

IN THE SUPREME COURT OF THE STATE OF NEVADA

KAZUO OKADA,

Petitioner,

vs.

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

Respondent,

and

WYNN RESORTS, LIMITED,

Real Party in Interest.

Case No. 74519

District Court Case No. A-12-656710-B  
Electronically Filed  
Dec 01 2017 11:55 a.m.

Elizabeth A. Brown  
Clerk of Supreme Court  
**SUPPLEMENTAL APPENDIX  
IN SUPPORT OF REAL  
PARTIES IN INTEREST  
KIMMARIE SINATRA AND  
WYNN RESORTS, LIMITED'S  
ANSWER TO PETITION FOR  
WRIT OF PROHIBITION OR  
ALTERNATIVELY, MANDAMUS**

**VOLUME II**

DATED this 1st day of December 2017.

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**CHRONOLOGICAL**

DOCUMENT	VOL.	PAGE
Elaine P. Wynn's Motion for Leave to File Fifth Amended Counterclaim and Crossclaim on Order Shortening Time dated March 10, 2016	I	RA0001-0212
First Amended Answer of Elaine P. Wynn to Aruze and Universal's Fourth Amended Counterclaim; Fifth Amended Counterclaim and Crossclaim of Elaine P. Wynn	II	RA0213-0285
Elaine P. Wynn's Motion for Leave to File Fifth Amended Counterclaim and Crossclaim on Order Shortening Time (Originally filed under seal on March 10, 2016)	II	RA0286-0311
Elaine P. Wynn's Motion for Leave to File Sixth Amended Counterclaim and Crossclaim	II	RA0312-0331
Order Regarding Motions to Dismiss and Motion to Strike Elaine P. Wynn's Fifth Amended Counterclaim and Cross claims	II	RA0332-0335
Interim Order on Wynn Resorts' Motion for Disqualification	II	RA0336-0340
Notice to Se-Set Hearing on Elaine P. Wynn's Motion for Leave to File Sixth Amended Counterclaim and Crossclaim and Request for Order Shortening Time	II	RA0341-0346
Notice of Entry of Order (Granting Elaine P. Wynn's Motion for Leave to File Sixth Amended Counterclaim and Crossclaim)	II	RA0347-0353
Elaine P. Wynn's Motion to Dismiss Kimmarie Sinatra's Counterclaim and Crossclaim	II	RA0354-0371

**ALPHABETICAL**

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Elaine P. Wynn's Motion to Dismiss Kimmarie Sinatra's Counterclaim and Crossclaim	II	RA0354-0371

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 1st day of December 2017, I electronically filed and served a true and correct copy of the above and foregoing **SUPPLEMENTAL APPENDIX IN SUPPORT OF REAL PARTIES IN INTEREST KIMMARIE SINATRA AND WYNN RESORTS, LIMITED'S ANSWER TO PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY MANDAMUS** to the following:

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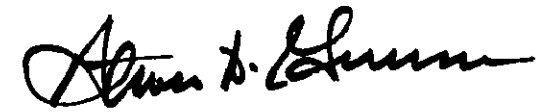
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

16 WYNN RESORTS, LIMITED, a Nevada  
17 Corporation,

18 Plaintiffs,

19 vs.

20 KAZUO OKADA, an individual, ARUZE  
USA, Inc., a Nevada corporation,  
21 UNIVERSAL ENTERTAINMENT  
CORPORATION, a Japanese corporation,

22 Defendants.

24 ARUZE USA, INC., a Nevada corporation,  
UNIVERSAL ENTERTAINMENT  
25 CORPORATION, a Japanese corporation,

26 Counterclaimants.

27 vs.

28 WYNN RESORTS, LIMITED, a Nevada

CASE NO. A-12-656710-B

DEPT. NO: XI

ELECTRONIC FILING CASE

**FIRST AMENDED ANSWER OF ELAINE  
P. WYNN TO ARUZE AND  
UNIVERSAL'S FOURTH AMENDED  
COUNTERCLAIM; FIFTH AMENDED  
COUNTERCLAIM AND CROSSCLAIM  
OF ELAINE P. WYNN**

Date:

Time:

Courtroom:

Complaint Filed:

Trial Date: None Set

1 Corporation, STEPHEN A. WYNN, an  
2 individual, KIMMARIE SINATRA, an  
3 individual, LINDA CHEN, an individual, RAY  
4 R. IRANI, an individual, RUSSELL  
5 GOLDSMITH, an individual, ROBERT J.  
6 MILLER, an individual, JOHN A. MORAN, an  
7 individual, MARC D. SCHORR, an individual,  
8 ALVIN V. SHOEMAKER, an individual, D.  
9 BOONE WAYSON, an individual, ELAINE P.  
10 WYNN, an individual, ALLAN ZEMAN, an  
11 individual,

12 Counterdefendants.

13 ELAINE P. WYNN, an individual,

14 Counterclaimant and  
15 Crossclaimant,

16 vs.

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

20 Crossdefendants,

21 ARUZE USA, INC., a Nevada Corporation,

22 Counterdefendant.

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1 ANSWER

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

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

8 Ms. Wynn is not required to respond, and does not respond, to the allegations that were not  
9 asserted against her, including: Count V by Aruze USA against Wynn Resorts (paragraphs  
10 210-219); Count VII by Aruze USA against Wynn Resorts (paragraphs 233-237); Count VIII by  
11 Aruze USA against Wynn Resorts (paragraphs 238-245); Count IX by Aruze USA against Wynn  
12 Resorts, Steve Wynn, and Kimmarie Sinatra (paragraphs 246-256); Count X by Aruze USA against  
13 Wynn Resorts, Steve Wynn, and Kimmarie Sinatra (paragraphs 257-268); Count XI by Aruze USA  
14 against Steve Wynn and Kimmarie Sinatra (paragraphs 269-282); Count XII by Aruze USA against  
15 Wynn Resorts, Steve Wynn, and Kimmarie Sinatra (paragraphs 283-292); Count XIII by Aruze  
16 USA against Steve Wynn (paragraphs 293-308); Count XIV by Aruze USA against Steve Wynn  
17 (paragraphs 309-324); Count XV by Aruze USA against Steve Wynn (paragraphs 325-334); Count  
18 XVI by Aruze USA against Steve Wynn (paragraphs 335-345); Count XVII by Aruze USA against  
19 Steve Wynn (paragraphs 346-355); Count XVIII by Aruze USA against Wynn Resorts, Linda Chen,  
20 Russel Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V.  
21 Shoemaker, Boone Wayson, and Allan Zeman (paragraphs 356-364); Count XIX by Aruze USA  
22 against Wynn Resorts (paragraphs 365-372).

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

25 JURISDICTION AND VENUE

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

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

## NATURE OF THE ACTION

3. On information and belief, Ms. Wynn admits that Wynn Resorts filed a complaint against Aruze USA shortly after the Board voted to redeem Aruze's stock at a meeting that took place on February 18, 2012. Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegation that Wynn Resorts understood Aruze USA would sue upon being sued and denies that allegation on that basis. Ms. Wynn admits the allegations of footnote 1. Except as expressly admitted or otherwise denied, Ms. Wynn denies the allegations of paragraph 3.

4. Ms. Wynn admits that Wynn Resorts redeemed Aruze USA's shares at an approximately 30% discount to the market price in exchange for a promissory note of around \$1.9 billion to be paid in 10 years. On information and belief, Ms. Wynn admits that Wynn Resorts' complaint was filed on February 19, 2012. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 4, in part because she lacks information sufficient to form a belief as to their truth.

5. The allegations contained in paragraph 5 are legal conclusions which require no response. In the event these conclusions can be deemed allegations of fact, Ms. Wynn denies the allegations of paragraph 5.

6. Ms. Wynn avers that she entered into the Amended and Restated Stockholders Agreement dated January 6, 2010 (“January 2010 Stockholders Agreement”) with Mr. Wynn and Aruze USA. Ms. Wynn avers that the Stockholders Agreement dated April 11, 2002 (“April 2002 Stockholders Agreement”) and the January 2010 Stockholders Agreement speak for themselves and that the quoted excerpts of those agreements have been taken out of context, and denies any allegations inconsistent with the April 2002 Stockholders Agreement and January 2010 Stockholders Agreement. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies any allegations inconsistent with the Articles of Incorporation. On information and belief, Ms. Wynn denies that Mr. Wynn unilaterally amended the Articles of Incorporation without

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

6 7. Ms. Wynn denies the allegations of paragraph 7.

7 8. Ms. Wynn denies the allegation that there was no legitimate factual or legal basis to  
8 invoke the redemption provision. Ms. Wynn further denies the allegations of paragraph 8, in part  
9 because she lacks information sufficient to form a belief as to their truth.

10 9. Ms. Wynn denies the allegations of paragraph 9.

11 10. Ms. Wynn denies the allegations of paragraph 10.

12 11. Ms. Wynn denies the allegations of paragraph 11.

13 12. The allegations contained in paragraph 12 are legal conclusions which require no  
14 response. In the event these conclusions can be deemed allegations of fact, Ms. Wynn denies the  
15 allegations of paragraph 12.

16 **PARTIES**

17 13. Ms. Wynn denies that Aruze is currently a stockholder of Wynn Resorts. Except as  
18 expressly denied, on information and belief, Ms. Wynn admits the allegations of paragraph 13.

19 14. On information and belief, Ms. Wynn admits the allegations of paragraph 14.

20 15. Ms. Wynn admits the allegations of paragraph 15.

21 16. Ms. Wynn admits that Stephen A. Wynn is the Chairman of the Board and Chief  
22 Executive Officer of Wynn Resorts. Ms. Wynn admits that Stephen A. Wynn is a resident of  
23 Nevada. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to  
24 the truth of the allegations of paragraph 16, and denies the allegations on that basis.

25 17. Ms. Wynn admits that Kimmarie Sinatra is the General Counsel, Secretary, and a  
26 Senior Vice President of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information  
27 sufficient to form a belief as to the truth of the allegations of paragraph 17, and denies the allegations  
28 on that basis.

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

4           19.     Ms. Wynn admits that Linda Chen was a director of Wynn Resorts. Except as  
5 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
6 allegations of paragraph 19, and denies the allegations on that basis.

7           20.     Ms. Wynn admits that Ray R. Irani is a director of Wynn Resorts. Except as  
8 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
9 allegations of paragraph 20, and denies the allegations on that basis.

10          21.     Ms. Wynn admits that Russell Goldsmith was a director of Wynn Resorts. Except as  
11 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
12 allegations of paragraph 21, and denies the allegations on that basis.

13          22.     Ms. Wynn admits that Robert J. Miller is a director and Chair of the Gaming  
14 Compliance Committee of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks  
15 information sufficient to form a belief as to the truth of the allegations of paragraph 22, and denies  
16 the allegations on that basis.

17          23.     Ms. Wynn admits that John A. Moran is a director of Wynn Resorts. Except as  
18 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
19 allegations of paragraph 23, and denies the allegations on that basis.

20          24.     Ms. Wynn admits that Marc D. Schorr was a director and Chief Operating Officer of  
21 Wynn Resorts, and that Mr. Schorr had stepped down from the Board. Except as expressly  
22 admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of  
23 paragraph 24, and denies the allegations on that basis.

24          25.     Ms. Wynn admits that Alvin V. Shoemaker is a director of Wynn Resorts. Except as  
25 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
26 allegations of paragraph 25, and denies the allegations on that basis.

1           26.     Ms. Wynn admits that D. Boone Wayson is a director of Wynn Resorts. Except as  
2 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
3 allegations of paragraph 26, and denies the allegations on that basis.

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

7                                   **GENERAL ALLEGATIONS**

8 **I.     Kazuo Okada and Steve Wynn Launch Wynn Resorts**

9           **A.     Turned Out By Mirage Resorts, Steve Wynn Turns to Kazuo Okada to Finance**  
10                               **the New Wynn Project**

11           28.     Ms. Wynn admits that Mr. Wynn developed Mirage Resorts, Inc., which owned and  
12 operated the Mirage, Treasure Island, and the Bellagio, and that Mr. Wynn ceased being Chief  
13 Executive Officer after Mirage Resorts, Inc. merged with MGM Grand, Inc. Except as expressly  
14 admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of  
15 paragraph 28, and on that basis denies the allegations.

16           29.     Ms. Wynn admits that Mr. Wynn purchased the Desert Inn casino and planned to  
17 build a new casino on that site, and that he contacted Mr. Okada about funding. Except as expressly  
18 admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of  
19 paragraph 29, and on that basis denies the allegations.

20           30.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
21 allegations of paragraph 30, and on that basis denies the allegations.

22           31.     Ms. Wynn admits that Valvino Lamore, LLC ("Valvino") was a Nevada limited  
23 liability company used to develop the Desert Inn project. Ms. Wynn admits that Aruze USA  
24 contributed \$260 million to Valvino in October 2000. Except as expressly admitted, Ms. Wynn  
25 denies the allegations of paragraph 31, in part because Ms. Wynn lacks information sufficient to  
26 form a belief as to the truth of those allegations.

1           32.     Ms. Wynn admits that Aruze USA contributed \$120 million to Valvino in April  
2 2002. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the  
3 truth of the allegations of paragraph 32, and on that basis denies those allegations.

4           **B.     The Stockholders Agreement**

5           33.     Ms. Wynn admits on information and belief that in 2002 steps were taken in  
6 anticipation of Wynn Resorts going public. Except as expressly admitted, Ms. Wynn lacks  
7 information sufficient to form a belief as to the truth of the allegations of paragraph 33, and on that  
8 basis denies those allegations.

9           34.     Ms. Wynn admits that Mr. Wynn, Aruze USA, and Baron Asset Fund entered into  
10 the April 2002 Stockholders Agreement dated April 11, 2002. Ms. Wynn admits that the April 2002  
11 Stockholders Agreement purported to establish certain restrictions on the sale of stock the  
12 signatories were to receive in "NewCo." Ms. Wynn admits that NewCo was a predecessor to Wynn  
13 Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to  
14 the truth of the allegations of paragraph 34, and on that basis denies those allegations.

15          35.     Ms. Wynn avers that the April 2002 Stockholders Agreement speaks for itself, and  
16 denies any allegation inconsistent with that agreement.

17          36.     Ms. Wynn avers that the April 2002 Stockholders Agreement speaks for itself and  
18 that the quoted excerpts of that agreement have been taken out of context, and denies any allegation  
19 inconsistent with that agreement. Ms. Wynn avers that the January 2010 Stockholders Agreement  
20 speaks for itself, and denies any allegation inconsistent with that agreement.

21          37.     Ms. Wynn admits that the April 2002 Stockholders Agreement purported to establish  
22 certain restrictions on the transfer of shares of Wynn Resorts common stock held by the parties to  
23 that agreement. Ms. Wynn avers that Wynn Resorts share certificates speak for themselves, and  
24 denies any allegation inconsistent with the share certificates. Except as expressly admitted, Ms.  
25 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 37,  
26 and on that basis denies those allegations.

27          38.     Ms. Wynn denies that the Stockholders Agreement removed Aruze USA from the  
28 purview of later-adopted redemption provisions in Wynn Resorts' Articles of Incorporation. Ms.



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

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

10 **C. Wynn Resorts' Original Articles of Incorporation**

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

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

15 **D. The Contribution Agreement**

16 42. On information and belief, Ms. Wynn admits that the Valvino interests were  
17 converted to interests in the new Wynn Resorts entity, and that Aruze USA had contributed  
18 approximately \$380 million for its Valvino interests. Except as expressly admitted, Ms. Wynn lacks  
19 information sufficient to form a belief as to the truth of the allegations of paragraph 42, and on that  
20 basis denies those allegations.

21 43. On information and belief, Ms. Wynn avers that Wynn Resorts' public filings  
22 include a document that purports to be a Contribution Agreement among Mr. Wynn, Aruze, Baron  
23 Asset Fund, Kenneth R. Wynn Family Trust, and Wynn Resorts, the contents of which speak for  
24 itself. Except as expressly averred, Ms. Wynn lacks information sufficient to form a belief as to the  
25 truth of the allegations of paragraph 43, and on that basis denies those allegations.

26 44. Ms. Wynn avers that the Contribution Agreement speaks for itself and denies any  
27 allegation inconsistent with the Contribution Agreement. Except as expressly averred, Ms. Wynn  
28

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

3       E.     **After Securing Aruze USA's Contribution, Steve Wynn Unilaterally Amends**  
4             **the Articles of Incorporation**

5       45.     Ms. Wynn admits that the Articles of Incorporation contain a provision that allows  
6 Wynn Resorts to redeem stock under certain circumstances, and that Wynn Resorts and Mr. Wynn  
7 applied that provision to Aruze's stock in 2012. On information and belief, Ms. Wynn denies that  
8 Mr. Wynn added the redemption provision unilaterally without Aruze's consent. Except as  
9 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
10 allegations of paragraph 45, and on that basis denies those allegations.

11       46.     Ms. Wynn avers that the April 2002 Stockholders Agreement and the Contribution  
12 Agreement speak for themselves, and denies any allegation inconsistent with those agreements. Ms.  
13 Wynn lacks information sufficient to form a belief as to the truth of the additional allegations of  
14 paragraph 46, and on that basis denies those allegations.

15       47.     Ms. Wynn admits that the Articles of Incorporation of Wynn Resorts includes a  
16 provision that provides for redemption of stock held by unsuitable persons. Ms. Wynn avers that the  
17 Articles of Incorporation speaks for itself and denies any allegation inconsistent with the Articles.  
18 On information and belief, Ms. Wynn denies that Mr. Wynn added the redemption provision  
19 unilaterally without Aruze's consent. Except as expressly admitted, denied, or averred, Ms. Wynn  
20 lacks information sufficient to form a belief as to the truth of the allegations of paragraph 47, and on  
21 that basis denies those allegations.

22       48.     Ms. Wynn avers that the April 2002 Stockholders Agreement and the Contribution  
23 Agreement speak for themselves, and denies any allegation inconsistent with those agreements. The  
24 remaining allegations of paragraph 48 are legal conclusions which require no response. To the  
25 extent the remaining allegations can be deemed allegations of fact, Ms. Wynn denies them in part  
26 because she lacks information sufficient to form a belief as to their truth.

27       49.     Ms. Wynn avers that the Stockholders Agreement speaks for itself, and denies any  
28 allegation inconsistent with that agreement. Ms. Wynn denies that she, Mr. Wynn, Wynn Resorts,

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

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

12 **F. Wynn Resorts Goes Public**

13 51. Ms. Wynn admits that Mr. Okada became a board member of Wynn Resorts in  
14 October 2002. Ms. Wynn admits that the LLC interests of Valvino were contributed to Wynn  
15 Resorts in September 2002. Except as expressly admitted, Ms. Wynn lacks information sufficient to  
16 form a belief as to the truth of the allegations of paragraph 51, and on that basis denies those  
17 allegations.

18 52. On information and belief, Ms. Wynn admits that on October 25, 2002, Wynn  
19 Resorts conducted an initial public offering on NASDAQ at \$13 per share, and that shortly  
20 thereafter, Mr. Okada became Vice Chairman of Wynn Resorts' Board of Directors. On  
21 information and belief, Ms. Wynn further admits that Aruze made an additional investment in or  
22 provided further funding to Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks  
23 information sufficient to form a belief as to the truth of the allegations of paragraph 52, and on that  
24 basis denies those allegations.

25 53. Ms. Wynn admits that Wynn Las Vegas, Wynn Macau, Encore Las Vegas, and  
26 Encore Macau have been successful. On information and belief, Ms. Wynn admits that Mr. Okada  
27 has contributed financially to the casinos' success. Except as expressly admitted, Ms. Wynn lacks  
28

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

3 54. Ms. Wynn admits the allegations of paragraph 54.

4 **G. The Close and Trusting Relationship of Steve Wynn and Kazuo Okada**

5 55. On information and belief, Ms. Wynn admits that Mr. Wynn considered Mr. Okada a  
6 close friend and a partner. Except as expressly admitted, Ms. Wynn lacks information sufficient to  
7 form a belief as to the truth of the allegations of paragraph 55, and on that basis denies those  
8 allegations.

9 56. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
10 allegations of paragraph 56, and on that basis denies those allegations.

11 57. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
12 allegations of paragraph 57, and on that basis denies those allegations.

13 58. On information and belief, Ms. Wynn avers that, in 2006, Mr. Wynn asked Mr.  
14 Okada and Aruze to enter into an Amendment to the April 2002 Stockholders Agreement. Ms.  
15 Wynn avers that the Amendment dated November 8, 2006 ("2006 Amendment") speaks for itself,  
16 and denies any allegation inconsistent with that amendment. Except as expressly averred, Ms.  
17 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 58,  
18 and on that basis denies those allegations.

19 59. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
20 allegations of paragraph 59, and on that basis denies those allegations.

21 **II. Universal Discloses and Ultimately Pursues Foreign Development Projects**

22 **A. In 2007, Universal Fully Discloses to Wynn Resorts Its Interest In Pursuing a**  
23 **Casino Project in the Philippines**

24 60. On information and belief, Ms. Wynn avers that Mr. Okada has been involved with  
25 business efforts in the Philippines since around 2008. Except as expressly averred, Ms. Wynn lacks  
26 information sufficient to form a belief as to the truth of the allegations of paragraph 60, and on that  
27 basis denies those allegations.

28

1           61.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
2 allegations of paragraph 61, and on that basis denies those allegations.

3           62.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
4 allegations of paragraph 62, and on that basis denies those allegations.

5           63.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
6 allegations of paragraph 63, and on that basis denies those allegations.

7           64.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
8 allegations of paragraph 64, and on that basis denies those allegations.

9           65.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
10 allegations of paragraph 65, and on that basis denies those allegations.

11          66.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
12 allegations of paragraph 66, and on that basis denies those allegations.

13          67.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
14 allegations of paragraph 67, and on that basis denies those allegations.

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

17          68.     On information and belief, Ms. Wynn admits that Universal and/or its affiliates went  
18 about acquiring land in the Philippines for a planned casino. Except as expressly admitted, Ms.  
19 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 68,  
20 and on that basis denies those allegations.

21          69.     On information and belief, Ms. Wynn admits that an entity or entities affiliated with  
22 Universal or Mr. Okada purchased land near Manila Bay. On information and belief, Ms. Wynn  
23 denies that Universal complied with the laws of the Philippines regarding citizenship for  
24 landholding. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief  
25 as to the truth of the allegations of paragraph 69, and on that basis denies those allegations.

26          70.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
27 allegations of paragraph 70, and on that basis denies those allegations.

28

1           **C.     Steve Wynn and Elaine Wynn Divorce**

2           71.     Ms. Wynn admits that she and Mr. Wynn began divorce proceedings in March 2009.  
3     Ms. Wynn admits that by early 2010, Ms. Wynn and Mr. Wynn had reached an agreement regarding  
4     division of their community assets, including the Wynn Resorts stock then held in Mr. Wynn's  
5     name. On information and belief, Ms. Wynn admits that Aruze was Wynn Resorts' largest  
6     shareholder after the division of assets between Mr. Wynn and Ms. Wynn. Except as expressly  
7     admitted, Ms. Wynn denies the allegations of paragraph 71, in part because she lacks information  
8     sufficient to form a belief as to the truth of the allegations.

9           72.     Ms. Wynn admits that she, Mr. Wynn, and Aruze entered into the January 2010  
10    Stockholders Agreement. Ms. Wynn avers that the January 2010 Stockholders Agreement speaks  
11    for itself, and denies any allegation inconsistent with that agreement. Except as expressly admitted  
12    or averred, Ms. Wynn denies the allegations in paragraph 72, because she lacks information  
13    sufficient to form a belief as to the truth of the allegations.

14          73.     Ms. Wynn avers that the January 2010 Stockholders Agreement speaks for itself, and  
15    denies any allegation inconsistent with that agreement. Except as expressly averred, Ms. Wynn  
16    denies the allegations of paragraph 73, because she lacks information sufficient to form a belief as to  
17    the truth of the allegations.

18          74.     Ms. Wynn avers that the January 2010 Stockholders Agreement speaks for itself, and  
19    denies any allegation inconsistent with that agreement. Except as expressly averred, Ms. Wynn  
20    denies the allegations of paragraph 74, because she lacks information sufficient to form a belief as to  
21    the truth of the allegations.

22          75.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
23    allegations of paragraph 75, and on that basis denies those allegations.

24           **D.     Steve Wynn and Kazuo Okada Visit the Philippines in 2010, as Wynn Resorts**  
25           **Considers Involvement with the Philippine Project**

26          76.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
27    allegations of paragraph 76, and on that basis denies those allegations.

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

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

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

7           79.     Ms. Wynn denies that the duration of Wynn Resorts' donation to Macau is  
8 "suspiciou[s]." On information and belief, Ms. Wynn admits the other allegations of paragraph 79.

9           80.     Ms. Wynn admits that Mr. Okada, in his capacity as a Wynn Resorts director, voted  
10 against the donation to the University of Macau Development Foundation. Ms. Wynn admits that  
11 Mr. Okada raised objections to the size and the term of the donation. Except as expressly admitted,  
12 Ms. Wynn denies the allegations of paragraph 80.

13          81.     Ms. Wynn lacks information sufficient to form a belief as to the truth of and therefore  
14 denies the allegation that the alleged fact is "[n]otabl[e]," and avers that she believes she was  
15 unaware of the alleged fact at the time. Ms. Wynn admits that the head of Macau's government is  
16 also the chancellor of the University of Macau. Ms. Wynn lacks sufficient information to form a  
17 belief as to whether that individual has "ultimate oversight of gaming matters," and therefore denies  
18 that allegation. Ms. Wynn avers that Wynn Resorts' SEC filings speak for themselves and deny any  
19 allegation regarding the contents of those filings that is inconsistent with the filings themselves.  
20 Except as expressly admitted and averred, Ms. Wynn lacks information sufficient to form a belief as  
21 to the truth of the allegations of paragraph 81, and on that basis denies those allegations.

22          82.     Ms. Wynn admits that Wynn Resorts received a legal opinion that sanctioned the  
23 donation to the University of Macau Development Foundation. Except as expressly admitted, Ms.  
24 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 82,  
25 and on that basis denies those allegations.

26          83.     On information and belief, Ms. Wynn admits that Wynn Resorts has received a letter  
27 from the Securities Exchange Commission regarding its Macau donation and that the SEC has made  
28 inquiries. On information and belief, Ms. Wynn avers that a regional office of the SEC has notified

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

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

7 84. Ms. Wynn admits that Mr. Wynn married his current wife in or around April 2011.  
8 On information and belief, Ms. Wynn avers that Mr. Wynn contacted Mr. Okada regarding a  
9 potential sale of Ms. Wynn's stock. Except as expressly admitted or averred, Ms. Wynn lacks  
10 information sufficient to form a belief as to the truth of the allegations of paragraph 84, and on that  
11 basis denies those allegations.

12 85. On information and belief, Ms. Wynn admits that, sometime in 2011, Mr. Wynn  
13 asked Mr. Okada to consent to a transfer of Ms. Wynn's shares. Except as expressly admitted, Ms.  
14 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 85,  
15 and on that basis denies those allegations.

16 86. On information and belief, Ms. Wynn admits that Mr. Okada was amenable to  
17 allowing Ms. Wynn to transfer her stock. Except as expressly admitted, Ms. Wynn lacks  
18 information sufficient to form a belief as to the truth of the allegations of paragraph 86, and on that  
19 basis denies those allegations.

20 87. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
21 allegations of paragraph 87, and on that basis denies those allegations.

22 88. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
23 allegations of paragraph 88, and on that basis denies those allegations.

24 89. Ms. Wynn denies the allegations of paragraph 89, in part because she lacks  
25 information sufficient to form a belief as to their truth.

26 90. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
27 allegations of paragraph 90, and on that basis denies those allegations.

28



1           91.     On information and belief, Ms. Wynn admits that Mr. Okada signed a waiver and  
2 consent granting her the option to transfer her stock. Except as expressly admitted, Ms. Wynn lacks  
3 information sufficient to form a belief as to the truth of the allegations of paragraph 91, and on that  
4 basis denies those allegations.

5           92.     On information and belief, Ms. Wynn admits that Mr. Okada signed a waiver and  
6 consent granting her the option to transfer her stock. Except as expressly admitted, Ms. Wynn lacks  
7 information sufficient to form a belief as to the truth of the allegations of paragraph 92, and on that  
8 basis denies those allegations.

9           93.     Ms. Wynn admits that Wynn Resorts has SOX compliance policies. Except as  
10 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
11 allegations of paragraph 93, and on that basis denies those allegations.

12          94.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
13 allegations of paragraph 94, and on that basis denies those allegations.

14          95.     On information and belief, Ms. Wynn admits that Aruze stated that it would allow  
15 her to transfer her shares. Except as expressly admitted, Ms. Wynn lacks information sufficient to  
16 form a belief as to the truth of the allegations of paragraph 95, and on that basis denies those  
17 allegations.

18          96.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
19 allegations of paragraph 96, and on that basis denies those allegations.

20          97.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
21 allegations of paragraph 97, and on that basis denies those allegations.

22          98.     Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
23 allegations of paragraph 98, and on that basis denies those allegations.

24          99.     Ms. Wynn admits that Bob Miller is a member of Wynn Resorts' Compliance  
25 Committee. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 99, in part  
26 because she lacks information sufficient to form a belief as to the truth of the allegations of  
27 paragraph 99.

28

1           **G.     The Chair of Universal's and Aruze Gaming America's Compliance**  
2                   **Committee Resigns**

3           100.   Ms. Wynn admits that Mr. Schreck has a long-standing relationship with Mr. Wynn  
4 and acted as a lawyer for Mr. Wynn or Wynn Resorts, that Mr. Schreck worked for Mr. Okada  
5 and/or entities affiliated with Mr. Okada, and that Mr. Schreck eventually left his position with Mr.  
6 Okada. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to  
7 the truth of the allegations of paragraph 100, and on that basis denies those allegations.

8           101.   Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
9 allegations of paragraph 101, and on that basis denies those allegations.

10          102.   Ms. Wynn admits that Mr. Schreck's law firm acted as counsel for Wynn Resorts in  
11 the Nevada state court action regarding Mr. Okada's document inspection demand. Except as  
12 expressly admitted, Ms. Wynn denies the allegations of paragraph 102, in part because she lacks  
13 information sufficient to form a belief as to the truth of those allegations.

14       **III.   Steve Wynn Directs Wynn Resorts to Conduct a Pretextual Investigation for the**  
15                   **Purpose of Redeeming Aruze USA's Shares**

16           **A.     Wynn Resorts Seeks Kazuo Okada's Resignation and Threatens Redemption in**  
17                   **an Attempt to Secure a Personal Benefit for Steve Wynn**

18          103.   Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
19 allegations of paragraph 103, and on that basis denies those allegations.

20          104.   Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
21 allegations of paragraph 104, and on that basis denies those allegations.

22          105.   Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
23 allegations of paragraph 105, and on that basis denies those allegations.

24          106.   Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
25 allegations of paragraph 106, and on that basis denies those allegations.

26          107.   Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
27 allegations of paragraph 107, and on that basis denies those allegations.

28

1           108. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
2 allegations of paragraph 108, and on that basis denies those allegations.

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

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

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

9           111. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
10 allegations of paragraph 111, and on that basis denies those allegations.

11           112. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
12 allegations of paragraph 112, and on that basis denies those allegations.

13           113. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
14 allegations of paragraph 113, and on that basis denies those allegations.

15           114. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
16 allegations of paragraph 114, and on that basis denies those allegations.

17           115. Ms. Wynn lacks information sufficient to form a belief as to what “characterizations”  
18 Mr. Wynn made, and on that basis denies that allegation. On information and belief, Ms. Wynn  
19 denies the additional allegations of paragraph 115.

20           116. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
21 allegations of paragraph 116, and on that basis denies those allegations.

22           117. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
23 allegations of paragraph 117, and on that basis denies those allegations.

24           **C. A Letter From Steve Wynn’s Outside Lawyer Confirms that, While Wynn**  
25           **Resorts Had Already Determined the Outcome, a Pretextual “Investigation”**  
26           **Was Only Just Starting**

27           118. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
28 allegations of paragraph 118, and on that basis denies those allegations.

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

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

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

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

8 121. Ms. Wynn admits that Mr. Miller and/or others made an oral presentation regarding  
9 Mr. Okada's activities at a meeting on or around November 1, 2011. Ms. Wynn avers that Mr.  
10 Okada participated in the meeting. Except as expressly admitted or averred, Ms. Wynn lacks  
11 information sufficient to form a belief as to the truth of the allegations of paragraph 121, and on that  
12 basis denies those allegations.

13 122. Ms. Wynn admits that the Compliance Committee retained Freeh Sporkin &  
14 Sullivan LLP ("Free Sporkin") to conduct an investigation with respect to Mr. Okada's activities  
15 overseas. Ms. Wynn admits that the Board voted to eliminate the position of Vice Chairman and  
16 accepted the Compliance Committee's retention of Freeh Sporkin. Except as expressly admitted,  
17 Ms. Wynn denies the allegations of paragraph 122.

18 **F. Kazuo Okada Seeks More Information Regarding Wynn Macau**

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

24 **G. Aruze USA Nominates Directors, But Steve Wynn Refuses to Endorse Them**  
25 **Despite His Obligation to Do So**

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

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

4 **H. The Freeh Investigation Proceeds Without Seeking Any Input From Kazuo**  
5 **Okada**

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

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

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

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

14 **I. Freeh Sporkin Refuses to Provide Meaningful Information Regarding the**  
15 **Investigation to Kazuo Okada**

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

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

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

22 **J. Kazuo Okada Voluntarily Sits For A Full-Day Interview With Freeh Sporkin**

23 132. On information and belief, Ms. Wynn admits that Mr. Okada sat for an interview  
24 with Mr. Freeh on February 15, 2012. Except as expressly admitted, Ms. Wynn lacks information  
25 sufficient to form a belief as to the truth of the allegations of paragraph 132, and on that basis denies  
26 those allegations.

27 133. On information and belief, Ms. Wynn admits that Mr. Freeh asked Mr. Okada about  
28 expenses paid by Universal and/or its agents or affiliates for lodging and meals at Wynn Resorts

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

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

6 **K. Wynn Resorts Allows No Opportunity for A Reasonable Response**

7 135. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
8 allegations of paragraph 135, and on that basis denies those allegations.

9 136. Ms. Wynn avers that the Second Amended Complaint filed by Wynn Resorts speaks  
10 for itself and denies any allegation inconsistent with the Second Amended Complaint.

11 137. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
12 allegations of paragraph 137, and on that basis denies those allegations.

13 138. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
14 allegations of paragraph 138, and on that basis denies those allegations.

15 139. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
16 allegations of paragraph 139, and on that basis denies those allegations.

17 140. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
18 allegations of paragraph 140, and on that basis denies those allegations.

19 141. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
20 allegations of paragraph 141, and on that basis denies those allegations.

21 142. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
22 allegations of paragraph 142, and on that basis denies those allegations.

23 143. Ms. Wynn admits that the Board voted to redeem Aruze's shares, at a valuation that  
24 reflected a discount to the trading price, on the day the directors received the Freeh Sporkin report.  
25 Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 143, in part because  
26 she lacks information sufficient to form a belief as to their truth.

27 144. Ms. Wynn denies the allegations of paragraph 144, in part because she lacks  
28 information sufficient to form a belief as to their truth.

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

3           152. Ms. Wynn admits that Mr. Wynn yelled at Mr. Okada's counsel when he introduced  
4 himself. Ms. Wynn admits that Mr. Wynn said that Mr. Okada's counsel should not be present. Ms.  
5 Wynn admits that Mr. Okada was told that he needed to enter into a nondisclosure agreement in  
6 order to receive a copy of the Freeh Sporkin report. Ms. Wynn admits that Mr. Okada did not agree  
7 to enter into a nondisclosure agreement. Except as expressly admitted, Ms. Wynn denies the  
8 allegations of paragraph 152, in part because she lacks information sufficient to form a belief as to  
9 their truth.

10           153. On information and belief, My Wynn admits that a copy of the Freeh Sporkin report  
11 is attached to Wynn Resorts' Complaint. Except as expressly admitted, Ms. Wynn lacks  
12 information sufficient to form a belief as to the truth of the allegations of paragraph 153, and on that  
13 basis denies those allegations.

14           154. Ms. Wynn admits that there were translation problems during the Board meeting.  
15 Ms. Wynn admits that Mr. Okada requested that the translation be provided sequentially rather than  
16 simultaneously, and that the request was denied. Except as expressly admitted, Ms. Wynn lacks  
17 information sufficient to form a belief as to the truth of the allegations of paragraph 154, and on that  
18 basis denies those allegations.

19           155. Ms. Wynn admits that Mr. Freeh made a presentation in English. Ms. Wynn admits  
20 that after Mr. Freeh completed his presentation, the Board asked if Mr. Okada had any questions.  
21 Ms. Wynn admits that Mr. Okada asked the Board to delay making any resolutions. Except as  
22 expressly admitted, Ms. Wynn denies the allegations of paragraph 155, in part because she lacks  
23 information sufficient to form a belief as to their truth.

24           156. Ms. Wynn avers that there were technical difficulties during the Board meeting. Ms.  
25 Wynn admits that the connection with Mr. Okada was lost at some point during the meeting, and  
26 that no other contact was made with Mr. Okada. Except as expressly admitted or averred, Ms.  
27 Wynn denies the allegations of paragraph 156, in part because she lacks information sufficient to  
28 form a belief as to their truth.



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

5           158. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
6 allegations of paragraph 158, and on that basis denies those allegations.

7           159. Ms. Wynn admits that Wynn Resorts filed a complaint that attached a copy of the  
8 report without exhibits but is without information sufficient to form a belief about the timing and  
9 form of the filing and on that basis denies those allegations of paragraph 159.

10          160. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
11 allegations of paragraph 160, and on that basis denies those allegations.

12           **C. Aruze USA Disputes That Redemption Has Occurred**

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

16           **D. The Board Redeems on False Premises**

17          162. Ms. Wynn avers that Aruze is bound by the redemption provision, and admits that  
18 Aruze disputes that it is bound by the redemption provision. Ms. Wynn avers that the Articles of  
19 Incorporation speak for themselves, and denies any allegation inconsistent with the Articles of  
20 Incorporation.

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

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

8           165. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies  
9 any allegation inconsistent with the Articles of Incorporation. Except as expressly averred, Ms.  
10 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 165,  
11 and denies those allegations on that basis.

12           166. Ms. Wynn denies the allegations of paragraph 166, in part because she lacks  
13 information sufficient to form a belief as to their truth.

14           **E. Even if Aruze USA Were Subject to the Redemption Provision (Which it is not),**  
15           **the Wynn Parties are Still Liable for Breaching and/or Tortiously Interfering**  
16           **with the Stockholders Agreement and Amended Stockholders Agreement**

17           167. Ms. Wynn avers that the April 2002 Stockholders Agreement and the January 2010  
18 Stockholders Agreement speak for themselves, and denies any allegation inconsistent with those  
19 agreements. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies  
20 any allegation inconsistent with the Articles of Incorporation. On information and belief, Ms. Wynn  
21 denies that Mr. Wynn unilaterally amended the Articles of Incorporation without Aruze's consent.  
22 Except as expressly averred or otherwise denied, Ms. Wynn denies the remaining allegations of  
23 paragraph 167.

1           **F. Even if Aruze USA Was Subject to the Redemption Provision (Which it is Not),**  
2           **the Unilateral Blanket 30% Discount that Wynn Resorts Applied to the Stock**  
3           **Is Erroneous and the Promissory Note is Unconscionably Vague, Ambiguous,**  
4           **and Oppressive**

5           168. Ms. Wynn admits that Wynn Resorts issued a promissory note in the amount of  
6 approximately \$1.9 billion. On information and belief, Ms. Wynn admits that the price reflected an  
7 approximately 30% discount to the trading price of Wynn Resorts stock on NASDAQ at or around  
8 the time of the redemption. On information and belief, Ms. Wynn admits that Wynn Resorts issued  
9 a press release on February 19, 2011 regarding the redemption. Ms. Wynn avers that the press  
10 release speaks for itself, and denies any allegation inconsistent with the press release. Ms. Wynn  
11 denies that the Stockholders Agreement precludes the redemption of Aruze's stock. Ms. Wynn  
12 denies that she and Mr. Wynn breached the Stockholders Agreement by voting to redeem Aruze's  
13 shares of Wynn Resorts stock. Ms. Wynn admits that some of the purported contractual transfer  
14 restrictions could be found to constitute unreasonable restraints on alienability. Ms. Wynn denies  
15 that contractual transfer restrictions could not "legitimately impact" the value of Aruze's shares at  
16 the time the redemption occurred. Except as expressly admitted, averred, or otherwise denied, Ms.  
17 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph 168,  
18 and denies those allegations on that basis.

19           169. Ms. Wynn avers that the press release speaks for itself, and denies any allegation  
20 inconsistent with the press release. On information and belief, Ms. Wynn denies that Mr. Wynn  
21 unilaterally added the redemption provision to the Articles of Incorporation without Aruze's  
22 consent. Except as expressly averred or denied, Ms. Wynn lacks information sufficient to form a  
23 belief as to the truth of the allegations of paragraph 169, and on that basis denies those allegations.

24           170. Ms. Wynn admits that the Board of Wynn Resorts considered a valuation opinion  
25 from Moelis & Company. Ms. Wynn admits that Moelis & Company had done business with Wynn  
26 Resorts in the past. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph  
27 170.

1 171. Ms. Wynn admits that Mr. Wynn has a long-standing professional relationship with  
2 Mr. Moelis. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 171, in  
3 part because she lacks information sufficient to form a belief as to their truth.

4 172. On information and belief, Ms. Wynn admits that Moelis & Company opined that a  
5 30% discount was appropriate. Ms. Wynn avers that the Stockholders Agreement speaks for itself,  
6 and denies any allegation inconsistent with the Stockholders Agreement. Except as expressly  
7 admitted or averred, Ms. Wynn denies the allegations of paragraph 172, in part because she lacks  
8 information sufficient to form a belief as to their truth.

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

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

22 174. On information and belief, Ms. Wynn admits the allegations of paragraph 174.

23 175. Ms. Wynn avers that the Form 8-K speaks for itself and denies any allegation  
24 inconsistent with that document.

25 176. Ms. Wynn lacks information sufficient to form a belief as to the truth of the  
26 allegations of paragraph 176, and denies those allegations on that basis.

27 177. Ms. Wynn avers that the Form 8-K speaks for itself and denies any allegation  
28 inconsistent with that document.

178. Ms. Wynn denies the allegations of paragraph 177, in part because she lacks information sufficient to form a belief as to their truth.

## CLAIMS FOR RELIEF

**COUNT I**

## Declaratory Relief

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

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

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

181. Ms. Wynn admits that Aruze and Universal are purportedly seeking a judicial declaration. Ms. Wynn denies that the declaration Aruze and Universal seek is appropriate. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 181.

182. Ms. Wynn admits that Aruze and Universal are purportedly seeking a judicial declaration. Ms. Wynn denies that the declaration Aruze and Universal seek is appropriate. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 182.

183. Ms. Wynn admits that Aruze and Universal are purportedly seeking a judicial declaration. Ms. Wynn denies that the declaration Aruze and Universal seek is appropriate. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 183.

184. Ms. Wynn admits that Aruze and Universal are purportedly seeking a judicial declaration. Ms. Wynn admits that the valuation opinion Mr. Moelis presented to the Board did not consider whether the transfer restrictions were valid as to Aruze. Ms. Wynn denies that the declaration Aruze and Universal seek is appropriate. Ms. Wynn denies that she and Mr. Wynn breached the Stockholders Agreement by voting for the redemption of Aruze's shares of Wynn Resorts stock. Except as expressly admitted and otherwise denied, Ms. Wynn denies the allegations of paragraph 184, in part because she lacks information sufficient to form a belief as to their truth.

1 185. The allegations of paragraph 185 are legal conclusions that do not require a response.  
2 In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on  
3 the ground that she lacks information sufficient to form a belief as to their truth.

4 186. Ms. Wynn admits that an actual controversy exists between the parties, and that the  
5 dispute is ripe for adjudication. Ms. Wynn denies that Wynn Resorts acted unlawfully when it  
6 redeemed Aruze's stock.

7 187. Ms. Wynn denies the allegations of paragraph 187.

8 **COUNT II**

9 **Permanent Prohibitory Injunction**

10 **(By Aruze USA Against Wynn Resorts and the Wynn Directors)**

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

13 189. Ms. Wynn admits that Aruze is purportedly seeking a permanent injunction. Except  
14 as expressly admitted, Ms. Wynn denies the allegations of paragraph 189.

15 190. Ms. Wynn denies the allegations of paragraph 190.

16 191. Ms. Wynn denies the allegations of paragraph 191.

17 192. Ms. Wynn denies the allegations of paragraph 192.

18 193. The allegations of paragraph 193 are legal conclusions that do not require a response.  
19 In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on  
20 the ground that she lacks information sufficient to form a belief as to their truth.

21 194. Ms. Wynn denies the allegations of paragraph 194.

22 **COUNT III**

23 **Permanent Mandatory Injunction**

24 **(By Aruze USA Against Wynn Resorts and the Wynn Directors)**

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

27 196. Ms. Wynn admits that Aruze is purportedly seeking a permanent injunction. Except  
28 as expressly admitted, Ms. Wynn denies the allegations of paragraph 196.



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

## COUNT VI

## Breach of Fiduciary Duty

**(By Aruze USA Against the Wynn Directors)**

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

221. The allegations of paragraph 221 are legal conclusions that do not require a response.

222. The allegations of paragraph 222 are legal conclusions that do not require a response.

223. Ms. Wynn avers that the Articles of Incorporation speak for themselves, and denies any allegations inconsistent with the Articles of Incorporation.

224. Ms. Wynn denies the allegations of paragraph 224.

225. Ms. Wynn denies the allegations of paragraph 225.

226. Ms. Wynn denies the allegations of paragraph 226.

227. Ms. Wynn denies the allegations of paragraph 227.

228. Ms. Wynn denies the allegations of paragraph 228.

229. Ms. Wynn denies the allegations of paragraph 229.

230. Ms. Wynn denies the allegations of paragraph 230.

231. The allegations of paragraph 231 are legal conclusions that do not require a response.

In any event, Ms. Wynn denies those allegations to the extent they constitute allegations of fact, on the ground that she lacks information sufficient to form a belief as to their truth.

232. Ms. Wynn denies the allegations of paragraph 232.

## **AFFIRMATIVE DEFENSES**

Ms. Wynn asserts the following affirmative defenses:

## **FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

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



1 **SECOND AFFIRMATIVE DEFENSE**

2 **(Unclean Hands)**

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

6 **THIRD AFFIRMATIVE DEFENSE**

7 **(Estoppel)**

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

10 **FOURTH AFFIRMATIVE DEFENSE**

11 **(Laches)**

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

14 **FIFTH AFFIRMATIVE DEFENSE**

15 **(Waiver)**

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

18 **SIXTH AFFIRMATIVE DEFENSE**

19 **(Election of Remedies)**

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

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 **(Limitation on Liability)**

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

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 **(Authorization by Articles of Incorporation)**

3 Counterclaimants' claims against Ms. Wynn are barred in whole or in part because Ms.  
4 Wynn's actions are authorized by and comport with Wynn Resorts' Articles of Incorporation,  
5 Bylaws, and Nevada law.

6 **NINTH AFFIRMATIVE DEFENSE**

7 **(Ratification)**

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

11 **TENTH AFFIRMATIVE DEFENSE**

12 **(Statute of Limitations)**

13 Counterclaimants' claims against Ms. Wynn are barred in whole or in part by the applicable  
14 statute(s) of limitations.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 **(Adequate Remedy at Law)**

17 Counterclaimants' claims for injunctive relief against Ms. Wynn are barred in whole or in  
18 part by the availability of adequate remedies at law.

19 **TWELFTH AFFIRMATIVE DEFENSE**

20 **(Consent)**

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

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 **(Privilege)**

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

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(Justification)**

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

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 **(Lack of Standing)**

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

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 **(Release and Indemnification)**

12 Counterclaimants claims against Ms. Wynn are barred in whole or in part because  
13 Counterclaimants are required under the Articles of Incorporation to indemnify and hold harmless  
14 Wynn Resorts for any losses, including attorney's fees, resulting from their conduct.

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 **(Contributory Negligence)**

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

19 **EIGHTEENTH AFFIRMATIVE DEFENSE**

20 **(Comparative Negligence)**

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

25 **NINETEENTH AFFIRMATIVE DEFENSE**

26 **(Res Judicata)**

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

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**TWENTIETH AFFIRMATIVE DEFENSE**

**(Collateral Estoppel)**

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

**RESERVATION**

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

**JURY DEMAND**

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

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

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

1 **FIFTH AMENDED COUNTERCLAIM AND CROSSCLAIM**

2 **I. Introduction**

3 1. With these crossclaims, Elaine P. Wynn seeks a declaration that the January 2010  
4 Stockholders Agreement, which purports to prohibit her from selling shares that she owns absent the  
5 permission of her ex-husband Stephen Wynn, is invalid and unenforceable as a matter of law. She  
6 also seeks damages for Mr. Wynn's breach of his obligations under the January 2010 Stockholders  
7 Agreement, including for his failure to support her renomination and reelection to the Board of  
8 Directors, and for Wynn Resorts' tortious interference with that contract. Furthermore, and in the  
9 alternative, to the extent that the January 2010 Stockholders Agreement is deemed valid and  
10 enforceable, Ms. Wynn seeks specific performance ordering Mr. Wynn to comply with his  
11 contractual obligations, as explicitly required by the January 2010 Stockholders Agreement.

12 2. Ms. Wynn raises these issues reluctantly: she had hoped, for the sake of her family  
13 and of the Company she helped to build, that the issues plaguing the operation of Wynn Resorts and  
14 the reckless risk-taking of its Chairman and CEO Mr. Wynn could be addressed through proper  
15 corporate processes and channels. They cannot be. Mr. Wynn has intentionally kept the Wynn  
16 Resorts Board in the dark and has turned the General Counsel of the Company into his  
17 co-conspirator. He has engaged in reckless, risk-taking behavior, leaving himself vulnerable to  
18 allegations of serious wrongdoing – that he made a multi-million dollar payment and used Company  
19 resources to silence and that he did not properly disclose to the Board of Directors. This and other  
20 such decisions have left the directors and the Company vulnerable to potential liability and  
21 regulatory exposure.

22 3. Every time Elaine Wynn sought information, as a director should, she confronted a  
23 “tone at the top” that punished inquiry, even by her, a major shareholder, director and co-founder of  
24 Wynn Resorts. Mr. Wynn operates the Company without the effective checks and balances that the  
25 law requires, beginning with independent and effective Board members. Ms. Wynn and her fellow  
26 Board members were intentionally fed misinformation by Mr. Wynn and Kimmarie Sinatra, the  
27 Company's General Counsel, a process that depended on the deficiencies in the internal controls and  
28 their intentional circumvention with regard to the decisions of the Chairman and CEO. Although

1 bound by the January 2010 Stockholders Agreement to support Elaine Wynn's director candidacy,  
2 Mr. Wynn instead engineered her removal from the Board in retaliation for her challenging his  
3 decisions and questioning his judgment. Ms. Wynn cannot sit by idly and accept punishment for  
4 doing what is right and daring even to inquire about Mr. Wynn's reckless operation of the Company.

5 4. The ostensible purpose of the January 2010 Stockholders Agreement was to place  
6 restrictions on the stock held by Mr. Okada (through his company, Aruze USA, Inc.) to preserve the  
7 Wynn-Okada alliance and avoid the kind of takeover that the Wynns faced at the Mirage. Mr. Wynn  
8 induced Ms. Wynn to sign the January 2010 Stockholders Agreement by a series of false  
9 representations, both professional and personal, including that the purpose was to restrict Mr.  
10 Okada, not her, and that she would serve on the Board for at least as long as the restrictions applied  
11 so that she could protect her stock in the Company, which is Ms. Wynn's largest asset.

12 5. Now that the shares held by Mr. Okada's company have been redeemed, the  
13 ostensible purpose of the January 2010 Stockholders Agreement has been frustrated. If the purpose  
14 was indeed to impose limits on Mr. Okada, as Mr. Wynn and his counsel maintained, then there is  
15 no legitimate basis for continuing to enforce the Agreement's restrictions on Ms. Wynn's shares.

16 6. As is now clear, Mr. Wynn is misusing the January 2010 Stockholders Agreement to  
17 exert full and perpetual control over his former wife's life and legacy. A contract restricting  
18 alienability in perpetuity is unreasonable and unlawful. In this case, Ms. Wynn's agreement was  
19 also fraudulently induced. Ms. Wynn entered into the Agreement reasonably believing that Mr.  
20 Wynn would of course provide for their family. Mr. Wynn actively promoted that impression and  
21 misrepresented his intentions. Only later did Mr. Wynn share with his daughters through  
22 conversations that they, and their families, should expect only Ms. Wynn to provide support and any  
23 inheritance, and that he did not plan to include them in his will. At the same time as he has been  
24 delivering this message to his daughters, Mr. Wynn has refused Ms. Wynn's requests to enter into  
25 the kind of responsible joint estate planning that would provide a legacy for their family and also for  
26 the community; if he has a will or other instrument that provides for his family, he has refused to  
27 acknowledge it or reveal any of its terms so that Ms. Wynn can reasonably plan her own estate. By  
28 refusing to allow Ms. Wynn to sell or transfer her stock, Mr. Wynn would force their daughters to

1 liquidate most of or all of Ms. Wynn's other assets to pay estate tax on stock that they cannot sell  
2 either. In her own lifetime, Ms. Wynn, who is a committed philanthropist, is further denied the right  
3 to spend what is hers in support of the causes she passionately believes in. To the extent that the  
4 January 2010 Stockholders Agreement imposes restrictions on the sale of Ms. Wynn's shares, it is  
5 unreasonable and constitutes an unenforceable, perpetual and unlawful restraint on alienability.

6         7. If the January 2010 Stockholders Agreement is found to have any continuing validity  
7 (and it should not be), Mr. Wynn materially breached that Agreement. Ms. Wynn agreed to  
8 restrictions on her stock to help her partner of 41 years and the father of her children maintain the  
9 alliance with, and the restrictions on, Mr. Okada. Mr. Wynn in turn agreed that Ms. Wynn would be  
10 able to oversee and protect her interests as a major investor and shareholder with a seat on the Board.  
11 Among other things, Mr. Wynn was obligated to endorse and support Ms. Wynn's nomination and  
12 election for director of Wynn Resorts, which he failed to do.

13         8. Neither Mr. Wynn nor Ms. Sinatra made any effort to hide their antipathy for Ms.  
14 Wynn's insistence on carrying out her duties as a director. For her part, Ms. Wynn became  
15 increasingly concerned about the pattern of reckless risk-taking by the Chairman and CEO,  
16 unconstrained by proper internal controls; the "tone at the top" that discouraged any challenge to  
17 Mr. Wynn; the fact that Mr. Wynn and Ms. Sinatra decided what would and would not be disclosed  
18 to the Board; and the fact that they made decisions based not on what was best for the shareholders,  
19 but what was best for management, specifically the Chairman and CEO. No other plausible  
20 explanation could justify the decision to keep secret from the Board and other Company counsel  
21 besides Ms. Sinatra the fact that the Chairman and CEO had engaged in alleged misconduct on  
22 Company property against at least one Company employee serious enough to warrant a multimillion  
23 dollar payment and thereby to expose the Company and other directors to liability without their  
24 knowledge or consent.

25         9. The Wynn Board may be the most compliant board of any major public company. In  
26 only three instances in the history of the Company has a director voted against Mr. Wynn's position  
27 on any issue. The only time Mr. Wynn's purported position has ever been "defeated" was when it  
28 came to electing Ms. Wynn to the Board of Directors in 2015. She is a near 10 percent shareholder.

1 If her name were not "Wynn," and if she did not know as much as she does and had not raised proper  
2 questions about the management of the Company, she would of course have a seat on the Board.  
3 Although Mr. Wynn formally voiced that he was voting the shares he controlled in Ms. Wynn's  
4 favor, he engineered the Nominating Committee's recommendation to reduce the Board's size and  
5 not to renominate Ms. Wynn and the Board's decision to follow that recommendation. Ms. Wynn is  
6 the only director in the Company's history who was involuntarily "retired." She is the only director  
7 to seek renomination and not to receive it. Dogged by a campaign that "Steve wanted her off" – a  
8 campaign Mr. Wynn and his co-conspirators devised and executed – Ms. Wynn no longer sits on the  
9 Board; Mr. Wynn maintains complete voting control over her stock; and the vast bulk of her stock is  
10 totally restricted from transfer, including to the point that she cannot protect herself or provide for a  
11 reasonable estate plan for the benefit of her children. Elaine Wynn is a sophisticated business  
12 woman. This is not the agreement she made. She sought to protect the Company and her family and  
13 to do no harm to her children's father. It is impossible to draw any conclusion other than that Mr.  
14 Wynn intentionally sought to do just the opposite.

15 **II. Case Designation**

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

20 **III. The Parties**

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

23 12. Counterdefendant and crossdefendant Stephen A. Wynn is and was, at all relevant  
24 times, a citizen of Nevada.

25 13. Counterdefendant and crossdefendant Kimmarie Sinatra is and was, at all relevant  
26 times, a citizen of Nevada.

27 14. Plaintiff, counterdefendant, and crossdefendant Wynn Resorts Limited ("Wynn  
28 Resorts") is a company organized and existing under the laws of Nevada.



1           15. Defendant, counterclaimant, and counterdefendant Aruze USA, Inc. ("Aruze") is a  
2 company organized and existing under the laws of Nevada. On information and belief, Aruze is and  
3 was controlled by Kazuo Okada at all relevant times, and is the entity Mr. Okada used to hold shares  
4 in Wynn Resorts.

5 **IV. General Allegations**

6           16. Elaine Wynn married Stephen Wynn in 1963, when they were both 21. They  
7 divorced in 1986, and remarried in 1991. They divorced again eighteen years later, in 2010.

8           17. Ms. Wynn made major contributions to the success of Wynn Resorts. She worked  
9 tirelessly to turn visions into reality, to help create the unique ambiance and experience that have  
10 made Wynn Resorts so successful. Mr. Wynn never contested, at the time of divorce, that Ms.  
11 Wynn was entitled to 50 percent of the stock in Wynn Resorts.

12           18. Between 1977 and 2000, Ms. Wynn served as a director of Mirage Resorts.

13           19. Ms. Wynn served as a director of Wynn Resorts from October 2002 until April 2015.

14 **A. Creation of Wynn Resorts**

15           20. In 2000, Mr. Wynn purchased the Desert Inn in Las Vegas. The Desert Inn site  
16 eventually was rebuilt as Wynn Resorts. The entity Mr. Wynn used to hold the Desert Inn property  
17 was the Nevada limited liability company Valvino Lamore, LLC ("Valvino"), which Mr. Wynn  
18 formed in April 2000.

19           21. Mr. Wynn turned to Mr. Okada to help finance this new project. In October 2000,  
20 Aruze contributed \$260 million to Valvino and became a member of Valvino.

21           22. In April 2002, Aruze contributed a further \$120 million to Valvino.

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

24           24. Mr. Wynn, Aruze and Baron agreed to contribute their interests in Valvino to a new  
25 entity, to be named Wynn Resorts. On April 11, 2002, Mr. Wynn, Aruze, and Baron executed a  
26 Stockholders Agreement (the "April 2002 Stockholders Agreement") with respect to their shares in  
27 the new entity.

1           25.     Mr. Wynn became Wynn Resorts' Chairman and Chief Executive Officer in June  
2 2002.

3           26.     In October 2002, Ms. Wynn became a director, Mr. Okada became Vice Chairman,  
4 and Wynn Resorts conducted an initial public offering of Wynn Resorts stock (ticker symbol  
5 WYNN) on the NASDAQ exchange.

6           **B.     The 2002 and 2006 Stockholders Agreements**

7           27.     In 2002 and 2006, the stockholders executed two agreements intended to ensure that  
8 their unified voting strength would be used to keep control in the hands of the Wynn-Okada alliance.  
9 A third agreement was signed in 2010 after the Wynns divorced.

10          28.     Section 2(a) of the April 2002 Stockholders Agreement sets forth a voting agreement  
11 between Mr. Wynn and Aruze. Section 2(a) provides that Mr. Wynn would designate a majority of  
12 all nominees to the Board of Wynn Resorts; Aruze would designate a minority slate of directors; and  
13 Mr. Wynn and Aruze would vote the shares held by them to elect the designated nominees.

14          29.     Section 9 of the April 2002 Stockholders Agreement set forth a  
15 right-of-first-refusal restriction on the transfer of stock by Mr. Wynn, Aruze and Baron. Generally,  
16 Section 9 provided that each contracting party who wished to sell stock must, with certain  
17 exceptions, provide notice of the proposed terms of sale to the other parties to the agreement, and  
18 that each other party would have the right to purchase the offered shares according to certain  
19 procedures.

20          30.     Section 4 of the April 2002 Stockholders Agreement stated that "Shares may not be  
21 transferred or sold by any Stockholder unless the transferee (including a Permitted Transferee) both  
22 executes and agrees to be bound by this Agreement."

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

28          32.     In the same Form 10-K, Wynn Resorts further stated: "Mr. Wynn and Aruze USA,

1 Inc., together with Baron Asset Fund, have entered into a stockholders' agreement. Under the  
2 stockholders' agreement, Mr. Wynn and Aruze USA, Inc., have agreed to vote their shares of our  
3 common stock for a slate of directors, a majority of which will be designated by Mr. Wynn, of which  
4 at least two will be independent directors, and the remaining members of which will be designated  
5 by Aruze USA, Inc. As a result of this voting agreement, Mr. Wynn, as a practical matter, controls  
6 the slate of directors to be elected to our board of directors."

7 33. In or about 2006, Mr. Wynn asked Mr. Okada to agree to further restrictions on  
8 Aruze's ability to sell Wynn Resorts stock. On November 8, 2006, Mr. Wynn and Aruze executed  
9 an Amendment to Stockholders Agreement ("2006 Amendment").

10 34. The 2006 Amendment added the following: "Mutual Restriction on Sale of Shares.  
11 Neither [Mr.] Wynn nor Aruze (nor any of their respective Permitted Transferees) shall Transfer, or  
12 permit any of their respective Affiliates to Transfer, any Shares Beneficially Owned by such Person  
13 without the prior written consent of both [Mr.] Wynn and Aruze." This type of restriction on stock  
14 transfers is known as a consent restriction and purported to apply to all shares subject to the  
15 agreement.

16 **C. Division of the Wynn Shares**

17 35. Elaine and Stephen Wynn finalized their divorce in 2010 after having been married  
18 for a total of 41 years. Under Nevada law, Ms. Wynn was entitled to an equal division of  
19 community assets, including their Wynn Resorts stock.

20 36. Mr. Wynn insisted that he could not transfer shares to Ms. Wynn unless she signed  
21 the January 2010 Stockholders Agreement. Mr. Wynn and his lawyers represented to Ms. Wynn  
22 that because the shares to be divided between Mr. Wynn and Ms. Wynn were subject to the 2002 and  
23 2006 Agreements, Ms. Wynn had no choice but to be added as a party to the pre-existing  
24 Stockholders Agreement and to execute the Irrevocable Proxy in order to maintain the restrictions  
25 on Mr. Okada; that the purpose of the restrictions was to restrict *Mr. Okada's* transfer of his shares,  
26 not Ms. Wynn's; that if she did not agree to the same restrictions that applied to Mr. Okada, Mr.  
27 Okada would seize that as an opportunity to reopen negotiations; and that Mr. Okada's doing so  
28

1 could undermine their joint control of Wynn Resorts and potentially diminish the value of their  
2 holdings.

3 37. Mr. Wynn also led Ms. Wynn to believe that he would engage in responsible joint  
4 estate planning with Ms. Wynn to provide a legacy for their family and also for the community.  
5 These representations were false.

6 38. Mr. Wynn also made certain business commitments to Ms. Wynn, who now  
7 separately held nearly 10 percent of the stock in the Company: that is, like any such large  
8 stakeholder, and particularly one restricted from freely selling the vast majority of her stake, she was  
9 entitled to serve, and he committed to her serving, on the Board of Directors.

10 39. In reliance on the representations made to her by Mr. Wynn and his counsel, Ms.  
11 Wynn signed the January 2010 Stockholders Agreement, as described further below.

12 **D. The January 2010 Stockholders Agreement**

13 40. On January 6, 2010, Mr. Wynn and Ms. Wynn, on the one hand, and Mr. Okada's  
14 company Aruze, on the other hand, signed the Amended and Restated Stockholders Agreement  
15 ("January 2010 Stockholders Agreement"). As represented to Ms. Wynn, the purpose of the  
16 January 2010 Stockholders Agreement was to ensure that Mr. Okada did not transfer his shares  
17 without the permission of Mr. Wynn and Ms. Wynn.

18 41. Section 2(a) of the January 2010 Stockholders Agreement provides as follows:

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

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

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

5 42. The Irrevocable Proxy, attached as Exhibit A to the January 2010 Stockholders  
6 Agreement and executed by both Ms. Wynn and Aruze, grants Mr. Wynn voting rights to all shares  
7 subject to the Agreement and provides that such proxy is to be exercised "for the election of  
8 directors as more specifically provided and in a manner consistent with this Agreement."

9 43. Section 2(b) of the January 2010 Stockholders Agreement provides that, with certain  
10 exceptions, "none of [Ms. Wynn], [Mr. Wynn,] or Aruze (nor any of their respective Permitted  
11 Transferees) shall Transfer, or permit any of their respective Affiliates to Transfer, any Shares  
12 Beneficially Owned by such Person without the prior written consent of each of the others." The  
13 restrictions of Section 2(b) contain no time limitation.

14 44. Section 4 of the January 2010 Stockholders Agreement states that "[s]hares may not  
15 be transferred or sold by the Designated Stockholder unless the transferee (including a Permitted  
16 Transferee) both executes and agrees to be bound by both this Agreement and the Proxy." The  
17 restrictions of Section 4 contain no time limitation and provide that any transferee must be bound by  
18 the restrictions in the agreement.

19 45. Section 9 of the January 2010 Stockholders Agreement provides for a  
20 right-of-first-refusal restriction on stock transfers. Generally, Section 9 provides that each party  
21 who wishes to sell stock must, with certain exceptions, provide notice of the proposed terms of sale  
22 to the other parties to the Agreement, and that each other party will then have the right to purchase  
23 the offered shares according to a specified procedure. The restrictions of Section 9 contain no time  
24 limitation and provide that the transferee must be bound by the restrictions in the agreement.

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

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

3           E.     **Wynn Resorts Redemption of Aruze’s Stock**

4           48.     On or about October 29, 2011, Wynn Resorts’ Compliance Committee retained  
5 Louis Freeh, former Director of the Federal Bureau of Investigation, to investigate Mr. Okada’s  
6 activities overseas, including his activities in the Philippines.

7           49.     On February 18, 2012, Mr. Freeh made a presentation to the Board of Wynn Resorts  
8 regarding Mr. Okada’s overseas activities. Based on Mr. Freeh’s presentation, the Board of Wynn  
9 Resorts adopted a resolution finding Aruze, Mr. Okada, and Universal Entertainment Corporation to  
10 be Unsuitable Persons under Wynn Resorts’ Second Amended and Restated Articles of  
11 Incorporation (“Articles”). The Board caused Wynn Resorts to redeem Aruze’s shares in Wynn  
12 Resorts.

13          50.     With the redemption of Mr. Okada’s interest, the purpose and intent of the January  
14 2010 Stockholders Agreement fails. Mr. Wynn does not need Ms. Wynn’s shares to protect him  
15 from Mr. Okada. The risk posed by Mr. Okada and his shareholdings simply does not exist in light  
16 of the redemption. The January 2010 Stockholders Agreement was never intended to give Mr.  
17 Wynn a perpetual unlimited “get out of jail free” card, guaranteeing Ms. Wynn’s support against  
18 any and all comers. This was an agreement with its roots – and its execution – in the Wynn-Okada  
19 alliance. With Mr. Okada out of the picture, the January 2010 Stockholders Agreement no longer  
20 serves its purpose and is invalid and unenforceable.

21          F.     **Mr. Wynn’s Abandonment of His Promises to Ms. Wynn and Pattern of**  
22                 **Reckless Behavior**

23          51.     Working very long days, and trusting that (whatever Mr. Wynn might do in his  
24 personal life) Mr. Wynn would not put the Company they had co-founded and so painstakingly  
25 worked to build at risk, Ms. Wynn cannot say with any certainty when Mr. Wynn’s reckless  
26 risk-taking began or accelerated. But beginning at the time of her divorce, and for obvious reasons,  
27 Ms. Wynn began examining the extent to which Mr. Wynn was withholding information from the  
28 Board on critical issues and using a public company to fund his lavish lifestyle and personal politics.

1 Mr. Wynn, along with Ms. Sinatra, effectively undermined the role and proper decision-making  
2 authority of the Board by withholding information from or affirmatively misleading the Board,  
3 including on matters that indisputably should have been reported by the Board, and by retaliating  
4 against Ms. Wynn for raising proper inquiries into the conduct of the Company, including by Mr.  
5 Wynn.

6 52. Among other things, Ms. Wynn learned that Mr. Wynn, using the services of a  
7 private criminal defense attorney and a private gaming attorney, had previously made a multimillion  
8 dollar payment after apparently being threatened with allegations of serious misconduct occurring  
9 on Company property against a Wynn Resorts employee. When Ms. Wynn made inquiries of Ms.  
10 Sinatra, the Company's General Counsel, Ms. Sinatra stated that Mr. Wynn had decided that the  
11 matter should not be disclosed to the Board or other Company counsel – even though Mr. Wynn, as  
12 the Chairman and CEO of a public company, had exposed himself to sufficiently serious allegations  
13 of wrongdoing that he had been forced to pay millions of dollars and had used Company resources  
14 to conceal the allegations.

15 53. Ms. Wynn also learned, from Mr. Wynn himself, that his prior representations to her  
16 about providing for their family – misrepresentations made to secure her signature on the January  
17 2010 Stockholders Agreement – and all the assumptions upon which they were based were a sham.  
18 Mr. Wynn has rebuffed her efforts even to discuss what would be an appropriate approach to  
19 balancing the legacy they leave for their family with the responsibility Ms. Wynn has long felt to  
20 give back to the community. Mr. Wynn has now repeatedly confirmed to both Ms. Wynn and their  
21 two children that the children should look to Ms. Wynn, and only Ms. Wynn, for support and that he  
22 has no intention of including them in any significant way in his will or otherwise. He has refused  
23 Ms. Wynn's requests that they meet together to discuss estate planning for the benefit of their family  
24 and their foundation, leaving no doubt that he knew at the time he secured her signature on the  
25 January 2010 Stockholders Agreement that he would never do so. Even if Mr. Wynn has created a  
26 will or other mechanism to provide for his family, he has refused to acknowledge it or reveal any of  
27 its terms so that Ms. Wynn can reasonably plan her own estate.  
28



1           54.     Ms. Wynn also learned that Mr. Wynn's judgment as to the promotion and retention  
2 of senior officials of the Company was dangerously flawed, with potentially serious implications for  
3 the Company, its directors and its gaming licenses. Mr. Wynn surrounded himself with senior  
4 management many of whom, it has emerged, were elevated more for their loyalty than their integrity  
5 and ability. For example, for many years, Marc D. Schorr, Mr. Wynn's hand-picked selection for  
6 Chief Operating Officer ("COO") of Wynn Resorts in 2001, was one of Mr. Wynn's closest  
7 associates. When Ms. Wynn objected to Mr. Schorr's election to the Board because of questions  
8 about his ethics, Mr. Wynn and Ms. Sinatra rebuffed her and retaliated against her. As it turned out,  
9 Ms. Wynn's concerns were well-founded, but Mr. Wynn misled the Board about the reason for Mr.  
10 Schorr's sudden decision to retire.

11           55.     Mr. Schorr's misconduct came to light due to the actions of a former casino operator  
12 named Tim Poster, who was as close to Mr. Schorr as Mr. Schorr was to Mr. Wynn. Mr. Poster  
13 initially was hired to explore potential business opportunities for Wynn Resorts in internet  
14 gambling; when Mr. Wynn decided not to pursue that direction, he assigned Mr. Poster to a  
15 prominent position in casino marketing. Shortly thereafter, Mr. Wynn personally chose and  
16 announced Mr. Poster's promotion to COO of Wynn Las Vegas. But before Mr. Poster could even  
17 begin to assume his full duties, Mr. Wynn was forced to accept his resignation when it was revealed  
18 that Mr. Poster was under investigation for participating in illegal gambling. The Nevada Gaming  
19 Control Board subsequently rejected Mr. Poster's application for preliminary findings of suitability  
20 based on this and other misconduct.

21           56.     Mr. Schorr's and Mr. Poster's well-known pattern of joint betting activity then raised  
22 concerns about whether Mr. Schorr might have participated in similar, illegal activities. Within  
23 weeks, Mr. Wynn announced to the Board that Mr. Schorr, despite having recently received a  
24 contract extension and additional compensation at Mr. Wynn's direction, had now decided to resign  
25 voluntarily because he was ready to retire. This same claim was made in SEC filings. In its  
26 subsequent SEC Form 8-K filed March 27, 2013, and echoing Mr. Wynn's misrepresentation to the  
27 Board, Wynn Resorts falsely and deceptively reported that Mr. Schorr's departure from Wynn  
28 Resorts was the result of Mr. Schorr's notice to the Company of his "his intention to retire." In fact,



1 Mr. Schorr was terminated by Mr. Wynn because of his participation in illegal gambling, something  
2 every gaming executive knows will not be tolerated by authorities. Even after these events, Mr.  
3 Wynn again hired Mr. Schorr as a paid consultant for Wynn Resorts. When Ms. Wynn voiced her  
4 concerns about Mr. Schorr's retention as a consultant, she again was made to feel her concerns were  
5 baseless. When she brought her concerns to the attention of other senior management, Mr. Schorr's  
6 consultancy was suspended – but since then Mr. Schorr has again been engaged by Wynn Resorts to  
7 consult periodically.

8         57. Both Wynn Resorts and Mr. Wynn entertain lavishly, which is common in the  
9 gaming industry. The dollar volume of such entertaining, not to mention the costs of a fleet of jets,  
10 and the overlap between what is personal and what should be a business expense, demand effective  
11 internal controls including careful review by the Audit Committee. Mr. Wynn misused Company  
12 resources to support his legendary lifestyle. There was no effective protocol, or at least none  
13 approved by the Board, to oversee entertainment and travel expenditures, and Ms. Wynn's inquiries  
14 were rebuffed. On information and belief, on no occasion did the Audit Committee of the Board  
15 ever investigate or even conduct an in-depth review of the Company's internal controls governing  
16 such large expenditures; certainly, no such reports have been produced, and there is evidence of  
17 regular shredding of audit committee materials and notes. The tone at the top of senior  
18 management, in particular Mr. Wynn and Ms. Sinatra, was to discourage even Board members from  
19 questioning the unilateral apportionment decisions of Mr. Wynn. Again, Ms. Wynn's efforts to act  
20 as a truly independent director were stonewalled: she was specifically barred from sitting in on a  
21 meeting of the Audit Committee.

22         58. The knowledge that dissent was not tolerated at the Board level means that it was not  
23 tolerated anywhere. Mr. Wynn and Ms. Sinatra intentionally created a tone at the top that was not  
24 and is not conducive to proper functioning of internal controls. This is true as well with respect to  
25 Mr. Wynn's increasing profile in partisan politics, conveyed in media interviews that were often  
26 conducted on Company property. As an individual, Mr. Wynn is free to support whatever party or  
27 candidate he chooses, whether or not that serves the Company's interest. But acting as Chairman  
28 and CEO, and using Company resources, he is responsible to the Board and ultimately to the

1 shareholders; the issue is not whether Stephen Wynn supports the Republican Party, but whether it  
2 is in the best interests of the Company to take sides in partisan politics. Ms. Wynn expressed her  
3 concerns to Company counsel, which likewise were rebuffed. At least one other director, on  
4 information and belief, expressed similar concerns. Nevertheless, the issue was never raised at the  
5 Board level, and Mr. Wynn has only increased the Company's partisan profile to the detriment of  
6 the Company.

7 59. Mr. Wynn has exerted, and continues to exert, control over his Board, including by  
8 exercising control over their access to information and by retaliating against Ms. Wynn for her  
9 proper inquiries into Company matters, as described previously. All Wynn Resorts directors who  
10 have ever served on the Board have been, without exception, selected by Mr. Wynn. In only three  
11 instances in the history of the Company – with one of them being Ms. Wynn's renomination (where  
12 the board was following Mr. Wynn's signals but not his vote) and the other two being lone  
13 dissenting votes from Ms. Wynn on one occasion and Mr. Okada on the other – has a director voted  
14 against Mr. Wynn's intentions at any time or on any subject.

15 **G. Mr. Wynn's Disregard of His Agreement and of His Repeated Assurances to**  
16 **Engineer Elaine Wynn's Removal from the Board of the Company She Built**

17 60. On information and belief, Mr. Wynn and Ms. Sinatra, including by using the  
18 Nominating and Governance Committee, engineered the 2015 removal of Elaine Wynn from the  
19 Board of the Company she co-founded, worked tirelessly to create, and in which she owns a  
20 significant shareholder stake. Doing so violated both the written and oral agreements between the  
21 Wynns. It was Ms. Wynn's punishment for asking too many questions that Mr. Wynn and Ms.  
22 Sinatra did not want to answer. Mr. Wynn no longer wanted Ms. Wynn's participation, despite his  
23 obligations under the January 2010 Stockholders Agreement and even as he insisted on his absolute  
24 right to control her property.

25 61. Renomination was routine at Wynn Resorts until February 24, 2015, when the  
26 Nominating and Corporate Governance Committee of Wynn Resorts voted to recommend that Ms.  
27 Wynn not be renominated to the Board, recommending instead that the size of the Board be  
28 decreased by one and that only directors J. Edward Virtue and John J. Hagenbuch be renominated.

1           62.     On February 26, 2015, the Board of Wynn Resorts voted in favor of reducing the size  
2 of the Board by one, the one being Ms. Wynn. Although Mr. Wynn professed to vote formally  
3 against this act of expulsion, he made it clear that the only reason he did not vote with the directors  
4 he had hand-selected and guided was because he was contractually obligated to vote otherwise. The  
5 message was lost on no one. Mr. Wynn carried the day. Based on false and pretextual justifications,  
6 the Nominating Committee recommended against the renomination of Ms. Wynn as director, and  
7 the Board controlled by Mr. Wynn ratified that recommendation.

8           63.     Although Ms. Wynn then attempted to solicit proxies, the effort was doomed. Mr.  
9 Wynn failed to take reasonable steps during the ensuing proxy contest to communicate to  
10 shareholders any endorsement of Ms. Wynn's candidacy. To the contrary, he undermined support  
11 for Ms. Wynn. For example, after Mr. Wynn stated in a televised interview on April 15, 2015 that  
12 he did not agree with the Board's decision not to renominate Ms. Wynn, Ms. Wynn issued a press  
13 release thanking him for his endorsement. Rather than leave it at that, Wynn Resorts quickly issued  
14 a press release stating that Mr. Wynn's comments should not be misconstrued and that he had great  
15 respect for the care the Board took in making its decisions. Or, as the AP reported on April 17,  
16 2015, Mr. Wynn was not in fact endorsing Ms. Wynn.

17           64.     Mr. Wynn and Ms. Sinatra wanted Ms. Wynn expelled from the Board in retaliation  
18 for her proper inquiries into Company activities, including without limitation those involving Mr.  
19 Wynn as described above. Indeed, in the entire history of the Company, Ms. Wynn was the only  
20 director who wanted to stay on the Board who was not renominated and reelected.

21 **V.     Claims for Relief**

22                   **FIRST CAUSE OF ACTION**

23                   **DECLARATORY RELIEF**

24                   **(Discharge and/or Rescission for Frustration of Purpose)**

25           65.     Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

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

1           67.     The redemption of Aruze's stock has frustrated the purpose of the January 2010  
2 Stockholders Agreement and its predecessor agreements (*i.e.*, the April 2002 Stockholders  
3 Agreement and the 2006 Amendment).

4           68.     The stated purpose of the January 2010 Stockholders Agreement was for Aruze to  
5 support and avoid undermining Mr. Wynn's position as controlling shareholder and to support the  
6 existing alliance and agreement between Mr. Wynn and Mr. Okada—an alliance and agreement  
7 predicated on the substantial holding of Wynn Resorts stock by Mr. Okada's company Aruze. On  
8 information and belief, all parties to the agreement understood this was the purpose of the January  
9 2010 Stockholders Agreement and its predecessor agreements.

10          69.     Following the redemption of Aruze's shares, Mr. Okada (through Aruze) no longer  
11 holds Wynn Resorts stock, and there is no longer a need for an alliance between Mr. Okada's and  
12 Mr. Wynn's stockholdings. Therefore, the purpose of the January 2010 Stockholders Agreement  
13 and its predecessor agreements has been eliminated.

14          70.     In light of the above, performance by other parties of the January 2010 Stockholders  
15 Agreement has become valueless for Ms. Wynn and the purpose of all parties has been defeated.

16          71.     Ms. Wynn bore no fault for the events that gave rise to the unforeseeable Aruze  
17 redemption. She did nothing in her capacity as a director or otherwise that was a but for cause of the  
18 redemption. Nor did she take any action with respect to the redemption as a result of any purpose or  
19 desire to affect the obligations of any parties under any stockholders agreement; any actions she  
20 took in that regard resulted from the discharge of her fiduciary duties in the best interests of the  
21 corporation.

22          72.     Accordingly, Ms. Wynn seeks a declaration that all of Ms. Wynn's contractual duties  
23 under the January 2010 Stockholders Agreement are discharged or, alternatively, that the January  
24 2010 Stockholders Agreement is subject to rescission and is rescinded.

25                   **SECOND CAUSE OF ACTION**

26                   **DECLARATORY RELIEF**

27                   **(Unreasonable Restraint on Alienability in Violation of Public Policy)**

28          73.     Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

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

4       75.     The January 2010 Stockholders Agreement contains unreasonable and onerous  
5 restrictions on the alienability of Ms. Wynn's stock, including without limitation:

6             (a)     Section (2)(b), which provides that, with certain exceptions, "none of [Ms.  
7 Wynn], [Mr. Wynn,] or Aruze (nor any of their respective Permitted Transferees) shall Transfer, or  
8 permit any of their respective Affiliates to Transfer, any Shares Beneficially Owned by such Person  
9 without the prior written consent of each of the others." This provision continued the consent  
10 restriction agreed to by Mr. Wynn and Mr. Okada's company Aruze in the 2006 Amendment.

11            (b)     Section 4, which states that: "Shares may not be transferred or sold by the  
12 Designated Stockholder unless the transferee . . . both executes and agrees to be bound by" the  
13 January 2010 Stockholders Agreement.

14       76.     The restrictions are an unlawful and unenforceable restraint on alienation. There are  
15 no temporal limits to the material restrictions. They purport to burden the shares in perpetuity by  
16 tying up the shares and preventing Ms. Wynn or her estate from disposing of the shares during her  
17 lifetime and beyond. The restrictions are unenforceable as they unduly interfere with the  
18 alienability of Ms. Wynn's shares.

19       77.     The restrictions are independently unlawful and unenforceable pursuant to statute,  
20 including without limitation pursuant to NRS 78.355, which provides that proxies are not effective  
21 for a term of more than 7 years, and pursuant to NRS 78.365, which provides that voting agreements  
22 are not effective for a term of more than 15 years.

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

25                               **THIRD CAUSE OF ACTION**

26                               **DECLARATORY RELIEF**

27                               **(Forfeiture)**

28       79.     Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

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

4           81.     The restrictions set forth in the January 2010 Stockholders agreement are invalid as  
5 effecting an unlawful forfeiture. They purport unduly to restrict, and indeed to prevent altogether  
6 absent the inevitably withheld consent of an ex-husband, Ms. Wynn's ability to dispose of her  
7 shares of Wynn Resorts common stock during her lifetime and beyond.

8           82.     Mr. Wynn continues to contend that the restrictions are valid and that Ms. Wynn's  
9 ability to sell the vast majority of her shares does not exist absent his consent.

10          83.     The practical effect of the restrictions is that Ms. Wynn is unable to sell her shares of  
11 common stock in Wynn Resorts. Accordingly, Ms. Wynn seeks a declaration that the restrictions  
12 are unenforceable as an unlawful forfeiture in violation of public policy.

13                               **FOURTH CAUSE OF ACTION**

14                               **DECLARATORY RELIEF**

15                               **(Unilateral Mistake)**

16          84.     Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

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

20          86.     At the time the parties entered into the January 2010 Stockholders Agreement, Ms.  
21 Wynn made a mistake as to fundamental assumptions on which she agreed to the restrictions set  
22 forth therein. Specifically, the fundamental assumptions about which Ms. Wynn was mistaken were  
23 that: (1) Mr. Wynn would provide for their children as part of his estate planning and otherwise; and  
24 (2) the purpose of the January 2010 Stockholders Agreement was to restrict the transfer of Mr.  
25 Okada's shares, thereby ensuring Mr. Wynn's continued control of the Company, and not to  
26 independently to restrict Ms. Wynn's ability to transfer the vast majority of her shares if Mr. Okada  
27 was no longer a party to the January 2010 Stockholders Agreement.

87. These mistaken fundamental assumptions made by Ms. Wynn had a material effect on the agreed exchange of performances that is adverse to Ms. Wynn. Ms. Wynn did not knowingly bear the risk of this mistake.

88. Mr. Wynn knew of Ms. Wynn's mistake – namely because he had assured her repeatedly that he had the intention of providing for their children's interests, whereas in reality he had no such intent, and because Mr. Wynn represented to Ms. Wynn that the purpose of the January 2010 Stockholders Agreement was to restrict Mr. Okada's shares, not hers. Mr. Wynn's fault caused Ms. Wynn's mistake.

89. Accordingly, Ms. Wynn seeks a declaration that the restrictions in the January 2010 Stockholders Agreement are voidable by Ms. Wynn so that she can transfer her shares, including without limitation to provide for her children.

### FIFTH CAUSE OF ACTION

## DECLARATORY RELIEF

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

90. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

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

92. At the time the parties entered into the January 2010 Stockholders Agreement, Ms. Wynn was in the process of divorcing Mr. Wynn and was entitled to ownership of the shares of Wynn Resorts common stock that were transferred to her under the agreement pursuant to the community property laws of the State of Nevada.

93. In exchange for Ms. Wynn's performance of the continuing covenants of the January 2010 Stockholders Agreement, Ms. Wynn was supposed to receive as valuable consideration the performance agreed to by the other Designated Stockholders – including Aruze's continuing performance and Mr. Wynn acting to ensure the renomination and reelection of Ms. Wynn to the Wynn Resorts Board. Ms. Wynn would never have agreed to enter the voting agreement, execute the Irrevocable Proxy in favor of Mr. Wynn, and agree to restrictions on the sale or transfer of the

1 vast majority of her shares of Wynn Resorts common stock without Aruze's participation and  
2 without Mr. Wynn's contractual agreement that he would endorse and support Ms. Wynn's  
3 nomination and election as director, which he failed to do.

4 94. The failures of other Designated Stockholders to perform their continuing  
5 obligations under the January 2010 Stockholders Agreement had a material effect on the agreed  
6 exchange of performances that is adverse to Ms. Wynn and resulted in the unilateral imposition of  
7 burdensome covenants on Ms. Wynn without any corresponding, bargained-for, and beneficial  
8 covenants being performed by the other Designated Stockholders. The failures of consideration or  
9 performance include, without limitation, Mr. Wynn's, Aruze's, and Wynn Resorts' (as Aruze's  
10 successor) failures to comply with their continuing contractual obligations under the January 2010  
11 Stockholders Agreement.

12 95. Ms. Wynn is under no continuing obligation to perform her covenants under the  
13 January 2010 Stockholders Agreement because failures of consideration excuse her performance.  
14 The failures of other Designated Stockholders to perform concerned matters of prime importance.  
15 Ms. Wynn would not have entered into the January 2010 Stockholders Agreement if she had  
16 expected or contemplated such failures.

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

20 **SIXTH CAUSE OF ACTION**

21 **FRAUDULENT INDUCEMENT**

22 **(Against Stephen Wynn)**

23 97. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

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

27 99. Prior to and during the course of negotiation and execution of the January 2010  
28 Stockholders Agreement, Mr. Wynn led Ms. Wynn to believe that he would jointly provide for their



1 children and concealed from Ms. Wynn the fact that he had no intention of leaving anything of value  
2 to their children upon his passing, and that their children would actually be required to obtain all  
3 future financial support from Ms. Wynn. Mr. Wynn also led Ms. Wynn to believe that the purpose  
4 of the January 2010 Stockholders Agreement was to restrict Mr. Okada's (Aruze's) shares, but  
5 concealed from Ms. Wynn that the actual purpose of the January 2010 Stockholders Agreement  
6 was, in fact, to ensure Mr. Wynn's control of Ms. Wynn's shares.

7       100. Mr. Wynn's materially misleading statements and material omissions, combined  
8 with the restrictions prohibiting alienability of Ms. Wynn's shares of Wynn Resorts common stock  
9 as set forth in the January 2010 Stockholders Agreement, mean that upon Ms. Wynn's death, their  
10 children will have no testamentary support because the restrictions make it impossible for Ms.  
11 Wynn to leave their children any material sum. More specifically, Ms. Wynn's estate will owe  
12 substantial inheritance tax on Ms. Wynn's shares of Wynn Resorts common stock—stock that even  
13 her children cannot sell because of the purported continuing effect of the restrictions. Such tax will  
14 need to be funded from the other assets of Ms. Wynn's estate, thereby depleting virtually the entirety  
15 of her estate.

16       101. In forming the January 2010 Stockholders Agreement, Mr. Wynn had a duty to be  
17 candid with Ms. Wynn and to disclose to Ms. Wynn material facts known or accessible only to him  
18 because such facts were uniquely known to him. Mr. Wynn knew that the facts regarding his true  
19 intentions relating to the children were not known to or reasonably discoverable by Ms. Wynn. Mr.  
20 Wynn also knew the facts relating to his actual intent in inducing Ms. Wynn to enter into the January  
21 2010 Stockholders Agreement – to control Ms. Wynn's shares – were not known to or reasonably  
22 discoverable by Ms. Wynn.

23       102. Ms. Wynn would not have entered into the January 2010 Stockholders Agreement  
24 containing restrictions that, in effect, limited her ability properly to plan her testamentary estate if  
25 she had known that Mr. Wynn had no intention of providing for their children upon his death, and  
26 that Ms. Wynn would be the sole source of future financial support for their children. Ms. Wynn  
27 also would not have entered into the January 2010 Stockholders Agreement if she had known that  
28

1 Mr. Wynn's true purpose of inducing her to enter into the agreement was to ensure Mr. Wynn's full  
2 and perpetual control over Ms. Wynn's shares.

3 103. Mr. Wynn misled Ms. Wynn and concealed these material facts from Ms. Wynn with  
4 the intent to induce her to enter into the January 2010 Stockholders Agreement.

5 104. In addition, Mr. Wynn made a further affirmative misrepresentation of material fact  
6 to Ms. Wynn with the intention of inducing her to enter into the January 2010 Stockholders  
7 Agreement. Specifically, during negotiation of the January 2010 Stockholders Agreement, Mr.  
8 Wynn made an oral representation to Ms. Wynn that he would use his control of Wynn Resorts to  
9 assure that she would continue to be a director of the Company. This representation was false.

10 105. At the time Mr. Wynn made this representation to Ms. Wynn, he had knowledge of  
11 and believed that the representation was false because Mr. Wynn intended all along to remove Ms.  
12 Wynn from the Board in retaliation for, among other things, her having raised questions about Mr.  
13 Wynn's risk-taking and Mr. Wynn's misconduct.

14 106. Mr. Wynn's false representations to Ms. Wynn were made with the intention to  
15 induce her to enter into and to consent to the January 2010 Stockholders Agreement.

16 107. Ms. Wynn justifiably relied upon Mr. Wynn's misrepresentations and material  
17 omissions in entering into the January 2010 Stockholders Agreement.

18 108. Mr. Wynn willfully and knowingly acted to damage Ms. Wynn's interests. He did so  
19 with malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's rights.

20 109. As a result of Mr. Wynn's intentional misrepresentations and material omissions,  
21 Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an award of  
22 said damages, as well as an award of punitive damages.

23 110. In addition to compensatory and punitive damages, Ms. Wynn seeks a declaration  
24 that the January 2010 Stockholders Agreement was procured by fraud and therefore is voidable.

25 **SEVENTH CAUSE OF ACTION**

26 **DECLARATORY RELIEF**

27 **(Discharge by Aruze)**

28 111. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

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

4           113. In this action, Aruze has filed claims against Mr. Wynn (Counts XV and XVI of  
5 Aruze's Fourth Amended Counterclaim) alleging breach of contract and seeking to be excused and  
6 discharged from any further performance of its obligations with respect to the January 2010  
7 Stockholders Agreement. In those claims, Aruze asserts that the purpose of the January 2010  
8 Stockholders Agreement has been frustrated.

9           114. The stated purpose of the January 2010 Stockholders Agreement was to support the  
10 existing alliance and agreement between Mr. Wynn and Mr. Okada—an alliance and agreement  
11 predicated on the substantial holding of Wynn Resorts stock by Mr. Okada's company, Aruze. On  
12 information and belief, all parties to the agreement understood this was the purpose of the January  
13 2010 Stockholders Agreement and its predecessor agreements.

14           115. If Aruze successfully obtains a discharge of its obligations under the January 2010  
15 Stockholders Agreement and is no longer bound thereby, then Ms. Wynn seeks a corresponding  
16 declaration that her duties under the January 2010 Stockholders Agreement are likewise discharged  
17 or, alternatively, that the January 2010 Stockholders Agreement is subject to rescission and is  
18 rescinded.

19                                   **EIGHTH CAUSE OF ACTION**

20                                   **BREACH OF CONTRACT**

21                                   **(Against Stephen Wynn)**

22           116. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

23           117. Ms. Wynn alleges that Mr. Wynn breached the January 2010 Stockholders  
24 Agreement in two respects: by violating his obligations under the voting agreement contained in  
25 section 2(a) and under the consent restriction contained in section 2(b).

26           118. Mr. Wynn's obligation to "include [Ms. Wynn] as one of his endorsed nominees"  
27 required him to "endors[e]" Ms. Wynn's candidacy, before the Board of Directors and its relevant  
28 committees in their deliberations concerning her renomination and before the shareholders in the

1 contested proxy contest. This endorsement obligation required that he take reasonable affirmative  
2 steps to persuade the Board, the relevant Board committees, and the shareholders that she be  
3 renominated and reelected and to secure her renomination and reelection. It further prohibited him  
4 from taking steps to undermine her candidacy.

5 119. Because Mr. Wynn controlled the Board of Wynn Resorts, Mr. Wynn's promises to  
6 support and endorse Ms. Wynn amounted to assurances that she would, at a minimum, continue to  
7 be nominated as a director of the Company. The reason Ms. Wynn agreed to permit Mr. Wynn to  
8 vote her stock to elect Mr. Wynn's nominees pursuant to Section 2(a) of the January 2010  
9 Stockholders Agreement was because of these assurances that Ms. Wynn would be included in the  
10 endorsed nominees and would remain a director.

11 120. Mr. Wynn failed to endorse Ms. Wynn and failed to take reasonable steps to  
12 persuade the Nominating Committee and the members of the Board to renominate Ms. Wynn. To  
13 the contrary, on information and belief, Mr. Wynn communicated to the Nominating Committee and  
14 the members of the Board directly or indirectly that he did not want her to continue on the Board.  
15 Once Mr. Wynn conveyed his desire to have Ms. Wynn ousted from the Board, the other Board  
16 members supported his decision as they have nearly every other decision in the history of the  
17 Company. The other Board members never would have acted not to renominate and not to reelect  
18 Ms. Wynn without Mr. Wynn's approval.

19 121. At the Board meeting in which Ms. Wynn's renomination was considered, Mr. Wynn  
20 failed to make a motion to include Ms. Wynn as a nominee. Further, when he voted against the  
21 motion to shrink the size of the Board, he expressly stated that he was doing so only because he was  
22 contractually obligated to support Ms. Wynn's candidacy. This conveyed that Mr. Wynn was not  
23 genuinely endorsing her candidacy. Mr. Wynn's lack of support for Ms. Wynn, which on  
24 information and belief Mr. Wynn had also previously conveyed to other Board members, caused  
25 those other members to exclude Ms. Wynn from the Board.

26 122. Mr. Wynn, Ms. Sinatra, and Wynn Resorts generated transparently false and  
27 pretextual reasons for not nominating Ms. Wynn to the Board. These reasons included things like  
28 Ms. Wynn's demeanor and body language at Board meetings – reasons that were not communicated

1 to Ms. Wynn but were asserted for the first time only after Ms. Wynn filed claims based on her  
2 improper ouster from the Board. The Directors' reliance on these demonstrably false – and  
3 after-the-fact – justifications shows that they were not exercising any independent judgment, or any  
4 judgment at all, but were merely doing Mr. Wynn's bidding.

5 123. In addition, Mr. Wynn's decision to vote for Mr. Hagenbuch and against Mr. Virtue  
6 was not made on the merits of the two candidates but was part of a calculated effort to maximize the  
7 success of the effort not to reelect Ms. Wynn at the shareholders' meeting. As Mr. Wynn and his  
8 advisors correctly predicted, Mr. Virtue secured more votes than Mr. Hagenbuch, so Mr. Wynn's  
9 support for the weaker candidate was deliberately calculated to increase Mr. Hagenbuch's chances  
10 of defeating Ms. Wynn.

11 124. Mr. Wynn breached the January 2010 Stockholders Agreement by undertaking the  
12 foregoing measures to oust Ms. Wynn from the Board.

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

17 126. As a result of Mr. Wynn's material breaches of the January 2010 Stockholders  
18 Agreement, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to  
19 an award of said damages.

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

23 **NINTH CAUSE OF ACTION**

24 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

25 **(Against Stephen Wynn)**

26 128. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 and paragraphs  
27 116 to 127 above.

1           129. The January 2010 Stockholders Agreement contained an implied covenant of good  
2 faith and fair dealing that required Mr. Wynn not to do anything to undermine or injure Ms. Wynn's  
3 right to receive the benefits of the contract, namely, her renomination and reelection to the Board of  
4 Directors.

5           130. Mr. Wynn's conduct alleged above was unfaithful to the purpose of the January 2010  
6 Stockholders Agreement and Ms. Wynn's justified expectations and, as a result, breached the  
7 implied covenant of good faith and fair dealing.

8           131. Mr. Wynn's actions in breach of the implied covenant of good faith and fair dealing  
9 were material and sufficient to excuse Ms. Wynn from any future performance of obligations  
10 purported to be imposed on her under the January 2010 Stockholders Agreement.

11           132. As a result of Mr. Wynn's breaches of the implied covenant of good faith and fair  
12 dealing, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an  
13 award of said damages.

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

17                                   **TENTH CAUSE OF ACTION**

18                                   **SPECIFIC PERFORMANCE**

19                                   **(Against Stephen Wynn)**

20           134. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

21           135. Ms. Wynn has fully performed and has complied with all material obligations of the  
22 January 2010 Stockholders Agreement.

23           136. Section (g) of the January 2010 Stockholders Agreement entitled "Specific  
24 Performance" provides that "a breach by any party hereto of any covenants or agreements contained  
25 in this Agreement will cause the other parties hereto to sustain damages for which they would not  
26 have an adequate remedy at law for money damages, and therefore . . . the parties shall be entitled to  
27 the remedy of specific performance." This remedy is consistent with the unique character and  
28 nature of a director position on the Wynn Resorts Board of Directors. The wrongful loss of Ms.

1 Wynn's director position cannot be duplicated or replaced in any fashion except by ordering Mr.  
2 Wynn to comply with his obligations to Ms. Wynn in a new director election.

3 137. Ms. Wynn requests an order compelling Mr. Wynn to comply with the January 2010  
4 Stockholders Agreement, including without limitation his obligations to assure the nomination and  
5 election of Ms. Wynn to the Board of Directors.

6 **ELEVENTH CAUSE OF ACTION**

7 **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

8 **(Against Kimmarré Sinatra and Wynn Resorts)**

9 138. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

10 139. Ms. Sinatra and Wynn Resorts knew of the January 2010 Stockholders Agreement,  
11 including Ms. Wynn's rights to nomination and election to the Wynn Resorts Board of Directors.  
12 Despite their knowledge of these contractual rights, Ms. Sinatra and Wynn Resorts took actions with  
13 the intent to disrupt and frustrate performance of the January 2010 Stockholders Agreement.

14 140. Ms. Sinatra and Wynn Resorts intentionally interfered with the January 2010  
15 Stockholders Agreement by interfering with Mr. Wynn's obligation to renominate and reelect Ms.  
16 Wynn to the Board of Directors, including without limitation by inventing pretextual reasons for  
17 Ms. Wynn not to continue as a director and by cancelling the redeemed shares held by Mr. Okada.  
18 Had the shares not been cancelled, they would have been voted in Ms. Wynn's favor.

19 141. The foregoing actions were intentionally taken by Ms. Sinatra and Wynn Resorts to  
20 interfere with Ms. Wynn's rights under the January 2010 Stockholders Agreement.

21 142. Ms. Sinatra and Wynn Resorts willfully and knowingly acted to damage Ms. Wynn's  
22 interests. They did so with malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's  
23 rights.

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

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28

1 **TWELFTH CAUSE OF ACTION**

2 **BREACH OF FIDUCIARY DUTY**

3 (Against Stephen Wynn)

4 144. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

5 145. At all relevant times, Mr. Wynn was a controlling shareholder of Wynn Resorts, as  
6 he exercised actual control over Wynn Resorts by dominating its affairs, including but not limited to  
7 the corporate decision-making process of Wynn Resorts and the process of nominating and electing  
8 directors. Mr. Wynn had, and continues to have, such voting and managerial power that, as a  
9 practical matter, he is no differently situated than if he had actual majority shareholder voting  
10 control.

11 146. Mr. Wynn's position is that the purported corporate purpose underlying the January  
12 2010 Stockholders Agreement is to ensure that Mr. Wynn retains control over Wynn Resorts.

13 147. Mr. Wynn, as a director and controlling shareholder of Wynn Resorts, owed  
14 fiduciary duties to Ms. Wynn, a fellow director and minority shareholder of Wynn Resorts.

15 148. Mr. Wynn breached his fiduciary duties to Ms. Wynn by taking actions to eliminate  
16 her voice in the management of Wynn Resorts and to dilute her role as a minority shareholder by  
17 making sure that Ms. Wynn was ousted from the Board. Mr. Wynn, along with Ms. Sinatra and  
18 Wynn Resorts, flouted Mr. Wynn's obligations under the January 2010 Stockholders Agreement  
19 including without limitation by generating transparently false, pretextual, and post hoc reasons for  
20 not renominating Ms. Wynn to the Board and thereby ensured that she would not be reelected.

21 149. Mr. Wynn willfully and knowingly acted to damage Ms. Wynn's interests by  
22 eliminating her minority shareholder's voice in the management of Wynn Resorts. He did so with  
23 malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's rights.

24 150. As a result of Mr. Wynn's breaches of fiduciary duty, Ms. Wynn has been damaged  
25 in an amount to be proved at trial. Ms. Wynn is entitled to an award of said damages, as well as an  
26 award of punitive damages.



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**THIRTEENTH CAUSE OF ACTION**  
**AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(Against Kimmarré Sinatra and Wynn Resorts)**

151. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 and paragraphs 144 to 150 above.

152. Mr. Wynn breached his fiduciary duties, as set forth in paragraph 148 above.

153. Ms. Sinatra and Wynn Resorts knowingly participated in and substantially assisted Mr. Wynn's breaches of fiduciary duties owed to Ms. Wynn as explained above.

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

155. As a result of Ms. Sinatra's and Wynn Resorts' aiding and abetting of Mr. Wynn's breaches of fiduciary duty, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an award of said damages, as well as an award of punitive damages.

**FOURTEENTH CAUSE OF ACTION**  
**PERMANENT INJUNCTIVE RELIEF**

156. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 64 above.

157. To enforce the judicial declarations Ms. Wynn seeks in paragraphs 65 to 133 and to secure her rights declared thereunder, Ms. Wynn further seeks an injunction that enjoins Mr. Wynn from instructing Wynn Resorts not to register shares sold or transferred by or otherwise prevent the Transfer, as defined in the January 2010 Stockholders Agreement, of shares by Ms. Wynn, and that provides such other injunctive relief against Mr. Wynn and/or Aruze that the Court deems necessary and appropriate to enforce the declaratory relief granted.

**DEMAND FOR JURY TRIAL**

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

**PRAYER FOR RELIEF**

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

- 1           1.       A declaration that Ms. Wynn's contractual duties under the January 2010  
2 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders  
3 Agreement is subject to rescission and is rescinded because the redemption of Aruze's stock  
4 frustrated the principal purpose of the January 2010 Stockholders Agreement and its predecessor  
5 agreements (*i.e.*, the April 2002 Stockholders Agreement and the 2006 Amendment);
- 6           2.       A declaration that the restrictions on alienability as set forth in paragraph 75 above  
7 are unenforceable as an unreasonable restraint on alienation in violation of public policy and  
8 statutes;
- 9           3.       A declaration that that the restrictions are unenforceable as an unlawful forfeiture in  
10 violation of public policy;
- 11          4.       A declaration that the restrictions are voidable by Ms. Wynn because she made a  
12 unilateral mistake (known to Mr. Wynn) as to a fundamental assumption, or assumptions based on  
13 which she agreed to the restrictions;
- 14          5.       A declaration that that Ms. Wynn's contractual duties under the January 2010  
15 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders  
16 Agreement is subject to rescission and is rescinded because of failures of consideration and/or  
17 performance;
- 18          6.       Judgment in favor of Ms. Wynn and against Mr. Wynn based on Mr. Wynn's  
19 fraudulent inducement and a declaration that the restrictions are voidable by Ms. Wynn because Mr.  
20 Wynn made false representations to Ms. Wynn with the intention to induce her to enter into and to  
21 consent to the formation of the January 2010 Stockholders Agreement;
- 22          7.       If Aruze successfully obtains a discharge of its obligations under the January 2010  
23 Stockholders Agreement, a declaration that Ms. Wynn's contractual duties under the January 2010  
24 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders  
25 Agreement is subject to rescission and is rescinded;
- 26          8.       Judgment in favor of Ms. Wynn and against Mr. Wynn based upon Mr. Wynn's  
27 breaches of contract, and a declaration that Ms. Wynn's contractual duties under the January 2010  
28 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders

1 Agreement is subject to rescission and is rescinded because Mr. Wynn materially breached the  
2 agreement;

3 9. Judgment in favor of Ms. Wynn and against Mr. Wynn based upon Mr. Wynn's  
4 breach of the implied covenant of good faith and fair dealing, and a declaration that Ms. Wynn's  
5 contractual duties under the January 2010 Stockholders Agreement are discharged or, alternatively,  
6 that the January 2010 Stockholders Agreement is subject to rescission and is rescinded because Mr.  
7 Wynn materially breached the implied covenant of good faith and fair dealing;

8 10. An order compelling Mr. Wynn to comply with the January 2010 Stockholders  
9 Agreement, including without limitation his obligations to assure the nomination and election of  
10 Ms. Wynn to the Board of Directors;

11 11. Judgment in favor of Ms. Wynn and against Ms. Sinatra and Wynn Resorts based on  
12 Ms. Sinatra's and Wynn Resorts' intentional interference with the January 2010 Stockholders  
13 Agreement;

14 12. Judgment in favor of Ms. Wynn and against Mr. Wynn based on Mr. Wynn's  
15 breaches of fiduciary duty;

16 13. Judgment in favor of Ms. Wynn and against Ms. Sinatra and Wynn Resorts based on  
17 Ms. Sinatra's and Wynn Resorts' aiding and abetting of Mr. Wynn's breaches of fiduciary duty;

18 14. Preliminary and/or permanent injunctions as the Court deems necessary and  
19 appropriate to enforce the declarations prayed for, including an injunction that prohibits Mr. Wynn  
20 from instructing Wynn Resorts not to register shares sold or transferred by or otherwise to prevent  
21 the Transfer, as defined in the January 2010 Stockholders Agreement, of shares by Ms. Wynn, as  
22 well as such other injunctive relief against Mr. Wynn and/or Aruze that the Court deems necessary  
23 and appropriate;

24 15. For compensatory damages in an amount to be proved at trial;

25 16. For punitive and exemplary damages in a sum sufficient to punish Mr. Wynn, Wynn  
26 Resorts, and Ms. Sinatra, and to deter similar wrongdoing by others; and

27 17. Costs of suit and such other relief as the Court deems just and proper.  
28

28  
1 Dated: March 10, 2016

JOLLEY URGAL WOODBURY & LITTLE

2  
3 By

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*\*Pro hac vice admitted*

Attorneys for Counterdefendant/  
Counterclaimant/Cross-claimant  
ELAINE P. WYNN

**CERTIFICATE OF SERVICE**

1 hereby certify that on the <sup>28<sup>th</sup></sup>~~10<sup>th</sup>~~ day of March, 2016, I caused the foregoing FIRST  
AMENDED ANSWER OF ELAINE P. WYNN TO ARUZE AND UNIVERSAL'S FOURTH  
AMENDED COUNTERCLAIM; FIFTH AMENDED COUNTERCLAIM AND CROSSCLAIM  
OF ELAINE P. WYNN to be served as follows:

[X] by the Court's ECF System through Wiznet:

Bryce K. Kunimoto, Esq.  
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4 Allan Zeman

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15 Attorneys for Counterdefendant/Counterclaimant/Cross-claimant

ELAINE P. WYNN

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

19 WYNN RESORTS, LIMITED, a Nevada  
20 Corporation,

21 Plaintiffs,

22 vs.

23 KAZUO OKADA, an individual; ARUZE  
24 USA, INC., a Nevada corporation,  
UNIVERSAL ENTERTAINMENT  
CORPORATION, a Japanese corporation,

25 Defendants.

26  
27 AND ALL RELATED CLAIMS.  
28

ELECTRONICALLY SERVED

04/04/2016 05:28:53 PM

CASE NO. A-12-656710-B

Dept. No.: XI

**REDACTED VERSION OF ELAINE P.  
WYNN'S MOTION FOR LEAVE TO FILE  
FIFTH AMENDED COUNTERCLAIM  
AND CROSSCLAIM ON ORDER  
SHORTENING TIME (ORIGINALLY  
FILED UNDER SEAL ON MARCH 10,  
2016)**

**ELECTRONIC FILING CASE**

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 4<sup>th</sup> day of April, 2016, I caused the foregoing **REDACTED**  
3 **VERSION OF ELAINE P. WYNN'S MOTION FOR LEAVE TO FILE FIFTH AMENDED**  
4 **COUNTERCLAIM AND CROSSCLAIM ON ORDER SHORTENING TIME**  
5 **(ORIGINALLY FILED UNDER SEAL ON MARCH 10, 2016)** to be served as follows:  
6

7 ☒ [X] by the Court's ECF System through Wiznet:

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23 and

24 Paul K. Rowe, Esq.  
25 Grant R. Mainland, Esq.  
26 Bradley R. Wilson, Esq.  
27 Wachtell, Lipton, Rosen & Katz  
28 51 West 52<sup>nd</sup> Street  
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and

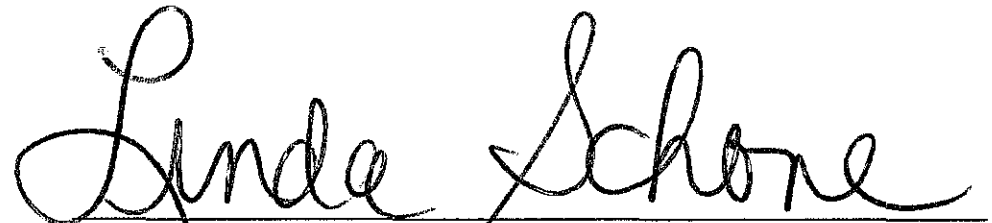


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5 John A. Moran, Marc D. Schorr,  
Alvin V. Shoemaker, Kimmarie  
6 Sinatra, D. Boone Wayson and  
Allan Zeman

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16 ELAINE P. WYNN

17 DISTRICT COURT  
18 CLARK COUNTY, NEVADA

19 WYNN RESORTS, LIMITED, a Nevada  
20 Corporation,  
21 Plaintiffs,  
22 vs.  
23 KAZUO OKADA, an individual; ARUZE  
24 USA, INC., a Nevada corporation,  
25 UNIVERSAL ENTERTAINMENT  
26 CORPORATION, a Japanese corporation,  
27 Defendants.

27 AND ALL RELATED CLAIMS.

FILED

2016 MAR 10 P 3:01

*John B. Quinn*  
CLERK OF THE COURT

FUS

CASE NO. A-12-656710-B  
Dept. No.: XI

ELAINE P. WYNN'S MOTION FOR  
LEAVE TO FILE FIFTH AMENDED  
COUNTERCLAIM AND CROSSCLAIM  
ON ORDER SHORTENING TIME

Hearing Date: 03/22/16

Hearing Time: 8:30a

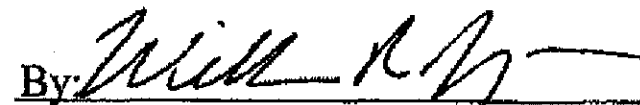
Trial Date: February 6, 2017, 1:30 p.m.

ELECTRONIC FILING CASE

1 Elaine P. Wynn ("Ms. Wynn") moves this Court for leave to amend her Answer to Aruze  
2 USA, Inc. and Universal Entertainment Corporation's Fourth Amended Counterclaim in order to  
3 assert a Fifth Amended Counterclaim and Crossclaim. This Motion is made and based on the  
4 attached Memorandum of Points and Authorities, the Declaration of William R. Urga and all  
5 exhibits attached, all pleadings and documents on file, and any oral argument the Court may  
6 choose to hear.

7  
8  
9 Dated: March 10, 2016

JOLLEY URGA WOODBURY & LITTLE

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11 By: 

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25 Attorneys for Counterdefendant/  
Counterclaimant/Cross-claimant

ELAINE P. WYNN

1                   **DECLARATION OF WILLIAM R. URGAS, ESQ. IN SUPPORT OF ORDER**  
2                   **SHORTENING TIME**

3           1.       I am an attorney licensed to practice law in the State of Nevada. I am a partner of  
4 the law firm of Jolley Urga Woodbury & Little, counsel for Elaine P. Wynn in this proceeding.

5           2.       I am authorized to make this Declaration and have personal knowledge of the  
6 matters set forth herein. Pursuant to EDCR 2.26, I offer this declaration in support of Ms. Wynn's  
7 Application for an Order Shortening Time.

8           3.       The deadline to seek leave to amend pleadings set forth in the parties' September  
9 22, 2014 Stipulated Scheduling Order as well as the Court's November 17, 2014 2nd Amended  
10 Business Court Scheduling Order is April 1, 2016, which is also the current initial expert  
11 disclosure deadline.

12          4.       Given that the case was stayed for one year, and certain depositions were separately  
13 stayed for nearly six more months, only three depositions were taken prior to 2016: those of Mr.  
14 Okada, James Stern (Wynn Resorts' Vice President of Security), and Toji Takeuchi (the Rule  
15 30(b)(6) witness for Aruze USA, Inc.). Only six additional depositions have so far been taken in  
16 2016.

17          5.       There is a substantial amount of discovery that needs to be completed in this case,  
18 including completing the depositions of the Wynn Resorts officers and directors. More than 20  
19 depositions are presently scheduled constituting over 40 deposition days, including a week-long  
20 trip to Japan next week and a separate week-long trip to Macau tentatively scheduled for August  
21 2016, a Rule 30(b)(6) deposition of Wynn Resorts itself, and depositions of Ms. Wynn and Mr.  
22 Wynn. In addition, the parties continue to serve written discovery and notice additional  
23 depositions on an ongoing basis.

24          6.       On February 26, 2016, counsel for Ms. Wynn served a redline version of a form of  
25 the proposed amended pleading on counsel for Mr. Wynn and requested that they stipulate to the  
26 proposed amendment. They declined to stipulate. On March 9, 2016, counsel for Ms. Wynn  
27 circulated a proposed amended pleading on counsel for all parties to this action, and requested that  
28 they stipulate to the proposed amendment. Counsel for the Aruze Parties stipulated to the

1 amendment, but counsel for Mr. Wynn declined to stipulate, and counsel for Wynn Resorts and  
2 Ms. Sinatra did not respond as of the time of this filing.

3 7. Stephen A. Wynn served his Third Supplemental Disclosures Pursuant to NRCP  
4 16.1 on January 19, 2016; the Aruze Parties served a Sixth Request for Production of Documents  
5 to Wynn Resorts, Limited on March 1, 2016; and the Wynn parties served their First Request for  
6 Production of Documents to Elaine P. Wynn on February 4, 2016.

7 8. Attached hereto as Exhibit A is a true and correct copy of Ms. Wynn's proposed  
8 Fifth Amended Counterclaim and Crossclaim.

9 9. Attached hereto as Exhibit B is a true and correct copy of excerpts from the  
10 deposition transcript of Robert J. Miller, Vol. III, taken February 11, 2016, and designated Highly  
11 Confidential.

12 10. Attached hereto as Exhibit C is a true and correct copy of excerpts from the  
13 deposition transcript of D. Boone Wayson, Vols. I & II, taken February 16 & 17, 2016, and  
14 designated Highly Confidential.

15 11. Attached hereto as Exhibit D is a true and correct copy of excerpts from the  
16 deposition transcript of Dr. Ray R. Irani, Ph.D., Vols. I & II, taken February 23 & 25, 2016, and  
17 designated Highly Confidential.

18 12. Attached hereto as Exhibit E is a true and correct copy of a letter from Debra L.  
19 Spinelli, Esq. to Michael T. Zeller, Esq., dated March 7, 2016.

20 13. Attached hereto as Exhibit F is a true and correct copy of a letter from Debra L.  
21 Spinelli, Esq. to Michael T. Zeller, Esq., dated March 7, 2016.

22 14. Attached hereto as Exhibit G is a true and correct copy of excerpts from the  
23 deposition transcript of Alvin V. Shoemaker, Vols. I & II, taken January 28 & 29, 2016, and  
24 designated Highly Confidential.

25 15. Having this Motion heard and decided before the conclusion of these depositions is  
26 important so that all matters at issue in this case can be fully examined by each of the parties. In  
27 open court on March 9, 2016, the Court stated that this Motion could be heard on shortened time  
28 and instructed the parties to meet and confer on a date for such hearing. The parties met and

1 conferred, and counsel for Ms. Wynn proposed that this Motion be heard March 22 or 24, 2016.  
2 Counsel for Mr. Wynn responded that they would see whether they could make either date.  
3 Counsel for Ms. Wynn received no other response.

4 16. Accordingly, Ms. Wynn requests that the Court set this matter for hearing on  
5 shortened time, preferably to be heard on March 22 or 24, 2016.

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

7 DATED this 10 th day of March, 2016.

8   
9 William R. Urga, Esq.

10 **ORDER SHORTENING TIME**


11 GOOD CAUSE APPEARING, it is hereby ordered that the foregoing Motion for Leave to  
12 File Fifth Amended Counterclaim and Crossclaim shall be heard on shortened time on the 22<sup>nd</sup>  
13 day of March 2016, at the hour of 8:30 a.m. in Department XI.

14 DATED this 10<sup>th</sup> day of March 2016.

15 **ELIZABETH GONZALEZ**   
16 DISTRICT COURT JUDGE

17 Submitted by:

18 JOLLEY URGa WOODBURY & LITTLE

19 By:   
20 William R. Urga  
21 David J. Malley

22 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
23 John B. Quinn  
24 Susan R. Estrich  
25 Michael T. Zeller  
26 Michael L. Fazio  
27 Jennifer D. English

28 Attorneys for Counterdefendant, Counterclaimant, and Cross-Claimant  
ELAINE P. WYNN

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Preliminary Statement

3 The Court should grant Elaine Wynn leave to file her proposed amended pleading, which  
4 is attached as Exhibit A. The proposed amendment is timely. The parties stipulated, and the  
5 Court ordered, that amendments to pleadings may be requested until April 1, 2016. Nevada Rule  
6 of Civil Procedure 15(a) provides that leave to amend “shall be freely given when justice so  
7 requires.” (emphasis added). As the United States Supreme Court held in interpreting identical  
8 Federal Rule of Civil Procedure 15(a), “[i]f the underlying facts or circumstances relied upon by a  
9 plaintiff may be a proper subject of relief, [s]he ought to be afforded an opportunity to test h[er]  
10 claim on the merits.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).<sup>1</sup> That is all Ms. Wynn seeks.

11 There can be no credible claim of prejudice by Mr. Wynn, Wynn Resorts or Kimmarré  
12 Sinatra, the only parties addressed by these amended crossclaims. Discovery is just now getting  
13 underway. As Mr. Wynn recently put it, “the bulk of discovery—including the depositions of Mr.  
14 Wynn and Ms. Wynn—ha[s] yet to occur in this case.”<sup>2</sup> As a consequence, each of the cross-  
15 defendants will have ample time to take discovery and develop their defenses to the amended  
16 pleading. Furthermore, the few depositions that have been taken in recent weeks – consisting  
17 mostly of Wynn Resort Directors – revealed new facts that were not previously disclosed to Ms.  
18 Wynn. Those depositions revealed that [REDACTED]

19 [REDACTED] Those Director depositions  
20 furthermore revealed for the first time that [REDACTED]

21 [REDACTED]  
22 [REDACTED]

23 In addition, this same recent Director testimony revealed that [REDACTED]

24  
25 <sup>1</sup> At the time *Foman* was decided, Federal Rule of Civil Procedure 15(a) was identical to  
26 Nevada Rule of Civil Procedure 15(a). The federal rule now reads: “The court should freely give  
27 leave when justice so requires.” F.R.C.P. 15(a)(2). The change from “shall” to “should” was  
28 “intended to be stylistic only.” *Id.* 2007 Advisory Committee Note.

<sup>2</sup> Reply in Support of Stephen A. Wynn’s Motion to Strike the Jury Demands of Elaine P.  
Wynn and Aruze USA, Inc. (Feb. 17, 2016) at 4.

1 [REDACTED]  
2 [REDACTED] And while Ms.  
3 Wynn did not have access to those facts until the other Directors recently were deposed, no one on  
4 Mr. Wynn's side can claim to be surprised by Ms. Wynn's amended allegations: Mr. Wynn and  
5 Wynn Resorts are far more familiar with the threat the Company faces from the pattern of  
6 misconduct detailed in the amended pleading than Ms. Wynn, a co-founder of Wynn Resorts and a  
7 significant shareholder who was ousted from her Director position for asking too many questions  
8 about the Company's governance and losing the favor of the controlling shareholder.

9 The deadline for amendment is now less than one month away. Ms. Wynn cannot afford  
10 the risk that if she does not amend her pleadings, Mr. Wynn will argue (wrongly) that she is barred  
11 by *res judicata* from ever raising her claims. Accordingly, Ms. Wynn now requests leave of Court  
12 to try *all* her crossclaims on the merits.

### 13 Procedural History

14 Complaint, Removal, & Remand. This case was filed on February 19, 2012. Defendants  
15 Mr. Okada and the Aruze Parties promptly removed the case to federal court. See Notice of  
16 Removal (Mar. 12, 2012). The case was remanded from federal court on June 21, 2012. See  
17 Minutes of Court, *Wynn Resorts, Ltd. v. Okada*, No. 2:12-CV-400-LRH-PAL (D. Nev. June 21,  
18 2012), ECF No. 102.

19 Department of Justice Investigation and Discovery Stays. Following remand, the  
20 Department of Justice moved for a total stay of all discovery while it investigated possible  
21 criminal charges against Mr. Okada. See United States of America's Motion to Intervene and for  
22 Temporary and Partial Stay of Discovery and for Order Shortening Time (Apr. 5, 2013). This  
23 Court granted that motion. See Order Granting United States of America's Motion to Intervene  
24 and for Temporary and Partial Stay of Discovery and For Order Shortening Time (July 8, 2013).  
25 All discovery was stayed for six months, until November 4, 2013. *Id.* at 3. Ms. Wynn sought  
26 partial relief from the Court's stay order, but her motion was denied. See Order Denying Elaine P.  
27 Wynn's Motion for Partial Relief From Stay Order (Aug. 20, 2013). This Court then extended the  
28 stay for an additional six months, to May 5, 2014. See Order Granting United States of America's



1 Motion for Extension of Temporary Stay of Discovery and for Order Shortening Time (Dec. 26,  
2 2013) at 3.

3       The Nevada Supreme Court's Stay Orders. The Nevada Supreme Court ordered a stay of  
4 Mr. Okada's deposition from July 1, 2015 to September 9, 2015. See Order Staying Deposition  
5 and Directing Answer, *Okada v. Eighth Judicial Dist. Court*, No. 68310 (Jul. 1, 2015); Order  
6 Denying Petition for Writ of Prohibition or Mandamus and Vacating Stay, *Okada v. Eighth*  
7 *Judicial Dist. Court*, No. 68310, 2015 WL 5313418 (Sept. 9, 2015) (unpublished disposition); see  
8 *Okada v. Eighth Judicial Dist. Court*, 131 Nev. Adv. Op. 83, 359 P.3d 1106 (2015) (opinion  
9 accompanying order). This Court entered a third stay in this action with regard to discovery  
10 against Wynn Resorts on August 14, 2015. See Order Granting Wynn Resorts, Limited's Motion  
11 to Stay Pending Petition for Writ of Prohibition on an Order Shortening Time (Aug. 14, 2015) at  
12 2. That stay was continued by another stay from the Nevada Supreme Court. See Order Granting  
13 Stay and Scheduling Oral Argument, *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, No. 68439  
14 (Oct. 1, 2015). The stay was lifted on November 12, 2015. See Order Denying Petition, *Wynn*  
15 *Resorts, Ltd. v. Eighth Judicial Dist. Court*, No. 68439, 2015 WL 7193763, (Nov. 12, 2015)  
16 (unpublished disposition).

17       Commencement of Discovery. Given that the case was stayed for one year, and certain  
18 depositions were separately stayed for nearly six more months, only three depositions were taken  
19 prior to 2016: those of Mr. Okada, James Stern (Wynn Resorts' Vice President of Security), and  
20 Toji Takeuchi (the Rule 30(b)(6) witness for Aruze USA, Inc.). Urga Decl. ¶ 4.<sup>3</sup> Only six  
21 additional depositions have so far been taken in 2016. *Id.*

22       There is a substantial amount of discovery that needs to be completed in this case,  
23 including completing the depositions of the Wynn Resorts officers and directors. *Id.* ¶ 5. More  
24 than 20 depositions are presently scheduled constituting over 40 deposition days, including a  
25 week-long trip to Japan next week and a separate week-long trip to Macau tentatively scheduled  
26

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27       <sup>3</sup> "Urga Decl." means the Declaration of William R. Urga filed concurrently herewith and its  
28 exhibits.

1 for August 2016, a Rule 30(b)(6) deposition of Wynn Resorts itself, and depositions of Ms. Wynn  
2 and Mr. Wynn. *Id.* In addition, the parties continue to serve written discovery and notice  
3 additional depositions on an ongoing basis. *Id.* Ms. Wynn has recently retained new counsel as  
4 this action resumes discovery.<sup>4</sup>

5 Ms. Wynn's Proposed Amendment. The underlying legal theories posed by Ms. Wynn's  
6 counterclaims are the same as they have always been: does Mr. Wynn have the power to control  
7 his ex-wife's shareholdings against her will, based on an Agreement that he fraudulently and in  
8 bad faith induced her to sign; that was supposed to apply only to the Wynn-Okada alliance; and  
9 that he breached by engineering her ouster from the Board in retaliation for her raising questions  
10 about Company controls and the CEO's judgment. The January 2010 Stockholders Agreement  
11 has been at the heart of Ms. Wynn's claims, as it is here. Every one of the allegations in this  
12 complaint go to the validity of that Agreement or its breach, including its breach by Mr. Wynn in  
13 retaliation for Ms. Wynn's questioning his authority and judgment. Ms. Wynn's proposed  
14 amended crossclaims involve Mr. Wynn fraudulently inducing Ms. Wynn to enter into that  
15 Agreement;<sup>5</sup> Ms. Wynn's right to the specific performance of Mr. Wynn's contractual duties,  
16 under that agreement, to nominate and vote for her in a Director election; additional grounds for  
17 invalidating the impermissible restrictions on Ms. Wynn's ability to dispose of any of her Wynn  
18 Resorts common stock; additional breaches of contract by Mr. Wynn; breaches of fiduciary duty  
19 by Mr. Wynn; and intentional interference with contract and aiding and abetting breach of  
20 fiduciary duty claims implicating both Wynn Resorts and its general counsel, Kimmarie Sinatra.

21 Mr. Wynn, Wynn Resorts and Ms. Sinatra Refuse To Stipulate To Amendment. On  
22 February 26, 2016 and times thereafter, counsel for Ms. Wynn provided counsel for Mr. Wynn  
23 with proposed amended pleadings and requested that they stipulate to the proposed amendment.  
24 Uрга Decl. ¶ 6. They declined to stipulate. *Id.* On March 9, 2016, counsel for Ms. Wynn

25  
26 <sup>4</sup> See, e.g., Motion to Associate Counsel on Order Shortening Time (Michael T. Zeller, Esq.)  
(Jan. 25, 2016).

27 <sup>5</sup> As used herein, "January 2010 Stockholders Agreement" means the Amended and Restated  
28 Stockholders Agreement dated January 6, 2010.

1. circulated a proposed amended pleading on counsel for all parties to this action, and requested that  
2. they stipulate to the proposed amendment. *Id.* Counsel for the Aruze Parties stipulated to the  
3. amendment, but counsel for Mr. Wynn declined to stipulate, and counsel for Wynn Resorts and  
4. Ms. Sinatra did not respond as of the time of this filing. *Id.*

5. **Argument**

6. **I. NEVADA RULE OF CIVIL PROCEDURE 15(a) SETS A HIGH BAR FOR**  
7. **DENYING A PARTY LEAVE TO AMEND.**

8. Nevada Rule of Civil Procedure 15(a) provides that “leave *shall* be freely given when  
9. justice so requires.” (emphasis added). This “mandate is to be heeded.” *Foman*, 371 U.S. at 182.  
10. Notably, because the Nevada Rules of Civil Procedure are “based in large part upon their federal  
11. counterparts,” federal cases interpreting federal Rule 15(a) are “strong persuasive authority.”  
12. *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

13. Courts interpreting federal Rule 15(a) hold that “[w]here there is a lack of prejudice to the  
14. opposing party and the amended complaint is obviously not frivolous, or made as a dilatory  
15. maneuver in bad faith, it is an abuse of discretion to deny” leave to amend. *Hurn v. Ret. Fund*  
16. *Trust of Plumbing, Heating & Piping Indus. of S. Cal.*, 648 F.2d 1252, 1254 (9th Cir. 1981). “The  
17. mere fact that [a party] could have moved at an earlier time to amend does not by itself constitute  
18. an adequate basis for denying leave to amend.” *Howey v. United States*, 481 F.2d 1187, 1191 (9th  
19. Cir. 1973). Accordingly, without a “sufficient justifying reason” for denial, Rule 15 *requires*  
20. leave to amend. *King v. Kramer*, 763 F.3d 635, 643 (7th Cir. 2014) (quotation marks omitted); *see*  
21. *also City of Miami v. Bank of Am. Corp.*, 800 F.3d 1262, 1286 (11th Cir. 2015) (“Unless a  
22. substantial reason exists to deny leave to amend, the discretion of the district court is not broad  
23. enough to permit denial.”) (quotation marks and brackets omitted). “[T]he district court may and  
24. should liberally allow an amendment to the pleadings if prejudice does not result.” *Schwartz v.*  
25. *Schwartz*, 95 Nev. 202, 205, 591 P.2d 1137, 1139 (1979).

26. In addition, Nevada courts have a “general policy to decide cases upon their merits.”  
27. *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 23, 62 P.3d 720, 736 (2003). Liberal application of  
28. Rule 15(a) “furthers the mandate that the rules of procedure are intended to allow cases to be

1 decided on the merits rather than on mere technicalities.” *Costello v. Carter*, 127 Nev. Adv. Op.  
2 36, 254 P.3d 631, 635 (2011). *See Boileau v. Bethlehem Steel Corp.*, 730 F.2d 929, 938 (3d Cir.  
3 1984) (“The commentaries on Rule 15 amendments support not only a liberal interpretation of this  
4 rule, but specifically address the liberal use of Rule 15 to amend complaints so as to state  
5 additional causes of action.”). Here, there is no reason to deny effect to the parties’ stipulation and  
6 the Court’s earlier scheduling order that permits amended pleadings until April 1, 2016. This  
7 timely motion should be granted.

8 **II. BECAUSE NO PREJUDICE WILL RESULT, THE COURT SHOULD ALLOW**  
9 **MS. WYNN’S PROPOSED AMENDMENT.**

10 The proposed amendment will not prejudice any party to this action, which alone is  
11 sufficient to grant leave to amend. Absent prejudice, the trial court “may and should liberally  
12 allow” the amendment. *Schwartz*, 95 Nev. at 205, 591 P.2d at 1139. Ms. Wynn brings this  
13 motion to amend three weeks before the deadline to do so. Given that discovery has only recently  
14 commenced in earnest (and indeed the depositions of any Wynn Resorts Directors began only in  
15 the past few weeks), the parties will have more than ample opportunity to conduct discovery  
16 related to Ms. Wynn’s proposed amendment. In all events, Mr. Wynn, Wynn Resorts and Ms.  
17 Sinatra are far more familiar with the matters raised here than they would ever allow the Directors,  
18 or Ms. Wynn in particular, to be.

19 **A. The Parties Have Ample Opportunity To Prepare For Trial On Ms. Wynn’s**  
20 **Amended Crossclaims.**

21 Mr. Wynn will be hard-pressed to point to a single one of Ms. Wynn’s new allegations as  
22 to which he does not have far more access to evidence than she. None should surprise him. In any  
23 event, as Mr. Wynn recently observed (on his motion to strike Ms. Wynn’s jury demand), it is  
24 “nearly eight months before the September 1, 2016 discovery cut-off date and more than one year  
25 before the February 6, 2017 trial date,” and “the bulk of discovery—including the depositions of  
26  
27  
28

1 Mr. Wynn and Ms. Wynn—ha[s] yet to occur in this case.”<sup>6</sup> As of the filing of this motion, only  
2 nine depositions have been taken, and more than 20 are presently scheduled over 40 deposition  
3 days, including a week-long trip to Japan next week and a separate week long trip to Macau  
4 tentatively scheduled for August 2016, a Rule 30(b)(6) deposition of Wynn Resorts itself, and  
5 depositions of Ms. Wynn and Mr. Wynn. Urga Decl. ¶ 5.<sup>7</sup> The Directors of Wynn Resorts in  
6 particular have recently begun to collect and produce documents on their own behalf.<sup>8</sup>

7 The deadline to seek leave to amend pleadings, as set forth in the parties’ September 22,  
8 2014 Stipulated Scheduling Order as well as the Court’s November 17, 2014 2nd Amended  
9 Business Court Scheduling Order is April 1, 2016, which is also the current initial expert  
10 disclosure deadline. Urga Decl. ¶ 3. This deadline was set with discovery in mind: “one hundred  
11 twenty (120) days before the discovery cut-off date.” Stipulated Scheduling Order (Sept. 22,  
12 2014) at 2. (As Mr. Wynn states, *supra*, the discovery cut-off has since been extended by one  
13 month to September 1, 2016.) In so stipulating, the parties agreed upon a sufficient time period to  
14 investigate claims pleaded before the deadline.<sup>9</sup> Accordingly, leave should be granted.

15  
16 <sup>6</sup> Reply in Support of Stephen A. Wynn’s Motion to Strike the Jury Demands of Elaine P.  
17 Wynn and Aruze USA, Inc. (Feb. 17, 2016) at 4.

18 <sup>7</sup> In fact, the parties are at this moment in the midst of requesting, collecting, and producing  
19 additional documents. For example, Stephen A. Wynn served his Third Supplemental Disclosures  
20 Pursuant to NRCF 16.1 on January 19, 2016; the Aruze Parties served a Sixth Request for  
21 Production of Documents to Wynn Resorts, Limited on March 1, 2016; and the Wynn parties  
22 served their First Request for Production of Documents to Elaine P. Wynn on February 4, 2016.  
23 Urga Decl. ¶ 7. To the extent the proposed amendment requires the parties to collect and produce  
24 any additional documents, they will be able to do so as part of this ongoing process.

25 <sup>8</sup> See, e.g., Urga Decl. Ex. E (Letter from D. Spinelli, Esq. to M. Zeller, Esq. (Mar. 7, 2016))  
26 at 2 (“in light of Mr. Shoemaker’s testimony that [REDACTED]”  
27 [REDACTED]; Urga Decl. Ex. F (Letter from D. Spinelli, Esq. to M. Zeller, Esq. (Mar. 7, 2016))  
28 at 2 (“Governor Miller produced responsive documents on and before December 31, 2015”); *id.* at  
3 (“Governor Miller supplemented his prior productions . . . on February 18”).

<sup>9</sup> Notably, both Wynn Resorts and the Aruze Parties previously have requested leave to  
amend their pleadings on the ground that there was no prejudice because the parties were (then  
and now, given the stays) just beginning discovery in earnest. See Wynn Resorts, Limited’s  
Motion for Leave to Amend Second Amended Complaint (Feb. 27, 2013) at 7 (noting that  
prejudice is unlikely when “the parties have only recently started document discovery”); Aruze

1           **B. Recently Discovered Facts Also Support the Right to Amend.**

2           Permitting amendment of pleadings to conform to the facts as revealed during discovery is  
3 among the most common reasons that courts give for exercising their discretion to allow  
4 amendment. *See Whealon v. Strong*, 121 Nev. 662, 665-66, 119 P.3d 1241, 1243-44 (2005)  
5 (affirming grant of leave to amend an answer to include dispositive affirmative defenses revealed  
6 during discovery). Here, that reason is particularly compelling. Now that discovery has finally  
7 begun, startling admissions by Wynn Resorts Directors disclosed new facts giving rise to Ms.  
8 Wynn's proposed amendment. Among other things, deposition testimony has begun to reveal [REDACTED]

9 [REDACTED]  
10 [REDACTED] Indeed, and based upon  
11 the Director testimony obtained thus far, [REDACTED]

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED] Notably, deposition testimony by these Directors revealed that [REDACTED]

15 [REDACTED]  
16 [REDACTED] Director  
17 testimony also confirms [REDACTED]

18 [REDACTED]  
19 [REDACTED]  
20           **1. Director Robert J. Miller.**

21           In his deposition less than a month ago, Director Robert J. Miller [REDACTED]

22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED] Urga Decl. Ex. B (Miller Dep. Tr. Vol. III (Feb. 11, 2016)) at 492:7-19;

26 [REDACTED]  
27 USA, Inc. and Universal Entertainment Corp.'s Motion for Leave to File Third Amended  
28 Counterclaim (June 12, 2013) at 4 (arguing that "[l]eave is particularly appropriate" when  
"[d]iscovery remains in its early stages"). Those statements still remain substantially true today.

1 502:16-503:5. Mr. Miller was asked [REDACTED]  
2 [REDACTED]  
3 [REDACTED] *Id.* at 492:7-19. [REDACTED]  
4 [REDACTED] *See id.*  
5 Mr. Miller also noted that [REDACTED]  
6 [REDACTED]  
7 [REDACTED]. *Id.* at  
8 506:15-23. But Mr. Miller conceded that [REDACTED]  
9 [REDACTED] *Id.* at 541:5-22. It became clear  
10 from Mr. Miller's testimony that [REDACTED]  
11 [REDACTED] *Id.* at 486:7-487:6. This new revelation of [REDACTED]  
12 [REDACTED]  
13 [REDACTED] Notably, and further supporting a  
14 tortious interference claim, Mr. Miller also admitted that [REDACTED]  
15 [REDACTED]  
16 [REDACTED] *Id.* at 457:21-458:3. He additionally conceded that [REDACTED]  
17 [REDACTED] (*id.* at 462:20-  
18 463:16), [REDACTED]  
19 [REDACTED]

20 **2. Director D. Boone Wayson.**

21 The deposition of another Director, D. Boone Wayson, that was taken less than a month  
22 ago provided additional new evidence showing [REDACTED]  
23 [REDACTED] Mr. Wayson could not recall [REDACTED]  
24 [REDACTED] but testified  
25 that [REDACTED]  
26 [REDACTED] Urga Decl. Ex. C  
27 (Wayson Dep. Tr. Vol. II (Feb. 17, 2016)) at 311:11-23; 313:19-314:13; 325:11-16. When asked  
28 [REDACTED]

1 [REDACTED]  
2 [REDACTED] *Id.* at 314:14-20. He  
3 acknowledged that [REDACTED]  
4 [REDACTED]  
5 [REDACTED]. *Id.* at 312:11-313:18.

6 Mr. Wayson testified [REDACTED]  
7 [REDACTED]  
8 [REDACTED]. *Id.* at 349:16-24. [REDACTED]  
9 [REDACTED]  
10 [REDACTED] *Id.* at 352:9-16.

11 Mr. Wayson, like another Director deposed so far, revealed for the first time that [REDACTED]  
12 [REDACTED] *Id.* Vol. I  
13 (Feb. 16, 2016) at 275:23-276:1 [REDACTED]  
14 [REDACTED] *id.* Vol. II (Feb. 17, 2016) at  
15 490:21-25 [REDACTED]  
16 [REDACTED]  
17 [REDACTED] *id.* at 486:8-13 [REDACTED]  
18 [REDACTED]

19 Like Mr. Miller, Mr. Wayson [REDACTED]  
20 [REDACTED]  
21 [REDACTED] *Id.* at 452:6-453:18. As noted  
22 above, this new revelation warrants the addition of tortious interference with contract and related  
23 claims in Ms. Wynn's proposed amended pleading.

24 **3. Director Alvin V. Shoemaker.**

25 In another new revelation, Alvin Shoemaker testified that [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]



1 [REDACTED] Urga Decl. Ex. G (Shoemaker Dep. Tr. Vol. II (Jan. 29, 2016)) at 332:16-22; 333:3-8;  
2 337:13-19. Mr. Shoemaker's testimony too provides new facts demonstrating [REDACTED]  
3 [REDACTED] He also specifically conceded  
4 that [REDACTED]  
5 [REDACTED] Namely, that [REDACTED]  
6 [REDACTED]  
7 [REDACTED] *Id.* at 318:9-11, 318:22-319:3, 319:11-12.  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED] *Id.* at 322:13-17. He could not provide [REDACTED]  
11 [REDACTED]  
12 [REDACTED] *Id.* at 335:20-336:3. Mr. Shoemaker was [REDACTED]  
13 [REDACTED]  
14 [REDACTED] *Id.* at 347:14-17. [REDACTED]  
15 [REDACTED] *Id.* at 347:25-348:5.  
16 Regarding [REDACTED]  
17 [REDACTED] - Mr. Shoemaker admitted that [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED] *Id.* at 379:14-19. [REDACTED]  
21 [REDACTED] *Id.* at 379:22-  
22 24.  
23 Additionally, Mr. Shoemaker, like the other Directors deposed thus far, [REDACTED]  
24 [REDACTED] Mr. Shoemaker  
25 [REDACTED] *Id.* at 349:2-25. Mr.  
26 Shoemaker is, however, aware that [REDACTED] Mr. Schorr  
27 currently is consulting for Wynn Resorts in Macau. *Id.* at 350:12-22.  
28

1                   4.     Director Ray R. Irani.

2     Dr. Irani similarly [REDACTED]

3 [REDACTED]  
4 [REDACTED] Urga Decl. Ex. D (Irani Dep. Tr. Vol. II (Feb.  
5 25, 2016)) at 196:24-197:21, 198:12-21, 199:6-17. [REDACTED]

6 [REDACTED]. *Id.* at 235:3-5.

7     Though Dr. Irani testified that [REDACTED]

8 [REDACTED]  
9 [REDACTED] *Id.* at

10 239:23-240:6. Dr. Irani, [REDACTED]

11 [REDACTED]  
12 [REDACTED] *Id.* at 226:20-227:7. He admitted that [REDACTED]

13 [REDACTED]  
14 [REDACTED] *Id.* at 227:8-24. And Dr. Irani, like the other Directors, [REDACTED]

15 [REDACTED] *Id.* Vol. I (Feb. 23, 2016) at 160:6-9 [REDACTED]

16 [REDACTED]  
17 [REDACTED]; *id.* Vol. II (Feb. 25, 2016) at 214:19-215:1 [REDACTED]

18 [REDACTED]  
19 [REDACTED] Lastly, Dr.

20 Irani [REDACTED]

21 [REDACTED] *Id.* Vol. II (Feb. 23, 2016) at 136:12-18.

22     Each of these recently discovered facts support Ms. Wynn's amended crossclaims. In  
23 addition to supporting Ms. Wynn's twelfth amended crossclaim against Mr. Wynn for breach of  
24 fiduciary duty, Ex. A ¶¶ 144-50, and her thirteenth amended crossclaim against Ms. Sinatra and  
25 Wynn Resorts for aiding and abetting that breach, *id.* ¶¶ 151-55, [REDACTED]

26 [REDACTED]  
27 [REDACTED] also gives rise to Ms. Wynn's eighth amended crossclaim for Mr.

28 Wynn's breach of the January 2010 Stockholders Agreement, *id.* ¶¶ 116-27, and her eleventh

1 amended crossclaim against Wynn Resorts and Ms. Sinatra for intentionally interfering with the  
2 January 2010 Stockholders Agreement, *id.* ¶¶ 138-43.

3 Ms. Wynn also adds a crossclaim arising from Wynn Resorts' decision to cancel Aruze's  
4 shares once redeemed rather than vote them, as they were required to do under the January 2010  
5 Shareholders Agreement, in favor of Ms. Wynn. *See* Ex. A ¶¶ 140-41. This testimony gives rise  
6 to and/or supports Ms. Wynn's fifth amended crossclaim for discharge through failure of  
7 consideration or performance, Ex. A ¶¶ 90-96, her tenth amended crossclaim against Stephen  
8 Wynn for specific performance, *id.* ¶¶ 134-37, and her eleventh amended crossclaim against Wynn  
9 Resorts and Kimmarie Sinatra for intentional interference with contractual relations, *id.* ¶¶ 138-43.

10 Discovery will surely shed further light on these issues. The documents produced to date,  
11 especially Board documents, are curiously sparse and silent as to many of the issues raised here.  
12 That may turn out to be additional evidence of [REDACTED]

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 [REDACTED] Leave to amend is "particularly" appropriate "when important evidence was solely in  
17 the possession of one party," as is clearly the case here. *Nutton v. Sunset Station, Inc.*, 131 Nev.  
18 Adv. Op. 34, 357 P.3d 966, 970 (2015).

19 C. Leave To Amend To Plead Alternative Legal Theories Related To The Core  
20 Issues In The Case Serves The Interests Of Justice.

21 Leave to amend to "state an alternative theory of recovery" is in the interests of justice,  
22 because parties "ought to be afforded an opportunity to test [their] claim[s] on the merits."  
23 *Foman*, 371 U.S. at 182. Rule 15(a)'s purpose is most "obviously" served by permitting  
24 additional causes of action "arising out of the same occurrence as that set forth in the original  
25 pleading, thereby insuring that the defendant knew of the action's commencement and of its nature  
26 in time to avoid any prejudice to his defense on the merits." *Davis v. Piper Aircraft Corp.*, 615  
27 F.2d 606, 614 (4th Cir. 1980). Indeed, both Wynn Resorts and the Aruze Parties successfully  
28 sought leave to amend their pleadings on precisely this basis. *See* Aruze USA, Inc. and Universal

1 Entertainment Corp.'s Motion for Leave to File Third Amended Counterclaim (June 12, 2013) at 4  
2 (noting that "[l]eave is particularly appropriate" for amendments which "add[] causes of action  
3 and legal bases based on the same core facts"); Wynn Resorts, Limited's Motion for Leave to  
4 Amend Second Amended Complaint (Feb. 27, 2013) at 6 (requesting leave to file an amended  
5 pleading that "clarifies Wynn Resorts' claim for breach of fiduciary duty by refocusing it on Mr.  
6 Okada's wrongful conduct").<sup>10</sup>

7 Here, Ms. Wynn seeks leave to add alternative legal theories arising from facts already  
8 pled. Her prior pleadings directly challenged the enforceability of the January 2010 Stockholders  
9 Agreement on the grounds that it has been frustrated, discharged, or breached, and that it is  
10 unenforceable. See Fourth Amended Counterclaim and Crossclaim of Elaine P. Wynn (Aug. 28,  
11 2015) (hereinafter 4AXC) ¶¶ 69-105. Ms. Wynn now seeks to amend her crossclaims to include  
12 additional legal theories attacking the enforceability of the January 2010 Stockholders Agreement.

13 First, Ms. Wynn's third amended crossclaim that the January 2010 Stockholders  
14 Agreement is an illegal forfeiture challenges the enforceability of the January 2010 Stockholders  
15 Agreement on public policy grounds. Ex. A. ¶¶ 79-83. Ms. Wynn previously pled that "[a]n  
16 actual controversy exists among Ms. Wynn, Mr. Wynn, and Aruze with respect to the validity  
17 and/or enforceability of the January 2010 Stockholders Agreement." 4AXC ¶ 79. This amended  
18 crossclaim presents an alternative legal theory arising from facts already pled.

19 Second, Ms. Wynn adds crossclaims challenging the January 2010 Stockholders  
20 Agreement on the ground that it lacks the elements of an enforceable contract: her fourth amended  
21 crossclaim for rescission due to unilateral mistake, Ex. A. ¶¶ 84-89, and her sixth amended  
22 crossclaim that the January 2010 Stockholders Agreement was procured by fraud, *id.* ¶¶ 97-110.  
23 (Mr. Okada has already pleaded that the January 2010 Stockholders Agreement was induced by  
24 fraud. See Fourth Amended Counterclaim of Aruze USA, Inc. and Universal Entertainment Corp.  
25

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26 <sup>10</sup> No one opposed these requests for leave to amend, although the Aruze Parties later  
27 characterized Wynn Resorts' amendment as "fundamentally chang[ing] its story" regarding the  
28 2012 redemption. Aruze USA, Inc. and Universal Entertainment Corp.'s Motion for Leave to File  
Third Amended Counterclaim (June 12, 2013) at 4.

1 (Nov. 26, 2013) ¶¶ 293-308.) Ms. Wynn should be allowed to challenge enforceability on the  
2 additional legal ground that it does not meet the required elements of a contract, especially since  
3 proving that the contract is enforceable would already require negating these grounds. *See*  
4 *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. Adv. Op. 35, 283 P.3d 250, 255 (2012)  
5 (“Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting  
6 of the minds, and consideration.”).

7 Finally, Ms. Wynn adds crossclaims arising from Wynn Resorts’ redemption and  
8 cancellation of Aruze’s shares: her eleventh amended crossclaim against Wynn Resorts and Ms.  
9 Sinatra for intentional interference with the January 2010 Stockholders Agreement, Ex. A ¶¶ 138-  
10 43, and her tenth amended crossclaim against Mr. Wynn for specific performance, *id.* ¶¶ 134-37.  
11 Mr. Okada, for his part, has alleged claims challenging the validity of that redemption. *See* Fourth  
12 Amended Counterclaim of Aruze USA, Inc. and Universal Entertainment Corp. (Nov. 26, 2013)  
13 ¶¶ 179-87. The legal effect of the redemption are already at issue, and these additional legal  
14 theories should be adjudicated as part of that inquiry. All claims and defenses related to the  
15 January 2010 Stockholders Agreement should be tried on the merits, and leave should be granted  
16 to plead Ms. Wynn’s additional crossclaims.

17 **D. Ms. Wynn Brings This Motion In Good Faith And Without Undue Delay.**

18 Leave to amend should be freely given unless there is evidence of “undue delay, bad faith  
19 or dilatory motive on the part of the movant.” *Foman*, 371 U.S. at 182. There is no such evidence  
20 here.

21 To the contrary and, as detailed above, Ms. Wynn sought to prevent this case from  
22 evolving into one in which these additional crossclaims would ever need to be litigated. And, at  
23 least some of Ms. Wynn’s amended crossclaims depend on recent depositions that were stayed as  
24 part of the multiple discovery stays in this case. The proposed amendment is brought in good  
25 faith, in advance of the stipulated deadline to amend, and will not prejudice any party. There is no  
26 reason to deny leave to amend.

1 Conclusion

2 Ms. Wynn respectfully requests that she be granted leave to plead her additional  
3 crossclaims.  
4

5 Dated: March 10, 2016

JOLLEY URGa WOODBURY & LITTLE

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of March, 2016, I caused the foregoing ELAINE P. WYNN'S MOTION FOR LEAVE TO FILE FIFTH AMENDED COUNTERCLAIM AND CROSSCLAIM ON ORDER SHORTENING TIME to be served as follows:

☒ by the Court's ECF System through Wiznet:

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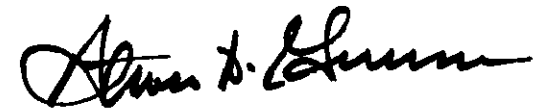
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ELAINE P. WYNN

15 **DISTRICT COURT**  
16  
17 **CLARK COUNTY, NEVADA**

18 WYNN RESORTS, LIMITED, a Nevada  
19 corporation,

20 Plaintiff,

21 vs.

22 KAZUO OKADA, an individual, ARUZE  
USA, Inc., a Nevada corporation,  
23 UNIVERSAL ENTERTAINMENT  
CORPORATION, a Japanese corporation,

24 Defendant.

25  
26 AND ALL RELATED CLAIMS  
27  
28

CASE NO. A-12-656710-B  
Dept. No.: XI

**ELAINE P. WYNN'S MOTION FOR  
LEAVE TO FILE SIXTH AMENDED  
COUNTERCLAIM AND CROSSCLAIM**

Date:

Time:

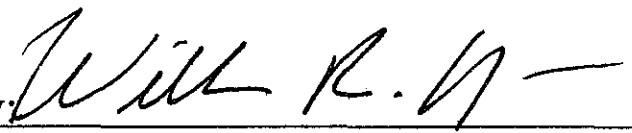
**ELECTRONIC FILING CASE**

1 Elaine P. Wynn ("Ms. Wynn") moves this Court for leave to amend her Fifth Amended  
2 Counterclaim and Crossclaim to assert a Sixth Amended Counterclaim and Crossclaim. This  
3 Motion is made and based on the attached Memorandum of Points and Authorities, and all  
4 exhibits attached, all pleadings and documents on file, and any oral argument the Court may  
5 choose to hear.

6  
7 Dated: May 27, 2016

JOLLEY URGAL WOODBURY & LITTLE

8  
9 By



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**NOTICE OF MOTION**

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion for Leave to File Sixth Amended Counterclaim and Crossclaim on for hearing before the above-entitled Court on CHAMBERS the 01 day of JULY 2016, at the hour of \_\_\_\_\_m. in Department XI or as soon thereafter as counsel maybe heard.

DATED this 27th day of May 2016.

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ELAINE P. WYNN

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Introduction**

3 The Court should grant Ms. Wynn leave to file this proposed amended pleading.<sup>1</sup> The  
4 Court expressly granted Ms. Wynn leave to file this Motion in response to its ruling dismissing  
5 Ms. Wynn's claims for tortious interference and aiding and abetting breach of fiduciary duty as to  
6 Wynn Resorts, Limited ("Wynn Resorts") and Ms. Sinatra. Although this is Ms. Wynn's sixth  
7 amended pleading, this is the first amendment to these particular claims which in any event arise  
8 from deposition testimony taken only a few months ago. The amended pleading cures the limited  
9 defects identified by the Court.

10 *First*, it alleges that Wynn Resorts and Ms. Sinatra tortiously interfered with the 2010  
11 Stockholders Agreement by conspiring with Mr. Wynn to effectively negate the contractual  
12 provisions obligating Mr. Wynn to support Ms. Wynn's Board candidacy. Both Wynn Resorts  
13 and Ms. Sinatra were fully aware of these provisions but instead of respecting them, wrongfully  
14 developed and implemented a scheme to oust Ms. Wynn from the Board, contrary to the  
15 provisions of the agreement. Simply put, that was tortious interference with the agreement.

16 *Second*, it repleads Ms. Wynn's claim for aiding and abetting breach of fiduciary duty to  
17 clarify that the duties arising from Mr. Wynn's status as a controlling shareholder are *legally*  
18 *separate and distinct* from any contractual obligations, thus responding to the Court's concerns as  
19 to this point.

20 *Third*, this amended pleading alleges further facts as to Wynn Resorts' and Ms. Sinatra's  
21 knowing participation in Mr. Wynn's breaches of his duties. This includes Ms. Sinatra's  
22 orchestration of the nominations process that led to Ms. Wynn's ouster, including her development  
23 and propagation of pretextual reasons for her ouster, as well as devising and executing a plan to  
24 cancel Mr. Okada's shares with the intent to prevent those shares from being voted in favor of  
25

26  
27 <sup>1</sup> The Sixth Amended Counterclaim and Crossclaim is attached as Exhibit A. A redline of the  
28 proposed Sixth Amended Counterclaim and Crossclaim showing the changes as against the Fifth  
Amended Counterclaim and Crossclaim is attached hereto as Exhibit B.

1 Ms. Wynn. Ms. Sinatra clearly acted with purpose, and her “contributions” were substantial.  
2 Nevada tort law provides Ms. Wynn a cause of action for these intentional acts.

3 Granting Ms. Wynn leave to file the proposed pleading will not prejudice any party. The  
4 factual issues that underlie the tort claims Ms. Wynn seeks to replead are already at issue with  
5 other claims in the litigation so discovery into those issues is already being taken and the  
6 amendment will not cause any unfair surprise or delay the recently extended schedule.

7 Ms. Wynn has properly pleaded all of the elements of these claims, and should be granted  
8 leave to file her Sixth Amended Counterclaim and Crossclaim.

### 9 **Facts And Procedural History**

10 Retaliatory Ouster From The Board. Ms. Wynn was a member of the Wynn Resorts Board  
11 of Directors from the Company’s founding until she was ousted in April 2015. Exh. A, Sixth  
12 Amended Counterclaim and Crossclaim (“6ACC”) ¶ 19. As a Director, her duties included  
13 overseeing Wynn Resorts’ management, investigating any red flags suggesting corporate  
14 wrongdoing, and of course keeping herself informed about the management of the Company for  
15 the benefit of shareholders. *Id.* ¶¶ 2-3, 8. Mr. Wynn did not welcome the oversight of Directors  
16 or the requirements of corporate governance of a public company. *Id.* ¶ 51-61. Ms. Sinatra was  
17 key to his manipulations, and none was more important than their successful effort to oust Ms.  
18 Wynn, who had too many questions for management.

19 One of those questions related to the multi-million dollar payment that had been made by  
20 the CEO arising out of what he now claims were “extortionate threats” against him involving a  
21 Company employee on Company property. *Id.* ¶ 52. While the payment was made in 2005, Ms.  
22 Wynn did not learn about it until 2009. Ms. Wynn asked Ms. Sinatra why the Board had not been  
23 informed about the extortion of its CEO? Surely this was important to the Company and might  
24 signal that the Company was vulnerable as well. A multi-million dollar payment can hardly be  
25 dismissed as a nuisance matter. Ms. Sinatra told Ms. Wynn that, as a Director, it was none of her  
26 business and none of the Board’s business. Pushed further, Ms. Sinatra told Ms. Wynn that what  
27 was and was not disclosed to the Board was something that the CEO decided with her. This was  
28 the “tone at the top” in 2009. Ms. Sinatra earned \$10.5 million that year, the middle of the

1 recession. *Id.* ¶ 57. When the man who set her salary (working for Mr. Wynn of course) suddenly  
2 “resigned” in 2013 after he learned he might be a target of an investigation into illegal gambling,  
3 Ms. Sinatra, no doubt with the approval of Mr. Wynn, decided to give him 200,000 shares that had  
4 not yet vested as cash dividends, neither of which she was required to do; and she falsely stated on  
5 regulatory filings that he had voluntarily resigned. *Id.* ¶ 56-57.

6 Ms. Sinatra’s advice to the Board was clearly based on who was asking the questions. She  
7 falsely told the Board that Ms. Wynn’s objection to a stock grant to Mr. Wynn would require an  
8 amended proxy statement, for instance, when it clearly would not have. *Id.* ¶ 58. More important,  
9 Ms. Sinatra, knowing that the real goal was to eliminate Elaine Wynn from the Board because she  
10 asked too many questions and was willing to challenge Mr. Wynn, played a key role in developing  
11 both the process and the pretexts to be used against her with Board members and investors. *Id.*  
12 ¶ 62-66.

13 Ms. Wynn’s Fifth Amended Pleading. This campaign to oust Ms. Wynn was executed at  
14 the highest levels and concealed until depositions of Board members in early 2016. *See* Elaine P.  
15 Wynn’s Motion for Leave To File Fifth Amended Counterclaim and Crossclaim on Order  
16 Shortening Time (Mar. 10, 2016) at 8-13. After uncovering this information at depositions,  
17 Ms. Wynn sought leave of Court to file an amended pleading, which the Court granted. *Id.*;  
18 3/24/16 Hr’g Tr. at 52:19-20.

19 Motions To Dismiss. Mr. Wynn, Wynn Resorts, and Ms. Sinatra moved to dismiss  
20 Ms. Wynn’s amended claims.<sup>2</sup> The Court denied Mr. Wynn’s motion in its entirety. 5/5/16  
21 Telephonic Hr’g Tr. at 9:8. The Court granted Wynn Resorts’ and Ms. Sinatra’s motions to  
22 dismiss the eleventh claim for intentional interference with contractual relations against them due  
23 to “concern[s] with the more distantly related entities to [the Stockholders Agreement] which was  
24

---

25 <sup>2</sup> *See* Stephen A. Wynn’s Motion To Dismiss Elaine P. Wynn’s Fifth Amended Counterclaim  
26 and Crossclaim; Motion To Strike Certain Allegations (Apr. 14, 2016) (“Wynn MTD”); Wynn  
27 Resorts, Limited’s Motion To Dismiss the Eleventh and Thirteenth Causes of Action in Elaine P.  
28 Wynn’s Fifth Amended Counterclaim and Crossclaim (Apr. 14, 2016) (“Wynn Resorts MTD”);  
Kimmarie Sinatra’s Motion To Dismiss The Eleventh and Thirteenth Causes of Action in Elaine  
P. Wynn’s Fifth Amended Counterclaim and Crossclaim (Apr. 14, 2016) (“Sinatra MTD”).

1 negotiated as part of the divorce.” 5/5/16 Telephonic Hr’g Tr. at 8:4-6. The Court also granted  
2 Wynn Resorts’ and Ms. Sinatra’s motions to dismiss the thirteenth claim for aiding and abetting  
3 breach of fiduciary duty against them, expressing concern that “the nature of the allegations” had  
4 too much “overlap with the contract claims.” *Id.* at 6:11-17, 9:4-6. The Court granted Ms. Wynn  
5 leave to file this Motion. 5/5/16 Hr’g Tr. at 34:2-4.

### 6 Legal Standard

7 “The State of Nevada has a policy of permitting amendments unless there is futility.”  
8 3/24/16 Hr’g Tr. at 52:20-21. A court considering a futility argument must do so “with great care  
9 and with considerable deference to the pleadings,” and “to err on the side of caution and permit  
10 amendments that appear arguable or even borderline.” *Nutton v. Sunset Station, Inc.*, 131 Nev.  
11 Adv. Op. 34, 357 P.3d 966, 975 (2015). Whether a proposed amendment states a cause of action  
12 is a question of law. *Anderson v. Mandalay Corp.*, 131 Nev. Adv. Op. 82, 358 P.3d 242, 247-48  
13 (2015).

14 Leave to amend is governed by a “good cause” standard when requested after the court-set  
15 deadline for motions to amend. *Nutton*, 357 P.3d at 970; NRCP 16(b). Good cause is satisfied by  
16 a showing of “the diligence of the party seeking the amendment.” *Id.* at 971. Once good cause is  
17 shown to consider an amended pleading, leave to amend is governed by Rule 15(a). *Id.* at 972.  
18 Under that rule, Nevada policy requires that “leave shall be freely given when justice so requires.”  
19 NRCP 15(a).

20 Whether to grant leave to amend is within the Court’s discretion. *Anderson*, 358 P.3d at  
21 247-48. However, “[w]here there is a lack of prejudice to the opposing party and the amended  
22 complaint is obviously not frivolous, or made as a dilatory maneuver in bad faith, it is an abuse of  
23 discretion to deny” leave to amend. *Hurn v. Ret. Fund Trust of Plumbing, Heating & Piping*  
24 *Indus. Of S. Cal*, 648 F.2d 1252, 1254 (9th Cir. 1981).

**Argument**

**I. LEAVE SHOULD BE GRANTED TO RESTATE THE TWO CLAIMS DISMISSED WITHOUT PREJUDICE.**

**A. This Motion Is Properly Before The Court.**

The Court expressly granted Ms. Wynn “leave to file a motion to amend.” 5/15/16 Telephonic Hr’g Tr. at 9:8-11. Thus, there should be no dispute as to whether this Motion is properly before this Court. However, even if the normal good cause standard set forth in Rule 16(b) were to apply, it is met here. The “basic inquiry” under Rule 16(b) is to examine “whether the filing deadline cannot reasonably be met despite the diligence of the party seeking the amendment.” *Nutton*, 357 P.3d at 971.

Here, Ms. Wynn raised her claims for intentional interference with contractual relations and aiding and abetting breach of fiduciary duty well in advance of the April 1, 2016, filing deadline, in her proposed Fifth Amended Counterclaim and Crossclaim (“FACC”). The Court ruled on the motions to dismiss the FACC claims on May 5, 2016, which meant that this Motion to cure the pleading defects identified by the Court could not have been brought by the earlier April 1 deadline. In such circumstances, courts find good cause exists to grant leave to amend. *See Inge v. Rock Fin. Corp.*, 281 F.3d 613, 626 (6th Cir. 2002) (“[P]rompt effort to remedy pleading deficiencies identified by the district court in the dismissal order” constitutes good cause under Rule 16(b), and denying such an effort is an abuse of discretion.); *Pinnacle Great Plains Operating Co., LLC v. Wynn Dewsnap Revocable Trust*, No. 4:13-CV-00106-EJL-CWD, 2015 WL 759003, \*2 (D. Idaho Feb. 23, 2015) (finding good cause for amendment when a “somewhat unique procedural posture” resulted in “[t]he deadline expir[ing] approximately two months before the Court resolved [defendant’s] motion to dismiss”).

Moreover, Nevada’s “general policy to decide cases upon their merits” necessitates that “[l]eave to amend should be freely given when justice requires.” *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22-23, 62 P.3d 720, 735 (2003). Leave to amend should be granted unless the pleading “could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). Thus “when a complaint can be amended to state a claim for relief,



1 leave to amend, rather than dismissal, is the preferred remedy.” *Cohen*, 119 Nev. at 22, 62 P.3d at  
2 735.

3 **B. The Amended Pleading Will Not Prejudice Any Party.**

4 The proposed pleading merely remedies limited pleading deficiencies articulated by the  
5 Court with respect to two claims against Wynn Resorts and Ms. Sinatra; it does not insert new  
6 claims or parties. *See Inge*, 281 F.3d at 626 (no prejudice as the “request to amend was a prompt  
7 effort to remedy pleading deficiencies identified by the district court in the dismissal order—as  
8 opposed to an effort to add new claims or parties.”); *see also Ross v. Pioneer Life Ins. Co.*, 545 F.  
9 Supp. 2d 1061, 1065 (C.D. Cal. 2008) (“Because the proposed amendment merely rests upon  
10 those allegations and pleadings already made, such amendment in no way prejudices Defendants’  
11 ability to defend against the Complaint.”). The new facts alleged are all within the scope of what  
12 has been addressed by both parties and will continue to be. Indeed, because the Court denied the  
13 motion to dismiss by Mr. Wynn in its entirety, the underlying facts are already at issue in this  
14 litigation; thus, there is no unfair surprise, discovery will not be impacted and the recently  
15 extended schedule will not otherwise be delayed. *See C.F. ex rel. Farnan v. Capistrano Unified*  
16 *Sch. Dist.*, 654 F.3d 975, 984 (9th Cir. 2011) (leave to amend granted when amendment “created  
17 no meaningful case management issues” and did not “infringe on the efficient adjudication of the  
18 litigation”) (quotation marks omitted); *see also Hood v. Hartford Life & Accident Ins. Co.*, 567 F.  
19 Supp. 2d 1221, 1225-26 (E.D. Cal. 2008) (amendment requested after Rule 16 deadline will be  
20 allowed for good cause absent showing “that discovery will need to be reopened, that trial will be  
21 delayed, or that defendant will be prejudiced by allowing the amendment”).

22 Nevada Rule of Civil Procedure 15(a) provides that “leave *shall* be freely given when  
23 justice so requires.” (emphasis added). This “mandate is to be heeded.” *Foman v. Davis*, 371  
24 U.S. 178, 182 (1962). Under Rule 15(a), “[w]here there is a lack of prejudice to the opposing  
25 party and the amended complaint is obviously not frivolous, or made as a dilatory maneuver in  
26 bad faith, it is an abuse of discretion to deny” leave to amend. *Hurn*, 648 F.2d at 1254. Therefore,  
27 “the district court may and should liberally allow an amendment to the pleadings if prejudice does  
28 not result.” *Schwartz v. Schwartz*, 95 Nev. 202, 205, 591 P.2d 1137, 1139 (1979). As shown

1 above, Ms. Wynn promptly brought this motion in response to the Court's ruling and allowing the  
2 amended pleading will not prejudice any party. There is no reason to deny Ms. Wynn her right to  
3 have her claims decided on the merits.

4 **II. THE AMENDED PLEADING ADDRESSES THE COURT'S CONCERNS AND**  
5 **PLEADS FACTS SETTING FORTH THE ELEMENTS OF MS. WYNN'S TORT**  
6 **CLAIMS.**

7 In Nevada, a pleading "need only broadly recite the 'ultimate facts' necessary to set forth  
8 the elements of a cognizable claim." *Nutton*, 357 P.3d at 974. The "particular 'evidentiary facts'  
9 that will be employed to prove those allegations" need not be included. *Id.* That standard is  
10 amply satisfied by Ms. Wynn's proposed amended pleading.

11 **A. The Amended Pleading Sufficiently Pleads Intentional Interference With**  
12 **Contractual Relations.**

13 The Nevada Supreme Court stated the elements of tortious interference with contractual  
14 relations in *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 109 Nev. 1043, 1048, 862 P.2d 1207,  
15 1210 (1993): "(1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3)  
16 intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of  
17 the contract; and (5) resulting damage." Interference liability is properly imposed upon "anyone  
18 who intentionally conspired and acted . . . contrary to the intendment of the parties under the . . .  
19 contract." 109 Nev. at 1048-49, 862 P.2d at 1210-11. The amended pleading clearly and  
20 specifically alleges that both Ms. Sinatra and Wynn Resorts, with full knowledge of the 2010  
21 Stockholders Agreement, intentionally conspired and acted with Mr. Wynn to disrupt that  
22 contractual relationship. Under *Hilton Hotels*, that sufficiently pleads this claim.<sup>3</sup>

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27 <sup>3</sup> For clarity, the amended pleading separates the claim, previously pleaded jointly against  
28 Wynn Resorts and Ms. Sinatra, into individual claims against both cross-defendants. *See* 6ACC  
¶¶ 140-45 (claim against Wynn Resorts); *id.* ¶¶ 146-51 (claim against Ms. Sinatra).

1                   1.       Ms. Wynn's Tortious Interference Claim Against Wynn Resorts Satisfies  
2                               The Hilton Hotels Elements.

3               Wynn Resorts knew of the Stockholders Agreement, including the obligations by  
4 Mr. Wynn to keep Ms. Wynn on the Board. 6ACC ¶ 141. Wynn Resorts intentionally interfered  
5 with this contractual provision with the purpose of disrupting it, including by:

- 6               (i)       “expelling Ms. Wynn from the Board, contrary to her entitlement under the 2010  
7                       Stockholders Agreement, in retaliation for her proper inquiries into Company  
8                       activities;  
9               (ii)       interfering with Mr. Wynn's obligation to renominate and reelect Ms. Wynn to the  
10                      Board of Directors, including without limitation by devising and executing a  
11                      campaign to ensure Ms. Wynn's ouster from the Board;  
12               (iii)       voting to recommend that Ms. Wynn not be renominated to the Board,  
13                      recommending instead that the size of the Board be decreased by one and that only  
14                      directors J. Edward Virtue and John J. Hagenbuch be renominated;  
15               (iv)       reducing the size of the Board by one, with the one being Ms. Wynn;  
16               (v)       issuing a press release written by the Company's public relations department  
17                      stating that Mr. Wynn's comments that ‘he did not agree with the Board's decision  
18                      not to renominate Ms. Wynn’ should not be misconstrued and that he had great  
19                      respect for the care the Board took in making its decision not to renominate her;  
20               (vi)       convincing investors to vote against Ms. Wynn based on false, pretextual reasons;  
21                      and  
22               (vii)       cancelling the redeemed shares held by Mr. Okada. Had the shares not been  
23                      cancelled, they would have been voted in Ms. Wynn's favor.”

24       *Id.* ¶ 142.

25               The agreement that Ms. Wynn would be able to protect her restricted shares by serving as a  
26 member of the Board was at the core of the Stockholders Agreement. *Id.* ¶ 7. She never would  
27 have agreed to give Mr. Wynn the right to vote her shares or restrict her sale of those shares  
28 without retaining the ability to protect the value of those shares as a member of the Board. Wynn  
Resorts' interference by ousting Ms. Wynn was intentionally directed at the very essence of that  
bargain. *Id.* ¶ 143. With the help of its co-conspirators Mr. Wynn and Ms. Sinatra, Wynn Resorts  
succeeded in disrupted the contractual provisions of the 2010 Stockholders Agreement, which  
damaged Ms. Wynn. *Id.* ¶¶ 143-45.

2. Ms. Wynn's Tortious Interference Claim Against Ms. Sinatra Satisfies The  
Hilton Hotels Elements.

Ms. Sinatra was aware of the 2010 Stockholders Agreement and specifically the contractual provision obligating Mr. Wynn to support Ms. Wynn's candidacy. *Id.* ¶ 147.

Ms. Sinatra also knew that as long as Ms. Wynn was on the Board, as that Agreement provided, both she and Mr. Wynn risked exposure of their misrepresentations to the Board, including the very pretext of any form of corporate governance at the company. She intentionally conspired with Mr. Wynn and acted to disrupt the very core of the contractual relationship. *Id.* ¶ 147-48.

Her acts included, for example:

- (i) "engineering and orchestrating Board actions to expel Ms. Wynn from the Board, contrary to her entitlement under the 2010 Stockholders Agreement, in retaliation for her proper inquiries into Company activities;
- (ii) inventing false, pretextual reasons to justify Ms. Wynn's ouster as a director and providing such reasons as if they were legitimate to senior executives and members of the Wynn Resorts Board of Directors;
- (iii) developing the scheme to reduce of the size of the Board by one seat to further ensure Ms. Wynn's expulsion and engineered its execution;
- (iv) sanctioning and encouraging Board members' attempts to convince investors to vote against Ms. Wynn; and
- (v) conspiring to propose the redeemed shares held by Mr. Okada be cancelled to ensure they were not voted in Ms. Wynn's favor and to convince the Board to vote to do so."

*Id.* ¶ 148. Ms. Sinatra did so "with the intent and design to disrupt Ms. Wynn's rights under the January 2010 Stockholders Agreement." *Id.* ¶ 149. Her conduct succeeded in disrupting the contractual provisions of the 2010 Stockholders Agreement, and it damaged Ms. Wynn. *Id.* ¶ 149-51.

Just as in *Hilton Hotels*, this is a case where interference liability is properly imposed on "anyone who intentionally conspired and acted . . . contrary to the intendment of the parties under the . . . contract." 109 Nev. at 1048-49, 862 P.2d at 1210-11. The contract at issue in *Hilton Hotels* intended for a boxing match with a particular boxer, although it did not specifically name

1 him. *Id.* The contracting defendants subsequently found a more lucrative match for that boxer  
2 and attempted to get out of the contract with the help of third parties by having the boxer  
3 disqualified from the relevant league. *Id.* This disrupted the performance of the contract: “the  
4 purpose of the contract was frustrated by deliberate maneuvering to secure more lucrative matches  
5 outside the Unification Series scheduled to take place at the Hilton.” *Id.* The court held that  
6 “[a]nyone who intentionally conspired and acted” with the contracting parties to disqualify the  
7 boxer “or otherwise promote matches that were contrary to the intendment of the parties under the  
8 Hilton/Duo contract” was liable for tortious interference. *Id.* Under controlling law, third parties  
9 who frustrate that purpose, preventing a contracting party from receiving the benefit of her  
10 bargain, are liable in tort.<sup>4</sup>

11 Just as in *Hilton Hotels*, Wynn Resorts and Ms. Sinatra interfered with the performance of  
12 the Stockholders Agreement, did so with the intention to disrupt it and by doing so, deprived  
13 Ms. Wynn of her benefits under that contract. The contract’s intended benefit was disrupted when  
14 Wynn Resorts and Ms. Sinatra took the specified actions in order to eliminate Ms. Wynn’s Board  
15 seat, inform shareholders that Mr. Wynn’s endorsement was not genuine, and cancel the redeemed  
16 shares which that would have been voted for her, among other things. 6ACC ¶¶ 142, 148. Wynn  
17 Resorts and Ms. Sinatra are liable in tort for their acts undermining the Stockholders Agreement  
18 and depriving Ms. Wynn of the benefit she bargained for. Ms. Wynn has certainly sufficiently  
19 alleged all of the elements required.

20 **B. The Proposed Amended Pleading Sufficiently Pleads Aiding and Abetting**  
21 **Breach of Fiduciary Duty.**

22 The Nevada Supreme Court recognized the tort of aiding and abetting breach of fiduciary  
23 duty in *In re Amerco Derivative Litig.*, 127 Nev. Adv. Op. 17, 252 P.3d 681, 701-02 (2011). To  
24 plead this tort, a plaintiff must show the breach of a fiduciary duty resulting in damages and that  
25  
26

---

27 <sup>4</sup> The *Hilton Hotels* Court imposed interference liability even when “the express terms of the  
28 contract . . . were not breached.” 109 Nev. at 1048, 862 P.2d at 1210.

1 the aider and abettor “knowingly participated” in that breach. *Id.* at 702.<sup>5</sup> The amended pleading  
2 alleges that both Wynn Resorts and Ms. Sinatra aided and abetted Mr. Wynn’s breaches of  
3 fiduciary duty and that his breach was not related to the Stockholder Agreement.<sup>6</sup>

4 In ruling on the motions to dismiss, the Court held that Ms. Wynn’s prior claim for aiding  
5 and abetting breach of fiduciary duty was “not appropriate” because it was “based on the  
6 contractual issues that we’re dealing with.” 5/5/16 Hr’g Tr. at 33:4-5. The amended pleading  
7 clarifies that Mr. Wynn’s fiduciary duties arise from his role as a controlling shareholder of the  
8 Company and are separate and distinct from his contractual duties under the Stockholders  
9 Agreement. 6ACC ¶ 155. Neither Wynn Resorts nor Ms. Sinatra offered any disagreement with  
10 the proposition that Mr. Wynn owes fiduciary duties to the Company’s minority shareholders,  
11 including Ms. Wynn. *See* Wynn Resorts MTD at 13-16; Sinatra MTD at 17-21. Mr. Wynn  
12 breached his duty by “taking actions to eliminate her voice in the management of Wynn Resorts  
13 and to dilute her role as a minority shareholder by making sure that Ms. Wynn was ousted from  
14 the Board.” 6ACC ¶ 156. Ms. Wynn’s claims against Wynn Resorts and Ms. Sinatra for aiding  
15 and abetting breach of fiduciary duty arise from Ms. Wynn’s status as a shareholder and director,  
16 not from any contract. *Id.* ¶ 153-55, 160, 166.

17 The amended pleading alleges Wynn Resorts knowingly participated in and substantially  
18 assisted Mr. Wynn’s breaches of fiduciary duties owed to Ms. Wynn by, among other things,  
19 doing the following:

- 20 (i) “conceiving and implementing a scheme to have Ms. Wynn removed from the  
21 Board, contrary to Mr. Wynn’s fiduciary duty to Ms. Wynn;  
22  
23

---

24 <sup>5</sup> The Nevada Supreme Court recently clarified that tortfeasors are liable even for  
25 “substantially . . . encourag[ing]” a breach of fiduciary duty. *Guilfoyle v. Olde Monmouth Stock*  
26 *Transfer Co.*, 130 Nev. Adv. Op. 78, 335 P.3d 190, 198 (2014). While the 6ACC pleads Wynn  
Resorts and Ms. Sinatra’s knowing participation in Mr. Wynn’s breach of his fiduciary duty, there  
can be no doubt whatsoever that they substantially encouraged that breach.

27 <sup>6</sup> Again for clarity, the amended pleading separates the claim, previously pleaded jointly  
28 against Wynn Resorts and Ms. Sinatra, into individual claims against both cross-defendants. *See*  
6ACC ¶¶ 159-64 (claim against Wynn Resorts); *id.* ¶¶ 165-70 (claim against Ms. Sinatra).

- 1 (ii) intentionally acting and conspiring with Mr. Wynn to oust Ms. Wynn from the  
2 Board of Directors, including by recommending against her renomination at the  
3 Committee and then at the Board level;
- 4 (iii) actively soliciting investors and encouraging them to vote against Ms. Wynn;
- 5 (iv) knowingly and intentionally reducing the size of Board by one seat with the intent  
6 to ensure Ms. Wynn was not renominated to the Board;
- 7 (v) conceiving and approving a press release written by the Company's public relations  
8 department stating that Mr. Wynn's comments that "he did not agree with the  
9 Board's decision not to renominate Ms. Wynn" should not be misconstrued and  
10 that he had great respect for the care the Board took in making its decision not to  
11 renominate her; and
- 12 (vi) knowingly and intentionally voting to cancel Mr. Okada's shares with the intent to  
13 prevent those shares from being voted in favor of Ms. Wynn."

14 *Id.* ¶ 162.

15 With respect to Ms. Sinatra, the proposed pleading alleges she also knowingly participated  
16 in and substantially assisted Mr. Wynn's breaches of fiduciary duties owed to Ms. Wynn. It  
17 alleges she did so by doing the following acts, among others:

- 18 (i) conceiving and implementing a scheme to have Ms. Wynn removed from the  
19 Board, contrary to Mr. Wynn's fiduciary duty to Ms. Wynn;
- 20 (ii) intentionally concealing misconduct by Mr. Wynn that should have been disclosed  
21 the Board, and could have exposed the Company to liability, or other losses,  
22 putting the interests of Mr. Wynn ahead of those of shareholders;
- 23 (iii) promoting and enforcing a tone at the top that punished proper inquiry into  
24 corporate governance decisions and Company activities;
- 25 (iv) putting the interests of Mr. Wynn ahead of all others, including by manipulating the  
26 Board and its members, including without limitation by:
- 27 (a) failing to truthfully tell Ms. Wynn about the circumstances surrounding the  
28 2005 payment when asked about it by Ms. Wynn and instead  
misrepresenting that it had been appropriately handled, when in fact  
company counsel at the time had been not been properly informed, among  
other reasons;
- (b) falsely telling the Board that a proxy statement that had been issued would  
have to be amended and reissued because of conduct by Ms. Wynn; and
- (c) misrepresenting to the Board and others the reason for the Company's  
COO's departure, as if it were nothing more than a decision to retire, and

1 claiming he was retiring when he in fact was terminated for his connections  
2 to illegal gambling;

3 (v) engineering and assisting in the execution of a scheme to ensure Mr. Okada's  
4 redeemed shares were cancelled in an intentional effort to ensure they were not  
voted in favor of Ms. Wynn; and

5 (vi) acting knowingly and intentionally to advance Mr. Wynn's scheme to oust Ms.  
6 Wynn from the Board in violation of his fiduciary duties.

7 *Id.* ¶ 168.

8 The amended pleading further alleges that both Wynn Resorts and Ms. Sinatra "willfully  
9 and knowingly acted to damage Ms. Wynn's interests" and that their actions resulted in harm to  
10 Ms. Wynn. *Id.* These allegations sufficiently plead the elements of an aiding and abetting breach  
11 of a fiduciary duty claim under Nevada law. Once a plaintiff has pleaded the existence of a  
12 fiduciary duty, its breach, and damages (which Ms. Wynn has done here, *id.* ¶¶ 159-64), liability is  
13 properly imposed so long as the remaining element is pleaded: defendant's knowing participation  
14 in that breach. *RFK Retail Holdings, LLC v. Eastern Real Estate LLC*, No. 2:15-cv-01446-R CJ-  
15 CWH, 2016 WL 659717, at \*5 (D. Nev. Jan. 18, 2016); *New England Life Ins. Co. v. Lee*, No.  
16 2:14-CV-1797 JCM NJK, 2015 WL 1413391, at \*7 (D. Nev. Mar. 27, 2015).<sup>7</sup> The amended  
17 pleading adequately alleges a claim for aiding and abetting breach of fiduciary duty.

18 The amended pleading also makes clear, if it were not already, the common purpose of the  
19 three and the substantiality of their assistance to Mr. Wynn. Mr. Wynn, for all his power, relied  
20 on Ms. Sinatra's legal skills and savvy; on her relationships with Board members and co-workers  
21 and their willingness to follow her lead, as she followed his. Ms. Wynn's ouster was clearly a  
22 joint effort:  
23

---

24 <sup>7</sup> By contrast, Wynn Resorts has itself pleaded a claim for aiding and abetting breach of  
25 fiduciary duty, although its pleading is in the most conclusory terms imaginable: "Universal and  
26 Aruze USA knowingly participated in Mr. Okada's breaches of fiduciary duty by facilitating  
27 and/or actively participating in the unethical, unlawful, and/or criminal conduct described herein,  
28 which conduct has threatened to undermine Wynn Resorts' reputation as well as its existing and  
prospective gaming licenses." Wynn Resorts, Ltd. Second Amended Complaint (Apr. 22, 2013)  
¶ 77.



- 1 • “The Board relied on Mr. Wynn and Ms. Sinatra to bring wrongdoing by company  
2 executives and other employees to their attention, and they relied on their representations  
3 to them. Nonetheless, Ms. Sinatra, conspiring with Mr. Wynn, purposefully did precisely  
4 the opposite – they hid misconduct from the Board and falsely represented information to  
5 the Board.” 6ACC ¶ 54.
- 6 • When Ms. Wynn asked about Mr. Wynn’s multimillion dollar payment, “Ms. Sinatra  
7 falsely led her to believe that it had been properly handled by the Company – even though  
8 Mr. Wynn, the Chairman and CEO of a public company, had exposed himself to  
9 sufficiently serious allegations of wrongdoing that he had been forced to pay millions of  
10 dollars and had used Company personnel and resources to conceal the allegations.” 6ACC  
11 ¶ 52.
- 12 • “Furthermore, in order to advance Mr. Wynn’s own personal interests ahead of the  
13 Company’s and without proper disclosures to the Board, Mr. Wynn and Ms. Sinatra chose  
14 to vest 200,000 of Mr. Schorr’s unvested shares and to pay him associated accrued cash  
15 dividends, even though, as an executive who was terminated for cause, Mr. Schorr was not  
16 entitled to either. Mr. Wynn and Ms. Sinatra did so not only because Mr. Schorr was a  
17 close personal friend of Mr. Wynn, but also because Ms. Sinatra owed him for the above-  
18 any-average compensation she received while working for Mr. Schorr as well as access to  
19 the perks Mr. Wynn treated himself to, such as personal use of Company aircraft and  
20 unchecked reimbursement for personal expenses.” 6ACC ¶ 57.
- 21 • “[I]n March 2014, the Company issued a proxy statement announcing the Board’s approval  
22 of a change to Mr. Wynn’s compensation package, altering the mix of cash and equity by  
23 decreasing the cash and increasing the equity. Mr. Wynn wanted the additional shares he  
24 was receiving to be free from the contractual restrictions that applied to them under the  
25 2010 Stockholders Agreement and sought Ms. Wynn’s agreement to waive the contractual  
26 restriction as to these shares. After negotiations, however, they could not reach an  
27 agreement. Ms. Sinatra falsely told the Board that because of Ms. Wynn’s refusal to agree,  
28 the Company would need to amend the proxy statement that had been issued to state that

1 the additional shares Mr. Wynn was receiving were subject to the contractual restrictions  
2 of the 2010 Stockholders Agreement. Ms. Sinatra made these deliberately false statements  
3 knowing that the prospect of preparing and releasing an amended proxy statement would  
4 not be well received by the Board and was ultimately used as a pretextual reason to oust  
5 Ms. Wynn.” 6ACC ¶ 58.

6 **Conclusion**

7 Ms. Wynn’s Motion for Leave To File Sixth Amended Counterclaim and Crossclaim  
8 should be granted.

9  
10 Dated: May 27, 2016

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26 Counterclaimant/Cross-claimant  
27 ELAINE P. WYNN  
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 27th day of May, 2016, I caused the foregoing **ELAINE P.**

3 **WYNN'S MOTION FOR LEAVE TO FILE SIXTH AMENDED COUNTERCLAIM AND**  
4 **CROSSCLAIM** to be served as follows:

5 [X] by the Court's ECF System through Wiznet:

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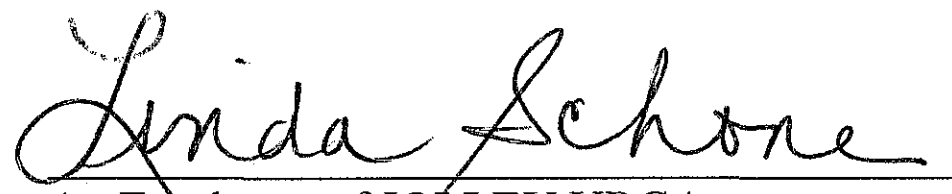
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12 John A. Moran, Marc D. Schorr,  
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14 Sinatra, D. Boone Wayson and  
15 Allan Zeman

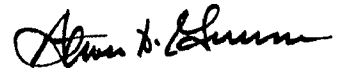
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**DISTRICT COURT**

**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 ALL RELATED CLAIMS.

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

**ORDER REGARDING MOTIONS TO  
DISMISS AND MOTION TO STRIKE  
ELAINE P. WYNN'S FIFTH AMENDED  
COUNTERCLAIM AND CROSSCLAIMS**

Date of Hearing: May 5, 2016

Time of Hearing: 8:30 a.m.

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

1 The following motions came before this Court on May 5, 2016:

- 2 1. Plaintiff Wynn Resorts, Limited's Motion to Dismiss the Eleventh and Thirteenth  
3 Causes of Action in Elaine P. Wynn's Fifth Amended Counterclaim and Crossclaim  
4 ("Wynn Resorts' Motion to Dismiss") and Notice of Joining Motions to Dismiss of  
5 Stephen Wynn and Kimmarie Sinatra ("Wynn Resorts' Joinder to Motions to  
6 Dismiss");
- 7 2. Counter-defendant Kimmarie Sinatra's Motion to Dismiss the Eleventh and  
8 Thirteenth Causes of Action in Elaine P. Wynn's Fifth Amended Counterclaim and  
9 Crossclaim ("Ms. Sinatra's Motion to Dismiss") and Notice of Joining Motions to  
10 Dismiss of Wynn Resorts, Limited and Stephen Wynn ("Ms. Sinatra's Joinder to  
11 Motions to Dismiss"); and
- 12 3. Counterdefendant Stephen A. Wynn's Motion to Dismiss Elaine P. Wynn's Fifth  
13 Amended Counterclaim and Crossclaim ("Mr. Wynn's Motion to Dismiss"); [and]  
14 Motion to Strike Certain Allegations ("Motion to Strike");
- 15 4. Kimmarie Sinatra's Joinder to Stephen A. Wynn's Motion to Strike ("Ms. Sinatra's  
16 Joinder to Motion to Strike"); and
- 17 5. Wynn Resorts, Limited's Joinder to Stephen A. Wynn's Motion to Strike  
18 ("Wynn Resorts' Joinder to Motion to Strike").

19 James J. Pisanelli, Esq. and Debra L. Spinelli, Esq., of Pisanelli Bice PLLC, appeared on  
20 behalf of Plaintiff/Counterdefendant Wynn Resorts, Limited, Counterdefendants Kimmarie Sinatra,  
21 and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A.  
22 Moran, Marc D. Schorr, Alvin V. Shoemaker, D. Boone Wayson, and Allan Zeman  
23 (the "Wynn Parties"). Donald J. Campbell, Esq. and J. Colby Williams, Esq. of Campbell &  
24 Williams, appeared on behalf of Counterdefendant/Cross-defendant Stephen A. Wynn  
25 ("Mr. Wynn"). William R. Urga, of Jolley Urga Woodbury & Little, and Michael Zeller of Quinn  
26 Emanuel Urquhart & Sullivan LLP, appeared on behalf of Counterdefendant/  
27 Counterclaimant/Crossclaimant Elaine P. Wynn ("Ms. Wynn"). And, J. Stephen Peek, Esq. and  
28

1 Robert Cassity, Esq. of Holland & Hart LLP, appeared on behalf of Defendant Kazuo Okada  
2 ("Mr. Okada") and Defendants/Counterclaimants/Counterdefendants Aruze USA, Inc.  
3 ("Aruze USA") and Universal Entertainment Corp. ("Universal") (the "Okada Parties").

4 The Court having considered the above-referenced motions and related briefings, as well as  
5 argument of counsel presented at the hearing, and good cause appearing therefor,

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

- 7 1. Wynn Resorts' Motion to Dismiss is hereby GRANTED;
- 8 2. Ms. Sinatra's Motion to Dismiss is hereby GRANTED;
- 9 3. Mr. Wynn's Motion to Dismiss is hereby DENIED;
- 10 4. The Motion to Strike and all joinders thereto are hereby DENIED.
- 11 5. Ms. Wynn is hereby given leave of Court to file a motion for leave to amend her  
12 pleading and file a proposed Sixth Amended Counterclaim and Crossclaim.

13 DATED: June 21, 2014

E. J. [Signature]  
DISTRICT COURT JUDGE

14 Respectfully submitted by:

15 PISANELLI BICE PLLC

16 By: [Signature]  
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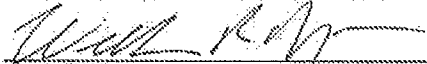
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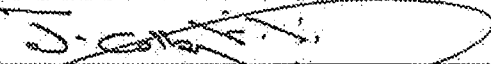
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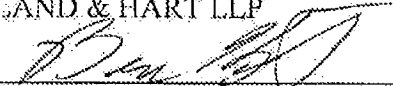
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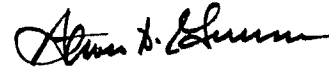
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Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 **WYNN RESORTS, LIMITED, a Nevada**  
20 **Corporation,**

21 **Plaintiff,**

22 **vs.**

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

27 **Defendants.**

28 **AND ALL RELATED CLAIMS**

Case No.: A-12-656710-B

Dept. No.: XI

**INTERIM ORDER ON WYNN RESORTS'**  
**MOTION FOR DISQUALIFICATION**

Date of Hearing: June 23, 2016

Time of Hearing: 10:00 a.m.

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

1 Before this Court are the following additional submittals related to  
2 Wynn Resorts, Limited's ("Wynn Resorts" or the "Company") Motion to Disqualify  
3 Quinn Emanuel and for Order Requiring Turnover of Privileged Matter, Injunctive Relief,  
4 Protection and Other Appropriate Relief on an Order Shortening Time (the "Disqualification  
5 Motion"):

6 1. Elaine Wynn's Notice of Submission of Materials for *In Camera* Review;

7 2. Elaine P. Wynn's Request for a Ruling on Wynn Resorts, Limited's Motion to  
8 Disqualify Quinn Emanuel;

9 3. List of communications submitted by Elaine P. Wynn and Quinn Emanuel  
10 Urquhart & Sullivan, LLP *In Camera* Pursuant to the Court's June 7, 2016 and June 17, 2016  
11 Orders;

12 4. Elaine Wynn's *In Camera* Submission of Materials by Quinn Emanuel Urquhart &  
13 Sullivan, LLP and Elaine P. Wynn Pursuant to the Court's June 7, 2016 and June 17, 2016 Orders;

14 5. Notice of Declarations of Aruze Attorneys in Response to Wynn Resorts' Motion  
15 to Disqualify Quinn Emanuel;

16 6. Wynn Resorts' Response to *In Camera* Submission; and

17 7. Declaration of Ian S. Shelton, Esq. (Quinn Emanuel of counsel) in Support of  
18 Elaine P. Wynn's Opposition to Wynn Resorts' Motion to Disqualify Quinn Emanuel.

19 In its Response to *In Camera* Submission, Wynn Resorts asks this Court to impose a  
20 protocol to protect and preserve its privileges. Specifically, Wynn Resorts asks this Court to  
21 implement four protocols to address its privileged communications which may be in the  
22 possession of its adversary, Elaine Wynn, including that which may be in the possession of her  
23 counsel.

24 Based upon the Disqualification Motion and the recent submittals by the respective  
25 parties, the Court concludes that it will convene an evidentiary hearing on Wynn Resorts'  
26 Disqualification Motion. Before doing so, the Court finds it appropriate to implement the  
27 protocol requested by Wynn Resorts, subject to certain modifications, to establish and catalogue  
28 all information over which Wynn Resorts may claim privilege. As the Nevada Supreme Court

1 has held in *Las Vegas Sands v. Eighth Judicial District Court*, 331 P.3d 905, 910-11 (Nev. 2014),  
2 Wynn Resorts' current management is the holder of the Company's privileges, and current  
3 management is entitled to determine who may possess and use such information. While she may  
4 be a former director of Wynn Resorts, Elaine Wynn has no rights relative to the Company's  
5 privileged and protected information.

6 Accordingly, IT IS HEREBY ORDERED:

7 1. Elaine P. Wynn and her counsel shall deposit all documents, including any  
8 electronic hard drives or other electronic storage devices that contain any type of company  
9 information, including Elaine Wynn's use of Wynn Resorts' email, with a Court-approved  
10 third-party ESI administrator. Elaine Wynn and Wynn Resorts are directed to meet and confer to  
11 see if they can reach an agreement on a third-party administrator that has an agreed protocol on  
12 how all data deposited with the third-party administrator can thereafter be searched for claims of  
13 privilege. If Elaine Wynn and Wynn Resorts cannot reach agreement, the Court will select a  
14 vendor and establish a protocol based upon the parties' submissions.

15 2. Elaine Wynn and Wynn Resorts shall meet and confer and establish a briefing  
16 schedule, if any, to resolve any claims of privilege by Elaine Wynn as to her use of Wynn Resorts'  
17 email and computer to communicate with her separate counsel.

18 3. At this point, the Court has not yet determined whether it will appoint a special  
19 master to address communications between Elaine Wynn and her counsel to determine if and to  
20 what degree she has disseminated privileged information. The Court will take up this issue again  
21 as the soon-to-be-established protocol for viewing Elaine Wynn's data is implemented and  
22 progressing.

23 4. The Court will await setting the date for an evidentiary hearing upon an assessment  
24 of the progress and satisfaction of the other provisions of this Order.

1 IT IS FURTHER ORDERED that because of the potential for irreparable harm stemming  
2 from a potential misuse of privileged information, a stay of discovery in this proceeding is  
3 required at this time, except as otherwise ordered by the Court.

4  
5 DATED: 28 Aug 16

6   
7 THE HONORABLE ELIZABETH GONZALEZ  
EIGHTH JUDICIAL DISTRICT COURT

8 Respectfully submitted by:

9  
10 PISANELLI BICE PLLC

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1 Approved as to form and content by:

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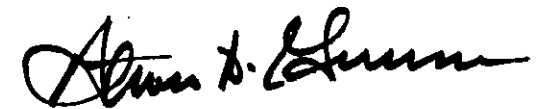
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26 Attorneys for Counterdefendant, Counterclaimant  
27 and Crossclaimant ELAINE P. WYNN  
28 \*admitted pro hac vice

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

20 WYNN RESORTS, LIMITED, etc.,  
21 Plaintiff,  
22 vs.  
23 KAZUO OKADA, etc., et al.,  
24 Defendants.

25 AND RELATED CLAIMS  
26

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

**NOTICE TO RE-SET HEARING ON  
ELAINE P. WYNN'S MOTION FOR  
LEAVE TO FILE SIXTH AMENDED  
COUNTERCLAIM AND CROSSCLAIM  
AND REQUEST FOR ORDER  
SHORTENING TIME**

Date of Hearing:  
Time of Hearing:

1 On May 27, 2016, Elaine P. Wynn ("Ms. Wynn") filed her Motion for Leave to File Sixth  
2 Amended Counterclaim and Crossclaim (the "Motion"). Wynn Resorts, Limited and Kimmarie  
3 Sinatra filed their Oppositions to the Motion on June 16, 2016, and Ms. Wynn filed reply briefs on  
4 June 21, 2016. The original hearing on the Motion was vacated due to the stay entered on June  
5 23, 2016. Now that the stay has been lifted, and due to the limited time remaining to conduct  
6 discovery, Ms. Wynn requests that the Motion to re-set for hearing on shortened time.

7  
8 DATED this 27<sup>th</sup> day of April, 2017.

9 JOLLEY URGAL WOODBURY & LITTLE

10  
11 By: 

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21 Counterclaimant/Cross-Claimant

22 Elaine P. Wynn

23 **DECLARATION OF WILLIAM R. URGAL**

24 I, William R. Urgal, state and declare as follows:

25 1. I am an attorney duly licensed in the State of Nevada and am a shareholder at Jolley  
26 Urgal Woodbury & Little, attorneys of record for Counterdefendant/Counterclaimant/Cross-  
27 Claimant Elaine P. Wynn ("Ms. Wynn"). I am personally knowledgeable about and am competent  
28 to testify as to the matters stated herein, except those matters that are stated upon information and  
belief.

2. On March 27, 2017, this Court lifted the discovery stay which had been in place  
since June 23, 2016.

3. Prior to entry of the June 23, 2016 stay, Ms. Wynn filed her Motion for Leave to File Sixth Amended Counterclaim and Crossclaim (the "Motion"). The Motion is fully briefed, but the Motion was not heard due to the stay.

4. Under the Third Amended Business Court Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call, certain discovery deadlines are rapidly approaching, including an initial expert disclosure deadline of August 18, 2017.

5. Given the significant amount of discovery remaining to be conducted and the impact the result of this Motion may have on that discovery, Ms. Wynn requests that the Motion be heard on shortened time for May 1, 2017 along with the other matters presently set to be heard on that date.

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

DATED this 27<sup>th</sup> day of April, 2017.

WILLIAM R. URGAS, ESQ.

### ORDER SHORTENING TIME

It appearing to the satisfaction of the Court, and good cause appearing therefor,

IT IS HEREBY ORDERED that ELAINE P. WYNN'S MOTION FOR LEAVE TO

||||

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1 **FILE SIXTH AMENDED COUNTERCLAIM AND CROSSCLAIM AND REQUEST FOR**  
2 **ORDER SHORTENING TIME** shall be heard on the 14<sup>th</sup> day of  
3 May, 2017, at the hour of 8:00 a.m. of said day in Dept. XI of  
4 the above-referenced Court.

5 DATED this 15<sup>th</sup> day of April, 2017.

6  
7   
8 DISTRICT COURT JUDGE 

9 Submitted by:

10 JOLLEY URGAL WOODBURY & LITTLE

11 By: 

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Cross-Claimant Elaine P. Wynn

18  
19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on the 21<sup>st</sup> day of April, 2017, I caused the foregoing

21 **NOTICE TO RE-SET HEARING ON ELAINE P. WYNN'S MOTION FOR LEAVE TO**

22 **FILE SIXTH AMENDED COUNTERCLAIM AND CROSSCLAIM AND REQUEST FOR**

23 **ORDER SHORTENING TIME** to be served as follows:

24 ☒ by the Court's ECF System through Wiznet:

25 Bryce K. Kunimoto, Esq.

26 J. Stephen Peek, Esq.

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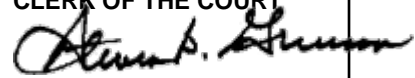
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*\*admitted pro hac vice*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada  
corporation,

Plaintiff,

vs.

KAZUO OKADA, an individual, ARUZE  
USA, Inc., a Nevada corporation,  
UNIVERSAL ENTERTAINMENT

CASE NO. A-12-656710-B  
Dept. No.: XI

**ELECTRONIC FILING CASE**

**NOTICE OF ENTRY OF ORDER**

CORPORATION, a Japanese corporation,  
Defendant.

AND ALL RELATED CLAIMS

YOU AND EACH OF YOU will please take notice that ***Order Granting Elaine P. Wynn's Motion for Leave to File Sixth Amended Counterclaim and Crossclaim*** was entered in the above-captioned matter on the 15<sup>th</sup> day of May, 2017. A copy of the Order is attached hereto.

Dated this 16<sup>th</sup> day of May, 2017.

GREENBERG TRAURIG, LLP

By: /s/ Mark E. Ferrario

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Tami D. Cowden, Esq. (NV Bar No. 8994)  
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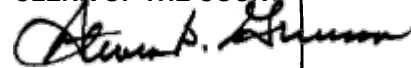
*Counsel for Counter-Defendant/Counter-Claimant/Cross-Claimant Elaine P. Wynn*

**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing *Notice of Entry of Order Granting Elaine P. Wynn's Motion for Leave to File Sixth Amended Counterclaim and Crossclaim* to be filed and served upon the parties registered to this action via the Court's E-Filing System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

Dated this 16<sup>th</sup> day of May, 2017.

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



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*\*admitted pro hac vice*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada  
corporation,

Plaintiff,

vs.

KAZUO OKADA, an individual, ARUZE  
USA, Inc., a Nevada corporation,  
UNIVERSAL ENTERTAINMENT

CASE NO. A-12-656710-B  
Dept. No.: XI

**ELECTRONIC FILING CASE**

**ORDER GRANTING ELAINE P.  
WYNN'S MOTION FOR LEAVE TO  
FILE SIXTH AMENDED  
COUNTERCLAIM AND  
CROSSCLAIM**

Page 1 of 3

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CORPORATION, a Japanese corporation,

Defendant.

AND ALL RELATED CLAIMS

Elaine P. Wynn's Motion for Leave to File Sixth Amended Counterclaim and Crossclaim ("Motion") filed herein on May 27, 2016, came before this Court on Monday, May 1, 2017. William J. Urga, Esq., of JOLLEY URGa WOODBURY & LITTLE and Mark E. Ferrario, Esq., of GREENBERG TRAURIG, LLP, AND JAMES M. COLE, ESQ. OF SIDLEY AUSTIN, LLP appeared on behalf of Counterdefendant/Counterclaimant/Crossclaimant Elaine P. Wynn ("Ms. Wynn"). James J. Pisanelli, Esq., Todd L. Bice, Esq. and Debra L. Spinelli, Esq., of PISANELLI BICE PLLC, appeared on behalf of Plaintiff/Counterdefendant Wynn Resorts, Limited and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman (collectively the "Wynn Parties"). J. Stephen Peek, Esq., and Robert J. Cassity, Esq., of HOLLAND & HART LLP, and David S. Krakoff, Buckley Sandler, LLP appeared on behalf of Defendant Kazuo Okada ("Okada") and Defendants/Counterclaimants/Counterdefendants Aruze USA, Inc. ("Aruze USA") and Universal Entertainment Corp. ("Universal") (collectively the "Okada Parties"). Donald J. Campbell, Esq., of CAMPBELL & WILLIAMS, appeared on behalf of Counterdefendant/Cross-defendant Stephen A. Wynn ("Mr. Wynn").

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The Court having considered the Motion, the Oppositions, the Replies, as well as the arguments of counsel presented at the hearing, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion is GRANTED.

IT IS SO ORDERED.

DATED: 5/15/17

  
THE HONORABLE ELIZABETH GONZALEZ  
EIGHTH JUDICIAL DISTRICT COURT

Jw

Respectfully submitted by:

GREENBERG TRAURIG, LLP

By: 

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Universal Entertainment Corp.*

The Court having considered the Motion, the Oppositions, the Replies, as well as the arguments of counsel presented at the hearing, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion is GRANTED.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

THE HONORABLE ELIZABETH GONZALEZ  
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

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By: \_\_\_\_\_

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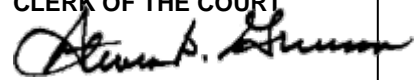
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*Elaine P. Wynn*

*\*admitted pro hac vice*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada  
Corporation,

Plaintiffs,

vs.

KAZUO OKADA, an individual, ARUZE  
USA, Inc., a Nevada corporation,  
UNIVERSAL ENTERTAINMENT  
CORPORATION, a Japanese corporation,

Defendants.

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

**ELAINE P. WYNN'S MOTION TO  
DISMISS KIMMARIE SINATRA'S  
COUNTERCLAIM AND CROSSCLAIM**

Date of Hearing:  
Time of Hearing:

ARUZE USA, INC., a Nevada corporation,  
UNIVERSAL ENTERTAINMENT  
CORPORATION, a Japanese corporation,

Counterclaimants.

vs.

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

Counterdefendants.

ELAINE P. WYNN, an individual,

Counterclaimant and  
Crossclaimant,

vs.

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

Crossdefendants,

ARUZE USA, INC., a Nevada Corporation,

Counterdefendant.

1 Elaine P. Wynn (“Ms. Wynn”), by and through her attorneys, hereby moves this Court  
2 pursuant to NRCP 12(b)(5), for an order dismissing Kimmarie Sinatra’s Counterclaim and  
3 Crossclaim.

4 This Motion is made and based upon the attached Memorandum of Points and Authorities,  
5 all pleadings and documents on file, and any oral argument the Court may choose to hear.

6 Dated this 2<sup>nd</sup> day of October, 2017

7 GREENBERG TRAURIG, LLP

8 By: /s/ Mark E. Ferrario

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20 Attorneys for Counterdefendant/  
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ELAINE P. WYNN

**NOTICE OF MOTION**

To: All Interested Parties; and

To: Their Counsel of Record;

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Elaine P. Wynn's Motion to Dismiss Kimmarré Sinatra's Counterclaim and Crossclaim, on for hearing in Department XI of the above-entitled Court on the 6 day of November, 2017 at 8:00 a.m. or as soon thereafter as counsel may be heard.

DATED this 2<sup>nd</sup> day of October, 2017.

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ELAINE P. WYNN

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Ms. Sinatra's abuse of process counterclaim is nothing more than a series of collateral  
4 attacks on the Court's oversight of this case, masquerading as a cause of action against Ms. Wynn.  
5 In 2016, Ms. Wynn amended her pleadings to add counterclaims against Mr. Wynn, Ms. Sinatra,  
6 and Wynn Resorts arising out of their successful scheme to oust her from the board of the company  
7 she co-founded. Since that time, the defendants have taken every conceivable step to avoid  
8 litigating those claims on the merits and to, instead, multiply proceedings—submitting motions to  
9 dismiss and endless additional filings in this Court and in the Nevada Supreme Court, resisting  
10 discovery, walking out of depositions, suing Ms. Wynn in another forum, and so on. This Court has  
11 seen through these efforts and has, for example, *denied* motions to dismiss Ms. Wynn's  
12 counterclaims from each of the defendants and has generally *granted* Ms. Wynn's requests to pursue  
13 discovery in the face of defendants' efforts to stonewall her.

14 Remarkably, however, Ms. Sinatra—but not Mr. Wynn or Wynn Resorts—has now lodged a  
15 counterclaim against Ms. Wynn for “abuse of process,” in pursuing claims this Court has held Ms.  
16 Wynn may pursue, and seeking discovery to which this Court has held Ms. Wynn is entitled. To try  
17 to obscure that undeniable reality, Ms. Sinatra also maintains that Ms. Wynn's counterclaims and  
18 discovery requests—again, counterclaims and discovery requests on which this Court has generally  
19 ruled *for Ms. Wynn*—were all made for the allegedly improper purpose of seeking certain settlement  
20 terms.

21 Ms. Sinatra's claim is legally and factually meritless. There is nothing remotely improper,  
22 much less tortious, about bringing viable claims that a court declines to dismiss; about making offers  
23 to settle those claims; or about pursuing discovery in furtherance of those claims. While Ms. Sinatra  
24 is undoubtedly frustrated that the Court has allowed Ms. Wynn to seek to hold her accountable for  
25 her conduct, an abuse of process claim against Ms. Wynn is not a legally supported vehicle for Ms.  
26 Sinatra to vent her frustrations with this Court's rulings or its handling of Ms. Wynn's claims.

## **BACKGROUND**

Ms. Sinatra's abuse of process claim centers around Ms. Wynn's decision to bring counterclaims against Mr. Wynn, Ms. Sinatra, and Wynn Resorts after they engineered a plan to remove Ms. Wynn from the Wynn Resorts board. Despite the rhetoric in Ms. Sinatra's pleading, however, it alleges few concrete facts, with most allegations made vaguely and on information and belief. *See, e.g.*, Counterclaim and Crossclaim of Kimmarie Sinatra (CC) ¶¶ 14, 24, 27-28.

The allegations seem to assert two ways in which Ms. Wynn purportedly misused the legal process. First, Ms. Sinatra alleges that Ms. Wynn should not have brought her counterclaims at all. In Ms. Sinatra's words, Ms. Wynn should not have "initiated legal process against Wynn Resorts and Ms. Sinatra" by "fil[ing] [an] amended pleading which included ... legally untenable tort claims." CC ¶¶ 19, 22, 31. Never mind that this Court rejected Ms. Sinatra's argument that Ms. Wynn's claims are "legally untenable" when the Court denied motions to dismiss from Ms. Sinatra and her co-defendants. *See* 8/23/17 Order Denying Wynn Resorts, Limited's Motion to Dismiss the Eleventh and Fourteenth Causes of Action and Kimmarie Sinatra's Motion to Dismiss the Twelfth and Fourteenth Causes of Action in Elaine P. Wynn's Sixth Amended Counterclaim and Crossclaim.

Second, Ms. Sinatra alleges that Ms. Wynn "abuse[d] the legal process" by "propounding discovery and filing motions" that included a motion to compel additional deposition time with Governor Miller and with "two additional people who had already been deposed." CC ¶¶ 26-28, 31. Although the complaint does not identify them, as best Ms. Wynn can tell, those "two additional people" were James Stern and John Strzemp. Here, too, the Court's subsequent decisions are irreconcilable with Ms. Sinatra's assertions of impropriety: for example, the Court *granted* Ms. Wynn's motion to compel additional time with Mr. Stern. *See* 4/15/16 Order Granting Elaine P. Wynn's Motion to Compel Deposition of James C. Stern on Order Shortening Time. Similarly, the Court has routinely granted motions from all parties, including Wynn Resorts, for additional deposition time with previously-deposed witnesses, including Governor Miller, where good cause exists. *See, e.g.*, 8/1/16 Order Granting Defendants' Motion to Compel Further Deposition of Gov. Robert J. Miller; 7/28/17 Order Granting Wynn Resorts, Limited's Motion to Compel Responses to



1 Questions and for Further Deposition of Kazuo Okada and Aruze 30(b)(6) Designee on Order  
2 Shortening Time.<sup>1</sup>

3 Ms. Sinatra’s complaint goes on to allege that Ms. Wynn’s supposedly “willful” and “not  
4 proper” acts were carried out with “improper motives and ulterior purposes.” CC ¶¶ 30-31. Ms.  
5 Sinatra alleges that Ms. Wynn filed claims and sought discovery “for the purposes of ... extracting a  
6 settlement from Mr. Wynn, Wynn Resorts and Ms. Sinatra that could not be achieved in court, to  
7 intimidate and embarrass Mr. Wynn, Wynn Resorts and Ms. Sinatra, to create potential conflicts  
8 between them, and to intentionally jeopardize their case against Okada, Aruze and Universal.” *Id.*  
9 ¶¶ 11, 30. Much of the alleged conduct behind these assertions took place before Ms. Wynn filed  
10 her counterclaims—that is, before there was any use of legal process at all. *See, e.g., id.* ¶¶ 13-15.  
11 Moreover, little of the alleged conduct relates to Ms. Sinatra specifically. Instead, the complaint  
12 alleges that most of the purported conduct was directed at “Mr. Wynn, Wynn Resorts and Ms.  
13 Sinatra”—and where the complaint singles out any one of those three parties, the alleged conduct  
14 complained of was directed at Mr. Wynn alone, not Ms. Sinatra. *See, e.g., id.* ¶¶ 15, 21 (describing  
15 pre-suit settlement demands allegedly made of “Mr. Wynn”). Indeed, nowhere does Ms. Sinatra’s  
16 pleading allege facts to establish how she might be “intimidate[d] or “embarrass[ed]” by the filing  
17 of Ms. Wynn’s counterclaims. *Id.* ¶¶ 11, 25, 30. Apart from the counterclaims themselves, the only  
18 direct connection to Ms. Sinatra appears to be the allegation that one of Ms. Wynn’s pre-litigation  
19 settlement offers included a request that Ms. Sinatra be terminated. *Id.* ¶ 15.<sup>2</sup>

### 20 LEGAL STANDARD

21 The Nevada Rules of Civil Procedure provide that a complaint should be dismissed for,  
22 among other things, “failure to state a claim upon which relief can be granted.” Nev. R. Civ. P.

---

23 <sup>1</sup> The complaint also alleges the “making of extortionate settlement offers” as an improper act  
24 done through the use of the legal process, CC ¶ 31, but Ms. Wynn’s settlement offers made outside  
25 of any court proceeding are not “process.” *See, e.g., Land Baron Inv. v. Bonnie Springs Family LP*,  
26 356 P.3d 511, 520 (Nev. 2015) (actions that are not “founded upon court authority” or that courts are  
not “involved in” do not constitute “legal process”). The alleged settlement offers, accordingly, are  
relevant if at all only to Ms. Wynn’s alleged purposes or motives. CC ¶ 30; *infra* § I.A.

27 <sup>2</sup> For reasons explained below, any allegations as to Mr. Wynn or Wynn Resorts cannot be  
28 maintained in a suit brought only by Ms. Sinatra.

12(b)(5). Although the Court must “accept all factual allegations in the complaint as true” and “draw every fair inference in favor of the non-moving party,” *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217 (2000), a motion to dismiss should be granted when the plaintiff “could prove no set of facts, which, if true, would entitle [her] to relief,” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 (2008).

## **ARGUMENT**

### **I. MS. SINATRA’S ABUSE OF PROCESS ALLEGATIONS FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.**

“[B]ecause of the potential chilling effect on the right of access to the court, abuse of process claims are heavily disfavored.” *N. Las Vegas Redevelopment Agency v. Skyview Corp.*, 2015 WL 13066381, at \*6 (Nev. Dist. Ct. Jan. 22, 2015). Such a claim requires plaintiffs to prove “(1) an ulterior purpose by the defendants other than resolving a legal dispute, and (2) a willful act in the use of the legal process not proper in the regular conduct of the proceeding.” *LaMantia v. Redisi*, 118 Nev. 27, 30 (2002). Because Ms. Sinatra’s counterclaim does not adequately plead facts that, even if true, would satisfy either element, it should be dismissed.

#### **A. Ms. Sinatra Fails To Plead Any Willful Act In The Use Of The Legal Process Not Proper In The Regular Conduct Of The Proceeding.**

The Court can begin and end its analysis with the second element of an abuse of process claim because nothing Ms. Wynn allegedly did “in the use of the legal process” could possibly be characterized as “not proper in the regular conduct of the proceeding.” The pleadings identify three categories of allegedly improper acts: (1) “making of extortionate settlement offers both before and after initiating legal process,” (2) “filing the claims,” *i.e.*, her counterclaims against Mr. Wynn, Ms. Sinatra, and Wynn Resorts, and (3) “propounding an unreasonable amount of discovery.” CC ¶ 31. None of these constitute “a willful act in the use of the legal process not proper in the regular conduct of the proceeding,” and they are absolutely privileged. That conclusion is amply supported by the case law.

#### **1. Settlement Demands.**

To start, Ms. Sinatra’s allegations of settlement offers and other pre-suit conduct are irrelevant because they concern acts that occurred “before [Ms. Wynn] initiat[ed] the legal process”

1 by filing her counterclaims. *Id.* Abuse of process claims concern only “the improper use *after*  
2 *issuance*” of legal process. *Kopff v. World Research Grp., LLC*, 519 F. Supp. 2d 97, 99 (D.D.C.  
3 2007); *see also Nevada Credit Rating Bureau, Inc. v. Williams*, 88 Nev. 601, 606 (1972) (“The  
4 action for abuse of process hinges on the misuse of regularly issued process, in contrast to malicious  
5 prosecution which rests upon the wrongful issuance of process.”); Restatement (Second) of Torts §  
6 682 (1977), Reporter’s Note (“Crux of action is improper use of process after it is issued.”). Put  
7 simply, “[t]here is no abuse of process where a plaintiff approaches a defendant with  
8 a settlement demand or offer prior to proceeding with litigation.” *Malibu Media, LLC v. Doe 1*, No.  
9 12-cv-1195, 2013 WL 5603275, at \*3 (D. Md. Oct. 10, 2013); *Hampton v. Nustar Mgmt. Fin. Grp.*,  
10 No. 05-cv-0824, 2007 WL 119146, at \*3 (D. Nev. Jan. 10, 2007) (“the complaining party must  
11 include some allegation of abusive measures taken *after the filing of the complaint* in order to state a  
12 claim”) (emphasis added). All of the settlement offers alleged by Ms. Sinatra were made *before* Ms.  
13 Wynn ever invoked the legal process by filing her counterclaims. *See* CC ¶¶ 13-15, 21-22.  
14 Although the pleading summarily alleges that Ms. Wynn also made settlement offers “after  
15 initiating legal process,” *id.* ¶ 31, not a single such offer is alleged anywhere in the complaint. And  
16 because conduct that occurred before any legal process began cannot constitute acts done “in the use  
17 of the legal process,” these allegations cannot support Ms. Sinatra’s claim.

## 18 2. Filing of Claims.

19 Ms. Sinatra’s contention that Ms. Wynn abused the legal process by filing her  
20 counterclaims, which Ms. Sinatra continues to insist are “legally untenable,” *id.* ¶¶ 22, 31, does not  
21 support a claim for abuse of process. Nevada law is clear that “filing a complaint does not constitute  
22 abuse of process.” *Land Baron Inv.*, 356 P.3d at 520; *see also Childs v. Selznick*, 281 P.3d 1161  
23 (Nev. 2009) (unpublished) (same). It necessarily follows, then, that filing a complaint *that survives*  
24 *a motion to dismiss*—as Ms. Wynn’s counterclaims have—also cannot constitute abuse of process.  
25 By definition, asserting viable claims cannot be an act “so lacking in justification as to lose its  
26 legitimate function as a reasonably justifiable litigation procedure.” *Momot v. Mastro*, No.  
27 09-cv-00975, 2010 WL 2696635, at \*4 (D. Nev. July 6, 2010).

1 A party's decision to assert viable claims, moreover, does not transform into "a willful act ...  
2 not proper in the regular conduct of the proceeding" simply because the claims are filed in an effort  
3 to prompt settlement. Courts applying Nevada law have thus found no improper conduct when suit  
4 was filed "to obtain a settlement," *Hampton*, 2007 WL 119146, at \*3, or even when suit was  
5 allegedly filed "without probable cause for the ... claims," *Ralphaelson v. Ashtonwood Stud*  
6 *Assocs., L.P.*, No. 08-cv-1070, 2009 WL 2382765, at \*3-4 (D. Nev. July 31, 2009), or to "coerce an  
7 unjust settlement," *Momot*, 2010 WL 2696635, at \*5. Indeed, the only time Nevada courts have  
8 entertained abuse of process claims premised on the contention that a party improperly brought suit  
9 in order to pursue a settlement was when the party did so "knowing that there was *no basis* for the  
10 claim," *Bull v. McCuskey*, 96 Nev. 706, 707 (1980) (emphasis added), or "wrongfully charged [the  
11 party] with a criminal violation and then attempted to use the prosecution as a bargaining tool,"  
12 *Posadas v. City of Reno*, 109 Nev. 448, 457 (1993). Moreover, in both *Bull* and *Posadas*, liability  
13 was not tied to the acts of filing a complaint or charges alone, because the allegedly tortious  
14 settlement demands continued after the proceedings were filed and after process was initiated.

15 Nothing like that is going on here. The Court's decision to *deny* motions to dismiss Ms.  
16 Wynn's claims demonstrates unequivocally that those claims were adequately pled and had a legal  
17 basis. *See, e.g., Am. Excess Ins. Co. v. MGM Grand Hotels, Inc.*, 102 Nev. 601, 605 (1986)  
18 (reversing abuse of process judgment after finding the defendant's contract interpretation "was  
19 reasonable" and so it "was justified in filing its complaint for declaratory relief"); *E. Sav. Bank, FSB*  
20 *v. Papageorge*, 31 F. Supp. 3d 1, 19-20 (D.D.C. 2014) (dismissing abuse of process claim that was  
21 "predicated upon an assertion that ... litigation" was a "sham" or "objectively baseless" when  
22 defendant's "lawsuit ... survived a motion to dismiss before it was settled"). And Ms. Sinatra does  
23 not and could not allege—except in the most conclusory fashion—that Ms. Wynn's claims have "no  
24 basis" in fact. The most Ms. Sinatra alleges is that Ms. Wynn knew that "some" of the allegations in  
25 her counterclaim were "false." CC ¶¶ 14, 18, 22-23. But Ms. Sinatra (a) does not identify any such  
26 "false" allegation, (b) does not allege any facts to support the conclusory statement of falsity, and (c)  
27 by asserting that only "some" allegations were false, concedes that "some" were also true. As such,  
28

Ms. Sinatra has failed to plead that Ms. Wynn's counterclaims against her have "no basis." *Contra Bull*, 96 Nev. at 707.

### 3. Discovery Demands.

The only alleged conduct that occurred both after the legal process began and separately from the mere filing of viable counterclaims is Ms. Wynn's purportedly "unreasonable amount of discovery." But allegations about motions to compel depositions that were granted or efforts to pursue discovery in support of claims that have survived a motion to dismiss does not constitute "use of the legal process not proper in the regular conduct of the proceeding." The Ninth Circuit's decision in *Blue Goose Growers, Inc. v. Yuma Groves, Inc.*, 641 F.2d 695 (9th Cir. 1981), is instructive.<sup>3</sup> That case affirmed the dismissal of a complaint alleging abuse of process that, much like Ms. Sinatra's, claimed three allegedly improper acts: (1) "[defendant's] threat during early discussions to file a lawsuit if certain business information was not disclosed by [plaintiff]," (2) "the initiation of the litigation itself," and (3) "an extensive discovery request for business records ... following initiation of the lawsuit." *Id.* at 697. "[N]one of these acts constituted a sufficient 'wilful act' to support a claim for abuse of process," and the discovery request was "simply a proper request seeking information relevant to ... claims in the underlying suit." *Id.* The same is true here—Ms. Sinatra alleges nothing "unreasonable" or improper about Ms. Wynn's discovery requests.

### 4. Absolute Litigation Privilege.

If more were needed, Ms. Sinatra's allegations are also barred by Nevada's absolute litigation privilege. That privilege is "quite broad," applies to both "conduct" and "communications" made during the litigation process, "even if known to be false," and includes "communications preliminary to a proposed judicial proceeding." *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. Cty. of Clark*, 128 Nev. 885, 381 P.3d 597 (2012). Because Ms. Sinatra's allegations about (1) settlement communications, (2) filing counterclaims, and (3) discovery pursuits, all fit comfortably within those parameters, they cannot,

---

<sup>3</sup> Although *Blue Goose* was decided under Arizona law, Arizona's tort elements are the same as Nevada's, and *Blue Goose* has been cited approvingly by at least one court applying Nevada law. See *Laxalt v. McClatchy*, 622 F. Supp. 737, 751-52 (D. Nev. 1985)

1 “as a matter of law, ... constitute the basis of” an abuse of process claim. *Id.* at \*2-3. That is yet  
2 another reason for dismissal.

3 \* \* \*

4 In sum, Ms. Sinatra has failed to allege any conduct that would establish the second element  
5 of an abuse of process claim. “[F]iling a lawsuit and performing ordinary acts in the regular course  
6 of the legal proceedings is not abuse of process even if the goals of the lawsuit are nefarious and  
7 improper.” *Rusakiewicz v. Lowe*, 556 F.3d 1095, 1104 (10th Cir. 2009). And because none of Ms.  
8 Sinatra’s allegations identify any cognizable “willful act in the use of the legal process not proper in  
9 the regular conduct of the proceeding,” *LaMantia*, 118 Nev. at 30, she “could prove no set of facts,  
10 which, if true, would entitle [her] to relief,” *Buzz Stew*, 124 Nev. at 228. Dismissal is therefore  
11 appropriate.

12 **B. Ms. Sinatra Fails To Plead Any Ulterior Purpose Other Than Resolving A**  
13 **Legal Dispute.**

14 Ms. Sinatra’s counterclaim fails for another, independent reason: she does not plead “an  
15 ulterior purpose by [Ms. Wynn] other than resolving a legal dispute.” *LaMantia*, 118 Nev. at 30.

16 The pleading alleges four “improper motives and ulterior purposes”: (1) “extracting a  
17 settlement from Mr. Wynn, Wynn Resorts and Ms. Sinatra that could not be achieved in court,”  
18 including “caus[ing] the company to terminate Ms. Sinatra,” “caus[ing] the company to separate the  
19 CEO and Chairman of the Board positions,” and proposing that Mr. Wynn buy Ms. Wynn’s stock at  
20 a premium; (2) “to intimidate and embarrass Mr. Wynn, Wynn Resorts and Ms. Sinatra”; (3) “to  
21 create potential conflicts between them”; and (4) “to intentionally jeopardize their case against  
22 Okada, Aruze and Universal.” CC ¶¶ 11, 15-16, 21, 30. These allegations fall short for several  
23 reasons.

24 To begin with, none of Ms. Wynn’s allegedly improper motives is cognizable in its own  
25 right or can support an abuse of process claim. The focus of the complaint is on one motive in  
26 particular—namely, that Ms. Wynn improperly pursued settlement terms, including Ms. Sinatra’s  
27 termination, that could not be obtained through a judgment entered in litigation. *See, e.g.*, CC at 15  
28 (highlighting twice in bold, underline, and italics the alleged request that Ms. Sinatra lose her job);

1 *id.* ¶¶ 15-16. Even taking that allegation as true, however, there was nothing wrong or actionable  
2 about such a motive. The whole point of settlement is resolving a legal dispute; seeking settlement  
3 of viable claims (as Ms. Wynn’s are) thus is not an “ulterior purpose ... *other than* resolving a legal  
4 dispute.” *LaMantia*, 118 Nev. at 30 (emphasis added). No doubt that is why courts in Nevada have  
5 held that “maintaining a lawsuit for the ulterior purpose of continuing litigation as a lever to obtain a  
6 settlement is not an improper motive and would not demonstrate any ulterior purpose other than  
7 resolution or settlement of the suit which is an acceptable use of process.” *Hampton*, 2007 WL  
8 119146, at \*3.

9 Not only that, but asking for settlement terms that a court itself might not be able to  
10 order—including asking that an alleged tortfeasor be terminated—does not represent an improper  
11 motive or purpose that could give rise to an abuse of process claim. Such demands are actually quite  
12 common. In *Russell v. Risher*, therefore, the court ordered dismissal of an abuse of process claim  
13 alleging that the “plaintiff demanded something ([the defendant’s] resignation) which she was not  
14 entitled to demand,” observing succinctly that “[i]t is not unusual for plaintiffs, in the negotiation  
15 stage, to demand more than they are entitled to receive.” 249 S.E.2d 908, 909 (S.C. 1978).  
16 Similarly, it is not unusual for a plaintiff to demand as a part of settlement talks that the defendant  
17 issue a public apology, even though courts are generally not empowered to forcibly order apologies.  
18 See *Woodruff v. Ohman*, 29 F. App’x 337, 346 (6th Cir. 2002). But “[n]o case law suggests a  
19 request for an apology is an abuse of process.” *Wooleyhan v. Cape Henlopen Sch. Dist.*, No.  
20 10-cv-153, 2011 WL 1875710, at \*16 (D. Del. May 17, 2011). And in *Rusakiewicz*, the Tenth  
21 Circuit made clear that settlement terms seeking prospectively to “forestall future tortious conduct  
22 of the same sort for which the lawsuit seeks [past] damages” is “not unusual” and does not support  
23 an abuse of process claim. 556 F.3d at 1104-05. Authorities like these nullify Ms. Sinatra’s claim  
24 that there was any actionably improper purpose behind the alleged request by Ms. Wynn—one of  
25 the largest shareholders of Wynn Resorts—that the company which she co-founded fire a general  
26 counsel who has engaged in repeated improper conduct in violation of her fiduciary duties.

27 The other three allegedly “ulterior purposes” are equally deficient. The claims about a  
28 motive to intimidate or embarrass are doubly flawed. First, Ms. Sinatra has no right to make such

1 assertions because, generally speaking, plaintiffs do not have standing or the right to bring abuse of  
2 process claims when the alleged wrongdoing was directed at someone else. *See, e.g., Balzer v. Cty.*  
3 *of Kern*, 57 F.3d 1076 (9th Cir. 1995) (unpublished) (a business owner did not have standing to  
4 bring abuse of process claims based upon a fire department’s alleged conduct toward her husband  
5 who was an employee); *Meza v. Meza*, No. 12-cv-01777, 2013 WL 2338126 (C.D. Cal. May 25,  
6 2013) (a mother did not have standing to bring abuse of process claims based upon a county’s filing  
7 for conservatorship against her daughter because that implicated the daughter’s rights). This  
8 commonsense principle ensures that “[a] claim for abuse of process, particularly one which rests  
9 upon an allegation that the complaint was filed for ulterior purposes, does not rest upon *unrelated*  
10 improper acts, but upon improper acts in the prosecution (or lack of prosecution) *of the relevant*  
11 *process.*” *Lehrer v. Connelly*, No. 11-cv-00735, 2012 WL 1032468, at \*4 (D. Nev. Mar. 27, 2012)  
12 (emphases added) (dismissing claim that “at most” alleged abuse of process that “accrued” to others  
13 in another suit as irrelevant to the plaintiff’s claims in the current suit). Here, however, there can be  
14 no question that any alleged embarrassment would belong to Mr. Wynn alone, not Ms. Sinatra. *See,*  
15 *e.g., 6ACC ¶ 52* (“Ms. Sinatra acted to protect or advance Mr. Wynn’s personal interests” by  
16 concealing allegations of misconduct and associated payments by Mr. Wynn). As a result, Ms.  
17 Sinatra cannot pursue her allegations about embarrassment.

18 Second, the allegations are also ill-pled. There are no factual allegations, for example, to  
19 support the assertion that Ms. Wynn filed suit to “intimidate and embarrass Mr. Wynn, Wynn  
20 Resorts, and Ms. Sinatra,” and Ms. Sinatra later concedes that some allegedly “scurrilous” but  
21 unidentified “accusations” were “removed” when the pleading was actually filed. CC ¶ 19. Nor  
22 would any such factual allegations signify a tortious motive: it is routine that parties settle  
23 allegations—confidentially and whether or not the defendants think the allegations are  
24 meritorious—because the would-be defendants “fear ... accusations being made public.” CC ¶ 14.  
25 No case supports transforming every such settlement discussion into fodder for an abuse of process  
26 claim.

27 In a similar vein, there are no factual allegations about how or why Ms. Wynn’s  
28 counterclaim could have been filed for the purpose of “creat[ing] potential conflicts” between Mr.



Wynn, Wynn Resorts and Ms. Sinatra or “jeopardize[ing] their case against Okada, Aruze and Universal.” *Id.* ¶ 30. As to the former, the only supposed “potential conflicts” would have arisen out of Ms. Sinatra’s alleged actions to assist Mr. Wynn and not Wynn Resorts—conduct which, again, this Court has found sufficiently pled to survive a motion to dismiss. As to the latter, the complaint expressly *refutes* any conclusion of “jeopardizing” the case, as it alleges elsewhere that Ms. Wynn’s “interests are aligned with Wynn Resorts” “as to the claims asserted by Aruze and Universal.” *Id.* ¶ 9. In short, these additional “improper motives” are all summarily asserted on information and belief, and such bald statements do not provide *factual* allegations or any “set of facts” that could be proven true. *Buzz Stew*, 124 Nev. at 228 (emphasis added); *see also, e.g., Jafbros, Inc. v. GEICO Indem. Co.*, 127 Nev. 1148 (2011) (unpublished) (affirming dismissal of complaint despite “conclusory allegations that [defendant’s] actions were willful, malicious, oppressive, and tortious” because “the factual assertions it included ... do not sustain these conclusions”).

Finally, and in addition to deficiencies with the alleged motives themselves, Ms. Sinatra nowhere alleges that any of the supposedly “ulterior purposes” was the *primary* purpose for which Ms. Wynn acted. That is also fatal. It is not enough to allege an “incidental motive of spite or an ulterior purpose of benefit to the defendant”; the wrongful purpose must have been the defendant’s primary purpose for invoking the legal process. *See, e.g., Restatement (Second) of Torts* § 682 (1977); *Fire Ins. Exch. v. Efficient Enters., Inc.*, 399 P.3d 333 (Nev. 2017) (tort covers those who use process “against another *primarily* to accomplish a purpose for which it is not designed”) (quoting Restatement) (emphasis added); *Hendershott v. Babeu*, No. 14-0158, 2015 WL 1395275, at \*3 (Ariz. Ct. App. Mar. 24, 2015) (“A claim for abuse of process requires a plaintiff to allege the defendant used a court process with the primary objective of pursuing an improper motive”); *Palmer v. Savona*, 623 F. App’x 480, 481 (9th Cir. 2015) (affirming dismissal when plaintiff “failed to allege facts sufficient to show that defendants’ primary motive ... was improper”). Ms. Sinatra does not allege that Ms. Wynn’s primary purpose in filing suit or pursuing discovery was, for example, to get Ms. Sinatra fired or to embarrass anyone. Nor could she: even Ms. Sinatra alleges that putative improper purposes were just some “among others,” CC ¶¶ 11, 30, and the primary

purpose behind Ms. Wynn's claims was unquestionably to secure redress for the harms she has suffered from her inability to sell her stock and from being ousted from the board as a result of Mr. Wynn's enforcement and breach of the Stockholder's Agreement, *see, e.g., id.* ¶ 15 (recognizing Ms. Wynn's desire to be "release[d] from the transfer restrictions" on her stock). Ms. Sinatra's failure to allege that Ms. Wynn's allegedly "improper" purposes were also her primary purposes is dispositive, and her claim should be dismissed for failure to plead any "ulterior purpose ... other than resolving a legal dispute."

### **CONCLUSION**

For the foregoing reasons, Ms. Sinatra's counterclaim for abuse of process should be dismissed with prejudice.

Dated: October 2, 2017

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**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b)(2)(D), I certify that on this 2<sup>nd</sup> day of October, 2017, I caused a true and correct copy of the forgoing *Elaine P. Wynn's Motion to Dismiss Kimmarré Sinatra's Counterclaim and Crossclaim* to be filed and served on the parties listed below by causing it to be transmitted by the Court's Odyssey e-service/e-filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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