusion about the prejudice to the  
14 defendants. And that's what we proved in this evidentiary  
15 hearing. The prejudice is clear. In Wynn's defiant  
16 litigation strategy, as Mr. Takeuchi repeatedly testified and  
17 as we indicated in our interrogatory responses, Wynn's  
18 strategy did a lot. It stopped the defendants' discovery in  
19 Macau, it stopped the defendants from questioning senior Wynn  
20 executives Linda Chen and Ian Coughlan about the documents  
21 regarding the land concession in Cotai and the UMDF  
22 contribution. It stopped the defendants from confronting  
23 witnesses with potentially impeaching documents. It stopped  
24 the defendants from learning the names of the Macau officials  
25 with whom Wynn brokered the land deal and contribution in

1 order to obtain the concession. It stopped the defendants  
2 from developing the pretext theory that the Court permitted  
3 back in 2012. And it stopped the defendants from  
4 investigating the land concession and contribution by running  
5 out the clock on fact discovery, which will be -- which is  
6 over in two weeks.

7           Mr. Takeuchi testified to every aspect of this  
8 prejudice repeatedly. The bottom line, Your Honor, as Mr.  
9 Takeuchi succinctly said, is that Wynn is preventing the  
10 defendants from learning the truth. So Mr. Pisanelli, I  
11 submit, cannot now stand up here and say his client couldn't  
12 possibly understand the prejudice unless Mr. Takeuchi  
13 testified about each and every redacted document. Your Honor,  
14 let me say this. Maybe we made the wrong call by not showing  
15 all 2,000 redacted documents to Mr. Takeuchi, and I take full  
16 responsibility for that, as I told the Court earlier during  
17 the sanctions hearing; but to say that Wynn doesn't know the  
18 prejudice and that we haven't established prejudice is,  
19 respectfully, to put form over substance. No doubt Mr.  
20 Takeuchi could have testified as to each redacted document  
21 that without seeing the names the defendants could not  
22 investigate, could not pursue additional discovery, could not  
23 know the truth about the land concession and the contribution  
24 and the officials who facilitated Wynn obtaining the  
25 concession in 2012. But, again with the utmost respect, that

1 repeated testimony on each of the redacted documents would not  
2 have changed the prejudice we established in this hearing.

3 And that, of course, Your Honor, does not account  
4 for between 500 and a thousand documents that by definition  
5 could not even be shown to Mr. Takeuchi before his deposition  
6 because Wynn either withheld them or prevented us from showing  
7 them to Mr. Takeuchi.

8 And in response Wynn offers a series of excuses for  
9 why their wilful withholding of the Macau documents was not  
10 prejudicial. The first excuse is Wynn's -- is that Wynn's  
11 withholding of the redacted Macau documents is the defendants'  
12 fault, our fault because the defendants didn't obtain consents  
13 for Wynn Macau. When he was here Mr. Bice spent a lot of time  
14 wanting to know from Mr. Takeuchi why they -- why he didn't  
15 get the consents for Wynn Macau to produce this information.  
16 And, respectfully, Your Honor, that position is laughable.  
17 Wynn Macau holds the documents, they own the documents, and  
18 the MPDPA requires Wynn Macau to get the consents from  
19 government officials and others named in the documents, but  
20 they didn't even try. As to the redacted documents the Court  
21 reviewed with Mr. Okada's name redacted, I, frankly, Your  
22 Honor, apologize to the Court that he didn't give that  
23 consent. It would have alleviated substantial burden on the  
24 Court had he given his consent prior to yesterday.

25 THE COURT: We would probably be in a very different



1 position in this hearing if he'd given his consent prior to  
2 yesterday, because we would be dealing with a very different  
3 volume of documents. Because my review in June 2016, a  
4 significant number of the documents were redacted purely for  
5 his personal information, i.e., his name.

6 MR. KRAKOFF: I understand, Your Honor. And I do  
7 not in any way quarrel with that whatsoever. And, as I said,  
8 we apologize that he didn't give his consent.

9 THE COURT: Well, he even told me yesterday nobody'd  
10 ever asked him for his consent. And that was sort of  
11 surprising.

12 MR. KRAKOFF: I really can't respond to that, Your  
13 Honor.

14 THE COURT: I understand. Sorry. Mr. Peek will.

15 MR. KRAKOFF: And I say that respectfully, because I  
16 always like to answer the Court's questions or suggestions.

17 But, Your Honor, but let me just say this, that what  
18 Wynn in this hearing and its papers ignores is that we have  
19 never sought sanctions based upon their refusal to turn over  
20 -- to produce documents with only Mr. Okada's name redacted.  
21 That's not -- that's not prejudicial. We've never taken that  
22 position. And we also agree we're not prejudiced by Wynn's  
23 redaction of documents that Universal already has in  
24 unredacted form. We don't contest that at all, such as  
25 communications with Universal employees. That's not

1 prejudicial. This is about redactions of other people's  
2 names.

3 THE COURT: So tell me how many documents those are,  
4 Mr. Krakoff. How many of the totally withheld documents are  
5 documents that are not Universal employees or Mr. Okada?

6 MR. KRAKOFF: I have not --

7 THE COURT: Mr. Miller?

8 MR. KRAKOFF: -- gone through and counted --

9 THE COURT: Mr. Cassity? Mr. Kunimoto?

10 MR. PEEK: I'll answer -- I'll answer that question.  
11 I will answer that question.

12 THE COURT: All right. When we get to Mr. Peek.

13 MR. PEEK: Yeah. But --

14 THE COURT: Do you want me to go through my  
15 questions yet, Mr. Krakoff, or do you want to finish your  
16 argument first?

17 MR. KRAKOFF: Whatever the Court wants.

18 THE COURT: I don't want to interrupt your argument.  
19 That's why I've been being patient.

20 MR. KRAKOFF: You've been very patient. And I  
21 appreciate that. I -- really I can do it either way, but I'm  
22 happy to go and --

23 THE COURT: No. Finish up. Finish up.

24 MR. KRAKOFF: Okay. Your Honor, this is about  
25 redactions of other people's names, the names of government

1 officials or business counterparts of former Wynn -- Wynn  
2 employees or former employees who might tell a different story  
3 than the one that Wynn Resorts is telling now. That's what  
4 we're talking about. Those are the documents that Wynn  
5 desperately wants us to -- wants to conceal from us, and  
6 that's why we're prejudiced.

7           Wynn's second excuse is they say that a 2012 email  
8 was an agreement between Mr. Okada and Mr. Naguiat at PAGCOR  
9 to sue Wynn over the Freeh's data privacy violations which  
10 occurred shortly after the redemption. And they say that the  
11 defendants' 2015 lawsuit prevented obtaining documents --  
12 obtaining consents and complying with the MPDPA. According to  
13 Wynn, this relieves Wynn Resorts in 2017, in this hearing, of  
14 an obligation to produce documents out of Macau and further  
15 proves their refusal was not prejudicial. Both of those  
16 claims are just false.

17           What you actually heard was that there was no  
18 coordination with Mr. Naguiat for him to file a lawsuit, Mr.  
19 Naguiat never did file a lawsuit, Universal didn't pay any  
20 legal fees, and Universal's lawsuit was filed three years  
21 after that email. And, Your Honor, frankly, what if there  
22 were some coordination? Both Mr. Okada and Mr. Naguiat were  
23 harmed by Wynn's admitted violation of the MPDPA by giving the  
24 documents to Mr. Freeh. So what if they talked about whether  
25 to work together to fight back? That would have nothing to do

1 with Wynn's obligation to produce documents in this litigation  
2 or Wynn's ability to obtain the consents. Nothing in that  
3 email or the 2015 lawsuit suggests in any way that Universal  
4 did anything to impede Wynn's ability to pursue and obtain  
5 consents or that the defendants weren't prejudiced.

6           We heard another excuse yesterday, Your Honor, when  
7 Mr. Pisanelli suggested there was no prejudice because  
8 Universal investigated the Freeh allegations itself. The  
9 problem with this excuse is that our pretext claim is not  
10 about the Freeh report at all. It's about the Cotai land  
11 concession and the UMDF contribution and withholding all of  
12 those documents.

13           So the bottom line on prejudice, Your Honor, is we  
14 don't know what information we don't have. When all we have  
15 is a redacted document we don't know what is redacted. And  
16 when we don't have a document at all, we have no idea what is  
17 being withheld. That's what Mr. Takeuchi said. There's no  
18 way for us to learn the truth.

19           So, Your Honor, before I sit down I want to touch  
20 briefly on the Johnny Ribiero case, because I think that it  
21 provides guidance to us in determining what sanction is  
22 warranted. One of the key factors is the need to deter Wynn  
23 Resorts from this type of abuse. Wynn Resorts wants to get  
24 off scott free even though it has wilfully refused to comply  
25 with multiple court orders to produce documents in its

1 control. If Wynn gets away with that here, the U.S. parent of  
2 any international company could simply obtain a vote by its  
3 subsidiary's board and end run the appropriate court-ordered  
4 Rule 34 discovery in Nevada.

5 So what are the appropriate sanctions? First,  
6 attorneys' fees are not sufficient. Wynn Resorts would gladly  
7 trade some attorneys' fees to be able to ignore the Court's  
8 orders requiring it to produce documents that would hurt  
9 Wynn's interest in this litigation. Something more is  
10 required.

11 And here's what would directly address the impact of  
12 Wynn's MPDPA violations and defiance of Court orders. Prevent  
13 Wynn Resorts from relying upon the Freeh report in motions,  
14 summary judgment, or at trial. We are here only because Wynn  
15 Resorts didn't care about violating the law in Macau when it  
16 benefitted the company to do so. When it needed information  
17 to build a case against the defendants in 2012 Wynn Resorts  
18 had Macau send Mr. Freeh all of those unredacted documents,  
19 and when Wynn Resorts needed information to fight this  
20 sanctions proceeding even after Wynn Macau supposedly got  
21 religion about the MPDPA Wynn still had unredacted documents  
22 sent to the Court. But when it doesn't benefit Wynn because  
23 it would reveal information to support our defenses now, it  
24 wants to use the MPDPA as a scare tactic.

25 As I noted, Your Honor, earlier when Your Honor

1 asked about the impact of Wynn's decision to violate the MPDPA  
2 that impact is clear. It allowed Mr. Freeh to write his  
3 report, his inculpatory report that was the sole basis for  
4 redemption of Aruze's shares. Wynn now claims that excluding  
5 the Freeh report is only allowed in criminal cases. That's  
6 what they said in their response. Not so. That's belied by  
7 Nevada's Civil Rule 37, which specifically permits the Court  
8 to exclude evidence as a sanction for violating a discovery  
9 order, not to mention five orders.

10           And Wynn's last gasp is to claim that the Macau  
11 documents don't even relate to the Freeh report. That's  
12 simply just bizarre, because we're here only because Wynn  
13 won't turn over the documents. These are documents that go  
14 directly to Wynn's pretext for removing Mr. Okada and  
15 redeeming Aruze's shares as I discussed before. Wynn can't  
16 now withhold the documents under the MPDPA that we need to  
17 prove our pretext claim when Wynn freely violated the MPDPA to  
18 help Freeh write his report.

19           So let's actually, Your Honor, let's actually hold  
20 Wynn Resorts responsible now for prohibiting the company from  
21 using the MPDPA as a sword and as a shield in this case and  
22 prevent reliance on the Freeh report.

23           And the other sanction, Your Honor, we request, as  
24 you know, is that there should be adverse inferences that the  
25 withheld documents would be favorable to the defendants and

1 harmful to Wynn Resorts.

2 Thank you, Your Honor, and I'm happy to answer  
3 whatever questions you have.

4 THE COURT: All right. Let's start with number one.  
5 What do you believe the impact is of Mr. Okada's consent  
6 yesterday to the production by Wynn Macau of documents  
7 including his personal identifying information including his  
8 name?

9 MR. KRAKOFF: I think that it -- as it Court said, I  
10 think it reduces the number of documents. I don't know what  
11 percentage they are or what that precise number is. Mr. Peek  
12 is going to get to that. But beyond that I don't think it  
13 changes anything. Because these documents are about the Cotai  
14 land concession, they're about the contribution. Ad whether  
15 or not his -- putting aside all the documents that his name is  
16 on, that doesn't impact the other documents. And that's what  
17 we have been trying all along to do, to establish, to get  
18 discovery, just discovery on something that Your Honor  
19 permitted us to do in 2012. And that is to pursue our pretext  
20 claim. And so it will make this journey easier, if you will,  
21 smoother, less onerous, but it doesn't change what our  
22 fundamental position is.

23 THE COURT: Okay. What impact do you believe that  
24 the other Universal employees' failure to consent has upon  
25 this decision?

1 MR. KRAKOFF: Failure, I'm sorry, to?

2 THE COURT: Failure to consent.

3 MR. KRAKOFF: Well, first of all, they didn't ask  
4 for any other consents at all until -- the only other consent  
5 they asked for was of Mr. Takeuchi in his deposition and when  
6 he testified. And as the Court will recall, he said, I would  
7 do it if that's what's required. He didn't say he wouldn't  
8 consent. They didn't ask, Your Honor. They didn't come to us  
9 and say anything about, well, how about these five names, how  
10 about this person. They expected us to divine what the names  
11 were in their documents that we don't have, that only they  
12 have, and to do searches for the names of other Universal  
13 employees, frankly, a preposterous position. But, again, the  
14 fundamental point is, Your Honor, they didn't ask. If they  
15 had, that's what we'd have done. We would have considered it,  
16 we would have taken it to the employees. But that didn't  
17 happen. So, respectfully, I don't think that that really  
18 applies to the analysis here.

19 THE COURT: Okay. What do you believe the impact is  
20 of your client's ability to have obtained the documents in  
21 their Macau litigation?

22 MR. KRAKOFF: Well, first of all, we didn't obtain  
23 those documents.

24 THE COURT: No. Ability to.

25 MR. KRAKOFF: I think that -- I think it does not



1 change the analysis, because the Court issued orders, those  
2 orders were violated, they have control of those documents,  
3 and they didn't direct their subsidiary to turn over those  
4 documents as is required by Nevada law. That's unrelated,  
5 Your Honor, frankly, to this proceeding. It really is.  
6 Because Court issued orders, they refused to turn over  
7 documents. They refused to tell their subsidiary, send those  
8 documents back to the United States because we have an order  
9 here in Nevada for those documents. So I don't believe there  
10 is an impact, Your Honor.

11 THE COURT: So what do you believe the impact is of  
12 the Macau court's dismissal of your clients' lawsuit that  
13 included the breach of the data privacy statute?

14 MR. KRAKOFF: Again, I don't think that that -- you  
15 mean that our complaint --

16 THE COURT: Your complaint was dismissed. Your  
17 complaint included the MPDPA violation issues, among other  
18 things, and it was summarily dismissed.

19 MR. KRAKOFF: Your Honor, that's another court.  
20 That's a court in a foreign land. We don't know what their  
21 standards are. We know what the standards are here in Nevada.  
22 We know what Rule 34 requires. We know what it means when the  
23 Court issues an order to our side or their side. If the Court  
24 tells us we have to do something, we have to do it. And so,  
25 again, Your Honor, while we are not -- I don't believe, Your

1 Honor, we should be controlled by what the Macau court did.  
2 We don't know anything about that litigation. I don't, the  
3 Court doesn't --

4 THE COURT: Your client does. Whether your client  
5 tells you or not is an entirely different issue. But your  
6 client knows about it. Mr. Peek's client knows about it.

7 MR. KRAKOFF: Your Honor, again my response is  
8 really straightforward, and that is that's another proceeding  
9 in a foreign country, and that does not -- should not impact  
10 the decisions of this Court.

11 THE COURT: You don't think there are any judicial  
12 estoppel issues?

13 MR. KRAKOFF: No, I don't. Not in that way I don't,  
14 Your Honor.

15 THE COURT: Okay. All right. How do you --

16 MR. KRAKOFF: Excuse me, Your Honor. I'm sorry to  
17 interrupt you.

18 THE COURT: Yeah. Absolutely.

19 MR. KRAKOFF: If that is of great concern to the  
20 Court, we will -- we will be happy to brief that issue. I --

21 THE COURT: I said it was of great concern in August  
22 when I asked the question. Maybe even in July when I asked  
23 the question the first time.

24 Or maybe it was you.

25 Ready for the next one?

1 MR. KRAKOFF: I am.

2 THE COURT: Okay. How do you believe I should  
3 balance the improper removal by Freeh of the protected  
4 information in conjunction with the Freeh report and your  
5 right to test the basis of that investigation other than the  
6 exclusion of the report? So I'm asking for your fallback  
7 position.

8 MR. KRAKOFF: I have two fallback positions. One is  
9 to exclude only reliance upon that portion of the report that  
10 goes to the documents that were taken out of Macau in  
11 violation of the MPDPA. So it's kind of --

12 THE COURT: That's the entertainment of the  
13 Philippine and Korean Government officials?

14 MR. KRAKOFF: Exactly, Your Honor.

15 THE COURT: I read the report over lunch.

16 MR. KRAKOFF: Yeah.

17 THE COURT: I hadn't read it in a while.

18 MR. KRAKOFF: Yeah. So that would be one.

19 And the other, of course, is the adverse inferences  
20 for failure to -- for refusal to turn those documents over.

21 THE COURT: And do you have a proposal as to the  
22 language of adverse inference and an identification of  
23 specific documents that you would proffer that applies to?

24 MR. KRAKOFF: I don't have one here with me, Your  
25 Honor. I can submit that to you, Your Honor, tomorrow.

1 THE COURT: Okay. Hold on. Let me see if you hit  
2 all my questions. Yes, that was all my questions for you, Mr.  
3 Krakoff.

4 Mr. Peek, you're up.

5 MR. KRAKOFF: Thank you, Your Honor.

6 THE COURT: Uh-huh.

7 DEFENDANT OKADA'S CLOSING ARGUMENT

8 MR. PEEK: I'm not going to try to start out with  
9 answering your questions, but if you'd like me to, I certainly  
10 would be happy to do it or we can save them --

11 THE COURT: No. You make your argument, and then I  
12 have all my Post-It notes, and they're in order.

13 MR. PEEK: I'm sure you do, Your Honor. But I  
14 certainly will address really in my opening remarks some of  
15 the questions that the Court has raised about the redaction of  
16 Mr. Okada.

17 And that's why I want to bring the Court back to its  
18 order. I want to bring the Court back to its November 1st  
19 order, because it seems to me that the distraction that Wynn  
20 Resorts has put forward has created some confusion with the  
21 Court about what the meaning of that order is. Because the  
22 order is really focused on three parts, one, the order to  
23 disclose the names of all individuals who refuse to provide an  
24 MPDPA consent and any individuals WRL was unable to contact to  
25 request an MPDPA consent. And let me also direct you, Your

1 Honor, to that provision in the order, as well, which said,  
2 "The Court is not requiring Mr. Okada to waive the MPDPA nor  
3 finding that Mr. Okada has waived any protections of the MPDPA  
4 that he believes benefit him as a non-Macau citizen.  
5 Accordingly and notwithstanding paragraph 2, Mr. Okada's  
6 personal data may remain redacted pursuant to the MPDPA in the  
7 documents that are the subject of the Aruze parties' motion if  
8 the Wynn parties believe because of the litigation in Macau  
9 that Mr. Okada is taking the position that the MPDPA grants --  
10 provides benefits to him as a non-Macau citizen."

11 And also with respect to the disclosure of the names  
12 of the individuals who refused to provide an MPDPA consent, we  
13 did not receive that. That's the reason for the motion. What  
14 we received was a list of those individuals from whom they  
15 obtained consents. Though much has been made of the fact that  
16 UEC did not provide consents or that Mr. Okada did not provide  
17 consents, I do not have one document, one pleading, one piece  
18 of correspondence from Wynn Resorts saying, we request the  
19 consents of the following individuals, employees of Aruze USA  
20 or UEC and please give me consents. That's what the order  
21 required them to do. But they did not do that. So now to  
22 come before this Court and argue, oh, my gosh, we don't have  
23 UEC consents, is frankly disingenuous and not consistent with  
24 the Court's order.

25 THE COURT: Well, it was sort of disingenuous for

1 somebody to tell me yesterday they'd never been asked for  
2 their consent.

3 MR. PEEK: I understand that, Your Honor. And I  
4 will respond to that, as well. Because you may recall that  
5 there was as part of the motion practice the email exchanges  
6 between Ms. Spinelli and me on the request for Mr. Okada to  
7 provide consent. And you may recall the position that I took  
8 in that motion and in that email, Your Honor. That was part  
9 of the argument that we made way back when.

10 THE COURT: I remember, Mr. Peek.

11 MR. PEEK: And what I said to her then and I say to  
12 this Court now, I'm not required to give you the consent  
13 because you were required to produce the documents in an  
14 unredacted form, and citing, of course, to the Sands versus  
15 Jacobs matter, the matter that Ms. Spinelli and I had  
16 litigated previously, a matter that we both understood what  
17 the law of that case was. And I also made the same argument  
18 then that I made later and I make now, is the sword/shield.  
19 So I said to Ms. Spinelli, we don't have to give you the  
20 consent, it's not required. So now I'm skewered perhaps by  
21 that fact. But let's go -- but I want to continue with that  
22 question that you have and keep that in mind.

23 The second part of the order, Your Honor, was to  
24 "produce unredacted versions of all electronic documents that  
25 were forwarded, sent to, or sent by a person not located in

1 Macau without MPDPA redactions at the time it was originally  
2 sent within 30 days of the entry of this order." So that  
3 relates just to the documents that may have resided in Hong  
4 Kong, United States, or someplace else because they were  
5 either sent to or sent from a place outside of Macau. That  
6 was the second part of the order.

7           And then the third part of the order and the one  
8 upon which I will focus significantly, Your Honor, is to  
9 "produce all documents WRL withheld, redacted based on Macau  
10 law privilege or gaming concession contracts within 30 days."  
11 But what is also part of that order, Your Honor, is this one.  
12 And that seems to be where the Court is focused with respect  
13 to Mr. Okada. Because you asked how many documents are there  
14 out of Macau where there are redactions. But remember that  
15 was not part of the order, because here's what the Court said.  
16 "To the extent the motion sought to compel documents without  
17 MPDPA redactions sent only between or among individuals  
18 located inside Macau the motion is denied without prejudice."  
19 You denied that motion to compel them to produce all of the  
20 2600-plus documents that had redactions on them, and you  
21 focused only, Your Honor, on the Macau law privilege, the  
22 consents, and the documents that resided outside of Macau.  
23 That's your focus in the order. And you said, the redactions  
24 made is for another day. That's what we understood.

25           But what does Wynn Resorts say? What do they

1 attempt to do in the distraction of the Court? They try to  
2 distract the Court and say, oh, by the way, the Okada  
3 documents are the -- the Okada lack of consent is the problem  
4 here and if we'd had the Okada consent we wouldn't be facing  
5 that. But, Your Honor, it's not Okada's consent or the  
6 disclosure of his name in an unredacted form that was even the  
7 subject of the motion practice. It was Macau law privilege,  
8 it was gaming concession privilege, it was confidentiality  
9 under the gaming concession contract, it was consents, and it  
10 was documents outside of Macau.

11 THE COURT: Mr. Peek, it was clearly part of the  
12 discussion that we had after the in-camera documents were  
13 submitted to me in June of 2016 and I began my review of that  
14 material, and then we had a question after I said, so hasn't  
15 Mr. Okada waived just like Mr. Jacobs did; and you guys  
16 convinced me he had not.

17 MR. PEEK: That's right.

18 THE COURT: You convinced me he had not and --

19 MR. PEEK: And that became the subject of your  
20 November 1st order.

21 THE COURT: And it became part of the order. But, I  
22 mean, this process related to this issue has involved Mr.  
23 Okada the whole time.

24 MR. PEEK: Not with respect to Macau law privilege,  
25 Your Honor. The documents related to Macau law privilege



1 aren't going to have Mr. Okada's name. They weren't even  
2 produced.

3 THE COURT: You don't think they'll have Mr. Okada's  
4 name in them somewhere?

5 MR. PEEK: I don't think that they will, Your Honor.

6 THE COURT: Okay.

7 MR. PEEK: I do not. But I don't even have the  
8 choice to make of that, because I haven't seen them because  
9 they have been withheld.

10 But let's focus, Your Honor -- and that's where I  
11 want to keep the Court focused, as opposed to this red  
12 herring, and the Court is now even seeming to impose upon me  
13 when the Court said to me, "That's for another day." You said  
14 that in paragraph 3 of your order, "That's for another day  
15 and without prejudice for you to raise that." That was  
16 November 1st. So when you say, yes, you were asked to look  
17 at those documents in June or July when they were submitted to  
18 you, I don't dispute that. But the order didn't address that  
19 other than to say about Mr. Okada what you said.

20 So I want to actually focus on what I believe to be  
21 the sanctionable conduct of Wynn Resorts in violation of the  
22 three parts of the order, the three parts of the order, Your  
23 Honor, not something related to Mr. Okada or Mr. Okada's  
24 consent.

25 This hearing and this motion has always been about

1 documents withheld for Macau law privilege. Mr. Bice and Mr.  
2 Pisanelli, of course, have gotten up before this Court  
3 numerous times and argued that this hearing should be limited  
4 to redacted documents. They made their same argument in the  
5 post-hearing brief, but this is not true. Let's talk about  
6 what has been withheld and redacted for Macau law privilege.  
7 WRL has repeatedly represented to this Court on multiple  
8 occasions that a have produced all Macau law privileged  
9 documents in their control. This is again not true. WRL  
10 continues to withhold and redact documents for Macau law  
11 privilege.

12           Wynn Resorts produced documents under two prefaces  
13 -- two prefixes with respect to Macau law privilege and  
14 attorney-client privilege. There was one called Wyn-Priv and  
15 another one called WRM-Priv. When WRL first withheld  
16 documents based on Macau law privilege in 2016 it withheld a  
17 total of 142 documents for Macau law privileges alone; 77 of  
18 those documents were Wyn-Priv documents, meaning they were in  
19 the United States, and 65 of those documents were WRM-Priv,  
20 meaning they were Wynn Macau documents. Today of those 65  
21 WRM-Priv withheld documents based on Macau law privileges WRL  
22 continues to withhold 46 of those documents. 25 of those  
23 documents appear based on the description of the documents in  
24 WRL's privilege logs relate to the Cotai land concession. 25.  
25 You say, what's the prejudice. That's the prejudice right

1 there. We don't get to look at those documents related to the  
2 Cotai land concession. You see this in Mr. Kunimoto's  
3 declaration in paragraph 44(b).

4           Interestingly, WRL's withholding of these documents  
5 is indefensible given Mr. Schall's testimony at the hearing  
6 that he specifically instructed WRL's counsel in late 2016 to  
7 produce any WRM documents related to the land concession. And  
8 remember why he said that? He said it because they were  
9 posted by the government -- or they were given by the  
10 government to this individual who then posted them on the  
11 Internet. There's no reason why WRL and their counsel have  
12 not produced these documents other than they don't want us to  
13 see information about the land concession. They were in WRL's  
14 control, they were subject to the Court's November 1st order,  
15 and WRM specifically instructed counsel to release them.

16           WRL has demonstrated and argued that it intends to  
17 rely on the DICJ's decision as a basis not to release  
18 documents in the course of this litigation in order to argue  
19 that its failure to produce the Macau law privilege was  
20 neither wilful nor worth of sanctioning. But any reliance WRL  
21 may place on the DICJ's decision is also disingenuous. And  
22 why do I say that? We just need to look at the letter that  
23 was sent by Jay Schall to the DICJ to ask them approve  
24 production of all documents subject to the Court's order. But  
25 they didn't do that. Jay did not do that. What does he do?

1 He asks the DICJ to approve of the production of a much  
2 narrower category of, quote, "correspondence, applications,  
3 documentation, exchange between the concessionaire WRL and the  
4 DICJ during the period of negotiation of the granting of the  
5 gaming license to WRL." We see that in Exhibit TX613, page 1,  
6 paragraph 3. And we know that the period of negotiations of  
7 the granting of the gaming license was between February 2002  
8 and June 2002. Mr. Schall testified to that. WRL's request  
9 was limited to that same time frame. Consequently, when DICJ  
10 issued its decision it was equally narrow, see TX613, stating  
11 that, quote, "The application, procedures, and all documents  
12 of the public tender for granting a concession for the  
13 operating of games of fortune and chance and other casino  
14 games in the MS -- in Macau SA are confidential and cannot be  
15 provided." We find that from Mr. Schall on the hearing  
16 transcript at page 79, lines 8 through 21, where Mr. Schall  
17 agreed with me that those documents would only relate to the  
18 period of February to June 2002.

19           However, Wynn Resorts has construed the DICJ's very  
20 narrow response to apply to every document over which it has  
21 claimed Macau law privilege and hiding behind the DICJ and  
22 telling its -- WRM telling its board that it had this  
23 correspondence and they couldn't produce it. There certainly  
24 were some productions by WRM, and those 19 documents that were  
25 subsequently produced we have detailed to you how 10 of these

1 documents do not even match the descriptions for which WRL  
2 initially claimed a basis to withhold them. We've identified  
3 those documents in paragraphs 65 to 67 of Mr. Kunimoto's  
4 declaration. And I want to talk about I think two or three of  
5 those, Your Honor.

6           Let me start with one of the documents. WRM-Priv  
7 2003 -- or 203581 to 203650 exemplifies this problem. WRL  
8 described this document on its March 14th fourteenth  
9 supplemental privilege log as a 70-page document identified as  
10 a filing reflecting the confidential communications for the  
11 purpose of facilitating the rendition of professional  
12 accounting services and protected by Macau law provisions  
13 regarding premium payments. We see that in Tab 89, TX699-120,  
14 appendix page 2961. The privilege log listed the date of the  
15 document as September 22nd, 2009, but did not list any authors  
16 or senders or recipients.

17           Subsequently WRL listed this document on its  
18 July 7th, 2017, cross-reference chart as being produced as  
19 WRM19628. We find this in our Tab 89, TX777, page 51 of that  
20 exhibit, and appendix page 2961. But what do we find when we  
21 actually look at this document? First, it's only a 25-page  
22 document, not a 70-page document as they told us it was. We  
23 know that from Tab 89C, Exhibit TX536, appendix pages 2970 to  
24 2994. Where are the other 45 missing pages that they had  
25 identified previously? Moreover, the document that is

1 produced is not dated September 22nd, 2009, as it had been  
2 previously identified and under which the conversion chart  
3 said this is now the document that we're releasing, but rather  
4 it is an August 4th letter from Scott Peterson and Robert  
5 Gansmo to Banco Nacional Ultramarino requesting a cashier  
6 order and attaching earlier correspondence from the summer of  
7 2008. No response from WRL is made as an explanation for this  
8 discrepancy. Furthermore, how could this letter from Wynn  
9 Macau to its bank have ever appeared on a Macau law privilege  
10 claim, a letter from Scott Peterson and Robert Gansmo to its  
11 bank? They claim a Macau law privilege on that document? So  
12 what is the real document that is 70 pages? I have no clue,  
13 Your Honor, today, because they say it was released and its a  
14 25-page document.

15           The failure of WRL to produce Macau law privileged  
16 documents is not limited to the WRM documents, nor are the  
17 blatant inconsistencies in WRL's log limited to the WRM  
18 documents. WRL initially withheld 77 Wyn-Priv documents based  
19 on the Macau law privilege. The Court's order required WRL to  
20 produce those documents in 30 days. WRL filed its writ  
21 petition and asked for a stay. Granted on the stay. The  
22 Supreme Court denied this writ petition on -- and became  
23 effective on January 19, 2017. When it became effective that  
24 30 days from the November 1st order was implicated, so we  
25 would have expected to have documents in accordance with the

1 order within the next 30 days. We did not.

2           Certainly WRL did subsequently produce 65 of these  
3 documents, but 59 of them were produced only after Aruze  
4 parties filed its motion for sanctions on April 4, 2017. We  
5 know that from the declaration of Mr. Kunimoto at paragraph  
6 33, Footnote 4 through 7. These 59 documents were produced by  
7 WRL between April 11th and as late as August 18th, 2017, the  
8 day -- I think it was the first day of the continued hearing  
9 or the day before. They still continue -- WRL still continues  
10 to withhold 12 Wyn-Priv documents they originally held under  
11 the Macau law privilege despite the direction of Mr. Schall.  
12 These documents are in the United States, clearly within  
13 Wynn's control, and now, however, are being withheld under a  
14 new privilege claim of attorney-client, because they morphed  
15 the description from Macau law privilege to assert now the  
16 attorney-client privilege, another effort to avoid us a  
17 transparency into their dealings with the Macau Government  
18 over the Cotai land concession and the UMDF donation.

19           One of those documents, Your Honor, I'm also going  
20 to highlight to the Court. It was highlighted in my errata,  
21 but I want to go over that document. Let's show how they  
22 morph documents and the belated assertion attorney-client  
23 privilege in Wyn-Priv 39328. You may recall I asked Mr.  
24 Schall about that document as it was described in WRL  
25 privilege log, and after I questioned Mr. Schall they decided

1 to produce that document as WYN103332 in the middle of this  
2 evidentiary hearing, and that document is the Stanley Ho  
3 concession agreement. But that's the end of the story. Let's  
4 go to the beginning of the story.

5           The beginning of the story is that this document  
6 demonstrates that WRL has not amended their privilege and  
7 productions in good faith and consistent with their  
8 obligations under the Nevada Rules of Civil Procedure, the  
9 local rules of the Eighth Judicial District Court and the  
10 Rules of Professional Responsibility as they contend in their  
11 opposing brief. Instead, this document demonstrates that WRL  
12 has misdescribed documents on their privilege logs, asserted  
13 privileges that cannot and never could apply, and calls into  
14 question the remaining 12 morphed Wyn-Priv documents that WRL  
15 continues to withhold.

16           So let's assume that WRL determined this document  
17 was relevant. That's the Stanley Ho document that they say it  
18 was. Because remember, by listing it on a privilege log WRL  
19 must have first determined it was relevant to this case. They  
20 now say and you say to me what's the relevance of Stanley Ho's  
21 concession agreement. But they had to make that determination  
22 to put it on the privilege log.

23           But, again, the beginning of the story. The first  
24 time that the Wyn-Priv 39328 appeared on a privilege log,  
25 which we find in Tab 45A, Exhibit 700-20, that was in June --



1 no, excuse me, March of 2016. But we also know from the priv  
2 logs that we've seen that WRL would have re-reviewed this  
3 document, this document 39328, at least five times. Because  
4 that's where it appears on their privilege log. It appears  
5 five times. Because they changed the document on five  
6 subsequent productions or privilege logs, on June 6, 2016 on  
7 their amended fifteenth supplemental privilege log they added  
8 an author and amended the description. On February 2nd --  
9 excuse me. On February 10th in the thirty-sixth supplemental  
10 disclosures they represented that the document Wyn-Priv 39238  
11 was being produced under a WYN Bates number. We know that  
12 from Exhibit 45C and that document TX731, page 42, appendix  
13 page 2241.

14           Then on February 22nd they relisted that document as  
15 withheld and asserted the attorney-client privilege. That's  
16 again Wyn-Priv 39328. They then reviewed this document again  
17 and said that they had inadvertently produced this document  
18 because they'd given us a conversion table and produced it and  
19 said that it was clawed back on May 16th. Then on June 6th  
20 they reviewed that same document, supposedly, Wyn-Priv 39328,  
21 and they re-produced it on June 6th in a redacted form. So  
22 they had five changes of Wyn-Priv 39238 to recognize that this  
23 document was improperly described, improperly designated as  
24 privileged, and then released, but they did not do so in any  
25 of those five times. Instead, they morphed the document to

1 something that it was not and only produced it when the Aruze  
2 parties called them out on it during this hearing, and they  
3 then produced it as a Stanley Ho concession agreement.

4 But let me go further into the tortured history of  
5 this document. As I said, it first appeared in March 14th in  
6 their fifteenth privilege log, no author. Then on their  
7 June 6th amended fifteenth supplemental privilege log they  
8 gave an amended description and they gave us an author. And  
9 who was the author? Becky Quinn. And who is Becky Quinn? An  
10 administrative assistant.

11 On February 10th, 2017, WRL served a thirty-sixth  
12 supplemental disclosure and listed Wyn-Priv 39328 on its  
13 cross-reference chart attached reflecting that Wyn-Priv was  
14 being produced under Bate Number WYN67596. That document that  
15 they produced is a letter from Jorge Olivera to Wynn Resorts  
16 with a letter response from Wynn Resorts to Jorge Olivera. It  
17 did not match the description of Wyn-Priv 39328 in their  
18 fifteenth or fifteenth supplemental privilege log with Becky  
19 Quinn as the author. But we do know that Jorge Olivera is a  
20 government official. He was on the tender commission.

21 On February 22nd WRL re-listed Wyn-Priv 39328 on its  
22 twenty-first supplemental privilege log and identified it now  
23 as a second time as a letter from Becky Quinn, okay. So now  
24 they told me, here's a Wyn-Priv document that I'm now  
25 releasing in my conversion table, and the one they released is

1 a letter from Jorge Olivera. So when they put it back on  
2 their re-listed privilege log they don't say it's a letter  
3 from Jorge Olivera, they say it's a letter from Becky Quinn.  
4 So, you know, I've got this letter from Jorge Olivera,  
5 everything seems to be fine, because it did not amend its  
6 cross-reference chart, nor did it produce a Stanley Ho  
7 concession agreement that they later did in August. They  
8 didn't even claw back WYN67587, the one they'd produced on  
9 February 10th and cross-referenced in their thirty-sixth  
10 supplemental privilege log in conjunction with the twenty-  
11 first supplemental privilege log of February 22nd where they  
12 said it was a Becky Quinn letter.

13           So I can't -- am I supposed to divine that the re-  
14 listing of the Becky Quinn letter was a claim of privilege  
15 over the Jorge Olivera letter that had just been produced?  
16 Because I know Jorge Olivera is a -- it's on the stationery of  
17 government. I know he's a government official. I know it's a  
18 letter to Wynn. He's not a lawyer, is not listed on the party  
19 list. But three months later WRL clawed back WYN67587. We  
20 missed that at Holland & Hart. However, on June 6th, in  
21 conjunction with our -- in conjunction with WRL's forty-first  
22 supplemental disclosure they produced WYN67587 in a modified  
23 and redacted form. They didn't amend, however, the twenty-  
24 first supplemental privilege log that had identified the  
25 letter as from Becky Quinn.

1           So the real question for the Court I think is how  
2 can a letter from Jorge Olivera, a Macau Government official,  
3 to Wynn Macau ever be classified as an attorney-client  
4 communication.

5           Now, mistakenly and in preparation for the  
6 evidentiary hearing we marked the unredacted version of the  
7 Jorge Olivera letter for use in the evidentiary hearing. We  
8 served that disclosure on Wynn and gave them the documents. I  
9 questioned Mr. Schall about the letter. I showed him the  
10 letter in this courtroom. I offered it in evidence. The only  
11 objection was that the document was marked as highly  
12 confidential and only related to an error in the numbering.  
13 We know that from the transcript at page 143, lines 22 through  
14 144, page [sic] 2. They didn't point out in the course of  
15 that objection that this letter had been clawed back that we  
16 had not picked up on. But, again, come back for the end of  
17 the tale where I started, was ultimately Wyn-Priv 39328 got  
18 produced in the hearing not as a Becky Quinn-authored  
19 document, not as a Jorge Olivera document over which they  
20 claimed privilege, but as the Stanley Ho concession agreement.

21           How can you trust somebody like that, Your Honor?  
22 How can you say that that is not wilful? Five opportunities  
23 to fix it, five opportunities to see whether it is, and then  
24 the letter over which they claim privilege is a letter from a  
25 Macau Government official to them that they redact. I have

1 sequestered it, so I -- you know, I -- and we actually had to  
2 replace it here in the courtroom. It cannot be legal advice,  
3 it cannot be protected by neither the Stanley Ho concession  
4 nor the Jorge can be protected by attorney-client.

5           You'll recall that on July 17th WRL certified to the  
6 Court that it had re-reviewed all documents identified on its  
7 privilege logs with Macau law protections asserted as the  
8 basis to withhold or redact and that documents that had only  
9 Macau law protections asserted have been produced in their  
10 entirety, and then only those documents that had a privilege  
11 or protection asserted in addition to the Macau law  
12 protections remain withheld or redacted based upon other  
13 privileges protections. That's Tab 19. We know that  
14 representation to be false, because the Wyn-Priv 39328 only  
15 had Macau law protections asserted when it was originally  
16 listed on the privilege log, and the attorney-client privilege  
17 merely replaced the Macau law protection three months after  
18 the Court's November 1st order, and that this document was a  
19 letter from Jorge Olivera to Wynn Macau. And the document  
20 that they later said that it was is the Stanley Ho.

21           That document, Your Honor, like many of their  
22 documents, is a morphous document description merely to avoid  
23 the November 1st order. It appears from the appendix, Your  
24 Honor, that WRL has intentionally created a confusing mess  
25 intended to obfuscate and avoid compliance.

1           We have another document similar to that. This is  
2 in Tab 43. Unlike Wyn-Priv 39328, it was never listed in one  
3 of WRL's cross-reference charts, so it's always been withheld.  
4 But its description has similarly changed to avoid production.  
5 After they certified to the Court that it produced all the  
6 documents WRL changed the description of this document for  
7 the first time and changed the basis for withholding this  
8 document from Macau law privilege to attorney-client  
9 privilege, Tab 43C. So their representation to the Court  
10 earlier in certifying was false. They did finally assert a  
11 new privilege over this document, but they only did so by  
12 changing the author, the recipient, and the description of the  
13 document. They only did so by changing the author, the  
14 recipient, and the description of the document. That alone,  
15 Your Honor, is indicative of WRL's wilful attempt to avoid  
16 compliance with the Court's order.

17           But let's look further into the description of this  
18 document. It was first described as a July 25th, 2006, letter  
19 from Jaime Roberto Carion, the director of Macau's Land Public  
20 Works and Transport Bureau, the ones who had control of the  
21 land concession. That letter was to Steve Wynn. That's the  
22 first description of it, July 25th, 2006. They later changed  
23 the description to assert that it was handwritten notes  
24 reflecting counsel's mental impressions. We know that from  
25 Tab 43C. Assuming that the document did in fact contain

1 counsel's handwritten notes, it should have been produced with  
2 the notes redacted. But it wasn't. They have not produced a  
3 July 25th, 2006, letter from Jaime Roberto Carion to Mr. Wynn.

4 But let's look further into that letter. They  
5 cannot claim attorney-client privilege over this document,  
6 because there's no recipient listed for the document. At best  
7 it may be work product. And finally, most alarming, WRL has  
8 listed Mark Rubenstein as the author of the July 25th, 2006,  
9 document. Mark Rubenstein left WRL five months previously, in  
10 February 2006. He went to work for the Cosmopolitan. Mr.  
11 Schall conceded this point at the hearing. But they stand  
12 before you and argue that this document is protected and that  
13 when they morphed it from Macau law to attorney-client  
14 privilege that they can protect it. But what is that letter?  
15 Is it a letter from Jaime Roberto Carion to Mr. Wynn? It  
16 can't be a letter authored by or have notes of Mark  
17 Rubenstein, because he wasn't there. It deals with the Macau  
18 land concession. I can go through all these documents, but we  
19 did that in our appendix, Your Honor, so I'm not going to.

20 So we come to the documents sent out of Macau that  
21 required -- that the order required WRL to produce the  
22 unredacted versions. We identified a number of those  
23 documents that we know that exist in Hong Kong with Allan  
24 Zeman, member of their board of directors, with Mr. Crawford,  
25 one of their auditors, and others who were travelling either

1 in Canada send them or in Hong Kong. They have the burden of  
2 demonstrating that the people who received these emails were  
3 in fact located at the time in Macau, but we have, however,  
4 shown differently. They haven't even addressed these  
5 documents in their hearing brief.

6 WRL should not be able to hide behind the MPDPA when  
7 it did not seek consents to produce unredacted documents  
8 containing personal data. We don't even know from whom they  
9 made those -- they requested those consents. They say, we  
10 can't tell you, because if I gave you the name that'd be  
11 revealing personal data. That wasn't raised at the time the  
12 Court entered its order. That's a Johnny come lately  
13 argument. And nowhere have they demonstrated to you that UEC  
14 employees' information was sought. They didn't attempt to  
15 obtain consents from the Macau Government officials, although  
16 they disclosed those names in the letters, from the University  
17 of Macau, or the University of Macau Development Foundation,  
18 or especially the Macau Government officials who were dealing  
19 with the land concession. So it is disingenuous and unfair  
20 for WRL to now use the MPDPA as their shield when it has not  
21 acted in good faith by seeking consents.

22 As Mr. Krakoff pointed out, personal data is  
23 regularly transferred outside of Macau in the regular course  
24 of business. So I don't need to go into that.

25 The prejudice, Your Honor, as Mr. Krakoff pointed



1 out but I'll highlight, is we do not have the ability to  
2 review the documents, Your Honor, related to the Macau land  
3 concession and the donation to the UMDF. This includes  
4 documents that have been completely withheld and remain  
5 withheld to this day from production by WRL based on its  
6 feigned reliance on the Macau law privilege. Their privilege  
7 logs cannot be trusted. We've cited to too many instances of  
8 unexplained inconsistencies and frankly just blatant  
9 obfuscation in their privilege logs for this to be some  
10 innocent mistake.

11           They can't claim attorney-client privilege for  
12 documents purportedly authored by Mark Rubenstein at a time he  
13 admittedly was no longer counsel for WRL. They cannot claim  
14 attorney-client privilege on letters from Mr. Gansmo and Mr.  
15 Shelton to the bank. They cannot claim privilege on letters  
16 from Jorge Olivera to Wynn or even over a concession contract  
17 between Stanley Ho and the Macau Government. They can't claim  
18 privilege over a 70-page document that they later produce as  
19 only 25 pages without an explanation of where the other 45  
20 pages are, and it's of a completely different period of time  
21 than what was described in its original privilege log. These  
22 are not innocent mistakes, Your Honor, but manifestations of  
23 calculated efforts to prevent the Aruze parties from obtaining  
24 discovery.

25           While they may claim that many documents, especially

1 documents previously withheld under Macau law privilege have  
2 subsequently been produced, it is important to note that most  
3 of these documents were produced only after the Aruze party  
4 filed its motion for sanctions on April 4, 2017, not within  
5 30 days of the Supreme Court order, certainly well past that  
6 deadline and other deadlines. We've been forced to bring  
7 multiple motions to compel and to bring this motion for  
8 sanctions only to prove that WRL has not fully complied with  
9 the Court's order.

10           Your Honor, I don't want the Court to get  
11 distracted, and I think it has become distracted -- and I  
12 respectfully submit that and apologize; I don't mean to say it  
13 offensively -- over the redactions and Mr. Okada and his  
14 consent, because that was dealt with, Your Honor, in the  
15 November 1st order and we brought the motion not based upon  
16 documents that had redactions, because that was for another  
17 day, as per paragraph 3. We certainly relied on what the  
18 Court said with respect to Mr. Okada. And if, as the Court  
19 suggests, that I should have done more to obtain Mr. Okada's  
20 consent --

21           THE COURT: Mr. Peek, Mr. Pisanelli read Mr. Okada  
22 portions of the deposition where Mr. Pisanelli asked him for  
23 his consent and Mr. Okada said no not, what, three months ago.

24           MR. PEEK: I understand.

25           THE COURT: I mean, it's not like nobody ever asked

1 him.

2 MR. PEEK: But so --

3 THE COURT: I'm not criticizing you, I'm not  
4 criticizing Mr. Krakoff or anybody else in the room.

5 MR. PEEK: So you're criticizing my client? But is  
6 that part of this --

7 THE COURT: It appears to be --

8 MR. PEEK: Is that part of this hearing, Your Honor?  
9 You are making it part of a hearing that is --

10 THE COURT: Mr. Peek, I have to make --

11 MR. PEEK: -- inconsistent with your order.

12 THE COURT: I have to make credibility  
13 determinations in the people who bringing the motions.

14 MR. PEEK: I understand, Your Honor. Understand.  
15 So is it you're saying, nobody asked me, that's a credibility  
16 -- that just destroys everything that he said? I leave that  
17 for the Court.

18 THE COURT: I have to assess his credibility based  
19 upon the answers he gave, his demeanor, and his presentation  
20 upon the stand.

21 MR. PEEK: I understand, Your Honor. But let's get  
22 past that, because even with that does that overcome --

23 THE COURT: Oh, absolutely not.

24 MR. PEEK: Okay.

25 THE COURT: But the question is a degree. It's an

1 issue of degree, Mr. Peek.

2 MR. PEEK: I understand that, Your Honor. But I  
3 think -- if you have questions of me -- because I've taken up  
4 way more of your time than I --

5 THE COURT: I do have questions of you. Are you  
6 ready?

7 MR. PEEK: Probably not.

8 THE COURT: Because you represent a different party  
9 than Mr. Krakoff --

10 MR. PEEK: I do.

11 THE COURT: -- I am probably going to ask you the  
12 same questions. If you don't have a different than Mr.  
13 Krakoff gave me, that's okay, you can tell me that; okay?

14 MR. PEEK: I hope to be consistent with him.

15 THE COURT: All right. Have you been able to  
16 calculate the number of documents that still remain based upon  
17 the consent that Mr. Okada gave yesterday of the approximate  
18 500 that have been totally withheld, approximately hundreds  
19 that have been highly confidential and redacted, and the  
20 approximate 2,000 that have been confidential and redacted?

21 MR. PEEK: I have not, Your Honor. And,  
22 respectfully, I don't know how I could. Because I wouldn't  
23 know based on the redaction whether it is a redaction of Mr.  
24 Okada's name or a UEC employee's name. And I did not focus on  
25 all of the hundreds and thousands of documents. I focused on

1 Macau law privilege and I focused on attorney-client  
2 privilege, I focused on documents outside of Macau as per the  
3 order, and I focused on consents.

4 THE COURT: Okay. So let me ask the question a  
5 little differently. You indicated earlier that there was  
6 nothing in the record before the Court that Universal  
7 employees had been asked for consents. I remember it being  
8 asked during hearings.

9 MR. PEEK: I don't. Well, you may -- I'd like to  
10 see a citation. If I'm mistaken, Your Honor, I don't mean to  
11 misrepresent to the Court.

12 THE COURT: Okay.

13 MR. PEEK: But I would -- I asked today, and maybe  
14 I'm too late to do that, because I didn't anticipate the UEC  
15 being the subject of the hearing, but I know that from Ms. --  
16 from Pisanelli Bice on the consent issue when we asked two  
17 things, we asked for consents -- and I have them here. There  
18 are two categories that we were provided, Your Honor. They  
19 were consents in Macau and consents outside of Macau. Those  
20 were provided. The list of individuals for whom they sought  
21 consents was not provided as per the order. So you say it was  
22 discussed, but it wasn't -- there was no compliance with the  
23 order.

24 THE COURT: Okay. So the next issue that I have to  
25 discuss, it relates to the Macau litigation that your client

1 said he relied upon the lawyers to deal with. What is your  
2 position related to the ability of your client or those acting  
3 on his behalf to have obtained the documents at issue from  
4 Wynn Macau in the Macau litigation?

5 MR. PEEK: I'll give you two answers, Your Honor.  
6 Number one is that, as you know from the dismissal, it was  
7 what I would call sua sponte. I don't know if that's the  
8 right word, but it was -- it was dismissed without a response  
9 from Wynn. So -- and the second part of that question, but  
10 also part of this first part is I don't know to what degree  
11 documents are permitted to be produced. Because remember the  
12 thrust of the lawsuit was the damages occasioned by the  
13 disclosure of the Freeh -- through the Freeh report of Mr.  
14 Naguiat, Mr. Araki, Mr. Shoji's names and others from the  
15 Philippines. So the lawsuit was not focused, Your Honor, on  
16 the larger hearing that we have here now of all of the other  
17 documents. But there was no -- and I don't know if there's an  
18 opportunity to get documents in Macau.

19 I don't know. Bryce, pull it up.

20 MR. KUNIMOTO: I'm not sure if this is --

21 MR. PEEK: Yeah. I'm not sure if I've got the right  
22 document.

23 THE COURT: And while you're looking that document  
24 can you tell me what you believe the potential impact of the  
25 judicial estoppel issues related to the dismissal of that

1 Macau lawsuit are.

2 MR. PEEK: I cannot, Your Honor. I cannot, because  
3 I haven't -- frankly, like Mr. Krakoff, I have not briefed it.  
4 I do not believe that the Court should either give any  
5 collateral judicial -- I think collateral estopped, as opposed  
6 to judicial estoppel would be the right phrase. But maybe I'm  
7 misunderstanding the two.

8 THE COURT: They get confused.

9 MR. PEEK: Judicial estoppel as I understand is if I  
10 make a statement to you upon which somebody relies, then I'm  
11 judicially estopped from taking a different position.

12 THE COURT: That is part of it.

13 MR. PEEK: That is part of it. Mr. Kunimoto  
14 reminded me that the judgment only focused on the MPDPA.

15 So I don't have an answer, Your Honor, but I'm  
16 certainly happy to brief it if the Court thinks that it is of  
17 moment to this case.

18 THE COURT: And then my last question to you deals  
19 with the remedy that you have requested. You have requested  
20 essentially that there be an adverse inference for any  
21 document that was produced in an unredacted form or not  
22 produced and that the Freeh report and any supporting  
23 documentation be excluded and the reliance upon that be  
24 excluded. Do you have a fallback position?

25 MR. PEEK: I probably -- I don't, Your Honor, with

1 respect to the Freeh report, and I think Mr. Krakoff addressed  
2 that. But I certainly do say to the Court that with respect  
3 to the adverse inference, without having the land concession  
4 contracts, without having the UMDF information that we have  
5 sought it makes it most difficult for us to give you that  
6 proof of the link between the land concession and the UMDF to  
7 show that there was in fact a payment through the UMDF to  
8 obtain the land concession. There are just too many  
9 coincidences in that 2011 period of time that ultimately led  
10 up to the redemption of the stock. So I would say that would,  
11 Your Honor, prove our pretext theory that Mr. Okada was  
12 removed -- or the Aruze USA stock was redeemed and Mr. Okada  
13 was removed as a director as a result of his questions on the  
14 land concession contract and the UMDF.

15 THE COURT: Thank you, Mr. Peek.

16 MR. PEEK: Thank you.

17 THE COURT: We'll take a 10-minute recess before Mr.  
18 Pisanelli starts.

19 (Court recessed at 2:41 p.m., until 2:50 p.m.)

20 THE COURT: Are we ready?

21 MR. PISANELLI: Yes, Your Honor.

22 THE COURT: Okay, Mr. Pisanelli. Let's get done.

23 MR. PISANELLI: Thank you.

24 THE COURT: Although I will give Mr. Krakoff a few  
25 minutes at the end.



1 MR. PISANELLI: Very good.

2 PLAINTIFF'S CLOSING ARGUMENT

3 MR. PISANELLI: So, Your Honor, if anything emerged  
4 from this evidentiary here, small little mini trial we did  
5 here, and I'm talking emerging from testimony and documents,  
6 not emerging from lawyers' arguments and theories, its this,  
7 that this has not been an attempt to level the playing field  
8 as we're hearing now today. It most clearly was, in our view,  
9 and attempt to gain an upper hand that otherwise would not  
10 have existed, will not exist, I should say, at the trial on  
11 the merits. If we were looking at this from a business  
12 perspective or an economic analysis we would use -- I think  
13 the word "windfall" is what we're talking about here. And  
14 there's several reasons why. Because we can concede for the  
15 sake of discussion that a technical violation of an order  
16 occurred. That's why we're here, it's why you brought us in  
17 to now start talking about the Ribiero factors.

18 THE COURT: I don't think it's a technical  
19 violation.

20 MR. PISANELLI: Well, all I'm --

21 THE COURT: There are issues as to the extent of the  
22 remedy as a result of the violation.

23 MR. PISANELLI: The reason I would say technical,  
24 and I don't want to get bogged down on it, is the debate from  
25 someone in my position to say, I didn't violate anything

1 because I don't have anything, versus saying, well, you told  
2 me to produce it anyway even though I don't have it. I don't  
3 want to go down that rabbit hole with you. That's what I  
4 meant by technical.

5 THE COURT: Okay.

6 MR. PISANELLI: But what we did see from the  
7 evidence, from the documents and from the testimony from the  
8 people who knew things that matter is that the defendants  
9 didn't lose anything, that the defendants suffered zero  
10 disadvantage in this lawsuit as a result of the debate that  
11 we've been having, and that the pursuit of the truth, which is  
12 why we're here at the beginning, it's why every one of us were  
13 hired on day one and it's the reason every one of us will be  
14 hired to stand before this jury, if we get that far, and talk  
15 about this, is to pursue the truth. And that has not been  
16 obscured at all by what has happened in this case. I would  
17 say, Your Honor, what the defendants have attempted to do in  
18 this case is to do the exact opposite, is to take this search  
19 for the truth and the search for a just result -- and I'm not  
20 talking about today only, I'm talking about the just result  
21 that will be presented this way to that box -- and pervert the  
22 process to give a false impression, the false impression  
23 coming from the relief that they're asking, be it the Freeh  
24 report limitations, presumptions, or other evidentiary  
25 restrictions which I will get to.

1           So the issues that brought us here I think we do  
2 agree on. That's the easy part, because all we have to do is  
3 read the June 13th order. You told us what to do, right. You  
4 said you wanted to hear evidence and see documents that touch  
5 upon control, wilfulness, and prejudice. Those are the three  
6 things we came to debate before you and to prove one way or  
7 another, and those, of course, come from the Ribiero factors,  
8 which I can read to you, but I suspect you could probably  
9 recite them back to us faster than any of us could do for you.  
10 But what I do want to highlight from the Ribiero analysis is  
11 the Court telling us that degrees matter, right. It's the  
12 word our Supreme Court uses in that analysis. A degree of  
13 wilfulness is what we're here to look at, the extent, another  
14 word for degree, to which a non-offending party would be  
15 prejudiced by a lesser sanction than what they're asking for;  
16 severity, another word for degree, of the sanction that is  
17 being requested and where evidence has been lost, which isn't  
18 even before us; the feasibility, again the word degree, of  
19 fairness of an alternative sanction. So that's why we're  
20 here.

21           For the sanctions to apply what can't be lost in  
22 this discussion is that this table carried that burden,  
23 carried the burden on all aspects of this debate. And that's  
24 the way it should be, as they're the ones coming in looking to  
25 gain an upper hand in this litigation that the evidence

1 otherwise by their own words won't support.

2           So let's start with -- like Mr. Krakoff, I like his  
3 idea. I think control is a key issue and a good one to start  
4 of what we saw. So some legal principles that guide us where  
5 we go openly and immediately reject Mr. Krakoff's position --  
6 and I'm only using him personally because I'm wanting to make  
7 sure I don't get the clients wrong, so I'll call it the  
8 Universal position --

9           MR. KRAKOFF: That's fine.

10          MR. PISANELLI: -- Universal's position is rejected  
11 immediately.

12          THE COURT: You aren't saying it in a derogatory  
13 manner, so everybody's okay with it.

14          MR. PISANELLI: Yeah. Thank you.

15          MR. KRAKOFF: I didn't take it that way.

16          MR. PISANELLI: So we're here to look at something  
17 more than just, as the United States -- or the Ninth Circuit  
18 has told us, an esoteric concept of an inherent relationship.  
19 That's not nearly good enough, and we have to drill deeper.  
20 We know again from the Ninth Circuit in the In re Citric Acid  
21 litigation that control is defined as the legal right to  
22 obtain documents on demand. If there's any one sentence of  
23 law that will guide this issue of control, I think that is it.  
24 Wright and Miller and other writers and professors all adopt  
25 that same issue when analyzing Rule 34 and Rule 37 when you

1 get here control defined as the legal right to obtain  
2 documents on demand. This shared membership concept which we  
3 heard from Universal's counsel, being in the same corporate  
4 association, we know from the Ernst & Young analysis that like  
5 this case covered companies within the Ernst & Young umbrella,  
6 but companies that were incorporated across the planet this  
7 shared membership was not good enough to just jump to the  
8 conclusion of control. And we also know that being a  
9 significant shareholder, despite the analysis Mr. Krakoff and  
10 his clients have offered, is not good enough. Recall even  
11 today in the opening he's talking about the control through  
12 voting power. Sure Wynn Resorts holds we'll just called it  
13 75 percent of the voting power, so you can manipulate the  
14 board of directors. But we know from the Weinstein  
15 Enterprises decision also in our brief, Your Honor, that  
16 that's not good enough. Maybe we'll have a different  
17 discussion, we would have, if we were talking about a wholly  
18 owned subsidiary here. That's when you can see the corporate  
19 shell game that can go on from one company to the other.  
20 Sometimes they're not even honoring the corporate distinctions  
21 amongst themselves until it's convenient. But we're talking  
22 about two publicly traded companies in this case, and the  
23 Delaware court in the Weinstein Enterprises case was very  
24 careful to point out that that cannot be the conclusory  
25 factor, that cannot be the determining factor when we're

1 talking about control, the right to obtain documents on  
2 demand.

3           So the factual issue here, then, with those legal  
4 principles in mind is one of we'll call it just reality, one  
5 of practicality, can Wynn Resorts go into Wynn Resorts Macau  
6 SA, I'll just call it Wynn Resorts Macau or Wynn Macau, can  
7 they go in on demand without regard to that company's  
8 discretion, without regard to what this company's management  
9 and its board of directors says, can the 75 percent  
10 shareholder from the United States go into Macau and say, do  
11 it and I don't care what you say, I don't care of your  
12 consequences, this is meaningful to us. And the answer from  
13 what we heard from Jay Schall and what we know about the law  
14 has to be no, there is no control as it relates to a right to  
15 obtain documents on demand. And if there is no control, that  
16 will lead us to show that the degree of wilfulness for a  
17 violation of an order is somewhere, if not exactly, on zero  
18 where that dial leads when there's no control of the parent or  
19 the majority shareholder.

20           So what did we hear about evidence about control?  
21 We know that Wynn Resorts didn't take the shell game approach,  
22 right. We know that Wynn Resorts didn't just say, sorry,  
23 separate companies, separate fictitious entities, therefore  
24 we're not doing it. Nothing close to that came up. But what  
25 we did see is Wynn Resorts and its team, including my own team

1 operating at the direction of our clients, went way beyond any  
2 standard of good faith to get what was available for this  
3 litigation. It spent extraordinary sums, extraordinary  
4 manpower to produce what it could from Wynn Resorts Macau.  
5 You'll recall, and this very well, Your Honor, may be the most  
6 important fact in this dispute, Wynn Macau is not a party to  
7 this litigation. It's not a party to this litigation because  
8 these defendants chose not to make it one. I'm not suggesting  
9 there's a cause of action that was available to it, but Mr.  
10 Okada's role overlapped all of these companies despite what he  
11 told you on the stand. The record's pretty clear he's a  
12 director of Wynn Macau. And they chose to have separate  
13 litigation. They sued there in Macau, and they sued here. In  
14 Macau let's not forget what we are now calling pretext issues,  
15 Cotai land concession and the transactions surrounding it, the  
16 University donation and MPDPA were the bases of that lawsuit  
17 in Macau, all of them. They're the heart of this claim of  
18 pretext they chose to litigate somewhere else. And so here we  
19 now come and start having a duplicative process, but asking  
20 you to conflate these corporate entities. We saw it, I  
21 noticed it, respectfully, from Mr. Krakoff in his opening  
22 sentence. The very first sentence he offered to you conflated  
23 Wynn Resorts and Wynn Macau as the same entity, and we know as  
24 a matter of fact that is beyond dispute that that is not the  
25 case. So everything we talk about when we're talking about

1 control has to be filtered through that distinction.

2           So what do we know that the team did? First, of  
3 course, Wynn Resorts presents your order, and even before that  
4 the request for production, to Wynn Macau and its team headed  
5 by Mr. Schall. Mr. Schall explained the history of that  
6 company and its dealings with the ODP and the MPDPA and what  
7 happened. It was basically a story of two time periods, call  
8 it pre 2012 and post 2012, as board strokes. There's  
9 obviously a little finer detail that can be put in there. But  
10 there was a law on the books that didn't seem to matter much  
11 to anybody, not on the government's side, not on the  
12 operators' side. And so when Judge Freeh and including when  
13 the SEC investigation came up it was not on anyone's radar  
14 that this was going to be a big deal. It was never this  
15 machiavellian type of strategy of the sword and shield that we  
16 hear today. And you never heard any evidence that there was.  
17 The only evidence on this topic was from Mr. Schall telling  
18 you about what I think he characterized as the step-up which  
19 happened after 2012, happened after a fine was presented to  
20 Wynn Macau for the access and the documents that were given to  
21 Judge Freeh. And it wasn't just simply a fine, slap on the  
22 wrist, go about your way. Things changed in that market  
23 dramatically across the market. And I'm not just talking  
24 about arguments and things you heard in other cases. I'm  
25 talking about what Mr. Schall told you, that all of the major



1 operators, their general counsel have a club. I think we have  
2 the same type of thing here. They all seem to know each other  
3 and talk to one another and share experiences in the  
4 marketplace, and that certainly was going on in Macau, and so  
5 he was comfortable telling you that he was not being singled  
6 out, Wynn Macau wasn't, by the ODP on this issue, that it was  
7 an industrywide standard, the office had been bulked up, and  
8 things had changed and the finger literally and figuratively  
9 was pointed at him, Mr. Schall, personally, no more mess-ups  
10 from you. And it was very serious issue. Both he and Ms.  
11 Chen were taken in for questioning. This was not something  
12 that was just being brushed aside because, oh, we're a rich  
13 company, we can afford fines. That was never on the mind of  
14 Mr. Schall or anyone in that company. This was a very serious  
15 issue, and he even told you about criminal prosecutions,  
16 actual prosecutions. Someone I think was affiliated with an  
17 Internet-based company, a telemarketing company.

18           So what did Mr. Schall do from there? Well, he was  
19 transparent. There's a suggestion to you today that Mr.  
20 Schall didn't even tell the ODP what it was that you were  
21 ordering, and that's not true. What Mr. Schall said is did he  
22 sit there and explain the distinctions of the categories, no,  
23 the reason why is because he gave the order. He said  
24 specifically, this is what our 75 percent shareholder has been  
25 ordered to do, we would like permission to comply. And the

1 answer was a resounding no, you will not. And the reason why  
2 is the policy that you can see that is applied across the  
3 board and a policy that Jay Schall applied in his own  
4 dealings, is what is the reasonable expectation of the  
5 person's personal data that you possess, if I have not  
6 consented but I gave you my personal data, what would I  
7 reasonably expect you to do with it in the ordinary course of  
8 your business. Giving it away, the ODP says, to another  
9 litigant in another country not involving you, the party who  
10 has my data, is not within the reasonable expectation of that  
11 person and therefore you shall not give that person's personal  
12 data away unless they personally consent. That message was  
13 loud and clear, as were the instructions and the restrictions  
14 on how even the processing would occur.

15           We heard in other cases that only Macau lawyers can  
16 review the documents. That wasn't the experience that we had,  
17 and so my team, headed by Ms. Spinelli and our vendor, went  
18 over to Macau for a rather remarkable experience of the  
19 securities that were put in place for the review of these  
20 documents so that no one got called in and no one got arrested  
21 because we were violating the MPDPA. You had to have badges,  
22 your cell phones had to stay out of the room, everything was  
23 done in some suites that were converted into a workroom, and  
24 no possibility of taking copies with you. All of it was  
25 treated as if that country had entrusted us with the most

1 highly confidential government secrets you could imagine.  
2 That's how people with logging in and out were treated. It  
3 was a very serious process, and that's how it happened. There  
4 were decisions to be made, and Ms. Spinelli headed up that  
5 team that would drive questions up to her, but ultimately the  
6 decision making was at the corporate counsel level, and Mr.  
7 Schall was very clear that no one certainly on my team had an  
8 ability to override those decisions when it was not altogether  
9 clear what to do about particular documents.

10           My point is only this, Your Honor, that this was not  
11 a casual undertaking. It certainly was not the presentation  
12 of some ruse to give the appearance that we're taking this  
13 matter seriously. Mr. Schall even told you how the company  
14 changed. And while the companies do have consolidated  
15 financials, you heard from directed at your questions that the  
16 financial information goes back and forth, almost never  
17 contains any personal data, and when it does both vendors,  
18 customers, and all employees have consents, and so there's a  
19 rare day indeed that there is any need for the personal data  
20 to cross the company lines for purposes of accounting and  
21 financial accountability. The only thing we heard were  
22 criticisms from Mr. Schall even today when we were talking  
23 about how it's kind of willy-nilly and the company does things  
24 at its convenience, we had Mr. Peek's examination about Mr.  
25 Schall's telephone that technically personal data was coming

1 across, and we couldn't even confirm that anything was. Jay  
2 was honest with you and said probably it could happen. If  
3 it's coming from employees, it's never an issue, it's not  
4 personal data that's protected, because there's consent. But  
5 it could happen. But the ODP is not so draconian as they as  
6 they don't understand how we do business. It's a different  
7 story if I'm answering my phone with an email he told us, than  
8 if I'm taking my phone in Las Vegas or Hong Kong or somewhere  
9 else and downloading someone's personal data and giving it  
10 away outside the owner's reasonable expectations.

11           So this suggestion that the rules are a matter of  
12 convenience for Wynn Resorts or Wynn Macau I don't think is  
13 supported by what we heard from the only voice that -- in this  
14 proceedings of what -- how things are done in the Wynn  
15 organization, and that was Jay Schall. He was pretty clear  
16 about that.

17           So we heard a lot of talk about -- oh. By the way,  
18 on this issue of consents, Wynn Resorts did not just give five  
19 or six consents. There's Mr. Wynn's, there's somebody else's  
20 making the exercise irrelevant, who gave a very long list of  
21 consents, all the consents that it could obtain certainly  
22 inside its organization, and there's been a lot of criticism  
23 from the defense table that consents were not obtained from  
24 the government. Jay explained to you why it was inappropriate  
25 in his mind to go to the government. Number one, he knew what

1 their answer would be; and, number two, because they are their  
2 regulators it was not a comfortable -- a situation he was  
3 comfortable with.

4 But what was the elephant in the room on that  
5 particular topic? Did Mr. Okada go to Edmund Ho, did they go  
6 to anyone in government, did they go to anyone in the  
7 University, did they go to anyone at Chinese Entertainment?  
8 We heard this name Ho Ho a lot. Did anyone ask him from this  
9 table? They're the ones that have to prove that they're  
10 prejudiced by our position. Prejudice means that you at least  
11 took some self help, I would suspect. And even as it relates  
12 to their own consents, rather than limit their own prejudice  
13 even though -- I'm getting a little ahead of myself -- we  
14 still didn't even hear what they did to put their own consents  
15 on the table and make sure that this process was as vast and  
16 as broad as it could be that Mr. Schall had put in place.

17 So after -- now getting back to the process -- Mr.  
18 Schall has his instructions from the government what happened  
19 at the board level? First of all we start with Mr. Takeuchi,  
20 I think, and even Mr. Okada. They have access and know about  
21 Wynn Resorts -- I'm sorry, Wynn Macau's board of directors,  
22 because Mr. Okada was on it. And Mr. Takeuchi, their 30(b)(6)  
23 designee, what did he have to offer by way of suggestion that  
24 Wynn Macau is governed by Wynn Resorts? Zero. Mr. Bice  
25 specifically asked him, do you have any evidence that Wynn

1 Macau is not governed by its own board of directors. He had  
2 zero to offer on that topic. He said, if this truly was just  
3 a little shell game and the master and puppet as they're  
4 trying to suggest to you, surely we would have heard that from  
5 Mr. Okada, surely he would have communicated that to the  
6 30(b)(6) designee, and some form of presentation would have  
7 been made that tells you, Your Honor, don't take Wynn Macau  
8 seriously at the board level, don't take the votes of  
9 independent directors approved by the Hong Kong Exchange  
10 seriously, here's my experience in the back -- looking  
11 backwards. But none of that came in.

12           So what we do know that came in is what Mr. Schall  
13 told us came in, that it was presented to the board, there was  
14 abstentions from Mr. Wynn and Mr. Maddox and the independent  
15 directors and two executive directors voted, the two executive  
16 directors being those with no relationship on the board of  
17 wry, and they all voted, of course, to follow the law. Didn't  
18 come as a shock to Your Honor, I suspect, especially in light  
19 of what we now know that board knew, because they operate in  
20 Macau, that this is a serious deal, this is not pre 2012, this  
21 is post 2012, and none of these people, certainly not Ms.  
22 Chen, certainly not Mr. Schall, were interested in getting  
23 hauled back in by the government, by the police or by anyone  
24 to suggest that they are now looking at criminal sanctions and  
25 violation, officers of a company looking at criminal

1 violations. There was no suggestion that they were interested  
2 in that, and so they said, no, we're not going to do it.

3 Now, what we're left at this point, Your Honor, is  
4 what does this evidence -- that's the totality of the evidence  
5 that we have here. What Mr. Schall told us and what we know  
6 about the Wynn Macau board saying no, what do we have by way  
7 of this table, who is obligated, their burden, to show  
8 control, what do we have presented to by way of evidence,  
9 documents, or testimony to override that testimony and in  
10 essence override that vote of the Wynn Macau board of  
11 directors? It is not hyperbole to say that there's nothing.  
12 Because that is the plain and simple truth of the matter.

13 Mr. Schall, his credibility will be weighed by you,  
14 Your Honor, of course, like all witnesses that came before  
15 you. And of course I believe in him, of course I'm opening  
16 biased. But he could not have been more frank with you about  
17 how that process went down and how seriously he takes that law  
18 as a resident of Macau and the chief legal officer in charge  
19 of its affairs. What did you hear to rebut it?

20 If we're talking that the 75 percent shareholder of  
21 that company truly controls it, what did we hear from the  
22 party with the burden that says ignore that the board of  
23 directors said no? There's nothing by way of evidence. The  
24 only thing you heard was from Universal's counsel telling you,  
25 yeah, that you could have removed those directors, you have

1 voting power to remove them. And what did Mr. Schall tell in  
2 response to that suggestion? He said, listen, whether it be  
3 removal by directors or let's take the hypothetical that was  
4 presented to him, Mr. Wynn or just the board generally, Kim  
5 Sinatra calls Jay Schall and says, do it, I don't care with  
6 what the board said, we want those documents presented. He  
7 was very clear in what he would have done. He said, I would  
8 have taken the documents that were contained in his personal  
9 safe in his office, the company's safe in his office, he's the  
10 only one that possesses it this is such a serious issue, he  
11 would have delivered it to the government, not to Kim Sinatra,  
12 not to Steve Wynn, not to anyone in Las Vegas. He said, I  
13 would have marched it to the government, I would have told  
14 them what was going on, and I would have quit. And the  
15 obvious reason being he's not going to jail for anyone. And  
16 that's how serious he was about this topic.

17           And what did we hear to undermine that? Nothing.  
18 Who cares about Jay Schall, they say, remove the directors by  
19 a new vote. And what did he tell you then? He said, even  
20 then if there was a direction the independent directors would  
21 quit, because none of them are interested in going to jail  
22 over this issue, the stock of the company would be frozen on  
23 the Hong Kong Stock Exchange until new independent directors  
24 were hired, those directors would come in, also refuse to be  
25 manipulated by Wynn Resorts, and the cycle would be ongoing.



1 You would not get any independent, noncorrupt director to take  
2 the position in Wynn Macau that they were going to override  
3 that decision and just do what they're told as the defendants  
4 in this case are suggesting could have or should have  
5 happened. No evidence supports that theory. It was only  
6 legal argument. And we're here, of course, to weigh evidence  
7 and credibility of the witnesses and the documents.

8           So if we know, whether we call it a preponderance of  
9 the evidence or the overwhelming one-sided presentation, we  
10 know that there is no ability of the parent, Wynn, the  
11 75 percent shareholder, to direct the board of directors of  
12 Jay Schall. In other words, there's no control, there's no  
13 access to get documents on demand. That establishes in and of  
14 itself the second element of wilfulness. But there's more to  
15 the wilfulness debate than we saw here, and I think what we do  
16 need to spend a few moments on are the obstructions and the  
17 obstacles to performance that also defeat the suggestion that  
18 there was this wilfulness on behalf of Wynn Resorts.

19           Recall we spent some time even today talking about  
20 the consent issue from Mr. Okada. Three months ago, you  
21 pointed out, Your Honor, he just flatly said no. There was no  
22 ambiguity. He just said, no, I won't do it. And then, just  
23 like today, said, no one's even asked me to do it. He didn't  
24 even know what this motion was about or what this hearing was.  
25 I asked him if he understood why he was here. He didn't even

1 know why he was here, because he's not participating in this  
2 process because he never wanted these documents. They want  
3 the sanction, not the documents.

4           And you'll also notice, Your Honor, and this  
5 matters, that even when you pushed him, because I couldn't get  
6 him to give the answer as I was wording it, even when you got  
7 him by phrasing it, why haven't you, he still qualified his  
8 answer. Even when you pushed him, do you consent now, he  
9 still qualified his answer, yes, so as long as, I think his  
10 phrase was, it relates to this case, leaving that window  
11 cracked open ever so far. And why was he doing it? He was  
12 doing it for the last question that I asked him, and that is,  
13 are you still reserving your right to sue Wynn Resorts if they  
14 give your personal data away; that is the case, that would be  
15 appropriate, he told us. And the reason we know that would be  
16 appropriate because it wasn't the first time he did it. And  
17 it also wasn't the first time that he coordinated with other  
18 people to do it. We do know that other lawsuits out of PAGCOR  
19 came, and that was from I believe Mr. Bangsil. Do we now  
20 right now whether there are some fingerprints from the  
21 Universal employees for that lawsuit? Not yet. I think we'll  
22 find out, but not yet. But there is an awful strong  
23 circumstantial case when we saw the evidence, the actual hard-  
24 copy evidence emails of this company coordinating with PAGCOR  
25 and other people to make it -- to impose some punishment,

1 we'll call, on Wynn Resorts for doing what they're actually  
2 asking Your Honor to order here. They are actually setting it  
3 up for us -- within a month we saw, as they were filing a  
4 motion to compel, they were filing a lawsuit for the violation  
5 of what they're asking to be compelled. Talk about  
6 gamesmanship. That's -- the consequences to that behavior I  
7 suppose is left for another day. But what we do know is that  
8 they are behind the scenes playing both ends. They are making  
9 sure they do everything in this courtroom to claim that  
10 they're harmed and to get Your Honor to order Wynn Resorts to  
11 do something, and then turning around collectively with the  
12 same lawyer and suing Wynn Resorts for doing what they're  
13 asking you to order us to do yet again. It is a remarkable  
14 set of circumstances. And, again, as I've noted earlier, to  
15 suggest no one asked us for consents is just not true, by the  
16 way. In meet and confers and in this courtroom we have made  
17 the point that we want consents from all of the defendants,  
18 and none were presented. And even if it just slipped our mind  
19 and we never bothered to ask them, you would think before you  
20 come into this courtroom asking for some of evidentiary  
21 sanction, knowing it's your obligation to prove prejudice, you  
22 can prove, look, Your Honor, we even offered our own consent  
23 so as to minimize this burden, minimize our harm, and to  
24 confirm truly that we are harmed, that there is something in  
25 there that matters to this case, they would have offered their

1 own consent. But their silence now and then just a wrongful  
2 denial that they were ever even asked, that's not a credible  
3 position to take.

4           So we do have a problem. And by we I mean the  
5 defendants. They have prosecuted this position already in  
6 Macau and lost. They're not going to tell you that that case  
7 is over, not going to tell you that there's no appeal, they're  
8 not going to tell you that they didn't have any right to do  
9 the same thing there that they did here. They won't say a  
10 word of that, because none of that is true.

11           They also were silent of what they did in this case  
12 to go and institute the proper channels there. We saw them  
13 use letters rogatory, did we not? We saw them go to foreign  
14 lands to ask people questions. Your Honor approved them. We  
15 didn't see any of that here. We saw a separate lawsuit there  
16 on the very topics that they're now complaining about here.

17           Boy, there's a lot of law about that. You can't do  
18 it. And typically you see parties trying to do it when  
19 they've lost and now they just start over somewhere else.  
20 Here they're playing again two sides of a coin by asking for  
21 billions of U.S. dollars in Macau for damages and the  
22 corporation be dissolved in Macau, but then coming in here and  
23 saying that, we're victimized. It is a remarkable set of  
24 circumstances that I certainly have never seen before. But  
25 the law doesn't allow it. Because they're the party with the

1 burden to show harm, just like those consents, boy, I would  
2 expect if I was a newcomer to this case to walk in and want to  
3 see those letters rogatory, want to see every action taken in  
4 Macau, want to see everything they did to obtain these alleged  
5 records, including talking to the University, talking to  
6 whoever it is that they claim that these bribes or this  
7 connection between Tien Chao or the Cotai land and the  
8 University donation, I would expect a scorched earth there  
9 like we've experienced here so that they could come in with a  
10 straight face and say, look how were handcuffed, instead of  
11 chasing a ghost that they know and we certainly know doesn't  
12 exist.

13           Instead, they didn't scorch the earth over there,  
14 Your Honor, because they know there's nothing underneath,  
15 there's nothing -- there's no there there. So, rather, they  
16 have this ability to say the ghost is unattainable and come in  
17 and say, we did everything we could, there are no such  
18 documents, therefore pretext falls away. That's really what's  
19 going on here, is the setup without any connection to an  
20 actual piece of evidence to suggest we might have had a  
21 defense, we might have been able to show a pretext even if the  
22 business judgment rule allows it or doesn't, we might have  
23 been able to show it. But they wouldn't have been able to do  
24 that had they really scorched the earth there like they did  
25 here, because they know then they would have had to be honest

1 with Your Honor and say, ah, no evidence anywhere of this  
2 defense. Your Honor should take that into consideration.

3 On this concept of obstructions and obstacles it is  
4 not insignificant that we're not only talking about civil  
5 lawsuits, but criminal complaints. And doesn't it say a lot,  
6 Your Honor, and we would hope you take it into consideration,  
7 that the party coming in here asking for the sanctions that  
8 they did has to this moment refused to acknowledge that they  
9 are the initiator of that criminal proceeding. To this moment  
10 they have refused to produce the petition that they filed.  
11 Everybody knows they did it. It's not like it's a secret  
12 anymore. But to this moment a party coming in here for  
13 equitable relief who's supposed to have some squeaky clean  
14 hands on them has still not produced the evidence that they  
15 were the ones behind the scenes trying to inflict this type of  
16 obstruction on us for complying with their own requests.

17 Remember, Your Honor, on this concept of obstruction  
18 and obstacles it is Mr. Okada himself who testified that he  
19 expected his own companies, one of which does business  
20 directly in Macau, Aruze Macau, Aruze Gaming Macau, expects  
21 them to be very careful. And by very careful he meant always  
22 comply with the MPDPA. And when asked, well, what about us,  
23 we possess some of yours; same answer, always, always, Wynn  
24 Resorts, be very careful with my personal data, I expect you  
25 to protect it at all times, reserving the rights to sue

1 criminally and civilly if we don't.

2           That leads us to prejudice. Overlap here, and I'm  
3 going to do my best and I am doing my best not to be  
4 redundant, but some of these pieces of evidence apply to the  
5 different factors. So it's hard to say from our perspective,  
6 Your Honor, what is the most persuasive evidence that we saw  
7 of prejudice, because this was like a cornucopia, like a grab  
8 bag, what do we want to put up first. And I have to start  
9 with choices, right. Choices. We asked in a request or  
10 multiple requests that can be called the anti-sandbag  
11 requests, defendants, please do tell us before it's too late  
12 for us what is it that you actually claim shows your  
13 prejudice. For instance, do you have a document that shows  
14 that here's a boatload of money going to somebody and if we  
15 find out that's a government official that's going to help up,  
16 but we don't know who it went to, maybe it just went to, you  
17 know, Mr. Wynn or his estate. Show us something like that.  
18 Show us something that, oh, there's transfer from one entity  
19 to the other starting with us, maybe it's the University and  
20 the other is the government for the land concession, but we  
21 don't have the names. Show us that so we can come into these  
22 proceedings and be armed and ready to figure out what actually  
23 happened. And three documents, three documents was their  
24 choice as their best evidence. Surely -- you're a litigator,  
25 Your Honor, we're all litigators here, with the exception of

1 the lucky few in the back -- all of us under those  
2 circumstances is going to give you our shot, right. You want  
3 to know what my evidence is, here's my best three. Guarantee  
4 if my hearing is resting on three documents, you're getting my  
5 best three. One of them was a document that had already been  
6 produced. They walked in here arguing to you prejudice from a  
7 document that had also been produced in unredacted form. All  
8 right. Maybe it was a mistake. I'm not trying to say they're  
9 pulling wool over your eyes or ours. But it's a document of  
10 utter irrelevance. We know that. And so the other two better  
11 be good, you're banking on it, defendants. And what were  
12 they? Itineraries, two emails of itineraries that a fair  
13 inference -- I'll concede it for this debate right now a fair  
14 inference is that Steve Wynn was coming to Macau and was  
15 seeing if he could meet with the chief executive, Edmund Ho.  
16 So what? Where in Macau law, where in Nevada law, where in  
17 the United States law, where in anywhere does it say a  
18 business operator should never have a communication with  
19 government officials? Can my law firm never have a meeting  
20 with the governor here? Can anyone not have a discussion with  
21 our mayor? It's an absurd proposition. And you'll find out  
22 later in this case, even though it's not in evidence here, we  
23 will never apologize for that fact. Mr. Wynn has already  
24 testified he's friends, very good friends with the utmost  
25 respect for Edmund Ho. He's not even the chief executive



1 anymore. He likes him as a human being, and his testimony is,  
2 I tried to see him every single time I was there.

3 So my answer is to these three smoking guns that  
4 were presented, here's my best, Pisanelli Bice, Wynn Resorts,  
5 and my answer is so what, you are going to make a connection  
6 between things that happened years apart on a land donation --  
7 I'm sorry, a land concession contract and a philanthropic  
8 donation the local university because Steve Wynn happens to be  
9 friends with the chief executive, that's it?

10 If that wasn't good enough to show that there's been  
11 an evidentiary failure on prejudice, what did Mr. Okada bring  
12 to the table in this process? Wow. Wow is what I thought to  
13 myself when I saw what he had to say about this. We know,  
14 because Mr. Takeuchi, the 30(b)(6) designee, told us, that the  
15 prejudice in this case is that I don't have evidence  
16 connecting the Cotai land and the University. It was very  
17 clear. He testified to that fact. We're trying to make that  
18 connection, because, he says, we think we might be able to  
19 make a defense that that was the motivation for kicking Aruze  
20 out of the company, redeeming these shares, and getting rid of  
21 Mr. Okada if we can connect. Pretext is what they call it.

22 Well, Mr. Okada blew that up in a hurry, didn't he?  
23 Blew it up back in his deposition because he repudiated the  
24 entire theory. Mr. Okada had every opportunity when I was  
25 asking questions before he was coached on a break, whether it

1 be in his deposition or here or anywhere else, a plain, open  
2 question where he gave us, his words, the only reason why he  
3 was kicked out of that company. The question, "So is it your  
4 testimony, then, that Steve Wynn wanted to redeem Aruze USA's  
5 shares because he was afraid that you would look into past  
6 transactions?" Right there. Just say yes; right? Just say  
7 yes, that's their theme. Slow down, he told me, it's because  
8 if I became the leading shareholder, the biggest shareholder,  
9 he would have to listen to my views, perhaps that's what he  
10 was afraid of. That was his answer, Your Honor.

11 I gave him a chance to pull it back. "And that's  
12 the reason why you believe the shares of Aruze USA were  
13 redeemed," I asked. And here was the end to this pretext,  
14 this topic we have scorched the earth on. His answer, "There  
15 is no other reason." That should be the nail in certainly  
16 their prejudice coffin in this case. Takeuchi says, I need it  
17 because of the pretext, and Okada says, there's no pretext, he  
18 wanted me out. His words, there is no other reason, they  
19 wanted me out because then they would have to listen to my  
20 views. The other directors he said were yes men for Steve  
21 Wynn. He even went so far as to say that the directors  
22 couldn't have terminated him to keep him quiet about Cotai  
23 land because he didn't know anything about it. He started  
24 investigating that after he was out of the company. Isn't  
25 that an odd drama to present to this Court, that we want to

1 kick you out for something you don't know anything about?  
2 Seriously? Prejudice? That's the best that they brought in  
3 here. He admitted that the University donation -- never  
4 uttered a word that it was a bribe it was illegal, but he was  
5 very clear even here today that it was the timing, what if we  
6 don't have enough money to be philanthropic anymore, he said,  
7 quote, "Well, there was also the length of it, because the  
8 duration was to be for 10 years, and over the course of  
9 10 years there could be changes taking place in the world that  
10 might make it unsustainable," that was a long time to maintain  
11 that risk, and so it's for that reason that he objected.  
12 Didn't hear anything about a bribe, didn't hear anything about  
13 government, didn't hear anything about the Cotai land. We  
14 might not be able to afford it, Mr. Okada told us.

15           So then I just went to the heart with him, Your  
16 Honor. We had danced around the topics that the lawyers  
17 brought into this litigation. I just asked him, did, Mr.  
18 Okada, you personally suffer any harm, any prejudice from Wynn  
19 Resorts honoring and obeying the MPDPA; unequivocal, no  
20 waffling, none. Universal, same question; none. Aruze USA,  
21 same question; none. Unequivocal, no waffling until the  
22 lawyer answers started coming flying. He had every  
23 opportunity with me when I said, any harm, any prejudice, and  
24 the answer was no. So we know that this pretext issue as it  
25 relates here is useless. It doesn't offer anything, as their

1 own former executive and party to this case said.

2 Let me talk for a moment about the Freeh report. I  
3 know it goes to one of your questions if I were to wrap up  
4 anyway. So defendants make a specific claim of --

5 THE COURT: My questions for you are different.

6 MR. PISANELLI: Okay. Fair enough. But let me talk  
7 about it, because it's meaningful to me and to us.

8 They make a specific claim of prejudice over the  
9 redacted documents as it relates to Freeh. Now, respectfully,  
10 Mr. Krakoff in a matter of about 30 seconds said, the Freeh  
11 report has nothing to do with our prejudice, and then in  
12 response to your question said, the Freeh report should be  
13 excluded from this case. I wish I could write fast enough or  
14 read my own handwriting to get the exact words, but I believe  
15 Your Honor noticed it, as well. Here's why that position is  
16 not serious. Contrary to what Mr. Krakoff said, we did not  
17 say that it's only available. What we did say is that it's  
18 primarily where it comes from when there's a suggestion of  
19 impropriety in obtaining the evidence, and even then is used  
20 very rarely and almost never in circumstances like this for a  
21 civil case.

22 But here let's just talk about prejudice as it  
23 relates to their claim. The reason I asked Mr. Okada what I  
24 did is what Your Honor has already pointed out in the  
25 questions, is if you want any type of restriction, defendants,

1 on the Freeh report, you're going to have to tie it to this  
2 claim of prejudice and what happened in this case. So we know  
3 that half of the report has to do with the violation of the  
4 Philippines Constitution on the land purchase. In Mr. Okada's  
5 words, Wynn Macau has nothing to do with that. And if you  
6 just read it, you see that there is on evidentiary foundation  
7 that came from Wynn Macau having to do with that analysis.  
8 All of that analysis comes from their own records. So no  
9 claim of prejudice on that half of the analysis.

10 Fair, open question for discussion now, because we  
11 do have a different standard that occurred that Mr. Freeh was  
12 given Freeh access and no redactions and now there are  
13 redactions from our perspective. It's not something that I'm  
14 going to quibble over. But here's the important point about  
15 any type of evidentiary restriction as it relates to that  
16 report. Mr. Okada confirmed for us that they conducted two  
17 investigations on the entertainment expenses, one for Mr.  
18 Chertoff and one by Mr. Takeuchi. First of all, neither of  
19 them requested of Mr. Schall or anyone at the company, can I  
20 go into your company and look at the same exact records. They  
21 were produced anyway, so they already had the same exact  
22 records. But nobody said, can I see if there's something  
23 else. But, more importantly, have you heard one word, Your  
24 Honor, one word in this case that that portion of the Freeh  
25 report is inaccurate or in question? I gave Mr. Okada every

1 opportunity to say it, to tell me, where is it that you're  
2 prejudiced by redaction of documents. And his answer was very  
3 clear, one mistake, was his words in his deposition, one  
4 mistake Mr. Freeh made and that is believing, Mr. Okada  
5 claims, that his fingerprints were on them and that he was the  
6 one that approved them.

7           The Freeh report is perfectly accurate, Mr. Takeuchi  
8 says, but he had a different one mistake. He said, well, Mr.  
9 Freeh missed one of them, there was actually another one, he  
10 didn't pick up on that, another trip for government officials.  
11 That was it. He didn't say and nor did you ever hear in this  
12 case that we were wrong about who they were, what they spent,  
13 how much money they were given to gamble or shop, about the  
14 gifts that were given to them, nothing. Nothing at all. All  
15 you heard Mr. Okada say is, I fired them, fired them both.  
16 Why would you fire somebody if it was wrong? You'd be  
17 attacking us if it was wrong. No. He was creating his  
18 obvious defense in this case that, I had nothing to do with  
19 it, is his point.

20           And our answer to that, Your Honor, from a prejudice  
21 perspective is who cares, Mr. Okada, we didn't remove you, we  
22 didn't redeem your shares, we redeemed the shares of the  
23 company that permitted this type of business practice, Aruze  
24 USA. Aruze USA, Universal, and Mr. Okada were all in this  
25 together. Mr. Okada was removed as a director by the

1 shareholders, but the shares were redeemed of Aruze USA. So  
2 if he was truly correct, and I don't know that there's anyone  
3 in this room that believes this, that he had nothing to do  
4 with this, assume it to be true, so what, your company still  
5 did it, you fired people admitting your company still did it  
6 and therefore we're still subject to the business judgment and  
7 discretion of the board of directors to redeem the shares of  
8 the company that allows that type of practice.

9           So when we talk about the Freeh report there is  
10 nothing in question about the Freeh report, Your Honor. And  
11 talk about a perversion of the pursuit of the truth, they want  
12 the jury not to hear everything that happened on February  
13 12th, if we in fact get there. They want the jury to hear  
14 something, anything to crack the door open on the business  
15 judgment rule on analysis that occurred that day. Now, if  
16 there was something in question and documents were used on one  
17 side but you never got to see them on the other side,  
18 different discussion. Maybe if Mr. Freeh got documents and we  
19 never gave them to them, boy, that doesn't sound very fair,  
20 does it? But that didn't happen, either. They have every  
21 single piece of paper Mr. Freeh got. And they've offered  
22 nothing by way of prejudice in this case to suggest that  
23 there's more paper. They have nothing to suggest to you that  
24 Mr. Freeh was sent into that company with a goal of finding  
25 only incriminating evidence and ignoring exculpatory. The

1 only evidence that came in was from Jay Schall, who said he  
2 was given free access to anything and everything he wanted,  
3 the former director of the FBI and federal judge conducting an  
4 independent investigation. Sound like a guy that came in with  
5 predetermined conclusion? You'd better have some evidence  
6 before you make an allegation like that. Nothing.

7 And so I will take Mr. Krakoff's point. The Freeh  
8 report is detached from this proceeding. It has nothing to do  
9 with this proceeding. And therefore there should be no  
10 evidentiary sanction related to it, and there certainly can't  
11 be any argument that the Freeh report somehow some way fits  
12 into a prejudice analysis. Nothing to do with prejudice, Mr.  
13 Krakoff said. And he was exactly right.

14 I'm not going to spend a lot of time, respectfully,  
15 on Mr. Peek's point. And I'll tell you why, Your Honor. They  
16 spent one page on it in their supplemental brief and then put  
17 in a lot of --

18 THE COURT: A box.

19 MR. PISANELLI: -- machinations and an exhibit or an  
20 appendix. But one page in their brief.

21 THE COURT: Box.

22 MR. PISANELLI: Yeah. And it's not what we're here  
23 for. If we have asserted attorney-client privilege, okay,  
24 let's have that discussion, let's have that --

25 THE COURT: Well, you've got to admit it is probably



1 the sloppiest job we've seen since CityCenter.

2 MR. PISANELLI: I'll tell you this, Your Honor.  
3 Respectfully, I absolutely will not. And I'll tell you why.  
4 We heard Mr. Peek talk about tracing a document. And if you  
5 turn to our brief, you'll see in -- it's towards the end of  
6 our brief in single-paragraph form, the last one in  
7 particular, his team talking about a mistake that happened  
8 over and over again followed the wrong document. So, yes,  
9 there was a mistake on mischaracterizing a particular  
10 document. And then they followed the wrong one through the  
11 logs, claiming to have been so confused because they couldn't  
12 find the right one because they were following the wrong one.  
13 As it relates to Mr. Rubenstein claiming that somehow some way  
14 we must be nefarious and bad people because, look, we put Mark  
15 Rubenstein's name on an attorney-client privileged document  
16 after he wasn't there anymore. But you know why you don't  
17 hear comments like this from Mr. Miller? Because Mr. Miller  
18 is in the trenches with Ms. Spinelli, and he knows, because he  
19 does this, that the metadata does that. The metadata will  
20 change as the document is produced. It doesn't mean that it  
21 was or was not Mark Rubenstein. What it means is that when  
22 the document gets processed the date can change or even the  
23 custodian can change. The --

24 THE COURT: Even people like me know that.

25 MR. PISANELLI: Right.

1 THE COURT: Okay. So --

2 MR. PISANELLI: And so finally, on the --

3 THE COURT: But you've got to admit, though, we've  
4 changed descriptions, we've changed categories, we've had  
5 problems with lengths of documents, there are problems with  
6 the log.

7 MR. PISANELLI: That length of document, you know  
8 what that is, Your Honor? It was a compilation of documents.  
9 And the first document that he was claiming to be confused by  
10 was the first of a compilation. There is an explanation in  
11 there for every one of them. And what exhibit is this? I  
12 know I'm defensive about it. I'll concede that. But what  
13 exhibit this is is an extraordinary time amount of time and  
14 energy in particular by Ms. Spinelli and Mr. Miller in getting  
15 what each party needed. One thing to come in here and say,  
16 look at the mistake and never an attempt to correct it.  
17 Another thing to say, okay, this is cumbersome and it's  
18 voluminous but what it shows is that the parties were working  
19 hard, hard to make sure that the other side gets what they  
20 needed. And do mistakes get made? Absolutely they do. Is  
21 there obfuscation or attempt to cloud so they can't find  
22 anything? That I reject and I will always reject. That never  
23 happened, not once, not ever. These parties -- and I'm the  
24 lucky one, because I'm not involved in it. But I never would  
25 ever stand before you and criticize the work Mr. Miller has

1 done on it, because, number one, it's over my head, and,  
2 number two, I wouldn't suggest that his side is doing what Mr.  
3 Peek is accusing us of. Ms. Spinelli and Mr. Miller have had  
4 more meet and confers on this case than I've ever had in my  
5 entire career to try and make sure that the other side is  
6 getting what they need. It was not good faith, in my view,  
7 for Mr. Peek to stand up and say that these attempts to meet  
8 and confer and to fix these problems, problems, by the way,  
9 that were actually fixed but he just doesn't know about, I  
10 don't think that was evidence of that. I think it's actually  
11 evidence of good faith.

12 THE COURT: I didn't say bad faith. I said sloppy.

13 So let's go to my questions and how they relate to  
14 you. When we were in the hallway yesterday after Mr. Okada  
15 finally consented to the release of his personal information  
16 by Wynn Macau for this litigation Ms. Spinelli told me that  
17 there was a drive in a safe in Macau that would be brought  
18 back. What is your estimate and your team's estimate as to  
19 how many of the documents off of the approximate 500,  
20 approximately hundred that are highly confidential redacted  
21 and approximate 2,000 confidential redacted will be produced  
22 as a result of the fact that Mr. Okada is no longer a problem  
23 in the consent world?

24 MR. PISANELLI: Well, I will respectfully take issue  
25 with your word choice on not being a problem. We believe two

1 things happened here that have to be addressed. One is that  
2 Mr. -- as I pointed out, Mr. Okada waffled on the consent and  
3 put a qualifier in there.

4 THE COURT: Not when he answered my question. He  
5 may with you, but with me he was pretty -- once I told him he  
6 didn't get to argue with me and I wasn't answering his  
7 questions he answered.

8 MR. PISANELLI: Wynn Macau also, we understand,  
9 requires written consent. So I communicated with Mr. Kunimoto  
10 yesterday just to give it to us so that we don't have any more  
11 gamesmanship. Just like you said, Her Honor got the  
12 confession that he consents. Make sure that we're not going  
13 to have frivolous litigation in Macau, give us the written  
14 consent. So we're waiting on that. That should clean it up.  
15 If they don't give us the written consent, that will tell us  
16 everything we need to know. And so, as you expected, I am  
17 sure, to answer your question I will cede the podium to Ms.  
18 Spinelli.

19 THE COURT: Okay. Well, don't cede the podium yet.  
20 We'll come back to that one. The issue about Mr. Bangsil,  
21 what impact do you believe that litigation in Macau to have  
22 upon this document issue?

23 MR. PISANELLI: Well, I think Mr. Bangsil's lawsuit  
24 is like any other, that we will to span for a violation. My  
25 point is not that that litigation directly impacts these

1 requests. I don't know the answer to that question.

2 THE COURT: Okay. That was --

3 MR. PISANELLI: My point was only that this team  
4 that wants equitable sanctions is coordinating to have us  
5 penalized on the other side by complying with their own  
6 requests.

7 THE COURT: Given the ODP's change in enforcement  
8 how do I balance the improper removal by Wynn of protected  
9 information in conjunction with the Freeh report and Okada's  
10 right to test the basis of the investigation?

11 MR. PISANELLI: Okay. That's the evidentiary  
12 failure that I have -- I can't say I impose, but that's the  
13 evidentiary failure that I pointed out as it relates to the  
14 defendants. In order -- that balancing necessarily assumes  
15 that the defendants met their burden by coming in and showing  
16 that there's an inherent unfairness in the Freeh report. When  
17 they concede that half of the analysis on the Philippines land  
18 is unrelated to what occurred and that there's nothing wrong  
19 through their own two investigations, I think the balance is  
20 that nothing need be done. The most I could ever possibly  
21 imagine is what we've put in our brief, Your Honor, is to say  
22 that if we redacted something and then stand up and object for  
23 lack of foundation because they don't know who a particular  
24 recipient is, okay, maybe that would be an unfair result  
25 stemming from the fact that we have to comply with foreign law

1 for a party -- an entity who is not a party to this case. I  
2 said at the beginning that we cannot ever lose sight of the  
3 fact that Wynn Macau is not a party to this case. And I think  
4 that's part of this answer. When we're doing the balancing of  
5 a separate entity, Wynn Resorts, a 75 percent shareholder, of  
6 a document that arguably is at the center of this hurricane  
7 that we call a lawsuit, the Freeh report, is going to be  
8 damaged and affected by some other party's compliance who's  
9 not even a party in this case, compliance with their own law,  
10 there's something inherently and dramatically unfair about  
11 that, in particular when no one is disputing the accuracy of  
12 -- they're only disputing work orders inside of their company  
13 should have been fired for it. So, other than foundational  
14 aspects of some of the emails or other documents, it doesn't  
15 seem to me that anything in light of the totality of what's  
16 been presented to you, anything beyond that would be wholly  
17 inequitable, we believe.

18 THE COURT: Okay. So with respect to the consent  
19 issues and the information I ordered long, long ago, because  
20 of your failure to disclose information related to those you  
21 had attempted to obtain consents from or those you chose not  
22 to ask for consents, can you tell me why it wouldn't be  
23 appropriate for me to exclude you from calling those  
24 individuals as witnesses or using any documents related to  
25 those witnesses or those individuals as evidence?

1           MR. PISANELLI: Because it is again imposing upon us  
2 an obligation outside of our control. Let's assume for the  
3 sake of discussion -- this is not true, but for the sake of  
4 discussion -- one of our board members who voted, not familiar  
5 with Macau law, nervous about the whole thing, just says, I'm  
6 not giving consent, I'm not -- I'm an independent director, I  
7 run my own company, for the sake of discussion, a person key  
8 to the story that must be presented to this jury, not an  
9 employee of ours, and there's nothing I can do to get it. Is  
10 it fair to us, Wynn Resorts, who cannot control a person, to  
11 now say, your pursuit of the truth, Wynn Resorts, is going to  
12 be restricted because of what that person decided for their  
13 own protection? And that is not an unrealistic hypothetical.  
14 I'm doing my best not to violate anyone's rights, but it is  
15 not an unrealistic hypothetical.

16           THE COURT: Okay. My last issue for you is the  
17 estoppel issue, whether we call it collateral estoppel or  
18 judicial estoppel. I take it from your comments that you  
19 believe that the dismissal of the action in Macau acts as sort  
20 of a death knell --

21           MR. PISANELLI: We do.

22           THE COURT: -- for the Okada parties.

23           MR. PISANELLI: We do in two respects. One is  
24 broadly, as if in any other litigation it would apply here,  
25 because they litigated the same exact issues in another forum,

1 but also for our limited purpose here it's an issue that  
2 relates to prejudice. You had another case, you could have  
3 been doing things somewhere else to gain evidence of this  
4 fanciful theory of a connection between two different  
5 transactions that are unrelated, you chose to sit on your  
6 hands and do nothing. There's consequences to that that  
7 shouldn't fall on us. That falls on defendants for that  
8 choice.

9 THE COURT: All right. Thank you.

10 MR. PISANELLI: Thank you.

11 Do you want to hear from Ms. Spinelli on your first  
12 question?

13 THE COURT: No. It's okay.

14 Mr. Krakoff, you have not to exceed 10 minutes.

15 DEFENDANTS ARUZE PARTIES' REBUTTAL

16 MR. KRAKOFF: Thank you, Your Honor.

17 First point, Mr. Pisanelli says, well, no  
18 wilfulness, no prejudice because we didn't go to the Macau  
19 Government to try to get documents from them, we didn't ask  
20 for a letter rogatory. One more excuse by Wynn. It's another  
21 attempt to deny responsibility. Wynn conveniently -- and Mr.  
22 Pisanelli conveniently neglect that for two years in this  
23 litigation, Your Honor, through five court orders Wynn never  
24 said it didn't have control of these documents and they  
25 promised to produce them in this court over and over and over



1 again. So, you know what, shame on us for taking Wynn Resorts  
2 at its word.

3 As to -- then they say, well, we should have gone to  
4 Edmund Ho and to others to get their consents, to ask for  
5 their consents. Another false narrative. These are their  
6 documents. We don't know whose names have been redacted.  
7 They could have asked us, they could have said, go and get  
8 some consents. They could have asked us, get consent for your  
9 employees. Again, Your Honor, despite what Mr. Pisanelli  
10 stood here and said, they never asked us for consents from  
11 anyone other than Mr. Okada.

12 Mr. Pisanelli says, well, you know, this land  
13 concession in Macau in the Cotai Strip and the contribution,  
14 those were years apart, there's no connection. Not so. What  
15 he neglected to tell you, Your Honor, is that land concession,  
16 it started out in 2005-2006. That's when they were out there  
17 trying to get it for the first time. They didn't get it until  
18 2012. It continued throughout this entire period. And then  
19 they couldn't get it. They couldn't get it 2008, '09, '10.  
20 Then we come into 2011. Pretty convenient, Your Honor, pretty  
21 convenient that on April 18th, 2011, the board votes to make  
22 an enormous -- by all accounts enormous contribution over  
23 10 years, nothing close to what this company had ever done  
24 before, \$135 million to the UMDF. And guess what. That's  
25 when they started to get movement on their land concession.

1 That's exactly when it happened. That's not a coincidence,  
2 Your Honor. It is not a coincidence. And so for him to say,  
3 well, there's no connection, most certainly there was. That's  
4 when Mr. Okada said, you know, he did object. And we move  
5 into the fall, and what happened then? In terms of their  
6 pretext he was making trouble. They wanted to get rid of him.  
7 In September Mr. Wynn and Ms. Sinatra told him directly, get  
8 out of here or we're going to redeem your shares. They hired  
9 other investigators during that summer to look at Mr. Okada.  
10 But, you know what, they didn't find anything. So then they  
11 get a lawyer to threaten him in October, get out or we're  
12 going to take your shares. Mr. Shapiro.

13 And then what did they do? They hire Mr. Freeh.  
14 What about Mr. Freeh? Nothing about Mr. Freeh, you know,  
15 well, his investigation was independent. You know what, Your  
16 Honor, that was a bogus investigation, and I'm here to tell  
17 you why. Because we heard it from Mr. Freeh, the former  
18 director of the FBI, a very important man. But you know what,  
19 he was totally compromised here. And we heard that in this  
20 case. Mr. Freeh in his very first meeting days after he was  
21 hired by Wynn Resorts, what did he do?

22 THE COURT: That's not part of my record. The  
23 objection's sustained.

24 MR. KRAKOFF: Well, I'm responding --

25 THE COURT: I understand.

1 MR. KRAKOFF: I'm responding to what Mr. Pisanelli  
2 said.

3 THE COURT: Hey, you know what, I don't really care  
4 how credible he is or not for purposes of today's hearing. I  
5 may care later.

6 MR. KRAKOFF: Well, let me just say this, because it  
7 links to another point Mr. Pisanelli said, and that is, well,  
8 they did their own investigation. Mr. Chertoff. You know  
9 what, Mr. Chertoff did do an investigation. Mr. Freeh was  
10 totally compromised because in his first meeting with Mr. Wynn  
11 he offered him more business. All right.

12 THE COURT: The objection is sustained again.

13 Okay. Let's talk about the prejudice or any other  
14 issues you want in the next couple of minutes while you wrap  
15 up.

16 MR. KRAKOFF: Your Honor, he says, well, you know,  
17 there's -- the only reason that Mr. Okada was thrown out was  
18 because he owned more shares. It's remarkable, Your Honor,  
19 for Mr. Pisanelli to stand here with a straight face and to  
20 forget that Mr. Okada said there was a lot more than that, as  
21 I already -- as I already argued to the Court. There was the  
22 contribution, there was the demand for board members, there  
23 was the lawsuit. So that is another false narrative.

24 He says that the -- then Mr. Pisanelli said, well, I  
25 want it both ways, that, well, the Freeh report has nothing to

1 do with this. It most certainly does. How many times did I  
2 argue -- did I say the Freeh report is the prejudice? The  
3 Macau documents that were given to Mr. Freeh to prepare the  
4 only piece of evidence that the board relied upon to redeem  
5 and throw out Mr. Okada, that was the Freeh report. Freeh  
6 report is not connected to our pretext. That's my point.  
7 That's what I said. It was a total distortion of what I said,  
8 Your Honor. Besides which Mr. Schall himself said, well, Mr.  
9 Freeh was out to get inculpatory evidence. That's not an  
10 independent investigation whatsoever. He forgets that Mr.  
11 Chertoff, by the way, also concluded that Freeh's  
12 investigation was hopelessly flawed. He mentions it --

13 THE COURT: No. We talked --

14 MR. KRAKOFF: No, no. He referred to that  
15 investigation.

16 THE COURT: No. The Chertoff thing I'll let him do.  
17 I'll let him do the Chertoff thing, because we've talked about  
18 Mr. Okada's investigation of his own. So can we finish up,  
19 please.

20 MR. KRAKOFF: Yes, Your Honor.

21 THE COURT: Thank you.

22 MR. KRAKOFF: I'll just say this about the Chertoff  
23 report that he did. He didn't do an investigation. He did a  
24 report about that -- about what Freeh did, about the bona  
25 fides of his investigation. That was not an investigation of

1 the facts here at all. And that was specifically what he said  
2 and what he's testified to. He ignored -- he said that among  
3 other things Mr. Freeh ignored two affirmative defenses under  
4 the Foreign Corrupt Practices Act and that he provided  
5 absolutely no due process whatsoever.

6 MR. PISANELLI: I don't know where this is coming  
7 from.

8 THE COURT: Anything else?

9 MR. KRAKOFF: If you hadn't raised -- never mind.  
10 Sorry.

11 THE COURT: Anything else you'd like to tell me?

12 MR. KRAKOFF: I apologize for that.

13 THE COURT: Mr. Krakoff, anything else you want to  
14 tell me?

15 MR. KRAKOFF: No, Your Honor.

16 THE COURT: All right. Thank you.

17 If anyone wants to brief the issue related to  
18 estoppel only, limited purely to estoppel and the impact, I  
19 think it's Exhibits 162 and 163 are dismissal, I may be wrong,  
20 the impact of that given the nature of the allegations made in  
21 the Macau litigation and the impact of the dismissal, I will  
22 take that brief if it is received by Monday at noon.

23 MR. KRAKOFF: Thank you, Your Honor.

24 MR. PEEK: I take it I don't get to have any  
25 rebuttal, Your Honor.

1 THE COURT: No. You were just on documents.

2 MR. PEEK: Well, there was a comment about  
3 documents, about Mr. Miller and Ms. Spinelli, and I want to  
4 comment on that. But there's no record of that.

5 THE COURT: I have myself witnessed the hard work  
6 that Mr. Miller and Ms. Spinelli have done in their meet and  
7 confers, and I have had to deal with motion practice from both  
8 of them related to their best efforts to reach an agreement  
9 but not be successful in reaching it.

10 MR. PEEK: Well, I think, Your Honor, what my  
11 comments were is I take offense that my presentation by my  
12 team, by my team, somehow is outweighed by what Ms. Spinelli  
13 and Mr. Miller did.

14 THE COURT: Okay. Well, I've got your box, because  
15 I told you I would look at what you filed in the box, and I'm  
16 going to put it down in my office on the table and I'm going  
17 to sit there and look at it tomorrow, okay.

18 MR. PEEK: Thank you.

19 THE COURT: All right. So if you could put it under  
20 advisement and set it for next Friday for decision. Not this  
21 Friday, since I'm letting them file a supplemental brief on  
22 the issue of estoppel. My brain is numb. And I had no  
23 Japanese interpreters today, and I'm still numb.

24 Anything else?

25 Would anyone like your exhibits that were not

1 offered to be returned?

2 MS. SPINELLI: Yes, Your Honor.

3 MR. PEEK: Yes, please, Your Honor.

4 THE COURT: Sorry. I had to give the hint, because  
5 you weren't answering quick enough.

6 THE CLERK: And, Your Honor, two more questions.

7 THE COURT: Just ask them.

8 THE CLERK: On August 23 there were three depo clips  
9 that we played for Steven Wynn, and then they were withdrawn.  
10 Do you want the transcripts of them, or do I keep it for the  
11 record?

12 THE COURT: Were they played as part of the  
13 evidentiary hearing?

14 THE CLERK: Yes.

15 THE COURT: Then we will keep it as part of the  
16 record.

17 MR. PISANELLI: Well, they were withdrawn, so --

18 MS. SPINELLI: We're stuck.

19 THE COURT: They were withdrawn, but they were --

20 MR. PISANELLI: I thought you struck them, too.

21 THE COURT: Did I strike them?

22 MS. SINATRA: A few of them, not all of them.

23 THE COURT: I still have to keep them if I struck  
24 them. They're part of the record.

25 MR. PEEK: Some of it was admitted, Your Honor.

1 THE COURT: Well --

2 MR. PEEK: But I think they're right that some was  
3 not.

4 THE COURT: Right. But even if I struck it I have  
5 to keep it as part of the record even though it shows as  
6 stricken. Because at some point it was part of the record for  
7 a few minutes. So if somebody disagrees with my striking, you  
8 can deal with that with the folks in Carson City on another  
9 writ. How many are you up to now? Because I've got two  
10 orders on my desk.

11 THE CLERK: And then on the exhibits that Mr. Peek  
12 proffered and some of them were admitted, but on August 23 you  
13 had agreed to [inaudible] seal the ones that were confidential  
14 and highly confidential. So would that apply to any exhibits  
15 admitted that are marked confidential or highly confidential?

16 THE COURT: Not unless I said so.

17 THE CLERK: Unless -- I don't know if -- the  
18 plaintiff's list does not have [inaudible].

19 THE COURT: If I admitted it and I did not say it  
20 was sealed, it's not sealed.

21 Was there anything anybody wants sealed that I  
22 didn't previously say was sealed?

23 MS. SPINELLI: No, Your Honor.

24 MR. KRAKOFF: No, Your Honor.

25 MR. PEEK: No, Your Honor.



1 THE COURT: All right. Anything else? You might  
2 notice we're overly paranoid because of what happened in  
3 Jacobs versus Sands.

4 THE CLERK: And then the depos, Your Honor, you had  
5 said that the parts that were read into the record --

6 THE COURT: Are public.

7 THE CLERK: -- are public, but they [inaudible]  
8 separate out in the transcript? Can I just seal the whole --

9 THE COURT: You're going to seal the whole  
10 transcripts. The parts that were read into the record are  
11 part of the record that Jill made, and she will have -- make  
12 sure Flo types it.

13 THE CLERK: Okay. That's all, then.

14 THE COURT: Anything else?

15 Or whoever Jill is able to get to type this  
16 monstrosity.

17 Okay. Anything else?

18 MR. PISANELLI: No, Your Honor.

19 MR. KRAKOFF: No, Your Honor.

20 THE COURT: Is anyone coming in the rest of this  
21 week, or am I not seeing you till next Monday?

22 MR. PISANELLI: Monday, I believe.

23 MR. PEEK: See you Monday, Your Honor.

24 THE COURT: Goodnight, everyone.

25 THE PROCEEDINGS CONCLUDED AT 4:05 P.M.

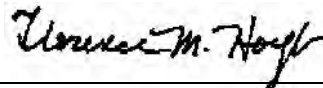
**CERTIFICATION**

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

**AFFIRMATION**

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

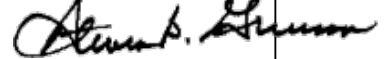
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A handwritten signature in black ink, appearing to read "Florence M. Hoyt", written over a horizontal line.

FLORENCE M. HOYT, TRANSCRIBER

10/18/17

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31 **DISTRICT COURT**

32 **CLARK COUNTY, NEVADA**

33 WYNN RESORTS, LIMITED, a Nevada  
34 corporation,

35 Plaintiff,  
36 v.

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

41 Defendants.

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

**NOTICE OF FILING MR. KAZUO  
OKADA'S MPDPA CONSENT**

Electronic Filing Case

Hearing Date:  
Hearing Time:

**HOLLAND & HART LLP**  
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1 AND ALL RELATED CLAIMS.  
2

3 PLEASE TAKE NOTICE that Defendant Kazuo Okada has signed his written MPDPA  
4 Consent, on the 18th day of October, 2017. A copy of the signed MPDPA Consent is attached  
5 hereto as Exhibit A.

6 DATED this 19th day of October 2017.  
7

8 By /s/ Bryce K. Kunimoto  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 19th day of October 2017, a true and correct copy of the foregoing **NOTICE OF FILING MR. KAZUO OKADA'S MPDPA CONSENT** was served by the following method(s):

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

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EXHIBIT A

EXHIBIT A

**Consent Request**

Wynn Resorts, Limited and its representatives, the law firm of Pisanelli Bice PLLC and FTI Consulting, Inc., will be collecting and processing certain documents from the Macau Special Administrative Region to be produced in the action styled *Wynn Resorts, Limited v. Kazuo Okada, et al.*, Case No. A-12-656710-B ("Action"), pending in Clark County, Nevada, United States of America.

By this message, we respectfully request that you provide your consent under the Macau Personal Data Protection Act, Macau law no. 8/2005, to the collection, processing and production of personal data pertaining to you in the Action. It is entirely within your discretion to refuse to provide such consent.

I have read, understood and freely agreed to the above of my own free will.

Signature

Date

Name

Title (or former title, if no longer with the company)



同意要請

米国ネバダ州クラーク郡で係争中のウィン・リゾート・リミテッド対岡田ら、事件番号A-12-656710-B（以下「訴訟」と言います）の訴訟に提出すべく、ウィン・リゾート・リミテッドおよびその代理であるピサネリ・バイス法律事務所とFTIコンサルティングは、マカオ特別行政区から特定の文書を収集し、処理します。

本文書により、私どもは本訴訟において、貴殿に関する個人情報を収集し、処理し、提出することに関して、貴殿のマカオ個人情報保護法no. 8/2005上の同意を求めます。貴殿次第で、その同意を拒否することができます。

私は上記を読み、理解し、私の自由意思に基づき同意しました。

署名

岡田 和夫

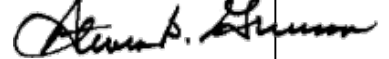
年月日

10/18/17

氏名

Kazuo Okada

役職（もし、会社と関係ない場合は、元の役職）



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31 **DISTRICT COURT**

32 **CLARK COUNTY, NEVADA**

33 WYNN RESORTS, LIMITED, a Nevada  
34 corporation,

35 Plaintiff,  
36 v.

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

41 Defendants.

42 AND ALL RELATED CLAIMS.

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

**DEFENDANTS' ERRATA REGARDING  
CLOSING ARGUMENT IN SUPPORT  
OF DEFENDANTS' MOTION FOR  
SANCTIONS**

Electronic Filing Case

Hearing Date:  
Hearing Time:

Defendants respectfully submit the following errata regarding their October 17, 2017 closing argument in support of their Motion for Sanctions. During the closing argument, the Court asked whether Defendants “have a proposal as to the language of adverse inference[s]” that Defendants seek. *See* Oct. 17, 2017 Hr’g Tr. at 34. Defendants included such a proposal in paragraphs 132 through 134 of their Proposed Findings of Fact, Conclusions of Law, and Order Regarding Defendants’ Motion for Sanctions (“Proposed FFCL”), submitted on July 24, 2017. As explained in the Proposed FFCL, the documents at issue in Defendants’ Motion for Sanctions are responsive to the Defendants’ RFPs on their pretext claim concerning the specific transactions that Wynn Resorts sought to prevent Mr. Okada from discovering, namely (1) Wynn Resorts’ \$135 million donation in 2011 to the UMDF, an entity closely connected to senior Macau government officials, shortly before Wynn Macau received the long-awaited and extremely valuable Cotai land concession; and (2) Wynn Resorts’ payment of \$50 million in 2008 to Tien Chiao, an entity closely connected to Edmund Ho (then Macau’s Chief Executive) for the purpose of pursuing the Cotai land concession.

Accordingly, as a result of Wynn Resorts’ willful and prejudicial failure to comply with the November 1, 2016 Order to produce these documents, Defendants are entitled to an adverse inference that the improperly redacted and withheld documents would be adverse to Wynn Resorts, would contradict Wynn Resorts’ denials that these transactions were undertaken for an improper purpose, and would substantiate the Defendants’ pretext theory. In particular, Defendants requested the following inferences in paragraphs 132 to 134 of their Proposed FFCL:

(1) “an adverse evidentiary inference that the documents would show that Wynn Resorts’ \$135 million donation to the UMDF was for the purpose of obtaining Wynn Macau’s Cotai land concession from the Macau government in 2011”;

(2) “an adverse evidentiary inference that the documents would show that Wynn Macau’s \$50 million payment to Tien Chiao directly benefited relatives of Chinese government officials that had control over governmental decisions directly affecting Wynn Macau and was

1 made for the purpose of obtaining benefits from the Macau government, including the Cotai  
2 land concession”; and

3 (3) “an adverse evidentiary inference that Wynn Resorts’ redemption of Aruze USA’s  
4 stock was effectuated to prevent Mr. Okada from learning the full extent of, and the resulting  
5 benefits received from, the \$135 million payment to UMDF, the \$50 million payment to Tien  
6 Chiao, and other undisclosed improprieties in Macau.”

7 These adverse evidentiary inferences are exactly the “lesser sanction[s]” envisioned in  
8 *Young v. Johnny Ribeiro Bldg. Co.*, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990) (listing  
9 “alternative, less severe sanctions, such as an order deeming facts relating to improperly  
10 withheld or destroyed evidence to be admitted by the offending party”).

11 DATED this 20th day of October 2017.

12  
13 By /s/ Robert J. Cassity

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of October 2017, a true and correct copy of the foregoing **DEFENDANTS' ERRATA REGARDING CLOSING ARGUMENT IN SUPPORT OF DEFENDANTS' MOTION FOR SANCTIONS** was served by the following method(s):

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

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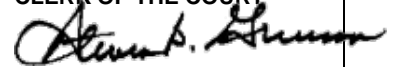
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada  
corporation,

Plaintiff,

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

**DEFENDANTS' POST-HEARING BRIEF  
REGARDING EXHIBIT 162 IN  
SUPPORT OF DEFENDANTS' MOTION  
FOR SANCTIONS**

Electronic Filing Case  
Hearing Date:  
Hearing Time:

Holland & Hart LLP  
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1     **I.     INTRODUCTION**

2           Defendants’ lawsuit in Macau has no bearing on this sanctions proceeding.<sup>1</sup> The issues  
3 being litigated in this sanctions proceedings are whether WRL should be sanctioned for its failure  
4 to follow orders of this Court, whether WRL has control over the Macau documents, whether its  
5 failure to produce the documents was willful, and whether Defendants have been harmed as a  
6 result. *None of these issues were ever litigated in the Macau lawsuit.* Nor could they have  
7 been, given that they concern US law. Instead, the Macau lawsuit concerned only Macau law – it  
8 concerned whether Defendants could obtain damages from WRM for the redemption as a result  
9 of the fact that WRM violated the MPDPA when it gave unredacted documents to Louis Freeh (a  
10 fact no party contested). The Macau court dismissed that lawsuit on the pleadings on narrow  
11 procedural grounds, finding that Defendants lacked standing to pursue the MPDPA claim, and  
12 finding that Defendants should instead sue to assess the validity of the resolutions adopted by the  
13 WRL Board on February 18, 2012 to obtain damages for the redemption.

14           Moreover, the Macau lawsuit is irrelevant here because Defendants had no ability or  
15 opportunity in that lawsuit to obtain any of the Macau documents at issue in this sanctions  
16 proceeding. WRL’s claim that Defendants “could have been doing things” to obtain documents  
17 in the Macau lawsuit but instead “chose to sit on [their] hands and do nothing” is false. Oct. 17,  
18 2017 Hr’g Tr. at 102-103. Under Macau law, parties are not entitled to discovery until a judge  
19 rules on the pleadings. The judge here dismissed the Macau lawsuit on the pleadings, leaving  
20 Defendants with no opportunity to obtain any documents from WRM. Even if Defendants’  
21 lawsuit had not been dismissed, Defendants would not have been able to obtain the Macau  
22 documents at issue here because the scope of document discovery available in Macau is  
23 extraordinarily limited, with parties only able to obtain from an adversary documents they could  
24 have specifically identified in advance.

25           Estoppel – whether defined as judicial estoppel, issue preclusion, or claim preclusion – is

26 \_\_\_\_\_  
27 <sup>1</sup> “Defendants” refers to Universal Entertainment Corp., Aruze USA, Inc., and Mr. Okada. “WRL” refers  
28 to Wynn Resorts, Limited. “WRM” refers to Wynn Macau, Limited and Wynn Resorts (Macau), S.A.  
“MPDPA” refers to the Macau Personal Data Protection Act. “Macau documents” refers to the documents  
covered by the Court’s November 1, 2016 Order.



1 a narrow doctrine under Nevada law given the dramatic effects it can have on a party's claims. In  
2 the circumstances we have here – where the foreign litigation did not concern any of the issues  
3 presented in the US proceeding, where the foreign court did not rule on any of the issues  
4 presented in the US proceeding, where Defendants had no opportunity to obtain any of the  
5 documents at issue in the US proceeding – no doctrine of estoppel could ever apply.

## 6 **II. FACTUAL BACKGROUND**

### 7 **A. Defendants File an MPDPA Complaint Based on the Freeh Report**

8 In February 2015, Defendants filed a lawsuit in Macau against WRM, Mr. Wynn, Marc  
9 Schorr, Wong Chi Seng, and Linda Chen (together, the “WRM parties”). Ex. 162 (July 11, 2017  
10 Decision of Civilian Tribunal of Lower Court) (WYNN00103137-151) at 1; Sa Aff. ¶ 2.<sup>2</sup> WRL  
11 was not a party to that lawsuit. Ex. 162. Defendants alleged that WRM violated the MPDPA  
12 rights of certain Philippine nationals – Rodolfo Soriano, Efraim Genuino, Cristino Naguiat, Ed de  
13 Guzman, Francis Hernando, and other PAGCOR employees and their relatives – when it gave to  
14 Louis Freeh unredacted documents that contained the personal information of those Philippine  
15 nationals. Ex. 162 at 3. Defendants alleged further that the unredacted documents were used to  
16 prepare the Freeh Report and justify the redemption of Aruze USA's shares, and as a result,  
17 Defendants sought damages for the redemption based on that MPDPA violation. Ex. 162 at 3.  
18 Defendants also sought dissolution of WRM on the basis that the Cotai land transaction and the  
19 \$135 million donation to the University of Macau Development Foundation were unlawful  
20 transactions. Ex. 162 at 2.

21 After Defendants served all the WRM parties in that lawsuit, the WRM parties filed a  
22 responsive pleading on May 17, 2016. Sa Aff. ¶ 3. Each side filed one more answer –  
23 Defendants on July 18, 2016, and the WRM parties on September 13, 2016. Sa Aff. ¶ 3. Neither  
24 Defendants nor the WRM parties made any other filings in that lawsuit. Sa Aff. ¶ 3.

### 25 **B. The Macau Court Dismisses Defendants' Complaint**

26 On July 11, 2017, the Macau court dismissed Defendants' claims. Ex. 162. The court  
27 dismissed the MPDPA claim on the basis that the immediate cause of the redemption was the

28 <sup>2</sup> The affidavit of Paulo Araújo e Sá is attached as **Exhibit A**.

February 18, 2012 resolutions of the WRL Board, and advised Defendants to instead “file [a] lawsuit . . . to query the effectiveness of [those] resolution[s].” Ex. 162 at 10 (“We may imag[in]e even if the [WRM parties] made a conduct violating the personal information protection law, the [February 18, 2012] board meeting could [have led to] a resolution on not making forced redemption of the shares. . . . Based on such ground, the court holds that there is no adequate cause-effect relation between the illegal conduct and the damage suffered.”). The court also dismissed the MPDPA claim on the basis that Defendants lacked standing both because Universal and Aruze USA are companies rather than natural persons and so do not have any rights under the MPDPA, and also because none of the Defendants were seeking to vindicate their own MPDPA rights, but the rights of separate Philippine nationals not parties to the lawsuit. *See* Ex. 162 at 11 (“What should be stressed is that the personal information protected by No. 8/2005 Code is that of natural person. . . . [T]he objective of protection is the information concerned person, and therefore, the [Defendants] should not be deemed as the person that is entitled to ask for damage indemnity as set forth in Paragraph 1.”).

The Macau court also dismissed Defendants’ claim seeking dissolution of WRM on the basis that Defendants had failed to demonstrate that dissolution would remedy any harm suffered by Defendants. *See* Ex. 162 at 7 (“[T]he court has not understood up to now what interests the plaintiffs can get or to what extent their rights of credits can be better protected once the company is declared to dissolve.”). The Macau court specifically withheld decision on the lawfulness of the transactions raised by Defendants. *See* Ex. 162 at 8 (“[E]ven if they violate law, public order or good customs . . . they will not lead to the consequence of dissolution of the company.”).

**C. Defendants Had No Opportunity to Conduct Document Discovery in Macau**

At the time the lawsuit was dismissed, Defendants had not had any opportunity to obtain documents from the WRM parties. *Sa Aff.* ¶ 5. Under the Macau Civil Procedure Code (“MCPC”), neither side has an opportunity to obtain any documents from its adversary before the judge rules on the pleadings. *Sa Aff.* ¶ 5. And because the judge here dismissed Defendants’ claims at the pleading stage, Defendants had no opportunity to conduct document discovery and did not obtain a single document from WRM. *Sa Aff.* ¶ 5.

Moreover, even if Defendants’ lawsuit had not been dismissed, Defendants would never have had an opportunity to obtain all of the Macau documents at issue in this sanctions proceeding given the limited nature of document discovery in Macau civil proceedings. Sa Aff. ¶ 6. As an initial matter, the scope of discovery is limited at the outset by the judge to documents concerning only those facts the judge deems to be “controversial.” Sa Aff. ¶ 6 (citing MCPC Article 430). At most, the judge can then order the production of specific documents concerning specific facts, and unless the judge orders otherwise, a party has only 10 days to produce those specific documents. Sa Aff. ¶¶ 7-9 (citing MCPC Article 431). If a party wants to obtain a document from its adversary, it must identify a specific document and request the court to order its production. Sa Aff. ¶ 8 (citing MCPC Article 455). As a result, the limited nature of document discovery in Macau stands in stark contrast to the broad document discovery available under the Nevada rules, and Defendants would not have been able to obtain the Macau documents through the Macau lawsuit, regardless of the outcome of that lawsuit. Sa Aff. ¶ 10.

### III. ARGUMENT

The Macau court’s dismissal of Defendants’ lawsuit has no bearing on this sanctions proceeding. First, judicial estoppel – which prevents a party from taking contrary factual positions in different lawsuits – does not apply because Defendants’ lawsuit was dismissed, and that doctrine is only relevant when a party succeeds on the merits in a different lawsuit. *See infra* Sec. III.A. Second, issue preclusion – which precludes a court from deciding an issue already litigated and decided in a separate proceeding – does not apply because none of the matters at issue in this sanctions proceeding were actually litigated in Macau. *See infra* Sec. III.B. Third, claim preclusion – which prevents a party from bringing the same claims in two different forums – does not apply because Defendants could not have brought the claims at issue in the sanctions proceeding in Macau. *See infra* Sec. III.C.

#### A. **No Judicial Estoppel Based on the Macau Lawsuit**

*First*, judicial estoppel does not apply. Judicial estoppel is “an extraordinary remedy . . . invoked to protect the integrity of the justice system.” *Nev. Tax Comm’n. v. Fed. Ins. Co.*, 128 Nev. 936, 381 P.3d 665 (2012) (internal quotation and citation omitted). It prevents a party “who

1 has stated an oath in a prior proceeding . . . that a given fact is true” from “deny[ing] the same  
2 fact in a subsequent action.” *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 273, 44 P.3d  
3 506, 514 (2002). Importantly, judicial estoppel can only apply when a party has been successful  
4 in the prior proceeding in persuading the court to adopt the fact at issue. *See Nev. Tax Comm’n.*  
5 *v. Fed. Ins. Co.*, 128 Nev. 936, 381 P.3d 665. (required element is that “the party was successful  
6 in asserting the first position”). It also will not apply unless the party’s positions in the two  
7 separate proceedings are “totally inconsistent.” *Id.*

8 Judicial estoppel cannot apply here because Defendants’ lawsuit in Macau was dismissed.  
9 *See, e.g., Olympic Coast Inv., Inc. v. Seipel*, 337 Fed. Appx. 702 (9th Cir. July 10, 2009) (“Absent  
10 success in a prior proceeding, a party’s later inconsistent position introduces no risk of  
11 inconsistent court determinations and thus poses little threat to judicial integrity.”) (internal  
12 citation omitted). Moreover, Defendants did not take any inconsistent positions between this  
13 sanctions proceeding and the Macau lawsuit, let alone “totally inconsistent” ones. The Macau  
14 lawsuit is based on the fact that WRM violated the MPDPA when it gave unredacted documents  
15 to Louis Freeh (a fact that no party denies) while this sanctions proceeding concerns the fact that  
16 WRL should comply with discovery orders of this Court. Not only are these proceedings not  
17 “inconsistent” – these two proceedings involve entirely “different law and facts” and as a result,  
18 judicial estoppel cannot apply. *Nev. Tax Comm’n*, 128 Nev. 936, 381 P.3d 665 (no judicial  
19 estoppel when “two cases involved different law and facts” because the two proceedings are thus  
20 “not totally inconsistent”).<sup>3</sup>

21 **B. No Issue Preclusion Based on the Macau Lawsuit**

22 *Second*, issue preclusion (otherwise known as collateral estoppel) does not apply. A party  
23 is precluded from re-litigating an issue of fact or law under the doctrine of issue preclusion only if  
24 that issue “was actually litigated and determined by a valid and final judgment.” *State, Univ. &*  
25 *Cnty. Coll. Sys. v. Sutton*, 120 Nev. 972, 983-84, 103 P.3d 8, 16 (2004); *see also Exec. Mgmt. v.*

27 <sup>3</sup> Moreover, the Macau lawsuit did not address the Macau Law Privilege, and so that lawsuit cannot have  
28 any bearing on all of the documents at issue in this sanctions proceeding that WRL withheld on Macau  
Law Privilege grounds.

1 *Ticor Title Ins. Co.*, 114 Nev. 823, 838-41, 963 P.2d 465, 475-77 (1998) (no issue preclusion  
2 when “none of [the] intensely factual issues [were] actually and necessarily litigated during the  
3 course of the [prior proceeding]”). Moreover, issue preclusion only applies when the issues in the  
4 current and former proceedings are “identical.” *State, Univ. and Cmty. Coll. Sys.*, 120 Nev. at  
5 983-84, 103 P.3d at 16 (no issue preclusion when issues in prior and current proceeding “were not  
6 identical” and all relevant evidence was not considered in prior proceeding); *see also Exec.*  
7 *Mgmt.*, 114 Nev. at 838-41, 963 P.2d at 475-77 (same).

8 None of the issues presented in this sanctions proceeding – whether WRL controls WRM  
9 and the Macau documents; whether WRL’s refusal to produce those documents was willful; and  
10 whether Defendants have been harmed by WRL’s refusal to produce the documents – were  
11 presented or litigated in the Macau lawsuit, let alone “identical” to the issues in that lawsuit. The  
12 Macau lawsuit and the subsequent court ruling concerned (1) whether the MPDPA violation or  
13 the February 18, 2012 Board resolutions were the immediate cause of the redemption; (2) whether  
14 Defendants had standing to sue under the MPDPA, and (3) whether Defendants had adequately  
15 pled that they would benefit from WRM’s dissolution. *See supra* Sec. II. It cannot be disputed  
16 that none of the same issues are presented here. And because none of the control, willfulness, or  
17 prejudice issues were “actually litigated” in Macau, issue preclusion cannot apply. *Exec. Mgmt.*,  
18 *Ltd.*, 114 Nev. at 838-41, 963 P.2d at 475-77.

19 **C. No Claim Preclusion Based on Macau Lawsuit**

20 *Third*, claim preclusion (otherwise known as res judicata) does not apply. The doctrine of  
21 claim preclusion is a narrow doctrine that applies only “when a second suit is brought against the  
22 same party on the same claim.” *Exec. Mgmt. v. Ticor Title Ins. Co.*, 114 Nev. 823, 835, 963 P.2d  
23 465, 473 (1998). The point is that “a valid and final judgment on a claim precludes a second  
24 action on that claim or any part of it.” *Id.*; *see also Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350  
25 P.3d 80, 81 (2015) (claim preclusion applies only when “subsequent action is based on the same  
26 claims or any part of them that were or could have been brought in the first action”).

27 The claim at issue here is that WRL should face sanctions for its refusal to obey orders of  
28 this Nevada Court. It is beyond dispute that this claim was not raised in the Macau lawsuit nor

could it have been – the Macau lawsuit concerns Macau law, and the U.S. lawsuit concerns U.S. law and court orders. Further, as set forth above, Defendants had no opportunity to obtain in the Macau lawsuit any of the Macau documents at issue in this sanctions proceeding because that lawsuit was dismissed on the pleadings. *See supra* Sec. II.C. Moreover, even if that lawsuit had not been dismissed, Defendants would not have had any opportunity to obtain all of the Macau documents given the narrow scope of document discovery available in Macau civil proceedings as compared to the broad scope of such discovery in US proceedings. *See* Sec. II.C, *supra*. In such circumstances – when one case deals with Macau law and Macau civil procedures, and the other deals with U.S. law and procedure – claim preclusion does not apply. *See, e.g., G.C. Wallace, Inc. v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark*, 127 Nev. 701, 703, 262 P.3d 1135, 1136 (2011) (no claim preclusion when different proceedings are under different statutory schemes).

#### IV. CONCLUSION

For the foregoing reasons, Defendants respectfully submit that the Macau court’s dismissal of Defendants’ lawsuit has no bearing on this sanctions proceeding.

DATED this 23rd day of October, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of October 2017, a true and correct copy of the foregoing **DEFENDANTS' POST-HEARING BRIEF REGARDING EXHIBIT 162 IN SUPPORT OF DEFENDANTS' MOTION FOR SANCTIONS** was served by the following method(s):

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

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14 /s/ Valerie Larsen  
15 An Employee of Holland & Hart LLP  
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EXHIBIT A

EXHIBIT A

**AFFIDAVIT OF PAULO ARAÚJO E SÁ**

1  
2 1. My name is Paulo Araújo e Sá. I am an attorney at Sa Advogados law firm in  
3 Macau, and am admitted to practice law in Macau. I have been practicing in Macau since 1994  
4 until now, with an interregnum of one year (1999-2000), and my areas of intervention are civil,  
5 administrative & public law, tax, banking & finance law, gaming and tourism law, real estate,  
6 urbanism, construction and environmental law, with a very wide practice of company and  
7 commercial law, debt collection and bankruptcy, gaming credit enforceability and insurance  
8 issues, and with large experience in dispute, resolution and litigation at different levels of  
9 Macau Courts, dealing, among others, with civil, commercial and criminal cases.  
10

11 2. I represent Universal Entertainment Corp., Aruze USA, Inc., and Mr. Kazuo  
12 Okada (the “UEC parties”) in a lawsuit filed by the UEC parties on February 12, 2015 in Macau  
13 against Wynn Resorts (Macau), S.A., Stephen Wynn, and other individuals (the “WRM  
14 parties”).  
15

16 3. The WRM parties filed a responsive pleading and counterclaim on May 17,  
17 2016. The UEC parties filed a further response on July 18, 2016, and the WRM parties filed  
18 their last response on September 13, 2016. Neither side filed any other pleadings in that case.  
19

20 4. By judicial decision of July 11, 2017, the Macau court dismissed the UEC  
21 parties’ lawsuit on the pleadings and both parties (UEC parties and WRM parties) were notified  
22 of the same decision on July 17, 2017.

23 5. The UEC parties had no opportunity to obtain documents from the WRM parties  
24 before UEC parties’ lawsuit was dismissed. Under the Macau Civil Procedure Code  
25 (“MCPC”), parties cannot obtain documents from their adversary before a judge rules on the  
26 pleadings.  
27  
28

1           6. Even for those lawsuits that survive the pleading stage, the scope of document  
2 discovery in civil litigation in Macau is limited. Under Article 430 of the MCPC, the scope of  
3 discovery is limited at the outset by the judge to only those relevant facts the judge deems to be  
4 “controversial.” *See* MCPC Article 430.

5  
6           7. The parties can request the production of documents concerning those specific  
7 facts deemed controversial. *See* MCPC Article 431, among other Articles.

8           8. If a party wants to obtain a document from its adversary, it must identify the  
9 document as much as possible, specify the facts it wants to prove with that document, and  
10 request the court to order its production. *See* MCPC Article 455.

11           9. If the judge orders production of specific documents, the party must produce  
12 those documents within 10 days or within the time fixed by the judge. *See* MCPC Articles 103  
13 and 455.

14  
15           10. I have reviewed the following Requests for Production (“RFPs”) issued by  
16 Defendants in the above-captioned litigation filed in Nevada: RFPs 89, 114, 118-120, 122-149,  
17 152, 166-167, 205-206, 249-250, 259-266, and 269-278. Considering that none of these  
18 requests meet the provision of the MCPC Article 455, and that some of these requests are not  
19 even related with the facts raised in the Macau lawsuit, they likely would not be granted in a  
20 Macau civil proceeding  
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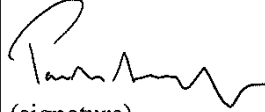
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1 I declare under penalty of perjury under the law of the State of Nevada that the  
2 foregoing is true and correct to the best of my knowledge, information, and belief, and that I am  
3 physically located outside the geographic boundaries of the United States, Puerto Rico, the  
4 United States Virgin Islands and any territory or insular possession subject to the jurisdiction of  
5 the United States.  
6

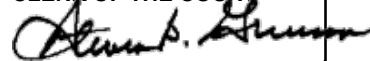
7 Executed on the 22<sup>nd</sup> day of October, 2017, at the Macau Special Administrative Region,  
8 China.

9 Paulo Araújo e Sá

10   
11 (signature)

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada  
Corporation,

Plaintiff,

vs.

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

Defendants.

AND RELATED CLAIMS

Case No.: A-12-656710-B

Dept. No.: XI

**WYNN RESORTS, LIMITED'S BRIEF  
REGARDING ISSUE PRECLUSION AND  
CLAIM PRECLUSION RELATED TO  
THE MACAU ACTION**

1 **I. INTRODUCTION**

2 At the close of the multi-day evidentiary hearing on the Okada Parties' Motion for  
3 Sanctions related to Wynn Resorts, Limited's ("Wynn Resorts") production of documents from its  
4 Macau-based subsidiary, non-party Wynn Macau, with redactions pursuant to Macau law (and as  
5 directed by the Wynn Macau Board of directors) and orders related thereto, the Court invited  
6 briefs on the limited issue of estoppel. Specifically, the Court asked the parties to brief collateral  
7 estoppel, given the nature of the allegations in the Macau Action, and the impact of the Macau  
8 Civil Court's dismissal of the Okada Parties' claims. The Wynn Parties' position remains the same  
9 as articulated to the Court previously: the Okada Parties' requested relief in this Nevada court, for  
10 sanctions or otherwise, are precluded given the Macau action they instigated, and the Macau  
11 Court's dismissal of that complaint on the merits.

12 **II. DISCUSSION**

13 **A. Nevada Courts Will Recognize the Macau Judgment.**

14 When asked about the impact of the Macau court's dismissal of the lawsuit the  
15 Okada Parties brought in Macau, the Aruze Parties' stated, "That's a court in a foreign land. We  
16 don't know what their standards are. . . . I don't believe, Your Honor, we should be controlled by  
17 what the Macau court did. We don't know anything about that litigation. . . . [T]hat's another  
18 proceeding in a foreign country, and that does not – should not impact the decisions of this  
19 Court." (Hr'g Tr. Oct. 17, 2017, 32:20-33:2, 33:8-10.) Therefore, before analyzing whether  
20 collateral estoppel and issue preclusion can be applied to a foreign-court judgment, it is first  
21 necessary to determine whether a foreign-court judgment can be recognized under Nevada law.  
22 *See Manco Contracting Co. (W.W.L.) v. Bezdikian*, 85 Cal. Rptr. 3d 233, 243 (2008) (recognition  
23 of a foreign-court judgment may be sought so that a party may rely on res judicata or collateral  
24 estoppel principles); *see also Alfadda v. Fenn*, 966 F. Supp. 1317, 1325 (S.D.N.Y. 1997).

25 Pursuant to Nevada's Recognition of Foreign-Country Money Judgments Act ("Act"),<sup>1</sup>  
26 Nevada courts shall recognize a foreign country judgement. *See* NRS 17.750(1)<sup>2</sup>; *see also*

27 <sup>1</sup> This Act is very similar to those acts of other states, including California's Uniform  
28 Foreign-Country Money Judgments Act ("California's Act"). *See* Cal. Civ. Proc. Code § 1713  
*et seq.* (2007).

1 *Takiguchi v. MRI Int'l, Inc.*, No. 2:13-cv-01183-HDM-VCF, slip op., 2015 WL 6661479, \*5  
2 (Oct. 29, 2015) ("Nevada . . . has adopted the Uniform Recognition of Foreign-Country Monetary  
3 Judgments Act . . . and as such it is possible to enforce a foreign money judgment in the state.").

4 This general rule is not without exception, however. A Nevada state court may not  
5 recognize a foreign country judgment if one or more of the following is found:

- 6 1. The judgment was rendered under a judicial system that does  
7 not provide impartial tribunals or procedures compatible  
8 with the requirements of due process of law;
- 9 2. The foreign court did not have personal jurisdiction over the  
defendant; and
3. The foreign court did not have jurisdiction over the subject  
matter.

10 NRS 17.750(2)(a)-(c). None of these factors exist when considering the Macau litigation brought  
11 by the Okada Parties.

12 Nevada courts also need not recognize a foreign country judgment if one or more of the  
13 following is found:

- 14 1. The defendant in the proceeding in the foreign court did not  
15 receive notice of the proceeding in sufficient time to enable  
the defendant to defend;
- 16 2. The judgment was obtained by fraud that deprived the losing  
party of an adequate opportunity to present its case;
- 17 3. The judgment or the cause of action on which the judgment  
is based is repugnant to the public policy of Nevada or the  
18 United States;
- 19 4. The judgment conflicts with another final and conclusive  
judgment;
- 20 5. The proceeding in the foreign court was contrary to an  
agreement between the parties under which the dispute in  
question was to be determined otherwise than by  
21 proceedings in that foreign court;
- 22 6. In the case of jurisdiction based only on personal service, the  
foreign court was a seriously inconvenient forum for the trial  
of the action;
- 23 7. The judgment was rendered in circumstances that raise  
substantial doubt about the integrity of the rendering court  
with respect to the judgment, or
- 24 8. The specific proceeding in the foreign court leading to the  
25 judgment was not compatible with the requirements of due  
process of law.

27 <sup>2</sup> This Act is applicable to a foreign country judgment to the extent the judgment grants or  
28 denies recovery of a sum of money, and, under the law of the foreign country where rendered, is  
*final conclusive and enforceable*. NRS 17.740(1)(a)-(b).



1 NRS 17.750(3)(a)-(h). Importantly, *the burden is on the party resisting recognition of a foreign*  
2 *court judgment to establish that a ground for non-recognition, as provided above, exists.*  
3 NRS 17.750(4). Therefore, if one or more of the enumerated exceptions listed above is not found,  
4 then a Nevada court shall enforce a foreign-court judgment. *None* of the above factors is an issue  
5 with respect to the Macau litigation brought by the Okada Parties.

6 The United States Supreme Court addressed the issue of recognizing foreign-court  
7 judgments in the seminal case of *Hilton v. Guyot*, 159 U.S. 113 (1895). The term "comity" was  
8 used by the *Hilton* Court (and by many decisions that followed) to describe the "recognition  
9 which one nation allows within its territory to the legislative, judicial, or executive acts of another  
10 nation, having due regard both to international duty and convenience, and to the rights of its own  
11 citizens, or of other persons who are under the protection of its laws." *Hilton*, 159 U.S.  
12 at 163-164. The doctrine of international comity requires courts of one nation to avoid, where  
13 possible, interfering with courts of another. *Van Den Biggelaar v. Wagner*, 978 F. Supp. 848, 857  
14 (N.D. Ind. 1997) (internal citations omitted). When comity principles support recognition of a  
15 foreign judgment, the judgment will generally be given the same effect as the judgment of a sister  
16 state. *In re Estate of Toland*, 329 P.3d 878, 883 (Wash. 2014) (internal citations omitted). Since  
17 *Hilton*, courts have generally held that "unless a foreign country's judgments are the result of  
18 outrageous departures from our own notions of 'civilized jurisprudence,' comity should not be  
19 refused." *British Midland Airways Ltd. v. Int'l Travel, Inc.*, 497 F.2d 869, 871 (9th Cir. 1974)  
20 (quoting *Hilton*, 159 U.S. at 205). As a first step in analyzing whether to recognize a foreign-court  
21 judgment, a court will typically assess any of the exceptions identified in the applicable  
22 foreign-country judgments act of that particular jurisdiction and which have been specifically  
23 raised by the party opposing recognition of the judgment. *See, e.g., Bank of Montreal v. Kough*,  
24 430 F. Supp. 1243 (N.D. Cal. 1977) (recognizing a British Columbia judgment after court  
25 evaluated issues raised by defendant under California's Act, in which defendant alleged lack of  
26 personal jurisdiction, lack of adequate notice, defective service of process, and that the judgment  
27 was obtained by fraud); *Allianz Suisse Versicherungs-Gesellschaft v. Miller*, 24 F. Supp. 3d 670  
28 (W.D. Mich. 2014) (recognizing the judgment of a Swiss court after court evaluated issues raised