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 Crossclaimant
 13 ELAINE P. WYNN

14 UNITED STATES DISTRICT COURT
 15 DISTRICT OF NEVADA

17 WYNN RESORTS, LIMITED, a Nevada
 Corporation,

18 Plaintiffs,

19 vs.

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

23 Defendants.

CASE NO. 2:12-CV-00400-LRH-PAL

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

JURY DEMAND

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

26 Counterclaimants,

27 vs.
 28

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

Counterdefendants.

ELAINE P. WYNN, an individual,

Counterclaimant and
Crossclaimant,

vs.

STEPHEN A. WYNN, an individual,

Crossdefendant,

ARUZE USA, INC., a Nevada Corporation,

Counterdefendant.

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1 ANSWER

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

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

8 Ms. Wynn is not required to respond, and does not respond, to the allegations that were
9 not asserted against her, including: Count IV by Aruze USA against Wynn Resorts (paragraphs
10 199-207); Count V by Aruze USA against Wynn Resorts (paragraphs 208-218); Count VII by
11 Aruze USA against Wynn Resorts (paragraphs 232-236); Count VIII by Aruze USA against
12 Wynn Resorts (paragraphs 237-244); Count IX by Aruze USA against Steve Wynn and Kim
13 Sinatra (paragraphs 245-257); Count X by Aruze USA against Wynn Resorts, Steve Wynn, and
14 Kim Sinatra (paragraphs 258-268); Count XI by Aruze USA against Wynn Resorts, Steve Wynn,
15 and Kim Sinatra (paragraphs 269-280); Count XII by Aruze USA against Steve Wynn and Kim
16 Sinatra (paragraphs 281-294); Count XIII by Aruze USA against Wynn Resorts, Steve Wynn, and
17 Kim Sinatra (paragraphs 295-304); Count XIV by Aruze USA against Wynn Resorts and Steve
18 Wynn (paragraphs 305-321); Count XV by Aruze USA against Wynn Resorts and Steve Wynn
19 (paragraphs 322-337); Count XVI by Aruze USA against Steve Wynn (paragraphs 338-348);
20 Count XVII by Aruze USA against Steve Wynn (paragraphs 349-359); Count XVIII by Aruze
21 USA against Wynn Resorts and Steve Wynn (paragraphs 360-369); Count XIX by Aruze USA
22 against Wynn Resorts and Steve Wynn (paragraphs 370-379); Count XX by Aruze USA against
23 Wynn Resorts and Steve Wynn (paragraphs 380-390); Count XXI by Aruze USA against Steve
24 Wynn (paragraphs 391-394); Count XXII by Aruze USA against Wynn Resorts (paragraphs 395-
25 402).

26 As to the allegations against Ms. Wynn set forth in enumerated paragraphs in the First
27 Amended Counterclaim, Ms. Wynn responds in correspondingly numbered paragraphs as
28 follows:

1 **JURISDICTION AND VENUE**

2 1. Ms. Wynn avers that, in the event and to the extent the Court were to
3 remand the entire action – a matter as to which Ms. Wynn has taken no position – federal
4 jurisdiction would be lacking unless and until a separate action were filed. Except as expressly
5 averred, Ms. Wynn admits the allegations of paragraph 1.

6 2. Ms. Wynn avers that, in the event and to the extent the Court were to
7 remand the entire action – a matter as to which Ms. Wynn has taken no position – federal
8 jurisdiction would be lacking unless and until a separate action were filed. Except as expressly
9 averred, Ms. Wynn admits the allegations of paragraph 2.

10 3. Ms. Wynn admits that venue is proper in this District because a substantial
11 part of the alleged events or omissions giving rise to the action occurred here. Except as
12 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the
13 allegations of paragraph 3, and denies those allegations on that basis.

14 **NATURE OF THE ACTION**

15 4. On information and belief, Ms. Wynn admits that Wynn Resorts filed a
16 complaint against Aruze USA shortly after the Board voted to redeem Aruze’s stock at a meeting
17 that took place on February 18, 2012. Ms. Wynn lacks information sufficient to form a belief as
18 to the truth of the allegation that Wynn Resorts understood Aruze USA would sue upon being
19 sued and denies that allegation on that basis. Ms. Wynn admits the allegations of footnote 1.
20 Except as expressly admitted or otherwise denied, Ms. Wynn denies the allegations of paragraph
21 4.

22 5. Ms. Wynn admits that Wynn Resorts redeemed Aruze USA’s shares at an
23 approximately 30% discount to the market price in exchange for a promissory note of around \$1.9
24 billion to be paid in 10 years. On information and belief, Ms. Wynn admits that Wynn Resorts’
25 complaint was filed on February 19, 2012. Except as expressly admitted, Ms. Wynn denies the
26 allegations of paragraph 5, in part because she lacks information sufficient to form a belief as to
27 their truth.

28 6. The allegations contained in paragraph 6 are legal conclusions which

1 require no response. In the event these conclusions can be deemed allegations of fact, Ms. Wynn
2 denies the allegations of paragraph 6.

3 7. The allegations contained in paragraph 7 are legal conclusions which
4 require no response. In the event these conclusions can be deemed allegations of fact, Ms. Wynn
5 denies the allegations of paragraph 7.

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

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

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

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

13 **PARTIES**

14 12. Ms. Wynn denies that Aruze is currently a stockholder of Wynn Resorts.
15 Except as expressly denied, on information and belief, Ms. Wynn admits the allegations of
16 paragraph 12.

17 13. On information and belief, Ms. Wynn admits the allegations of paragraph
18 13.

19 14. Ms. Wynn admits the allegations of paragraph 14.

20 15. Ms. Wynn admits that Stephen A. Wynn is the Chairman of the Board and
21 Chief Executive Officer of Wynn Resorts. Ms Wynn admits that Stephen A. Wynn is a resident
22 of Nevada. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief
23 as to the truth of the allegations of paragraph 15, and denies the allegations on that basis.

24 16. Ms. Wynn admits that Kimmarie Sinatra is the General Counsel, Secretary,
25 and a Senior Vice president of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks
26 information sufficient to form a belief as to the truth of the allegations of paragraph 16, and
27 denies the allegations on that basis.

28 17. Ms. Wynn admits that she is a director of Wynn Resorts and is Stephen

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

3 18. Ms. Wynn admits that Linda Chen is a director of Wynn Resorts. Except
4 as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of
5 the allegations of paragraph 18, and denies the allegations on that basis.

6 19. Ms. Wynn admits that Ray R. Irani is a director of Wynn Resorts. Except
7 as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of
8 the allegations of paragraph 19, and denies the allegations on that basis.

9 20. Ms. Wynn admits that Russell Goldsmith is a director of Wynn Resorts.
10 Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the
11 truth of the allegations of paragraph 20, and denies the allegations on that basis.

12 21. Ms. Wynn admits that Robert J. Miller is a director of Wynn Resorts.
13 Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the
14 truth of the allegations of paragraph 21, and denies the allegations on that basis.

15 22. Ms. Wynn admits that John A. Moran is a director of Wynn Resorts.
16 Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the
17 truth of the allegations of paragraph 22, and denies the allegations on that basis.

18 23. Ms. Wynn admits that Marc D. Schorr is a director and Chief Operating
19 Officer of Wynn Resorts. Except as expressly admitted, Ms. Wynn lacks information sufficient
20 to form a belief as to the truth of the allegations of paragraph 23, and denies the allegations on
21 that basis.

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

25 25. Ms. Wynn admits that D. Boone Wayson is a director of Wynn Resorts.
26 Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the
27 truth of the allegations of paragraph 25, and denies the allegations on that basis.

28 26. Ms. Wynn admits that Allan Zeman is a director of Wynn Resorts. Except

1 as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of
2 the allegations of paragraph 26, and denies the allegations on that basis.

3 **GENERAL ALLEGATIONS**

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

5 **A. Turned Out By Mirage Resorts, Steve Wynn Turns to Kazuo Okada to** 6 **Finance the New Wynn Project**

7 27. Ms. Wynn admits that Mr. Wynn developed Mirage Resorts, Inc., which
8 owned and operated the Mirage, Treasure Island, and the Bellagio, and that Mr. Wynn ceased
9 being Chief Executive Officer after Mirage Resorts, Inc. merged with MGM Grand, Inc. Except
10 as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of
11 the allegations of paragraph 27, and on that basis denies the allegations.

12 28. Ms. Wynn admits that Mr. Wynn purchased the Desert Inn casino and
13 planned to build a new casino on that site, and that he contacted Mr. Okada about funding.
14 Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the
15 truth of the allegations of paragraph 28, and on that basis denies the allegations.

16 29. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
17 allegations of paragraph 29, and on that basis denies the allegations.

18 30. Ms. Wynn admits that Valvino Lamore, LLC (“Valvino”) was a Nevada
19 limited liability company used to develop the Desert Inn project. Ms. Wynn admits that Aruze
20 USA contributed \$260 million to Valvino in October 2000. Except as expressly admitted, Ms.
21 Wynn denies the allegations of paragraph 30, in part because Ms. Wynn lacks information
22 sufficient to form a belief as to the truth of those allegations.

23 31. Ms. Wynn admits that Aruze USA contributed \$120 million to Valvino in
24 April 2002. Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief
25 as to the truth of the allegations of paragraph 31, and on that basis denies those allegations.

26 **B. The Stockholders Agreement**

27 32. Ms. Wynn admits on information and belief that in 2002 steps were taken
28 in anticipation of Wynn Resorts going public. Except as expressly admitted, Ms. Wynn lacks

1 information sufficient to form a belief as to the truth of the allegations of paragraph 32, and on
2 that basis denies those allegations.

3 33. Ms. Wynn admits that Mr. Wynn, Aruze USA, and Baron Asset Fund
4 entered into a Stockholders Agreement dated April 11, 2002 (“April 2002 Stockholders
5 Agreement”). Ms. Wynn admits that the April 2002 Stockholders Agreement purported to
6 establish certain restrictions on the sale of stock the signatories were to receive in “NewCo.” Ms.
7 Wynn admits that NewCo was a predecessor to Wynn Resorts. Except as expressly admitted, Ms.
8 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph
9 33, and on that basis denies those allegations.

10 34. Ms. Wynn avers that the April 2002 Stockholders Agreement speaks for
11 itself, and denies any allegation inconsistent with that agreement.

12 35. Ms. Wynn admits that the April 2002 Stockholders Agreement purported
13 to establish certain restrictions on the transfer of shares of Wynn Resorts common stock held by
14 the parties to that agreement. Except as expressly admitted, Ms. Wynn lacks information
15 sufficient to form a belief as to the truth of the allegations of paragraph 35, and on that basis
16 denies those allegations.

17 36. Ms. Wynn avers that the April 2002 Stockholders Agreement speaks for
18 itself, and denies any allegation inconsistent with that agreement. Ms. Wynn specifically denies
19 the allegation that Wynn Resorts had no legal right or ability to redeem Aruze’s stock, and
20 specifically denies that the April 2002 Stockholders Agreement had any bearing on Wynn
21 Resorts’ power to redeem stock.

22 37. Ms. Wynn avers that the April 2002 Stockholders Agreement speaks for
23 itself, and denies any allegation inconsistent with that agreement. Ms. Wynn further lacks
24 information sufficient to form a belief as to the truth of the allegations of paragraph 37, and on
25 that basis denies those allegations.

26 38. Ms. Wynn avers that the April 2002 Stockholders Agreement speaks for
27 itself, and denies any allegation inconsistent with that agreement. Ms. Wynn lacks information
28 sufficient to form a belief as to whether a fiduciary duty existed between Mr. Wynn and Aruze,

1 and therefore denies that allegation.

2 39. On information and belief, Ms. Wynn avers that, in 2006, Mr. Wynn asked
3 Mr. Okada and Aruze to enter into an Amendment to the April 2002 Stockholders Agreement.
4 Ms. Wynn avers that the Amendment dated November 8, 2006 (“2006 Amendment”) speaks for
5 itself, and denies any allegation inconsistent with that amendment.

6 **C. Wynn Resorts’ Original Articles of Incorporation**

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

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

11 **D. The Contribution Agreement**

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

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

23 44. Ms. Wynn avers that the Contribution Agreement speaks for itself and
24 denies any allegation inconsistent with the Contribution Agreement. Except as expressly averred,
25 Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of
26 paragraph 44, and on that basis denies those allegations.

27 45. Ms. Wynn avers that the Contribution Agreement speaks for itself and
28 denies any allegation inconsistent with the Contribution Agreement. Ms. Wynn denies that Wynn

1 Resorts has an agreement with Aruze that precludes a redemption provision. Except as expressly
2 averred or otherwise denied, Ms. Wynn lacks information sufficient to form a belief as to the
3 truth of the allegations in paragraph 45, and on that basis denies those allegations.

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

6 46. Ms. Wynn admits that the Articles of Incorporation contain a provision that
7 allows Wynn Resorts to redeem stock under certain circumstances, and that Wynn Resorts and
8 Mr. Wynn applied that provision to Aruze’s stock in 2012. On information and belief, Ms. Wynn
9 denies that Mr. Wynn added the redemption provision unilaterally without Aruze’s consent.
10 Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the
11 truth of the allegations of paragraph 46, and on that basis denies those allegations.

12 47. Ms. Wynn avers that the April 2002 Stockholders Agreement speaks for
13 itself, and denies any allegation inconsistent with that agreement. Ms. Wynn lacks information
14 sufficient to form a belief as to the truth of the additional allegations of paragraph 47, and on that
15 basis denies those allegations.

16 48. Ms. Wynn admits that the Articles of Incorporation of Wynn Resorts
17 includes a provision that provides for redemption of stock held by unsuitable persons. Ms. Wynn
18 avers that the Articles of Incorporation speaks for itself and denies any allegation inconsistent
19 with the Articles. On information and belief, Ms. Wynn denies that Mr. Wynn added the
20 redemption provision unilaterally without Aruze’s consent. Except as expressly admitted, denied,
21 or averred, Ms. Wynn lacks information sufficient to form a belief as to the truth of the
22 allegations of paragraph 48, and on that basis denies those allegations.

23 49. Ms. Wynn denies that it was “false” for Wynn Resorts and Mr. Wynn to
24 assert that the redemption provision applies to Aruze stock. On information and belief, Ms.
25 Wynn denies that Aruze relied on the absence of a redemption provision in making a contribution
26 to Wynn Resorts. On information and belief, Ms. Wynn denies that Aruze was not and could not
27 have been aware that the redemption provision could potentially be applied to Aruze. Ms. Wynn
28 further denies the other allegations of paragraph 49, in part because she lacks information

1 sufficient to form a belief as to their truth.

2 **F. Wynn Resorts Goes Public**

3 50. Ms. Wynn admits that Mr. Okada became a board member of Wynn
4 Resorts in October 2002. Ms. Wynn admits that the LLC interests of Valvino were contributed to
5 Wynn Resorts in September 2002. Except as expressly admitted, Ms. Wynn lacks information
6 sufficient to form a belief as to the truth of the allegations of paragraph 50, and on that basis
7 denies those allegations.

8 51. On information and belief, Ms. Wynn admits the allegations of paragraph
9 51.

10 52. Ms. Wynn admits that Wynn Las Vegas, Wynn Macau, Encore Las Vegas,
11 and Encore Macau have been successful. On information and belief, Ms. Wynn admits that Mr.
12 Okada has contributed financially to the casinos' success. Except as expressly admitted, Ms.
13 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph
14 52, and on that basis denies those allegations.

15 53. Ms. Wynn admits the allegations of paragraph 53.

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

17 54. On information and belief, Ms. Wynn admits that Mr. Wynn considered
18 Mr. Okada a close friend and a partner. Except as expressly admitted, Ms. Wynn lacks
19 information sufficient to form a belief as to the truth of the allegations of paragraph 54, and on
20 that basis denies those allegations.

21 55. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
22 allegations of paragraph 55, and on that basis denies those allegations.

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

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

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

28 **A. In 2007, Universal Fully Discloses to Wynn Resorts Its Interest In Pursuing a**

1 **Casino Project in the Philippines**

2 58. On information and belief, Ms. Wynn avers that Mr. Okada has been
3 involved with business efforts in the Philippines since around 2008. Except as expressly averred,
4 Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of
5 paragraph 58, and on that basis denies those allegations.

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

8 60. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
9 allegations of paragraph 60, and on that basis denies those allegations.

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

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

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

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

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

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

22 66. On information and belief, Ms. Wynn admits that Universal and/or its
23 affiliates went about acquiring land in the Philippines for a planned casino. Except as expressly
24 admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations
25 of paragraph 66, and on that basis denies those allegations.

26 67. On information and belief, Ms. Wynn admits that an entity or entities
27 affiliated with Universal or Mr. Okada purchased land near Manila Bay. On information and
28 belief, Ms. Wynn denies that Universal complied with the laws of the Philippines regarding

1 citizenship for landholding. Except as expressly admitted, Ms. Wynn lacks information
2 sufficient to form a belief as to the truth of the allegations of paragraph 67, and on that basis
3 denies those allegations.

4 68. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
5 allegations of paragraph 68, and on that basis denies those allegations.

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

7 69. Ms. Wynn admits that she and Mr. Wynn began divorce proceedings in
8 March 2009. Ms. Wynn admits that by early 2010, Ms. Wynn and Mr. Wynn had reached an
9 agreement regarding division of their community assets, including the Wynn Resorts stock then
10 held in Mr. Wynn's name. On information and belief, Ms. Wynn admits that Aruze was Wynn
11 Resorts' largest shareholder after the division of assets between Mr. Wynn and Ms. Wynn.
12 Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 69, in part because
13 she lacks information sufficient to form a belief as to the truth of the allegations.

14 70. Ms. Wynn admits that she, Mr. Wynn, and Aruze entered into the
15 Amended and Restated Stockholders Agreement dated January 6, 2010 ("January 2010
16 Stockholders Agreement"). Ms. Wynn avers that the January 2010 Stockholders Agreement
17 speaks for itself, and denies any allegation inconsistent with that agreement. Except as expressly
18 admitted or averred, Ms. Wynn denies the allegations in paragraph 70, because she lacks
19 information sufficient to form a belief as to the truth of the allegations.

20 71. Ms. Wynn avers that the January 2010 Stockholders Agreement speaks for
21 itself, and denies any allegation inconsistent with that agreement. Except as expressly averred,
22 Ms. Wynn denies the allegations of paragraph 71, because she lacks information sufficient to
23 form a belief as to the truth of the allegations.

24 72. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
25 allegations of paragraph 72, and on that basis denies those allegations.

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

28 73. Ms. Wynn lacks information sufficient to form a belief as to the truth of the

1 allegations of paragraph 73, and on that basis denies those allegations.

2 74. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
3 allegations of paragraph 74, and on that basis denies those allegations.

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

6 **E. Over Kazuo Okada’s Objection, Wynn Resorts Makes an Unprecedented**
7 **\$135 Million Donation for Wynn Macau**

8 76. Ms. Wynn denies that the duration of Wynn Resorts’ donation to Macau is
9 “suspiciou[s].” On information and belief, Ms. Wynn admits the other allegations of paragraph
10 76.

11 77. Ms. Wynn admits that Mr. Okada, in his capacity as a Wynn Resorts
12 director, voted against the donation to the University of Macau Development Foundation. Ms.
13 Wynn admits that Mr. Okada raised objections to the size and the term of the donation. Except as
14 expressly admitted, Ms. Wynn denies the allegations of paragraph 77.

15 78. Ms. Wynn lacks information sufficient to form a belief as to the truth of
16 and therefore denies the allegation that the alleged fact is “[n]otabl[e],” and avers that she
17 believes she was unaware of the alleged fact at the time. Ms. Wynn admits that the head of
18 Macau’s government is also the chancellor of the University of Macau. Ms. Wynn lacks
19 sufficient information to form a belief as to whether that individual has “ultimate oversight of
20 gaming matters,” and therefore denies that allegation.

21 79. Ms. Wynn admits that Wynn Resorts received a legal opinion that
22 sanctioned the donation to the University of Macau Development Foundation. Except as
23 expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the
24 allegations of paragraph 79, and on that basis denies those allegations.

25 80. On information and belief, Ms. Wynn admits that Wynn Resorts has
26 received a letter from the Securities Exchange Commission regarding its Macau donation and that
27 the SEC has made inquiries. Except as expressly admitted, Ms. Wynn lacks information
28 sufficient to form a belief as to the truth of the allegations of paragraph 80, and on that basis

1 denies those allegations.

2 **F. Steve Wynn and Kim Sinatra Fraudulently Promise Kazuo Okada Financing**
3 **for the Philippine Project**

4 81. Ms. Wynn admits that Mr. Wynn married his current wife in or around
5 April 2011. On information and belief, Ms. Wynn avers that Mr. Wynn contacted Mr. Okada
6 regarding a potential sale of Ms. Wynn's stock. Except as expressly admitted or averred, Ms.
7 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph
8 81, and on that basis denies those allegations.

9 82. On information and belief, Ms. Wynn admits that, sometime in 2011, Mr.
10 Wynn asked Mr. Okada to consent to a transfer of Ms. Wynn's shares. Except as expressly
11 admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations
12 of paragraph 82, and on that basis denies those allegations.

13 83. On information and belief, Ms. Wynn admits that Mr. Okada was amenable
14 to allowing Ms. Wynn to transfer her stock. Except as expressly admitted, Ms. Wynn lacks
15 information sufficient to form a belief as to the truth of the allegations of paragraph 83, and on
16 that basis denies those allegations.

17 84. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
18 allegations of paragraph 84, and on that basis denies those allegations.

19 85. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
20 allegations of paragraph 85, and on that basis denies those allegations.

21 86. Ms. Wynn denies the allegations of paragraph 86, in part because she lacks
22 information sufficient to form a belief as to their truth.

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

25 88. On information and belief, Ms. Wynn admits that Mr. Okada signed a
26 waiver and consent granting her the option to transfer her stock. Except as expressly admitted,
27 Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of
28 paragraph 88, and on that basis denies those allegations.

1 89. On information and belief, Ms. Wynn admits that Mr. Okada signed a
2 waiver and consent granting her the option to transfer her stock. Except as expressly admitted,
3 Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations of
4 paragraph 89, and on that basis denies those allegations.

5 90. Ms. Wynn admits that Wynn Resorts has SOX compliance policies.
6 Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the
7 truth of the allegations of paragraph 90, and on that basis denies those allegations.

8 91. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
9 allegations of paragraph 91, and on that basis denies those allegations.

10 92. On information and belief, Ms. Wynn admits that Aruze stated that it
11 would allow her to transfer her shares. Except as expressly admitted, Ms. Wynn lacks
12 information sufficient to form a belief as to the truth of the allegations of paragraph 92, and on
13 that basis denies those allegations.

14 93. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
15 allegations of paragraph 93, and on that basis denies those allegations.

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

18 95. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
19 allegations of paragraph 95, and on that basis denies those allegations.

20 96. Ms. Wynn admits that Bob Miller is a member of Wynn Resorts'
21 Compliance Committee. Except as expressly admitted, Ms. Wynn denies those allegations of
22 paragraph 96, in part because she lacks information sufficient to form a belief as to the truth of
23 the allegations of paragraph 96.

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

26 97. Ms. Wynn admits that Mr. Schreck has a long-standing relationship with
27 Mr. Wynn and acted as a lawyer for Mr. Wynn or Wynn Resorts, that Mr. Schreck worked for
28 Mr. Okada and/or entities affiliated with Mr. Okada, and that Mr. Schreck eventually left his

1 position with Mr. Okada. Except as expressly admitted, Ms. Wynn lacks information sufficient to
2 form a belief as to the truth of the allegations of paragraph 97, and on that basis denies those
3 allegations.

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

6 99. Ms. Wynn admits that Mr. Schreck's law firm acted as counsel for Wynn
7 Resorts in the Nevada state court action regarding Mr. Okada's document inspection demand.
8 Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 99, in part because
9 she lacks information sufficient to form a belief as to the truth of those allegations.

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

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

14 100. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
15 allegations of paragraph 100, and on that basis denies those allegations.

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

18 102. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
19 allegations of paragraph 102, and on that basis denies those allegations.

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

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

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

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

28 107. Ms. Wynn lacks information sufficient to form a belief as to the truth of the

1 allegations of paragraph 107, and on that basis denies those allegations.

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

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

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

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

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

12 112. Ms. Wynn lacks information sufficient to form a belief as to what
13 “characterizations” Mr. Wynn made, and on that basis denies that allegation. On information and
14 belief, Ms. Wynn denies the additional allegations of paragraph 112.

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

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

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

22 115. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
23 allegations of paragraph 115, and on that basis denies those allegations.

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

26 **D. Wynn Resorts Refuses to Allow Kazuo Okada and Aruze USA to Review Any**
27 **Supposed “Evidence”**

28 117. Ms. Wynn denies the allegations of paragraph 117, in part because Ms.

1 Wynn lacks information sufficient to form a belief as to the truth of the allegations.

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

3 118. Ms. Wynn admits that Mr. Miller and/or others made a oral presentation
4 regarding Mr. Okada’s activities at a meeting on or around November 1, 2011. Ms. Wynn avers
5 that Mr. Okada participated in the meeting. Except as expressly admitted or averred, Ms. Wynn
6 lacks information sufficient to form a belief as to the truth of the allegations of paragraph 118,
7 and on that basis denies those allegations.

8 119. Ms. Wynn admits that the Compliance Committee retained Freeh Sporkin
9 & Sullivan LLP (“Free Sporkin”) to conduct an investigation with respect to Mr. Okada activities
10 overseas. Ms. Wynn admits that the Board voted to eliminate the position of Vice Chairman and
11 accepted the Compliance Committee’s retention of Freeh Sporkin. Except as expressly admitted,
12 Ms. Wynn denies the allegations of paragraph 119.

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

14 120. On information and belief, Ms. Wynn admits that Mr. Okada has filed an
15 action in Nevada state court to seek access to Wynn Resort’s records. Ms. Wynn denies that any
16 actions by the Board were “highly suspicious.” Except as expressly admitted or denied, Ms.
17 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph
18 120, and on that basis denies those allegations.

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

21 121. Ms. Wynn denies the allegation that Mr. Wynn “refused” Aruze’s request
22 to endorse its slate of directors, but avers on information and belief that written communications
23 in response to Aruze declined to take a position on the slate and said the subject would be
24 addressed later; she further avers that Mr. Wynn indicated at the time behind the scenes that he
25 had no intention of supporting the Aruze slate and did not endorse it. Except as expressly denied
26 or averred, Ms Wynn admits the allegations of paragraph 121.

27 **H. The Freeh Investigation Proceeds Without Seeking Any Input From Kazuo**
28 **Okada**

1 122. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
2 allegations of paragraph 122, and on that basis denies those allegations.

3 123. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
4 allegations of paragraph 123, and on that basis denies those allegations.

5 124. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
6 allegations of paragraph 124, and on that basis denies those allegations.

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

9 **I. Freeh Sporkin Refuses to Provide Meaningful Information Regarding the**
10 **Investigation to Kazuo Okada**

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

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

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

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

18 129. On information and belief, Ms. Wynn admits that Mr. Okada sat for an
19 interview with Mr. Freeh on February 15, 2012. Except as expressly admitted, Ms. Wynn lacks
20 information sufficient to form a belief as to the truth of the allegations of paragraph 129, and on
21 that basis denies those allegations.

22 130. On information and belief, Ms. Wynn admits that Mr. Freeh asked Mr.
23 Okada about expenses paid by Universal and/or its agents or affiliates for lodging and meals at
24 Wynn Resorts properties, and about compliance with Philippine landownership requirements.
25 Except as expressly admitted, Ms. Wynn lacks information sufficient to form a belief as to the
26 truth of the allegations of paragraph 130, and on that basis denies those allegations.

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

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

2 132. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
3 allegations of paragraph 132, and on that basis denies those allegations.

4 133. Ms. Wynn avers that the complaint filed by Wynn Resorts speaks for itself
5 and denies any allegation inconsistent with the complaint.

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

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

10 136. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
11 allegations of paragraph 136, and on that basis denies those allegations.

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

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

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

18 140. Ms. Wynn admits that the Board voted to redeem Aruze's shares, at a
19 valuation that reflected a discount to the trading price, on the day the directors received the Freeh
20 Sporkin report. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 140,
21 in part because she lacks information sufficient to form a belief as to their truth.

22 141. Ms. Wynn denies the allegations of paragraph 141, in part because she
23 lacks information sufficient to form a belief as to their truth.

24 **L. Steve Wynn Hurriedly Schedules Board of Directors Meeting**

25 142. Ms. Wynn admits that a board meeting of Wynn Resorts took place on
26 Saturday, February 18, 2012, and that the Freeh Sporkin report was on the agenda. On
27 information and belief, Ms. Wynn admits that Freeh Sporkin interviewed Mr. Okada on February
28 15, 2012. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 142, in

1 part because she lacks information sufficient to form a belief as to their truth.

2 **M. Steve Wynn Tries to Use the Threat of Redemption to Buy Aruze USA's**
3 **Stock at a Substantial Discount**

4 143. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
5 allegations of paragraph 143, and on that basis denies those allegations.

6 144. On information and belief, Ms. Wynn avers that Mr. Doumani had invested
7 in one of Mr. Wynn's properties, and that Mr. Wynn had expressed concern about Mr. Doumani's
8 association with certain individuals. Except as expressly averred, Ms. Wynn denies the
9 allegations of paragraph 144, in part because she lacks information sufficient to form a belief as
10 to their truth.

11 **IV. Wynn Resorts' Unfounded and Unprecedented Redemption of More Than \$2.9**
12 **Billion of Aruze USA's Shares**

13 **A. Wynn Resorts Publicly Asserts That the Value of Aruze USA's Stock Is \$2.9**
14 **Billion**

15 145. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
16 allegations of paragraph 145, and on that basis denies those allegations.

17 146. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
18 allegations of paragraph 146, and on that basis denies those allegations.

19 **B. The Board Hurriedly Meets and Rushes to Redeem Aruze USA's Stock**

20 147. Ms. Wynn avers that Mr. Okada's counsel purportedly sent a letter dated
21 February 17, 2012 to a representative of Wynn Resorts. Ms. Wynn avers that the letter speaks for
22 itself and denies any allegation inconsistent with the letter.

23 148. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
24 allegations of paragraph 148, and on that basis denies those allegations.

25 149. Ms. Wynn admits that Mr. Wynn yelled at Mr. Okada's counsel when he
26 introduced himself. Ms. Wynn admits that Mr. Wynn said that Mr. Okada's counsel should not
27 be present. Ms. Wynn admits that Mr. Okada was told that he needed to enter into a
28 nondisclosure agreement in order to receive a copy of the Freeh Sporkin report. Ms. Wynn

1 admits that Mr. Okada did not agree to enter into a nondisclosure agreement. Except as expressly
2 admitted, Ms. Wynn denies the allegations of paragraph 149, in part because she lacks
3 information sufficient to form a belief as to their truth.

4 150. On information and belief, My Wynn admits that a copy of the Freeh
5 Sporkin report is attached to Wynn Resorts' Complaint. Except as expressly admitted, Ms. Wynn
6 lacks information sufficient to form a belief as to the truth of the allegations of paragraph 150,
7 and on that basis denies those allegations.

8 151. Ms. Wynn admits that there were translation problems during the Board
9 meeting. Ms. Wynn admits that Mr. Okada requested that the translation be provided sequentially
10 rather than simultaneously, and that the request was denied. Except as expressly admitted, Ms.
11 Wynn lacks information sufficient to form a belief as to the truth of the allegations of paragraph
12 151, and on that basis denies those allegations.

13 152. Ms. Wynn admits that Mr. Freeh made a presentation in English. Ms.
14 Wynn admits that after Mr. Freeh completed his presentation, the Board asked if Mr. Okada had
15 any questions. Ms. Wynn admits that Mr. Okada asked the Board to delay making any
16 resolutions. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 152, in
17 part because she lacks information sufficient to form a belief as to their truth.

18 153. Ms. Wynn avers that there were technical difficulties during the Board
19 meeting. Ms. Wynn admits that the connection with Mr. Okada was lost at some point during the
20 meeting, and that no other contact was made with Mr. Okada. Except as expressly admitted or
21 averred, Ms. Wynn denies the allegations of paragraph 153, in part because she lacks information
22 sufficient to form a belief as to their truth.

23 154. Ms. Wynn admits that Wynn Resorts gave Aruze notice that Aruze's stock
24 was redeemed for a note of approximately \$1.936 billion, which reflected a discount of around
25 30% to the trading price. Except as expressly admitted, Ms. Wynn lacks information sufficient to
26 form a belief as to the truth of the allegations of paragraph 154, and on that basis denies those
27 allegations.

28 155. Ms. Wynn lacks information sufficient to form a belief as to the truth of the

1 allegations of paragraph 155, and on that basis denies those allegations.

2 156. Ms. Wynn admits that Wynn Resorts filed a complaint that attached a copy
3 of the report without exhibits but is without information sufficient to form a belief about the
4 timing and form of the filing and on that basis denies those allegations of paragraph 156.

5 157. Ms. Wynn lacks information sufficient to form a belief as to the truth of the
6 allegations of paragraph 157, and on that basis denies those allegations.

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

8 158. Ms. Wynn admits that the redemption has taken place, and that Wynn
9 Resorts has so stated. Ms. Wynn admits that Aruze disputes the validity of the redemption.
10 Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 158.

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

12 159. Ms. Wynn avers that Aruze is bound by the redemption provision, and
13 admits that Aruze disputes that it is bound by the redemption provision. Ms. Wynn avers that the
14 Articles of Incorporation speak for themselves, and denies any allegation inconsistent with the
15 Articles of Incorporation.

16 160. Ms. Wynn avers that the Articles of Incorporation speak for themselves,
17 and denies any allegation inconsistent with the Articles of Incorporation. On information and
18 belief, Ms. Wynn admits that Aruze had been found previously to be “suitable” by the Nevada
19 Gaming Commission as a shareholder of Wynn Resorts and that she did not understand the
20 redemption to be based on a finding of unsuitability by a gaming authority. Except as expressly
21 admitted, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations
22 of paragraph 160, and denies the allegations on that basis.

23 161. Ms. Wynn avers that the Articles of Incorporation speak for themselves,
24 and denies any allegation inconsistent with the Articles of Incorporation. On information and
25 belief, Ms. Wynn admits that Wynn Resorts and its affiliates have not lost, and have not been
26 threatened with the loss of, a gaming license, and that she did not understand the redemption to be
27 based on such a loss or threatened loss. Except as expressly admitted, Ms. Wynn lacks
28 information sufficient to form a belief as to the truth of the allegations of paragraph 161, and

1 denies the allegations on that basis.

2 162. Ms. Wynn avers that the Articles of Incorporation speak for themselves,
3 and denies any allegation inconsistent with the Articles of Incorporation. Except as expressly
4 averred, Ms. Wynn lacks information sufficient to form a belief as to the truth of the allegations
5 of paragraph 162, and denies those allegations on that basis.

6 163. Ms. Wynn denies the allegations of paragraph 163, in part because she
7 lacks information sufficient to form a belief as to their truth.

8 **E. Even if Aruze USA Was Subject to the Redemption Provision (Which it is**
9 **Not), the Unilateral Blanket 30% Discount that Wynn Resorts Applied to the**
10 **Stock Is Erroneous and the Promissory Note is Unconscionably Vague,**
11 **Ambiguous, and Oppressive**

12 164. Ms. Wynn admits that Wynn Resorts issued a promissory note in the
13 amount of approximately \$1.9 billion. On information and belief, Ms. Wynn admits that the price
14 reflected an approximately 30% discount to the trading price of Wynn Resorts stock on
15 NASDAQ at or around the time of the redemption. On information and belief, Ms. Wynn admits
16 that Wynn Resorts issued a press release on February 19, 2011 regarding the redemption. Ms.
17 Wynn avers that the press release speaks for itself, and denies any allegation inconsistent with the
18 press release. Ms. Wynn denies that the Stockholders Agreement precludes the redemption of
19 Aruze's stock. Ms. Wynn admits that some of the purported contractual transfer restrictions
20 could be found to constitute unreasonable restraints on alienability. Ms. Wynn denies that
21 contractual transfer restrictions could not "legitimately impact" the value of Aruze's shares at the
22 time the redemption occurred.

23 165. Ms. Wynn avers that the press release speaks for itself, and denies any
24 allegation inconsistent with the press release. On information and belief, Ms. Wynn denies that
25 Mr. Wynn unilaterally added the redemption provision to the Articles of Incorporation without
26 Aruze's consent. Except as expressly averred or denied, Ms. Wynn lacks information sufficient
27 to form a belief as to the truth of the allegations of paragraph 165, and on that basis denies those
28 allegations.

1 166. Ms. Wynn admits that the Board of Wynn Resorts considered a valuation
2 opinion from Moelis & Company. Ms. Wynn admits that Moelis & Company had done business
3 with Wynn Resorts in the past. Except as expressly admitted, Ms. Wynn denies the allegations of
4 paragraph 166.

5 167. Ms. Wynn admits that Mr. Wynn has a long-standing professional
6 relationship with Mr. Moelis. Except as expressly admitted, Ms. Wynn denies the allegations of
7 paragraph 167, in part because she lacks information sufficient to form a belief as to their truth.

8 168. On information and belief, Ms. Wynn admits that Moelis & Company
9 opined that a 30% discount was appropriate. Ms. Wynn avers that the Stockholders Agreement
10 speaks for itself, and denies any allegation inconsistent with the Stockholders Agreement. Except
11 as expressly admitted or averred, Ms. Wynn denies the allegations of paragraph 168, in part
12 because she lacks information sufficient to form a belief as to their truth.

13 169. Ms. Wynn admits that the \$1.936 billion promissory note issued to Aruze
14 bears 2% interest per annum and is subordinate to other Wynn Resorts debt obligations as set
15 forth in the promissory note. Ms. Wynn avers that the promissory note speaks for itself and
16 denies any allegation inconsistent with the promissory note. Ms. Wynn admits that Wynn Resorts
17 issued notes in March 2012 with principal amount of approximately \$900 million and bearing
18 interest at 5.375%. Ms. Wynn avers that Mr. Okada did not participate in the Board's discussion
19 of the terms of the promissory note during the Board meeting of February 18, 2012. Except as
20 expressly admitted or averred, Ms. Wynn denies the allegations of paragraph 169, in part because
21 she lacks information sufficient to form a belief as to their truth.

22 **F. The Timing of the Redemption Demonstrates that Wynn Resorts Redeemed**
23 **Aruze USA's Shares Based on Material, Non-Public Information that Was**
24 **Not Incorporated Into the Redemption Price**

25 170. On information and belief, Ms. Wynn admits the allegations of paragraph
26 170.

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

1 Wynn denies the allegations of paragraph 180.

2 181. The allegations of paragraph 181 are legal conclusions that do not require a
3 response. In any event, Ms. Wynn denies those allegations to the extent they constitute
4 allegations of fact, on the ground that she lacks information sufficient to form a belief as to their
5 truth.

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

9 183. Ms. Wynn denies the allegations of paragraph 183.

10 **COUNT II**

11 **Permanent Prohibitory Injunction**

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

13 184. Ms. Wynn reasserts her responses to paragraphs 4 through 174 above, as if
14 fully set forth below.

15 185. Ms. Wynn admits that Aruze is purportedly seeking a permanent
16 injunction. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 185.

17 186. Ms. Wynn denies the allegations of paragraph 186.

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

19 188. Ms. Wynn denies the allegations of paragraph 188.

20 189. The allegations of paragraph 189 are legal conclusions that do not require a
21 response. In any event, Ms. Wynn denies those allegations to the extent they constitute
22 allegations of fact, on the ground that she lacks information sufficient to form a belief as to their
23 truth.

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

25 **COUNT III**

26 **Permanent Mandatory Injunction**

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

28 191. Ms. Wynn reasserts her responses to paragraphs 4 through 174 above, as if

1 fully set forth below.

2 192. Ms. Wynn admits that Aruze is purportedly seeking a permanent
3 injunction. Except as expressly admitted, Ms. Wynn denies the allegations of paragraph 192.

4 193. Ms. Wynn denies the allegations of paragraph 193.

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

6 195. Ms. Wynn denies the allegations of paragraph 195.

7 196. Ms. Wynn admits that Aruze is purportedly seeking damages. Except as
8 expressly admitted, Ms. Wynn denies the allegations of paragraph 196.

9 197. The allegations of paragraph 197 are legal conclusions that do not require a
10 response. In any event, Ms. Wynn denies those allegations to the extent they constitute
11 allegations of fact, on the ground that she lacks information sufficient to form a belief as to their
12 truth.

13 198. Ms. Wynn denies the allegations of paragraph 198.

14 COUNT VI

15 **Breach of Fiduciary Duty**

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

17 219. Ms. Wynn reasserts her responses to paragraphs 4 through 174 above, as if
18 fully set forth below.

19 220. The allegations of paragraph 220 are legal conclusions that do not require a
20 response.

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

23 222. Ms. Wynn avers that the Articles of Incorporation speaks for itself, and
24 denies any allegations inconsistent with the Articles of Incorporation.

25 223. Ms. Wynn denies the allegations of paragraph 223.

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

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

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

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FIFTH AFFIRMATIVE DEFENSE

(Waiver)

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

SIXTH AFFIRMATIVE DEFENSE

(Election of Remedies)

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

SEVENTH AFFIRMATIVE DEFENSE

(Limitation on Liability)

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

EIGHTH AFFIRMATIVE DEFENSE

(Authorization by Articles of Incorporation)

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

NINTH AFFIRMATIVE DEFENSE

(Ratification)

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

TENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

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

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ELEVENTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

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

TWELFTH AFFIRMATIVE DEFENSE

(Consent)

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

THIRTEENTH AFFIRMATIVE DEFENSE

(Privilege)

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

FOURTEENTH AFFIRMATIVE DEFENSE

(Justification)

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

FIFTEENTH AFFIRMATIVE DEFENSE

(Punitive Damages Are Unconstitutional)

If and to the extent Counterclaimants seek punitive damages against Ms. Wynn, Nevada's laws and statutes for punitive damages are unconstitutional because they are void for vagueness, violates equal protection, violates due process, violates freedom of contract, and impose an undue burden on interstate commerce.

SIXTEENTH AFFIRMATIVE DEFENSE

(Limitations on Punitive Damages)

1 If and to the extent Counterclaimants seek punitive damages against Ms. Wynn, punitive
2 damages in this case are barred in whole or in part by constitutional limitations, including but not
3 limited to due process, and are barred to the extent they duplicate other damages.

4 **SEVENTEENTH AFFIRMATIVE DEFENSE**

5 **(Lack of Standing)**

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

8 **EIGHTEENTH AFFIRMATIVE DEFENSE**

9 **(Release and Indemnification)**

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

13 **NINETEENTH AFFIRMATIVE DEFENSE**

14 **(Contributory Negligence)**

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

17 **TWENTIETH AFFIRMATIVE DEFENSE**

18 **(Comparative Negligence)**

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

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 **(Res Judicata)**

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

27 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

28 **(Collateral Estoppel)**

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

3 **RESERVATION**

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

6 **JURY DEMAND**

7 Ms. Wynn demands trial by jury on all issues so triable.
8

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

- 10 1. that Counterclaimants take nothing from Ms. Wynn by virtue of their First
11 Amended Counterclaim;
- 12 2. that the First Amended Counterclaim and each purported cause of action set forth
13 therein against Ms. Wynn be dismissed with prejudice;
- 14 3. that Ms. Wynn be awarded her costs and reasonable attorney's fees incurred herein
15 as allowed by law; and
- 16 4. for such further relief is deemed just and equitable.
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1 **COUNTERCLAIM AND CROSSCLAIM**

2 **I. Subject Matter Jurisdiction**

3 1. In the event the Court does not remand the entire action, the Court has
4 supplemental jurisdiction over this Counterclaim and Crossclaim pursuant to 28 U.S.C. § 1367.
5 The Counterclaim and Crossclaim form part of the same case or controversy as the Complaint
6 filed by Wynn Resorts and the First Amended Counterclaim filed by Aruze USA, Inc. (“Aruze”
7 or “Aruze USA”) and Universal Entertainment Corporation (“Universal”).

8 **II. Introduction**

9 2. This is an action seeking a declaration that a stockholders agreement
10 imposing onerous restrictions on Elaine P. Wynn’s ability to sell her stock in Wynn Resorts,
11 Limited (“Wynn Resorts”) is invalid. The central premise and motivating reason for the
12 restrictions were that Kazuo Okada (through Aruze) was a significant stockholder whose shares
13 were similarly restricted – but that those restrictions could not continue unless Ms. Wynn’s shares
14 were restricted as well. Now that the shares held by Mr. Okada’s company have been redeemed,
15 the purpose of the stockholders agreement has been frustrated, and the basis for enforcing the
16 agreement’s restrictions has been eliminated.

17 3. In addition, to the extent the stockholders agreement purports to impose
18 certain sale restrictions beyond a right of first refusal, those restrictions lack the reasonable basis
19 they are required by law to have. They do not serve a legitimate corporate purpose but rather are
20 intended to maintain the controlling position of Stephen A. Wynn and Mr. Okada. As such they
21 are an impermissible and unlawful restriction on the alienability of Ms. Wynn’s shares and are
22 also invalid on this alternative basis.

23 4. Ms. Wynn seeks to invalidate these unlawful restrictions for good and valid
24 reasons. First, having had a long history of involvement in charitable and community endeavors,
25 she desires to realize the value of her stock so that she may provide significant assistance to
26 various important causes she has supported over the years and may support in the future. Second,
27 Ms. Wynn seeks to invalidate these restrictions so that she may implement estate planning
28 measures that will protect the value of her investment for her children.

1 **III. The Parties**

2 5. Counterdefendant, counterclaimant, and crossclaimant Elaine Wynn is, at
3 all relevant times, a citizen of Nevada.

4 6. Counterdefendant and crossdefendant Stephen A. Wynn is, at all relevant
5 times, a citizen of Nevada.

6 7. Defendant, counterclaimant, and counterdefendant Aruze USA, Inc. is a
7 company organized and existing under the laws of Nevada. On information and belief, Aruze is
8 controlled by Kazuo Okada at all relevant times, and is the entity Mr. Okada used to hold shares
9 in Wynn Resorts.

10 **IV. General Allegations**

11 8. Ms. Wynn is the former spouse of Mr. Wynn. Ms. Wynn married Mr.
12 Wynn in 1963. They divorced in 1986, remarried in 1991, and then divorced a second time in
13 2009.

14 9. Ms. Wynn made significant contributions to the success of Wynn Resorts.
15 She has played important roles in many aspects of the company's operations, including personnel
16 management, public relations, and design of the ambience and customer experience at Wynn
17 Resorts properties.

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

19 11. Ms. Wynn has served as a director of Wynn Resorts since October 2002.

20 **A. The Creation of Wynn Resorts**

21 12. In 2000, Mr. Wynn purchased the Desert Inn in Las Vegas. The Desert Inn
22 site would eventually be rebuilt as the casino resort Wynn Las Vegas. The entity Mr. Wynn used
23 to hold the Desert Inn property was the Nevada limited liability company Valvino Lamore, LLC
24 ("Valvino"), which Mr. Wynn formed in April 2000.

25 13. Mr. Wynn turned to Mr. Okada to help finance this new project. In October
26 2000, Aruze contributed \$260 million to Valvino and became a member of Valvino.

27 14. In April 2002, Aruze contributed a further \$120 million to Valvino.

28 15. As of April 2002, Mr. Wynn and Aruze each held a 47.5% interest in

1 Valvino. Baron Asset Fund (“Baron”), a Massachusetts business trust, at that time had a 5%
2 interest in Valvino.

3 16. Mr. Wynn, Aruze, and Baron were the only members of Valvino.

4 17. In 2002, Mr. Wynn, Aruze, and Baron agreed to contribute their interests in
5 Valvino to a new entity, which would be named Wynn Resorts, Limited (“Wynn Resorts”).

6 18. On April 11, 2002, Mr. Wynn, Aruze, and Baron executed a Stockholders
7 Agreement (“April 2002 Stockholders Agreement”) with respect to their shares in the new entity.

8 19. Mr. Wynn became Wynn Resorts’ Chairman and Chief Executive Officer
9 in June 2002.

10 20. In October 2002, Ms. Wynn became a director, Mr. Okada became Vice
11 Chairman, and Wynn Resorts conducted an initial public offering of its stock on the NASDAQ
12 exchange.

13 **B. The April 2002 Stockholders Agreement**

14 21. Section 2(a) of the April 2002 Stockholders Agreement set forth a voting
15 agreement between Mr. Wynn and Aruze. Section 2(a) provided that Mr. Wynn would designate
16 a majority of all nominees to the board of directors of Wynn Resorts, while Aruze would
17 designate a minority slate of directors, and that Mr. Wynn and Aruze would vote the shares held
18 by them to elect the designated nominees.

19 22. Section 9 of the April 2002 Stockholders Agreement set forth a right-of-
20 first-refusal restriction on the transfer of stock by Mr. Wynn, Aruze, and Baron. Generally,
21 Section 9 provides that each contracting party who wishes to sell stock must, with certain
22 exceptions, provide notice of the proposed terms of sale to the other parties to the agreement, and
23 that each other party would have the right to purchase the offered shares according to certain
24 procedures.

25 23. Section 4 of the April 2002 Stockholders Agreement states that “Shares
26 may not be transferred or sold by any Stockholder unless the transferee ... both executes and
27 agrees to be bound by this Agreement”

28 24. On information and belief, the objective of the April 2002 Stockholders

1 Agreement was to secure and implement an alliance between Mr. Wynn and Mr. Okada to control
2 Wynn Resorts. The April 2002 Stockholders Agreement was not intended to benefit Wynn
3 Resorts or its other shareholders.

4 25. Because Mr. Wynn and Mr. Okada (through Aruze) were Wynn Resorts'
5 largest shareholders, by using the April 2002 Stockholders Agreement to maintain their positions,
6 they could effectively control Wynn Resorts. On March 15, 2005, Wynn Resorts disclosed in its
7 Form 10-K filing that "Mr. Wynn and Aruze USA, Inc. each own approximately 25% of our
8 outstanding common stock. As a result, Mr. Wynn and Aruze USA, Inc., to the extent they vote
9 their shares in a similar manner, effectively are able to control all matters requiring our
10 stockholders' approval, including the approval of significant corporate transactions."

11 26. In the same Form 10-K, Wynn Resorts further disclosed: "[i]n addition,
12 Mr. Wynn and Aruze USA, Inc, together with Baron Asset Fund, have entered into a
13 stockholders' agreement. Under the stockholders' agreement, Mr. Wynn and Aruze USA, Inc.,
14 have agreed to vote their shares of our common stock for a slate of directors, a majority of which
15 will be designated by Mr. Wynn, of which at least two will be independent directors, and the
16 remaining members of which will be designated by Aruze USA, Inc. As a result of this voting
17 agreement, Mr. Wynn, as a practical matter, controls the slate of directors to be elected to our
18 board of directors."

19 27. Aruze's status as a substantial stockholder was a basic assumption upon
20 which the April 2002 Stockholders Agreement was based.

21 **C. Mr. Wynn and Aruze Amend their Agreement**

22 28. On information and belief, in 2006, in order to prevent Mr. Okada from
23 selling Aruze's Wynn Resorts stock, Mr. Wynn asked Mr. Okada to agree to further restrictions
24 on Mr. Okada's ability to sell Wynn Resorts stock.

25 29. On November 8, 2006, Mr. Wynn and Mr. Okada executed an Amendment
26 to Stockholders Agreement ("2006 Amendment") between Mr. Wynn and Aruze.

27 30. The 2006 Amendment stated: "This Amendment is intended to reflect the
28 spirit of friendship and cooperation that exists between Mr. Wynn and Mr. Kazuo Okada, who is

1 the primary representative of Aruze.”

2 31. On information and belief, Mr. Wynn stated around that time: “We want to
3 make it clear we’re one shareholder.”

4 32. The 2006 Amendment amended the April 2002 Stockholders Agreement to
5 add the following: “*Mutual Restriction on Sale of Shares*. Neither [Mr.] Wynn nor Aruze (nor
6 any of their respective Permitted Transferees) shall Transfer, or permit any of their respective
7 Affiliates to Transfer, any Shares Beneficially Owned by such Person without the prior written
8 consent of both [Mr.] Wynn and Aruze.” This type of restriction on stock transfers is known as a
9 consent restriction.

10 33. The agreement is unclear whether the consent restriction applies to all
11 sales, or whether certain sales may be made without consent but subject to the right of first refusal
12 provision already in place. On information and belief, Mr. Wynn contends that the consent
13 restriction applies to all sales by the parties to the stockholders agreement.

14 34. On information and belief, the 2006 Amendment was intended to further
15 secure and implement the alliance between Mr. Wynn and Mr. Okada for control of Wynn
16 Resorts. The 2006 Amendment was not intended to benefit Wynn Resorts or its other
17 shareholders.

18 35. Again, Aruze’s status as a substantial stockholder was a basic assumption
19 upon which the 2006 Amendment was based.

20 **D. Mr. Wynn Divorces Ms. Wynn**

21 36. In March 2009, divorce proceedings began between Mr. Wynn and Ms.
22 Wynn. They had been married for 41 years.

23 37. Under Nevada law, Ms. Wynn was entitled to an equal division of
24 community assets, including the Wynn Resorts stock held in Mr. Wynn’s name.

25 38. During the divorce settlement negotiations, Mr. Wynn urged Ms. Wynn to
26 enter into a stockholders agreement that would restrict her ability to sell or otherwise transfer the
27 Wynn Resorts stock that would become her separate property. Ms. Wynn, however, did not want
28 her stock to be encumbered by transfer restrictions. The issue was discussed extensively between

1 Mr. Wynn and Ms. Wynn, and between their respective counsel.

2 39. Mr. Wynn and his lawyers emphasized to Ms. Wynn that the purpose of the
3 new agreement was not to constrain Ms. Wynn herself, but to keep in place shares held by Mr.
4 Okada's company subject to the voting agreement.

5 40. Mr. Wynn also emphasized that if Ms. Wynn were not subject to the
6 restrictions in the April 2002 Stockholders Agreement and the 2006 Amendment, Mr. Okada
7 would have an opening to renegotiate the existing restrictions. Mr. Wynn did not want to allow
8 Mr. Okada to renegotiate the existing terms.

9 41. Mr. Wynn argued that given his existing agreement with Mr. Okada's
10 company, he could not convey stock to Ms. Wynn free of restrictions.

11 42. After discussing these issues with Mr. Wynn, Ms. Wynn decided that, in
12 order to support and maintain the existing agreement and alliance between Mr. Wynn and Mr.
13 Okada, she would agree to abide by the transfer restrictions of the existing agreement between
14 Mr. Wynn and Mr. Okada's company.

15 **E. The January 2010 Stockholders Agreement**

16 43. On January 6, 2010, Mr. Wynn, Ms. Wynn, and Mr. Okada's company
17 Aruze signed the Amended and Restated Stockholders Agreement ("January 2010 Stockholders
18 Agreement").

19 44. Ms. Wynn's principal objectives in entering into the January 2010
20 Stockholders Agreement were to support and maintain the existing agreement and alliance
21 between Mr. Wynn and Mr. Okada. On information and belief, this was also the purpose of the
22 other parties to the January 2010 Stockholders Agreement.

23 45. Section 13 of the January 2010 Stockholders Agreement states:
24 "Notwithstanding any provisions to the contrary contained herein, no Stockholder or any of its
25 Affiliates shall be deemed to make any agreement or understanding herein in a capacity other
26 than that as stockholder of Wynn [Resorts]."

27 46. Section 2(b) of the January 2010 Stockholders Agreement provides that,
28 with certain exceptions, "none of [Ms. Wynn], [Mr. Wynn] or Aruze (nor any of their respective

1 Permitted Transferees) shall Transfer, or permit any of their respective Affiliates to Transfer, any
2 Shares Beneficially Owned by such Person without the prior written consent of each of the
3 others.” This provision essentially continued the consent restriction agreed to by Mr. Wynn and
4 Mr. Okada’s company in the 2006 Amendment. Like its predecessor, Section 2(b) was intended
5 to maintain and support the existing alliance between Mr. Wynn and Okada.

6 47. Section 9 of the January 2010 Stockholders Agreement is a right-of-first-
7 refusal restriction on stock transfers. Generally, Section 9 provides that each contracting party
8 who wishes to sell stock must, with certain exceptions, provide notice of the proposed terms of
9 sale to the other parties to the agreement, and that each other party would have the right to
10 purchase the offered shares according to a specified procedure.

11 48. Section 5 of the January 2010 Stockholders Agreement states that “each
12 Stockholder acknowledges that [Mr. Wynn] may instruct [Wynn Resorts] to not register (book-
13 entry or otherwise) of any certificate or uncertificated interest representing any of such
14 Stockholder’s Shares that are transferred in violation of this Agreement.”

15 49. Section 4 of the January 2010 Stockholders Agreement states that “Shares
16 may not be transferred or sold by the Designated Stockholder unless the transferee ... both
17 executes and agrees to be bound by” the agreement.

18 50. The shareholder status of Mr. Okada’s company, Aruze, was a fundamental
19 premise of Ms. Wynn’s decision to enter into the January 2010 Stockholders Agreement. Indeed,
20 all parties to the January 2010 Stockholders Agreement entered into it solely in their capacities as
21 stockholders. Ms. Wynn would not have agreed to give her ex-husband the potential ability to
22 restrict the market for her stock if not for her desire to support and not undermine the existing
23 alliance between Mr. Wynn and Mr. Okada.

24 51. Aruze’s participation in the January 2010 Stockholders Agreement was
25 also a fundamental premise of Ms. Wynn’s decision to enter into it. Ms. Wynn would not have
26 entered into the agreement if Aruze had not been a party to it, or if Aruze had not been bound by
27 it.

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

4 61. Ms. Wynn's principal purpose in entering into the January 2010
5 Stockholders Agreement was to support and avoid undermining the existing alliance and
6 agreement between Mr. Wynn and Mr. Okada – an alliance and agreement that presupposed the
7 substantial holding of Wynn Resorts stock by Mr. Okada's company, Aruze. On information and
8 belief, Mr. Wynn and Mr. Okada's company shared that same principal purpose in entering into
9 the January 2010 Stockholders Agreement and its predecessor agreements.

10 62. Following the redemption, Mr. Okada (through Aruze) no longer holds
11 Wynn Resorts stock, and there is no longer an alliance or a need for an alliance between Mr.
12 Okada's and Mr. Wynn's stockholdings. Therefore, the principal purpose of the January 2010
13 Stockholders Agreement and its predecessor agreements has been substantially frustrated, and a
14 basic assumption on which the contract was made has been fundamentally changed.

15 63. For all of the foregoing reasons, performance by other parties of the
16 January 2010 Stockholders Agreement has become valueless for Ms. Wynn.

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

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

1 **SECOND CAUSE OF ACTION**

2 **DECLARATORY RELIEF**

3 **(Unreasonable Restraint in Violation of Public Policy)**

4 66. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 57 above.

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

8 68. The January 2010 Stockholders Agreement contains unreasonable and
9 onerous restrictions on the alienability of Ms. Wynn's stock (the "Challenged Restrictions"),
10 including:

11 (a) Section (2)(b), which continued the consent restriction set forth in
12 the 2006 Amendment; and

13 (b) Section 4, which purports to require transferees of stock to be
14 bound by provisions of the January 2010 Stockholders Agreement.

15 69. To the extent they apply to sales of stock by Ms. Wynn above and beyond
16 the requirements of a right of first refusal, the Challenged Restrictions are unenforceable: they
17 are without a reasonable purpose, and unduly interfere with the alienability of Ms. Wynn's shares.

18 (a) The Challenged Restrictions were intended to maintain the
19 controlling positions of Mr. Wynn and Mr. Okada's company. They were not intended to benefit
20 Wynn Resorts or its shareholders generally, and are not reasonably related to a legitimate
21 corporate purpose.

22 (b) Furthermore, the Challenged Restrictions lack a reasonable purpose
23 after the redemption of Aruze's shares, because the continued ownership of those shares was a
24 fundamental purpose for imposing the Challenged Restrictions.

25 70. For these reasons, Ms. Wynn seeks a declaration that the Challenged
26 Restrictions are unenforceable as an unreasonable restraint on alienation in violation of public
27 policy, or that they should be construed as inapplicable to a sale by Ms. Wynn of shares as to
28 which she offers a contractual right of first refusal to the parties to the agreement.

1 **THIRD CAUSE OF ACTION**

2 **DECLARATORY RELIEF**

3 **(Discharge Or Rescission By Aruze)**

4 71. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 57 above.

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

8 73. In this action, Aruze has filed claims against Mr. Wynn (Counts XVI and
9 XVII of Aruze's First Amended Counterclaim) alleging breach of contract and seeking to be
10 excused and completely discharged from any further performance of its obligations with respect
11 to the January 2010 Stockholders Agreement. In those claims, Aruze further seeks rescission of
12 the January 2010 Stockholders Agreement.

13 74. Ms. Wynn's principal purpose in entering into the January 2010
14 Stockholders Agreement was to support and avoid undermining the existing alliance and
15 agreement between Mr. Wynn and Mr. Okada's company. On information and belief, Mr. Wynn
16 and Mr. Okada's company shared that same principal purpose in entering into the January 2010
17 Stockholders Agreement and its predecessor agreements.

18 75. If Aruze successfully obtains a discharge of its obligations under the
19 January 2010 Stockholders Agreement and is no longer bound thereby, then the purpose of that
20 agreement would be substantially frustrated. Ms. Wynn would not have entered into the
21 agreement if Aruze was not bound by it.

22 76. Accordingly, if Aruze successfully obtains a discharge of its obligations
23 under the January 2010 Stockholders Agreement, Ms. Wynn seeks a declaration that all of her
24 contractual duties under the January 2010 Stockholders Agreement are likewise discharged.

25 77. Alternatively, if Aruze obtains a rescission of the January 2010
26 Stockholders Agreement, then the agreement would no longer have any legal effect. In that
27 event, Ms. Wynn seeks a declaration confirming that her contractual obligations under the 2010
28 Stockholders Agreement are completely discharged.

1 **FOURTH CAUSE OF ACTION**

2 **PERMANENT INJUNCTIVE RELIEF**

3 78. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 57 above.

4 79. To enforce the judicial declarations Ms. Wynn seeks in paragraphs 58 to 77
5 and to secure her rights declared thereunder, Ms. Wynn further seeks an injunction that enjoins
6 Mr. Wynn from instructing Wynn Resorts to not register shares sold or transferred by Ms. Wynn,
7 as well as other injunctive relief against Mr. Wynn and/or Aruze the court deems necessary and
8 appropriate to enforce the declaratory relief granted.

9 **DEMAND FOR JURY TRIAL**

10 Ms. Wynn hereby demands trial by jury pursuant to Federal Rule of Civil Procedure
11 38(b).

12 **PRAYER FOR RELIEF**

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

- 14 1. A declaration that all of Ms. Wynn's contractual duties under the January 2010
15 Stockholders Agreement are discharged, or alternatively, that the January 2010
16 Stockholders Agreement is subject to rescission and is rescinded;
- 17 2. A declaration that the Challenged Restrictions are unenforceable as an
18 unreasonable restraint on alienation in violation of public policy or that they
19 should be construed as inapplicable to a sale by Ms. Wynn of shares as to which
20 she offers a contractual right of first refusal to the parties to the agreement;
- 21 3. If Aruze successfully obtains a rescission of the January 2010 Stockholders
22 Agreement or a discharge of Aruze's obligations thereunder, a declaration that all
23 of Ms. Wynn's contractual duties under the January 2010 Stockholders Agreement
24 are discharged and/or that the January 2010 Stockholders Agreement is subject to
25 rescission and is rescinded;
- 26 4. A preliminary and/or permanent injunction as the court deems necessary and
27 appropriate to enforce the declarations prayed for, including an injunction that
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prohibits Mr. Wynn from instructing Wynn Resorts to not register shares sold or transferred by Ms. Wynn;

5. Costs of suit and such other relief as the court deems just and proper.

Dated: June 19, 2012

JOLLEY URG WIRTH WOODBURY & STANDISH
William R. Urga

MUNGER, TOLLES & OLSON LLP
Ronald L. Olson
Mark B. Helm
Jeffrey Y. Wu

By: /s/ William R. Urga

Attorneys for Defendant, Counter- and Cross-claimant ELAINE WYNN

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am an employee of Jolley Urga Wirth Woodbury & Standish and that on the 19th day of June, 2012, I caused the document entitled ANSWER OF ELAINE P. WYNN TO ARUZE AND UNIVERSAL'S FIRST AMENDED COUNTERCLAIM; COUNTERCLAIM AND CROSS-CLAIM OF ELAINE P. WYNN to be served on the parties in this action via the Court's CM/ECF system.

By: /s/ Linda Schone
An Employee of JOLLEY URG WIRTH
WOODBURY & STANDISH