

IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS LIMITED,

Petitioner,

v.

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

Respondents,

and

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

Real Parties in Interest.

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

**APPENDIX IN SUPPORT OF  
ANSWER OF REAL PARTIES IN  
INTEREST TO PETITION FOR WRIT  
OF MANDAMUS OR  
ALTERNATIVELY, PROHIBITION  
FILED BY WYNN RESORTS, LIMITED**

**VOLUME I (RAPP 0001-RAPP 0250)**

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**APPENDIX IN SUPPORT OF ANSWER OF REAL PARTIES IN  
INTEREST TO PETITION FOR WRIT OF MANDAMUS OR  
ALTERNATIVELY, PROHIBITION FILED BY WYNN RESORTS,  
LIMITED**

**CHRONOLOGICAL INDEX**

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02-19-2012	Complaint	1	RAPP 0022- RAPP 0089
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09-22-2017	Defendants' Opposition to Wynn Parties' Motion for Summary Judgment on Stock Redemption <b>(FILED UNDER SEAL)</b>	2	RAPP 0323- RAPP 0367
09-22-2017	Appendix of Exhibits Referenced in Defendants' Opposition to Wynn Parties' Motion for Summary Judgment on Stock Redemption <b>(FILED UNDER SEAL)</b>	2-9	RAPP 0368- RAPP 2039
11-09-2017	Defendants' Supplemental Brief in Support of Opposition to Wynn Parties' Motion for Summary Judgment on Stock Redemption <b>(FILED UNDER SEAL)</b>	9	RAPP 2040- RAPP 2066
11-09-2017	Appendix of Exhibits Referenced in Defendants' Supplemental Brief in Support of Opposition to Wynn Parties' Motion for Summary Judgment on Stock Redemption <b>(FILED UNDER SEAL)</b>	9-12	RAPP 2067- RAPP 2966
12-11-2017	Transcript of Status Check and Hearing on Motion to Extend Partial Stay	12	RAPP 2967- RAPP 2988

**APPENDIX IN SUPPORT OF ANSWER OF REAL PARTIES IN  
INTEREST TO PETITION FOR WRIT OF MANDAMUS OR  
ALTERNATIVELY, PROHIBITION FILED BY WYNN RESORTS,  
LIMITED**

**ALPHABETICAL INDEX**

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12-11-2017	Transcript of Status Check and Hearing on Motion to Extend Partial Stay	12	RAPP 2967- RAPP 2988

## CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of Morris Law Group, that in accordance therewith, I caused a copy of **APPENDIX TO ANSWER OF REAL PARTIES IN INTEREST TO PETITION FOR WRIT OF MANDAMUS OR ALTERNATIVELY, PROHIBITION FILED BY WYNN RESORTS, LIMITED VOLUME I (RAPP 0001-RAPP 0250)** to be served via Electronic Mail unless otherwise indicated below:

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### **Courtesy Copy Hand Delivered:**

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

Dated: December 22, 2017

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By: /s/ PATRICIA FERRUGIA

## CIVIL COVER SHEET

Clark County, Nevada

Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)

A- 12- 654522- B

XI

**I. Party Information**

Petitioner(s) (name/address/phone): KAZUO OKADA, an individual

Attorney (name/address/phone): Charles H. McCrea, Jr. (SBN 104), LIONEL SAWYER & COLLINS, 300 S. 4<sup>th</sup> St., Ste. 1700, Las Vegas, NV 89101; 702-383-8888

Respondent(s) (name/address/phone): WYNN RESORTS, LIMITED, a Nevada corporation

Attorney (name/address/phone):

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence</b> <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<b>Estimated Estate Value:</b> _____ <input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input checked="" type="checkbox"/> <b>Other Civil Matters</b>

**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

- |  |  |   |
|--|--|---|
| <input checked="" type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8)        | <input type="checkbox"/> Enhanced Case Mgmt/Business  |
| <input type="checkbox"/> Commodities (NRS 90)          | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90)           | <input type="checkbox"/> Trademarks (NRS 600A)               |   |

January 11, 2012  
DateCharles H. McCrea, Jr.  
Signature of initiating party or representative

See other side for family-related case filings.

1 **0016**

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01/11/2012 02:33:08 PM

  
CLERK OF THE COURT

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 KAZUO OKADA, an individual,

15 Petitioner,

16 -against-

17 WYNN RESORTS, LIMITED, a Nevada  
18 corporation,

19 Respondent.

CASE NO. **A- 12- 654522- B**

DEPT. NO. **XI**

**PETITION FOR A WRIT  
OF MANDAMUS**

**[ARBITRATION EXEMPTION  
CLAIMED: PETITION SEEKS  
INJUNCTIVE RELIEF]**

**[BUSINESS COURT REQUESTED: NRS  
CHAPTER 78]**

22 COMES NOW Petitioner KAZUO OKADA ("Mr. Okada"), by and through his counsel  
23 LIONEL SAWYER & COLLINS and ALSTON & BIRD LLP, against Respondent Wynn  
24 Resorts, Limited ("Wynn Resorts" or the "Company"), and pursuant to Nev. Rev. Stat. § 34.150  
25 *et seq.* respectfully petitions the Court for a writ of mandamus compelling Respondent to  
26 produce certain books and records. This verified Petition is made and based on the facts set forth  
27 below and the Affidavit of Charles H. McCrea, Jr. and Memorandum of Law filed herewith:  
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1 of the \$30 million and the subsequent \$90 million invested by Aruze USA. Nevertheless, the  
2 Company still denied access to any records showing how the funds were used. Thus, on  
3 November 29, 2011, Mr. Okada sought inspection with regard to the full \$120 million invested  
4 by Aruze USA in April 2002 (which was ostensibly to be used in relation to the Macau resort).  
5 In response, Wynn Resorts has continued to deny Mr. Okada's requests to inspect its books and  
6 records and there has been no explanation for how the \$120 million was actually spent.

7 6. This action seeks an order that Mr. Okada and his attorneys be permitted to  
8 inspect the Company's books and records.

9 **PARTIES, JURISDICTION AND VENUE**

10 7. Petitioner Kazuo Okada is a resident of Hong Kong and citizen of Japan. In 1969,  
11 Mr. Okada founded Universal Lease Co. Ltd., which is now known as Universal Entertainment  
12 Corporation ("Universal"), and is its majority owner and Chairman. Mr. Okada is a Director,  
13 President, Secretary, and Treasurer of Aruze USA, Inc., a wholly-owned subsidiary of Universal.  
14 Aruze USA owns 24,549,222 shares of Wynn Resorts, or 19.66 percent of the outstanding shares  
15 of the Company. Mr. Okada has been found suitable by the Nevada Gaming Commission as a  
16 stockholder and as a controlling stockholder of Universal Entertainment Corporation.

17 8. Mr. Okada has served as a member of Wynn Resorts' Board of Directors since  
18 October 2002. Mr. Okada also serves as a member of the Board of Directors of Wynn Macau,  
19 Limited, a majority owned subsidiary of the Company.

20 9. Respondent Wynn Resorts, Limited is a publicly traded corporation organized and  
21 existing under the laws of the State of Nevada with its principal place of business in Las Vegas,  
22 Nevada. Wynn Resorts trades on NASDAQ under the ticker symbol "WYNN." Wynn Resorts,  
23 together with its subsidiaries, develops, owns, and operates destination casinos and resorts. The  
24 Company owns the Wynn Las Vegas casino resort in Las Vegas, Nevada, and the Wynn Macau  
25 casino resort located in the Macau Special Administrative Region of the People's Republic of  
26 China.

27 10. This Court has jurisdiction over this action pursuant to Nevada Constitution,  
28 Article 6, § 6.



11. Venue is proper in this Court pursuant to Nev. Rev. Stat. § 13.040.

**GENERAL ALLEGATIONS**

12. Petitioner reasserts and realleges Paragraphs 1 through 11 above.

**A. Mr. Okada and Mr. Wynn Create Wynn Resorts**

13. Mr. Wynn had a track record of planning and opening casino and resort projects such as the Golden Nugget, the Mirage, Treasure Island, and Bellagio. He lost control of these ventures, however, to MGM. In 2000, Mr. Wynn purchased the former Desert Inn in Las Vegas and tried to develop it. He was having trouble finding investors, until he met Mr. Okada.

14. Mr. Okada first came to know about Mr. Wynn through Universal. At the time, Universal was a distributor of electronic gaming machines in Nevada, and Mr. Wynn was a customer. Universal had developed the first computerized slot machine.

15. In October 2000, Aruze USA invested \$260 million for a 50 percent membership interest in Valvino Lamore, LLC ("Valvino Lamore"), Mr. Wynn's venture to develop the Desert Inn property. In connection with that investment, the parties entered into the Amended and Restated Operating Agreement of Valvino Lamore, LLC (the "Valvino Lamore Operating Agreement").

16. In 2002, in connection with the development of the Wynn Macau project, Mr. Wynn first asked Mr. Okada for \$30 million, supposedly to finance "due diligence," and then an additional \$90 million to fund other elements of the enterprise, for a total of \$120 million. Mr. Okada provided this funding through Aruze USA. The document memorializing this investment is the Third Amended and Restated Operating Agreement of Valvino Lamore, LLC (the "Third Amended and Restated Operating Agreement of Valvino Lamore,") executed by Mr. Wynn, Aruze USA, and Baron Asset Fund. Mr. Okada has never seen an accounting for how any of this money was spent. The Third Amended and Restated Operating Agreement of Valvino Lamore also provided that Mr. Wynn would receive a reimbursement for expenses incurred to develop a property in Macau.

17. In light of recent developments, Mr. Okada has become concerned regarding how Mr. Wynn caused these funds to be used. Mr. Okada's recent requests to inspect the books and

1 records in order to determine how these monies were used, and for substantiation of the  
2 reimbursement to Mr. Wynn, have been repeatedly and summarily denied by the Company.

3 18. In September 2002, less than two years after Mr. Okada and Mr. Wynn joined  
4 forces, the members of Valvino Lamore contributed 100% of their membership interests to  
5 Wynn Resorts in exchange for common stock in Wynn Resorts. Valvino Lamore is now a  
6 wholly-owned subsidiary of Wynn Resorts. Wynn Resorts now controls the books and records  
7 of Valvino Lamore.

8 19. In conjunction with the transition of Valvino Lamore to Wynn Resorts, Aruze  
9 USA, Mr. Wynn, and Baron Asset Fund entered into a stockholders agreement ("2002  
10 Stockholders Agreement").

11 20. On October 25, 2002, Wynn Resorts went public on the NASDAQ at \$13 per  
12 share. After the initial public offering, and other subsequent dilution, Mr. Okada and Mr. Wynn  
13 each owned approximately twenty percent of the common stock.

14 **B. Mr. Wynn Loses A Significant Portion Of His Stake in Wynn Resorts**

15 21. In March 2009, Mr. Wynn and his wife filed for divorce in Las Vegas. In a  
16 January 6, 2010 filing with the Securities and Exchange Commission, they reported that  
17 11,076,708 shares previously held as community property were transferred to Ms. Wynn, leaving  
18 Mr. Wynn with an equal number of shares. Meanwhile, Aruze USA held 24,549,222 shares, or  
19 more than double what Mr. Wynn had.

20 22. As a result of this transfer to his ex-wife, Mr. Wynn owned approximately nine  
21 percent of Wynn Resorts' outstanding common stock, compared to the almost twenty percent  
22 owned by Aruze USA.

23 23. As Mr. Wynn was losing a significant portion of his shares to his ex-spouse, he  
24 procured an amendment to the stockholders agreement ("2010 Amendment"), which, among  
25 other things, purports to impose restrictions on the shares of Wynn Resorts owned by Azure  
26 USA and Ms. Wynn and confirm the ability to Mr. Wynn to exercise certain rights in respect of  
27 such shares.

1           **C.     Mr. Okada Objects to HK\$1 Billion Donation to the University of Macau**

2           24.     In May 2011, Wynn Macau pledged to donate HK\$1 billion (about \$135 million)  
3     to the University of Macau Development Foundation. This contribution consists of a \$25 million  
4     contribution made in May 2011, and a commitment for additional donations of \$10 million each  
5     year for the calendar years 2012 through 2022 inclusive, for a total of \$135 million. Wynn  
6     Macau's gaming concession expires in June 2022. Mr. Okada objected to this donation, which  
7     appears to be unprecedented in the annals of that University. Mr. Okada noted in this regard that  
8     the University sits on land owned by the government, and there was no discussion regarding  
9     whether such a large gift, over such a long period, is an appropriate use of corporate funds.

10          25.     Mr. Okada's recent requests to inspect the Company's books and records  
11     regarding this donation have been denied by the Company.

12           **D.     Wynn Rebuffs Mr. Okada's Efforts To Review The Company's Books and**  
13           **Records**

14          26.     On November 2, 2011, Mr. Okada formally requested to inspect Wynn Resorts'  
15     books and records for the purpose of determining the manner in which the \$30 million obtained  
16     from Aruze USA, on or about April 22, 2002, was spent.

17          27.     Mr. Okada also sought to inspect the books and records of Wynn Resorts for the  
18     purpose of determining the details of the HK\$1 billion pledge (and partial donation) by Wynn  
19     Resorts or its affiliates to the University of Macau, which was made over Mr. Okada's objection.  
20     In this regard, he seeks all electronic and hard copy records referring or relating to the  
21     University.

22          28.     Mr. Okada further sought to inspect the books and records of Wynn Resorts for  
23     all evidence regarding the negotiation, drafting, and execution of the 2010 Amendment.

24          29.     On November 3, 2011, the Company summarily rejected Mr. Okada's requests for  
25     access to the Company's books and records.

26          30.     On November 9, the Company sent a letter indicating that it could not locate the  
27     \$30 million transferred to it by Aruze USA in April 2002. As a result, on November 17, 2011,  
28     Mr. Okada wrote to Wynn Resorts, enclosing a bank statement showing the \$30 million

1 withdrawal, and again seeking inspection. On November 28, 2011, Wynn Resorts indicated that  
2 they had indeed located the money, and the other \$90 million invested in April 2002 by Aruze  
3 USA, but refused to provide any accounting or records for how it was spent.

4 31. On November 29, 2011, Mr. Okada formally asked for inspection regarding how  
5 the full \$120 million was spent, as well as all books and records regarding the Macau  
6 Reimbursement Amount, as that term is used in the Third Amended and Restated Operating  
7 Agreement of Valvino Lamore.

8 32. On December 12, 2011, Mr. Okada formally requested inspection of books and  
9 records of Wynn Resorts and its predecessor entities for the years 2000-2002. On December 15,  
10 2011, Wynn Resorts rejected the requested inspection.

11 33. Mr. Okada's right as a Director to inspect the books and records of the Company  
12 is unqualified. Nevertheless, the Company has steadfastly refused to allow Mr. Okada to review  
13 any documents or other records on the matters he has raised, even though he is a Director of the  
14 Company, and the indirect owner of 19.66 percent of its shares.

15 **FIRST CLAIM FOR RELIEF**

16 **Inspection of the Wynn Resorts Books and Records**

17 **(Against Wynn Resorts)**

18 34. Petitioner reasserts and realleges Paragraphs 1 through 33 above as if set forth in  
19 full below.

20 35. Mr. Okada is a Director of Wynn Resorts, and has been so continuously since  
21 October 2002.

22 36. By letters dated November 2, November 17, November 29, and December 12,  
23 2011, Mr. Okada requested inspection of specific categories of the books and records of Wynn  
24 Resorts, and other matters which are not the subject of this Petition. The records requested for  
25 inspection include:

- 26 a. All books and records related to how the manner in which the \$120 million  
27 invested by Aruze USA in April 2002 was spent;  
28 b. All books and records related to a HK\$1 billion pledge (and partial donation)

1 by the Company or its affiliates to the University of Macau;

2 c. All books and records regarding the Macau Reimbursement Amount, as that  
3 term is used in the Third Amended and Restated Operating Agreement of  
4 Valvino Lamore;

5 d. Books and records of Wynn Resorts and its predecessor entities for the years  
6 2000 through 2002; and

7 e. All evidence regarding negotiation, drafting, and execution of the Amended  
8 and Restated Stockholders Agreement dated January 6, 2010 between Mr.  
9 Wynn, Ms. Wynn, and Aruze USA, Inc.

10 37. The November 2, 2011 requests have been summarily denied. The November 17  
11 and November 29, 2011 requests have been met by silence. The December 12, 2011 request has  
12 been summarily denied.

13 WHEREFORE, Petitioner prays for judgment as follows:

14 A. A writ of mandamus requiring Wynn Resorts to permit Mr. Okada and his counsel  
15 to inspect and make copies of the books and records of the Company;

16 B. That Petitioner be awarded his costs and expenses, including reasonable  
17 attorneys' fees incurred herein; and

18 C. Any and all such other and further relief as this Court deems just and proper.

19 Dated: January 11<sup>th</sup>, 2012

20 **LIONEL SAWYER & COLLINS**

21 By: 

22 Paul R. Hejmanowski (SBN #94)

Charles H. McCrea, Jr. (SBN #104)

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8 *Attorneys for Petitioner*

9 *KAZUO OKADA*

10 **VERIFICATION**

11 I, Kazuo Okada, being duly sworn, deposes and says:

12 I am the Petitioner in the foregoing Petition for a Writ of Mandamus (the "Petition"). I  
13 have read a certified Japanese translation of the Petition and know its contents. The Petition is  
14 true to my knowledge. The basis of my knowledge is my personal involvement in the matters  
15 described, review of documents, discussions with employees of Universal Entertainment Corp.  
16 and Aruze USA, and the investigation of my counsel.

17 /s/Kazuo Okada\*

18 KAZUO OKADA

19 Sworn to me this \_\_\_\_  
20 day of January, 2012

21 /s/\*  
22 Notary Public

23  
24  
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26  
27 \* Mr. Okada is not fluent in English. Accordingly, this Petition, including the Verification, was  
28 translated into Japanese. A certified copy of the translation, including the signed and notarized  
Verification, is attached hereto.

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下記申立人代理人弁護士  
 岡田和夫 (KAZUO OKADA)

# ネバダ州クラーク郡地方裁判所

<p>申立人:</p> <p>個人岡田和夫 (KAZUO OKADA)</p> <p>-対-</p> <p>相手方:</p> <p>ネバダ州法人ウィンリゾート社 (WYNN RESORTS, LIMITED)</p>	<p>訴訟番号</p> <p>部局番号</p> <p>職務執行令状を求める申立て</p> <p>[仲裁適用除外の主張: 強制命令の請求]</p> <p>[商事裁判所による判断を求める: NRS 第 78 章]</p>
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ここに、申立人岡田和夫（「岡田氏」）は、その訴訟代理人であるライオネル・ソイヤー&コリンズおよびオールストン&バード法律事務所を通じて、ウィンリゾート社（「ウィンリゾート社」または「同社」）を相手方として、NRS 第 34 章に従い、裁判所に対し、特定の帳簿および記録の提出を相手方に命じる職務執行令状の申立てを致します。本申立ては、以下に記載した事実および添付の法律意見書に基づいて行うものです。

申立書, 1 /

### 本申立ての性質

1. 本申立ては、ウィンリゾート社が、岡田氏による同社の帳簿および記録の閲覧を拒否したことに起因します。ウィンリゾート社の取締役として（事実、同社の株式の 19.66 パーセントを間接的に保有する者として）、岡田氏は、同社の帳簿および記録を調査する権利を明らかに有しています。しかし、数回にわたって書面で要求したにも関わらず、ウィンリゾート社は、同社の帳簿および記録を同社の取締役に調査させないよう頑なに隠匿し続けています。本申立ては、岡田氏およびその弁護士に同社の帳簿および記録の閲覧を許可せよ、との命令を求めるものです。

2. 2000 年 10 月、岡田氏は、同氏が間接的に支配するネバダ州の会社であるアルゼ USA 社（「アルゼ USA」）をして、ネバダ州ラスベガスにあったウィンリゾート社の前身である会社に \$260,000,000 を投資させました。

3. 2002 年 4 月、アルゼ USA は、ウィンリゾート社の会長兼 CEO のスティーブン・A・ウィン（「ウィン氏」）の要請を受けて、さらに \$120,000,000 をウィンリゾート社の前身である会社に投資しました。この投資には、中華人民共和国のマカオ特別行政区におけるカジノ企画の開発を進展させるためにウィンリゾート社に対する援助が必要であるとウィン氏が言ったために投資した \$30,000,000 も含まれていました。

4. ウィンリゾート社の取締役として、同社の全株主の利益に沿うべく同社の適切な経営を確保するため、岡田氏には同社の事業について知る権利と義務があります。2011 年 7 月に同社が行ったマカオ開発基金大学への 10 億香港ドル（135,000,000 米ドル）の寄付（この寄付に対し岡田氏は正式に反対を表明しました）を含む、近時に起きたいくつかの出来事は、岡田氏をして、同社の帳簿および記録を調査する取締役としての権利を行使するよう促すものでした。特に、11 月 2 日、岡田氏は、(a) 同社が行った 10 億香港ドル（135,000,000 米ドル）のマカオ大学に対する寄付、(b) 2002 年 4 月にアルゼ USA がウィンリゾート社に投資した \$30,000,000 の使途、(c) 岡田氏、ウィン氏およびイレイン・ウィン（ウィン氏の前妻）間で締結された株主間契約に関する 2010 年の修正合意に関する情報を求めました。

5. 岡田氏の要求は拒否されました。要求は即座に拒否されただけでなく、驚くべきことに、ウィンリゾート社は、\$30,000,000 の送金が行われたことについてさえ証拠を提出す  
申立書, 2 /



るよう求めたのです。アルゼ USA は直ちにその証拠を提供し、これを受けて同社は \$30,000,000 およびこれに引き続いてアルゼ USA が投資した \$90,000,000 を受領したことを認めました。にもかかわらず、同社は、上記資金の用途を示すあらゆる記録の閲覧を依然として拒否しました。こうして、11 月 29 日、岡田氏は、アルゼ USA が 2002 年 4 月に投資した合計 \$120,000,000（これは、表向きはマカオリゾートに関して使われることになっていました）に関する記録の閲覧を求めました。これに対して、ウィンリゾート社は、同社の帳簿および記録の閲覧を求める岡田氏の要求を拒否し続けており、\$120,000,000 の実際の用途についてはこれまで何らの説明もされていません。

6. 本申立ては、岡田氏およびその弁護士に同社の帳簿および記録の閲覧を許可せよ、との命令を求めるものです。

#### 当事者、管轄、裁判地

7. 申立人岡田和夫は香港に居住する日本人です。1969 年、岡田氏はユニバーサル・リース株式会社を設立し、同社は現在はユニバーサル・エンターテイメント社（「ユニバーサル」）として知られており、岡田氏はその過半数株主兼会長です。岡田氏は、ユニバーサルの完全子会社であるアルゼ USA の取締役、社長、参事、財務役員です。アルゼ USA はウィンリゾート社の 24,549,222 株を保有し、同社の発行済株式の 19.66 パーセントを保有しています。岡田氏はネバダ州賭博委員会によりユニバーサル・エンターテイメント社の株主および支配株主として適格と認められてきました。

8. 岡田氏は、2002 年 10 月以来、ウィンリゾート社取締役会のメンバーを務めています。また、岡田氏は、同社が株式の過半数を保有する子会社ウィンマカオの取締役会のメンバーも務めています。

9. 相手方ウィンリゾート社は上場企業で、ネバダ州法に基づいて組織されて存在し、事業本拠地はネバダ州ラスベガスです。ウィンリゾート社は NASDAQ で株式銘柄コード「WYNN」で取引されています。ウィンリゾート社はその子会社と共に、観光地のカジノやリゾートの開発、所有、運営をしています。同社はネバダ州ラスベガスのウィンラスベガス・カジノリゾートと中華人民共和国マカオ特別行政区にあるウィンマカオ・カジノリゾートを所有

しています。

10. 当裁判所はネバダ州憲法第六條 6 節に従い本申立てに対して管轄権を持ちます。
11. ネバダ州改訂法令 13,040 に従い、当裁判所は適切な裁判地です。

#### 一般的な主張

12. 申立人は前記 1 項から 11 項までを改めて主張します。

##### **A. 岡田氏とウィン氏によるウィンリゾート社の設立**

13. ウィン氏はゴールデンナゲット、ミラージ、トレジャーアイランド、ベラージオなどのカジノやリゾート事業の企画や運営の実績がありました。しかし、ウィン氏はこれらのベンチャー事業の支配権を MGM に失いました。2000 年、ウィン氏はラスベガスで前デザートインを購入しその開発を試みました。ウィン氏は、投資家を見つけるのに苦勞している時に岡田氏と出会いました。

14. 岡田氏は当初、岡田氏の会社であるユニバーサルを通じてウィン氏を知りました。当時、ユニバーサルはネバダ州にある電子賭博機械の販売業者で、ウィン氏は顧客でした。ユニバーサルは最初のコンピュータスロットマシンを開発しました。

15. 2000 年 10 月、アルゼ USA は、デザートインの土地を開発するウィン氏のベンチャー事業であるバルビノ・ラモレ有限会社（「バルビノ・ラモレ」）に対し、50 パーセントの持分を得るのと引き換えに、\$260,000,000 を投資しました。この投資に関連して、両当事者はバルビノ・ラモレ有限会社の修正運営契約（「バルビノ・ラモレ運営契約」）を締結しました。

16. 2002 年、ウィン・マカオ企画開発に関連して、ウィン氏は岡田氏に、デューデリジェンスの資金として \$30,000,000、その後更に事業の他の部分へ資金を供給するために \$90,000,000、合計 \$120,000,000 を要求しました。岡田氏はこの資金をアルゼ USA を通じて提供しました。この投資を記録化した文書が、ウィン氏、アルゼ USA およびバロンアセットファンドによって締結されたバルビノ・ラモレ有限会社の第三次修正運営契約（「バルビノ・ラモレ第三次修正運営契約」）です。岡田氏はこの資金がどの様に使われたのか、その会計を一度も見ることがありません。また、バルビノ・ラモレ第三次修正運営契約には、マカオの土地開発に

要した費用についてウィン氏は償還を受けることが定められていました。

17. 最近の開発を踏まえると、岡田氏は、ウィン氏がこれらの資金をどのように使ったのかについて懸念を抱くようになりました。これらの資金がどのように使われたのかについて明らかにするために同社の帳簿および記録の閲覧を、またウィン氏へ償還された費用の裏付け資料を求める岡田氏の近時の要求は、繰り返しかつ即座に、同社によって拒否されてきました。

18. 岡田氏とウィン氏が協働するようになってから2年足らずの2002年9月、バルビノ・ラモレのメンバーがウィンリゾート社の普通株式と引き換えに彼らの持分を100パーセントウィンリゾート社に提供しました。現在、バルビノ・ラモレはウィンリゾート社の完全子会社です。現在、ウィンリゾート社はバルビノ・ラモレの帳簿および記録を管理しています。

19. バルビノ・ラモレのウィンリゾート社への遷移と同時に、アルゼ USA、ウィン氏およびバロンアセットファンドは株主間契約を締結しました（「2002年株主間契約」）。

20. 2002年10月25日、ウィンリゾート社がNASDAQに1株13ドルで上場しました。初回株式公開とその後の希釈化の後に、岡田氏とウィン氏はそれぞれ普通株式を約20パーセントずつ保有しました。

#### **B. ウィン氏がウィンリゾート社に対する相当部分の利権を失ったこと**

21. 2009年3月、ウィン氏と彼の妻はラスベガスで離婚しました。2010年1月6日の証券取引委員会への提出書類において、二人は、共有財産として持っていた11,076,708株がウィン夫人に移転し、ウィン氏の手元に同数の株式が残ったと報告しました。一方、アルゼ USAは24,549,222株を保有し、ウィン氏の二倍以上の株式を保有していました。

22. ウィン氏の前妻への株式の移転の結果、アルゼ USA がほぼ20パーセントを保有しているのに対して、ウィン氏はウィンリゾート社の発行済普通株式の約9パーセントを保有することになりました。

23. ウィン氏がその持株の大部分を前妻に対する譲渡により失う過程において、彼は株主間契約の修正（「2010年修正合意」）を取り付けました。この修正は、その他の内容とともに、アルゼ USA およびウィン夫人が保有するウィンリゾート社の株式に対して制限を課し、

これらの株式に関してウィン氏がある種の権利を行使する権限を認めるものです。

**C. マカオ大学に対する 10 億香港ドルの寄付に対する岡田氏の反対**

24. 2011 年 5 月に、ウィン・マカオが、マカオ大学開発基金に 10 億香港ドル（約 135,000,000 米ドル）の寄付を約束しました。この寄付は、2011 年 5 月になされた 25,000,000 米ドルと 2012 年から 2022 年までの毎年 10,000,000 米ドルの追加寄付とで、合計で 135,000,000 米ドルを渡すというものでした。ウィン・マカオの賭博特権は 2022 年 6 月に失効します。当該大学の歴史において前例のないこの寄付に、岡田氏は反対しました。このことに関して、岡田氏は、同大学が政府所有の敷地にあること、またこのような巨額かつ長期間に及ぶ贈与が会社資金の適切な使用といえるのかについて何らの議論もなされていないことを指摘しました。

25. この寄付に関してウィンリゾート社の帳簿および記録の閲覧を求める岡田氏の最近の要求は、同社によって拒否されました。

**D. ウィンリゾート社の帳簿および記録を調査しようとする岡田氏の努力をウィン氏が妨害したこと**

26. 2011 年 11 月 2 日、岡田氏は、2002 年 4 月 22 日またはその前後にアルゼ USA から得た \$30,000,000 の使途を明らかにするために、ウィンリゾート社の帳簿および記録の閲覧を正式に要求しました。

27. また、岡田氏は、岡田氏が異議を述べたにもかかわらず行われたウィンリゾート社またはその関連会社によるマカオ大学に対する 10 億香港ドルの寄付の約束（およびその一部の寄付）の詳細を明らかにすることを目的として、ウィンリゾート社の帳簿および記録の閲覧を求めました。この点に関して、岡田氏は、同大学に言及したまたは同大学に関連したすべての電子的記録およびハードコピーによる記録の提供を求めています。

28. 岡田氏はさらに、2010 年修正合意の交渉、草案および締結に関するすべての証拠について、ウィンリゾート社の帳簿および記録の閲覧を求めました。

29. 2011 年 11 月 3 日、ウィンリゾート社は岡田氏による同社の帳簿および記録の閲覧要求を即座に拒否しました。

30. 11月9日、ウィンリゾート社は、2002年4月にアルゼ USA から同社に送金された\$30,000,000を確認することができない旨を述べた書状を送付しました。その結果、2011年11月17日、岡田氏はウィンリゾート社に書状を送り、\$30,000,000が引き出されたことを示す銀行の明細書を同封し、再度閲覧を求めました。2011年11月28日、ウィンリゾート社は、上記資金、さらに2002年4月にアルゼ USA から出資を受けた別の\$90,000,000について、これらを確認したことを明らかにしていますが、それらの用途に関する説明および記録の提出は拒否しました。

31. 2011年11月29日、岡田氏は、上記\$120,000,000の用途に関する調査ならびに第三次修正ヴァルヴィーノ・ラモーレ運営契約において定義されている用語である「マカオ償還額」に関連するすべての帳簿および記録の閲覧を正式に求めました。

32. 2011年12月12日、岡田氏は、2000年から2002年までのウィンリゾート社およびその前身である法人の帳簿および記録の閲覧を正式に要求しました。2011年12月15日、ウィンリゾート社はこの閲覧要求を拒否しました。

33. ウィンリゾート社の帳簿および記録を閲覧する取締役としての岡田氏の権利は無条件のものです。にもかかわらず、同社は、岡田氏が同社の取締役でありかつ19.66パーセントの株式の間接的な保有者であるにもかかわらず、岡田氏が指摘した事項について同氏がいかなる文書および記録を調査することも断固として拒否し続けています。

救済に関する請求  
ウィンリゾート社の帳簿および記録の閲覧  
(ウィンリゾート社に対して)

34. 申立人は、上記1項から33項について、その全文が以下に記載されたかのごとく、改めてこれらを主張します。

35. 岡田氏はウィンリゾート社の取締役であり、2002年10月から継続的に取締役を務めていました。

36. 2011年11月2日、11月17日、11月29日および12月12日付の書状により、岡田氏は、ウィンリゾート社の特定の帳簿および記録の閲覧ならびに本申立てに含まれないその他の事項について要求を行ってきました。閲覧を求めた記録には以下のものが含まれます。

申立書, 71

- a. 2002年4月にアルゼ USA が投資した\$120,000,000の使途に関するすべての帳簿および記録。
- b. ウィンリゾート社またはその関連会社がマカオ大学に対して行った10億香港ドルの寄付の約束（およびその一部の寄付）に関する全ての帳簿および記録。
- c. バルビノ・ラモレ第三次修正運営契約で用いられている用語である「マカオ償還額」に関するすべての帳簿および記録。
- d. 2000年から2002年までのウィンリゾート社およびその前身の法人の帳簿および記録。
- e. ウィン氏、ウィン夫人およびアルゼ USA の間で締結された株主間契約の2010年1月6日付修正合意の交渉、草案および締結に関するすべての証拠。

37. 2011年11月2日の要求は即座に拒否されました。2011年11月17日および11月29日の要求については返答がありませんでした。2011年12月12日の要求は即座に拒否されました。

よって、申立人は次のとおりの判決を求めます。

- A. 岡田氏およびその弁護士がウィンリゾート社の帳簿および記録を閲覧および謄写することを許すよう、ウィンリゾート社に命じる職務執行令状。
- B. 申立人は、本件において生じた合理的な弁護士費用を含む費用および支出について賠償が認められること。
- C. 本裁判所が正当かつ適切であるとするその他のあらゆる追加の救済。

日付: 2012年1月 日

ライオネル・ソイヤー&コリンズ

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申立書, 8/

秘匿特権対象文書・部外秘: オールストン&バード: 2012年1月2日

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下記申立人代理人弁護士

カズオ・オカダ

申立書, 9/

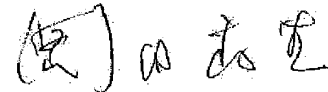
RAPP 0019

## 証 明

私、岡田和夫は、正式に宣誓を行った上で、次のとおり証言し、申し述べます。

私は、前記の職務執行令状を求める申立て（「本件申立て」）の申立人です。私は本件申立ての正式な翻訳を読んで、その内容を承知しています。本件申立てには、私の認識に照らして真実が記載されています。私の認識は、記載されている事柄に対する私自身の直接の関与、文書の調査、ユニバーサルエンターテインメント社及びアルゼ USA 社の従業員との協議並びに私の弁護士による調査に基づいています。

岡 田 和 夫



2012 年 1 月 日、私に対して宣誓が行われました。

公 証 人





## TRANSPERFECT

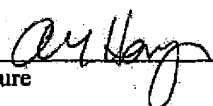
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### CERTIFICATION OF TRANSLATION

I, Ann Marie Hovey, hereby certify that the attached English to Japanese translation has been verified to be an accurate and complete rendering of the content of the original document, to the best of our ability by a qualified translator competent in both languages.

The following document is included in this certification:

Kazuo Okada v. Wynn Resorts, Limited, Petition for a Writ of Mandamus.

  
Signature

Sworn to before me this

January 9, 2012

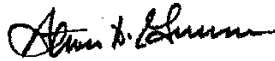
  
Signature, Notary Public

**SARAH E MULLEN**  
Notary Public - State of New York  
No. 01MU6245919  
Qualified in New York County  
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Stamp, Notary Public

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19 **DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 **WYNN RESORTS, LIMITED, , a Nevada**  
22 **Corporation,**

23 **Plaintiff,**

24 **vs.**

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

28 **Defendants.**

Case No.: A-12-656710-B

Dept. No.: XI

**COMPLAINT**

(Request for Business Court Assignment  
Pursuant to EDCR 1.61(a))

(Exempt from Arbitration - Declaratory  
Relief Requested)

1 Plaintiff WYNN RESORTS, LIMITED ("Wynn Resorts"), by and through its undersigned  
2 counsel, hereby files the above-captioned Complaint:

3 **NATURE OF THE ACTION**

4 This is an action for breach of fiduciary duty and related offenses committed against  
5 Wynn Resorts at the hands of one of its directors, Kazuo Okada ("Okada") and his affiliates.  
6 Wynn Resorts' Compliance Committee commissioned former Director of the Federal Bureau of  
7 Investigation, Louis J. Freeh, to examine Okada's domestic and foreign activities impacting  
8 Wynn Resorts. Based upon a multi-month investigation – which culminated with a personal  
9 interview that Okada long evaded – Freeh uncovered substantial evidence of gross improprieties  
10 by Okada and his agents, as explained in Freeh's report, attached as Exhibit 1. In particular, Freeh  
11 presented Wynn Resorts' Board with evidence that Okada had made unlawful payments to foreign  
12 gaming regulators who could advance Okada's business interests. Okada surreptitiously undertook  
13 these acts despite admonishments that all Directors closely adhere to Company policy, scrupulous  
14 business practices/ethics, and the law, both foreign and domestic. The public's confidence in  
15 gaming's integrity depends upon strict observance of these principles. Okada's conduct poses a  
16 direct assault upon, and a present threat to, Wynn Resorts' reputation for probity, which is central  
17 to maintaining its stature in the gaming industry as well as its current and future licensing.

18 **PARTIES AND RELATED PERSONS/ENTITIES**

19 1. Plaintiff WYNN RESORTS is and was at all times relevant hereto a corporation  
20 organized and existing under the laws of the State of Nevada, with its principal place of business  
21 in the State of Nevada. Wynn Resorts is publicly traded on NASDAQ.

22 2. Wynn Resorts is a world class developer of destination resort casinos.  
23 Wynn Resorts owns resort casinos through its wholly owned subsidiary,  
24 WYNN LAS VEGAS, LLC ("Wynn Las Vegas") and through WYNN MACAU, LIMITED  
25 ("Wynn Macau").

26 3. Wynn Las Vegas operates the Wynn Las Vegas and Encore resort casinos in  
27 Las Vegas, Nevada.

28

1           4.     Wynn Macau is a Cayman Islands company, publicly traded on the Hong Kong  
2 Stock Exchange (of which Wynn Resorts owns a majority interest). Through its wholly owned  
3 subsidiary, WYNN RESORTS (MACAU), S.A., a company organized and existing under the  
4 laws of Macau Special Administrative Region of the Peoples Republic of China, Wynn Macau  
5 operates the Wynn Macau and Encore at Wynn Macau resort-casinos in Macau.

6           5.     Defendant OKADA is and was at all times relevant hereto a citizen of Japan, and a  
7 director of Wynn Resorts. Okada serves multiple roles with Wynn Resorts and its affiliated  
8 companies (the "Wynn Companies"). He is a member of the Board of Directors for both  
9 Wynn Resorts and Wynn Macau and, until February 18, 2012, through UNIVERSAL  
10 ENTERTAINMENT CORPORATION ("Universal") and ARUZE USA, controlled a shareholder  
11 that had owned approximately 19.66% of Wynn Resorts. From October 2002 up to and until  
12 October 2011, Okada also served as Vice Chairman of Wynn Resorts. In these capacities, Okada  
13 owed, and continues to owe, fiduciary duties of care, loyalty, and good faith to the  
14 Wynn Companies.

15           6.     Defendant ARUZE USA, INC. ("ARUZE USA") is and was at all times relevant  
16 hereto a corporation organized and existing under the laws of the State of Nevada, and a wholly  
17 owned subsidiary of Universal ("Universal"). Until February 18, 2012, ARUZE USA was a  
18 19.66% shareholder in Wynn Resorts. Okada serves as director, President, Secretary, and  
19 Treasurer of ARUZE USA.

20           7.     Defendant UNIVERSAL is a public corporation organized under the laws of  
21 Japan, and formerly known as ARUZE Corporation until a November 2009 name change.  
22 Universal manufactures and sells pachislot and pachinko machines, and other similar gaming  
23 equipment. Universal does business in the State of Nevada, has been issued a manufacturer's  
24 license by the Nevada Gaming Commission, and was deemed suitable by the Nevada Gaming  
25 Commission as a 100% shareholder in ARUZE USA. Okada is Director, Chairman of the Board  
26 and, together with his family members, a 67.9% shareholder in Universal.

27           8.     The Wynn Resorts' Board of Directors consists of 12 members, comprised of  
28 Stephen A. Wynn ("Mr. Wynn") as Chairman, Okada, Russell Goldsmith, Linda Chen,

1 Dr. Ray R. Irani, former Nevada Governor Robert J. Miller, John A. Moran, Alvin V. Shoemaker,  
2 D. Boone Wayson, Elaine P. Wynn, Allan Zeman, and Marc D. Schorr (collectively "Wynn  
3 Directors" and/or "Wynn Board").

4 9. Wynn Resorts' Gaming Compliance Committee ("Compliance Committee") is an  
5 internal committee chaired by Director Miller and comprised of two additional members, Schorr  
6 (director and COO) and John Strzemp (Wynn Resorts' Executive Vice President and Chief  
7 Administrative Officer). The Compliance Committee is charged with assuring Wynn Resorts'  
8 compliance with all laws and regulations, particularly on gaming laws, regulations, and policies.

9 10. The Honorable Louis J. Freeh, Esq., is a former director of the Federal Bureau of  
10 Investigation ("FBI"), having led that agency with distinction from 1993 to 2001. Prior to serving  
11 as FBI Director, Freeh was a United States District Court Judge. Today, Freeh is a partner in  
12 Freeh Sporkin & Sullivan, LLP – a law firm he founded with two other former federal judges –  
13 which specializes in domestic and foreign corporate investigations and compliance.

#### 14 JURISDICTION

15 11. Defendants Universal, ARUZE USA, and Okada have each individually and in  
16 concert with one another, caused the acts and events alleged herein within the State of Nevada  
17 and all are subject to the jurisdiction of this Court. Venue is also proper in this Court.

18 12. This matter is properly designated as a business court matter and assigned to the  
19 Business Docket under EDCR 1.61(a) as the claims alleged herein arise from business torts.

#### 20 GENERAL ALLEGATIONS

21 13. A Nevada gaming license is a privilege. Nevada law imposes comprehensive  
22 regulatory requirements upon gaming licensees, including obligations that those associated with  
23 the licensee possess the necessary character, qualifications, and integrity to be suitable to hold  
24 that privilege so as to not pose a threat to the public interest or the integrity of the regulation and  
25 control of gaming. As a Director of Wynn Resorts, Okada is subject to these demanding  
26 standards.

27 14. Additionally, all of Wynn Resorts' Directors agreed to be, were, and are subject to  
28 Wynn Resorts' Code of Business Conduct and Ethics (the "Code of Conduct"). The Code of

1 Conduct reinforces and enhances Wynn Resorts' commitment to doing business in an ethical  
2 manner. The Code of Conduct reflects Wynn Resorts' values, demonstrates ethical leadership,  
3 and promotes an environment that upholds its longstanding reputation for integrity, ethical  
4 conduct, and trust.

5 15. Forsaking his obligations to maintain the integrity required of a gaming licensee,  
6 the Company's Code of Conduct and his other fiduciary duties, Okada committed improper acts  
7 that included making payments for the benefit of foreign gaming officials who could advance his  
8 personal business interests. He has furthermore elected to compete against Wynn Resorts,  
9 undertaking a campaign to convert Wynn Resorts' assets for his own benefit, and that of his  
10 affiliates. Wynn Resorts has been compelled to defend against Okada's acts of aggression by,  
11 among other things, the initiation of remedial and defensive Board actions and the prosecution of  
12 this action.

13 *Okada Enters the Philippine Market*

14 16. By all measures, Okada's abandonment of his duty of loyalty to Wynn Resorts  
15 commenced with his plan to develop gaming operations in the Philippines.

16 17. Upon learning of opportunities in the Philippines, Okada approached Mr. Wynn  
17 with an idea of creating a casino resort in Manila Bay. Neither Mr. Wynn nor the Board of  
18 Directors was willing to pursue such opportunities in the Philippines.

19 18. Undeterred, Okada pressed on with his personal agenda without full disclosure to  
20 Mr. Wynn or the Board. In furtherance of his personal scheme, Okada asked that a city ledger  
21 account at Wynn Resorts be opened in the name of his company, Universal ("Universal City  
22 Ledger"). Upon information and belief, and unbeknownst to Wynn Resorts, Okada sought the  
23 city ledger account, in part, to facilitate his pursuit of his personal business interests in the  
24 Philippines and to promote the false appearance of an affiliation with Wynn Resorts to his  
25 Philippine business contacts.

26 19. Upon information and belief, many doors opened for Okada in the Philippines due  
27 to his well-publicized relationship with Mr. Wynn and Wynn Resorts. Wynn Resorts is informed  
28 and believes that Okada touted his relationship and affiliation with Wynn Resorts so as to

1 convince others that Wynn Resorts was and/or is somehow affiliated with Universal's desired  
2 presence in Manila. All such representations were and are false.

3 20. In 2008, the Philippine Amusement and Gaming Corporation ("PAGCOR"), a  
4 100% government-owned and controlled corporation that operates under the direct supervision of  
5 the Office of the President of the Philippines and is charged with "[r]egulat[ing], authoriz[ing] and  
6 licens[ing] games of chance, games of cards and games of numbers, particularly casino gaming,  
7 in the Philippines," awarded four provisional gaming licenses without public bidding. PAGCOR  
8 issued one such license to a newly-formed entity that is owned 99% by ARUZE USA, known as  
9 Tiger Resort, Leisure and Entertainment Inc. Okada's pursuit and development of that license  
10 expressly contradicts Wynn Resorts' requests to Okada not to pursue business in the Philippines.  
11 Moreover, Okada's actions to obtain and exploit that license involved violations of his duties to  
12 Wynn Resorts.

13 *Initial Examination of Okada's Activities*

14 21. In or around the fall of 2010, Wynn Resorts heard that Okada was continuing to  
15 represent to multiple people that he (and/or Universal) and Wynn Resorts were involved in a joint  
16 venture together in the Philippines and were pursuing, also as joint venturers, potential  
17 opportunities in Japan. Such representations were again false.

18 22. Questioning Okada's actions, in or around January 2011, Wynn Resorts, through  
19 its Compliance Committee, commissioned an independent investigation and risk assessment of  
20 investing in the gaming industry in the Philippines, which found:

- 21 a. Official corruption in the Philippine gaming industry is "deeply ingrained";  
22 b. Doubts that newly-elected President Aquino's stated plans for reform would  
23 eliminate corruption from the gaming industry;  
24 c. The country's legal/regulatory frameworks were not closely aligned with  
25 American compliance and transparency standards; and  
26 d. Despite a general refusal by witnesses to discuss Okada's role in the  
27 Philippines (many refused to comment), other information created  
28

1 reasonable suspicion that persons acting on Okada's behalf had engaged in  
2 improprieties.

3 23. Notwithstanding the issues identified by the investigation/assessment, Okada was  
4 unrelenting in his appeal to Wynn Resorts. In February 2011, he repeated his oft-uttered request  
5 that Mr. Wynn travel to the Philippines to explore investing in Universal's Manila Bay project.

6 24. During the February 24, 2011 meeting of the Board of Directors, following  
7 discussion of the Foreign Corrupt Practices Act ("FCPA"), the findings from the independent  
8 investigation were relayed to the Board. Mr. Wynn advised the Board that he had been invited by  
9 Okada to meet Philippine President Aquino. Okada was present for the Board's discussions. The  
10 independent directors (Goldsmith, Irani, Miller, Moran, Shoemaker, Wayson, and Zeman)  
11 unanimously advised Wynn Resorts management that involvement in the Philippines was  
12 inadvisable and that the meeting should be cancelled. In plain terms, the Board informed Okada  
13 that Wynn Resorts would not invest in Universal's Manila Bay project.

14 25. Okada, who had scheduled on his own initiative a meeting between Mr. Wynn and  
15 Philippine President Aquino, was embarrassed and angry in having to cancel the arrangements.  
16 Again, however, Okada remained undeterred.

17 26. Finally recognizing that Wynn Resorts was not going to provide Okada and  
18 Universal with funds or know-how for his Philippine project, Okada nonetheless moved forward  
19 with his secret plans to compete against Wynn Resorts by false claims of affiliation and  
20 endorsement, among other things.

21 27. Despite knowing the Board's opposition to his plans in the Philippines, Okada  
22 proceeded to announce that he and Universal planned to lure high-limit, VIP gamblers from China  
23 to its Manila Bay resort-casino, the same customer base as Wynn Macau. In short, Okada was  
24 creating a new casino in direct competition with Wynn Macau.

25 28. Universal purportedly intends to construct two casinos and three hotels in Manila  
26 by December 2013, intends to open those facilities in early 2014, intends to spend \$2.3 billion on  
27 the project, and hopes to turn \$2 billion in sales in its first year of operation. Okada has publicly  
28



1 stated his intent to open more casinos in Asia in 2015. On or about January 26, 2012, Universal  
2 broke ground on construction of the Manila Bay casino resort.

3 29. To promote his own interests, Okada launched a campaign to misappropriate  
4 Wynn Resorts' assets and secrets for his and his affiliates' use. Among other things, Okada  
5 arranged to have several people serve as interns at the Wynn Macau property so that Wynn Macau  
6 "know how" could be learned and siphoned from Wynn Resorts.

7 *Wynn Resorts Expects Compliance*

8 30. During a July 28, 2011 executive session, the independent directors again  
9 discussed Okada's ongoing involvement in the Philippines and expressed concern about probity  
10 issues attendant to Okada's involvement and the effect that Okada's actions in the Philippines  
11 could have on Wynn Resorts. Of notable concern were Okada's comments at prior Board  
12 meetings. Specifically, Okada had relayed his familiarity with local business practices that  
13 involved having third parties make payments to government officials rather than someone doing  
14 so directly (acts prohibited not only under the Foreign Corrupt Practices Act, but also by Wynn  
15 Resorts' Code of Conduct and other policies).

16 31. Following Okada's comments, Wynn Resorts took several steps to reiterate and to  
17 ensure awareness of the boundaries of corporate policies and legal restrictions on payments to  
18 government officials (among other things). These include the following:

- 19 a. To ensure that all directors, especially Okada, were kept informed about the  
20 Foreign Corrupt Practices Act, on August 4, 2011, a notice to the Board  
21 was issued for a training on the Foreign Corrupt Practices Act to be held on  
22 October 31, 2011, followed by a Board meeting on November 1, 2011.
- 23 b. To further protect Wynn Resorts, on August 5, 2011, all members of the  
24 Board of Directors were asked to review: (1) the Code of Business Ethics;  
25 and (2) the Policy Regarding Payments to Government Officials, and  
26 execute an acknowledgement that they read, understood, and  
27 acknowledged the policies. All members of the Board have signed the  
28

1 acknowledgement but for one. Despite multiple attempts to follow-up,  
2 Okada has still failed to sign.

- 3 c. Attached to the Directors' & Officers' Questionnaire sent to all members of  
4 the Board on January 12, 2012 was an acknowledgement form that required  
5 the Directors to sign in two places: (1) Page 26 of the questionnaire; and  
6 (2) Page 50 on the separate Code of Business Conduct and Ethics  
7 Acknowledgement Form that was part of the questionnaire packet. Okada  
8 signed and returned the former on the January 27, 2012 deadline but failed  
9 to return a signed Code of Business Conduct and Ethics Acknowledgement  
10 Form. Okada has still not returned the acknowledgement despite a  
11 follow-up request to do so.

12 32. On September 15, 2011, Okada, through his assistant, sent an RSVP that he would  
13 attend both the Foreign Corrupt Practices Act training on October 31 and the Board meeting  
14 noticed for November 1, 2011. But Okada never attended the training.

15 33. To follow up on issues raised during the July 28, 2011 Board meeting, in early  
16 August, Wynn Resorts' Board of Directors also commissioned a second independent investigation  
17 into the regulatory and compliance climate in the Philippines. This investigation identified  
18 anomalies and improprieties related to Universal's/Okada's dealings in the Philippines.

19 34. On September 27, 2011, the Compliance Committee held a special meeting to  
20 discuss the findings of the second independent investigation. Those findings identified a number  
21 of concerns regarding Okada's activities, including that he may be: (a) engaging in acts that  
22 would render him unsuitable under Nevada gaming regulations, and (b) breaching the fiduciary  
23 duties he owed to Wynn Resorts.

24 35. At the direction of the Compliance Committee, Wynn Resorts approached Okada's  
25 counsel to discuss the Committee's concerns relative to Okada's conduct and business in the  
26 Philippines, and its effect on Wynn Resorts and Okada's duties and responsibilities as a member  
27 of Wynn Resorts' Board of Directors. Wynn Resorts' concerns were ill-received.  
28

1           36. Over the next month, counsel for Wynn Resorts and Okada engaged in discussions  
2 about Wynn Resorts' concerns that Okada's involvement in the Philippines was placing  
3 Wynn Resorts and its shareholders at substantial risk.

4           37. Okada designed and executed a strategy to divert attention away from his own  
5 misconduct. Okada claimed to need access to certain books and records (e.g., records related to  
6 an amendment to a shareholder's agreement between Mr. Wynn, Elaine Wynn, and Okada).  
7 Okada's diversionary tactics underscored his need to change the topic from the real issue – his  
8 misconduct in the Philippines.

9           38. Okada's game playing continued. On October 25, 2011, days before the  
10 long-scheduled Foreign Corrupt Practices Act training, he requested that the training materials be  
11 translated into Japanese (despite his previous, long-term practice of translating all materials on his  
12 own) and that the date of the training be moved (despite that it had been planned around his  
13 previous confirmation). His refusal to attend the training, an event attended by all other Board  
14 members, demonstrated a cavalier disregard for his obligations as director of a company in a  
15 highly regulated gaming industry. In the end, Okada was the sole Board member who failed to  
16 attend the training, with all other directors appearing in person or telephonically.

17                           *Former FBI Director Freeh Investigates*

18           39. On or about October 29, 2011, Wynn Resorts, on behalf of its Compliance  
19 Committee, retained Freeh to conduct an independent investigation into Okada and his activities,  
20 with a focus on three main areas: (1) whether Okada breached the fiduciary duties owed to  
21 Wynn Resorts; (2) whether Okada engaged in conduct that could jeopardize Wynn Resorts'  
22 gaming licenses; and (3) whether Okada engaged in any conduct that could violate Wynn Resorts'  
23 compliance policy.

24           40. As part of that investigation, Freeh conducted dozens of interviews (including of  
25 all independent members of Wynn Resorts' Board of Directors), and reviewed thousands of pages  
26 of documents and emails. As of January 1, 2012, there remained only one outstanding item on  
27 Freeh's to-do list: interview Okada. Yet, Okada refused to schedule the interview despite Freeh's  
28

1 stated willingness to travel on short notice to conduct the interview anywhere in the world to  
2 accommodate Okada's schedule.

3 41. With only Okada's interview outstanding, on February 6, 2012, Freeh briefed  
4 Wynn Resorts' Compliance Committee.

5 42. Okada finally sat for his interview with Freeh in Tokyo, Japan, on February 15,  
6 2012, where Okada was accompanied by United States counsel.

7 43. Freeh announced that he would report his findings to the Board of Directors on  
8 February 18, 2012.

9 44. At the February 18, 2012 Board meeting, Freeh made a detailed presentation and  
10 provided the Board with copies of his final report, outlining the following improprieties, among  
11 others:

12 a. The Universal City Ledger account established by Okada revealed  
13 36 separate instances, from May 2008 to through June 2011 where Okada  
14 or his associates/affiliates made payments exceeding US \$110,000 that  
15 directly benefitted senior PAGCOR officials. This included payment for  
16 luxury lodging, extravagant dinners, shopping, and cash to spend for,  
17 among others, former PAGCOR Chairman Genuino and his family and  
18 friends and current PAGCOR Chairman, Cristino Naguiat ("Naguiat").

19 b. The Freeh report noted that Okada's conduct constituted *prima facie*  
20 evidence of violations of the Foreign Corrupt Practices Act. On one  
21 particular occasion, Okada arranged for PAGCOR Chairman Naguiat, his  
22 wife, his three children, their nanny, other senior PAGCOR officials, one of  
23 whom also brought his family to stay at Wynn Macau. Okada and his  
24 associates refused to provide Wynn Macau management with the name of  
25 Chairman Naguiat and tried to conceal his identity. At Okada's associates'  
26 request and Okada's direction, Chairman Naguiat and his entourage were  
27 provided with the most expensive accommodation, food, and star  
28 treatment. In addition, Okada's associates asked that each guest be

1 provided a \$5,000 cash advance during their stay. Following the stay,  
2 Okada's associates requested Wynn Macau reduce the excessive charges  
3 because they feared an investigation and did not want Universal to get in  
4 trouble. Wynn Macau refused.

5 c. There is substantial evidence that Okada, his associates and companies may  
6 have arranged and manipulated ownership and management of legal  
7 entities in the Philippines under his control, in a manner that may have  
8 enabled the evasion of Philippine constitutional and statutory requirements.

9 d. Moreover, close associates and consultants of the former PAGCOR  
10 administration attained positions as corporate officers, directors and/or  
11 nominal shareholders of entities controlled by Okada and, in some cases,  
12 served as links between Okada and the former PAGCOR chair.

13 e. There is substantial evidence that the ownership structure of  
14 Okada-affiliated, ARUZE USA-owned entities may subject Okada to civil  
15 and criminal penalties under Philippine law.

16 f. Despite being repeatedly advised of the strict anti-bribery laws and  
17 Wynn Resorts' policies, Okada insists and strongly believes that, when  
18 doing business in Asia, he is permitted to provide gifts and things of value  
19 to government officials, whether directly or indirectly.

20 g. His conduct is not accidental or based upon a misunderstanding of the law  
21 or the policies. Rather, Okada stated his personal rejection of anti-bribery  
22 laws and Wynn Resorts' related policies to fellow Wynn Resorts Board  
23 members.

24 45. Following Freeh's presentation, the Board deliberated at length and unanimously  
25 adopted resolutions finding the Defendants to be Unsuitable Persons under Wynn Resorts' Second  
26 Amended and Restated Articles of Incorporation ("Articles of Incorporation" and/or "Articles"),  
27 and redeemed ARUZE USA's shares in Wynn Resorts in accordance with the provisions of the  
28 Articles

1 46. Okada's deplorable actions demonstrate that he had abandoned and forsaken all  
2 duties owed to Wynn Resorts. Worse, Okada undertook a pattern of conduct that jeopardizes  
3 Wynn Resorts' good reputation, its long-standing business relationships, and its gaming and  
4 business licenses. Accordingly, the Board of Directors has unanimously (except for Okada)  
5 authorized the pursuit of this action.

6 **FIRST CAUSE OF ACTION**

7 **(Breach of Fiduciary Duty)**

8 **(Wynn Resorts against Okada)**

9 47. Wynn Resorts repeats and realleges the allegations set forth in Paragraphs 1  
10 through 46 above as though fully set forth herein.

11 48. Wynn Resorts' Code of Conduct, which applies to all employees, officers, and  
12 directors, provides guidelines for ethical behavior consistent with the reputation and integrity of  
13 Wynn Resorts. The Code of Conduct supplements the duties, fiduciary and otherwise, imposed  
14 upon Okada under Wynn Resorts' governing documents and the law.

15 49. The Code of Conduct addresses conflicts of interest. Specifically, the Code of  
16 Conduct provides that "directors are expected to dedicate their best efforts to advancing  
17 [Wynn Resorts'] interests and to make decisions that affect [Wynn Resorts] based on  
18 [Wynn Resorts'] best interest, independent of outside influences."

19 50. The Code of Conduct defines a "conflict of interest" as "when your own interests  
20 (including the interests of a family member or an organization with which you have a significant  
21 relationship) interfere, or even appear to interfere with the interests of [Wynn Resorts]. A conflict  
22 situation can arise when you take actions, have interests or are offered benefits that make it  
23 difficult for you to perform your [Wynn Resorts] work objectively and effectively."

24 51. The Code of Conduct provides a non-exclusive list of potential conflict scenarios.  
25 Included in this list is an express prohibition on financial interests in other businesses: "You may  
26 not own a significant interest in any company that competes with [Wynn Resorts]." The Code of  
27 Conduct provides that "it is not typically" a conflict if the competing entity "is a publicly traded  
28 company *and* you and your family members' only relationship with any such entity is to have an

1 interest of *less than 2%* of the outstanding shares of the [competing] company." (Emphasis  
2 added).

3 52. Further, the Code of Conduct precludes outside employment or activities with a  
4 competitor. Specifically, "[s]imultaneous employment with or serving as a director of a  
5 competitor of [Wynn Resorts] is prohibited, as is any activity that is intended to or that you  
6 should reasonably expect to advance a competitor's interests. You may not market products or  
7 services in competition with [Wynn Resorts'] current or potential business activities. . . ."

8 53. In addition, the Code of Conduct expressly states that "*[y]ou may not use*  
9 *corporate property or information or your position at [Wynn Resorts] for improper personal*  
10 *gain, and you may not compete with [Wynn Resorts].*" (Emphasis added.)

11 54. The Code of Conduct also provides as follows:

12 a. With respect to offering gifts and entertainment,

13 i. "Special rules apply in the context of dealing with government  
14 officials and employees. See 'Interacting with Government –  
15 Prohibition on Gifts to Government Officials and Employees'  
16 below."

17 ii. "Giving or receiving any payment or gift in the nature of a bribe or  
18 a kickback is absolutely prohibited."

19 iii. "You are prohibited from providing gifts, meals or anything of  
20 value to government officials or employees or members of their  
21 families in connection with Company business without prior written  
22 approval from the Compliance Officer."

23 iv. "The Company's Policy Regarding Payments to Foreign Officials,  
24 the U.S. Foreign Corrupt Practices Act (the "FCPA"), and the laws  
25 of many other countries prohibit the Company and its officers,  
26 employees and agents or other third parties from giving or offering  
27 to give money or anything of value, directly or through an  
28 intermediary, to a foreign officials, employees of a state-owned

1 company, a foreign political party, a party official or a candidate for  
2 political office in order to attempt to influence officials acts or  
3 decisions of that person or entity, to obtain or retain business, or to  
4 secure any improper advantage."

5 b. With respect to company information and intellectual property:

6 i. "Company assets, including Company time, equipment, materials,  
7 resources and proprietary information, must be used for business  
8 purposes only."

9 ii. "The Intellectual Property must not be used or reproduced without  
10 the consent of the Company and for authorized use in connection  
11 with the Company's business. Every effort must be undertaken to  
12 protect the Intellectual Property from illegal copying or misuse."

13 55. As a Wynn Resorts director, Okada was bound by the Code of Conduct.

14 56. Further, as a Director, Okada stands as a fiduciary to Wynn Resorts and, therefore,  
15 owes a high duty to the Company, including the duty of care, the duty of loyalty, and that he at all  
16 times discharged those duties in good faith and with a view to the interests of Wynn Resorts.

17 57. The fiduciary duty of loyalty that Okada owed as a Director required him to  
18 maintain, in good faith, the corporation's and its shareholders' best interests over the interests of  
19 anyone else, including his own.

20 58. Okada breached his fiduciary duties by engaging in unlawful activities, many of  
21 which occurred on Wynn Resorts' properties, and all of which undermine Wynn Resorts'  
22 reputation as well as its business and gaming licenses.

23 59. Okada further breached his fiduciary duty of loyalty by, among other things,  
24 self-dealing, placing his own interests above those of Wynn Resorts, and using Wynn Resorts'  
25 confidential information, trade secrets, and related trademarks for his own benefit and to  
26 Wynn Resorts' detriment. Specifically, and among other things, the website of Universal (of  
27 which Okada holds a significant interest and serves as Chairman of the Board) states that  
28 Universal obtained its purported experience and "know how" in operating top quality facilities



1 and providing services to the high end market through Okada's experience with Wynn Resorts.  
2 Universal's website also states that it intends to use its know-how acquired by Okada from his  
3 relationship with Wynn Resorts in Universal's Manila Bay casino-resort operation. Universal and  
4 Okada expressly admit (and those in the industry indisputably recognize) that a Manila Bay  
5 casino-resort will compete with Wynn Macau (in which Wynn Resorts has a significant  
6 ownership interest) for gaming customers and resort clientele.

7 60. Okada's acts and/or failures to act constituted breaches of his fiduciary duties.  
8 Okada's breaches of duty involved intentional misconduct and knowing violations of the law.

9 61. As a direct and proximate result of Okada's acts and omissions, Wynn Resorts has  
10 suffered and will continue to suffer direct, incidental and consequential damages in an amount to  
11 be proven at trial, but in any event, in excess of \$10,000, plus prejudgment interest.

12 62. In committing the acts herein above alleged, Okada is guilty of oppression, fraud,  
13 and malice toward Wynn Resorts. As such, Wynn Resorts is entitled to recover punitive damages  
14 from Okada for the purpose of deterring him and others similarly situated from engaging in like  
15 conduct.

16 63. As a result of the acts and omissions of Okada, Wynn Resorts has been compelled  
17 to hire the services of an attorney for the protection of its interests.

18 **SECOND CAUSE OF ACTION**

19 **(Aiding & Abetting Breach of Fiduciary Duty)**

20 **(Wynn Resorts against ARUZE USA & Universal)**

21 64. Wynn Resorts repeats and realleges the allegations set forth in Paragraphs 1  
22 through 63 above as though fully set forth herein.

23 65. As a director, Okada owed Wynn Resorts a fiduciary duty of loyalty which, as  
24 alleged herein, he breached.

25 66. ARUZE USA and Universal knowingly participated in Okada's breach by  
26 facilitating the self-dealing and misappropriation of Wynn Resorts' confidential information, trade  
27 secrets, and trademarks, and committing unlawful acts that undermine Wynn Resorts' good  
28 reputation as well as its business and gaming licenses.

1           67. As a direct and proximate result of ARUZE USA's and Universal's acts and  
2 omissions in aiding and abetting Okada's breach of duty, Wynn Resorts has suffered and will  
3 continue to suffer direct, incidental and consequential damages in an amount to be proven at trial,  
4 but in any event, in excess of \$10,000, plus prejudgment interest.

5           68. In committing the acts herein above alleged, ARUZE USA and Universal are  
6 guilty of oppression, fraud, and malice toward Wynn Resorts. As such, Wynn Resorts is entitled  
7 to recover punitive damages from ARUZE USA and Universal for the purpose of deterring them  
8 and others similarly situated from engaging in like conduct.

9           69. As a result of the acts and omissions of ARUZE USA and Universal, Wynn  
10 Resorts has been compelled to hire the services of an attorney for the protection of its interests.

11                           **THIRD CAUSE OF ACTION**

12                           **(Declaratory Relief – NRS Chapter 30)**

13                           **(Wynn Resorts against Okada, ARUZE USA & Universal)**

14           70. Wynn Resorts repeats and realleges the allegations set forth in Paragraphs 1  
15 through 69 above as though fully set forth herein.

16           71. To be deemed "suitable" under Nevada gaming law, the applicant must be: (a) a  
17 person of good character, honesty and integrity; (b) a person whose prior activities, criminal  
18 record, if any, reputation, habits and associations do not pose a threat to the public interest of the  
19 State of Nevada or to the effective regulation and control of gaming, and (c) must have adequate  
20 business probity, competence and experience, in gaming or generally.

21           72. Section 3.090 of the Nevada Gaming Regulations provides that a license,  
22 registration, and suitability finding requires, among other things, a person of "good character,  
23 honesty, and integrity" and one "whose background, reputation and associations will not result in  
24 adverse publicity for the State of Nevada and its gaming industry . . . ."

25           73. Even after a suitability finding, Regulation 3.080 provides that "[t]he commission  
26 may deny, revoke, suspend, limit condition or restrict any registration or finding of suitability or  
27 application therefor upon the same grounds as it may take such action with respect to licenses,  
28 licensees and licensing; without exclusion of any other grounds."

1           74. In recognition of the central importance of its gaming license, Wynn Resorts'  
2 Articles of Incorporation afford the Board of Directors the "sole discretion" to take certain action  
3 to protect the gaming licenses and approvals of Wynn Resorts and its affiliates. Under the  
4 Articles of Incorporation, an "Unsuitable Person" shall mean a Person who . . . in the sole  
5 discretion of the board of directors of the Corporation, is deemed likely to jeopardize the  
6 Corporation's or any Affiliated Company's application for, receipt of approval for, right to the use  
7 of, or entitlement to, any Gaming License." In addition, the Amended and Restated Gaming and  
8 Compliance Program defines an "Unsuitable Person" as, among other things, one "that the  
9 Company determines is unqualified as a business associate of the Company or its Affiliates based  
10 on, without limitation, that person's antecedents, financial practices, financial condition or  
11 business probity."

12           75. Following a determination of unsuitability, the Articles of Incorporation provide  
13 that "[t]he Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an  
14 Unsuitable Person shall be subject to redemption by the Corporation, out of funds legally  
15 available therefor, by action of the board of directors, to the extent . . . deemed necessary or  
16 advisable by the board of directors. If . . . the board of directors deems it necessary or advisable,  
17 to redeem any such Securities, the Corporation shall give a redemption Notice to the Unsuitable  
18 Person or its Affiliate and shall purchase on the Redemption Date the number of shares of the  
19 Securities specified in the Redemption Notice for the price set forth in the Redemption  
20 Notice . . . ."

21           76. On February 18, 2012, following Freeh's presentation, the Board of Directors  
22 deliberated at length and thereafter adopted resolutions that: (1) determined that ARUZE USA,  
23 and Universal were likely to jeopardize Wynn Resorts' and its affiliated companies' gaming  
24 licenses; (2) deemed Okada, ARUZE USA, and Universal to be unsuitable persons under  
25 Wynn Resorts' Articles of Incorporation; and (3) redeemed ARUZE USA's shares in  
26 Wynn Resorts for approximately US \$1.936 billion via a promissory note, in accordance with  
27 Article VII of the Articles of Incorporation.  
28

1           77.     Aware of the magnitude of his improprieties and what any reasonable Board of  
2 Directors of a Nevada gaming company would have to do, Okada attempted, in advance of the  
3 February 18, 2012 Board meeting, to set up a defense by disputing the Board's authority to act  
4 upon Freeh's report.

5           78.     Accordingly, a justiciable controversy has arisen between the parties whose  
6 interests are adverse, and the dispute is ripe for adjudication. Wynn Resorts acted lawfully and in  
7 full compliance with its Articles of Incorporation, Bylaws, and other governing documents and is  
8 entitled to a declaration from this Court to that effect.

9           79.     As a result of the acts and omissions of Defendants, Wynn Resorts has been  
10 compelled to hire the services of an attorney for the protection of its interests.

11           WHEREFORE, Wynn Resorts prays for judgment as follows:

12           1.     For compensatory and special damages, including attorneys' fees, against  
13 Defendants in an amount to be determined at trial;

14           2.     For a declaration that Wynn Resorts acted lawfully and in full compliance with its  
15 Articles of Incorporation, Bylaws, and other governing documents as set forth herein;

16           3.     Disgorgement of profits;

17           4.     Punitive damages;

18           5.     For an award of reasonable costs and attorneys' fees;

19           6.     For prejudgment and post-judgment interest on the foregoing sums at the highest  
20 rate permitted by law; and

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1 7. Any additional relief this Court deems just and proper on the evidence presented at  
2 trial.

3 DATED this 18th day of February, 2012.

4 PISANELLI BICE PLLC

5 By: 

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19 Attorneys for Wynn Resorts, Limited  
20  
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# EXHIBIT 1

**REPORT**  
**Attorney – Client / Work Product / Privileged and Confidential**

**I. Introduction**

Wynn Resorts, Limited ("Wynn Resorts"), a publicly traded company incorporated in the State of Nevada, on behalf of its Compliance Committee, retained Freeh Sporkin & Sullivan, LLP ("FSS") on November 2, 2011 to conduct an independent investigation. That independent investigation has been conducted under the sole direction of the Compliance Committee. The purpose of the investigation was to determine whether there is evidence that Mr. Kazuo Okada, a member of the Wynn Resorts Board of Directors, may have: (i) breached his fiduciary duties to Wynn Resorts; (ii) engaged in conduct that potentially could jeopardize the gaming licenses of Wynn Resorts; and/or, (iii) violated the Wynn Resorts compliance policy. Specifically, FSS has been asked to examine Mr. Okada's efforts in connection with the creation of a gaming establishment in the Republic of the Philippines.

This is the Report to the Compliance Committee Chairman on the results of FSS' investigation. As set forth with greater detail in the attached appendix, FSS has performed its investigation by interviewing dozens of individuals and by reviewing thousands of documents, electronic emails, corporate and public records.

**II. Summary**

The investigation has produced substantial evidence that:

1. Despite being advised by the Wynn Resorts Board of Directors and Wynn Resorts attorneys on the strict US anti-bribery laws which govern Wynn Resorts and its board, Mr. Okada strongly believes and asserts that when doing business in Asia, he should be able to provide gifts and things of value to foreign government officials, whether directly or by the use of third party intermediaries or consultants.
2. Mr. Okada, his associates and companies have arranged and designed his corporate gaming business and operations in the Philippines in a manner which appears to contravene Philippine Constitutional provisions and statutes that require 60% ownership by Philippine nationals, as well as a Philippine criminal statute.
3. Mr. Okada, his associates and companies appear to have engaged in a longstanding practice of making payments and gifts to his two (2) chief gaming regulators at the Philippines Amusement and Gaming Corporation ("PAGCOR"), who directly oversee and regulate Mr. Okada's Provisional Licensing Agreement to operate in that country. Since 2008, Mr. Okada and his associates have made multiple payments to and on behalf of these chief regulators, former PAGCOR Chairman Efraim Genuino and Chairman Cristino Naguiat (his current chief regulator), their families and PAGCOR associates, in an amount exceeding US 110,000. At times, Mr. Okada, his

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associates and companies have consciously taken active measures to conceal both the nature and amount of these payments, which appear to be prima facie violations of the United States Foreign Corrupt Practices Act ("FCPA"). In one such instance in September 2010, Mr. Okada, his associates and companies, paid the expenses for a luxury stay at Wynn Macau by Chairman Naguiat, Chairman Naguiat's wife, their three children and nanny, along with other senior PAGCOR officials, one of whom also brought his family. Mr. Okada and his staff intentionally attempted to disguise this particular visit by Chairman Naguiat by keeping his identity "Incognito" and attempting to get Wynn Resorts to pay for the excessive costs of the chief regulator's stay, fearing an investigation. Wynn Resorts rejected the request by Mr. Okada and his associates to disguise and to conceal the actual expenditures made on behalf of Chairman Naguiat.

4. Additionally, Mr. Okada, his associates and companies appear to have engaged in a pattern of such prima facie violations of the FCPA. For example, in 2010 it also is possible that Mr. Okada, his associates and companies made similar payments to a Korean government official who oversees Mr. Okada's initial gaming investment in that country. Additional investigation is needed to develop and confirm these possible FCPA violations.
5. The prima facie FCPA violations by Mr. Okada, his associates and companies constitute a substantial, ongoing risk to Wynn Resorts and to its Board of Directors, creating regulatory risk, conflicts of interest and potential violations of his fiduciary duty to Wynn Resorts. Finally, Mr. Okada's documented refusal to receive Wynn Resorts requisite FCPA training provided to other Directors, as well as his failure to sign an acknowledgment of understanding of Wynn Resorts Code of Conduct, increase this risk going forward.
6. Mr. Okada insisted in his interview that all of his gaming efforts in the Philippines prior to the change of the presidential administration in the summer of 2010 were undertaken on behalf of and for the benefit of Steve Wynn and Wynn Resorts. This assertion is contradicted by press releases dating back to 2007 on his website, which announce an independent effort by Universal; his real estate investments; and the ownership of his corporations in the Philippines.
7. (7) Mr. Okada has stated that Universal paid expenses related to then-PAGCOR Chairman Genuino's trip to Beijing during the 2008 Olympics.



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**III. Kazuo Okada's Relevant Corporate Affiliations**

**A. Wynn Resorts**

After an initial public offering which closed in October 2002, Aruze USA, Inc., controlled by Mr. Okada, became a 24.5% shareholder of Wynn Resorts. Mr. Okada's current ownership of Wynn Resorts through his control of Aruze USA, Inc. is 19.66%.

Mr. Okada became a member of the Wynn Resorts Board of Directors on October 21, 2002, and remains on the Board of Directors as of the date of this Report. In the past, Mr. Okada has used the title of Vice Chairman of Wynn Resorts. In October 2011, the Wynn Resorts Board of Directors eliminated the position of Vice Chairman.

As a Director of Wynn Resorts, Mr. Okada is entitled to receive the courtesy of what is called a "City Ledger Account." Such accounts were originally instituted as a result of Sarbanes Oxley's prohibition of extensions of credit, in the form of a personal loan from an issuer to an officer or director. The accounts were funded by deposits from the director or his company. Such an account exists for billing conveniences related to charges incurred at various Wynn Resorts locales. Mr. Okada has availed himself of this courtesy and established such a City Ledger Account.<sup>1</sup> Within Wynn Resorts, this Okada City Ledger Account is referred to either as the "Universal City Ledger Account" or as the "Aruze City Ledger Account." Accordingly, the phrases Universal City Ledger Account and Aruze City Ledger Account will be referred to interchangeably within this report despite the fact that Aruze Corp.'s name was changed to Universal Entertainment Corporation in November of 2009.

Mr. Okada has been found to be suitable by the Nevada Gaming Commission.<sup>2</sup>

**B. Universal Entertainment Corporation of Japan**

Mr. Okada currently serves as Director and Chairman of the Board of Universal Entertainment Corporation ("Universal Entertainment"), registered in Tokyo, Japan. Universal Entertainment Corporation is the current trade name of a company which was incorporated in 1969 as Universal Lease Co. Ltd. and which became Aruze Corp. in 1998. Aruze changed its

<sup>1</sup> The initial wire to establish the Aruze Corp. City Ledger Account was dated February 15, 2008.

<sup>2</sup> Mr. Okada was originally found to be suitable as a shareholder of Aruze Corp. as part of *An Order of Registration* issued jointly by the State Gaming Control Board and the Nevada Gaming Commission on June 4, 2004. On June 5, 2005, in a similar order, the Nevada Commission and the State Gaming Control Board found Aruze Corp. to be (1) suitable as a controlling shareholder of Wynn Resorts, Limited, (2) suitable as the sole shareholder of Aruze USA, Inc., (3) that Aruze USA, Inc. is registered as an intermediary company and is found suitable as a shareholder of Wynn Resorts, Limited, and (4) that Mr. Okada is suitable as a shareholder and controlling shareholder of Aruze Corp. [See Appendix]

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name to Universal Entertainment Corporation in November 2009. Universal is listed on the JASDAQ stock exchange and is engaged in the manufacture and sale of pachinko and gaming machines and related business activities. As of September 2011, Okada Holdings Godokaisha was Universal Entertainment's major shareholder, with 67.90% of the issued shares.

The Nevada Gaming Commission has approved Universal Entertainment's suitability as the 100% shareholder for a subsidiary, Aruze USA, Inc.

**C. Aruze USA, Inc.**

Aruze USA, Inc. ("Aruze USA") is a wholly owned subsidiary of Universal Entertainment. Aruze USA is a US company and was incorporated in the State of Nevada on June 9, 1999. Mr. Okada is a Director of Aruze USA and serves as its President, Secretary, and Treasurer.

Aruze USA has been found suitable by the Nevada Gaming Commission as a major shareholder of Wynn Resorts.

**D. Aruze Gaming America, Inc.**

Aruze Gaming America, Inc. is a private company that is 100% personally owned by Mr. Okada. He currently serves as a Director, Secretary, and Treasurer of the company. Aruze Gaming America, Inc. is a US company and was incorporated on February 7, 1983. The company changed its name from Universal Distributing of Nevada, Inc. to Aruze Gaming America, Inc. on January 6, 2006. Aruze Gaming America, Inc. shares a common business address with Aruze USA, Inc. in Las Vegas, Nevada.

**E. Business Interests in the Republic of the Philippines**

Since 2008, Mr. Okada has been involved with a variety of corporate entities and with various business associates in the creation of a gaming establishment in an area of the Philippines known as Entertainment City Manila.<sup>3</sup> In furtherance of this endeavor, Mr. Okada and his associates have procured land and a provisional gaming license in the Philippines. A more detailed review of Mr. Okada's corporate entities and business associates in the Philippines is set forth in Section V(2)(A) below.

**F. Business Interests in the Republic of Korea**

Mr. Okada has recently pursued development of a casino resort complex in the Incheon Free Economic Zone in the Republic of Korea. A more detailed review of Mr. Okada's activities in Korea is set forth in Section V(4) below.

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<sup>3</sup> On the Universal Entertainment website (viewed January 30, 2012) this project is referenced as "Manila Bay Resorts." [See Appendix]

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**IV. Relevant Legal and Policy Standards**

**A. FCPA**

The United States Foreign Corrupt Practices Act ("FCPA") contains two primary categories of violations: (i) a books and records provision, and (ii) a bribery provision. Based upon available information, it seems clear that Aruze USA fits the definition of domestic concern<sup>4</sup> and United States person<sup>5</sup> provided in the FCPA, and that the FCPA applies both to Aruze USA and to Mr. Okada personally, in his capacity as an officer and director of Aruze USA.

Under the definitions of domestic concern and United States person, the statute applies to a corporation, partnership, unincorporated organization and other enumerated entities that have their principal place of business in the United States or which are organized under the laws of a State of the United States. It also applies to officers and directors of such concerns.<sup>6</sup>

In 1998, the FCPA was amended and added an alternative basis to interstate commerce for jurisdiction. As the United States District Court for the Southern District of New York wrote: "... The amendments expanded FCPA coverage to 'any person' -- not just 'issuers' or 'domestic concerns' . . . . [A]ny United States person or entity violating the Act outside of the United States is subject to prosecution, regardless of whether any means of interstate commerce were used. Citing 15 USC 78dd-1, 78dd-2. . . . (Emphasis added.)<sup>7</sup>

Under this definition, Aruze USA is a covered party under the FCPA.

The FCPA provides that "[i]t shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd-1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)

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<sup>4</sup> 15 U.S.C. 78 dd – 2(a),(h).

<sup>5</sup> 15 U.S.C. 78 dd – 2(i).

<sup>6</sup> 15 U.S.C. 78 dd – 2(g).

<sup>7</sup> *In re Grand Jury Subpoena*, 218 F. Supp. 2d 544, 550 (S.D.N.Y. 2002).

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- (i) influencing any act or decision of such foreign official in his official capacity,
  - (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or
  - (iii) securing any improper advantage; or
- (B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; . . .<sup>8</sup>

The head of PAGCOR fits within the definition of foreign official as used in the FCPA.

According to PAGCOR's website, it "is a 100 percent government-owned and controlled corporation that runs under the direct supervision of the Office of the President of the Republic of the Philippines."<sup>9</sup> In addition to prescribing mandates to generate revenue for certain government programs and promote tourism in the Philippines, PAGCOR's charter states that the entity will "...[r]egulate, authorize and license games of chance, games of cards and games of numbers, *particularly casino gaming*, in the Philippines...."<sup>10</sup> (Emphasis added.)

As set forth above, there is still the interstate commerce basis for jurisdiction, but there is also an alternative. The alternative would require the same elements for an offense, but a showing of interstate commerce would not be required. If the interstate commerce basis for jurisdiction were used, the analysis set forth below would be of significance.

With regard to means or instrumentality of interstate commerce, some of the facts referred to in this report pertain to Mr. Okada utilizing the Universal City Ledger Account to confer financial benefits upon Philippine gambling regulators who could affect the business interests of Aruze USA, Inc. in the Philippines. Some of those benefits were conferred at Wynn Macau. The following facts concerning the Universal City Ledger Account, which bear upon use of means or instrumentalities of interstate commerce, were established during the investigation:

- The account is maintained at the corporate offices of Wynn Resorts, Limited in Las Vegas, Nevada where periodic deposits are made from Universal into the Wynn Resorts, Limited operating account at Bank of America in Las Vegas, Nevada to ensure that the amount on deposit remains at or about US 100,000. Bank documents reflect that the deposits are received from a Universal Entertainment account located in Japan.<sup>11</sup>

<sup>8</sup> 15 U.S.C. Section 78dd – 2(a).

<sup>9</sup> <http://www.pagcor.ph/pagcor-faqs-profile.php>, viewed January 18, 2012. [See Appendix]

<sup>10</sup> *Ibid.*, viewed January 18, 2012. [See Appendix]

<sup>11</sup> See, e.g. wire transfer documents from Sumitomo Mitsumi Bank to Bank of America. [See Appendix]

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- When charges are incurred at Wynn Macau, Wynn Macau tracks all charges for the Universal City Ledger Account on its books, and then the accounting department transfers the charges to accounting at Wynn Resorts, Limited in Las Vegas via a journal entry. Wynn Macau sends a pdf file to a staff accountant at Wynn Resorts, Limited in Las Vegas with all the backup documentation. Invoices issued by Wynn Resorts, Limited are periodically sent to a Universal Entertainment email address.<sup>12</sup>

**B. Nevada Gaming Regulations and Wynn Resorts Policies**

The question of whether or not a gaming licensee or licensee applicant is deemed "suitable" in Nevada is answered by reviewing the Nevada Revised Statutes ("NRS") in conjunction with the regulations promulgated by the Nevada Gaming Commission ("NGC"), which is empowered by the NRS.<sup>13</sup>

**1. Legislative Authority**

The standard for determining suitability is found in Section 463.170 of the NRS. Paragraph (2) of the NRS 463.170, entitled *Qualifications for license, finding of suitability or approval; regulations*, provides that the person seeking a license or a suitability determination is subject to the following considerations: "[a]n application to receive a license or be found suitable must not be granted unless the Commission is satisfied that the applicant is: (a) A person of good character, honesty and integrity; (b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this State or to the effective regulation and control of gaming. . . ." In addition, paragraph (3) provides in pertinent part "[a] license to operate a gaming establishment or an inter-casino linked system must not be granted unless the applicant has satisfied the Commission that: (a) [t]he applicant has adequate business probity, competence and experience, in gaming or generally. . . ."

The Nevada Gaming Commission Regulations ("Nevada Gaming Regulations") are also relevant to the conditions placed upon suitability. According to Section 3.080 of the Nevada Gaming Regulations, entitled *Unsuitable affiliates*, "[t]he commission may deny, revoke, suspend, limit, condition or restrict any registration or finding of suitability or application therefor upon the same grounds as it may take such action with respect to licenses, licensees and licensing; without exclusion of any other grounds." Paragraph (1) of Section 3.090, entitled

<sup>12</sup> In a Wynn Resorts Memorandum to File from the Corporate Accounting department, dated January 10, 2012, the "invoice[s] and all support documentation are emailed to [kimiko.okamura@hq.universal-777.com](mailto:kimiko.okamura@hq.universal-777.com), [takeshi.usami@hq.universal-777.com](mailto:takeshi.usami@hq.universal-777.com) and [jwayama.hidetsugu@hq.universal-777.com](mailto:jwayama.hidetsugu@hq.universal-777.com) on the 5<sup>th</sup> of each month for the prior month [sic] activity." [See Appendix]

<sup>13</sup> For further advice regarding suitability, please consult directly with David Arraj, Esq. and/or see Memo dated December 9, 2011 from Kate Lowenhar-Fisher, Esq. and Jamie L. Thalgott, Esq. to David Arraj, Esq. re Associations and the Suitability Analysis. [See Appendix]

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*Standards for commission action*, provides in pertinent part that “[n]o license, registration, finding of suitability, or approval shall be granted unless and until the applicant has satisfied the commission that the applicant: (a) Is a person of good character, honesty, and integrity; (b) Is a person whose background, reputation and associations will not result in adverse publicity for the State of Nevada and its gaming industry; and (c) Has adequate business competence and experience for the role or position for which application is made.”

### 2. Underlying Corporate Documents of Wynn Resorts

The Second Amended and Restated Articles of Incorporation of Wynn Resorts, Limited (filed September 16, 2002) also provide for standards that seek to define an “Unsuitable Person.” As set forth on page 8 of the Articles of Incorporation, the phrase Unsuitable Person “shall mean a Person who . . . in the sole discretion of the board of directors of the Corporation, is deemed likely to jeopardize the Corporation’s or any Affiliated Company’s application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License.” (Emphasis added.)

Finally, the Amended and Restated Gaming and Compliance Program of Wynn Resorts, Limited (adopted as of July 29, 2010) defines an *Unsuitable person* as a “[p]erson (i) who has been denied licensing or other related approvals by a Gaming Authority on the grounds of unsuitability or who has been determined to be unsuitable to be associated with a gaming enterprise by a Gaming Authority; or (ii) that the Company determines is unqualified as a business associate of the Company or its Affiliates based on, without limitation, that Person’s antecedents, associations, financial practices, financial condition or business probity.”

In the event of a finding of unsuitability, there are provisions within the aforementioned corporate documents that provide for a resolution post determination. Specifically, on page 6 of the Second Amended and Restated Articles of Incorporation of Wynn Resorts, Limited, the Articles state in pertinent part, “[t]he Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person shall be subject to redemption by the Corporation, out of funds legally available therefor, by action of the board of directors, to the extent required by the Gaming Authority making the determination of unsuitability or to the extent deemed necessary or advisable by the board of directors. If a Gaming Authority requires the Corporation, or the board of directors deems it necessary or advisable, to redeem any such Securities, the Corporation shall give a Redemption Notice to the Unsuitable Person or its Affiliate and shall purchase on the Redemption Date the number of shares of the Securities specified in the Redemption Notice for the Price set forth in the Redemption Notice. . . .” The Articles provide further guidance as to the terms of the redemption.

In addition, according to Section 3.6 of the Fourth Amended and Restated Bylaws, effective as of November 13, 2006, the removal of a director is premised upon “. . . the

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affirmative vote of the holders of not less than two-thirds (2/3) of the voting power of the issued and outstanding stock of the Corporation entitled to vote generally in the election of directors (voting as a single class). . . .” Resignation is also listed as an option “upon giving written notice, unless the notice specifies a later time for effectiveness of such resignation, to the chairman of the board, if any, the president or secretary, or in the absence of all of them, any other officer.”

**C. Wynn Resorts Code of Business Ethics**

Wynn Resorts first adopted a Code of Business Conduct and Ethics on May 4, 2004. The document defines itself as “a statement of policies for the individual and business conduct of the Company’s employees and Directors . . . .”<sup>14</sup> There are two sections of the Code that are relevant to this investigation: (i) conflict of interest and (ii) interaction with government officials. The sections are included below for reference purposes.

**1. Conflict of Interest:**

“A Conflict of interest occurs when your private interests interfere, or even appear to interfere, with the interests of the Company. A conflict situation can arise when you take actions or have interests that make it difficult for you to perform your Company work objectively and effectively. Your obligation to conduct the Company’s business in an honest and ethical manner includes the ethical handling of actual, apparent and potential conflicts of interest between personal and business relationships. This includes full disclosure of any actual, apparent or potential conflicts of interest as set forth below.

Special rules apply to executive officers and Directors who engage in conduct that creates an actual, apparent or potential conflict of interest. Before engaging in any such conduct, executive officers and Directors must make full disclosure of all facts and circumstances to the Corporate Secretary, who shall inform and seek the prior approval of the Audit Committee of the Board of Directors.”

**2. Interacting with Government:**

**Prohibition on Gifts to Government Officials and Employees**

“Different governments have different laws restricting gifts, including meals, entertainment, transportation and lodging, that may be provided to government officials and government employees. You are prohibited from providing gifts, meals or anything of value to government officials or employees or members of their families in connection with Company business without prior written approval from the Compliance Officer.”

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<sup>14</sup> Wynn Resorts Code of Business Conduct and Ethics dated May 4, 2004, page 7. [See Appendix]

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**Bribery of Government Officials**

"The Company's Policy Regarding Payments to Foreign Officials, the U.S. Foreign Corrupt Practices Act (the "FCPA"), and the laws of many other countries prohibit the Company and its officers, employees and agents from giving or offering to give money or anything of value to a foreign official, a foreign political party, a party official or a candidate for political office in order to influence official acts or decisions of that person or entity, to obtain or retain business, or to secure any improper advantage. Please refer to the Company's Policy Regarding Payments to Foreign Officials for more details regarding prohibited payments to foreign government officials."

**Discipline for Violations:**

"The Company intends to use every reasonable effort to prevent the occurrence of conduct not in compliance with its Code and to halt any such conduct that may occur as soon as reasonably possible after its discovery. Subject to applicable laws and agreements, Company personnel who violate this Code and other Company policies and procedures may be subject to disciplinary action, up to and including discharge." (Emphasis added.)

The Code has since been revised twice, once in 2009 and then again on November 1, 2011. Although the above sections have been expanded in these later editions, for the purpose of this investigation and the dates in question the substance has remained basically the same and the FCPA has continued to be a point of emphasis.

**V. Report of Investigation**

**1. Mr. Okada's Attitude Toward Wynn Resorts Compliance Requirements**

Mr. Okada's prima facie violations of FCPA, involving both his government regulators in the Philippines and possibly in Korea, do not appear to be accidental or based upon a misunderstanding of anti-bribery laws. Conversely, despite being advised by fellow Wynn Resorts Board members and Wynn Resorts counsel that payments and gifts to foreign government officials are strictly prohibited, Mr. Okada has insisted that there is nothing wrong with this practice in Asian countries. Mr. Okada has stated his personal rejection of Wynn Resorts anti-bribery rules and regulations, as well as legal prohibitions against making such payments to government officials, to fellow Wynn Resorts Board members.

In a February 24, 2011 Wynn Resorts Board of Directors ("Board") meeting at which Mr. Okada was present, after a lengthy discussion by the Board of the FCPA,<sup>15</sup> including specifically the Universal project in the Philippines and potential Wynn Resorts' involvement, "[t]he

<sup>15</sup> In an email from Kim Sinatra to Michiaki Tanaka, dated February 26, 2011, Ms. Sinatra referenced a meeting with Mr. Okada in which she furnished FCPA policy and training materials and reiterated the importance of strict compliance with the FCPA. [See Appendix]



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independent members of the board unanimously advised management that any involvement [by Wynn Resorts] in the Philippines under the current circumstances was inadvisable.”<sup>16</sup> During this discussion, Mr. Okada challenged the other board members over statements regarding the impermissibility under the FCPA of giving gifts abroad in return for favorable treatment, and made statements about hiring “third party consultants” to give gifts to officials.<sup>17</sup>

One board member recalled Mr. Okada stating that, in Asia, one must follow the local culture, and that is why one should hire “consultants” to give the gifts.<sup>18</sup> This board member understood Mr. Okada to mean that such use of consultants would help avoid prosecution under the FCPA. Another board member who was present recalled Mr. Okada stating that conducting business in the Philippines was all a matter of “hiring the right people” to pay other people.<sup>19</sup> Yet another board member recalled Mr. Okada being “adamant” during the FCPA discussion that it is not corrupt to give “gifts.”<sup>20</sup> A board member who participated in the meeting by phone recalled Mr. Okada claiming that, in the Philippines, “business is done in a different manner, and sometimes you have an ‘intermediary’ that will do whatever he has to do,” or words to that effect.<sup>21</sup> A different board member recalled being “shocked” by the contradiction between two of Mr. Okada’s statements during this discussion.<sup>22</sup> Early in the discussion, Mr. Okada explained that there were no longer corruption issues in the Philippines with the new administration. However, Mr. Okada subsequently stated, in effect, that while he himself would not pay bribes, he would “hire someone else” to bribe the necessary person.

Pursuant to a chain of emails reviewed by FSS, commencing with an email on August 4, 2011 from Roxane Peper, Director of Intellectual Property and Corporate Records, to each of the board members (or their representatives), and ending with an email from Ms. Peper to Kevin Tourek, Senior Vice President and Corporate Counsel, on October 26, 2011, the following is clear:<sup>23</sup>

- All board members were notified of upcoming FCPA training/board meeting set for October 31 – November 1, 2011 and asked to confirm attendance by August 31, 2011.
- Mr. Okada, through two of his representatives, was emailed at least three (3) separate times before Shinobu Noda, his assistant, sent an email on September 15, 2011 confirming that Mr. Okada would attend.

<sup>16</sup> Minutes of Wynn Resorts Board of Directors meeting, February 24, 2011, p.3. [See Appendix]

<sup>17</sup> Interview of Steve Wynn, November 7, 2011.

<sup>18</sup> Interview of Robert J. Miller, December 16, 2011.

<sup>19</sup> Interview of Alvin V. Shoemaker, December 20, 2011.

<sup>20</sup> Interview of Marc D. Schorr, December 20, 2011.

<sup>21</sup> Interview of Allan Zeman, December 21, 2011.

<sup>22</sup> Interview of D. Boone Wayson, December 20, 2011.

<sup>23</sup> See emails from Roxane Peper to Kevin Tourek on October 26, 2011. [See Appendix]

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Subsequent to the confirmation, Ms. Peper received an email from Ms. Noda on October 25, 2011. Ms. Noda stated that the email contained a message to Kim Sinatra, Senior Vice President and General Counsel of Wynn Resorts, from Mr. Okada.<sup>24</sup> This part of the message was entirely in Japanese and had to be translated. Mr. Okada asked for the FCPA training materials to be provided in Japanese. He also stated that he would be arriving on "Monday [October 31]", which was the day the FCPA training was to commence. He asked if the training could be held after the board meeting or rescheduled. Kim Sinatra sent a response to Ms. Noda via email on October 25, 2011 thanking Mr. Okada for the note and stating further that the FCPA training materials had been translated and would be provided to him via email and that Wynn Resorts had made further arrangements to have the FCPA live training translated to Japanese via simultaneous translation.<sup>25</sup> She also stated that the date of the training could not be rescheduled because it had been planned around his previous confirmation and that outside counsel was coming to Las Vegas to provide the training.

Mr. Okada failed to attend the training on October 31, 2011. He was the only member of the board not in attendance (all others attended in person or via telephone dial-in as evidenced via a sign-in sheet).<sup>26</sup>

**2. Gaming Establishment in the Philippines**

Evidence obtained in the course of the investigation establishes that Mr. Okada, his associates and companies, may have arranged and manipulated the ownership and management of legal entities in the Philippines under his control, in a manner that may have enabled the evasion of Philippine constitutional and statutory requirements. It is also noted that Mr. Okada's two principal Philippine corporations, Eagle I Landholdings, Inc. and Eagle II Holdco, Inc., which may have been purposefully created to circumvent Philippine constitutional restrictions on foreign ownership of land, appear to be closely intertwined with Rodolfo Soriano, Paolo Bombase and Manuel M. Camacho, who have numerous common ties to former PAGCOR Chairman Efraim Genuino. For example, with regard to Eagle II Holdco, Inc., as late as 2010, Platinum Gaming and Entertainment ("Platinum") had acquired 60% of its shares. According to a dated filing by Platinum on file with the Philippine SEC, Rodolfo Soriano controlled 20% of Platinum at the time of its incorporation. Mr. Soriano, referred to by attorney Camacho as a "bag man" for then-Chairman Genuino, is a former PAGCOR consultant and respondent in PAGCOR corruption referrals (see page 15 *infra*). Similarly, Paolo Bombase, an officer, director and nominal shareholder of Eagle I Landholding, Inc. and Eagle II Holdco, Inc. has a 1.25% share of Ophiuchus Real Properties Corp. This Ophiuchus entity is 15% owned by a Philippine company named SEAA Corp. In turn, SEAA is the family-controlled company of former PAGCOR Chairman Efraim Genuino. At this time, the significance of this interlocking shareholder link

<sup>24</sup> See email from Shinobu Noda to Roxane Peper dated October 25, 2011. [See Appendix]

<sup>25</sup> See email from Kim Sinatra to Shinobu Noda dated October 25, 2011. [See Appendix]

<sup>26</sup> See FCPA Training Sign-In sheet dated October 31, 2011. [See Appendix]

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between Mr. Okada, his former Philippine gaming regulator, and the regulator's associates is not known.

### **A. Corporate Links between Mr. Okada's Business Interests and Those of Philippine Government Officials**

Close associates and consultants of the former Genuino PAGCOR administration eventually attained positions as corporate officers, directors and/or nominal shareholders in legal entities controlled by Mr. Okada, and, in some cases, served as links between the business interests of Mr. Okada and those of former PAGCOR chairman Efraim Genuino and members of Genuino's immediate family.

In order to better understand the interrelationships among corporate entities in the Philippines controlled by Mr. Okada and those controlled by PAGCOR officials and their associates, FSS requested the Philippines law firm of M. M. Lazaro & Associates ("Lazaro") to produce a study of this issue.<sup>27</sup> Drawing upon official records obtained from the Philippines Securities and Exchange Commission, Lazaro produced an analysis of the relationships created by the ownership and control structures of these entities.<sup>28</sup> The chart below, extracted from that analysis, illustrates these relationships in schematic form.

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<sup>27</sup> Manuel Lazaro was formerly a government corporate counsel with the rank and privileges of a Philippine presiding justice, court of appeals, who FSS retained to assist in the investigation and to advise on certain aspects of Philippine law. [See Appendix]

<sup>28</sup> The complete Lazaro PPT is attached to this report. [See Appendix]

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Kuroko Okada

AGA Philippines, Inc.

Amaze USA Inc.

Tiger Resort Leisure and Entertainment Inc.

Eagle I Landholdings Inc.

Eagle II Holdings, Inc.

Platinum Gaming & Entertainment Corp.

Genaro Family

SEAA Corp.

Vista College Inc.

Lex Davao Entertainment Corporation

National Capital Edge Corporation

Oriental North Properties & Entertainment Corporation

**Nominal Stockholders**  
 Park N. Soria  
 Daniel M. Combarro  
 Arnoldo Aguirre  
 Maribel Aguirre

Tiger Resorts, Leisure and Entertainment, Inc. ("Tiger") was incorporated in the Philippines on June 13, 2008.<sup>29</sup> Its primary purpose was stated as:

To acquire, own, maintain, operate and/or manage hotels (city and resort), inns, apartments, private clubs, pension houses, convention halls, lodging houses, restaurants, cocktail bars, and any and all services and facilities related or incident thereto.<sup>30</sup>

Tiger is predominantly owned by Aruze USA, Inc.<sup>31</sup> In August 2008, PAGCOR granted Tiger a Provisional Licensing Agreement to operate a gaming establishment in the Entertainment City Manila Zone. An official of the current PAGCOR administration told FSS in December 2011 that PAGCOR was currently reexamining this license.<sup>32</sup>

<sup>29</sup> Articles of Incorporation of Tiger. [See Appendix]

<sup>10</sup> *Ibid.*, [See Appendix]

<sup>49</sup> GIS of Tiger, 2010. [See Appendix].

<sup>32</sup> Combined interview of Jay Daniel R. Santiago and Thadeo Francis P. Hernandez, on December 12, 2011. It should be noted that after the interview with Santiago and Hernandez, FSS along with its Philippine counsel, for purposes of this investigation, formally requested a copy of the Provisional Licensing Agreement from PAGCOR, as well as other related documents. On the same date that the formal request was made, PAGCOR refused to supply a

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Eagle I Landholdings, Inc. ("Eagle I") was incorporated in the Philippines on May 16, 2008 with 5 partners of the Philippines law firm Sycip Salazar Gatmaitan ("Sycip") as the shareholders, directors and officers.<sup>33</sup> By certification on September 5, 2008, the original shareholders were all replaced by, among others, Eagle II Holdco, Inc. ("Eagle II"), with approximately 60% ownership. Eagle II maintained this percentage of ownership of Eagle I through the filing of the latest available General Information Statement ("GIS") for the year 2010.<sup>34</sup> Eagle I's 2009 GIS, filed September 17, 2009, indicates that Paolo Bombase, Manuel N. Camacho and Rodolfo V. Soriano (whose associations with PAGCOR and Mr. Genuino are explained below) all had become officers/directors and nominal stockholders of Eagle I; they retained this status through the filing of the latest GIS for Eagle I.<sup>35</sup> Aruze USA, Inc. first appears as the owner of approximately 40% of Eagle I as of the 2010 GIS, owning the share previously owned by Molly Investments Cooperative UA ("Molly").<sup>36</sup>

Eagle II's filings with the Philippines Securities and Exchange Commission indicate a history similar to that of Eagle I. Incorporated on May 19, 2008 by the same 5 Sycip partners,<sup>37</sup> Eagle II reflected the acquisition of approximately 60% of its shares by Platinum Gaming & Entertainment Corp. ("Platinum") on its GIS filed September 17, 2009, with Platinum owning the same percentage as of the 2010 GIS.<sup>38</sup> The same filings reflect the appearance--in 2009 and continuing through the 2010 filing--of Messrs. Camacho, Soriano and Bombase as officers/directors and nominal shareholders. In 2010 Aruze USA, Inc. appears with the 40% shareholding that was attributed to Molly in 2009.<sup>39</sup>

Platinum was incorporated in the Philippines on November 21, 2001, with a Certificate of Filing of Amended Articles of Incorporation ("AOI") issued by the Philippines Securities and Exchange Commission on June 10, 2002.<sup>40</sup> Platinum has no GIS on file with the Philippines Securities and Exchange Commission, and the only corporate document filed besides the Articles of Incorporation is the 2004 Financial Statement. The latest information on file lists Mr.

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copy of Tiger's Provisional Licensing Agreement, saying that they were bound by a non-disclosure clause. That refusal was signed by Francis P. Hernando, who is identified below as a PAGCOR employee, who stayed in Wynn Macau in June 2011 and had US 709.72 of expenses paid for by the Aruze City Ledger account. See Letter of Request and Letter of Refusal. [See Appendix]

<sup>33</sup> Articles of Incorporation of Eagle I. [See Appendix]

<sup>34</sup> GIS of Eagle I for years 2009 and 2010. [See Appendix] A GIS is required to be filed on an annual basis according to Section 141 of the Corporation Code of the Philippines. [See Appendix]

<sup>35</sup> Ibid. [See Appendix]

<sup>36</sup> Ibid. [See Appendix]; FSS has determined Molly to be a wholly owned subsidiary of Aruze Corp. See [http://www.universal-777.com/en/ir/ir\\_lib/material/annual\\_20081119.pdf](http://www.universal-777.com/en/ir/ir_lib/material/annual_20081119.pdf), page 32.

<sup>37</sup> Articles of Incorporation of Eagle II. [See Appendix]

<sup>38</sup> GIS of Eagle II, years 2009-2010. [See Appendix]

<sup>39</sup> GIS of Eagle II, 2010. [See Appendix]

<sup>40</sup> Articles of Incorporation of Platinum, as amended June 10, 2002. [See Appendix]

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Soriano, a former PAGCOR consultant, as a director/officer and a 20% shareholder in Platinum.<sup>41</sup>

Messrs. Camacho, Bombase and Soriano are all directly associated with former PAGCOR Chairman Genuino in significant ways. Mr. Camacho is an attorney and a principal of the Manila law firm Camacho & Associates. He was for a time in a law partnership with Mr. Genuino's son, Erwin Genuino.<sup>42</sup> Mr. Camacho traveled to Japan with Mr. Soriano at then PAGCOR Chairman Genuino's behest, to meet with Mr. Okada and other representatives of Aruze. This meeting resulted in Mr. Camacho's firm replacing Sycip in representing Aruze with respect to the development of the project in Entertainment City Manila.<sup>43</sup>

Sometime subsequent to this meeting, Aruze wired retainer funds to the bank account of Mr. Camacho's firm, an account controlled jointly by Mr. Camacho and Erwin Genuino. Later, Mr. Camacho discovered that all or most of these funds had been withdrawn by Erwin Genuino. When he questioned this withdrawal, he was eventually told by Mr. Soriano and/or then PAGCOR Chairman Genuino that the funds had been withdrawn to be used as a "cash payoff" to the mayor of the municipality in which the Entertainment City Manila project is located, in order to facilitate approval of the use of some plots of land to build roads needed for Mr. Okada's casino project. Mr. Camacho claims to have had a falling out with Erwin Genuino and Mr. Soriano, and to be involved currently in a lawsuit against Erwin Genuino over the dissolution of their law partnership.<sup>44</sup> Erwin Genuino is named as a respondent, along with former PAGCOR Chairman Genuino, in two sworn corruption referrals ("PAGCOR Referrals") filed with the Republic of the Philippines Department of Justice ("DOJ") in the summer of 2011 by the current PAGCOR Administration.<sup>45</sup>

Mr. Bombase, also an attorney, is an officer/director and shareholder of Ophiuchus Real Properties Corporation ("Ophiuchus"), incorporated in April 2011.<sup>46</sup> According to its 2011 GIS, Ophiuchus was 15% owned by SEAA Corporation ("SEAA").<sup>47</sup> SEAA, which was registered with the Philippine SEC on December 3, 1997, is, according to its 2011 GIS, 100% owned by members of former PAGCOR Chairman Genuino's immediate family.<sup>48</sup> The Articles of

<sup>41</sup> M. M. Lazaro & Associates, "Aruze Corporations in the Philippines and 'Related' Corporations", p. 18. [See Appendix]

<sup>42</sup> Interview of M. Camacho, December 13, 2011.

<sup>43</sup> In his discussion with FSS, Mr. Camacho referred to the firm only as "Aruze," not further defined.

<sup>44</sup> Although Mr. Camacho, who is in his seventies, failed to recall some details of his dealings with Mr. Genuino and Mr. Soriano, FSS credits the general account given by him during the December 13, 2011 interview.

<sup>45</sup> See PAGCOR Referrals. [See Appendix]

<sup>46</sup> Articles of Incorporation of Ophiuchus. [See Appendix]

<sup>47</sup> GIS of Ophiuchus, 2011. [See Appendix]

<sup>48</sup> GIS of SEAA, 2011. [See Appendix]

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Incorporation of Ophiuchus also list Emilio Marcelo as an officer/director and shareholder.<sup>49</sup> Mr. Marcelo is named as a respondent in the PAGCOR Referrals.<sup>50</sup>

Mr. Soriano is a former PAGCOR consultant, named by Mr. Camacho as a close business associate and “bag man” for Mr. Genuino.<sup>51</sup> Mr. Soriano is also named as a respondent in the PAGCOR Referrals.<sup>52</sup> As of the latest information filed with the Philippines Securities and Exchange Commission in 2002, Mr. Soriano was a 20% shareholder and an officer/director of Platinum,<sup>53</sup> identified above as a 60% shareholder in Eagle II. If Mr. Soriano still held the same stake in Platinum when it acquired its share of Eagle II in 2009, then he became an effective owner of 12% of Eagle II and approximately 7% in Eagle I.

**B. Apparent Evasion of Republic of Philippines Legal Requirements**

As described in the preceding section, Mr. Okada caused various legal entities to be incorporated in the Philippines, in order to develop his casino resort project there, over time replacing the original incorporating Filipino shareholders with combinations of foreign shareholders affiliated with or controlled by him and associates of then-PAGCOR Chairman Genuino. As discussed below, there are constitutional and statutory requirements in the Republic of the Philippines requiring that purchasers of land be Philippines citizens or Filipino-owned legal entities, and that legal entities conducting business in the Philippines, with certain exceptions, be at least 60% Filipino owned.

In 2008, Eagle I purchased various tracts of land near Manila Bay totaling approximately 30 hectares at a total price of PHP 13,527,637,941.00 (approximately US 314,953,000.00) for the development of the project in Entertainment City Manila.<sup>54</sup>

At FSS’ request, Lazaro prepared an analysis and opinion on the validity of Eagle I’s ownership of these properties, in light of the aforementioned provisions of the Philippines Constitution and applicable statutes.<sup>55</sup> The analysis included a detailed review of the ownership and capitalization of Eagle I and associated entities described in the preceding section. The following is a summary of pertinent findings of the Lazaro analysis.

<sup>49</sup> Articles of Incorporation of Ophiuchus. [See Appendix]

<sup>50</sup> See PAGCOR Referrals. [See Appendix]

<sup>51</sup> Interview of M. Camacho, Dec 13, 2011.

<sup>52</sup> See PAGCOR Referrals. [See Appendix]

<sup>53</sup> Articles of Incorporation of Platinum, as amended June 10, 2002. The 2001 Articles of Incorporation list four (4) additional 20% shareholders, identified as Filipino nationals. Because Platinum has not filed a GIS since 2002, the current ownership and control of Platinum is unknown. [See Appendix]

<sup>54</sup> Numbered Transfer Certificates of Title (“TCT”) for Eagle I purchase of land tracts in Parañaque City, Philippines, dated August 19, 2008. [See Appendix]

<sup>55</sup> M. M. Lazaro & Associates. Memo re “Validity of Eagle I’s Ownership of Real Estate Properties” (“Ownership Memo”), Jan 2012. [See Appendix]

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A review of the 2009 Financial Statement of Eagle I disclosed that the funds used to purchase the land tracts appear to have been advanced by Molly.<sup>56</sup>

Platinum, the 59.99% owner of Eagle II, has filed no records with the Philippines Securities and Exchange Commission indicating that its paid-in capital ever increased beyond the original PHP 62,500, despite its amended Articles of Incorporation indicating that its authorized capital stock was increased from the initial PHP 1,000,000.00 to PHP 24,000,000.00.<sup>57</sup> Nor is it known today what person(s) or entities have controlled Platinum since incorporation in 2001.

The 1987 Constitution of the Philippines requires that only Philippines citizens or corporations with at least 60% of their capital stock owned by Filipinos are qualified to acquire land in the Philippines.<sup>58</sup> The Philippines Foreign Investment Act further requires that for a corporation to be considered a Philippines national, at least 60% of its capital stock outstanding and entitled to vote must be owned and held by citizens of the Philippines.<sup>59</sup>

Whenever facts or circumstances create doubt as to whether the ownership of 60% of a corporation is truly Filipino, Philippines Securities and Exchange Commission case law has held that a stringent examination of the true ownership of the voting stock of the subject corporation and of the true ownership of the voting stock of all successive layers of corporate ownership should be conducted. The application of this stringent standard is known as the "Grandfather Rule."<sup>60</sup>

Serious doubts are therefore raised about the actual Filipino equity of Eagle I, because of the appearance that Eagle I and Eagle II were created purposely to "...circumvent the constitutional restriction on foreign ownership of land."<sup>61</sup> Lazaro bases this assertion on its conclusion that "...Platinum appears to be merely a shell corporation used to satisfy the Filipino equity requirement."<sup>62</sup> Application of the Grandfather Rule would therefore be appropriate.

Applying the Grandfather Rule, Lazaro calculates the true percentage of Filipino versus foreign equity in Eagle I as illustrated in the following table:<sup>63</sup>

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<sup>56</sup> Ibid, p. 2. [See Appendix]

<sup>57</sup> Ibid, pp. 5-6. [See Appendix]

<sup>58</sup> Ibid, p. 8. [See Appendix]

<sup>59</sup> Ibid, pp. 9-10. [See Appendix]

<sup>60</sup> Ibid, pp. 11-14. [See Appendix]

<sup>61</sup> Ibid, p. 14. [See Appendix]

<sup>62</sup> Ibid, pp. 14-15. [See Appendix]

<sup>63</sup> Ibid, p. 15. [See Appendix]



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Shareholder	Direct	Indirect	Total Filipino investment in Eagle I	Total Foreign investment in Eagle I
Aruze USA	40% of Eagle I	24% (40% of 60% total holdings of Eagle II in Eagle I)		64%
Platinum*		36% (60% of 60% total holdings of Eagle II in Eagle I)	36%	

\*As noted above, Platinum has failed to file its annually required GIS with the Philippine SEC since its inception in 2001. The calculations in the above table prepared by Lazaro assume the "best case" scenario (for Platinum), i.e., that it is a truly 100% Filipino-owned corporation. If Platinum's actual Filipino ownership is less than 100%, then the percentage of Filipino investment in Eagle I would be correspondingly even less than calculated in the table.

Lazaro concludes that "...the foregoing shareholder structure appears to have been formulated by the parties as a legal scheme to justify the qualification of Eagle I to own real estate properties. The scheme employed...gives Aruze USA, Inc....a convenient vehicle to justify its ownership...in circumvention of the constitutional restriction on the foreign ownership of land."<sup>64</sup> Lazaro goes on to conclude that the apparent shareholder structuring scheme outlined above may also constitute a violation of Commonwealth Act No. 108, commonly known in the Philippines as the "Anti-Dummy Law."<sup>65</sup> If convicted of a violation of this law, stockholders of Platinum and of Aruze USA, Inc. who profited from the scheme would face a sentence of imprisonment of not less than five years nor more than fifteen years.<sup>66</sup>

From the foregoing discussion, there is substantial evidence and credible legal opinion indicating that the ownership structure of Eagle I and Eagle II may subject Mr. Okada, along with his associates and companies, to civil as well as criminal sanctions under Philippine law.

<sup>64</sup> Ibid, p. 16. [See Appendix]

<sup>65</sup> Ibid, pp. 16-17. [See Appendix]

<sup>66</sup> Ibid, p. 17. [See Appendix]

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**3. Apparent FCPA Violations Regarding Philippine PAGCOR Officials at Wynn Resort Properties**

FSS has reviewed records of the Aruze City Ledger Account, through which Mr. Okada and Universal charge expenses for lodging, entertainment and other incidentals incurred at Wynn Resorts facilities against funds deposited into the account by Universal, and available underlying documentation furnished by Wynn Resorts management. The table below highlights thirty-six (36) separate instances, from May, 2008, through June 2011 (more than a three (3) year period), when Mr. Okada, his associates and companies made payments exceeding US 110,000, which directly benefitted senior PAGCOR officials, including two chairmen and their family members.

Name	Relationship to PAGCOR/Phil. Gov't.	Location(s) and Date(s) of Stay(s)	Total Charged to Aruze City Ledger Account (in US)
Efraim C. Genuino	Former PAGCOR Chairman (February 2001 to June 30, 2010)	WM June 6-9 2010	1,870.64
Cristino L. Naguiat Jr.	PAGCOR Chairman (July 2, 2010 to Present)	WM Sep 22-26 2010	See Suzanne Bangsil <sup>67</sup>
		WLV Nov 15-20 2010	5,380.86
		WM June 6-10 2011	3,909.80
Dinner (Naguiat Party)	Chairman (PAGCOR)	WM Sep 24 2010 (Hosted by and charged to Kazuo Okada)	1,673.07
Maria Teresa Socorro Naguiat	Wife of PAGCOR Chairman Cristino L. Naguiat Jr.	WM June 6-10 2011	1,039.31
Suzanne Bangsil <sup>68</sup>	Wife of Rogelio Bangsil, PAGCOR	WM Sep 22-26 2010	50,523.22
Jose Miguel	Husband of former	WLV Nov 12-17	4,642.40

<sup>67</sup> Chairman Naguiat did not identify himself and Mr. Okada's representatives insisted that his stay there be "Incognito." Accordingly, the bulk of the charges for the trip are reflected on the City Ledger Account as attributable to "Suzanne Bangsil," the wife of Rogelio Bangsil, a senior PAGCOR official and Chairman Naguiat's employee. However, interviews, photo identifications and documentary evidence clearly establish that Chairman Naguiat was the "Incognito" guest and the direct beneficiary of these payments.

<sup>68</sup> Investigation has in fact determined that Chairman Naguiat was registered as an "Incognito" VIP guest under Suzanne Bangsil's reservation. Therefore, this US 50,523.22 was paid for Chairman Naguiat's benefit.

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"Mike" Arroyo	Philippines President Gloria M. Arroyo (Jan 20 2001 – June 20 2010)	2009	
Imelda Dimaporo	PAGCOR Board Member	WM June 8-10 2010	891.44
Philip Lo	PAGCOR Board Member	WLV April 29 2009 – May 3 2009	1,755.25
Manuel Roxas	PAGCOR Board Member	WLV April 2009 <sup>69</sup>	253.75
		WLV April 29 2009 – May 3 2009	1,686.95
Susan Vargas	PAGCOR Board Member	WM June 8-10 2010	480.17
Jose Tanjuatco	PAGCOR Board Member (July 19 2010 to Present)	WLV Nov 15-18 2010	2,148.57
Rogelio J. B. Bangsil	Officer in Charge of PAGCOR Gaming Department	WM Sep 24-26 2010	1,149.04
		WM June 6-12 2011	2,955.23
Rodolfo Soriano	PAGCOR Consultant	WM June 3-7 2008	1,186.08
		WLV Nov 12-17 2009	4,228.00
		WM June 7-10 2010	1,104.06
		WM Aug 18 2010	368.06
Olivia Soriano	Relative of Rodolfo Soriano	WLV May 2008	975.55
Anthony F. "Ton" Genuino <sup>70</sup>	Son of Efraim C. Genuino; Mayor of Los Baños (2010 to Present)	WLV Sep. 2008	2,386.26
		WLV Oct 2008	2,326.49
Rafael Francisco	PAGCOR COO and President	WLV Nov 12-17 2009	4,360.16
		WM June 7-11 2010	935.21

<sup>69</sup> When the "Dates of Stay" in this table were not readily available, the month and year that the charges were entered in the City Ledger Account are used.

<sup>70</sup> See PAGCOR Referrals (Anthony Genuino is named as a respondent). [See Appendix]

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Emelio Marcello	PAGCOR Consultant	WLV Nov 12-17 2009	1,181.60
		WM June 7-9 2010	471.51
Carlos Bautista	PAGCOR VP Legal	WM June 6-10 2010	1,049.69
Mario Cornista	PAGCOR Consultant	WM June 7-9 2010	600.02
Rene Figueroa	PAGCOR Executive VP	WM June 7-10 2010	646.76
Ernesto Francisco	PAGCOR Executive Committee and Casino General Manager	WM June 7-10 2010	797.17
Edward King	PAGCOR VP Corporate Communications	WM June 7-10 2010	767.71
Transportation	PAGCOR Delegation	WM Aug 2010	462.42
Jeffrey Opinion	Member of Naguiat Party	WM Sep 24-26 2010	906.61
Ed de Guzman	PAGCOR Executive Committee, AVP Slots	WM Jun 6-12 2011	3,421.79
Gabriel Guzman	Probable relative of Ed de Guzman (had adjoining room)	WM Jun 6-12 2011	1,391.71
(Thadeo) Francis P. Hernando <sup>71</sup>	PAGCOR VP, Licensed Casino Development Dept.	WM Jun 8-10 2011	709.72
<b>TOTAL</b>			<b>110,636.36</b>

The total in the above table represents charges from the Aruze City Ledger Account that are readily identifiable as incurred directly by officials and consultants of PAGCOR,<sup>72</sup> their family members and close associates, including Jose Miguel Arroyo, the then-First Gentleman of the Republic of the Philippines, husband of Philippine President Gloria Arroyo. Through a review of the Aruze City Ledger Account for statement periods March 2008 through November 2011, FSS has calculated that total charges to the account for that period, attributable to

<sup>71</sup> This is the same PAGCOR official who denied the FSS request for documents in December 2011, including a copy of the Provisional License Agreement. See footnote 31.

<sup>72</sup> In order to establish the PAGCOR affiliation of some of the individuals listed in this chart, various sources were consulted, including the PAGCOR website, internet news articles and the PAGCOR Referrals.

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PAGCOR officials, employees, consultants, their associates and family members, exceed USD 110,000.<sup>73</sup>

FSS investigators interviewed members of the Wynn Macau management team, who furnished the following relevant information regarding a visit to that property in September 2010 by then and current PAGCOR Chairman and CEO Cristino L. Naguiat, Jr., his wife, three children, nanny and other PAGCOR officials, whose four-day stay at Wynn Macau was paid for via the Aruze City Ledger Account:

- September 20, 2010: Yoshiyuki Shoji of Universal, in an e-mail to Angela Lai of Wynn Macau, requests reservations for "Rogelio Bangsil (Guest Representative) & Others." Mr. Shoji requests Encore Suite or "more gorgeous room, such as Villa," and "the best butler" for unnamed person in group, who is "VIP for Universal." Mr. Shoji states that guests other than Bangsil should not be registered, that all charges should be posted to Universal's City Ledger,<sup>74</sup> and that "Mr. Okada would like them to experience the best accommodations and services at Wynn Macau."<sup>75</sup> The communication makes no reference to PAGCOR or the government affiliation of the guests.
- September 20, 2010: In an e-mail to Wynn Macau President Ian Coughlan and others, Ms. Lai informs Mr. Coughlan of the reservation and that checks of websites indicate that Mr. Bangsil is in charge of PAGCOR's gaming department.<sup>76</sup>
- September 20, 2010: In an e-mail to Mr. Shoji, Ms. Lai advises that Wynn Macau is checking on availability of the requested upgrade and that Macau law requires that all room occupants be registered, and requests that all guest names be furnished in advance of or at the time of registration.<sup>77</sup>
- September 22, 2010: In an e-mail to Wynn Macau President Ian Coughlan, Wynn Macau Senior Vice-President – Legal Jay M. Schall advises Mr. Coughlan of

<sup>73</sup> See City Ledger Account. [See Appendix]

<sup>74</sup> When Mr. Shoji set up the City Ledger Account for Mr. Okada in 2008, he asked whether the customer name and amount paid would be made public. He was advised that such information would not become public. Email response from Kim Sinatra to Shoji, dated February 8, 2008. [See Appendix]

<sup>75</sup> E-mail from Y. Shoji to A. Lai, September 20, 2010 [See Appendix]; interview of A. Lai, January 4, 2012.

<sup>76</sup> E-mail from A. Lai to I. Coughlan, September 20, 2011 [See Appendix]; interview of A. Lai, January 4, 2012; interview of I. Coughlan, December 29, 2011. It should be noted that according to an article in Manilatimes.net, published February 2, 2012, Rogelio Bangsil has recently been transferred to the PAGCOR international marketing department after a probe that found the government losing PHP 160 million in government run casinos to a Mr. Liu. [See Appendix]

<sup>77</sup> E-mail from A. Lai to Y. Shoji, September 20, 2010 [See Appendix]; interview of A. Lai, January 4, 2012.

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PAGCOR's 100% government ownership and of Mr. Bangsil's position there. He writes "Bangsil, the guest of Mr. Okada, is a top five (if not 3) officer."<sup>78</sup>

- September 22, 2010 (14:00): Wynn Macau sends 1 Rolls Royce and 1 Elgrand to the airport, along with Masato Araki, Special Assistant to Mr. Okada; and Kenichiro Watanabe, another Universal associate, to meet arriving party, who arrived on Philippine Airline Flight 352 from Manila. They return with Chairman Cristino L. Naguiat, Rogelio Bangsil and Jeffrey Opinion at 14:45.<sup>79</sup> Only Mr. Bangsil furnishes his name upon registration. Ms. Lai and Wynn Macau VIP Services Manager Beatrice Yeung thereafter checks PAGCOR website and identifies Chairman Naguiat's name from his picture there.<sup>80</sup> Ms. Yeung's log and ongoing entries refer to "[I]ncognito (Mr. Naguiat, Cristino L.)."<sup>81</sup>
- Chairman Naguiat occupies Villa 81, the most expensive accommodation at Wynn Resorts Macau (about 7,000 square feet in size, which then cost about US 6,000 per day and is mostly reserved for "high rollers").
- September 22, 2010: the Wynn Encore log book reflects "Incognito (Mr. Naguiat) stayed in Villa 81 Master Bedroom 1."<sup>82</sup>
- September 23, 2010 (10:00): Mr. Araki advises Ms. Yeung that Chairman Naguiat plans to have lunch with Miss Pansy Ho at MGM.<sup>83</sup>
- September 23, 2010 (14:04): Jay Schall sends an email to Wynn Macau corporate security to check Worldcheck, as a rush job, for Cristino L. Naguiat Jr., Chairman and Chief Executive Officer of PAGCOR.<sup>84</sup>

<sup>78</sup> E-mail from J. Schall to I. Coughlan, September 22, 2010 [See Appendix]; interview of J. Schall, January 3, 2012; interview of I. Coughlan, December 29, 2011.

<sup>79</sup> Wynn Macau Manager – Encore Logbook, September 22, 2010. [See Appendix]

<sup>80</sup> Interviews of Beatrice Yeung, January 4, 2012 and February 1, 2012; interviews of Angela Lai January 4, 2012 and February 2, 2012.

<sup>81</sup> Wynn Macau Manager – Encore Logbook, September 22, 2010. [See Appendix]

<sup>82</sup> Ibid. [See Appendix] During subsequent visits, Chairman Naguiat was identified as "Naguiat," though he was identified during his initial visit as "incognito." The negative inference to be drawn is an attempt to hide the payment of extremely costly expenses by a corporation connected with a regulated entity. The fact that he had only recently become chairman may have been a factor in his desire to keep his identity secret.

<sup>83</sup> Miss Ho is the daughter of Hong-Kong and Macau-based businessman Stanley Ho. Though Nevada gaming regulators found Miss Ho to be a suitable business partner for MGM Mirage, see <http://www.lvrj.com/business/45462797.html>, New Jersey regulators recommended that she be found unsuitable as MGM Mirage's joint venture partner in Macau. See <http://www.newjerseynewsroom.com/state/mgm-mirage-chooses-pansy-ho-over-atlantic-city>. [See Appendix]

<sup>84</sup> Email from Jay Schall to Peter Barnes of Wynn Macau Corporate Security, dated September 23, 2010. [See Appendix]

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- September 23, 2010: In an e-mail to Ms. Lai, with a copy to Mr. Okada, Mr. Shoji requests that a credit of US 5,000 be extended to each person now staying at the Villa for shopping and gaming, up to a total of US 50,000. According to Mr. Shoji's email, the funds are to be advanced by Wynn Macau and charged to the Universal City Ledger account.<sup>85</sup>
- September 24, 2010 (13:45): MOP 80,000<sup>86</sup> (approximately US 10,000) is advanced from the Wynn Macau main cage to a Wynn Macau VIP Services employee (no longer employed at Wynn Macau), who in turn hands the money to Masato Araki, special assistant to president of Aruze USA, based upon instructions in the above referenced e-mail to Ms. Lai. The handover of funds is witnessed by Wynn Encore manager Alex Kong. The funds are charged to the Universal City Ledger Account.<sup>87</sup> MOP 15,000 of this sum is used to pay for a Chanel bag that Chairman Naguiat requested be purchased for his wife.<sup>88</sup>
- September 24, 2010 (Approximately 14:00): Mrs. Naguiat, her three children, Mrs. Bangsil and her daughter arrive at Wynn Macau.
- September 24, 2010 (15:45): Wynn Macau employees meet Mr. Okada and his assistant, Jun Yoshie, at the airport, transport them to Wynn Macau and escort Mr. Okada to room 5688.<sup>89</sup>
- September 24, 2010 (late afternoon): Mr. Coughlan receives a phone message from Mr. Yoshie that Mr. Okada would like to speak to him. Mr. Coughlan proceeds to an area near the Wynn Encore reception desk, where he meets Mr. Yoshie and Mr. Okada. They step into the Cristal Bar to talk, whereupon Mr. Okada, with Mr. Yoshie interpreting into English, tells Mr. Coughlan that the guests [referring to

<sup>85</sup> E-mail from Y. Shoji to A. Lai, September 23, 2010 [See Appendix]; e-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 24, 2010.

<sup>86</sup> MOP 80,000 was worth approximately US 9,816 at that time.

<sup>87</sup> Wynn Macau Manager – Encore Logbook, September 24, 2010 [See Appendix]; Wynn Macau "Miscellaneous Disbursement" record #013014, dated September 24, 2010 [See Appendix]; e-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012; interview of Alex Kong, February 1, 2012.

<sup>88</sup> Wynn Macau Manager – Encore Logbook, September 24, 2010. [See Appendix]. The Chanel bag was purchased by a Wynn Macau employee as per instructions by Mr. Araki, who works for Mr. Okada. The Wynn Macau employee gave the bag, store receipt and change to Mr. Araki to deliver to Mrs. Naguiat. Later, Mr. Araki stated that Mrs. Naguiat did not like the bag so he would give it to his own wife.

<sup>89</sup> Wynn Macau Manager – Encore Logbook, September 24, 2010 [See Appendix]; interview of B. Yeung, January 4, 2012.

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Chairman Naguiat's party] are very important to Universal, and that Mr. Okada wants Mr. Coughlan to insure that they are well cared for during their stay.<sup>90</sup>

- September 24, 2010 (17:00): Mr. Okada meets Chairman Naguiat (and approximately thirteen (13)) others in his party) for dinner at Okada Restaurant.<sup>91</sup> Mr. Okada hosts the dinner and the bill for \$1,673.07 is charged to his room.
- September 25, 2010 (05:45): Wynn Macau employees meet Mr. Okada outside his room and escort him to a limousine, which transports him to the Macau Ferry Terminal for 07:00 scheduled ferry departure to Hong Kong International Airport.<sup>92</sup>
- September 25, 2010: Beatrice Yeung describes in her log book "Movements – Incognito (Mr. Naguiat, Cristino L) / Mr. Bangsil, Rogelio / Mr. Opinion, Jeffrey (Mr. Okada's guests, Villa 81)."<sup>93</sup>
- September 25, 2010: Mr. Araki requests a second advance of MOP 80,000 for guests in Villa 81. Ms. Yeung accompanies Mr. Araki to the Main Cage and obtains the advance for him.<sup>94</sup> [This makes a total of MOP 160,000 advanced for the use of Chairman Naguiat and his party and charged to the Universal City Ledger Account per Mr. Okada's orders, as relayed in Mr. Shoji's e-mail.]
- September 26, 2010 (11:10): Mr. Araki departs the Wynn Macau Encore main entrance. He hands Ms. Yeung MOP 4100, returning what he says is the remainder of the two cash advances for Chairman Naguiat's party.<sup>95</sup>
- September 26, 2010 (13:15): Chairman Naguiat's party departs via Wynn Macau limousine to pick up Mrs. Naguiat from shopping and proceeds to the airport.<sup>96</sup>

<sup>90</sup> Interviews of Ian Coughlan, January 5, 2012 and February 2, 2012.

<sup>91</sup> Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 24, 2010. [See Appendix]

<sup>92</sup> Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 25, 2010. [See Appendix]

<sup>93</sup> Wynn Macau Manager – Encore Logbook, September 25, 2010. [See Appendix]

<sup>94</sup> Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 25, 2010 [See Appendix]; Wynn Macau "Miscellaneous Disbursement" record #013066, dated September 25, 2010. [See Appendix]

<sup>95</sup> E-mail from B. Yeung to I. Coughlan, September 27, 2010 [See Appendix]; Wynn Macau Manager – Encore Logbook, September 26, 2010 [See Appendix]; handwritten and signed note dated "9/26/10" with notation "MOP 4,100". [See Appendix]. The returned funds were equal to approximately US \$03.07 returned out of a total of approximately US \$19,632 provided.

<sup>96</sup> Interview of B. Yeung, January 4, 2012; Wynn Macau Manager – Encore Logbook, September 26, 2010. [See Appendix]



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- November 10, 2010: Mr. Shoji advises Mr. Coughlan in an e-mail of receipt of Wynn Macau's invoice for the late September 2010 visit, in which the Villa [for Chairman Naguiat] was charged at the amount of MOP 48,000. Mr. Shoji states that "I understand that Mr. Okada explained to you in Macau that they were our business guests and we made reservations for them and all charges are billed to our company. While some of charges [sic] will be reimbursed by them, room charges were planned to be borne by us as ordinary business expenses. Since the amount charged is too much and beyond the ordinary room charge, our company will be put in a very difficult position to give reasonable explanations if we are inquired by someone. I would appreciate if you would reconsider this matter and charge us the original rate (free upgrade to Villa) since the party directly dealing with [sic] on this matter is our company rather than the each [sic] individual guest." (Emphasis added).<sup>97</sup>
- On or about December 10, 2010: After e-mails and phone messages following Mr. Shoji's September 20, 2010 e-mail, Mr. Coughlan has a phone conversation with Mr. Shoji, in which he advises Mr. Shoji that, after internal Wynn Macau discussions, the final decision was that Wynn Macau would not provide the requested free upgrade for the Villa occupied during the September 2010 visit.<sup>98</sup>

The foregoing recitation of facts surrounding the September 2010 visit of Chairman Naguiat and his party to Wynn Macau demonstrates several significant elements of that visit:

- Mr. Okada considered these guests to be very important to his company.
- An effort was made from the outset to conceal Chairman Naguiat's identity and official status, to the point of not even wanting to advise Wynn Macau management and staff.
- With Mr. Okada's knowledge, Chairman Naguiat and his family were provided with approximately US 20,000 cash to use for gaming and also shopping
- Mr. Okada's representative sought to have Wynn Resorts fund a portion of the expenses incurred by Chairman Naguiat and his party, i.e., the free upgrade to a Villa.

<sup>97</sup> E-mail from Y. Shoji to I. Coughlan, November 10, 2010 [See Appendix]; interviews of I. Coughlan, December 29, 2011 and January 5, 2012.

<sup>98</sup> Interviews of I. Coughlan, December 29, 2011 and January 5, 2012; e-mail string between I. Coughlan and Y. Shoji and others, September 20 to December 9, 2010, subject: "Invoice and Statement for September Stay." [See Appendix]

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- Mr. Okada's representative expressed apprehension about Universal being able to justify the level of expenditures in the event of future inquiries.

There is evidence that Mr. Okada personally directed the payments and gifts provided to Chairman Naguiat and his family during their luxury stay at Wynn Macau's most expensive accommodation in September 2010. On October 5, 2010, Mr. Araki sent an email to Wynn Macau in order to arrange for a "second group of PAGCOR" checking into Wynn Macau on October 8, 2010. Clearly referring back to Chairman Naguiat's stay less than two weeks earlier, Mr. Araki writes: "Our Chairman Okada once again instructed us to take care of the group, but not like last time meaning that we will not take care of their room charges and others." (Emphasis added). Mr. Araki, who worked for Mr. Okada and personally supervised Chairman Naguiat's luxury stay at Wynn Macau, appears to confirm Mr. Okada's personal knowledge and control of the payments for Chairman Naguiat.<sup>99</sup>

It is significant to note that the leadership of PAGCOR, which is appointed by the President of the Republic of the Philippines, changed effective June 30, 2010, when Benigno S. Aquino III assumed office as President of the Republic of the Philippines, succeeding Gloria M. Arroyo. Former PAGCOR Chairman Efraim C. Genuino, an Arroyo appointee, left office effective June 30, 2010, and Cristino L. Naguiat, Jr., President Aquino's appointee, assumed the position of Chairman and CEO of PAGCOR on July 2, 2010.

A review of the Aruze City Ledger Account records reveals that, after June 30, 2010, there are no charges attributed to Mr. Genuino or any of his family members who collectively had three (3) separate stays at Wynn resorts (Macau or Las Vegas) while Mr. Genuino was PAGCOR Chairman.<sup>100</sup> Conversely, the Aruze City Ledger Account reflects charges for Chairman Naguiat, his family, and key PAGCOR staff from Chairman Naguiat's "new" administration only after Naguiat became PAGCOR Chairman. This sequence is evidence that the hosting of these persons at Wynn Resorts, and payments made for them through the Aruze City Ledger Account, are solely related to PAGCOR, the Philippines government agency in charge of licensing and regulating Mr. Okada's business interests.

It is also clear that, having already received approval from PAGCOR in 2008 for a Provisional Licensing Agreement to develop a gaming business in the Philippines, Mr. Okada had a strong and continuing motive through 2010 and beyond to maintain favorable relations with the Chairmen and senior officials of PAGCOR. As previously noted, PAGCOR's primary governmental mission is regulating gaming businesses in the Philippines. Mr. Okada's project in Entertainment City Manila was prominently featured in PAGCOR's annual reports for

<sup>99</sup> Email from Matt Araki to Beatrice Yeung dated October 5, 2010. [See Appendix]

<sup>100</sup> The sole exception identified, Rodolfo Soriano, Jr., is listed on the Aruze City Ledger Account as having a single room charge on August 18, 2010. [See Appendix]

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2008,<sup>101</sup> 2009<sup>102</sup> and 2010.<sup>103</sup> The 2010 Annual report features photos and messages from Chairman Naguiat, and several other members of the new PAGCOR leadership. The 2010 Annual report makes it clear that two of the proponents, Bloomsbury and the SM Consortium, are constructing their resorts and are expected to complete their first phase within 2014. The other two proponents (one of which is Tiger, the provisional licensee for Mr. Okada's casino project) are in the initial design stages and are expected to break ground in 2012.

The continuing coverage of Mr. Okada's Manila Bay Resorts project in PAGCOR's annual reports indicates that PAGCOR's interest in and oversight of this project did not stop with the granting of the Provisional Licensing Agreement in 2008. Indeed, the very nature of the Provisional Licensing Agreement requires continued oversight by PAGCOR officials. As Lazaro advised, the Provisional Licensing Agreement was issued in relation to the "Bagong Nayong Philipino Manila Bay Tourism City" project, which is also referred to as "PAGCOR City." PAGCOR City is envisioned to be a Las Vegas-style gaming and entertainment complex. The project was designed to attract proponents with established experience in the hotel and gaming business. PAGCOR released the "Terms of Reference," which detailed a list of requirements to which project proponents must conform in order to qualify for a PAGCOR license to operate within PAGCOR City.

The "Terms of Reference" section provides, in pertinent part, a mandatory Minimum Investment of US 1 Billion, consisting of both equity and debt, and the submission of an associated Project Implementation Plan within 120 days from signing of the Provisional License and approval by PAGCOR (Paragraph 4, Section II, Terms of Reference). Furthermore, within 30 days of signing of the Provisional License, proponents are required to submit a Performance Assurance Bond in the amount of PHP 100 Million to guarantee the completion of the project (Paragraph 8, Section II, Terms of Reference). Within 15 days of signing of the Provisional License, proponents are also required to open an Escrow Account (with an initial deposit of at least US 100 Million) through which funds for the project will pass. This Escrow Account must maintain a balance of at least US 50 Million. (Paragraph 9, Section II, Terms of Reference).

Specifically, paragraph 13 of the Terms of Reference states the following in relation to achieving a regular, non-provisional, Casino Gaming license:

<sup>101</sup> PAGCOR 2008 Annual Report, pp. 12-18, viewed January 25, 2012 at <http://www.pagcor.ph/annual-reports/annual-2008/pagcor-annual-report-2008.html>. [See Appendix]

<sup>102</sup> PAGCOR 2009 Annual Report, pp. 16-19, viewed January 25, 2012 at <http://www.pagcor.ph/annual-reports/annual-2009/pagcor-annual-report-2009.html>. [See Appendix]

<sup>103</sup> PAGCOR 2010 Annual Report, pp. 24-26, viewed January 25, 2012 at <http://www.pagcor.ph/annual-reports/annual-2010/pagcor-annual-report-2010.html>. [See Appendix]

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“13. Issuance of License

A Provisional License will be issued to the winning proponent effective for the duration of the project development period and shall not exceed the approved completion date of the whole project.

*The Regular Casino Gaming License will be issued upon completion of the Project and upon approval by PAGCOR of the report detailing the actual total cost of the Project to ensure the proponent's compliance with the approved project cost based on the Project Implementation Plan. The term of the License shall not exceed the term of PAGCOR as specified in RA 9487.*

No sub-license will be issued nor allowed.” (Emphasis added.)

Thus, a Regular Casino Gaming License will be issued by PAGCOR upon (1) completion of the Project and (2) compliance with the approved project cost as approved by PAGCOR, based on the previously submitted Project Implementation Plan, including all other conditions as may be stipulated in the Provisional License Agreement.<sup>104</sup> Clearly, PAGCOR maintains an active regulatory role over gaming businesses after the issuance of a provisional gaming license. An operator who has already been granted a provisional license, therefore, would have a powerful business incentive to maintain favorable relations with PAGCOR's Chairman and senior leadership.<sup>105</sup>

Finally, the PAGCOR officials with whom FSS spoke in December 2011 indicated that, upon “taking over” from the Genuino Administration in 2010, they conducted a review of previously granted gaming licenses to ensure that all issuance decisions had been done properly, indicating that the Naguiat Administration was exercising close review in monitoring of all licensees, including Mr. Okada.

<sup>104</sup> See research of Michelle Lazaro as expressed in her email dated January 30, 2012 to Mike McCall; See also “Terms of Reference” that were attached to the email. [See Appendix]

<sup>105</sup> A recent example of the extent of PAGCOR's continuing oversight of gaming operators can be found in the August 2011 issue of *Inside Asian Gaming* magazine. An article therein reported on claims by gaming operator Thunderbird Resorts, Inc. (“Thunderbird”) that PAGCOR had unlawfully attempted to force Thunderbird, through various allegedly selective enforcement actions, to renegotiate the revenue sharing agreement it had signed with the previous PAGCOR leadership under Mr. Genuino. See “Ball of Confusion,” dated August 10, 2011, *Inside Asian Gaming*, online edition, viewed January 26, 2011 at <http://www.asgam.com/features/item/1238-ball-of-confusion.html>. In the September 2011 issue, PAGCOR responded by making reference to various regulatory or enforcement functions it had been carrying out with regard to Thunderbird's casinos, up through the time that the dispute became heated. Among the functions mentioned were “resident monitoring teams” in Thunderbird casinos to “...guarantee the fair conduct of games...” as well as PAGCOR's serving of a notice of closure to Thunderbird in response to the disputed issues. See “Philippines Gaming Regulation—The Untold Story”, dated 23 September 2011, *Inside Asian Gaming*, online edition, viewed January 26, 2011. [See Appendix]. These statements by PAGCOR clearly indicate that PAGCOR maintains active regulatory monitoring of licensed gaming businesses in the Philippines and claims the authority to close down licensed operators.

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Mr. Okada's hosting and payments on behalf of PAGCOR Chairman Naguiat and his family at Wynn Macau, was most likely related to Mr. Okada's business interests in the Philippines, and would therefore constitute a prima facie violation of the FCPA both by Mr. Okada as well as by Aruze USA, Inc.

**4. Possible Pattern of FCPA Violations Regarding Korean Government Officials**

As stated previously, in recent years, Mr. Okada has been pursuing development of a resort complex in the Incheon Free Economic Zone in the Republic of Korea. Jong Cheol Lee, the Commissioner of the Incheon Free Economic Zone Authority, and apparently an Incheon government official, announced the signing of a Memorandum of Understanding on approximately October 27, 2011, between the Incheon Free Economic Zone ("IFEZ") and Okada Holdings Korea to develop a casino resort near the Incheon International Airport.<sup>106</sup>

A review of the Aruze City Ledger Account disclosed charges paid for Jong Cheol Lee and other guests of his party at Wynn Las Vegas and Wynn Macau for the period November 2010 to June 2011. Registration documents provided by Wynn Resorts disclosed annotations for Mr. Lee and three other guests, indicating: "Share with Incheon Free Economic Zone." According to the Aruze City Ledger Account, the following amounts were paid for government Lee and his party:

Name	Relationship to Incheon Free Economic Zone	Location and Date of Stay	Total Charged to Aruze City Ledger Account
Jong Cheol Lee	Commissioner	WLV Nov 16-18 2010	1,597.16
		WM June 2011	1,134.55
Woo Hyeung Lee	Unknown	WLV Nov 16-18 2010	843.89
		WM June 2011	1,083.22
Min Yong Choi	Unknown	WLV Nov 16-18 2010	507.50
Ki Dong Hur	Unknown	WLV Nov 16-18 2010	779.20
<b>TOTAL PAID</b>			<b>5,945.52</b>

These payments made for and on behalf of possible Korean government officials may be part of a continuing pattern by Mr. Okada and his associates to commit prima facie violations of the

<sup>106</sup> [http://english.visitkorea.or.kr/enu/bs/tour\\_investment\\_support/pds/content/cms\\_view\\_1516066.jsp?gotoPage=&item=&keyword=](http://english.visitkorea.or.kr/enu/bs/tour_investment_support/pds/content/cms_view_1516066.jsp?gotoPage=&item=&keyword=), viewed January 14, 2012 [See Appendix]. <http://blog.daum.net/ikoreatimes/60>, viewed January 14, 2012. [See Appendix]

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FCPA. However, further investigation is required in order to determine (i) the nature of Mr. Okada's relationship with these guests; (ii) whether these guests actually had a government affiliation at the time of their 2010 visits to Wynn Las Vegas and Wynn Macau; and, (iii) the status of Mr. Okada's gaming initiative in Korea.

**5. Mr. Okada's Continuing Refusal to Receive Wynn Resorts mandated FCPA Orientation Training and to Acknowledge Wynn Resorts Code of Conduct**

Mr. Okada's apparent practice and pattern of committing prima facie violations of the FCPA must also be reviewed in the context of his ongoing and likely future conduct as a majority shareholder and director of Wynn Resorts. Since August, 2011, Mr. Okada has failed to make himself available for requisite Wynn Resorts Board of Directors training regarding the FCPA and compliance. Not only has every other board member accepted and received such training, but attempts to accommodate Mr. Okada (including Japanese translation of the FCPA training materials and telephonic availability for the training) have failed.

Moreover, since August 2011, Mr. Okada has also failed even to acknowledge in writing Wynn Resorts Code of Business Ethics and Wynn Resorts Policy regarding Payments to Government Officials. Mr. Okada's continuing failure to perform this requisite review and agreement to comply with Wynn Resorts Ethics and anti-bribery rules and regulations create risk to Wynn Resorts and its board. Such non-compliance by Mr. Okada also suggests that he intends to continue his apparent practice and pattern of making FCPA prohibited payments on a going-forward basis. Any such future conduct would substantially enhance the risks to Wynn Resorts and compromise Mr. Okada's fiduciary duties to Wynn Resorts.

On August 5, 2011, Cheryl Palmer, the executive assistant to Kevin Tourek, sent out an email memorandum on Mr. Tourek's behalf to all board members stating that per compliance policy requirements, all members must acknowledge in writing on an annual basis having reviewed (and agreeing to comply with) two separate documents: (1) the Company's Code of Business Ethics and (2) Policy Regarding Payments to Government Officials.<sup>107</sup> A copy of the form was attached to the email, as was a copy of both the Code and the Policy. The email asked for the executed form to be returned prior to August 26, 2011. All of the members of the board, except for Mr. Okada, returned a signed copy of the acknowledgement. Mr. Okada was reminded, via emails to his representatives on a number of occasions,<sup>108</sup> as well as via a letter from Kevin Tourek, dated November 2, 2011, to provide an executed copy of the

<sup>107</sup> See email from Cheryl Palmer dated August 5, 2011. [See Appendix]

<sup>108</sup> See emails contained in email from Kevin Tourek to Robert Shapiro, Esq., dated October 24, 2011. [See Appendix]

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acknowledgement form no later than November 15, 2011.<sup>109</sup> Mr. Okada failed to meet this deadline and, as of the date of this report, has yet to provide a signed copy of the form.<sup>110</sup>

In addition to his failure to return the fully executed Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials Acknowledgment Form, which, as previously indicated, was sent out in August of 2011, Mr. Okada has yet to return a secondary acknowledgement form that was attached to the annual Directors' & Officers' Questionnaire ("D&O Questionnaire"). This form was sent out to each member of the board of directors on January 9, 2012, as part of the overall D&O Questionnaire packet.<sup>111</sup> The packet contained instructions to "sign where indicated by the *sign here tabs*" and asked that the 2012 D&O Questionnaire be returned in its entirety on or before January 27, 2012. The two places that required Mr. Okada's signature were (1) on page 26 of the D/O Questionnaire itself, and (2) on page 50 on the separate Code of Business Conduct and Ethics Acknowledgment Form that was part of the overall D&O Questionnaire packet. Though Mr. Okada returned the signature page (page 26) of the D&O Questionnaire itself on January 27, 2012,<sup>112</sup> (which was confirmed to FSS on February 7, 2012), the fact that he has yet to return the separate Code of Business Conduct and Ethics Acknowledgment Form (which he has unequivocally pledged to do by virtue of signing on the signature page of the D&O Questionnaire) is telling and is consistent with his refusal to provide an executed copy of the Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials Acknowledgment Form that was sent to him in August of 2011. Though Wynn Resorts did not send to Mr. Okada the Code of Business Conduct and Ethics and the Policy Regarding Payments to Government Officials attached to the D & O Questionnaire in Japanese language versions, which they did previously with respect to the code and policy sent out in August of 2011 after a request by Mr. Okada's attorney, Mr. Okada has never previously requested that the D & O Questionnaire itself be translated into Japanese. Mr. Okada was again reminded of his obligation to return the separate Code of Business Conduct and Ethics Acknowledgment Form (page 50 of the D&O Questionnaire packet) in an email from Roxane Peper to Mr. Okada's assistant, Takashi Matsui, on January 31, 2012.<sup>113</sup> A copy of the form was attached to the email for Mr. Okada's convenience. This form remains outstanding.

<sup>109</sup> See letter from Kevin Tourek to Mr. Okada, dated November 2, 2011. [See Appendix]

<sup>110</sup> In a letter dated December 1, 2011 to Robert Shapiro, Esq., outside counsel for Wynn Resorts, Gidon Caine, Esq., counsel for Mr. Okada, explained that the reason Mr. Okada did not sign the acknowledgment form was due to the fact that the materials had not been translated into Japanese. As of the date of submission of this Report, Mr. Okada has not yet submitted a signed copy of the acknowledgment form despite being provided with the requested translations, which were attached to a letter sent via email dated December 27, 2011 from Jeffrey Soza to Gidon Caine. [See Appendix]

<sup>111</sup> See Memorandum from Kim Sinatra to Board of Directors and Officers of Wynn Resorts, Limited, dated January 9, 2012, and 2012 Director's & Officers Questionnaire attached thereto. [See Appendix]

<sup>112</sup> See email from Takashi Matsui to Roxane Peper, dated January 27, 2012. [See Appendix]

<sup>113</sup> See email from Roxane Peper to Takashi Matsui, dated January 31, 2012. [See Appendix]

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On February 1, 2012, Barry Brooks, one of Mr. Okada's attorneys, contacted Kevin Tourek, senior vice president and general counsel with Wynn Resorts, via email regarding "address[ing] the request, forwarded to Mr. Okada under cover of a memorandum from Mr. Wynn, that Mr. Okada execute and return to Wynn Resorts, Ltd. ("Wynn Resorts") a form of acknowledgment ("Acknowledgment") in regard to the Wynn Resorts Code of Business Conduct and Ethics (the "Code"). Most importantly, I wanted to emphasize that Mr. Okada agrees, with a deep sense of commitment, with the principles set out in the Code and agrees that it is in the best interest of Wynn Resorts and its shareholders that he, as a director, be a leader in observing and advocating for those principles. Also, and in any case, Mr. Okada believes that the requirements of the Code, and the spirit of those requirements, are keys to the future success of Wynn Resorts."<sup>114</sup> In a follow-up phone call to that email, Mr. Brooks and Mr. Tourek discussed the ramifications of Mr. Okada not signing the policy, the possibility of interpretation issues, and concerns over whether Mr. Okada may have any conflict of interest issues. Mr. Brooks also asked for a copy of the D & O Questionnaire.<sup>115</sup>

**6. Mr. Okada, his associates and companies, Universal have pursued independently a casino gambling development in the Philippines since 2008.**

FSS interviewed Mr. Okada on February 15, 2012 and the results of that interview are set forth more fully in Section VI.<sup>116</sup> In this interview, Mr. Okada asserted that all his efforts in the Philippines prior to the change of presidential administration in the summer of 2010 were undertaken on behalf of and for the benefit of Steve Wynn and Wynn Resorts, and that he only undertook to develop a gaming business in the Philippines independently subsequent to the change of presidential administrations.

On December 20, 2007, Aruze Corp. issued a press release entitled "Business Realignment and Future Business Development." The press release stated the following:

"The Company looks to acquire the licenses necessary to operate a casino resort in the Asian region, including Macau, and to commence operation of a casino resort on its own over the next business year. . . . For this know-how, which is vital from a management perspective, the Company intends to enlist the full cooperation of Wynn Resorts, Limited's Steve Wynn in its future pursuits regarding this project. For the purpose of successfully operating a casino resort in the Asian Region on an independent basis, the Company has received agreement from Steve Wynn that he will supply all necessary support, including active personal exchange with Wynn Resorts, Limited. . . ."<sup>117</sup> (Emphasis added.)

<sup>114</sup> See email from Barry Brooks to Kevin Tourek, dated February 1, 2012. [See Appendix]

<sup>115</sup> See email from Kevin Tourek to Kim Sinatra, dated February 2, 2012. [See Appendix]

<sup>116</sup> Statements attributed to Okada during the February 15, 2012 interview are based on FSS' contemporaneous notes.

<sup>117</sup> See JASDAQ press release for Aruze Corp., dated December 20, 2007, entitled "Business Realignment and Future Business," available at: [http://www.universal-777.com/en/ir/releases/2007/20071220\\_e.pdf](http://www.universal-777.com/en/ir/releases/2007/20071220_e.pdf). [See Appendix]



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On April 25, 2008, Aruze Corp. issued another press release entitled "Casino Project in the Philippines." This press release stated the following:

"As announced in its 'Business Realignment and Future Business Development' press release issued December 20, 2007, ARUZE GROUP seeks to commence the operation of a casino resort in the Asian region, which shall be conducted independently by ARUZE CORP. . . . Out of the above mentioned elements, where essential management-based know-how is concerned, the Company intends to proceed with the project under the full guidance of Wynn Resorts, Limited's Steve Wynn."<sup>118</sup> (Emphasis added.)

The press release identifies the location of the planned casino as a plot of land adjacent to "Bagong Nayong Pilipino Manila Bay Tourism City."

The language in the press releases suggest that Universal's intentions from the inception of the project were to develop a gaming business independently, and not for the benefit of Steve Wynn or Wynn Resorts.

**7. Mr. Okada has stated that Universal paid expenses related to then-PAGCOR Chairman Genuino's trip to Beijing during the 2008 Olympics.**<sup>119</sup>

Mr. Okada was asked during his interview whether he met then-PAGCOR Chairman Genuino in Beijing during the 2008 Olympics. Mr. Okada stated that Universal's President Tokuda made the arrangements for Chairman Genuino to travel to the Olympics. Mr. Okada explained that Mr. Tokuda was involved with the setting of the travel itinerary. When Mr. Okada was asked if the travel arrangements were "paid by Universal," Mr. Okada responded "not 100% perhaps there were people certainly not all but I'm not familiar with the details." Mr. Okada was then asked "To your knowledge, did Universal pay any of the associated costs of any of the travel of Mr. Genuino?" Mr. Okada answered "I don't know whether or not the travel expense was paid by them. My understanding is that there was a certain amount of personal monies being spent from the attendees and participants including Chairman Genuino but I do not know details regarding this." Mr. Okada was then asked "But is it your knowledge that some of those expenses were paid by Universal?" Mr. Okada answered: "Regarding the individual payment of personal monies, whether before or after, it was Universal that put together all of the expenses."

Mr. Okada then explained that since Mr. Okada was previously invited to "one of the islands in the Philippines so in return well we decided that we would decide to do this in turn so I too would invite them as well. There was a time from where we had that understanding now that I recall. So I may have asked Mr. Tokuda to include this person [Genuino] as well." The

<sup>118</sup> See JASDAQ press release for Aruze Corp., dated April 25, 2008, entitled "Casino Project in the Philippines," available at: [http://www.universal-777.com/en/ir/releases/2008/20080425\\_e\\_pr2.pdf](http://www.universal-777.com/en/ir/releases/2008/20080425_e_pr2.pdf). [See Appendix]

<sup>119</sup> Attributions from Mr. Okada's interview are based on FSS contemporaneous notes.

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following question was then asked: "If there was a time that Genuino has invited you to the Philippines and in return for that you may have invited him or had some knowledge that Universal paid some of his expenses when he came to Beijing?" Mr. Okada responded: "I don't like to be invited more than what is necessary because that would mean that I am vulnerable and I don't like that. I was told that it was paid for and he insisted so I remember he had to be paid for in this way. So I remember that Mr. Tokuda said he should be included as well. I remember thinking that I had to return this in some way so I may have made that decision based on that memory." (Emphasis Added).

Later in the interview, Mr. Okada stated that Chairman Genuino appeared to have a "few people" with him at the Olympics and, "I asked my staff why wasn't he around and then my people said Mr. Genuino had a few people accompany him and he met with them to go shopping and once I heard that I do not recall now but again I don't have a clear recollection of his whereabouts."

**VI. Summary of Mr. Okada's February 15, 2012 Interview**<sup>120</sup>

Mr. Okada had four lawyers present over the course of the interview, including a Japanese interpreter/associate. Mr. Okada was given a full opportunity to answer all questions. He attended the interview voluntarily and at the end he was asked whether he wanted to explain anything else.

**A. Apparent FCPA Violations regarding Philippine PAGCOR officials.**

1. Mr. Okada admitted going to Macau on or about September 24 2010 to meet with PAGCOR chairman Naguiat at Wynn Macau. Mr. Araki called Mr. Okada on either September 24 or 23 to advise that Chairman Naguiat was at Wynn Macau.
2. Mr. Okada stated he flew to Macau from Japan for the sole reason of meeting Chairman Naguiat.
3. Mr. Okada stated the purpose of Chairman Naguiat's visit to Wynn Macau was for business – as a new PAGCOR Chairman, Naguiat wanted to better understand the casino business. Mr. Okada stated that a number of his Universal employees, including Araki, were at Wynn Macau in order to assist Chairman Naguiat in this regard.
4. Mr. Okada stated that when he got to Wynn Macau he asked to see Ian Coughlan, Wynn Macau CEO.
5. Mr. Okada asked to see and met with Ian Coughlan at Wynn Macau but denied telling Coughlan that the guests were Universal VIPs and that they should be treated well.

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<sup>120</sup> Certain sections of the report below are presented in an abbreviated form. See the attached notes of Mr. Okada's interview for a more expansive description. [See Appendix]

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6. Mr. Okada emphatically denied saying this and related that there is no way he would have said something to that extent regarding special care: "I would have said this is a person with a position with PAGCOR, I would have said be normal and don't do anything out of the ordinary."
7. Mr. Okada stated he attended a dinner for approximately ten (10) people at Wynn Macau and that Chairman Naguiat also attended.
8. Mr. Okada stated that either Araki, Shoji or Universal paid for the dinner
9. Mr. Okada said that he did not know whether any other PAGCOR officials attended the dinner.
10. Mr. Okada stated that he and Naguiat did not discuss any business at the dinner which would have been rude.
11. Mr. Okada stated that he believed Naguiat's wife was present at the dinner but that he was not introduced to her.
12. Mr. Okada stated he left early the next morning.

### **B. Mr. Okada's Knowledge of and Response to Chairman Naguiat's September 2010 stay**

1. Mr. Okada stated that sometime after September 2010 he learned from Universal President Tokuda that the cost of Chairman Naguiat's stay at Wynn Macau exceeded reasonable entertainment expenses.
2. Mr. Okada learned about the excessive September 2010 expenses from Takuda about three or four months after the events when the bills would come up.
3. Mr. Okada stated that he was never told the cost of Chairman Naguiat's Wynn Macau stay nor did he ask anybody that question.
4. Mr. Okada stated that he understood that Chairman Naguiat had stayed in the most expensive accommodation at Wynn Macau. But he said "I heard later on that he was in one of the more expensive rooms. I heard this in the context of it would be a problem regarding our corporate policy...."
5. Mr. Okada stated that Chairman Naguiat's wife was present at Wynn Macau. Mr. Okada did not know if his children were present.
6. Mr. Okada stated that he did not know that any cash had been provided to Chairman Naguiat.
7. Mr. Okada stated that he did not know that Universal employees had tried to hide the identity of Chairman Naguiat as a guest.
8. Mr. Okada stated that he did not know how long Chairman Naguiat had stayed at Wynn Macau.
9. Mr. Okada denied seeing two (2) emails from Shoji to Angela Lai at Wynn Macau, dated September 20<sup>th</sup> and 23<sup>rd</sup> 2010 respectively, which requested.

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reservations for a Universal VIP guest, "who would not be registered," and arrangements to provide up to 5,000 US credit for each person staying at Naguiat's Villa. Mr. Okada explained that although he saw his name in the email cc's, he would not have seen either email because for the most part he does not use his PC.

10. Mr. Okada stated that internal Universal rules do not permit the payment of cash to government officials. Mr. Okada stated that no stay in the Villa in Wynn Macau could cost US 50,000
11. Mr. Okada stated that internal Universal rules permitted the payment of reasonable entertainment expense for government officials but did not know what amount was permitted.
12. Mr. Okada stated that the cost of Chairman Naguiat's stay at Wynn Macau caused a "problem" for Universal and that as a result Araki was fired, and Shoji resigned after having been scolded by Mr. Okada.
13. Mr. Okada stated that he did not make any changes at his company or give anyone new instructions as a result of finding out about Naguiat's stay in September 2010.
14. Mr. Okada said that it was possible that Chairman Naguiat would be billed for the cost of the stay.
15. Mr. Okada said, when he was asked about a reference in a Shoji email to posting all expenses to the Universal City Ledger Account, that he lacked any knowledge of such an account and said "I wonder if the City Ledger is in reference to our internal policy, as long as it is under that ceiling...."

**C. Mr. Okada stated that he was aware of only one other guest stay at Wynn Macau that he believed was improperly paid by Universal.**

1. Mr. Okada stated only a few weeks ago he learned from President Tokuda that Anthony Genuino, son of former PAGCOR Chairman Genuino, had stayed at Wynn Las Vegas in September of 2008 and that Universal had paid US 2300 for his stay.
2. Mr. Okada stated that Genuino would be sent the bill for this cost
3. Mr. Okada denied any knowledge of other PAGCOR officials staying at Wynn Resorts from 2008 through June 2011 with Universal paying for their expenses.
4. Mr. Okada stated that he had just instructed President Tokuda of Universal to conduct an investigation into Universal's payment of entertainment expenses.
5. Mr. Okada blamed Shoji as the responsible party for these payments.
6. Mr. Okada stated that he yelled at Shoji for not reporting these matters to him and would have fired Shoji except that Shoji resigned. Mr. Okada stated that Tokuda

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did report these matters and Mr. Okada believed that Shoji was also in a position to know all about what had happened but had failed to report it to him.

7. Mr. Okada stated that Shoji was a trusted employee who had worked closely with him since 2002 and should have reported these matters to him.
8. Mr. Okada stated that they were just starting this investigation and that bills may be sent to certain of these guests for the expenses which Universal paid.
9. Mr. Okada especially blamed Mr. Shoji since he was the head of the company's compliance committee from 2002-2010.
10. Mr. Okada stated that he last met with Chairman Naguiat in the Philippines during January 2012 in order to seek land leasing approval from PAGCOR.
11. Mr. Okada stated that Universal had an expense policy but he didn't know what the amounts were. Mr. Okada stated that he was unfamiliar with the specific details of his compliance policy because he was too high within the company. He left it to others to handle the details of the policies.
12. Mr. Okada was asked a series of questions regarding about a dozen other PAGCOR officials who stayed at Wynn Macau or Wynn Las Vegas during 2010 and 2011 for whom Universal paid their expenses.
13. Mr. Okada denied having authorized any of these payments and said that he would not have authorized such payments if the guests were PAGCOR officials.
14. Mr. Okada stated that on one occasion he met Jose Miguel Arroyo, husband of Former Philippine President Gloria Arroyo, but did not know that Jose Arroyo had stayed at Wynn Las Vegas in November 2009, with Universal paying for his expenses totaling US 4,642.
15. Mr. Okada stated that he met Chairman Naguiat approximately 4 or 5 times since Naguiat's Chairmanship in June 2010 and that these meetings always involved official matters.
16. Mr. Okada stated that he told Tokuda in December of 2011 to investigate these matters.
17. Mr. Okada stated that December was the first time he asked Mr. Tokuda investigate these charges for Universal.
18. Mr. Okada stated further that Shoji was a trusted employee whom he had met with "very frequently." During the time period in September 2010 when Shoji was setting up the Naguiat visit, Shoji told Mr. Okada nothing about Naguiat.

#### **D. Okada statements to the Board of Directors Regarding doing business in Asia**

1. Mr. Okada stated that he could not specifically remember attending a Wynn Resorts Board of Directors meeting in February 2011.

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2. Mr. Okada stated that he did not remember attending a Wynn Resorts Board of Directors meeting where bribery was discussed.
3. Mr. Okada denied ever stating to Wynn Resort Directors words to the effect that "it was a matter of hiring the right people and that you must pay other people." He responded "absolutely not, that's a lie."
4. Mr. Okada denied telling fellow board members words to the effect that "you have to follow local customs and that's why you have consultants."
5. Mr. Okada also denied ever stating to fellow board members words to the effect "I wouldn't bribe someone but would have someone else bribe that person."
6. As to bribing someone in the Philippines, Mr. Okada stated that "there is no need to do that in the Philippines even because we are in the position to invest."
7. Mr. Okada also denied ever stating words to the effect that "In Asia, it is okay to give gifts to government officials." His response was "absolutely not."
8. Mr. Okada stated that he had been a member of the Wynn Resorts Board of Directors since 2005 or 2006. When asked about his duties or responsibilities as a director of Wynn Resorts, Okada stated that he had to "ensure socially just company, there should be no illegal activities, and that I have to help them be successful and grow as a company."
9. Mr. Okada was asked if he had ever read the Wynn Resorts Code of Conduct to which he responded, "No because it is in English, no I cannot."
10. Mr. Okada was asked if he had accepted Wynn Resorts Board of Director FCPA training in 2011, to which he replied that he had received some documents but sent them to his lawyers.

### **E. Doing Business in the Philippines**

1. Mr. Okada stated that prior to the new Philippine administration taking over in 2010, his efforts to conduct a gambling business in the Philippines were being done for Wynn Resorts and that he was reporting to Steve Wynn about these activities.
2. Mr. Okada said before the new Philippine administration in 2010 "All of the conversation between myself and Genuino was for the sake of explaining to Mr. Wynn."
3. Mr. Okada stated that a press release from Aruze Corp. dated April 25, 2008, that announced Aruze would independently operate a casino project in the Philippines, had not been presented to him for approval.
4. Mr. Okada stated that neither Steve Wynn nor Wynn Resorts had invested any money in the Philippine business initiative which he had been conducting since 2008,

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5. Okada stated that Universal had invested between US 300-400 million in 2008 to acquire the land for the Manila Bay project.
6. When asked whether Mr. Wynn or Wynn Resorts invested any money in the US 300-400 million purchase, Mr. Okada stated that "Wynn Resorts had no involvement whatsoever."
7. Mr. Okada stated that it was only after the new Aquino presidency in June of 2010 that he decided to pursue a Philippine gaming project independently.
8. Mr. Okada stated that this land had been acquired by a company called Eagle I Land Holdings in which Aruze USA had an ownership interest.
9. Mr. Okada stated that at the time of the land acquisition in 2008, Eagle I Land Holdings was 60% owned by Filipino nationals. However, when asked to identify the 60% ownership today, he responded "I know of them I know who they are but I don't remember their names."
10. Mr. Okada stated that he was aware of the Philippine legal requirement that land be 60% owned by Filipinos.
11. Mr. Okada stated that neither Tiger or Aruze had a provisional gaming license for the Philippines.
12. Mr. Okada does not know whether a deposit was made by Universal in order to pursue the Filipino gaming initiative.
13. It was his understanding that to get a gaming license in the Philippines you needed to do certain things beforehand and that he asked questions on Wynn's behalf as to what had to be done.
14. Mr. Okada stated that Platinum Gaming and Entertainment was a Philippine company run by Soriano.
15. Mr. Okada stated that he did not know Paolo Bombase or Manuel Camacho as shareholders of Eagle I and Eagle II.
16. Mr. Okada stated that Masato Araki may have lent his name as a stockholder to Eagle I and Eagle II but that Mr. Okada did not know the details. Mr. Okada stated that he did not know whether Manabu Kawasaki, who was another Universal employee, was a stockholder of Eagle I or Eagle II.

#### **F. Possible Payments by Universal to Korean Government Officials.**

Mr. Okada stated that he is interested in the IFEZ for possible investment. Mr. Okada stated that he personally set up arrangements in 2009 or 2010 for a Korean delegation from the IFEZ to visit Las Vegas. According to Mr. Okada, this delegation was led by a Mr. Lee, who was "seconded" to IFEZ by the Korean government. Mr. Okada invited this delegation to see the Venetian.

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Mr. Okada stated that "at the very beginning" he discussed the "issue of expense" and the Korean side said they had to pay for their own expenses as government officials. Mr. Okada stated that the Korean delegation stayed at Wynn Las Vegas and paid for their rooms. When told that Universal in fact paid for the Koreans' rooms, Mr. Okada stated "It's possible we paid in advance the first time but then they paid later. I am personally in charge of the Koreans." When Mr. Okada was then asked if he knew that was done he responded "I am certain it was done."

Mr. Okada later repeated that the Koreans paid for their own travel. When advised that Universal paid for Commissioner Lee and others to stay at Wynn Macau in 2011, and Wynn Las Vegas in 2010, Mr. Okada stated that "It may have been that we made a temporary payment to be reimbursed later but in any case for Korea all trips must be applied for with the City Hall and they need to get prior approval."

Mr. Okada later repeated that he did not authorize Universal to pay approximately US 6,000-worth of room charges for Commissioner Lee and other IFEZ officials for stays at Wynn Resorts. When asked if it would be against "Universal's policy" to pay such travel expenses, Mr. Okada repeated that the Koreans would pay for their own expenses. He added that "Maybe it was the case where Universal made a temporary payment to be reimbursed later and all this would be paid by 'admin official.'"

**G. Mr. Okada Instructs Mr. Tokuda to Conduct an Investigation**

Mr. Okada stated that since about 2008-2009, Universal has had both "ordinary" and "extraordinary" rules about paying entertainment expenses regarding government officials. However, he stated that he did not know the "specific details." Mr. Okada stated that "cash" could not be given but that he did not know the dollar amount limit for providing government officials with meals.

Mr. Okada stated that after learning from Mr. Tokuda about the excessive expenses paid by Universal for Chairman Naguiat's September 2010 stay at Wynn Macau, Mr. Okada did not take any steps or give instructions to prevent a recurrence. Indeed, Mr. Okada stated his belief that Universal's corporate policy as it exists today is "plenty on its own."

Mr. Okada stated that "within the last week or so" he learned from Mr. Tokuda that the son of then-PAGCOR Chairman Genuino stayed at Wynn Las Vegas in 2008 and that Universal had paid US 2,800 for his expenses. Mr. Okada said this was "inexcusable" and that he had given instructions to have him [Genuino] billed directly. Mr. Okada further stated that Mr. Tokuda had found "several more" of these instances but that Mr. Okada did not "know the details." Mr. Okada stated that in regard to Chairman Naguiat's stay at Wynn Macau, perhaps an invoice should also be sent to him as the customer.

Mr. Okada stated that "it was just yesterday" that he heard from Tokuda about "these issues being raised." After being asked what he knew about a list of PAGCOR officials whose



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stays at Wynn Macau and Wynn Las Vegas were paid by Universal from 2008 – 2011, Mr. Okada denied any knowledge of these events. However, Mr. Okada stated that “everything I believe [FSS] mentioned matches with what Mr. Tokuda is investigating right now. And I will have him write a paper that lists all the countermeasures and a progress report and what has been wrapped up and so forth.”

Mr. Okada stated that in approximately December 2011, he “clearly instructed” Mr. Tokuda to conduct an investigation about these matters. At the end of the interview, Mr. Okada stated that “I will look into all the expense that you have asked about and if it is someone who has an existing relationship I will for sure bill that person.”

## VII. Conclusions

The investigation has produced substantial evidence that directly relates to Mr. Okada’s suitability under Nevada law as both a major shareholder and director of Wynn Resorts.

Nevada Gaming Commission Regulations regarding individual suitability issues encompass, among other things, a person’s “good character, honesty and integrity,” and whether a person’s “background, reputation and associations will not result in adverse publicity for the State of Nevada and its gaming industry” (Section 3.090 of the NRS). The NRS also require that a covered person satisfy the Commission that such person has “adequate business probity” (Section 463.170, paragraph 3).

Both Aruze USA, a Nevada corporation, and Mr. Okada personally, as a Director, President, Secretary and Treasurer of Aruze Inc., are covered parties under the jurisdiction of the FCPA.

As set forth above, the investigation has produced substantial evidence that Mr. Okada, his associates and companies have apparently been engaging in a longstanding practice and pattern of committing prima facie violations of anti-bribery laws, particularly the FCPA.

The testimonial and documentary evidence appear to prove that, since at least 2008, Mr. Okada, his associates and companies have made over US 110,000 in payments to his chief gaming regulators (2) in the Philippines (PAGCOR), their families and associates. Mr. Okada is building a multi-billion dollar gaming business and operation in the Philippines.

The practice and means of making these payments varied slightly but were regularly and repeatedly arranged in the same manner. For example, between June 2008 and August 2010, former PAGCOR Chairman Efraim Genuino (February 2001 – June 30, 2010), his son and other PAGCOR government officials, were hosted by Mr. Okada, his associates and companies at either Wynn Resorts Las Vegas or Wynn Resorts Macau. Mr. Okada, his associates and companies would arrange and pay thousands of dollars to cover the expenses of Chairman

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Genuino, his son and other then-current PAGCOR officials in his party. These payments were made by Mr. Okada, his associates and companies, using the City Ledger Account, which contained an average balance of US 100,000 funded and replenished by Universal. International money transfers and the facilities of interstate commerce were used to make these payments.

There is substantial evidence to show that Chairman Genuino's June 2010 stay at Wynn Macau was due to the fact that he was then Mr. Okada's principal Philippine gaming regulator. This is also demonstrated by the fact that after Chairman Genuino left his PAGCOR office in June 2010, he and his family were no longer the beneficiaries of such payments at Wynn Resorts facilities.

However, as set forth above in greater detail, Mr. Okada's current chief Philippine gaming regulator, Chairman Cristino Naguiat (July 2, 2010 – present) and his family quickly succeeded Chairman Genuino as the beneficiaries of payments by Universal for stays at Wynn Resorts Las Vegas and Wynn Resorts Macau (September 2010 in Macau; November 2010 in Las Vegas; and June 2011 in Macau, just over seven (7) months ago).

These payments were made using Mr. Okada's City Ledger Account, as was done regarding payments on behalf of the former PAGCOR Chairman. The evidence further suggests that Chairman Naguiat's luxury stays at Wynn Resorts facilities were fully known to Mr. Okada, who actively involved himself in some of the arrangements. For example, Chairman Naguiat's September 22-26, 2010 stay at Wynn Resorts Macau luxury Villa 81, the most expensive accommodation at Wynn Resorts Macau (about 7,000 square feet in size, which then cost about US 6,000 per day), was intended by Mr. Okada and his associates to be kept secret and concealed within Wynn Resorts Macau records. Initially, Mr. Okada's associates arranging for Chairman Naguiat's September 2010 stay at Wynn Resorts Macau purposefully withheld Naguiat's name and had him registered as an "Incognito" VIP guest of Universal, utilizing the named reservation of "Rogelio Bangsil" (another then-senior PAGCOR official). Chairman Naguiat then stayed at the Wynn Resorts Macau for four days, together with his wife, three children and a nanny, without ever once introducing himself to the constantly attending Wynn Resorts Macau VIP service managers.

Mr. Okada's associate, who made this reservation for Chairman Naguiat, requested a "more gorgeous room, such as "Villa" and "the best butler," for this unnamed "VIP for Universal," who turned out to be the chief gaming regulator for the Philippines. The evidence also shows that on September 24, 2010, Mr. Okada personally made clear (via an interpreter) to Ian Coughlan, the Wynn Resorts Macau Executive Director and President, that Chairman Naguiat and his party were important guests and that Mr. Coughlan should make sure that his staff took good care of them. The evidence further shows that on the evening of September 24, 2010, Mr. Okada hosted a dinner at Wynn Macau for Chairman Naguiat (and approximately 13 others). The US 1,673.07 cost of this dinner was charged to Mr. Okada's room.

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The testimonial and documentary evidence also shows that despite deliberate attempts to conceal Chairman Naguiat's identity while a guest at Wynn Resorts Macau in September 2010, hotel staff, acting on their own, soon identified Chairman Naguiat by means of a photo from the PAGCOR website. Their interest in doing so was sparked by the fact that the senior PAGCOR guest known to them, Mr. Bangsil, exercised great deference to Chairman Naguiat, who the staff determined must be the 'boss'. Nevertheless, the VIP service providers continued to refer to Chairman Naguiat only as "sir," thereby following the wishes and directions of Chairman Naguiat and Mr. Okada's associates. The evidence also shows that several weeks after Chairman Naguiat's intended "Incognito" stay at Villa 81, Mr. Okada's associates became concerned about the high cost of Chairman Naguiat's luxury stay at Wynn Resorts Macau. Specifically, Mr. Okada's associate advised Wynn Resorts Macau that the amount being charged for Chairman Naguiat's stay was too much over an ordinary business expense. Mr. Okada's associate then asked if Wynn Resorts Macau "could reconsider the matter [Chairman Naguiat's stay] and charge us [Mr. Okada's company] the original rate [and free upgrade to a Villa] since the party directly dealing with on this matter is our company [Mr. Okada's company] rather than each individual guest [Chairman Naguiat]." Mr. Okada's associate further stated that "since the amount charged [for Chairman Naguiat] is too much beyond the ordinary room charge, our company [Mr. Okada's company] will be put in a very difficult position to give reasonable explanations if we are inquired by someone." (Emphasis added).

Despite Mr. Okada's associate's efforts to have Wynn Resorts Macau reduce these payments and assist in covering up the beneficial amounts received by Chairman Naguiat, Wynn Resorts Macau denied this request.

Mr. Araki's later email ("Our Chairman Okada once again instructed us to take care of the group [PAGCOR], but not like the last time....") to Wynn Macau, dated October 5, 2010, also tends to confirm Mr. Okada's personal knowledge and direction of the payments made on behalf of Chairman Naguiat and his family for their luxury stay at Wynn Macau for September 22-26, 2010.

The evidence also shows that on September 24-25, 2010, Mr. Okada's associates obtained a total of US 20,000 cash from Wynn Resorts Macau's main cage as "cash advances" for Chairman Naguiat, his family and party. This same associate of Mr. Okada returned approximately US 503 of this advance on September 26, 2010 as the remainder from Chairman Naguiat's party. Mr. Okada's City Ledger Account was again used to pay for this advance.

The evidence also shows that the PAGCOR-related payments made by Mr. Okada and his associates are not the result of any misunderstanding of the applicable anti-bribery laws, including the FCPA. Conversely, by his own statements and declarations to fellow Wynn Resorts Board members, Mr. Okada apparently believes that there is nothing wrong with making payments and gifts to government officials when doing business in Asia. When advised by fellow directors and Wynn Resorts lawyers that such payments are bribes strictly prohibited by

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the FCPA and other laws, Mr. Okada responded that third party intermediaries or “consultants” can be used to make the payments.

The best evidence of Mr. Okada's belief that it is permissible to make payments to government officials is his admission that Universal paid expenses for then-PAGCOR Chairman Genuino's trip to the 2008 Beijing Olympics. Mr. Okada explained that since Mr. Genuino had previously invited Mr. Okada to “one of the islands in the Philippines,” Mr. Okada and Universal's President Tokuda in turn had Universal pay for expenses related to Genuino's trip to Beijing, which Mr. Okada stated was arranged by President Tokuda. This admission by Mr. Okada is consistent with his February 24, 2011 statements to board members that there is nothing wrong with making payments and gifts to government officials.

The evidence about the corporate structures utilized by Mr. Okada and his associates to initiate his multibillion dollar gaming business in the Philippines also appears to demonstrate Mr. Okada's intent to do business as he desires, regardless of the applicable laws and regulations. FSS's examination of the corporate documents relating to Mr. Okada's gaming initiative in the Philippines appears to show that he has used a complex web of corporate structures and companies to evade laws which require Philippine nationals to own 60% interest in all real estate. A separate legal analysis by a Philippine attorney confirms this finding and suggests that Mr. Okada's Philippine gaming initiative has been set up in violation of applicable law.

Additionally, the preliminary evidence also shows that in connection with Mr. Okada's efforts to develop a gaming business in IFEZ, Mr. Okada and his associates may be engaging in the same pattern of proscribed payments to government officials. The preliminary evidence shows that in October 2011, Mr. Okada's company signed a Memorandum of Understanding with IFEZ to develop a casino resort near the Incheon International Airport. Preliminary information indicates that IFEZ is overseen by the Incheon Free Economic Zone Authority, apparently part of the City of Incheon government. Mr. Okada's City Ledger account reflects that from November 2010 through June 2011, four (4) individuals, including IFEZ Commissioner Jong Cheol Lee, had two stays at Wynn Resorts Las Vegas and Wynn Resorts Macau, where payments totaling US 5,945.52 were made on their behalf through Mr. Okada's City Ledger account. Preliminary internet research identifies Jong Cheol Lee as the current IFEZ Commissioner, a position he has held since July 2010. It is not clear at this preliminary stage i) whether Mr. Okada's announced gaming investment and operation within IFEZ has received any gaming licensing, and ii) whether the three (3) guests who accompanied Commissioner Lee were then Korean government officials.

The investigation has established that despite requests by Wynn Resorts since August 2011 that Mr. Okada acknowledge in writing that he has reviewed (and agreed to comply with) Wynn Resort's “Code of Business Ethics” and “Policy Regarding Payments to Government Officials,” Mr. Okada has failed to do so.

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Finally, Mr. Okada was interviewed by FSS on February 15, 2012 by FSS and was given the opportunity to present his version of the facts. Mr. Okada denied knowledge of Chairman Naguiat staying "incognito" at Wynn Macau in September 2010. He also denied knowledge that Mr. Shoji was actively involved in arranging for Chairman Naguiat's stay. Although Mr. Shoji's emails asking that Chairman Naguiat's identity be kept secret, and that Chairman Naguiat be provided with cash in connection with his visit, were copied directly to Mr. Okada, the latter stated that because he rarely uses his personal computer, he would not have seen such emails. Mr. Okada acknowledged flying to Macau on September 24, 2010 in order to visit Chairman Naguiat but denied telling Ian Coughlan that Chairman Naguiat was an important Universal guest who should be treated well. Conversely, Mr. Okada stated that there is "no way" he would have said something like that, but would have said "be normal and don't do anything out of the ordinary." The substantial evidence relating to Chairman Naguiat's September 2010 stay at Wynn Macau, including emails, Coughlan's statements, and the facts and reasonable inferences regarding this evidence, cast substantial doubt on Mr. Okada's credibility.

Mr. Okada also vehemently denied making statements to fellow board members to the effect that doing business in Asia requires and permits bribes to be made to government officials. Mr. Okada's denials are directly contradicted by many of his fellow board members.

Similarly, Mr. Okada insists that all of his efforts to establish a gambling business in the Philippines prior to 2010 were undertaken solely on behalf of Wynn Resorts. His insistence is largely contradicted by the actions which he undertook. First, Mr. Okada and Universal invested US 300-400 million to buy property in the Manila Bay Entertainment Zone, which was to be used for his gaming operation. Mr. Okada admitted that Wynn Resorts had "no money involved in this investment." Secondly, Mr. Okada and Universal set up an elaborate corporate structure in order to initiate, and operate in the future, a multimillion dollar casino operation. Wynn Resorts had no participation in any of these corporate initiatives or structures, all of which were controlled by Universal and Mr. Okada. Third, the provisional gaming license, which is required in order to establish a gaming business in the Philippines, was procured by Mr. Okada and his companies, without any relation to Wynn Resorts. Finally, when shown an April 25, 2008 Aruze Corp. press release, which states that the Aruze casino operation will be independently developed by Aruze with the mere intent that Wynn Resorts help guide its project, Mr. Okada denied any knowledge of this press release.

In sum, the substantial evidence developed by this investigation and set forth above, based on witness interviews, public information, documentary and electronic data, provide the Compliance Committee and Board of Directors a factual basis to review Mr. Okada's continued suitability to be a major shareholder and director of Wynn Resorts.

TRAN

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

WYNN RESORTS LIMITED	.	
	.	
Plaintiff	.	CASE NO. A-12-656710-B
	.	
vs.	.	
	.	DEPT. NO. XI
KAZUO OKADA, et al.	.	
	.	
Defendants	.	<b>Transcript of</b>
	.	<b>Proceedings</b>
. . . . .	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 4**

MONDAY, AUGUST 21, 2017

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

RAPP 0090

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
ROBERT J. CASSITY, ESQ.  
BRYCE KUNIMOTO, ESQ.  
DAVID KRAKOFF, ESQ.  
ADAM MILLER, ESQ.  
DONALD JUDE CAMPBELL, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, AUGUST 21, 2017, 10:05 A.M.

2 (Court was called to order)

3 THE COURT: Good morning. Is Mr. Schall here?

4 MR. BICE: He is, Your Honor.

5 THE COURT: Come on up, sir. It's a different  
6 courtroom. This one looks more traditional.

7 JASON MARTIN SCHALL, DEFENDANTS' WITNESS, SWORN

8 THE CLERK: Thank you. Please be seated. And  
9 please state and spell your name for the record.

10 THE WITNESS: Jason Martin Schall, J-A-S-O-N  
11 M-A-R-T-I-N S-C-H-A-L-L.

12 DIRECT EXAMINATION

13 BY MR. PEEK:

14 Q Good morning, Mr. Schall.

15 A Good morning.

16 Q Thank you for coming back from Macau.

17 A Pleasure.

18 Q When we were here last we had been talking about  
19 some of the Wynn privilege documents. Remember that?

20 A Yes.

21 Q And where we left off was Exhibit 719, and then we  
22 were on page 219 of that exhibit.

23 MR. PEEK: And if we could bring it up, please,  
24 Nick. In the middle of that page you'll see the document  
25 number, which I think is 39328 then priv. Do you see that,



1 Nick? Are you on the right page, Nick, or not? There you go.

2 THE WITNESS: 9328?

3 BY MR. PEEK:

4 Q Yeah.

5 A Okay.

6 Q And remember that then we also talked that that  
7 document had been put on a cross-reference chart. Do you  
8 remember the cross-reference chart that we talked about?

9 A I remember.

10 Q Okay. And that is Exhibit I think 731, page 42.  
11 And that appears at about the top quarter of the page.

12 MR. PEEK: So you see the 39328 there, Nick? Can  
13 you see it? You're up a little bit, Nick, about -- right  
14 there.

15 BY MR. PEEK:

16 Q So let me kind of go back to first of all the  
17 description of the document. As it appears in Exhibit 719 it  
18 appears to be a document called draft agreement protected by  
19 Macau Special Administrative Region Law 16-201, Section 1,  
20 Article 16, re concession agreement. Do you see that?

21 A Yes.

22 Q Okay. Becky Quinn is an administrative assistant at  
23 Wynn Resorts; correct?

24 A I don't know her.

25 Q You don't know her.

1           A     Correct.

2           Q     Okay. Well, let's look at Exhibit 719, 638, just so  
3 that we can be on the same page. And it's what we call -- we  
4 as lawyers call a player list. And we see on there the name  
5 Becky Quinn. You see that? It's about halfway down or more  
6 of the page.

7           A     Yes.

8           Q     And what does it say Becky Quinn is?

9           A     Administrative assistant.

10          Q     Yeah. So did you think that Becky Quinn was  
11 drafting summaries of legal -- well, first of all, she was the  
12 -- apparently the author of a draft agreement that we saw  
13 previously. The first description that Wynn gave us she was  
14 the author of this draft agreement. And that we know appears  
15 on 719, 219. She appears to be the author, this  
16 administrative assistant; correct?

17          A     Well, the column says "Author/From."

18          Q     Okay. So she was one or the other. And there's no  
19 recipient, either, is there?

20          A     No.

21          Q     Okay. And then now she's identified again as author  
22 and from, as you say, in this new Exhibit I think it's 735 --  
23 no. Let me back up a minute. I'm a little ahead of myself.

24                 So when we talked about it -- before we get to Becky  
25 Quinn, when we talked about this with Becky Quinn previously

1 we also looked at that document that said it was converted, to  
2 which it was converted. Remember that, the conversion chart?

3 A I remember the chart.

4 Q And remember the conversion chart didn't match the  
5 description of the document. Remember that?

6 A I recall there was some issue with numbers.

7 Q There was some issue. And there was some issue with  
8 numbering, and there was some issue of whether it was the same  
9 document or not, because I think it was a 2006 document versus  
10 a 2002 document. Remember that?

11 A I don't remember that specifically.

12 Q You don't? That's fine. But you remember that  
13 there was some issue as to whether or not document described  
14 as something that Becky Quinn had authored or came from Becky  
15 Quinn was not the same document on the conversion chart. Do  
16 you remember that?

17 MR. BICE: Objection. Foundation.

18 THE COURT: Overruled. You can answer.

19 THE WITNESS: Okay. I don't remember that it was  
20 the Becky Quinn document, but I remember it was a document  
21 that had the issue you're describing.

22 BY MR. PEEK:

23 Q Okay. Now, the document here that goes from  
24 WYNNPRIV, and we have it up here, looks like it's 72 plus 11,  
25 83, about 84-page document that Becky Quinn either had drafted

1 or had sent to or something?

2 A Look, I'm not familiar --

3 Q You're not familiar with the numbering?

4 A If each numbering equals a page, then that's  
5 approximately correct.

6 Q I'll represent to you that each number does  
7 represent a page.

8 A Okay. I agree.

9 Q All right. So you remember that Ms. Spinelli told  
10 us that it got put back on a privilege chart? Remember that?  
11 Remember that discussion that we had? If you don't, that's  
12 fine.

13 A I remember Ms. Spinelli doing something. I don't  
14 remember exactly what it was.

15 Q Okay. Well, let's look at Exhibit 735.

16 MR. PEEK: And I don't know if that's in evidence or  
17 not, Your Honor.

18 THE CLERK: Still proposed.

19 MR. PEEK: Pardon?

20 THE CLERK: It's still Proposed.

21 MR. PEEK: Still proposed. So if we could bring up  
22 Exhibit 735, which --

23 THE COURT: No.

24 MR. PEEK: Bring it up to me. Can you do that, or  
25 do I have to -- can you separate me from the Court and

1 separate the witness from the Court.

2 THE COURT: So exclude Court.

3 (Pause in the proceedings)

4 MR. PEEK: Your Honor, I would offer Exhibit 735,  
5 which is a pleading in this case which is identified as the  
6 Wynn parties' twenty-first supplemental privilege log.

7 MR. BICE: Your Honor, we're going to object. This  
8 witness doesn't -- there's no personal knowledge and no  
9 evidence that the witness had any participation in the  
10 preparation of privilege log -- this privilege log.

11 And I'd also note for the Court that this is -- the  
12 Court has already addressed this attempt to now bring in  
13 documents that we asked them to identify by Bates number, any  
14 documents that you claim that you were prejudiced by or for  
15 which you claim any harm, in our request for production of  
16 documents. None of these documents that they're referencing  
17 here were identified. And we asked for those documents by  
18 Bates stamp, and the Court has already ruled you can't come in  
19 now after you've identified three documents and now start  
20 bringing up a host of whole new documents.

21 THE COURT: Thank you, Mr. Bice.

22 Anything else, Mr. Peek?

23 MR. PEEK: Your Honor, this is a pleading, so I  
24 wouldn't be able to identify a document. It's not a document.  
25 And then these are all privileged documents. I can't identify

1 privileged documents, because I don't know what they are.  
2 What I'm going to show the Court is this pattern and practice  
3 of Wynn Resorts to mask their productions.

4 THE COURT: Okay. If it's a pleading, then it  
5 couldn't have been something that you were responding to a  
6 request for production. But I'm not clear on the privileged  
7 nature of a pleading, since pleadings are typically filed in  
8 my file. So they may be protected under the sealing and  
9 redacting of court records policy by the Nevada Supreme Court,  
10 but certainly --

11 MR. PEEK: I don't think anything here was redacted,  
12 Your Honor. But I'm not trying to -- this is not, as they  
13 suggested the last time to you, my effort to try to get in  
14 highly confidential information in the form of testimony.

15 THE COURT: Is it a pleading?

16 MR. BICE: This is a pleading, Your Honor.

17 THE COURT: Lovely. Pleadings have different issues  
18 than privilege documents.

19 MR. BICE: Absolutely. But here's my response to  
20 the claim that Counsel didn't know the document Bates stamp  
21 numbers. The privilege log has a Bates stamp number on each  
22 document, since the privilege log lists them by Bates stamp  
23 number. Again --

24 THE COURT: I see that.

25 MR. BICE: -- we did not -- again, as the Court has

1 already said, if you didn't identify the documents that you  
2 were going to claim prejudice by, you can't now show up at the  
3 hearing with new document numbers and say, now I want to claim  
4 prejudice for this document, this document, or this document.

5 THE COURT: Okay.

6 MR. BICE: And Mr. Okada --

7 THE COURT: But this is a pleading.

8 MR. BICE: This is a pleading, but it's about the  
9 documents on the privilege log that have numbers. There has  
10 been no disclosure --

11 THE COURT: Mr. Bice --

12 MR. BICE: Yes.

13 THE COURT: -- your objection's overruled.

14 Okay. Now, the pleading, are you asking that it be  
15 admitted for purposes of this hearing, since it's already part  
16 of my record?

17 MR. PEEK: Yes, I am, Your Honor. Yes.

18 THE COURT: Okay. Since it's already part of my  
19 record, Mr. Bice, any objection?

20 MR. BICE: Other than the objection that I note --

21 THE COURT: On scope.

22 MR. BICE: -- that I noted it on scope and it's not  
23 otherwise on file with the Court.

24 Is it?

25 MR. PEEK: No. Discovery documents don't get filed

1 with the Court, Your Honor.

2 THE COURT: I thought you told me it was a pleading.

3 MR. BICE: It's not a pleading. It's just a  
4 disclosure.

5 MR. PEEK: It's a Wynn parties' twenty-first  
6 privilege log, Your Honor, which is on a -- which has a  
7 caption and is put on a pleading paper. Because it's their  
8 service to me.

9 THE COURT: So is it a document that was filed with  
10 the court?

11 MR. PEEK: It is not filed with the court, because  
12 pleadings -- excuse me, discovery documents are not filed with  
13 the court, Your Honor.

14 THE COURT: Right. Discovery documents aren't  
15 pleadings and they're not filed with the court and I wouldn't  
16 otherwise know about it.

17 MR. BICE: And the witness -- again, Your Honor, the  
18 witness has no personal knowledge about this document.

19 THE COURT: Since it's not a pleading, the objection  
20 is sustained. It's something that should have been identified  
21 before. Pleadings I'm going to let you have fair game on.  
22 It's a discovery document, Mr. Peek.

23 MR. PEEK: Your Honor, the request for production  
24 was on documents.

25 THE COURT: Yes.



1           MR. PEEK: The documents on which we claim  
2 prejudice. I'm not claiming prejudice from this document.  
3 What I'm showing to the Court is what the Wynn Resorts  
4 privilege logs, if you will, because these come from the  
5 privilege logs, so I'm not saying that this document itself --  
6 because I couldn't discover it. It didn't come up until much  
7 later in the process. And so you're forbidding me from doing  
8 that and sanctioning me now because I didn't produce something  
9 when I said to the Court all the documents that they have  
10 produced -- because they asked me the documents that have been  
11 produced, what documents have been produced. This is a not a  
12 document that's been produced. This is a discovery document  
13 with a privilege log. No document has been produced.

14           THE COURT: And we've been talking about privilege  
15 logs and comparing --

16           MR. PEEK: We have. And we talked about it at the  
17 last hearing, and you allowed me to do it then.

18           THE COURT: And we've been talking about privilege  
19 logs as they relate to other documents and with you exploring  
20 the foundation related to particular privileged documents or  
21 documents that are listed on the privilege log. And I'll let  
22 you do that. But this document that you are trying to use now  
23 is apparently a document produced -- or a discovery response  
24 produced in this case; right?

25           MR. PEEK: It was served on us, yes, not, quote,

1 unquote, "produced." You're calling it produced, but it  
2 wouldn't be produced. It's not a document produced, Your  
3 Honor, because those would be all of those that have Wynn Bate  
4 numbers that are actually produced, not a WYNNPRIV document.

5 THE COURT: It's a discovery document that was  
6 created and served as part of this litigation. Never mind.

7 MR. PEEK: Your Honor, this says, "Any all documents  
8 that concern, reference, or relate to any contention by you of  
9 prejudice or harm to you related to any redaction."

10 THE COURT: Okay.

11 MR. PEEK: This is not a redaction. This is not  
12 issue of --

13 THE COURT: We've been going through the privilege  
14 log.

15 MR. PEEK: This is not a redaction, Your Honor. The  
16 request --

17 THE COURT: I'm not stopping you from going through  
18 the privilege log. What I am stopping you from doing is  
19 discussing with this witness discovery responses that were not  
20 previously identified. And what you are telling me is this is  
21 a cover sheet that goes to the privilege log; right?

22 MR. PEEK: Correct.

23 THE COURT: Okay. The privilege log is okay. We  
24 can discuss the privilege log till the cows come home.

25 MR. PEEK: Okay. Then I'll go to -- if we could

1 scroll down, I'll see where it starts on the privilege log.

2 MR. BICE: Again, Your Honor, I renew my objection  
3 on the fact that the witness here doesn't have any personal  
4 knowledge about the privilege log. And there's certainly no  
5 foundation that he does. I would also note --

6 THE COURT: But the reason we're going through this  
7 exercise, Mr. Bice and Mr. Peek, is because the witness may  
8 have knowledge about the documents that are identified on the  
9 privilege log, and Mr. Peek is trying to delve into the claim  
10 of privilege that has previously been made by Wynn with a  
11 person who might arguably have knowledge about the document  
12 that is subject to the privilege.

13 MR. PEEK: Your Honor, I might also add if you go  
14 back to the topics that Mr. Schall was required to -- on which  
15 he was required to educate himself, this is one of the topics  
16 on which he was required to educate himself for the 30(b)(6).  
17 So he should have knowledge. And I can go through each of  
18 those topics through that exhibit, Topic 13(e), Topic 13(a),  
19 Topic 20, and I can read those into the record, Your Honor,  
20 from the exhibit. He was required to prepare himself.  
21 Apparently he did not prepare himself on these logs because  
22 they chose not -- Wynn Resorts chose not to prepare him. He  
23 was their 30(b)(6).

24 THE COURT: And you may use his 30(b)(6) deposition  
25 to the extent you think it is appropriate as part of this

1 hearing. But I'm not there yet.

2 Mr. Bice, you wanted to say something, I could tell.

3 MR. BICE: I did. Because there is no such thing --  
4 these references he made to the 30(b)(6) about these privilege  
5 logs is just simply not accurate.

6 THE COURT: Well, Mr. Bice --

7 MR. BICE: I mean, we could -- one can actually read  
8 these. He's representing to you these topics. It's just not  
9 accurate.

10 And my other problem, Your Honor, is --

11 THE COURT: Do we have a copy of it somewhere I can  
12 look at it instead of somebody reading it to me?

13 MR. PEEK: The 30(b)(6), Your Honor --

14 THE COURT: What exhibit number is it/

15 MR. PEEK: -- is Exhibit 771.

16 THE COURT: I have all of these lovely binders. Let  
17 me go find it.

18 Is everybody okay with me looking at Exhibit 771,  
19 which is allegedly a notice of 30(b)(6) deposition but has not  
20 yet been admitted.

21 MR. BICE: Yes.

22 MR. PEEK: Look a Topic 20, Your Honor.

23 THE COURT: My document 771 does not appear to be a  
24 notice of deposition. So it's not -- I'm not going to  
25 actually look at 771, since it's not what you told me it was.

1 (Pause in the proceedings)

2 MR. PEEK: Page 69 through 89, Your Honor, of --

3 THE COURT: Of what?

4 MR. PEEK: Of that exhibit. Your Honor, this is a

5 notice of -- it's attached to his 30(b)(6) depo, Your Honor,

6 which is Exhibit 771. So that's where we identified. It is

7 an Exhibit 1 to his deposition, and it starts on page 69, and

8 Topic 20, Your Honor, would actually be on --

9 THE COURT: I'm only going to look at the page that

10 begins on page 69.

11 MR. PEEK: Look at 85, Your Honor, which is --

12 THE COURT: Mr. Peek, can I finish making my record.

13 MR. PEEK: Sorry, Your Honor.

14 THE COURT: 771 is not admitted. I am only looking

15 at the notice of 30(b)(6) deposition which has been referenced

16 by the parties, which is in my binder 771-069. I am turning

17 to the categories that were --

18 MR. PEEK: Category 20. Start with the Category 20.

19 THE COURT: Mr. Peek, could I finish making my

20 record.

21 MR. PEEK: I'm sorry. I thought you --

22 THE COURT: I'm turning to the topics which begin on

23 page 78 of Exhibit 771. Mr. Peek you referred me to which

24 numbers?

25 MR. PEEK: Topic 20, Your Honor.

1 THE COURT: Thank you, Mr. Peek. And Topic  
2 Number 20 is on page number 085, and it has two subparts?

3 MR. PEEK: Yes, Your Honor, it does.

4 THE COURT: And you're referring to 20(b), Macau law  
5 privileges?

6 MR. PEEK: Yes.

7 THE COURT: Anything else?

8 MR. PEEK: 13(e), Your Honor, as well.

9 THE COURT: 13(e) is on page 81 --

10 MR. PEEK: Yes, Your Honor.

11 THE COURT: -- collection and production of WRM  
12 documents for purposes of this action?

13 MR. PEEK: Yes.

14 THE COURT: Anything else?

15 MR. PEEK: 13(a), Your Honor.

16 THE COURT: 13(a) is on page 771-080. It reads,  
17 "The statement by WRM counsel that some documents with U.S.  
18 recipients were produced redacted out of Macau because they  
19 could not be located in the United States, but they were  
20 responsive so we had to produce WRMSA's copy out of Macau with  
21 the MPDPA redactions to the quote to Ms. Spinelli's  
22 declaration."

23 Anything else?

24 MR. PEEK: Topic 10(b), Your Honor. And that is on  
25 page 80.

1           THE COURT: Thank you. Topic 10(b) reads "The  
2 statement by WRL that Wynn Macau's documents are being  
3 reviewed for production [inaudible] subject to Macau data  
4 privacy laws will be produced and/or disclosed by Wynn Resorts  
5 in this action." And then the citation to a brief filed in  
6 opposition to a motion to compel.

7           Anything else?

8           MR. PEEK: No, Your Honor.

9           THE COURT: Okay. Mr. Bice.

10          MR. BICE: Your Honor, my point was very simple.  
11 This assertion that this was somehow in -- this privilege log  
12 issue was somehow the subject of the 30(b)(6) is just simply  
13 not accurate claim. The privilege log -- the witness doesn't  
14 have any personal knowledge of the privilege log.

15          And I'd also note there's -- this sanctions hearing  
16 is supposed to be about our nonproduction of documents. I've  
17 now heard this argument that, well, you know, the privilege  
18 log is confusing, although that's never disclosed in any of  
19 their discovery responses to us. And this sandbagging of  
20 showing up now and trying to change what the sanction hearing  
21 is about because they don't have any evidence, I'd also note  
22 for the Court that Mr. Okada admitted -- and that's Mr. Peek's  
23 only client anymore, Your Honor. Mr. Okada admitted that the  
24 redactions -- he claimed no prejudice from any redactions.

25          THE COURT: Okay. Anything else?

1 MR. BICE: No.

2 THE COURT: To the extent the witness has factual  
3 information about documents that are listed on the privilege  
4 log he can answer those questions.

5 The problem that I have, Mr. Peek, is that there is  
6 a limitation that I am trying to place on you consistent with  
7 your answers to interrogatories. Mr. Kunimoto previously  
8 handed you the answers to interrogatories which said  
9 "redactions," as opposed to "privileges." So --

10 MR. PEEK: These are RFPs, Your Honor, not -- you  
11 said interrogatories.

12 THE COURT: Requests for production. I'm sorry.  
13 Requests for production which related to redactions, not  
14 privilege logs. Is there something specifically on that  
15 discovery response that relates to privilege logs and not  
16 redactions?

17 MR. PEEK: Yes, Your Honor. If you'd allow me to go  
18 forward, I can connect these dots. But --

19 THE COURT: Can you tell me before you go forward.

20 MR. PEEK: Your Honor, this Wynn privilege log that  
21 starts in June of 2016 which identified Document 39328,  
22 WYNNPRIV Document 39328 through 39411 that appears on Exhibit  
23 719-219, their privilege log of June 2016, okay. We came here  
24 and we showed the Court --

25 THE COURT: Mr. Peek, I'm stopping you again because



1 I want to go back a second. Mr. Kunimoto handed you the  
2 actual responses to the requests for production. So my  
3 question was poorly worded. There was a request for  
4 production to which you responded that related to redactions  
5 for which you were seeking sanctions. Is there a similar  
6 request for production related to documents withheld on  
7 privilege which you were asked questions about in that request  
8 for production, or was it only related to redacted documents?

9 MR. PEEK: Your Honor, I'm going to have to --

10 THE COURT: Mr. Kunimoto's thinking. If you hand  
11 him back the document, he might think faster.

12 MR. PEEK: Yeah. So I'm looking the requests, Your  
13 Honor.

14 THE COURT: Yes. That was --

15 MR. PEEK: There were only -- there were only eight,  
16 nine of them. Your Honor, there is another request -- this is  
17 Request Number 7 I referred in redactions. Request Number 8,  
18 which I don't think would apply, but I want to be candid with  
19 the Court, "Any and all documents that concern, reference, or  
20 relate to your compliance with the Macau Personal Data Privacy  
21 Act or other Macau privacy confidentiality laws." I don't  
22 have any such documents, because they didn't produce any. They  
23 withheld them all. Wynn Resorts Macau --

24 THE COURT: Well, but you might have some that were  
25 in your own possession.

1 MR. PEEK: I might have some, Your Honor.

2 THE COURT: Mr. Bice, do you believe there is  
3 anything in that request for production of documents that you  
4 have been referring to that relates to documents withheld on  
5 the basis of privilege, as opposed to redacted documents?

6 MR. BICE: Yes, Your Honor. Actually the Request  
7 Number 7, which they quoted you part of it, is -- Request  
8 Number 7 says, "Any and all documents that concern, reference,  
9 or relate to any contention by you of prejudice or harm  
10 related to any redaction made pursuant to the Macau Personal  
11 Data Privacy Act or other Macau policy/confidentiality laws  
12 identifying the redaction by the Bates stamp number."

13 THE COURT: So that only refers to redactions.

14 MR. BICE: Well, these privilege logs also refer to  
15 redactions, as well. There's redactions for a basis of  
16 privilege, and there's -- some of the documents are withheld  
17 in total on basis of privilege. So even if there's a  
18 redaction, it's on the privilege log and it's got a Bates  
19 stamp number.

20 THE COURT: I understand that, Mr. Bice. What I'm  
21 trying to find out from you is any request for production of  
22 documents that you served in preparation for this hearing was  
23 there a specific request that requested Mr. Peek to identify  
24 each document which was withheld on the basis of privilege,  
25 not redaction, that he was going to claim there was an issue

1 of prejudice for purposes of this sanctions hearing.

2 MR. BICE: Well, the answer to that, Your Honor, is  
3 I need one second, because I need to find --

4 THE COURT: Okay.

5 MR. BICE: -- because we also served a request --

6 THE COURT: Okay. It's all right.

7 MR. BICE: Request Number 9 was any documents that  
8 concern, reference, or relate to their answers to our  
9 interrogatories on their motions for sanctions. So in our  
10 interrogatories we specifically asked them -- hold on one  
11 second.

12 THE COURT: Sir, if you want to get up, you can.  
13 This is going to take a little while.

14 MR. PEEK: Your Honor, Interrogatory 13 also refers  
15 to redactions. As does Interrogatory 12.

16 THE COURT: Mr. Peek, can we please let Mr. Bice  
17 finish what he's doing.

18 MR. PEEK: Certainly, Your Honor.

19 THE COURT: Thank you.

20 MR. PEEK: Sorry to be ahead of the game.

21 (Pause in the proceedings)

22 MR. BICE: Yeah. Interrogatory Number 12, Your  
23 Honor, says, "Describe in detail and with particularity all  
24 harm, including attorneys' fees and costs, that you claim  
25 relate to any redactions that are the subject of your motion

1 for sanctions filed with the court." So I don't believe, Your  
2 Honor, we identified any harm associated with the privilege  
3 log, because we had no disclosure by --

4 THE COURT: Oh, you wouldn't have been the one who  
5 was doing it. They would have.

6 MR. BICE: What's that?

7 THE COURT: You would be asking the questions. They  
8 were responding.

9 MR. BICE: Right. Had someone made a claim in the  
10 sanctions motion, in their motion for sanctions which we're  
11 here on, that they were prejudiced by the privilege log, we  
12 would have asked such a question. But since there has been no  
13 claim of prejudice from the privilege log until we got to this  
14 hearing and we've now tried to change what the scope of the  
15 hearing is into something else, that's why. So we object to  
16 trying to convert this hearing into a hearing about the  
17 privilege log, as opposed to a hearing about the MPDPA and the  
18 Macau law objections, Your Honor.

19 THE COURT: But you would not disagree, Mr. Bice,  
20 that certain documents were withheld entirely, not redacted,  
21 based upon the assertion of the Macau Data Privacy Act or a  
22 Macau law privilege?

23 MR. BICE: There are certain documents that were  
24 only in Macau that were withheld entirely because they don't  
25 exist in the United States. The documents that were in the

1 United States that were previously claim privilege, Macau law  
2 privilege that were either redacted or withheld in total have  
3 since been produced. But, yes, there are a collection of  
4 documents in Macau in the possession of Wynn Macau that have  
5 not been produced, and they would be included in the documents  
6 on the privilege log.

7 THE COURT: So we will see those that have been  
8 withheld on the basis of Macau law privilege if we continue  
9 this exercise?

10 MR. BICE: Yes.

11 THE COURT: Okay.

12 MR. BICE: But they will be listed by Bates number.

13 THE COURT: Thank you.

14 Mr. Peek, you can continue.

15 MR. PEEK: Thank you, Your Honor.

16 BY MR. PEEK:

17 Q So where I was is directing your attention to the  
18 privilege log I think was 735, page 4, of that privilege log.  
19 And there we see --

20 THE COURT: 735 is one of the privilege logs. There  
21 is no objection to the privilege log being admitted for  
22 purposes of today's hearing; right, Mr. Bice?

23 MR. BICE: Yeah. I renew my objection on the same  
24 scope, Your Honor. It's beyond the scope of this matter.

25 THE COURT: Overruled.

1 MR. BICE: Thank you.

2 BY MR. PEEK:

3 Q So we had to -- first of all there was a statement  
4 that it was converted to a different document. We went over  
5 that last time. And if you want me to go over it again, I  
6 will, but I'm trying not to cover old ground. But if you'd  
7 just agree that the document that we went over last time on  
8 the conversion chart was not a Becky Quinn document identified  
9 as anything related to a draft agreement protected by Macau  
10 SAR region law in 16-21.

11 A I recall there was an issue of conversion with the  
12 document. The numbers didn't match, yes.

13 Q Okay. So remember there was a statement that just  
14 got put back on a privilege log, this document? You see that?  
15 This is the privilege log. You see it up at the third entry,  
16 Becky Quinn?

17 A Yes, I see it.

18 Q So now we have Becky Quinn either authoring as an  
19 administrative assistant, or she's sent this to somebody, and  
20 it's called a draft summary of legal advice re concession  
21 obligation. You see that? That's what that document is  
22 identified as; correct?

23 A I see what it says here.

24 Q Okay. Does it show a recipient?

25 A Nope.

1           Q     Now, if somebody's offering legal advice, there has  
2 to be somebody to whom the legal advice is being directed;  
3 correct?

4           MR. BICE:  Objection, Your Honor.  Beyond the scope.

5           THE COURT:  Overruled.

6           THE WITNESS:  Typically.

7 BY MR. PEEK:

8           Q     There's a recipient; right?  So we know Becky's not  
9 a lawyer; correct?

10          A     I know she's an administrative assistant.

11          Q     Okay.

12          A     I don't know that she's not a lawyer.

13          Q     Okay.  Fair.  But we also know that Becky didn't  
14 send this apparently to anybody, or at least from the  
15 description; correct?

16          A     I know that the recipient column is blank.

17          Q     Okay.  Now, certainly the original description was a  
18 draft agreement, and now it's been converted to now legal  
19 advice; correct?

20          A     The first document you showed me, it says "Draft  
21 agreement protected by Macau law."  This one says "Draft  
22 summary of legal advice."

23          Q     By the way, I just want to make clear, and I'm  
24 pretty sure that we covered this ground, but just to sort of  
25 set the stage again, my recollection is that WRMSA was the

1 concessionaire; correct?

2 A WMRSA is the concessionaire.

3 Q Is -- not was. Is the concessionaire; correct?

4 A Correct.

5 Q And it was a concessionaire as of the awarding of  
6 the concession in February 2002; correct?

7 A Again, I don't recall exactly when it was awarded,  
8 but sometime in 2002.

9 Q And it was the party -- just for you, Mr. Schall,  
10 our M&Ms.

11 A Thank you.

12 Q And if -- so WRMSA would have been the party to the  
13 concession agreement when it was finalized; correct?

14 A That's correct.

15 Q Okay. Now, this past Friday, August 18th, at  
16 6:07 p.m., we were served with a new privilege log. This  
17 is Exhibit 809.

18 MR. PEEK: So can you show him Exhibit 809, which  
19 again is just a privilege --

20 THE COURT: Any objection to 809, which is just a  
21 privilege log?

22 MR. PEEK: I'm going to show just the privilege log.

23 MR. BICE: Same objection as before, Your Honor.

24 Again, this is beyond the scope of -- my apologies. It's

25 beyond the scope of this hearing, as this is not the subject



1 of their motion. If they wanted to have a different hearing  
2 about a privilege log, we would have been happy to have done  
3 so.

4 MR. PEEK: Your Honor --

5 THE COURT: Objection's overruled.

6 THE CLERK: I'm sorry. There's no 809 on the  
7 exhibit list [inaudible].

8 MR. PEEK: We supplemented?

9 THE CLERK: Yes. [Inaudible].

10 MR. PEEK: Okay. Let me --

11 THE COURT: And I assume that part of that document  
12 is not a privilege log by the way you've referenced that. So  
13 can you give me the page numbers of the document we're seeking  
14 to admit.

15 MR. PEEK: I have it as 809. I don't know how --  
16 why it went to Dulce as --

17 THE CLERK: It was supplemented again last night.

18 MR. PEEK: The problem is, Your Honor, we got this  
19 on Friday at 6:07, so Dulce may not have gotten it, because  
20 it's -- we weren't able to supplement it until now. My  
21 apologies, Dulce.

22 THE COURT: And which page does the privilege log  
23 start on?

24 MR. PEEK: Your Honor, this actually -- just to be  
25 clear the privilege log would begin on page 4.

1           Nick, do you not have this loaded up? I could show  
2 him the hard copy.

3           Your Honor, may I approach and find --

4           THE COURT: You may. 809, which should be in one of  
5 the white books near the end.

6 BY MR. PEEK:

7           Q     It would be in that last volume. Is that it?

8           A     Yeah.

9           Q     Can you turn to 809.

10          MR. PEEK: May I look over --

11          THE COURT: You may.

12          MR. PEEK: Thank you, Your Honor.

13          THE COURT: But you may not have any M&Ms.

14          MR. PEEK: I know the rule, Your Honor.

15          THE COURT: And please don't put the thing on the  
16 mike, or Jill will get mad.

17          MR. PEEK: The privilege log begins on 809-5, Your  
18 Honor.

19          THE COURT: Thank you.

20          MR. PEEK: And it continues through 809-101. So  
21 that's what I would offer.

22          THE COURT: So pages 5 through 101 of 809 will be  
23 offered, since it's just the privilege log.

24          THE CLERK: Is it offered, or admitted?

25          THE COURT: No. It's admitted.

1 (Defendants' Exhibit 809-5 through 809-101 admitted)

2 BY MR. PEEK:

3 Q If you would now turn to page 16. So it'd be  
4 Exhibit 809-16.

5 MR. PEEK: Do you have it, Nick, now? Okay. Thank  
6 you.

7 BY MR. PEEK:

8 Q Now, do you see that the document which had  
9 previously been identified twice on a privilege log has now  
10 been released, this 39328, this 84-page document? You see  
11 it's released?

12 A Yes.

13 Q Okay. And remember it was first described as a  
14 draft agreement; correct?

15 A Yes.

16 Q And then it was later described in February 22nd of  
17 this year as a legal summary or legal memorandum by Becky  
18 Quinn; correct? Or from Becky Quinn.

19 A "Summary of Legal Advice."

20 Q Summary of legal advice; correct? Okay. So now  
21 let's look at WYNN103322, and it is Exhibit 810. It should be  
22 in your folder right there, Exhibit 810.

23 THE COURT: That's a proposed exhibit.

24 MR. PEEK: That's proposed exhibit that was just  
25 produced, Your Honor, on Friday.

1 THE COURT: I'm not looking at the big-screen TVs.

2 MR. PEEK: It's not on the big-screen TV. I don't  
3 think it's anyplace on the screen, Your Honor.

4 THE COURT: Okay.

5 BY MR. PEEK:

6 Q Do you have Exhibit 810?

7 A I do.

8 Q Okay. Exhibit 810 is a concession agreement, is it  
9 not?

10 A No.

11 Q Sorry. My apologies. Maybe I pulled up the wrong  
12 document here or I gave you the wrong -- my apologies.

13 Actually, I need to -- it's actually Exhibit 811. I was one  
14 off. It's a concession agreement, is it not?

15 A It appears to be.

16 THE COURT: Sir, do the Bates numbers match on the  
17 one you're looking for? Do the Bates numbers match?

18 BY MR. PEEK:

19 Q Now, the description --

20 THE WITNESS: I can't read it.

21 THE COURT: You're not the only one.

22 THE WITNESS: Yes [inaudible].

23 BY MR. PEEK:

24 Q In the released document, which is 809-16, it says  
25 Production Bates 103332. That's in Exhibit 809, page 16;

1 correct?

2 A Well, sorry. I have 103332 as 811-1.

3 Q Correct. The Judge was asking you is it the same  
4 release -- document that's showed as being released?

5 THE COURT: Same numbers.

6 BY MR. PEEK:

7 Q That appears in Exhibit 809, so you have to go back  
8 to 809 --

9 A Oh. I understand. So --

10 THE COURT: He's already done that. He got close to  
11 the screen and told me the numbers were the same.

12 MR. PEEK: Okay. The numbers are the same.

13 BY MR. PEEK:

14 Q And this is a concession agreement now that's been  
15 released; correct?

16 A That's what it's labelled, yes.

17 Q And you're familiar with concession agreements;  
18 correct?

19 THE COURT: Don't show it. It's not admitted,  
20 please.

21 MR. PEEK: Not admitted yet, Nick. Sorry.

22 THE WITNESS: I'm familiar with concession  
23 agreements, but not this one.

24 BY MR. PEEK:

25 Q Okay. And you're not familiar with this one because

1 this is a concession agreement with Stanley Ho, isn't it?

2 MR. BICE: Objection, Your Honor. The document's  
3 not in evidence.

4 THE COURT: Overruled. He can ask the witness  
5 certain questions about the document without admitting it.  
6 Ho, H-O.

7 BY MR. PEEK:

8 Q So the description was -- this is a concession  
9 agreement with Stanley Ho, isn't it?

10 A With SJM.

11 Q SJM. That's Stanley Ho's company; correct?

12 A Correct.

13 Q In fact it identifies Stanley Ho as one of the  
14 individuals that's Party B, representing Societe --

15 THE COURT: Mr. Peek, you can't read from the  
16 document, because it's not admitted.

17 BY MR. PEEK:

18 Q This is the Stanley Ho concession agreement;  
19 correct?

20 A It's the SJM --

21 Q SJM.

22 A -- concession agreement.

23 Q Not the Wynn Macau concession agreement; correct?

24 A I haven't looked through the whole thing, but  
25 appears to be SJM's.

1 Q And it's not the Becky Quinn legal memorandum,  
2 either, is it?

3 A Well, I don't know what the Becky Quinn legal  
4 memorandum is.

5 Q I don't, either. But it doesn't appear to be a  
6 legal memorandum, does it?

7 A I'll agree with that.

8 Q And it doesn't appear to be something drafted by  
9 Becky Quinn, either, does it?

10 MR. BICE: Objection. Foundation.

11 THE COURT: Overruled. You can answer.

12 THE WITNESS: I'll agree with that, as well.

13 BY MR. PEEK:

14 Q Okay. So when we saw in the first description under  
15 Macau law privilege of Becky Quinn as the draft agreement do  
16 you know whether Becky Quinn would have had any involvement  
17 whatsoever in the drafting of the concession to SJM?

18 A I don't know Becky Quinn. It seems unlikely if the  
19 description of her position is accurate.

20 Q There were three concessions granted in February of  
21 2012; correct? Or '02, February 2002, after the tender  
22 process; correct?

23 A I don't know if it was February, but early 2002.

24 Q But there were three concessions; correct?

25 A Correct.

1 Q One to Galaxy; correct?

2 A Yes.

3 Q One to Wynn Resorts Macau SA; correct?

4 A Yes.

5 Q And one to Stanley Ho, SJM; correct?

6 A Yes.

7 Q So do you have any reason -- does Wynn Resorts --

8 WRMSA have any reason to claim Macau law privilege over a

9 Stanley -- over SJM's concession agreement?

10 A No.

11 Q Now, remember that you told us that Article 92 of

12 the concession agreement, your concession agreement, has a

13 confidentiality provision?

14 A I don't remember if it's 92, but --

15 Q Would you look at 92, this one, and read it to

16 yourself.

17 A Theirs is 92, so --

18 Q The one for SJM is also 92?

19 A Yes.

20 Q And do you know why it is that Wynn Resorts Limited

21 Las Vegas would have Stanley Ho's concession agreement if it's

22 protected by confidentiality?

23 A I have no idea.

24 Q But you would think that protection by

25 confidentiality means that third parties wouldn't have copies



1 of the concession agreement; correct?

2 A Until they're published in the Official Gazette and  
3 made public record, that's correct.

4 Q So is this -- was this published in the Gazette?

5 A Yes.

6 Q Okay. So once it became a public document the  
7 production of the concession agreement between WRMSA and the  
8 Macau Government is available for anybody to review; correct?

9 A Yes.

10 Q Okay. Now, when you were preparing for your  
11 30(b)(6) deposition did you review documents on which there  
12 was a claim of Macau law privilege?

13 THE COURT: In preparation for his deposition --

14 MR. PEEK: 30(b)(6) deposition.

15 THE COURT: -- did he review documents to make  
16 himself knowledgeable --

17 MR. PEEK: Correct.

18 THE COURT: -- in response to the subpoena and the  
19 categories.

20 MR. PEEK: Correct.

21 THE COURT: Okay.

22 THE WITNESS: I don't recall exactly what documents  
23 I reviewed, but I reviewed documents which would enable me to  
24 execute my 30(b)(6) deposition in a competent manner.

25 //

1 BY MR. PEEK:

2 Q Well, did you review those documents over which  
3 there was a Macau law privilege claim?

4 A I can't specifically recall what documents I looked  
5 at. I'm sorry.

6 Q Well, in fact when you testified you told me you  
7 looked at some pleadings, you looked at some discovery  
8 requests. You didn't actually look at any of the documents  
9 produced, did you, Mr. Schall?

10 A Maybe that's why I don't recall.

11 Q Okay. Well, when you testified just in June of this  
12 year remember you told you did not actually look at documents  
13 that had been produced?

14 A Okay.

15 Q Remember that?

16 A No.

17 Q Okay. So can you think of any reason why WRMSA  
18 would have any interest in claiming that SJM's concession  
19 agreement was subject to Macau law privilege?

20 A Why WRMSA would make that claim?

21 Q Uh-huh. Uh-huh.

22 A I'm not sure WRMSA made that claim, but if they did,  
23 I don't know why it would.

24 Q Well, isn't it WRMSA who holds that so-called Macau  
25 law privilege?

1           A     Is it WRMSA that holds the Macau law privilege?  
2           Q     That you're claiming.  
3           A     Using the term "Macau law privilege" is something  
4     that WRMSA used.  
5           Q     Yes. So in preparation for production of documents  
6     I would imagine that the Pisanelli Bice group came to you and  
7     said, you hold the privilege, WRMSA, you, Jay Schall, what do  
8     you think about whether this document should or should not  
9     have a claim of privilege on it? Did you do that?  
10          A     There are occasions where they requested my advice  
11     on that topic, not related to a concession agreement.  
12          Q     Related to any Macau law privilege, such as the land  
13     concession?  
14                MR. BICE: Objection, Your Honor. Attorney-client  
15     privilege.  
16                THE COURT: Sustained.  
17                MR. PEEK: That's a subject matter question, Your  
18     Honor.  
19     BY MR. PEEK:  
20          Q     Okay. Were you ever asked to review documents  
21     related to the land concession --  
22                MR. BICE: Your Honor, I'm going to renew my --  
23     BY MR. PEEK:  
24          Q     -- in preparation for --  
25                MR. BICE: I'm sorry. My apologies. I'll let him

1 finish.

2 THE COURT: In preparation for 30(b)(6) depo?

3 MR. PEEK: In preparation for -- no, for production  
4 of the documents in Macau.

5 THE COURT: Mr. Bice.

6 MR. BICE: Your Honor, I'm going to renew my  
7 objection about the scope of this. And one of the things I'd  
8 like to point out to the Court because I didn't have a chance  
9 to when you were asking me about the discovery requests that  
10 we had made of them is in our 30(b)(6) notice to them this was  
11 Topic Number 14, "Knowledge, understanding, facts and  
12 circumstances related to each act that -- by Wynn Resorts that  
13 violates any Court order that is the subject of your motion  
14 for sanctions." Their 30(b)(6) witness did not identify any  
15 of these alleged issues with the privilege logs and made no  
16 such claim at their 30(b)(6) deposition. So --

17 THE COURT: So are you saying because of that it's  
18 outside the scope even though it wasn't in your request for  
19 production?

20 MR. BICE: Well, it wasn't in our request for  
21 production because it wasn't in their motion. And so we  
22 asked --

23 THE COURT: Issues with the privilege log and the  
24 Macau law privilege have been around for us for a year and a  
25 half, maybe two years at this point. But it's been a while.

1 MR. BICE: I get that.

2 THE COURT: So it's not like I hadn't known that we  
3 were having issues related to the claim of privilege, not just  
4 redaction --

5 MR. BICE: Fair.

6 THE COURT: -- but claim of privilege.

7 MR. BICE: That's fair.

8 THE COURT: But you are entitled to ask them  
9 questions, and I allowed you discovery related to that issue.  
10 So if what you're telling me is you asked the question and  
11 their response was, we're not telling you anything --

12 MR. BICE: Any violation of the Court order that  
13 they were claiming is what the -- Topic Number 14 of their  
14 30(b)(6), and we heard none of this. So this is outside the  
15 scope. You can't show up at the hearing after no witness  
16 showed up and gave any of this story about the privilege log  
17 and then claim, well, we now want to discuss it at the  
18 evidentiary hearing.

19 THE COURT: Okay. Sir, I'm going to let you get up  
20 and take about a five-minute break, go to the restroom, get  
21 some more water or something while I listen to whoever it is  
22 on this side of the room who knows the answer on this  
23 question. I'm looking at Mr. Krakoff, maybe Mr. Kunimoto.

24 MR. PEEK: Perhaps we should have a citation, Your  
25 Honor, to that topic being examined from Mr. Bice, as opposed

1 to the palpable misrepresentations I've heard so far from Mr.  
2 Bice on all these other topics.

3 THE COURT: So is there a depo reference, Mr. Bice?

4 (Pause in the proceedings)

5 MR. PEEK: I know Mr. Krakoff's going to address  
6 this, but I'm going to raise this again, because --

7 THE COURT: Well, can I have -- let's get to the  
8 point where Mr. Bice is answering my question first, please.

9 MR. BICE: And I'm looking right now, Your Honor,  
10 through the transcript. Unfortunately, I don't have my  
11 highlighted version, so I'm looking right now.

12 Your Honor, they actually had notes prepared for  
13 Topic Number 14, Mr. Krakoff's client did. So let's -- since  
14 they have those notes, let's see if they actually prepared him  
15 on this topic. I would ask the Court to see his notes. I  
16 don't think --

17 Do I have those exhibits with us?

18 -- because the Court will find none of this in those  
19 notes, I don't believe.

20 THE COURT: So you have the transcript and notes  
21 were attached as an exhibit?

22 MR. BICE: That's what I'm looking for right now,  
23 Your Honor.

24 THE COURT: And was there a reference to the notes  
25 in the deposition itself indicating those were the draft

1 answers?

2 MR. BICE: I believe so. I believe they had a list  
3 of notes for each topic that they prepared him on, and they  
4 had a list of notes.

5 THE COURT: Well, let's wait and see if that's true.

6 MR. KRAKOFF: Your Honor, the fundamental response  
7 here is Mr. Takeuchi testified that documents that were  
8 withheld prejudiced them. They didn't know what was in those  
9 documents. That is -- he repeatedly testified --

10 THE COURT: I am aware of that. But that's not what  
11 I'm asking now.

12 MR. PEEK: What is it you're asking, as to what he  
13 testified to, Your Honor, on that topic?

14 THE COURT: And if the notes were used in lieu of  
15 testimony at the deposition what the notes said.

16 MR. KRAKOFF: He didn't -- I recall this, Your  
17 Honor. [Inaudible]. I don't have the transcript right in  
18 front of me, but I recall he did not -- he did not say, look,  
19 my testimony's in the notes. There was nothing in lieu of his  
20 testimony. The notes he prepared, and testified clearly about  
21 this, based upon conversations that he had in preparation, and  
22 he made notes on each topic, which we produced to Wynn  
23 Resorts.

24 THE COURT: Okay. Well, let's see what we get.

25 Does anybody else need a break, since the witness

1 got one?

2 Sure, Mr. Peek, you can be a witness. I'm sure Mr.

3 Bice would love that. He's had that --

4 THE COURT: I haven't had you be a witness in, what,

5 four years?

6 MR. PEEK: He had that opportunity --

7 THE COURT: Once before.

8 MR. PEEK: Once before.

9 MR. BICE: We have the notes right here, Your Honor.

10 I think there are four lines for notes.

11 THE COURT: Well, but I also need the relationship

12 of the transcript to the notes.

13 MR. BICE: I'm looking for that, Your Honor. My

14 apologies.

15 THE COURT: I'm patiently waiting. This is my

16 patient face. I know that you don't see it very often.

17 Ms. Sinatra, nice article on your pro bono work. I

18 said nice things the other day about Ms. Smitt and Ms.

19 Spinelli, so I'm sharing that about you, too.

20 MS. SINATRA: Thank you.

21 (Pause in the proceedings)

22 THE COURT: Any luck, guys?

23 MR. BICE: No, Your Honor. We're looking. I didn't

24 cover the topic-by-topic number only.

25 MR. KRAKOFF: Your Honor, I know we turned them over



1 in the middle of his deposition. We're not finding them as  
2 being marked by Mr. Bice as an exhibit. But I know that that  
3 happened, because I handed them to Mr. Bice.

4 MR. BICE: Handed what?

5 MR. PEEK: The notes.

6 MR. KRAKOFF: The notes.

7 MR. BICE: Yes, I have the notes.

8 MR. PEEK: He's saying they weren't marked as  
9 exhibits --

10 THE COURT: Did you mark them as an exhibit to the  
11 deposition?

12 MR. BICE: I don't believe we did. I don't believe  
13 we did, Your Honor.

14 THE COURT: So that won't help me.

15 MR. BICE: Not all of them. But we do have -- we  
16 did have the notes, Your Honor. And I believe, and I'm having  
17 this look for, he testified he had not seen our redaction log.  
18 And I don't believe he'd seen any privilege log. So how they  
19 have prepared him to testify or provide any testimony as to  
20 any supposed prejudice or harm from any privilege log is  
21 beyond me.

22 THE COURT: Did he have a citation to the deposition  
23 where he says that?

24 MR. BICE: We're looking, Your Honor. My apologies.

25 THE COURT: Thanks.

1 MR. PEEK: Your Honor, the --

2 MR. KRAKOFF: Your Honor, I would just point out

3 that this privilege log Mr. Bice is talking about is highly

4 confidential. He couldn't look at that in the first place.

5 THE COURT: The privilege log's highly confidential?

6 MR. PEEK: Yes.

7 MR. KRAKOFF: Yes.

8 MR. PEEK: They designated privilege logs as highly

9 confidential, Your Honor.

10 (Pause in the proceedings)

11 MR. BICE: Your Honor, here's what I know. He saw

12 three documents. That's page 193. He saw three documents.

13 He saw no redaction log, and he saw no privilege log. He saw

14 three documents, that's if they had him prepared to testify on

15 -- for us. So, yes, this is beyond the scope of what this --

16 their 30(b)(6) that was asked to be prepared to testify to any

17 purported violations of any court order, and he showed up with

18 three documents.

19 THE COURT: Okay. So does anybody want to respond?

20 Mr. Krakoff, I think you were there at the

21 deposition. Do you want to respond or do you want to let Mr.

22 Peek respond?

23 MR. PEEK: I have something else to add, Your Honor.

24 THE COURT: Okay.

25 MR. KRAKOFF: Your Honor, they didn't ask him about

1 privilege log. He couldn't look at any privilege logs even if  
2 they had. And so I think this is frankly a red herring, it's  
3 a distraction, because they know and they -- he couldn't have  
4 looked at this anyhow.

5 THE COURT: So here's my question to you, Mr.  
6 Krakoff. You are aware I allowed discovery in advance of this  
7 hearing to try and narrow the issues about what the prejudice  
8 related to these documents that there have been withheld and  
9 then a wilfulness issue. Those are my two main things I'm  
10 doing for purposes of this. Is it your position that he  
11 testified related to the privilege log issue in one way,  
12 shape, or form of the other?

13 MR. KRAKOFF: You know, honestly, Your Honor, I  
14 really have to keep searching on our transcript.

15 THE COURT: All right.

16 MR. PEEK: Your Honor, the problem I have certainly  
17 with these arguments is that the disingenuousness of these  
18 arguments are palpable. Because when I brought up the  
19 30(b)(6) of Jay Schall and the topics on which Mr. Schall was  
20 asked to testify and asked to prepare, he didn't prepare. He  
21 didn't look at any Wynn privilege logs, he didn't look at any  
22 WRM privilege logs, he didn't look at any documents at all  
23 that had redactions or not have redactions as he was asked to  
24 do. So what I looked at --

25 THE COURT: All right. Mr. Peek, I didn't see that

1 within the 30(b)(6) depo topics that I saw. I understand your  
2 position, but if I was --

3 MR. PEEK: You're saying that the Topic 28, which  
4 deals with privileges, is not something he should have  
5 prepared on?

6 THE COURT: None of those issues would have elicited  
7 me giving a witness, as a lawyer, a privilege log to review  
8 the way those questions were phrased -- the topics were  
9 phrased. But I'm sure there's people who may disagree with  
10 that. So what I'm trying to figure out is is there -- wait.

11 MR. PEEK: So policy, practices, and procedures,  
12 including compliance with the MPD and the Macau law  
13 privileges, you'd have to look at documents in order to be  
14 able to know whether there was compliance.

15 THE COURT: No, I don't think you would.

16 MR. PEEK: Okay.

17 THE COURT: So let me ask the question a different  
18 way. Mr. Bice is essentially arguing that you're trying to  
19 sandbag him by failing to provide information in the discovery  
20 process leading up to this hearing about what issues you were  
21 prejudiced about. We've had this discussion on Day 1, which  
22 was on July 26th, and now we're on Day 4 and we're still  
23 having this discussion. I'm trying to have you identify for  
24 me where in your responses to discovery, whether it was the  
25 30(b)(6) deposition, the response to the requests for

1 production, or the answers to interrogatories, where you  
2 identified the failure to provide privileged documents as part  
3 of the issues for this hearing. Not the prior briefing. I'm  
4 in the discovery.

5 MR. PEEK: Well, I wasn't asked to identify them,  
6 Your Honor, because --

7 THE COURT: You weren't?

8 MR. PEEK: No, because if you'd look at the  
9 interrogatories, it deals with redactions, it doesn't deal  
10 with the privilege logs.

11 THE COURT: That was the request for production.

12 MR. PEEK: And the same thing with interrogatories,  
13 interrogatories, as well. The 30(b)(6) was not a 30(b)(6) of  
14 an individual. So the 30(b)(6), I can't -- Mr. Krakoff has  
15 the answer there. I don't have that answer, Your Honor,  
16 because I was not involved, since you don't take a 30(b)(6) of  
17 a individual, and my client was Mr. Okada at that time when he  
18 was deposed or --

19 THE COURT: Mr. Krakoff has an answer for me. I can  
20 tell by the way he's looking at me.

21 MR. PEEK: Maybe he has an answer, but I can't give  
22 you an answer. So I wasn't requesting interrogatories, I  
23 wasn't requested in productions for privilege.

24 THE COURT: Okay. Mr. Krakoff.

25 MR. KRAKOFF: What I'm learning, Your Honor, or

1 being reminded of is that the 30(b)(6) notice didn't ask about  
2 withheld documents at all, only redactions. So the topic  
3 didn't come up.

4 MR. BICE: That's just -- I read it to Your Honor.

5 THE COURT: Mr. Bice, can you give him the topic  
6 number.

7 MR. BICE: It's 14.

8 THE COURT: Can you show it to him.

9 MR. BICE: Yeah. Let me find it again, Your Honor.  
10 It claimed any acts by us that were in violation of the  
11 Court's order that is the subject matter of the motion for  
12 sanctions. And as I understand it, what we're doing here  
13 today is there's an accusation that these privilege logs  
14 somehow violate a court order. Because otherwise I don't know  
15 why we're spending all this time on it, particularly with a  
16 witness who doesn't know anything about the privilege logs.

17 THE COURT: Well, but he may have information about  
18 the underlying documents that are identified in the privilege  
19 log, which is why I've allowed him to answer questions on that  
20 issue.

21 MR. BICE: I agree, Your Honor. I will stipulate  
22 that there are documents in Macau that have not been sent to  
23 the United States the are -- we have not produced, because  
24 Wynn Resorts -- or Wynn Macau has said they will not release  
25 them. I mean, we stipulated that.

1           THE COURT: I had that discussion this morning about  
2 the validation set. So if I could ask you a slightly  
3 different question then, Mr. Bice.

4           MR. BICE: Yes, Your Honor.

5           THE COURT: Can you tell me why that document got  
6 produced on the third round.

7           MR. BICE: Yeah. We can. I'm going to let Ms.  
8 Spinelli address it --

9           MR. PEEK: Can we do this on the witness stand, Your  
10 Honor, under oath?

11          THE COURT: No. I'm not going to have her put under  
12 oath right now.

13          MR. PEEK: Well, she may think that's funny, but,  
14 Your Honor, I --

15          THE COURT: This is not part of my sanctions  
16 hearing, this is an inquiry by me.

17          MR. PEEK: Okay.

18          MS. SPINELLI: Your Honor, when you made the order  
19 about all documents that were not -- that just were Macau law  
20 privilege, as opposed to any other privilege, my team went  
21 back and released all the -- released the documents that had  
22 Macau law privilege. When we did that some of the  
23 descriptions looked like draft or attorney-client privilege,  
24 and you allowed us to -- if there was some other protection,  
25 to assert it. Which is what we did.

1 THE COURT: Sure.

2 MS. SPINELLI: Whether they can challenge it or not  
3 obviously is subject to what they want to do.

4 THE COURT: So who on Earth would have thought that  
5 met either attorney-client privilege or some other --

6 MS. SPINELLI: Well, the document actually says in  
7 the footnote that it's a draft summary. It has HK on it,  
8 which reveals generally that it's done by a lawyer. And Becky  
9 Quinn is the legal assistant, or was, to Marc Rubinstein, who  
10 was general counsel of Wynn Resorts before Wynn Macau was  
11 created in 2002 when they were doing the concessions. The  
12 reason why it was produced this last time, Your Honor, is  
13 because when he brought it up I went back and looked at it and  
14 saw Ho, every one was just [unintelligible] Ho and concession.  
15 The same time we got our concession agreement I saw it was  
16 Stanley Ho, and in good faith I produced it. They can  
17 complain about it all they want, but --

18 THE COURT: How many others are there where the same  
19 error has occurred?

20 MR. PEEK: There are a number of them, Your Honor,  
21 I'm going to go over.

22 THE COURT: Mr. Peek, I'm talking to Ms. Spinelli.

23 MS. SPINELLI: We produced a handful of documents  
24 based upon our review. The reason why we served a  
25 supplemental and amended privilege log on Friday, Your Honor,



1 was because we were here before you. There was the cross-  
2 reference sheet, and everybody said it was really complicated  
3 in the errata. So this was to bring clarity to the issue. We  
4 have the Bates numbers of the release, we provide columns that  
5 say what were released and the Bates numbers that were both  
6 WYNNPRIV on the original log, and then also the Bates numbers  
7 for the release log. So rather than some horrible thing, we  
8 went back to make it clear that -- you know, when it was  
9 produced and all that other stuff.

10 So this was to bring clarity. I looked at it  
11 because any good lawyer when gets questioned in a court of law  
12 about a document and they -- I went back and looked at them  
13 because I felt slightly attacked, and it was personal to me.  
14 I looked back at the documents and saw that it was a Stanley  
15 Ho draft agreement, it wasn't our privilege.

16 THE COURT: So how many others like this are there?

17 MS. SPINELLI: I think we did a production on Friday  
18 of a handful of documents --

19 THE COURT: That's not what I'm asking. What I'm  
20 asking is how many others have been identified on the  
21 privilege log misidentified like this document? And if you  
22 don't know, you don't know.

23 MS. SPINELLI: I don't know. I don't know, but I  
24 don't -- with the meet and confers with the other side I'd  
25 sent a letter, I don't remember what point, I can look at it,

1 in June.

2 THE COURT: Well, but they will meet and confer with  
3 you based upon the description you include in the privilege  
4 log. And if the description you include in the privilege log  
5 is a memo seeking legal advice, they're going to meet and  
6 confer with you on different issues than a concession  
7 agreement that Stanley Ho's company entered into.

8 MS. SPINELLI: Absolutely. And the reason why the  
9 meet and confer worked, Your Honor, was because when I went  
10 back and looked at it -- the first said it was a concession  
11 under Macau law. We went back and looked at it, it was draft  
12 with attorney stamp on the document. So when we adjusted it  
13 for privilege we said that. But then when we looked at it  
14 again -- nobody would have ever known if I misrepresented or  
15 made false statements, but it was a Stanley Ho agreement, so  
16 that was my oops.

17 THE COURT: Oh. I absolutely understand. I'm just  
18 trying to figure out how many like that -- because you're  
19 dealing with a large team of individuals, some who are not  
20 with your firm and are contractors, how many other  
21 misdesignations we may have in the column that is the  
22 descriptor.

23 MS. SPINELLI: I don't believe, actually, Your  
24 Honor, that we have. This review was done -- this last review  
25 was done largely by me.

1 THE COURT: No, not the last review. I'm talking  
2 about the first and the second review. I know what you did,  
3 you've explained this most recent review that you've done.  
4 I'm talking about the original times they were reviewed.

5 MS. SPINELLI: Post your order, Your Honor, it was  
6 me. I did it. Because I wanted to be consistent with Sands-  
7 Jacobs, quite frankly. And your order's in there, so I wanted  
8 to be clear about it. And because we were asserting  
9 privilege. But I wasn't perfect, so I got one doc.

10 THE COURT: Okay. Mr. Peek?

11 MR. PEEK: Your Honor, this was put on the privilege  
12 log in June 2016.

13 MS. SPINELLI: Right.

14 MR. PEEK: Ms. Spinelli represents to you that it  
15 has attorney-client on it. I'm looking at it. I see nothing  
16 here that would suggest that it is an attorney-client  
17 document. I see nothing anywhere within here that would  
18 suggest that it has some form of privilege. If you look at  
19 the first page of it, it is Party B, SJM. So all you have to  
20 do is look at the first page.

21 THE COURT: And we may have a discussion about the  
22 issues in the privilege log which are not related to this  
23 witness. I want to try and get this witness out of here.

24 MR. PEEK: I understand, but you're asking Ms.  
25 Spinelli to explain. And so when I hear that explanation when

1 I -- it starts out in June of 2016, and then they come back  
2 and put it on a conversion log and the conversion log is a  
3 completely different document. And then they supplemented on  
4 February 22nd, and put it back on a privilege log, that means  
5 that they looked at it now three times. They've looked at it  
6 three times, and then they had subsequent disclosures, and now  
7 we get it at 6:07 on Friday before the hearing on Monday?

8 THE COURT: No, after Day 3, before Day 4.

9 MR. PEEK: Yeah.

10 THE COURT: Because we've been in the hearing for a  
11 while.

12 MR. PEEK: I understand.

13 THE COURT: Okay.

14 MR. PEEK: But when you look at that pattern, Your  
15 Honor, that's wilfulness, and I know we'll argue about it  
16 later. But to hear --

17 THE COURT: I'm not there -- that --

18 MR. PEEK: -- this explanation that says, oh, it had  
19 attorney on it or it had something that suggested attorney was  
20 preparing it or Becky Quinn had any involvement in it at all  
21 is disingenuous at best.

22 THE COURT: So, Mr. Peek, what I'd like to -- I'd  
23 really -- you can argue this later. What I'd really like to  
24 do is try and get the witness out of here.

25 MR. PEEK: I --

1           THE COURT: But the issues that you're mostly  
2 finding about on privilege log are legal argument issues. But  
3 if you have documents you want to ask the witness about that  
4 are --

5           MR. PEEK: That's what I'm going to do, but I can't  
6 seem to get there --

7           THE COURT: But you've been going slower than  
8 molasses.

9           MR. PEEK: No, I'm not, Your Honor. I keep getting  
10 interrupted by objections. So if you'd let me go forward here  
11 as opposed to every time I try to do a document I get an  
12 objection and I have to sit down and listen to the objection,  
13 the speaking objection, in front of the witness. And you're  
14 allowing him to do a speaking objection.

15          THE COURT: Let the witness go out this last time.

16          MS. SPINELLI: Your Honor, I just have one, actually  
17 two comments. The first is, he made representations to you  
18 about what was done at the last hearing when he knew full well  
19 there was an errata that he was unaware of when he started  
20 this questioning. And the reason why I bring it up right now  
21 is because he misrepresented it again, like we lied about it.  
22 The errata was fixed when it was brought to our attention.

23          THE COURT: I'm not trying to get into that right  
24 now. Right now I am trying to finish Mr. Schall's testimony.

25          MS. SPINELLI: Completely understand. And we

1 appreciate that. So I'll sit down --

2 THE COURT: If I could get --

3 MR. BICE: Your Honor, the only added point I want  
4 to make about this is it's a document in all reality we  
5 shouldn't have even produced, because it's about Stanley Ho.  
6 It has nothing to do with this case.

7 THE COURT: Okay.

8 MR. BICE: We inadvertently identified it -- just  
9 wasting our time.

10 MR. PEEK: But what it has to do with this case  
11 though is they make this claim of confidentiality, Your Honor,  
12 under Article 92, and they produce those documents --

13 THE COURT: Mr. Peek, I understand it, and we'll  
14 discuss that in the argument section of this if I ever finish  
15 the evidence portion. So if we could get the witness back,  
16 please. Thank you so much.

17 MR. PEEK: Your Honor, to go forward, Your Honor,  
18 can I continue with my examination.

19 THE COURT: Yes. That's why I asked the witness to  
20 come back in so you could finish your examination some day  
21 before the end of the year.

22 Mr. Schall, thank you for allowing us this brief --

23 MR. PEEK: Can we have just not speaking objections  
24 and just objections and then move on.

25 THE COURT: We're going to try not to do speaking

1 objections, but I do occasionally need clarification when you  
2 guys are citing stuff I don't know about like 30(b)(6)  
3 depositions and answers to interrogatories and things.

4           So, sir, you're still under oath. Hope you had a  
5 nice break. And they didn't get one, so hopefully they'll be  
6 very patient -- quick and to the point of their questions.

7           Mr. Peek, you're up.

8           MR. PEEK: Thank you, Your Honor.

9 BY MR. PEEK:

10          Q     I wanted to actually -- you understand that WRMSA is  
11 claiming a privilege or a confidentiality -- first claim Macau  
12 law privilege, you and I agree that there is not a quote,  
13 unquote, "Macau law privilege" related to Article 92 of the  
14 concession agreements; correct?

15          A     I don't know if I agree. Article 92 imposes certain  
16 confidentiality restrictions.

17          Q     Confidentiality. It doesn't say, privilege?

18          A     Correct.

19          Q     Okay. And then there's also a claim of Macau law  
20 privilege under Macau SAR Law 16/2001, Section 1, Article 16,  
21 regarding concession agreements. Do you recall that?

22          A     I do.

23          Q     And that's a claim that WRMSA is making and made by  
24 Pisanelli Bice, WRL's lawyers; correct?

25          A     Well, I'm not a litigator, but WRMSA told WRL we

1 cannot give you certain documents because of Macau law. What  
2 WRL came to this court and this proceeding and said I don't  
3 know.

4 Q But as you identified to me, you didn't look at  
5 every document that either WRL claimed privileged or WRMSA  
6 claimed privileged, did you?

7 A Correct.

8 Q So that decision was made by WRL's lawyers; correct?

9 A I don't know who made it.

10 Q It's made by Pisanelli Bice. Were your lawyers  
11 involved in it?

12 A I don't know.

13 Q You don't know. Let me have you look at -- this is  
14 another exhibit. This is a pleading, it is WRL's objection.  
15 It is Exhibit 706.

16 Your Honor, this is a pleading. It's Exhibit 706.  
17 It's their objection to our motion to compel.

18 THE COURT: Was it filed with the Court.

19 MR. PEEK: It was filed with the Court, Your Honor.

20 THE COURT: So since it's already part of my record,  
21 Mr. Bice, I'm going to let the witness look at it, and then  
22 I'll decide what weight, if any, I give to it as part of this  
23 hearing.

24 MR. BICE: The witness -- there's no basis to this.  
25 I understand, Your Honor, but the witness doesn't know



1 anything about --

2 THE COURT: He may not. That may be really quick.

3 MR. PEEK: He may not. That's very true.

4 THE COURT: He may say, no, I don't know. No, I

5 don't know. And then we'll get out of here really quick.

6 MR. PEEK: We will.

7 Can you go to page 16 of that.

8 THE COURT: Yes, for purposes of this hearing since

9 it's already part of my record.

10 It should be on your screen there and on the bigger

11 screen, and they're going to blow up the portion --

12 BY MR. PEEK:

13 Q You see the quotation that WRL has provided the

14 Court of Macau Law 16-201 [sic] up at the top of the page? Do

15 you see that?

16 THE COURT: Do you want to blow it up.

17 MR. PEEK: Can I blow it up for him.

18 THE COURT: The indented part.

19 MR. PEEK: The top quote there, Nick, the bidding

20 process.

21 THE WITNESS: I see it.

22 BY MR. PEEK:

23 Q You see that?

24 A Yes.

25 Q So this is one of the other privileges under which

1 you claim some protection; correct?

2 A I didn't claim anything. But --

3 Q Well, Wynn Resorts' lawyers claimed it for WRMSA;  
4 correct?

5 A I don't know who's pleading this is, but it appears  
6 so.

7 Q Okay. Well, I'm trying to just direct your  
8 attention to this statute. Are you familiar with that statute  
9 in Macau?

10 A Yes.

11 Q Okay. And is it quoted correctly?

12 A I'm familiar, but I haven't memorized it. It  
13 appears correct.

14 Q Okay. And what it says is, "the bidding processes,  
15 the documents and data included therein as well as all  
16 documents and data relating to the tender are confidential,  
17 and access to or consultation of such documents by third  
18 parties is prohibited." Do you see that?

19 A Yes.

20 Q Now that relates to the bidding process; correct?

21 A It relates to what's listed here.

22 Q Okay. "The bidding processes, the documents and  
23 data included therein --" That would be the bidding process,  
24 documents; correct?

25 A Yes.

1 Q And then it says, "-- as well as all documents and  
2 data relating to the tender --" That's the tender in the  
3 bidding process; correct?

4 A Correct.

5 Q Those are what are confidential; correct?

6 A According to this, yes.

7 Q And the tender and the bidding process concluded at  
8 or about the time the concessions were awarded in January,  
9 February of 2002; correct?

10 A The tender and bidding process concluded with the  
11 awarding of the concession.

12 Q That's in January, February of 2002; correct?

13 A Early 2002.

14 Q Okay. We'll come back to this. But I just wanted  
15 to make sure that you and I agree on this. So let me move on  
16 here to -- when we were here last we had also talked about a  
17 document identified in the privilege log under Exhibit 719-  
18 360. Wait a minute. Make sure I get the right one here.  
19 Yes.

20 MR. PEEK: If you could bring that up, please, Nick.

21 BY MR. PEEK:

22 Q And this is a claim of Macau law privilege on a  
23 document from Jaime Roberto Carrion to Steve Wynn; correct?  
24 Remember that?

25 A Can you blow it up for me.

1 Q Yes, he's going to do that for you.

2 A You said 719-360?

3 Q Yeah. That's Exhibit 719, page 360 on the privilege  
4 log of June 2016.

5 A Okay.

6 Q And you'll see that it is -- the author is Jaime  
7 Carrion?

8 A Carrion.

9 Q And it's a letter to Steve Wynn?

10 A That's what this says.

11 Q Okay. And then it says it's a letter and attachment  
12 protected by Macau special administrative region law. Is that  
13 the region law that we just went over, that's 16/201, or 2001?

14 A This doesn't say that. But because it's referencing  
15 Article 92 and regarding concession agreements I imagine that  
16 is the case.

17 Q Okay. And we just established that that only  
18 related to the tender process, the bid process; correct?

19 A And related documents, yes.

20 Q And related documents before the bid award; correct?

21 MR. BICE: Objection to the form.

22 THE COURT: Overruled.

23 You can answer.

24 THE WITNESS: I would agree with that. I don't know  
25 if the government agrees with that, but yes.

1 BY MR. PEEK:

2 Q Okay. Do you remember, then, we had gone over --

3 well, I think we'd established of course that Jaime was a

4 Public Works person from Macau Government; correct?

5 A Correct.

6 Q And I think we did this, but maybe we didn't, so in

7 Exhibit 804, this is WRL's twenty-fourth supplemental

8 privilege log served on the eve of the hearing. So it was

9 served on July 26th, at 8:59. And you would know that, but

10 let me just --

11 THE COURT: That's a proposed exhibit.

12 MR. PEEK: Proposed exhibit.

13 BY MR. PEEK:

14 Q Let me have you look at the 804 --

15 THE COURT: So what's it start on, 804-?

16 MR. PEEK: 804-4, Your Honor. And it includes

17 exhibits, and it ends on 804-29.

18 THE COURT: Mr. Bice, I understand you have the same

19 objection?

20 MR. BICE: I have the same objection, Your Honor.

21 THE COURT: Same ruling, 804-4 through 29 be

22 admitted for purposes of this hearing.

23 (Defendants' Exhibits 804-4 through 804-29 admitted)

24 MR. PEEK: Thank you.

25 //

1 BY MR. PEEK:

2 Q Let me have you now turn to 804, page 5. And you  
3 see that that same document is now -- has an attorney-client  
4 privilege claim, as opposed to Macau law privilege; correct?

5 A I see that that's what this says.

6 Q That's what that says.

7 A Okay.

8 Q Okay. And, again, this would be a WRMSA claim  
9 because it relates to Macau concession; correct?

10 A Well, what you're showing me says attorney-client  
11 privilege.

12 Q No. No. I understand that, but documents related  
13 to WRMSA would be a claim that WRMSA would make either under  
14 Macau law privilege or attorney-client privilege; correct?

15 A I'm not trying to get semantics with you. WRMSA  
16 would tell Wynn Resorts, we can't give you that document  
17 because of Macau law.

18 Q Well, let's -- I understand that. But the claim of  
19 privilege though is a privilege held by either of  
20 confidentiality or privileges held by WRMSA; correct?

21 MR. BICE: Objection. Calls for a legal conclusion.

22 THE COURT: Overruled.

23 MR. PEEK: He's a lawyer.

24 THE COURT: Mr. Peek, please don't argue.

25 MR. PEEK: Okay.

1 THE COURT: You can answer.

2 THE WITNESS: My understanding is the term "Macau  
3 law privilege" was coined here in the United States as a  
4 matter of convenience.

5 BY MR. PEEK:

6 Q By Wynn Resorts' lawyers?

7 A Yes.

8 Q Okay. But it's a -- whatever it is, whether it's a  
9 Macau law privilege or Macau law of confidentiality it's  
10 something held by WRMSA; correct?

11 MR. BICE: Same objection, Your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: WRMSA would tell Wynn Resorts, I can't  
14 give you that document because of, and then it would cite a  
15 law. We would not use the term "privilege" when we were  
16 talking to our --

17 BY MR. PEEK:

18 Q But we've already gone over it. You haven't looked  
19 at all these documents yourself, correct, to claim that  
20 privilege or that confidentiality; correct?

21 A All what documents?

22 Q All of the documents on which a claim is being made  
23 for Macau law privilege, you haven't looked at all of those;  
24 correct?

25 A That's correct.

1 Q That decision was made by Wynn Resorts' lawyers;  
2 correct?

3 A I don't know who made the decision. That seems  
4 logical.

5 Q So you don't know, from your review of all of the  
6 documents on which they claim a privilege has been made,  
7 whether or not it does or does not satisfy WRMSA's claim;  
8 correct?

9 A I'm sorry. I don't understand that question.

10 THE COURT: Claim of confidentiality?

11 BY MR. PEEK:

12 Q Claim of confidentiality or privilege.

13 A So, I don't know if a document, which Wynn Resorts  
14 Limited lawyers withheld based on a Macau law privilege, to  
15 use your term, actually satisfies Macau law with respect to  
16 asserting that confidentiality.

17 Q Correct.

18 A Correct.

19 Q That decision was made by Wynn Resorts' lawyers;  
20 correct?

21 A I believe so.

22 Q Thank you. So, anyway, we now see that the letter  
23 previously described in 719-360 as a authored letter from  
24 Jaime Roberto Carrion to Mr. Wynn is now identified, same date  
25 -- actually a different date, identified as July 25th of '06,



1 as an author of Marc Rubinstein and a claim of attorney-client  
2 privilege; correct?

3 A Okay. I'm sorry. I see these numbers in the left  
4 column, but the numbers you showed me before, are they the  
5 same as this?

6 Q Well, they're right above you.

7 A They're right above me?

8 THE COURT: No. He's asking if on the prior  
9 privilege log you showed -- it's the same document --

10 MR. PEEK: Oh. Okay. So we'll go back -- yeah,  
11 that's a fair point.

12 So we'll go back to 719-360, if you would, Nick. So  
13 that the witness can be -- can you just -- no, too late to do  
14 split screen. Can you do split screens on this one, Nick,  
15 when you bring the other one back up, so that he can see.

16 THE COURT: Somebody touched the monitor and made  
17 dots on it, and I don't have any control in this courtroom.

18 BY MR. PEEK:

19 Q Okay. So just the document numbers are  
20 WYNNPRIV45276 to WYNNPRIV45286. It's the 12-page document.

21 A Yes.

22 Q Okay. So now it has a new name in Exhibit 804, page  
23 5. Same numbers; correct?

24 A Yes.

25 Q Okay.

1           A     Thank you.

2           Q     You're welcome.

3           THE COURT: I'm going to try something with your  
4 monitor real quick. Hold on, Mr. Peek.

5           So touch the bottom corner on your left. There we  
6 go. So if you make marks and they need to be erased, that's  
7 where you touch at that monitor.

8           THE WITNESS: Oh. Okay.

9 BY MR. PEEK:

10          Q     Do you know who Marc Rubinstein is?

11          A     I do.

12          Q     Okay. And he was formerly general counsel to Wynn  
13 Resorts Limited; correct?

14          A     Yes.

15          Q     And he's been gone for some time?

16          A     Yes.

17          Q     Now you're familiar with attorney-client privilege,  
18 are you not? I mean as a lawyer, you're familiar with it?

19          A     Yes.

20          Q     And you're familiar with that it has to be a  
21 communication from a lawyer to a client or a client to a  
22 lawyer; correct?

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

25               THE COURT: Overruled.

1 BY MR. PEEK:

2 Q It has to be two people involved in the  
3 communication; correct?

4 A I don't know. If I write a note to myself it can't  
5 be privileged?

6 Q I would agree. So if you're going to be claiming a  
7 privilege it would be because I've communicated legal advice  
8 of a confidential nature; correct?

9 MR. BICE: Same objection, Your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: I guess what I'm saying is if I write  
12 a note to myself that contains legal --

13 BY MR. PEEK:

14 Q That's not what I asked you, Mr. Schall. I'm only  
15 asking you if you're familiar --

16 MR. BICE: Can the witness be allowed to finish his  
17 answer, please, Your Honor.

18 THE COURT: Yes, he can.

19 Sir, can you finish your answer.

20 THE WITNESS: Mr. Peek, I thought you said that for  
21 the privilege to apply it required two parties, a sender and a  
22 recipient.

23 BY MR. PEEK:

24 Q Would you agree with that?

25 A I agree that the privilege can apply in that

1 situation.

2 Q Do you think it applies just to a note to yourself?

3 A If I take down meeting notes and it's not giving  
4 them to anyone, I would hope that attorney-client privilege  
5 would apply.

6 Q But you're in a meeting and there are people  
7 involved in the meeting who may have sought your legal advice;  
8 correct?

9 A I'm saying as if I make the notes for myself and I  
10 don't hand them out to the entire meeting.

11 Q You believe that's a privileged communication when  
12 you're taking notes of what occurred during the meeting as  
13 opposed to you were actually asked a legal question? Is that  
14 what you believe?

15 A I'm not trying to be combative with you. I agree  
16 that attorney-client privilege can apply when there's  
17 communication between an attorney and a client. I also  
18 believe that if I take meeting notes for myself, never  
19 intended for use by others, that attorney-client privilege  
20 should apply.

21 Q Okay. That's what you believe?

22 A Yes.

23 Q Okay. That's fine. So here we have Marc  
24 Rubinstein.

25 MR. PEEK: And if you'll just do the 804-5, Nick,

1 document is all we need, just the full description of that  
2 one. Thank you.

3 BY MR. PEEK:

4 Q We know that there's no recipient, correct, of this  
5 communication by Mr. Rubinstein; correct?

6 A Well, I see two blank columns after his name.  
7 There's no header on this page. I don't know what they  
8 referred to.

9 Q We'll go back to the original page. If you'll go  
10 back to page 4. Now go to page 5. So Columns 4 and 5 are  
11 -- recipient is Column 4, and Column 5 is cc; correct?

12 A Correct.

13 Q Okay. So there's no recipient in Column 4; correct?

14 A Correct.

15 Q And what it says is, "Handwritten notes reflecting  
16 counsel's protected memo impressions with Marc Rubinstein Esq.  
17 re concession agreement." Correct?

18 A That's what it says.

19 Q And it's dated 7/25/2006; correct?

20 A Yes.

21 Q Was Mr. Rubinstein still counsel at the Wynn Resorts  
22 in July 2006?

23 A I don't believe so.

24 Q Okay. Now do you know whether or not Mr.  
25 Rubinstein's notes appear on the letter from Mr. Carrion to

1 Mr. Wynn, which was the original description of the document,  
2 the letter and attachment?

3 A I do not.

4 Q Do you know whether or not the document with the  
5 notes of Mr. Rubinstein redacted was produced, the letter?

6 A I don't know.

7 Q Okay. Now let's look at -- now go to Exhibit 809,  
8 that's the supplement from last Friday.

9 And page 9 of that, Nick, please.

10 BY MR. PEEK:

11 Q And at the bottom -- one up from the bottom you see  
12 that same document described?

13 MR. PEEK: I'm sorry. 19. I apologize, Nick. I  
14 said 9, I meant 19. My apologies.

15 BY MR. PEEK:

16 Q So just to -- one up from the bottom we see that  
17 same document described as Marc Rubinstein. Do you see it?

18 A I'm sorry. I don't.

19 Q You don't see it in page 19, 809-19?

20 A No. You can see what I'm looking at.

21 Q 809-19. You're on 809-23.

22 A Oh. I see. I was looking at the wrong -- I'm  
23 sorry.

24 Q You're right. I apologize.

25 A I'm sorry.

1 Q You were correct. It was page 19 of the -- or page  
2 19 of the privilege log, but page 23 of the exhibit. So you  
3 see that now?

4 A Yes, I do.

5 Q And it's described as a, again, Marc Rubinstein  
6 handwritten notes, dated 7/25/06, when he was no longer at the  
7 Wynn Resort?

8 A Marc Rubinstein handwritten notes, yes.

9 Q Okay. And it now -- what does it now say that those  
10 documents are -- or what the description of the document is?

11 A "Handwritten notes reflecting counsel's mental  
12 impressions for communications with outside counsel on legal  
13 obligations re concession agreement."

14 MR. PEEK: Okay. Could you bring up 804-5 side by  
15 side with that, please.

16 BY MR. PEEK:

17 Q Now, this one, which was served on us on July 26th,  
18 2017, and marked and identified as Exhibit 804, page 5 says  
19 that --

20 THE COURT: And that's the bottom one?

21 MR. PEEK: That would be the top one, Your Honor,  
22 "Handwritten notes reflecting counsel's protected mental  
23 impressions with Marc H. Rubinstein."

24 BY MR. PEEK:

25 Q That's what the description of it was just before

1 the hearing started on July 26th; correct?

2 A I don't know when this was delivered, but that's  
3 what it says.

4 Q That's what it says. And then now on the eve of  
5 this hearing it's now described as "mental impressions for  
6 communication with outside counsel on legal obligations re  
7 concession agreement." Correct?

8 A That's what this says.

9 Q And it's by a person authored who no longer worked  
10 at Wynn Resorts in July of 2006; correct?

11 A The column says, author and from, I don't know if  
12 that is indicative of when the actual correspondence was  
13 written or it was something that was written before --

14 Q It has a document date on it; right?

15 MR. BICE: Can the witness be allowed to finish,  
16 Your Honor.

17 THE COURT: Sir, did you have more you wanted to  
18 add?

19 MR. PEEK: He's not answering the question, Your  
20 Honor.

21 THE COURT: Mr. Peek.

22 THE WITNESS: All I was saying is I'm not familiar  
23 with this. It says, from author, author/from. I don't know  
24 if that means that the date associated is the date it was  
25 written or produced or it was a reforwarded or a



1 recirculation, I have no idea.

2 BY MR. PEEK:

3 Q Fair point. Let's go back to the original  
4 description in June of 2016, which is Exhibit 719-360. Let's  
5 go back to that one.

6 A Okay.

7 MR. PEEK: So if you'd bring it up for him, Nick.

8 BY MR. PEEK:

9 Q And that description describes this document as a  
10 letter from the Public Works Bureau to Mr. Wynn correct?

11 A Correct.

12 Q And the date of the document -- see up there at the  
13 top where it says, "document date," see that document date?

14 A Doc date, yes.

15 Q Doc date, 7/25/2006; correct?

16 A Yes.

17 Q Okay. So then it -- it started out as a letter from  
18 the Public Works to Steve Wynn; correct?

19 A This description --

20 Q And the claim was a Macau law privilege; correct?

21 THE COURT: Sir, do you have more to add to your  
22 answer?

23 THE WITNESS: It's okay. Thank you though. It  
24 says, "privilege withhold". "Privilege concession, Clause 92,  
25 concession."

1 BY MR. PEEK:

2 Q It's Macau law privilege claim by Wynn Resorts  
3 Limited; correct? It's a yes or no.

4 A Yes.

5 Q And then it morphed on the eve of the start of our  
6 evidentiary hearing in July into a claim that it was Mr.  
7 Rubinstein's notes; correct?

8 MR. BICE: Objection. Foundation.

9 THE COURT: Overruled.

10 THE WITNESS: If you show me the second of the three  
11 I'll be able to answer the question.

12 BY MR. PEEK:

13 Q I'll show you the second of the three. There you  
14 have it.

15 THE COURT: Since I'm the fact finder and I've  
16 already got it can we skip ahead.

17 MR. PEEK: Okay. Well, Your Honor, I just want to  
18 establish it's the document date. He's saying, well, I don't  
19 know when it was created. But --

20 THE COURT: He doesn't, but I do because --

21 MR. PEEK: Okay.

22 THE COURT: -- you've been making a record. Every  
23 time you ask to use them I'm admitting them over the objection  
24 for purposes of the privilege log only.

25 MR. PEEK: I'll move on, Your Honor.

1 THE COURT: Thank you. How much longer have you got  
2 with this witness at the pace we're going?

3 MR. PEEK: How much longer do I have with this  
4 witness?

5 THE COURT: At the pace we're going?

6 MR. PEEK: I'm hoping to be completed, Your Honor,  
7 by Wednesday afternoon. This is a little bit slow because of  
8 the changes in the logs and the claims that Wynn Resorts has  
9 made. When I get past this --

10 THE COURT: Just keep going. You've told me how  
11 long.

12 MR. PEEK: -- it will move faster. Okay.

13 MR. BICE: Your Honor, I'm going to note my  
14 objection to this -- how the hearing --

15 THE COURT: Mr. Bice, we'll talk about it at the  
16 lunch break.

17 MR. BICE: Thank you.

18 THE COURT: I'm going to let the witness have a full  
19 lunch break, and you guys don't get one.

20 MR. BICE: Appreciate it.

21 THE COURT: Or a short one.

22 BY MR. PEEK:

23 Q And when we were last here we also discussed another  
24 document, which was identified in Exhibit 719, page 162.

25 MR. PEEK: If you'd bring that up, please, Nick.

1 BY MR. PEEK:

2 Q And that was a letter from Ron Kramer -- no  
3 recipient. I take it back. Originally it was brought up, it  
4 was a letter from Ron Kramer to Edmund Ho. My apologies. I  
5 was a step ahead of myself.

6 MR. PEEK: And that would be Document 41630, Nick.

7 BY MR. PEEK:

8 Q In June of 2016, in Exhibit 719-162 the claim was  
9 Macau law privilege; correct?

10 A Yes.

11 Q And it was identified as a letter from Ronald Kramer  
12 to Edmund Ho; correct?

13 A Yes.

14 Q So there was an author and a recipient; correct?

15 A Yes.

16 Q And Ron Kramer was at that time I think president of  
17 WRMSA?

18 A No.

19 Q What was his position at WRMSA?

20 A None.

21 Q None. So who is he? Was he a Wynn Resorts  
22 Limited --

23 A Yes.

24 Q Okay. And what was his position at Wynn Resorts  
25 Limited at that time?

1           A     I believe president.

2           Q     Okay. My mistake. I had him at WRM. Now we, then,  
3 know that it got changed -- just a moment, if I may -- and  
4 this is Exhibit 735, which is in evidence. That's the  
5 privilege log of February 22nd, 2017, page 4. That letter is  
6 now just Ron Kramer as author. No recipient; correct?

7           A     Correct.

8           Q     And it says it's a draft letter reflecting  
9 confidential legal advice with Marc Rubinstein re concession  
10 agreement; correct?

11          A     That's what this says.

12          Q     Do you know whether it's the concession agreement  
13 related to the gaming concession or the land concession?

14          A     I don't know.

15          Q     And what had been previously claimed as the Macau  
16 law privilege now is an attorney-client privilege; correct?

17          A     That's what this says.

18          Q     Okay. And of course you wouldn't know why the  
19 description went from Macau law privilege to now an attorney-  
20 client privilege, would you?

21          A     No. On these logs, no.

22          Q     So that was February 22nd.

23                MR. PEEK: Let's look now what it looks like on  
24 August 18th at 6:05. This is Exhibit 809, page 18, Nick. Did  
25 you find it Nick or do I need to. It's about the top third,

1 Nick. See Ron Kramer? There you go.

2 BY MR. PEEK:

3 Q Now on Friday it now became, again, a draft letter,  
4 no recipient, no cc; correct?

5 A Correct.

6 Q So it says, "Handwritten notes reflecting counsel's  
7 protected memo impressions with Marc Rubinstein Esq., and  
8 confidential legal advice regarding proposed revisions to  
9 concession agreement." In 2004 were there proposed revisions  
10 to the gaming concession agreement to your knowledge, your  
11 company, WRMSA?

12 A Again, I don't know.

13 Q And was Marc Rubinstein representing WRMSA with  
14 respect to the concession agreement?

15 A I don't know. This is before I worked for the  
16 company.

17 Q Okay. It's fair. Do you know whether the draft  
18 letter with the handwritten notes redacted has, in fact, been  
19 produced?

20 A No. No, I don't know.

21 THE COURT: Very good catch.

22 BY MR. PEEK:

23 Q Now previously I think it had been identified, the  
24 description was a description of legal advice with Marc  
25 Rubinstein. Now it's just mental impression; correct? Now

1 February it was identified in description at legal advice;  
2 correct?

3 A Yes, that's what it says.

4 Q And then now it's his mental impression as opposed  
5 to legal advice; correct?

6 A Well, it says, "Draft letter with handwritten notes  
7 reflecting counsel's protected mental impressions with Marc  
8 Rubinstein." So it seems a lawyer's mental impressions, but I  
9 don't know it's Marc's or someone else's.

10 Q Oh. Okay. "Counsel's protected mental impressions  
11 with Marc Rubinstein." So maybe it's some other lawyer  
12 meeting with Marc Rubinstein. So you can't tell from that  
13 description there whether it's Marc's mental impressions or  
14 somebody else's mental impressions?

15 A Correct.

16 Q In conferring with Marc about his or her mental  
17 impressions?

18 A I can't tell. I just have the description.

19 Q Okay. Let's move on now to another WYNNPRIV  
20 document. This is a document that appears in Exhibit 719-310,  
21 and it is Document 39706 to 39710, Steve Wynn to Edmund Ho.  
22 And there's a claim of Macau law privilege; correct?  
23 Initially, back in June of 2016.

24 A Correct.

25 Q And it's identified not as a draft letter, correct?

1           A     It says, "Letter."  
2           Q     Letter. And it's from Steve Wynn to Edmund Ho, the  
3 chief executive; correct?  
4           A     That's what this says.  
5           Q     Okay. Now, you remember this conversion chart that  
6 we went over last time?  
7           A     I remember seeing it.  
8           Q     You remember seeing that conversion chart. So let's  
9 look at 731-42. That document was apparently converted, that  
10 39706, was converted to Document 67375; right?  
11           MR. BICE: Your Honor, I'm going to renew --  
12           THE COURT: Yes.  
13           MR. BICE: I'm going to renew my objection.  
14           THE COURT: Overruled.  
15           MR. BICE: Well, I also want to renew my objection  
16 on the grounds that this document was later amended.  
17           THE COURT: I understand, Mr. Bice.  
18           MR. PEEK: I'm going to go through the amendments,  
19 Your Honor. That's what I'm doing.  
20           THE COURT: I know. It's painful.  
21           MR. PEEK: It is painful, but I wished it hadn't --  
22 I wish it weren't so painful, Your Honor.  
23           MR. BICE: As I renew my objection, Your Honor, that  
24 this is beyond the scope of the motion and they've produced no  
25 witness and no evidence --



1           MR. PEEK: Your Honor, this is a speaking objection,  
2 again.

3           THE COURT: Mr. Peek, Mr. Bice, it's important you  
4 guys each let each other finish without interrupting each  
5 other. I understand Mr. Bice has a scope issue to the extent  
6 that there are privileged documents to which this witness has  
7 information about the underlying document for which they claim  
8 a privilege or confidentiality has been made. I will let him  
9 answer questions related to that. He has already told us he  
10 does not know anything about the preparation of the privilege  
11 logs, the cross-reference logs, or any of that information;  
12 right?

13           THE WITNESS: Correct.

14           THE COURT: Okay.

15           MR. PEEK: Your Honor, and I understand that, and I  
16 certainly -- I don't like calling lawyers, but that's about  
17 the only person I can call other than this witness would be  
18 the lawyers.

19           THE COURT: Well, we'll see what happens. Let's  
20 keep going with this witness.

21           MR. PEEK: And if I have to do that with Ms.  
22 Spinelli or somebody else I will, but I'm trying to avoid  
23 that, Your Honor.

24           THE COURT: Keep going on this.

25 //

1 BY MR. PEEK:

2 Q In any event, this shows that there was a conversion  
3 of this document and was released. Do you see that?

4 A Okay. I remember this from last time. I remember I  
5 said, I don't know what converted means. If these two columns  
6 represent a starting number and then a number it turned into,  
7 then I agree with you.

8 THE COURT: I don't know can be a good answer.

9 BY MR. PEEK:

10 Q I understand you don't know. There you go. So I'll  
11 move on, but I want to at least have you -- you at least can  
12 identify Steve Wynn and Edmund Ho as individuals with whom  
13 you're familiar?

14 A That's correct.

15 Q You can identify that there is a document withheld  
16 on Macau law privilege related to communication between Mr.  
17 Wynn and Mr. Ho; correct?

18 A When you show me that log and you're speaking to  
19 that document I agree with you.

20 Q Okay. And I think one of the reasons why you may  
21 not have familiarity with those documents is because WRL was  
22 in control of making those objections; correct?

23 A It's correct that WRL was in control of making those  
24 objections.

25 Q So if we look at Document 67375 we actually find

1 that in Exhibit 800. I don't know if 800's in evidence or  
2 not.

3 THE CLERK: It's still proposed.

4 MR. PEEK: Pardon.

5 THE CLERK: It's still proposed.

6 MR. PEEK: Still proposed.

7 BY MR. PEEK:

8 Q So let me have you take a look at Exhibit 800-2,  
9 which is -- starts as Bate Number 67374, does it not?

10 A Is he going to show me or do I need to --

11 MR. PEEK: Your Honor, I don't want him to show --  
12 You're not showing the Court, okay.

13 BY MR. PEEK:

14 Q So you have it right there?

15 A No.

16 THE COURT: On his screen?

17 MR. PEEK: Oh. then he needs to look at it. We  
18 need to pull it. It's Exhibit 800.

19 THE COURT: I'll look away while you all show it to  
20 everybody.

21 THE WITNESS: Which one is it, Mr. Peek?

22 BY MR. PEEK:

23 Q Exhibit 800.

24 A 800?

25 Q Uh-huh.

1           A     Okay, I'm at 800.

2           Q     Okay. So in February of -- February 10, I think of  
3 2010, when we had this thirty-sixth supplement the document  
4 was identified, and you'll see a 67375, that's actually page 2  
5 of what's on -- of that exhibit, correct, that Exhibit 800?

6           A     So -- okay, yes. Page 2.

7           Q     Okay. Now you would agree with -- are you familiar  
8 with Secretary Lau Si Lo?

9           A     Yes.

10          Q     And this is a Wynn Macau document; correct?

11          A     It's on Wynn Macau letterhead, yes.

12          Q     And then it was signed by -- if you go to the bottom  
13 of the next page, signed by Steve Wynn?

14          A     Correct.

15          Q     And the date of the letter is 2012; correct?

16          A     August 20, 2012.

17          Q     And are you familiar with this communication by Wynn  
18 Macau to Secretary Lau Si Lo?

19          A     Yes.

20                MR. PEEK: Your Honor, I'd offer Exhibit 800-2  
21 through 800-4.

22                THE COURT: Any objection to 800-2 through 800-4?

23                MR. BICE: Yes.

24                THE COURT: Tell me what your objection is.

25                MR. BICE: My objection is that once again this is a

1 document that was never identified by the defendants as being  
2 one of the documents for which they were claiming any form of  
3 privilege. This document is being offered because we've  
4 already acknowledged that the conversion log that he's trying  
5 to use -- this is the exact same thing we've already been over  
6 with before.

7 THE COURT: Mr. Bice, can we just not make a  
8 speaking objection and tell me what your legal basis of your  
9 objection is, please.

10 MR. BICE: Legal basis is that this document is not  
11 within the scope of this hearing. We'd asked them to identify  
12 the document by Bates number on which they were claiming that  
13 they were prejudiced and they did not --

14 THE COURT: Okay. The objection is sustained for a  
15 minute.

16 Sir, I'm going to take my lunch break now. I'm  
17 going to let you go out. You are in the middle of a question.  
18 So anything you talk to the lawyers about during the lunch  
19 hour is fair game for an inquiry when you come back under  
20 the --

21 What's the case called?

22 MR. PEEK: Coyote Springs, Your Honor.

23 THE COURT: -- Coyote Springs versus BrightSource  
24 Entertainment case that Mr. Pisanelli is well aware of.

25 MR. CAMPBELL: Fake law, Your Honor.

1 THE COURT: Well, it's the Nevada Supreme Court.

2 So I'm just cautioning that because of that decision  
3 certain kinds of questions or things you may talk to with your  
4 lawyers may not have a privilege associated with them when you  
5 come back from lunch. You can talk about the weather, talk  
6 about sports, have a lovely lunch. And we'll see you at 1:15.  
7 I'm going to talk to the lawyers for a few minutes about this  
8 particular issue without you.

9 THE WITNESS: Thank you. Can I leave this here.

10 THE COURT: You can.

11 THE WITNESS: Okay. Thank you, Your Honor.

12 THE COURT: 1:15.

13 MR. PEEK: May we have a comfort break, Your Honor.

14 THE COURT: Not yet. We'll go faster if I don't  
15 give you the comfort break.

16 So, Mr. Peek, other than to show that they were  
17 sloppy, what is your other purpose in using this document?

18 MR. PEEK: Your Honor, it's interesting that you  
19 call this sloppiness, I call it intentional hide the ball.

20 THE COURT: It may be.

21 MR. PEEK: Because it's intentional hide the ball,  
22 Your Honor, it's not necessarily that document in and of  
23 itself. It's the gamesmanship of the change of the --  
24 repeated change of the log and the misdescription of documents  
25 that they say to you, and you seem to give them that benefit

1 of the doubt as mistake or sloppiness. I'm saying, Your  
2 Honor, this is an intentional wilful act to hide the ball --

3 THE COURT: Okay. So --

4 MR. PEEK: -- on their part. Because they --

5 THE COURT: -- what I'm trying to get you to tell  
6 me, Mr. Peek, is how this particular witness, who we have here  
7 from the Far East, is going to provide me input related to  
8 whether the plethora of problems with the privilege log, the  
9 conversion log, the descriptions is wilful or a mistake.  
10 How's this witness going to help me?

11 MR. PEEK: That's a fair point, Your Honor. I think  
12 the only person who can help us on that would be the  
13 individuals who put them on the log --

14 THE COURT: And that may be what we do.

15 MR. PEEK: -- that may -- we may have to do that.  
16 I'm loath to do that, Your Honor. It's not my style to  
17 bring --

18 THE COURT: But this witness can't answer those  
19 questions. He's said, I don't know, a lot.

20 MR. PEEK: But I think -- Your Honor, the Court can  
21 draw an inference however from these misdescriptions, because  
22 I have to at least show the misdescriptions through somebody,  
23 and he has to identify that, you know, a letter that is so  
24 2012 is not the same one that they described as a 2002 letter.  
25 Then they put it back -- and he can then show that they got

1 put back on a log now with a different description. So maybe  
2 you're right, that might just come down to argument. But I  
3 need him, Your Honor, to at least be somebody who can, from  
4 the witness stand, identify the names, like SJM in the  
5 concession agreement, like Secretary Lau Si Lo is not the same  
6 as Edmund Ho, which when they say that's the conversion. You  
7 describe it and they describe it as, oh, I'm sorry, I made a  
8 mistake. I describe it, Your Honor, as an intentional effort  
9 to mislead us through a series of privilege logs where it  
10 changes and morphs in each privilege log first in June of  
11 2016, then in February of 2017.

12 THE COURT: I understand that this is an appropriate  
13 item for argument at the end of this case as to the privilege  
14 logs, and I'm going to let you put all of the privilege logs  
15 in. And if you want to ask questions about the particular  
16 documents I'm going to let you do that. However, asking this  
17 witness about the nature of the changes when he has told you  
18 repeatedly that he is unaware of how those documents were  
19 repaired, how someone came up with the term "Macau law  
20 privilege" or anything like that is a waste of our limited  
21 time that we have with this witness. And I would really like  
22 to get this hearing done this week. And I know that that  
23 sounds like we don't have that ability especially since you do  
24 not want to go on Friday, and at this point I've acquiesced to  
25 your request.



1 MR. PEEK: Your Honor, I will try to move faster.  
2 When I get past -- there are a few more -- well, more than --  
3 I don't want to say a few more. There are a number of these  
4 instances and examples that exist.

5 THE COURT: Of inconsistencies between the various  
6 logs regardless of whether we say they are mistake or  
7 wilfulness we'll call them inconsistencies.

8 MR. PEEK: I will certainly -- and I've tried not to  
9 ask him, do you know why the description was changed. I don't  
10 think I've asked him that question.

11 THE COURT: You have.

12 MR. PEEK: Okay. Now I won't. I'll just say, the  
13 description has changed; correct? And that may be sufficient.

14 THE COURT: And he'll say, based on what you've  
15 shown me, sure, sir. That's what he's been saying every time  
16 you've asked.

17 MR. PEEK: Well, Your Honor, everybody may think  
18 that's, you know, amusing over here -- well, on this side. I  
19 understand that, because I hear sort of the laughter behind  
20 me.

21 THE COURT: What I'm trying to say, Mr. Peek, is  
22 this witness telling you they've changed isn't something he  
23 has personal knowledge of. It's something he's telling you  
24 based on his observation at that moment in time based on the  
25 information you're showing. That is something that is

1 suitable for argument to me. That is something that the  
2 witness has no information about.

3 MR. PEEK: Okay. So let me also say to you, Your  
4 Honor, that the fact that he has no information about it I  
5 think is also relevant, because it goes to control. Remember  
6 who holds that so-called privilege? Remember who has the  
7 concession? The concession is WRMSA. Remember who he is? He  
8 is WRMSA's general counsel. And yet all of these privileges  
9 are being claimed by WRL. And they say, we have no control.  
10 And he said, I've not looked at all of the documents. So it's  
11 important to establish that he has not looked at any of these  
12 documents over which his company is claiming a privilege.  
13 It's a privilege that his company holds. So it's being done  
14 by WRL's counsel, that is also important, Your Honor, to  
15 establish. I can't do that except from that witness stand  
16 from Mr. Schall.

17 THE COURT: Okay. Can you tell me why 800-2-4 was  
18 not in your response to request for production.

19 MR. PEEK: I don't think I can, Your Honor. I guess  
20 I can say I made a mistake --

21 THE COURT: Okay.

22 MR. PEEK: -- by not including it in my production,  
23 Your Honor.

24 THE COURT: Okay. I'm not going to decide whether  
25 it's wilful or negligent at this point.

1 Mr. Bice.

2 MR. BICE: Your Honor --

3 MR. PEEK: Yeah. And it's not a redacted document  
4 either, Your Honor.

5 MR. BICE: We have a --

6 MR. PEEK: Request with redacted documents, it's not  
7 redacted.

8 THE COURT: Mr. Peek, I'm going --

9 MR. BICE: We have a motion that we're here on;  
10 right? And that motion was filed by the Okada parties. And  
11 in that motion, Your Honor, that motion I believe it is the  
12 motion that they filed on March 31 of 2017, none of these  
13 issues upon which Mr. Peek has been spending countless hours  
14 on is anywhere in this motion or the reply brief. In fact,  
15 the opposite is the case. What they're --

16 THE COURT: Well, most of the revisions to the  
17 privilege log were after the briefing started.

18 MR. BICE: Some of them were --

19 THE COURT: Post.

20 MR. BICE: Some of them were, Your Honor. But  
21 here's our point. Here's our point. This is not the subject  
22 matter of this motion for sanctions. This motion for  
23 sanctions is, according to them, is about the MPDPA redactions  
24 and the Macau law privileges; right? If they want to, and  
25 we've had many, many meet and confers about the privilege logs

1 over time, and there have been revisions to the privilege logs  
2 over time, if they want to make some sort of offer of proof to  
3 the Court, here, look at this privilege log. That should be  
4 the subject of an actual motion, Your Honor, or something  
5 other than wasting this witnesses time. Because here's what's  
6 really -- Your Honor, from our perspective what's going on is  
7 Mr. Okada has admitted under oath, and that's Mr. Peek's own  
8 client, I'll just quote it for you. "Have you been harmed --"  
9 This is his testimony. "Have you been harmed in any way by  
10 Wynn Resorts or Wynn Macau's compliance with the Macau  
11 Personal Data Protection Act?" "I have not." He then goes on  
12 to explain over and over again throughout his deposition how  
13 he has suffered no prejudice from the compliance with the  
14 MPDPA. So what has happened here is we now have Mr. Okada's  
15 lawyers morphing the hearing into something else, because they  
16 don't have a complaint about the motion -- a serious argument  
17 about the actual motion that they filed.

18           And so this -- we're not going to morph it around,  
19 because Mr. Okada has admitted -- just like they didn't  
20 produce any evidence to us to back up these allegations about  
21 control over the documents and that somehow these documents  
22 can be produced outside of Macau over the objection of the  
23 Wynn Macau board of directors. So what's going on here is  
24 we're spending hours of time trying to now change what this  
25 motion is about into something else and arguing about a

1 privilege log. If they'd like to file a motion about a  
2 privilege log where we can actually respond to it, Your Honor.  
3 Because there have been many meet and confers, and Mr.  
4 Kunimoto and Mr. Miller, who are both sitting in here, are  
5 well aware of that. And, in fact, there's correspondence with  
6 them that accompany these privilege logs that either Mr. Peek  
7 apparently doesn't read or he doesn't know about when he's  
8 making these insinuations about the status of the privilege  
9 logs.

10 THE COURT: Okay. Anything else you want to add?

11 MR. BICE: So I ask this Court to actually focus on  
12 what this hearing is actually about. And if they want to file  
13 a separate motion on the privilege log we'll be happy to  
14 address that and attach all those meet and confer letters that  
15 went on as part of the discussions about the privilege log.

16 THE COURT: Thank you.

17 Mr. Peek, there was something else you wanted to say  
18 before I break for lunch.

19 MR. PEEK: There is, Your Honor, because what I'm  
20 hearing is palpable misrepresentations. This motion is about  
21 three bases. The Macau law privilege, the Court overruled  
22 their Macau law privilege claim and ordered them to produce  
23 documents. It is also about documents that exist outside of  
24 the United States that were either sent to or sent from  
25 officials. And the third one is consent. So when Mr. Bice

1 says, this is not about the Macau law privilege, these are  
2 documents over which they claimed. And the Court ordered that  
3 on November 1st -- actually, the September hearing the Court  
4 ordered them to produce them, all documents that overruled the  
5 Macau law privilege. When he says, it's not about the Macau  
6 law privilege and it's not about this, it is about the Macau  
7 law privilege. Because what they did is they said, oh, gosh,  
8 I'm going to relook at my Macau law privilege and I'm now  
9 going to morph it over time, and they had many opportunities  
10 to do that, February, two times in February, April, two times,  
11 July, when the Court ordered them on July 7th, certify that  
12 you have produced everything. They certified that. Then what  
13 they do, on July 26th on the eve of the first sanctions  
14 hearing they produce more documents. They'd change them or  
15 they changed the description from Macau law privilege to  
16 attorney-client. So I'm entitled to show, Your Honor, that  
17 the documents that they are morphing over time fit within the  
18 Court's order of November 1st, ordering them to produce them.  
19 So when Mr. Bice says, this is not the subject matter of this  
20 motion, it is the subject matter of this motion, because these  
21 are the documents the Court ordered them to produce when it  
22 overruled the Macau law privilege.

23 THE COURT: Thank you, Mr. Peek. I am going to  
24 overrule the objection, allow the witness to talk about 800-2-  
25 4. Mr. Peek, if there any other documents for which they are

1 not listed in your response for request for production you  
2 will not ask about them, that's the last one.

3 MR. BICE: Thank you, Your Honor.

4 (Court recessed at 12:12 p.m., until 1:17 p.m.)

5 THE COURT: Mr. Miller, where is the rest of your  
6 team? You would notice I'm sitting in my chair, I'm waiting.

7 Mr. Schall, come on back up. We're going to get  
8 started whether they're here or not. So while you were out I  
9 overruled the objection. So at some point in time somebody's  
10 going to ask you if you remember the last question. Do you?

11 THE WITNESS: It was about this letter.

12 THE COURT: This letter being Exhibit 800-2-4. 2  
13 through 4.

14 THE WITNESS: Yes.

15 THE COURT: So we don't do readbacks. So I'm  
16 hopeful that Mr. Peek will remember what he meant to ask you.  
17 The old days they used to charge sanctions by the minute for  
18 lawyers who were late. It always went to the Library Fund.

19 (Pause in the proceedings)

20 THE COURT: Mr. Malley, are you the only Elaine Wynn  
21 lawyer here today?

22 MR. MALLEY: I am, Your Honor.

23 THE COURT: It's nice to see you in the back row.

24 MR. MALLEY: It is nice to be here.

25 THE COURT: Are you comfy back there?

1 MR. MALLEY: I am.

2 THE COURT: That's lovely.

3 MR. BICE: It's a pleasant change from the  
4 seventeenth floor.

5 THE COURT: Jill said we could never go back up  
6 there till it gets redone. And since they won't tell me  
7 whether I get to the 17th floor I'm not spending money on it.

8 Mr. Kunimoto, you know better. You know I'm a  
9 starting-on-time kind of person.

10 MR. KUNIMOTO: My apologies, Your Honor.

11 THE COURT: Where is Mr. Peek?

12 MR. KUNIMOTO: He's having a bio break. I don't  
13 know how else to describe it.

14 THE COURT: He would call it a break for personal  
15 convenience.

16 (Pause in the proceedings)

17 THE COURT: Mr. Peek, how are you?

18 MR. PEEK: I am well, Your Honor. I have had such a  
19 delightful time this morning, and I just came back for more.

20 THE COURT: Isn't that nice?

21 MR. PEEK: It is.

22 THE COURT: So I told the witness, while we were  
23 waiting for you, that I had overruled the objection --

24 MR. PEEK: That you're going to get it all done.

25 THE COURT: No. I told him I had overruled the



1 objection. I asked him if he remembered the question. He  
2 said he knew it was about the letter. We identified the  
3 letter as 800-2 through 4. And now we need you to repeat the  
4 question for him so both he and I can complete our notes -- or  
5 I can complete my notes and he can answer your question.

6 MR. PEEK: Your Honor, for some reason I've lost my  
7 pen. I don't know what I did with it, but I guess I don't  
8 need a pen for this. There it is.

9 Nick, if you could --

10 THE COURT: He's got it up already.

11 MR. PEEK: Yeah.

12 THE COURT: We were trying to start without you.

13 MR. PEEK: And you well could have, Your Honor,  
14 because really we know that this letter is certainly not a  
15 letter as identified in June of 2016, as a letter from Steve  
16 Wynn to Edmund Ho; right?

17 BY MR. PEEK:

18 Q We know that?

19 A Correct.

20 Q Okay. And then later in Exhibit 735-4, that was the  
21 amended privilege log -- or amended log. This document  
22 identified previously, as Steve Wynn did and Ho, was put on  
23 the privilege log on page 4 of that. Do you see that?

24 A I see it.

25 Q Yeah. So it went from a Macau law to a conversion

1 table to now an attorney-client privilege; correct?

2 A Yes.

3 Q And the new description is not a letter from Steve  
4 Wynn to Edmund Ho, but it's a draft letter reflecting  
5 confidential legal advice with Marc Rubinstein. Do you see  
6 that?

7 A I see it.

8 Q Is there a recipient to this letter?

9 A Not listed on --

10 MR. BICE: Objection, Your Honor. Asked and  
11 answered.

12 THE COURT: Overruled.

13 THE WITNESS: Not listed here.

14 BY MR. PEEK:

15 Q And then in Exhibit 809 it now has a similar  
16 description from last Friday. That's Exhibit 809, that's the  
17 Twenty-seventh amended privilege log from Friday at -- Friday,  
18 it's August 18th, at 6:07; correct?

19 THE COURT: You've got to give us a page.

20 MR. PEEK: And we're on page 17.

21 THE COURT: Thank you.

22 BY MR. PEEK:

23 Q Do you see that? And that -- you know, he's  
24 got a --

25 MR. PEEK: Thank you very much, Nick.

1 THE WITNESS: Yes.

2 BY MR. PEEK:

3 Q And, again, no recipient; correct?

4 A Correct.

5 Q And I'll actually -- I'll move on.

6 THE COURT: Thank you.

7 BY MR. PEEK:

8 Q So let me have you now look at Exhibit 719, page  
9 316. And it's another WYNNPRIV document where you claim Macau  
10 law privilege.

11 THE COURT: Mr. Peek, is this identified in your  
12 responses to request for production?

13 MR. PEEK: No, Your Honor. The WYNNPRIV documents  
14 are not identified. I can tell you --

15 THE COURT: Okay. So --

16 MR. PEEK: -- from the beginning they are not.

17 THE COURT: -- as I indicated, before I let you  
18 break for lunch, the only additional documents besides 800-2-4  
19 we're going to talk about are those that were listed on your  
20 response to request for production. I have given you --  
21 sufficiently way for you to establish a pattern of problems  
22 with the privilege documents. That does not preclude you from  
23 making argument related to those and asking me perhaps using a  
24 different witness on some issues.

25 MR. PEEK: I understand, Your Honor. I'll try to

1 move forward then. I understand the Court's ruling. And I  
2 guess I don't really need to make it a record, because you're  
3 saying I'm not precluded at some other point, you're just  
4 saying through this witness I'm precluded.

5 THE COURT: That's correct.

6 MR. PEEK: Okay. As you can see, Your Honor, I have  
7 quite a few of these.

8 THE COURT: I know, Mr. Peek. I'm waiting  
9 patiently.

10 MR. PEEK: To show -- well, that's because I had so  
11 many to show the witness, Your Honor. But this is not  
12 sloppiness. I'm glad I amused my colleagues on the other  
13 side, Your Honor. Your Honor, what I want to show him now is  
14 these are actually WRMPRIV documents where I think he would  
15 have at least knowledge of WRMPRIV documents. So may I  
16 proceed with what I call not WYNNPRIV documents, but these are  
17 WRMPRIV documents.

18 THE COURT: If he tells you, I don't know, then  
19 we're going to move on though; right?

20 MR. PEEK: You're right. If he starts out by saying  
21 I don't know, because I would not involved in the process of  
22 claiming privilege, it was done by the Wynn Resorts' lawyers,  
23 I'm sure that would be the case.

24 THE COURT: Mr. Bice, anything you want to add?

25 MR. BICE: I renew my objection. Again, none of

1 these documents were identified by the Okada parties as basis  
2 for their motion for sanctions.

3 THE COURT: Thank you, Mr. Bice.

4 Mr. Peek, remember, I'm giving you only a little bit  
5 of leeway on this.

6 MR. PEEK: Yeah. I mean, I -- just --

7 THE COURT: So ask him, see if he knows.

8 MR. PEEK: Just so that I understand. I heard that  
9 objection and I thought that objection had been overruled that  
10 I'm not being sanctioned for not identifying unredacted  
11 documents in an RFP.

12 THE COURT: Then you clearly misunderstood what I  
13 said when we were breaking for lunch. I said, Mr. Peek, the  
14 only documents you were going to examine on that weren't  
15 identified in your response to request for production were  
16 800-2-4. This examination, however, that you are telling me  
17 you're going to do is based on a privilege log entry --

18 MR. PEEK: Right.

19 THE COURT: -- which is slightly different.

20 MR. PEEK: That's right. These are now priv  
21 documents.

22 THE COURT: No, they're privilege log entries.

23 MR. PEEK: They're privilege log entries, they're  
24 not redacted documents, Your Honor.

25 THE COURT: Well, we'll see if I -- Mr. Peek, I'm

1 trying to give you a little bit of leeway, but we're not going  
2 into documents you haven't identified. If you want to ask  
3 this witness about a privilege log for his client for whom he  
4 is general counsel, whether he was involved, I'll let him  
5 answer those questions. And if he says, I don't know, well  
6 then we'll quickly move on.

7 MR. PEEK: I understand. But I guess where I'm  
8 confused, Your Honor, is -- and maybe I am misunderstanding  
9 the Court's ruling, and I don't want to argue Troy White the  
10 Court. I don't want to be jumping up and down on this. But I  
11 understood an RFP, an interrogatory that referred to redacted  
12 documents to be redacted documents, not documents withheld.  
13 If the Court's saying to me that I should have identified in a  
14 response to a request for production on redacted documents,  
15 documents that had been withheld, I want to make sure that I  
16 understand that's what the Court is ruling.

17 THE COURT: No, Mr. Peek. But I --

18 MR. PEEK: Okay.

19 THE COURT: -- have said, repeatedly, is to the  
20 extend that you are arguing that there has been a pattern of  
21 misconduct by Wynn Resorts in the use of their privilege log  
22 or claims of privilege, that is a legal argument which you and  
23 I will be able to have a discussion about later. This  
24 witness, however, has indicated he does not have factual  
25 information about those privilege log entries that we've

1 already gone over. I've asked you to stop asking him about  
2 them.

3 MR. PEEK: And I understand that part of the  
4 argument -- or the ruling.

5 THE COURT: So the fact that we are now going to the  
6 entity for which he serves as general counsel I'm going to  
7 give you a little bit of leeway. But when he says, I don't  
8 know seven times can we stop.

9 MR. PEEK: I get that point, Your Honor.

10 THE COURT: Okay.

11 BY MR. PEEK:

12 Q You've already told us, Mr. Schall, that at one time  
13 or another you did make an effort to make sure that as -- that  
14 any WRM documents that may have protection under either  
15 Article 92 of the concession agreement or Article 16/2001  
16 under the Macau law that you wanted those withheld. Am I  
17 correct?

18 A If I was asked about a document and thought that  
19 Clause 92 or Law 16/2001 applied in terms of restricting  
20 access to the document then I would have indicated so.

21 Q But only if you were asked about a specific  
22 document?

23 A Correct.

24 Q Okay. Thank you. So let me have you look at  
25 Exhibit 699.

1           MR. PEEK: I think I have to get to another folder,  
2 Your Honor. And 699, and here we're only going to deal  
3 with --

4           Nick, if you'd show me where the privilege log  
5 starts, please.

6 BY MR. PEEK:

7           Q     I'm starting on page 4 of 699. What involvement, if  
8 any, did you have in the preparation of a privilege log by  
9 WRM?

10          A     Is there supposed to be a document for me to look  
11 at?

12          Q     Yeah. Here's the document. It is the Wynn parties  
13 fourteenth supplemental privilege log WRM documents.

14          THE COURT: And we're going to show you that,  
15 because it's just the privilege log.

16          MR. PEEK: It's just the privilege log.

17 BY MR. PEEK:

18          Q     So I just want to know whether or not this privilege  
19 log was prepared just by the Wynn Resorts Limited lawyers,  
20 Pisanelli Bice, or in consultation with you or someone on your  
21 staff.

22          A     Okay. I understand. To the extent an entry on here  
23 reflects a direct question to me about the document that has  
24 been withheld I would have been involved.

25          Q     Direct question about a -- in other words, somebody



1 came to you with a document and said, is there a privilege  
2 associated with it?

3 A Yes, Mr. Peek. But they also may have asked a  
4 question such as, who is this person, does this person relate  
5 to some entity that a privilege would apply to?

6 Q Okay.

7 THE COURT: Can you identify for us any particular  
8 document that is identified on this privilege log for WRM that  
9 you were consulted?

10 THE WITNESS: I'm going to pull --

11 MR. PEEK: Yeah.

12 THE COURT: I'm just trying to short circuit an hour  
13 and a half of questioning.

14 MR. PEEK: And I am too, Your Honor.

15 THE WITNESS: 699, page 2-4? Page 4.

16 BY MR. PEEK:

17 Q Yeah. It starts at page 4.

18 THE COURT: And I'm admitting --

19 MR. PEEK: And I'm offering Exhibit -- yeah -- thank  
20 you, Your Honor.

21 THE COURT: I'm admitting 699-4 through the end,  
22 overruling Mr. Bice's same objection he's made, because it is  
23 only the privilege log that's being admitted.

24 MR. PEEK: Your Honor, it's page 4 through 136 of  
25 Exhibit 699.

1 THE COURT: Thank you.

2 Dulce, please note, 699-4 through 136.

3 (Defendants' Exhibits 699-4 through 699-136 admitted)

4 THE WITNESS: Because of the descriptions, and I  
5 haven't looked at all 131 pages, it would be very difficult  
6 for me to identify specific documents that I was specifically  
7 involved in and saying that they belong on this log.

8 MR. PEEK: Your Honor, may I at least show a few of  
9 these.

10 THE COURT: Sure. I was just hoping to get an  
11 answer one way or the other.

12 MR. PEEK: Yeah.

13 BY MR. PEEK:

14 Q Let me have you turn to page 10, 699-10. And what I  
15 want you to look at specifically is a document, WRMPRIV54626,  
16 Macau Government Official. Maybe this doesn't have enough  
17 information for you either, but --

18 A Yeah, I'm sorry. I don't know.

19 Q Can you give us at least any kind of a -- this is  
20 131-page privilege log of WRM, can't represent how many  
21 entries there are, but we certainly know there's more than  
22 131, maybe 10 a page or seven a page. So there's about let's  
23 just say a guesstimate of 800 entries. Can you tell me how  
24 many documents you recall ever being asked to review by the  
25 Pisanelli Bice lawyers as to whether or not there should be a

1 claim of privilege. And this would have been in 2016.

2 A In 2016?

3 Q Uh-huh.

4 A I believe zero.

5 Q Okay. What about in 2013 when lawyers from  
6 Pisanelli Bice were there with FTI and we had reviewers, how  
7 many?

8 A I would approximate a dozen.

9 Q Was there anybody else on your staff -- your legal  
10 staff who may have been shown from time to time any documents  
11 questioning whether or not a privilege should be claimed?

12 A I believe I was the only one, but I can't speak to  
13 what Pisanelli Bice may have done.

14 Q But your recollection is that in 2013 you were the  
15 only one and it was only about a dozen?

16 A Approximately.

17 Q And then in 2016 when this log was prepared, zero  
18 contact -- zero documents were shown to you; correct?

19 A That's my recollection.

20 Q Okay. So I had you look at at least one of those on  
21 page 699-10. And there's another one on that same page, and  
22 it begins 54672 -- it actually begins 65672, so it's about the  
23 third one after the one you just looked at. And it says that  
24 it's authored by Steve Wynn. Does that in any way appear to  
25 be one of those even dozen that you looked at?

1           A     No.

2           Q     It is your understanding as the counsel for -- let  
3 me back up for a minute. Were you aware when the board of  
4 directors was being -- in December of 2016, did you have a  
5 copy of any privilege log which identified the documents that  
6 were being withheld?

7           A     No.

8           Q     When you made that presentation to the board?

9           A     No.

10          Q     When you wrote to the DICJ and asked them for  
11 permission to produce documents did you send them a  
12 description of the documents that had been withheld?

13          A     No.

14          Q     In Article 92 -- well, let me ask you, is there a  
15 reason why you didn't tell the DICJ what documents it was that  
16 the defendants had asked to be produced from Macau?

17               MR. BICE: Objection. Foundation. Assumes facts  
18 not in evidence.

19               THE COURT: Overruled.

20 BY MR. PEEK:

21          Q     Remember that letter you wrote to the DICJ?

22               THE COURT: You've got to let him answer.

23               THE WITNESS: I remember the letter. I don't  
24 remember it exactly, because it's going on a year, although I  
25 have refreshed my memory on it before my deposition I think.

1 I believe we were trying to keep it simple and high level.  
2 And in my and our experience with the DICJ, trying to parse up  
3 the pie would be difficult, so it was easier to try to get a  
4 yes out of them, which is what we wanted so we wouldn't be  
5 going through something like this now. To say, we need to  
6 release documents that are protected by these provisions in  
7 Macau law, can we please do it?

8 BY MR. PEEK:

9 Q And you remember last time that we talked about the  
10 difference between exclusively and namely?

11 A Yeah.

12 Q Do you remember that?

13 A I do.

14 Q Yeah. And, really you said that the namely meant it  
15 was more expansive than exclusive even though you said  
16 documents related to the concession in the 2002 period you  
17 really meant and beyond with the word "namely". Do you  
18 remember that?

19 MR. BICE: Objection to form.

20 THE COURT: Overruled.

21 You can answer.

22 THE WITNESS: Legal provisions protecting documents  
23 related to the tender process and the concession process has  
24 been interpreted a little more broadly by some people in Macau  
25 to include things that went beyond the tender and concession,

1 went into communications with the gaming regulator well after  
2 the concessions were granted. Therefore, my recollection is  
3 we used namely to say look, we really want the tender  
4 documents. There was a large universe of them, and it would  
5 be much easier if you could just have all of them. But there  
6 might be some other things. And what we did not want was to  
7 give you 99 percent and have one document hanging out there  
8 and still be here today doing what we're doing.

9 BY MR. PEEK:

10 Q So when you say, "some people" you mean some people  
11 within the DICJ --

12 A Yes.

13 Q -- or some people, other lawyers with other gaming  
14 companies?

15 A I mean my experiences with legal counsel with the  
16 DICJ.

17 Q Okay. Had you ever asked anybody at DICJ whether or  
18 not documents related to post concession, that six-month  
19 period from award to contract, could be released?

20 A I don't recall asking that exact question.

21 Q You just interpreted somewhere along the way that  
22 documents post June/July of 2002 were not to be -- had some  
23 confidential protection to them; correct?

24 A I didn't interpret that. I've had discussions with  
25 their counsel were common such as -- and any communications

1 you have with the government that have to do with the gaming  
2 business can't leave Macau.

3 Q Did you interpret that as a DICJ requirement under  
4 Article 92 or under the OPDP or MPDPA?

5 A When speaking about gaming-related documents I  
6 interpreted it as an instruction from DICJ as a verbal  
7 instruction that has the force of law on a concession company.

8 Q And this conversation, was it in the -- but it  
9 wasn't -- the conversation you had with counsel, it wasn't in  
10 the context of a request to produce documents post June 2002,  
11 was it?

12 A I don't quite understand the question.

13 Q Well, we established that 16/2001 relates to the  
14 tender and bid process pre award; correct?

15 A That law is still in effect. So whether it's  
16 provision ceased being effective at the award of concessions I  
17 can't answer for you, Mr. Peek.

18 Q Well, the wording appears to be pre tender, pre bid,  
19 does it not, even though the law is still in the book?

20 A I agree with you, the wording appears --

21 Q Okay. And then the Article 92 also appears to be  
22 related to that period of time through the awarding of the  
23 contract that would be February through June, July, August;  
24 correct?

25 A I don't have Article 92 in front of me, but since

1 it's in the concession I would say that that one would be  
2 continuing.

3 Q Okay. Well, we know that it's in the Stanley Ho  
4 one. Do you need -- you want to refresh your recollection by  
5 reviewing it? Would that help you?

6 A Sure.

7 Q Okay. Let me turn you to that document 811.

8 THE COURT: I didn't admit 811.

9 MR. PEEK: I know. I'm just asking to refresh his  
10 recollection, Your Honor.

11 THE COURT: Just so we're all clear.

12 MR. PEEK: I know.

13 MR. BICE: I'm sorry. How does reviewing a summary  
14 of somebody else's concession to refresh his recollection as  
15 to --

16 MR. PEEK: Your Honor, would he just not make  
17 speaking objections, please.

18 THE COURT: But the provisions would --

19 Mr. Bice, because the witness just said the language  
20 was the same as what was in the Wynn and it would help refresh  
21 his recollection. So we're either going to see that it  
22 refreshes his recollection or we're not. We're not admitting  
23 it.

24 MR. PEEK: No, we're not.

25 And don't show it up on the screen to the Court.



1 Please show it to the witness, and go to page 71.

2 THE COURT: He has his copy.

3 BY MR. PEEK:

4 Q Oh. If you have 811, it's on page 71. It's 811/071  
5 is where Article 92 appears.

6 A It refreshes my recollection.

7 Q Okay.

8 THE COURT: Somebody who actually understands.  
9 Thank you so much. Now that your recollection has been  
10 refreshed he might ask you another question.

11 MR. PEEK: I'm going to.

12 BY MR. PEEK:

13 Q So having had your recollection refreshed do you  
14 maintain that any document related to post June 2002 related  
15 to anything, regarding the concession, is protected by  
16 confidentiality under Article 92? Is that your position?

17 A It's actually what Article 92, Provision 1 says.

18 MR. PEEK: Your Honor, can I ask counsel to not be  
19 talking all the time during my examination. I would  
20 appreciate it.

21 THE COURT: They're allowed to talk to each other  
22 just like your people talk to each other.

23 MR. PEEK: I don't care if they do that. But could  
24 they do it a little bit more quietly.

25 MR. BICE: We'll attempt to do so, Your Honor.

1 THE COURT: All right. Everyone, let's try to keep  
2 quiet so Mr. Peek is not distracted.

3 MR. PEEK: I'm easily distracted, Your Honor.

4 BY MR. PEEK:

5 Q So, for example, you would consider the discussions  
6 with the government about a land concession to be protected?

7 A No.

8 Q No, you would not? Okay. Let me have you take a  
9 look at another document and see if you can -- look at this.  
10 This is on 699-16 and it is a document with Bates Numbers  
11 55323 to 55325.

12 MR. PEEK: Did you find it, Nick? And, Nick, I  
13 think it's the -- oh boy.

14 THE COURT: The bottom.

15 MR. PEEK: Bottom, is that where it is, Your Honor?

16 THE COURT: That's what he's pulling up for all of  
17 us. 55325 to 55325 maybe?

18 MR. PEEK: You know, I'm on the wrong page, Your  
19 Honor. It should be on 16 of the priv log. My apologies. It  
20 is actually at the bottom of 699-16.

21 BY MR. PEEK:

22 Q Do you see that one? Are you there with me?

23 A Yes, sir.

24 Q And this is a note from Ian Coughlan, email exchange  
25 between Mr. Coughlan, Cindy Mitchum, and Samantha Stewart?

1           A     Those are the recipients listed.

2           Q     Yeah. Those are the recipients. And there's a  
3 carbon copy to Kim Sinatra?

4           A     And Linda Chen.

5           Q     And Linda Chen. So of course Cindy Mitchum and  
6 Samantha Stewart are individuals in the U.S., are they not?

7           A     Yes.

8           Q     And it actually refers to an email exchange re draft  
9 land concession agreement?

10          A     Yes.

11          Q     Are you familiar with this document at all?

12          A     I don't know what this document is.

13          Q     You don't know whether or not you were copied on it  
14 for example, because we don't -- it says -- it looks like only  
15 Kim Sinatra and Linda Chen were. But you don't know whether  
16 you were?

17          A     Correct.

18          Q     Okay. But I think as you just told me, you don't  
19 consider correspondence regarding the land concession to be  
20 covered by Macau law privilege; correct?

21          A     I do not.

22          Q     So an email like this, you don't recall it ever  
23 being brought to your attention by Pisanelli Bice?

24          A     At some point Pisanelli Bice sought my advice on  
25 land concession documents, and my answer was those would not

1 be protected and subject to other privileges. You could  
2 release them, and in any event the Macau Government had  
3 released them all to some media organization and posted them  
4 all over the Internet anyway.

5 Q Do you know, as the holder of that confidential  
6 right, whether or not Wynn Resorts Limited has released them  
7 to -- as a new WRM document without having privilege or  
8 confidentiality?

9 A I believe so. My instruction was they're not  
10 subject to any privilege and they could be released.

11 Q When did you do that?

12 A I believe late last year, but I can't exactly  
13 recall, Mr. Peek.

14 Q Okay. We've looked for those documents, haven't  
15 seen them, but maybe somewhere along the way they'll show up.  
16 So I'm going to go past ones related to the land concession  
17 because we've established that one. And so let me have you  
18 take a look at -- this would be on Exhibit 699, page 61. And  
19 this one appears in the middle of that page as an entry where  
20 Ian Coughlan is the author, and the recipient is the chief  
21 executive's office. And it bears big numbers WRMPRIV69258 to  
22 69258, so it's a one-page document. Do you see that?

23 A I see it.

24 Q Okay. Is that a document on which you were  
25 consulted as to whether or not it should be withheld under one

1 of the so-called Macau law privilege?

2 A I can't tell.

3 Q Okay. You don't know if it's one of those dozen?  
4 From the description you can't tell it's one of those dozen  
5 that you were shown?

6 A Correct.

7 Q Okay. And this is, again, a letter protected by the  
8 16/2001, which is pre bid, pre tender process; correct?

9 A Yes.

10 Q Okay. All right. Here's one where I think you  
11 actually might be involved. Take a look at page 63 of Exhibit  
12 699. And you're apparently the author of that document? This  
13 is WRMPRIV59376 to 59389. So that would be a eight-page  
14 document about the lower half of the WRM priv log on 699-63?

15 A I see it.

16 Q You're with that? And I think the -- this is  
17 regarding the Cotai land concession, which you said is not a  
18 Macau law privilege?

19 A It says, draft agreement regarding the Cotai land  
20 concession.

21 Q No. I know what it says. But the claim is the  
22 Macau law privilege, correct, isn't it?

23 A Okay.

24 Q Not attorney-client, just Macau law privilege;  
25 correct?

1           A     Yes.

2           Q     And is it your understanding as a lawyer of that  
3 draft of an agreement has some protection for land concession  
4 under the Macau law privilege?

5           A     I don't know what this draft agreement is.

6           Q     It just says draft agreement regarding Cotai land  
7 concession.

8           A     Correct.

9           Q     So when you say you into know what it is, you're the  
10 author of it, it is too long ago in March 17, 2011, for you to  
11 recall that you drafted an agreement or you reviewed an  
12 agreement or you had something to do with a draft agreement  
13 regarding Cotai land concession?

14          A     I recall drafting and being involved in many things  
15 related to that agreement. But this could have been an  
16 agreement about gaming on Cotai land, I don't know.

17          Q     Okay. Again, because you weren't consulted?

18          A     I don't believe so.

19          Q     But we would at least know from the description that  
20 somebody put in there that it's regarding the Cotai land  
21 concession, not the Cotai gaming concession; correct?

22          A     There is no Cotai gaming concession. So, again, I'm  
23 not saying you're right or wrong, I'm saying I don't know what  
24 kind of an agreement this is.

25          Q     My apologies. I won't use the word "Cotai gaming

1 concession." I'll talk about WRMSA's gaming concession  
2 awarded to it in or about February 2002. There's no  
3 description there that would even lead one to believe that's  
4 regarding a draft agreement for the gaming concession awarded  
5 to WRMSA in 2002; correct?

6 A This description says, "Draft agreement regarding  
7 Cotai land concession".

8 Q I know. You said, well, it may have something to do  
9 with the gaming concession.

10 A I said it could.

11 Q Okay. That's the agreement that was completed in  
12 2002; correct?

13 A I said it could have something to do with gaming,  
14 but I just don't know, Mr. Peek. This could -- I just don't  
15 know.

16 Q Okay. That's fine. Now it says the recipient was  
17 the Macau chief executive's office. Does that help refresh  
18 your recollection on this document that you authored?

19 THE COURT: Where is that on that line?

20 MR. PEEK: Oh. I'm on the wrong line. I apologize,  
21 Your Honor.

22 THE COURT: Mine's blank.

23 MR. PEEK: It just says, "Macau Government Official  
24 author".

25 THE COURT: No. Mine's blank.

1 MR. PEEK: Oh. Maybe I'm on the wrong -- let me  
2 back up a minute, Your Honor. I may have gotten off on the  
3 wrong page on 63? Document 59376, maybe I'm on the wrong one,  
4 Your Honor. My apologies. You were right. My notes show  
5 that it has a recipient, but that's just my note, Your Honor,  
6 so -- but that's my mistake. My apologies.

7 THE COURT: I just want to make sure we're all  
8 talking about the same --

9 MR. PEEK: No. No. My notes here show something  
10 different than the exhibit, so I -- I made a mistake in my  
11 notes.

12 BY MR. PEEK:

13 Q Here, just turn to page 66 there. There's another  
14 one where in the middle of the page on 699-66 it has Bate  
15 ranges 59929 to 59946, that's an 18-page document on July  
16 19th, 2011. Macau Government Official is the author. Do you  
17 see that?

18 A Yes.

19 Q And that is identified as a letter re land  
20 concession. Were you the recipient of letters from time to  
21 time from the Macau Government regarding the land concession?

22 A I would have received them but would never have been  
23 a direct recipient from the Government.

24 Q In 2011 -- was when you were -- wasn't it 2011 when  
25 you were actively negotiating the land concession contract?



1           A     I believe by 2011 we had received drafts of the  
2 contract from the Government. So we were working through the  
3 process with them, yes.

4           Q     Were you the one who had the responsibility for  
5 commenting or turning back the draft to the Macau Government?

6           A     I would have been involved.

7           Q     You would have be involved. So does this  
8 description of letter re land concession ring a bell with you  
9 as something you may have seen or did see?

10          A     I can't tell from this.

11          Q     You can't tell. But, again, you would agree with me  
12 that because it's the land concession it wouldn't have a  
13 confidentiality or a privilege associated with it; correct?

14          A     If it was purely related to the land concession, I  
15 agree with you.

16          Q     Okay. But, of course, you haven't seen the letter  
17 before this went on a privilege log; correct?

18          A     I didn't see the letter in reference to this  
19 privilege log. I have probably seen it in the past in some  
20 other context.

21          Q     Let me have you take a look at the next page, 67 of  
22 Exhibit 699. Middle of that page is a three-page document  
23 Bate numbered 60078 to 60080. Does that document of  
24 September 2nd, 2011, refresh your recollection as to whether  
25 or not you saw a letter -- the recipient's just WRMSA is the

1 recipient, but does it refresh your recollection as to  
2 receiving letters regarding information requests related to  
3 Cotai land concession contracts?

4 A Not -- not from this.

5 Q Look at now page 70 of 699. And what I'm asking you  
6 to look at is 60300, which is the second-to-last entry, and  
7 then it goes to 60309, so it's a 10-page document. It says  
8 WRMSA employee is the author, and this is legal department.

9 A I see it.

10 Q Were you involved in the drafting of this letter  
11 which WRL has claimed is subject to the Macau law privilege?

12 A I can't tell.

13 Q Okay. Were you writing during this period of time  
14 back and forth to the Macau Government?

15 A I was participating in correspondence with the Macau  
16 Government, yes.

17 Q Then the bottom entry we have neither an author nor  
18 a recipient and it's identified as "Corporate documents  
19 summarizing Cotai land concession agreement and protected by  
20 Macau Special Administrative Region Law and Article 92." Does  
21 that refresh your recollection that in September 2011 there  
22 were corporate documents summarizing Cotai land concession?

23 A It does not.

24 Q Okay. So did you ever prepare any corporate  
25 documents summarizing the Cotai land concession in August of

1 -- or September 2011?

2 A I'm not quite sure what's meant by corporate  
3 documents, but I prepared documents summarizing the Cotai land  
4 concession in the past, yes.

5 Q Okay. Does it refresh your recollection as to  
6 whether or not in these last two documents on page 699-70 were  
7 one of the dozen that were shown to you?

8 A It does not.

9 MR. PEEK: Okay. If I may have a moment, Your  
10 Honor.

11 THE COURT: Sure. And for your planning purposes,  
12 we're going to break at 3:00. I have a meeting, but luckily  
13 we're on the floor that my office is, so it should only take  
14 about 15 minutes. So that'll be your afternoon break.  
15 Everybody can wait till then.

16 (Pause in the proceedings)

17 BY MR. PEEK:

18 Q Were you involved in documents -- I guess would be  
19 documents being removed from the WRM privilege log and then  
20 produced at some later date? Were you involved in that  
21 process at all?

22 A Other than what I recall advising about land  
23 concession-related documents, no, I wasn't involved.

24 Q And I think you said that was at the end of last  
25 year.

1           A     As I recall.

2           Q     So let me -- I'll try to do one of these real  
3 quickly here. So let's look at 699, page 120. And that's a  
4 Priv Log -- WRMPPRIV Log 203573. It's a one-page document.  
5 And it says you're a recipient of that document.

6           A     It seems I'm both an author and recipient.

7           Q     I'm trying to -- did I get it there?

8           A     I am a recipient.

9           Q     Okay. Looks like you're also an author.

10          A     According to this.

11          Q     According to that. And let me have you look at  
12 Exhibit 777.

13               MR. PEEK: Can you bring that up on my screen,  
14 please, Nick. Just 777.

15               I don't think it's in evidence, Your Honor.

16               THE CLERK: It's proposed.

17               MR. PEEK: Your Honor, this is another privilege log  
18 of July 7, 2017. The privilege log begins on page -- begins  
19 on page 40.

20               And it ends on 56, Nick? Is that what it is?

21               He's on 45, Your Honor.

22               THE COURT: 777-40 to 45, Mr. Bice. Any additional  
23 objections?

24               MR. BICE: Can I have those numbers one more time.  
25 My apologies.

1           THE COURT: 777, pages 40 through 45, according to  
2 Mr. Peek.  
3           MR. BICE: 40 through 45?  
4           THE COURT: He says it's a privilege log.  
5           MR. PEEK: It's your forty-fourth privilege log.  
6           MR. BICE: It's a production log. That's where I  
7 was looking here.  
8           THE COURT: So it's not a privilege log?  
9           MR. BICE: It's not.  
10          THE COURT: Okay.  
11          MR. BICE: But maybe we're misunderstanding.  
12          MR. PEEK: Your Honor, I apologize. I jumped ahead  
13 in my outline, so I've got to -- it's easy to correct. It's  
14 just a production -- it's another one of those conversion  
15 tables.  
16          THE COURT: If you say so. It's not in evidence, so  
17 I'm not looking at it.  
18          MR. PEEK: It's a disclosure, Your Honor, beginning,  
19 as I said, on --  
20          THE COURT: Sir, did you find it?  
21          THE WITNESS: 777-40?  
22          MR. PEEK: And ends, as I said, Your Honor, on --  
23 the entire disclosure ends on 56.  
24          THE COURT: My guess is he's going to ask you if  
25 you've seen it before or if you were involved in it.

1 MR. PEEK: And what I'm referencing here, what I'll  
2 be referencing, Your Honor, is the Exhibit B conversion table.  
3 Remember we -- this is a different conversion table, but it  
4 was served on us on July 7th, 2017. So on page -- Your Honor,  
5 I'd offer those pages from their disclosure.

6 THE COURT: Mr. Bice.

7 MR. BICE: Your Honor, again, there is no evidence  
8 that this witness has any knowledge about this document or had  
9 any volume in it. It is not an appropriate subject matter for  
10 this --

11 THE COURT: Can I ask you guys a question. Is this  
12 conversion table for previously designated privileged  
13 documents of WRM which were being produced?

14 MR. PEEK: Yes.

15 THE COURT: Then I will admit it for the purpose of  
16 the witness identifying whether or not he was --

17 MR. BICE: There's both Wynn Resorts and WRM  
18 documents.

19 THE COURT: But the WRM ones are on it?

20 MR. PEEK: I'm focusing on the WRM ones, Your Honor.

21 THE COURT: WRM is on it, Mr. Bice?

22 MR. BICE: Yes. It's on page --

23 THE COURT: Then, Mr. Peek, to the extent that you  
24 want to ask this witness his involvement in the decision  
25 making to convert the documents or remove them from the

1 privilege log and produce them, go at it.

2 MR. PEEK: Thank you, Your Honor.

3 BY MR. PEEK:

4 Q Mr. Schall, you'll see that the Exhibit B there's a  
5 date of July 7, 2017, is it not?

6 A Yes. You're on page 51 of 777?

7 Q Yes, I'm on page 51.

8 A Okay.

9 Q But it starts on page 46. You're on page 6 of 7 of  
10 that. But it just --

11 THE COURT: I thought we were on page 40 through 45.

12 MR. PEEK: We are, Your Honor. No, Your Honor, it  
13 was 40 through 56 is the entire disclosure.

14 THE COURT: 40 through 56. They keep changing.

15 BY MR. PEEK:

16 Q Do you know whether or not this document -- well,  
17 fairer question they want me to ask you is were you involved  
18 in converting any of the WRMPRIV documents into documents on  
19 which no privilege by WRMSA requested?

20 A I was not involved in the conversion process.

21 Q Okay. That was entirely done by WRL converting your  
22 documents, WRMSA documents, to -- from a privilege claim to a  
23 no privilege claim; correct?

24 A Done by the lawyers for WRL, yes.

25 Q And you said you'd already spoken to them in

1 December of 2016, correct, about the Macau land concession  
2 wasn't protected by Macau law privilege?

3 MR. BICE: Objection to form.

4 THE COURT: Overruled.

5 THE WITNESS: That's my recollection.

6 BY MR. PEEK:

7 Q Let me have you -- just a moment. Catch myself up.  
8 Let's look at a document that was converted. First  
9 of all let's go back to 699-120. Do you still have 699-120 in  
10 front of you?

11 A Okay. I have it.

12 Q And there's a document there of 203579 to 203580.  
13 Author is Robert Gansmo, Scott Peterson, and it gives  
14 recipients. See that?

15 A I see it.

16 Q And if you go back to -- on 77-51 [sic] there's a  
17 conversion table.

18 THE COURT: So 777, page 51?

19 BY MR. PEEK:

20 Q Page 51, the conversion of that Document 203579  
21 shows it as WRM 19713.

22 A I see that.

23 Q And then if we go to that Exhibit WRM19713, it's  
24 Exhibit 538. Can you find Exhibit 538 in those binders behind  
25 you. Are you with me on 538?



1           A     I'm open to 538, yes.

2           Q     So back up to 699120 --

3                   MR. PEEK: Is that still on the screen, Nick?

4 BY MR. PEEK:

5           Q     Yeah. So that's identified as a June 2009 Robert

6 Gansmo email, isn't it? That's on the privilege log?

7           A     Document date June 7th, 2009.

8           Q     Yeah. And that's 203579 and it's converted to

9 WRM19713; correct?

10          A     Yes.

11          Q     And then Exhibit 538, that's WRM19713, isn't it?

12          A     Yes.

13          Q     Do you recognize this email?

14          A     Do I recognize this email?

15          Q     Yes.

16          A     I don't recall, but I've at least seen emails on

17 this topic in the past.

18          Q     Scott Peterson is a WRMSA employee, is he not?

19          A     At that time.

20          Q     At that time he was the CFO?

21          A     Correct.

22          Q     Okay. And his email that is 19713 is dated January

23 2009, is it not?

24          A     Yes.

25          Q     Not June 2009, as shown on the privilege log;

1 correct?

2 A The privilege log says June, the email says January.

3 Q And the description in 699120, Exhibit 699120 says  
4 "Robert Gansmo, Scott Peterson as authors to Scott Peterson,  
5 Robert Gansmo, Alexandria Carerra da Silva"; correct?

6 A Correct.

7 Q I can see the recipient in January 2009 of Mr. Da  
8 Silva Carerra, but I don't see either Mr. Peterson or Mr.  
9 Gansmo as recipients, do you? Oh. I see there's Peterson. I  
10 apologize. Is there a Gansmo in here, in this January 2009  
11 email?

12 A It seems not until Scott Peterson forwarded it to  
13 him.

14 Q Ah, that's right, because then he forwarded it to  
15 him, and then he became another author along with Scott  
16 Peterson; right? So do you know whether or not it's the same  
17 document of June 7, '09, identified in the WYNNPRIV log that  
18 we know to be January 5th, '09? Do you know whether it is or  
19 not the same?

20 A I don't know.

21 Q Okay. That's fair.

22 THE COURT: Mr. Peek, are you done with the WRM  
23 Privilege Log Exhibit 699 now?

24 MR. PEEK: I am not, Your Honor, because I have a  
25 few others where -- similar examples of conversion tables.

1 THE COURT: Right. But if it's all conversion table  
2 issues and this witness has already said he wasn't involved  
3 and he's not familiar, that's something you're going to argue  
4 to me as a legal issue.

5 MR. PEEK: Oh. I see your point, Your Honor.

6 THE COURT: The question is do you need to ask this  
7 witness any more questions about these issues.

8 MR. PEEK: Let me just -- you're right, Your Honor.  
9 Maybe he doesn't -- he wasn't involved in the conversion.

10 THE COURT: He said he wasn't.

11 MR. PEEK: But he can certainly identify that the  
12 documents are not the same. But I guess you're right, I can  
13 do that through argument and briefing, is what you're saying?

14 THE COURT: That's what I'm trying to tell you.

15 MR. PEEK: Yeah, I know. Because you get the point.

16 THE COURT: I got the point about eight hours ago.

17 MR. PEEK: Just a repeat of the same thing, Your  
18 Honor. So given the fact that he wasn't involved in the  
19 conversion table or the documents that were produced under  
20 these new numbers, then you're right, I will move on.

21 THE COURT: I'm not precluding you from arguing it  
22 later.

23 MR. PEEK: No, no. I understood that, Your Honor.  
24 So, yes, I guess I am done, having gotten the Exhibit 699 into  
25 evidence, 777 into evidence.

1 THE COURT: Portions of those documents.

2 MR. PEEK: The only problem I have is getting some  
3 of these conversion documents into evidence where he might  
4 actually --

5 THE COURT: The conversion documents are marked  
6 confidential; right?

7 MR. PEEK: Some are. Some are marked highly. So  
8 they vary.

9 THE COURT: So that creates an issue with putting  
10 them in evidence; right?

11 MR. PEEK: I don't think it does, Your Honor, but  
12 the Court may disagree with me. Because just because -- just  
13 because they marked at some time highly confidential, when you  
14 have an evidentiary hearing, whether it's a trial or  
15 preliminary injunction or anything, you're entitled to have  
16 those documents admitted into evidence and they may lose that  
17 confidential designation.

18 THE COURT: Sure. If they're relevant to the  
19 proceedings.

20 MR. PEEK: Correct, if they're relevant to the  
21 proceeding, that's right.

22 THE COURT: That's what I'm trying to say.

23 MR. PEEK: Okay. I'm not trying to get documents  
24 that have highly confidential into evidence just for the  
25 purpose of getting them into evidence, but I need to be able

1 to show that a document --

2 THE COURT: Can we skip ahead, because I'd like you  
3 to finish with this witness before you have to fly to Hong  
4 Kong.

5 MR. PEEK: Yes, Your Honor.

6 (Pause in the proceedings)

7 BY MR. PEEK:

8 Q I'm going to move to another topic now. Do you  
9 remember in the Court order the Court ordered Wynn Resorts to  
10 produce certain documents that were sent to or by a person not  
11 located in Macau?

12 A Talking about the order from last November or  
13 something?

14 Q Order from last November, yes. You remember that?

15 A Yes.

16 Q And I think you and I already established that you  
17 didn't necessarily -- you didn't tell the OPDP in any of your  
18 correspondence, whether it was in 2013 all the way up through  
19 '16, that some documents that had been requested by the  
20 defendants did exist outside of Macau. You didn't tell them  
21 that, did you?

22 MR. BICE: Objection to the form.

23 THE COURT: Overruled.

24 THE WITNESS: Your question is did we at any time  
25 tell ODP that there were already documents in the United

1 States that might be disclosed? I'm just trying to get your  
2 question correct in my mind. Sorry.

3 BY MR. PEEK:

4 Q I understand. And I'm trying to frame it so that  
5 you can get it correct in your mind. My question is focused  
6 on documents responsive to this litigation.

7 A Okay.

8 Q You were asking OPDP, may I produce documents that  
9 might be responsive to this litigation with redactions.

10 A What we asked ODP in summary is can Wynn Resorts  
11 Macau SA produce documents to Wynn Resorts Limited for use in  
12 this litigation, whether they go into evidence or discovery.  
13 It was not my place to concern myself with what documents were  
14 in Wynn Resorts Limited's control however they got there. I  
15 was only concerned with documents in Macau that belonged to  
16 Wynn Macau.

17 Q Right. And I think you told us that in 2013 they  
18 allowed you to produce certain documents so long as they  
19 contained redactions for personal information; correct?

20 A The ODP allowed us to produce documents that either  
21 don't contain personal data, because then they're not  
22 relevant, have personal data redacted, or we had a fully  
23 consented-to consent allowing the data -- subject data to  
24 leave Macau.

25 Q And then there was a Court order in November of 2016

1 with respect to documents that were to/from places outside the  
2 United States. Did you -- did you know that there were  
3 documents that had been requested by the defendants that  
4 existed outside of the United States?

5 THE COURT: Outside the United States?

6 BY MR. PEEK:

7 Q Excuse me. Outside of Macau.

8 MR. PEEK: Thank you, Your Honor. I apologize. I  
9 misspoke. Outside of Macau.

10 THE WITNESS: So was I aware that the defendants had  
11 requested documents that resided outside of Macau? Yes, I was  
12 aware of that. And is there -- is there more to the question?

13 BY MR. PEEK:

14 Q That was just -- I'm just asking if you were.  
15 That's number one.

16 A Yes.

17 Q [Inaudible] more of the question.

18 A Yes.

19 Q Please let me do it in my order.

20 A Okay. Sorry.

21 Q I'm slow minded. And then did you tell OPDP that  
22 documents that had been requested by the defendants already  
23 existed outside of Macau?

24 A No.

25 Q Did you tell OPDP that WRL had documents with

1 personal data that had been sent from Macau?

2 A No.

3 Q Did you tell OPDP that, for example, Allen Zeman  
4 lived in Hong Kong, was a member of your board of directors,  
5 and regularly received documents containing personal data of  
6 individuals in Macau?

7 A No.

8 Q We know you obtained consents from or either had  
9 consents that were in existence or obtained consents from many  
10 of the WRMSA employees; correct?

11 A Data privacy consents.

12 Q Yes, data privacy consents.

13 A Correct.

14 Q Did you ever make an effort to obtain consents from  
15 government officials?

16 A No.

17 Q Did you know that government officials' personal  
18 data was contained within your email or electronically stored  
19 information?

20 A I'm aware that -- I'm aware of that, yes.

21 Q For example, the Macau Office of the Secretary for  
22 Economy and Finance, they were individuals with whom you  
23 corresponded from Wynn Macau or WRMSA corresponded from time  
24 to time; correct?

25 A That's probably correct.



1 Q Did you seek any consents from those individuals at  
2 the Macau Office of the Secretary for Economy and Finance?

3 A No.

4 Q Similarly for the Macau Transport and Public Works,  
5 did you seek any consents from those individuals?

6 A No.

7 Q How about from the University of Macau? Did you  
8 seek -- you corresponded from time to time with  
9 representatives of the University of Macau, did you not?

10 A I don't think I did, but --

11 Q But WRMSA employees did from time to time; correct?

12 A Yes.

13 Q And you knew that documents related to the  
14 University of Macau would have been responsive to requests by  
15 the defendants; correct?

16 A I wouldn't say I was specifically aware of that, but  
17 okay.

18 Q Well, you knew that there was an issue raised in the  
19 litigation between Aruze, UEC, and Mr. Okada regarding the  
20 UMDf donation; correct?

21 A So I guess I would answer your question that  
22 documents related to the donation may have been responsive,  
23 but there could be other documents that maybe weren't.

24 Q No. I understand that. But you understand there  
25 was a dispute between the parties, WRL on one side and the

1 Aruze parties on the other side, over the UMD-- or the  
2 donation to the UMDF; correct?

3 A I understand that's in the litigation here.

4 Q And did you seek to obtain any consents from any  
5 representatives of the -- either the University of Macau or  
6 the UMDF, which is the University of Macau Development  
7 Foundation?

8 A No.

9 Q Did you understand that there were documents with  
10 the UMDF and the government officials that existed at WRMSA?  
11 Strike that. You don't need to answer that. Let me move on.

12 And I think we established at the last hearing with  
13 regard to government officials that the letters from the OPDP  
14 and the DICJ that you -- were attached to your declaration  
15 contained the personal data of the individuals at OPDP and the  
16 DICJ; correct?

17 A It had their names, yes.

18 Q And you did so without consent, but said it's  
19 because their names exist on the Internet?

20 A I didn't feel their consent was necessary, so we did  
21 so without consent, yes.

22 Q Did anybody at OPDP tell you that their consent was  
23 not required?

24 A No.

25 Q Did anybody at DICJ tell you that their consent was

1 not necessary?

2 A Nope.

3 Q Were you involved in the efforts by WRL to identify  
4 documents that existed outside of Macau having been sent to or  
5 from somebody who did not live in Macau? Were you involved in  
6 that effort at all?

7 A Okay. I need to get that one straight. Was I  
8 involved in Wynn Resorts Limited's efforts to identify  
9 documents outside of Macau that were -- what's the origin of  
10 the documents?

11 Q Yeah. Maybe I -- yeah. And then I'll ask it a  
12 different way. So we both know that from time to time  
13 documents did go to individuals who live outside of Macau;  
14 correct?

15 A From Macau to outside of Macau, correct.

16 Q And we know that from time to time documents from  
17 outside of Macau came into Macau; correct?

18 A Correct.

19 Q Now, those documents that went -- either came in  
20 from outside of Macau or went from Macau to an outside source  
21 were not produced by WRM without redactions; correct?

22 A That I don't know.

23 Q Okay. You don't know.

24 A I don't know.

25 Q Well, did you -- did you -- when these documents

1 were being processed in 2013 did you know that as part of the  
2 collection and processing and production of the documents that  
3 WRMSA was not producing documents that had come into Macau  
4 from an outside source or had gone from Macau to an outside  
5 source without redaction?

6 A Did know that WRMSA was not producing documents that  
7 had come in or gone out without redactions?

8 Q Well --

9 A I guess I know that now.

10 Q Yeah.

11 A Okay? I know that now.

12 Q You know that now.

13 A Yes.

14 Q Okay. Did you -- did you as the legal counsel for  
15 WRMSA believe that a document which had come in from Macau,  
16 come in from outside of Macau, let's say for example Allen  
17 Zeman, and was sent to six individuals in Macau and referenced  
18 Edmund Ho or Fernando Chu Sai On, government officials,  
19 [inaudible], did you believe that that document should be  
20 redacted since it came outside of Macau?

21 A Okay. I believe once a document is in the  
22 possession of Wynn Resorts Macau I say it should not transmit  
23 it back out for use in a proceeding like this unless it is in  
24 compliance with the Personal Data Protection Act.

25 Q That's with one coming in. Let's talk about one

1 that goes out. So now you're sending a document outside of  
2 Macau or you are sending an internal document to Ian Coughlan  
3 -- I don't want to use you as an example, because you're an  
4 attorney. Say your CFO sent an internal document to Ian  
5 Coughlan and he cc-s individuals in the United States, they're  
6 going outside, has a number of names of Macanese individuals  
7 who have not given consent. So you know that the personal  
8 data has already been transferred, correct, when the cc --

9 A The names of the people who are cc-ed?

10 Q Correct.

11 A Correct.

12 Q So that document has already been transferred out of  
13 Macau in the ordinary course of business I guess you would  
14 say?

15 A It's your hypothetical, so yes.

16 Q Okay. Well, but you would -- that actually  
17 happened. This is not hypothetical. You know that that  
18 happened, don't you? You know that from time to time  
19 representatives or employees of Wynn Resorts Macau SA carbon  
20 copy individuals in the United States on email correspondence.  
21 You know that.

22 A Yes.

23 Q That's not a hypothetical. It's actually a fact;  
24 correct?

25 A That is a fact.

1 Q Okay. And did you consider that to be a transfer of  
2 the personal data at the time that email was carbon copied to  
3 somebody in the United States?

4 A It depends.

5 Q Depends on what?

6 A Well, it may be a transfer of personal data, but all  
7 of the data subjects may given their consent for us to do so.

8 Q I'll put the hypothetical that nobody -- not  
9 everybody gave their consent. For example, it's an email  
10 correspondence regarding a meeting with Edmund Ho, a meeting  
11 with Fernando Chu Sai On, a meeting with the Public Works  
12 director, a meeting with the Secretary of Transport, who did  
13 not give consents.

14 A Okay. So I understand. So in your hypothetical  
15 what you're saying is someone in Macau emails five cc-s in the  
16 United States and in the body of the email there are names of  
17 government officials.

18 Q Yes. And it may even be individuals within the "to"  
19 line that also did not give consents.

20 A Well, if they're our employees, that would actually  
21 not be possible. But --

22 Q I know. But I'm talking about if an author, Ian  
23 Coughlan, sends something to a Macau Government official with  
24 a carbon copy to somebody in the United States, you have a  
25 disclosure of information in the body about the meeting with

1 the government official, you have a government official who is  
2 actually identified in the "to" line, that's transferring that  
3 individual's personal data as well as others' who may have  
4 been involved; correct?

5 A Okay. Assuming your hypothetical is accurate where  
6 Ian Coughlan emails something and some of the recipients of  
7 the email are Macau Government officials and you have Macau  
8 Government official names in the body of the email, what I  
9 would say is, yes, personal data has been transferred without  
10 consent in the ordinary course of business.

11 Q I would agree with you there. Okay. So why  
12 couldn't that document be produced by WRMSA?

13 A That's the question?

14 Q Uh-huh.

15 A The Macau Data Protection Office is a difficult  
16 office that enforces a law that is draconian, I would say, and  
17 very difficult to live and run your business by. However, the  
18 office does understand the realities of business, and they do  
19 understand that in the ordinary course of business Wynn  
20 Resorts Macau, let's say, and lots of other businesses in  
21 Macau are probably transferring unconsented personal data out  
22 of Macau which could be a technical violation of the law.

23 Q Uh-huh.

24 A However, the office has drawn in writing to us in  
25 our correspondence with them over this matter and in general a

1 distinction between that kind of ordinary course business  
2 correspondence -- and that's a fluid concept, right, and you  
3 and I might disagree on what's in the ordinary course -- and  
4 handing over an email like the one you described to a complete  
5 third party for use in U.S. litigation.

6 Q Are you done with the answer?

7 A Yeah.

8 Q -- ask another one. So are you telling me that you  
9 actually wrote a letter -- the OPDP actually told you in  
10 correspondence that it recognized that you have transferred  
11 data and that it happens and you're not supposed to now if  
12 that data exists in Macau transfer that again in this  
13 litigation?

14 A They have told us in correspondence that the  
15 expectation of data subjects should be taken into account when  
16 you are determining what to do with their personal data.

17 Q Okay. But you've already told me, Mr. Schall -- and  
18 this is where I get confused. You've already told me that you  
19 never did tell the OPDP in any written correspondence or even  
20 in meetings with him that the hypothetical that I gave you,  
21 that the universe of documents like that in Macau that WRMSA  
22 had and is it okay to produce those? That data's already been  
23 transferred.

24 A That's right.

25 Q So now you maintain that OPDP knew that you were



1 doing that on a regular basis and told you somewhere along the  
2 way that, okay, we know you do this on a regular basis but in  
3 a context of requests for documents, which you didn't disclose  
4 to them, they would [inaudible] it?

5 A I don't believe that's what I said.

6 Q Okay. Well, that's what I'm -- I'm trying to be --  
7 I guess I'm confused. You didn't tell them of this regular  
8 transfer that existed in the documents that were being  
9 requested; correct?

10 A We weren't specific about the documents being  
11 requested other than to say, we have documents in Macau with  
12 personal data for which we do not have consents, can we please  
13 give it in this process.

14 Q Correct. Why didn't you tell them that the personal  
15 data of many of the -- or that had already been transferred  
16 when documents were sent out of Macau through email to Hong  
17 Kong and to the U.S.?

18 A Sir, are you asking me why didn't I draw an analogy  
19 to things that happened in the ordinary course of my business  
20 with respect to unconsented-to personal data being transmitted  
21 out of Macau to try to persuade them to allow me to give  
22 specific documents with unconsented-to personal data over in  
23 this proceeding?

24 Q Yeah. I'll go with your -- with the way you want to  
25 frame my question. Yeah, why didn't you tell them that you

1 already transferred this data outside of Macau and the names  
2 of the individuals that were being transferred -- or the  
3 personal data had been transferred?

4 A Well, you're talking about "this data" like it's  
5 specific. So --

6 Q Okay. Let me -- let's just pick a document. You  
7 know that there are documents that existed where it was --  
8 recipients were not only Macanese, but also U.S. You know  
9 that those exist; correct?

10 A Correct.

11 Q And you know that within the body of those emails  
12 that the names of individuals are within the body and that  
13 those names are of individuals who have not consented to the  
14 release of their names. You know that, don't you?

15 A Yes.

16 Q Okay. So that's really what I'm trying to  
17 understand. Why didn't you present a document like that to  
18 the OPDP and say, look, we've already done this, it's already  
19 existing in the United States, why can't we allow it to be  
20 transferred?

21 A Okay. Maybe we're still not on the same page. But  
22 when we -- when we went to ODP late last year we knew the  
23 exact universe of the documents with the personal data that  
24 had not been given to Wynn Resorts, the exact universe. And  
25 that is what we asked ODP permission for. We did not, I will

1 admit, draw the analogy that in the course of everyday  
2 business over the last decade unconsented-to personal data  
3 does go out. They're very aware of that. They fined us over  
4 the Freeh report.

5 Q Right. But they don't fine you on a regular basis  
6 of emails that contain the personal data of Macanese  
7 transferred to the U.S. through carbon copy or through direct  
8 correspondence; right?

9 A I believe they draw a distinction between emails  
10 that I send within my own corporate organization and emails  
11 that would go to a third party. And they've drawn that  
12 distinction in parts of the correspondence you've had in this  
13 case. But I take your point, Mr. Peek. We did not do what  
14 you said.

15 Q So are you telling me, then, that you draw a  
16 distinction between what might be considered internal email  
17 correspondence within the WRMSA and the WRL family and  
18 something to let's say a vendor in San Francisco that may  
19 contain personal data?

20 A I draw a distinction when I'm sending an email as to  
21 whether the email is going to someone in the Wynn organization  
22 or to let's say a vendor in San Francisco as to what I put in  
23 the email, yes, I would.

24 Q You do.

25 A I do.

1 Q So, if I understand correctly, you said that in  
2 December of 2016 you did not have a discussion with the OPDP  
3 about the fact that there were documents that existed outside  
4 of the United States that had been transferred let's say in  
5 the ordinary course through carbon copies, through direct  
6 correspondence to U.S. residents or a Hong Kong resident like  
7 Mr. Zeman or -- it's Dr. Zeman, isn't it?

8 A Dr. Zeman, yeah. I think it was in November, so  
9 late 2016 the latest round with ODP, correct. We did not draw  
10 their attention to the fact that unconsented personal data  
11 goes out of Macau every day in the ordinary course of  
12 business.

13 Q Were you asked by Wynn Resorts Limited to produce  
14 documents that existed in Macau on your server, for example,  
15 electronically stored information that had been -- that had  
16 transferred data through carbon copies or through direct sent  
17 to or received into -- did they ask you to look for those  
18 kinds of documents?

19 A I'm not trying to be difficult. I don't understand.

20 Q No, that's all right. [Inaudible] the question.  
21 So Wynn Resorts came to you and asked you about the  
22 order --

23 A Yes.

24 Q -- of the Court. And that order had three orders by  
25 the Court. You remember those three things that apply here,

1 the Macau law privilege, consent, and the documents sent to or  
2 from individuals outside of Macau.

3 A Yes.

4 Q Okay. So it's really that third one that I'm  
5 focused on. Did Wynn Resorts ask you to look for these  
6 documents that had been sent to -- sent into Macau from  
7 outside of Macau or sent from Macau outside of Macau?

8 MR. BICE: Objection, Your Honor. Attorney-client  
9 to the extent he's asking for Mr. Schall's communications with  
10 legal counsel.

11 MR. PEEK: That's not --

12 MR. BICE: To the extent he's not, then we obviously  
13 wouldn't object.

14 MR. PEEK: It's not seeking legal advice, Your  
15 Honor. I was just asking --

16 THE COURT: Mr. Bice, this whole discussion we've  
17 been having with this gentleman is about communications he had  
18 with Wynn Resorts Limited's counsel about the privilege log,  
19 the conversion log. So I'm going to overrule your objection.  
20 But I understand your position. If we're going to substantive  
21 information, we need to be more careful.

22 So you can answer.

23 THE WITNESS: Okay. Okay. What I recall, Mr. Peek,  
24 is that I was told by Pisanelli Bice that --

25 MR. BICE: Objection.

1 BY MR. PEEK:

2 Q Yeah. I just -- I don't want to hear -- yeah. I  
3 mean --

4 THE COURT: We don't want to know what they told  
5 you.

6 BY MR. PEEK:

7 Q Yeah. I'm not looking for what they told you.

8 A Okay.

9 Q What I'm trying to ascertain is that we know there  
10 are three parts to that order. You got sent a draft of it in  
11 September or October of 2016, correct, before the Court had  
12 actually entered the order?

13 A Yes.

14 Q Okay. Now, I haven't compared them side by side as  
15 to whether or not the one that you received is the one that  
16 the Court signed, but we know that at least those three topics  
17 were in the draft order that you had; correct?

18 A Correct.

19 Q So what I'm really asking you is whether or not in  
20 that third bucket of documents is whether you were asked to  
21 produce any documents that may exist in Macau that had been  
22 sent outside of Macau, didn't contain personal data, or had  
23 been sent into Macau that also contained personal data.

24 MR. BICE: My objection, Your Honor, is asked by  
25 whom.

1 THE COURT: Overruled. Sir, it's a yes or no.  
2 THE WITNESS: No.  
3 THE COURT: So we'll be in recess until 3:15.  
4 Sir, this is not a requested recess. You may now  
5 speak with your counsel as much as you want.  
6 THE WITNESS: Thank you.  
7 (Court recessed at 2:59 p.m., until 3:27 p.m.)  
8 THE COURT: Sorry. It took longer than I thought.  
9 Mr. Schall, if you'd come on back up. Let's try and  
10 get you out of here.  
11 Mr. Peek, how far are we behind?  
12 MR. PEEK: I think we're way ahead, Your Honor --  
13 THE COURT: Okay.  
14 MR. PEEK: -- since you have --  
15 THE COURT: Helped reframe your --  
16 MR. PEEK: -- helped me -- although I don't  
17 necessarily agree with the Court, I am certainly bound by the  
18 Court's ruling. But I appreciate -- as long as I can show  
19 these by --  
20 THE COURT: Absolutely.  
21 MR. PEEK: -- by some other means, I will do so.  
22 THE COURT: But having the witness say, I don't  
23 know, a lot of times just isn't helpful for all of us. But I  
24 understand.  
25 MR. PEEK: I appreciate that, Your Honor.

1 THE COURT: Okay. Let's keep going.

2 BY MR. PEEK:

3 Q Mr. Schall, from -- can you give me some of the  
4 names of the individuals from whom you did seek consents,  
5 whether it be before 2013 or during the course of producing  
6 documents.

7 THE COURT: Mr. Peek, don't lean on the mike.

8 THE WITNESS: Okay. So --

9 THE COURT: Who did you ask consents for?

10 BY MR. PEEK:

11 Q Whom did you ask -- from whom did you ask consents?

12 A In the initial phase we got -- asked for and  
13 received consents from all of the custodians in Macau, so  
14 myself, Ian Coughlan, Linda Chen, the CFO Robert Gansmo.  
15 After what I'll call the discovery process in Macau and we had  
16 identified more people who we need to seek consents I can't  
17 name any of them individually for you, but they would have  
18 been kind of mid-level and lower employees in our active  
19 employ who turned up and we needed their consents. But I  
20 couldn't give you specific names.

21 Q Those individuals, were they all WRMSA --

22 THE COURT: Mr. Peek, you can't sit over there.

23 MR. PEEK: You're right, I can't. I can't  
24 [unintelligible] the microphone, Your Honor.

25 //



1 BY MR. PEEK:

2 Q Were they all WRMSA employees?

3 A To the best of my knowledge, yes.

4 Q Were there any individuals who were not WRMSA  
5 employees from whom you sought consents?

6 A I'm not sure, Mr. Peek.

7 Q So when you say they were -- the initial consents  
8 were from the more senior people like yourself, Ian Coughlan,  
9 Robert Gansmo; correct?

10 A Correct.

11 Q And then as you began to identify documents in the  
12 collection you identified that there were more employees or  
13 WRMSA individuals whose names appeared; correct?

14 A Correct.

15 Q And did you then from that -- from at least those  
16 documents that were collected where you saw the names, is that  
17 where you sort of began to identify a universe of individuals  
18 within the company from whom you would need to have consents?

19 A I personally didn't, but that is what occurred, yes.

20 Q That is what occurred. And were each and every one  
21 of those individuals whom you -- who had been identified  
22 within the universe of the ESI collection, did they all give  
23 consents?

24 A No.

25 Q Who were some of those who were -- did not give

1 consents?

2 A I don't know specifically, but I do know that there  
3 was a group from whom consents were requested, group of  
4 employees, and they either did not consent or did not reply,  
5 which would be taken as --

6 Q Would it be a violation of the MPDPA to give us the  
7 names of those who did not give consents?

8 A Yes.

9 Q In what way?

10 A We would be taking the personal data, the name, and  
11 associating that they had said no to this process and sending  
12 it out of Macau.

13 Q To just be giving name, that's all?

14 A In the situation you've described, correct.

15 Q So when I ask you a question about an individual in  
16 Macau who hasn't given consent are you okay to testify to  
17 that?

18 A Yes.

19 Q Okay. So you can testify to the names of  
20 individuals who did not give consent, but you can't disclose  
21 them in writing to me?

22 A Well, I don't know the names of the people who  
23 didn't give their consent.

24 Q I didn't ask you that.

25 A Oh.

1           Q     That's not my question. My question is just  
2 specific that you can't testify to the names of individuals  
3 who have not given consent, but you can't give me those names  
4 in writing. Is that your testimony?

5           A     No. So --

6           Q     Okay.

7           A     -- with specific reference to people who do not  
8 consent to something, doesn't have to be this case, if you  
9 were to ask me name by name, did this person give consent or  
10 not, I believe I could not tell you the ones who did not give  
11 consent. If you and I are having a discussion, you're asking  
12 me questions and somehow someone's name who didn't give  
13 consent comes up in a completely other context, I think I'd be  
14 okay to say it. However, you're talking about an area that's  
15 very -- it's untested to some extent. However, what I know is  
16 if I sat here and I knew the names of the people who didn't  
17 give consent and say I knew them and I listed them all off  
18 verbally to you and it got back to Macau and they all went and  
19 complained to the Data Protection Office, I would be in  
20 trouble.

21          Q     Okay.

22          A     As would the company.

23          Q     Of course, I couldn't ask you about those names of  
24 individuals who did not give consent, because their names  
25 would be redacted in your documents; correct?

1           A     Correct.

2           Q     Yeah. Okay. So the only way that I would know of a  
3 name from whom you did not receive consent would be if you  
4 actually gave it to me. And you're saying you can't; correct?

5           A     I can't because I don't know, and I can't because I  
6 believe I would be in trouble for doing that.

7           Q     Well, were you the one who was -- were you involved  
8 in the requests for consents?

9           A     Involved? I was aware it was going on, but --

10          Q     Who did that?

11          A     I don't exactly recall.

12          Q     Was it a WRMSA employee?

13          A     I believe Ana Chavez would have been involved, yes,  
14 who's a WRMSA employee.

15          Q     Was Pisanelli Bice involved in that process at all?

16          A     I suspect they were, but I wasn't that involved in  
17 the process.

18          Q     When you say you suspect they were, they were  
19 involved in the requests of the individual to give consent?

20          A     They seemed to be our primary liaison with the --  
21 Wynn Resorts Macau SA's liaison with the U.S. litigation, so I  
22 expect that they were involved in every aspect of what went on  
23 in Macau. To what extent I don't know.

24          Q     And that would be -- that would include, ask Sally  
25 or Fred to give consent; correct?

1           A     I don't know.

2           Q     You believe, however, that they were involved  
3 because they were involved in every aspect of consents, were  
4 they not?

5           A     It'd be hard for me to tell you that PB wasn't  
6 involved with some aspect of this litigation as it touched  
7 Macau.

8           Q     Now, you've already told me that you didn't ask for  
9 the consents of individuals like Edmund Ho; correct?

10          A     Correct.

11          Q     Why not?

12          A     A few reasons.  Mainly it's a bit impractical.  And  
13 government officials are regulators, whether directly or  
14 indirectly our regulator.  We would not want to put them in a  
15 position of asking them for their consents in a procedure like  
16 this with respect to their official capacity.  And in my  
17 opinion I do not believe government officials could give  
18 consent with respect to personal data being released when it  
19 relates to their governmental capacity.

20          Q     Sorry.  I'm scratching my head because I'm a little  
21 bit confused, because we've already agreed that DICJ and the  
22 OPD people gave -- didn't give consent when you released their  
23 names.  So what am I missing?  You say they can't do it in  
24 their official capacity, but yet you did release names of OPD  
25 and DICJ?

1           A     My recollection is those were letters that they sent  
2 us. So I view it differently. A letter that they send us  
3 officially in their capacity, we didn't get their consent,  
4 maybe I'll find out later that was wrong. A email which  
5 contains the names of government officials acting in their  
6 official capacity which let's say Ian Coughlan wrote, for  
7 example, that in my opinion requires consent, and that is what  
8 we did not ask for.

9           Q     Because you thought it inappropriate to ask for  
10 consent?

11          A     They're our regulator, and we would not put them in  
12 that position.

13          Q     Now, as with the OPD, who you said their names are  
14 all over the Website for the OPDP, the names of the government  
15 officials are all over the government Website, are they not?

16          A     I agree with you. But the examples where we spoke  
17 about the Internet were letters written by ODP. I recall ODP.  
18 I don't recall DICJ. But letters written by ODP officials to  
19 us in their official capacity, we did not seek consent to  
20 release those letters when we were leaving the official's name  
21 in there. An email that contains the names of government  
22 officials and what they may or may not be doing in some type  
23 of process we're involved in I view differently.

24          Q     I'm sorry. I don't quite understand the difference.  
25 If you're corresponding with them just like you're