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Administrative Head of the New York State and Local Retirement System and Trustee of the New  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THOMAS P. DiNAPOLI, COMPTROLLER  
OF THE STATE OF NEW YORK, AS  
ADMINISTRATIVE HEAD OF THE NEW  
YORK STATE AND LOCAL RETIREMENT  
SYSTEM AND TRUSTEE OF THE NEW  
YORK STATE COMMON RETIREMENT  
FUND, derivatively on behalf of WYNN  
RESORTS, LTD.,

Case No.: A-18-770013-B

Dept. No.: Department 27

**VERIFIED STOCKHOLDER  
DERIVATIVE COMPLAINT**

(Exemption From Arbitration Requested.  
Damages Exceed \$50,000)  
Request for Business Court  
Assignment Pursuant to

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Plaintiff,

EDCR 1.61 (a)

vs.

STEPHEN A. WYNN, JOHN J.  
HAGENBUCH, RAY R. IRANI, JAY L.  
JOHNSON, ROBERT J. MILLER,  
PATRICIA MULROY, CLARK T.  
RANDT, JR., ALVIN V. SHOEMAKER,  
J. EDWARD VIRTUE, D. BOONE  
WAYSON, and KIMMARIE SINATRA,

Defendants,

and

WYNN RESORTS, LTD.,

Nominal Defendant.

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1 Plaintiff Thomas P. DiNapoli, Comptroller of the State of New York, as Administrative  
2 Head of the New York State and Local Retirement System and Trustee of the New York State  
3 Common Retirement Fund, brings this stockholder derivative action on behalf of Nominal  
4 Defendant Wynn Resorts, Ltd. (“Wynn Resorts” or the “Company”) against certain current and  
5 former officers and directors of the Company for breaches of fiduciary duty and the Board of  
6 Directors’ (“Board”) abject failure to act even when informed of a longstanding pattern of sexual  
7 abuse and harassment by Wynn Resorts founder, former Chief Executive Officer (“CEO”), and  
8 former Chairman of the Board, Stephen A. Wynn (“Steve Wynn”). Plaintiff makes these  
9 allegations upon personal knowledge as to its own actions and, as to all other matters, upon the  
10 investigation of its undersigned counsel which included, among other things, (1) review and  
11 analysis of Wynn Resorts public filings with the United States Securities and Exchange  
12 Commission (“SEC”); (2) a review of press releases, news articles, and other public statements  
13 issued by or concerning Wynn Resorts and Steve Wynn; and (3) a review of court records,  
14 including, but not limited to pleadings filed in *Wynn Resorts, Ltd. v. Okada et al.*, No. A-12-  
15 656710-B (Clark County, Nevada) and *Louisiana Mun. Police Emps.’ Ret. Sys. v. Wynn et al.*, No.  
16 2:12-cv-00509-JCM-GWF (D. Nev.). On behalf of itself and the stockholders it seeks to  
17 represent, Plaintiff alleges as follows:

18 **I. INTRODUCTION**

19 1. This is a stockholder derivative action brought on behalf of Nominal Defendant  
20 Wynn Resorts, alleging breaches of fiduciary duty by Steve Wynn, the Company’s Board<sup>1</sup> and the  
21 Company’s General Counsel and Secretary, Kimmarie Sinatra (“Sinatra”) from at least March 28,  
22 2016, through the present (the “Relevant Period”). As detailed herein, Steve Wynn engaged in a  
23 decades-long pattern of sexual abuse and harassment that remained unchecked, and tacitly

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26 <sup>1</sup> The current Board consists of Defendants John J. Hagenbuch (“Hagenbuch”), Ray R. Irani (“Irani”), Jay L. Johnson  
27 (“Johnson”), Robert J. Miller (“Miller”), Patricia Mulroy (“Mulroy”), Clark T. Randt, Jr. (“Randt”), Alvin V.  
Shoemaker (“Shoemaker”), J. Edward Virtue (“Virtue”), and D. Boone Wayson (“Wayson”) (together, the “Director  
Defendants,” and, together with Steve Wynn and Defendant Sinatra, “Defendants”)

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1 permitted, by Defendant Sinatra and the Director Defendants, resulting in a breach of their duty of  
2 loyalty and other fiduciary duties to stockholders. The Director Defendants and Defendant Sinatra  
3 did nothing to prevent Steve Wynn's ongoing pattern of sexual abuse and harassment, and  
4 ultimately permitted Steve Wynn to resign from the Company without being held accountable for  
5 the serious allegations lodged against him. Meanwhile Wynn Resorts' stockholders have lost  
6 billions in market value and the Company faces mounting lawsuits, possible loss of gaming  
7 licenses, and other regulatory sanctions.

8         2.         Founded in 2000, Wynn Resorts is a leading developer, owner, and operator of  
9 destination casino resorts that integrate hotel accommodations and a wide range of amenities,  
10 including fine dining outlets, premium retail offerings, distinctive entertainment theaters, and large  
11 meeting complexes.

12         3.         An explosive *Wall Street Journal* article published on January 26, 2018, detailed  
13 Steve Wynn's alleged history of sexual predation at Wynn Resorts ("*Wall Street Journal* article").  
14 The article recounts serious allegations of Steve Wynn's sexual misconduct, including an alleged  
15 sexual assault of a Wynn Resorts employee on Company property in 2005 ("the 2005 assault").  
16 Later reports revealed that Steve Wynn created a clandestine limited liability company, Entity Y,  
17 to conceal a \$7.5 million settlement paid to the alleged assault victim in 2005.

18         4.         After interviewing over 150 people, the *Wall Street Journal* article also revealed  
19 that Steve Wynn is notorious for a decades-long pattern of sexual abuse and harassment, including  
20 subjecting dozens of former Wynn Resorts employees to, among other things, unwanted sexual  
21 advances and pressure to perform sex acts. Former Wynn Resorts employees described an  
22 atmosphere of terror at the Company, and several detailed how their repeated efforts to notify  
23 senior management fell on deaf ears.

24         5.         Wynn Resorts' Board members were complicit in Steve Wynn's pervasive pattern  
25 of sexual abuse and harassment, setting a tone at the top that permitted Steve Wynn to wield his  
26 power unchecked. Defendant Sinatra knew of the 2005 assault and settlement payment no later  
27 than 2009. The then-current Board knew of the 2005 assault as early as 2009 when Elaine Wynn,  
28 Steve Wynn's ex-wife and a former Board member, reportedly informed a Board representative of

1 the incident, but in any event, the Board knew no later than March 28, 2016, when Ms. Wynn filed  
2 court documents detailing the alleged assault and settlement.

3           6.       Yet, even when armed with actual knowledge of Steve Wynn’s sexual abuse and  
4 harassment, the Director Defendants did *nothing* to stop Steve Wynn’s misconduct. The Director  
5 Defendants did not investigate allegations of sexual abuse and harassment; they did not act to  
6 prevent Steve Wynn from abusing and harassing employees; they did not take action to make  
7 employees feel safer in the workplace; they did not implement internal controls that would cause  
8 the Board to be immediately notified of further allegations of abuse and harassment. They did  
9 nothing despite their obligation to the Company and shareholders to hold Steve Wynn accountable  
10 for his misconduct. To the contrary, allegations that the Director Defendants and Defendant  
11 Sinatra acted to conceal Steve Wynn’s misconduct have surfaced in ancillary litigation involving  
12 Steve Wynn and his ex-wife Elaine Wynn.

13           7.       It was only *after* the publication of the *Wall Street Journal* article that the Director  
14 Defendants took minimal steps to rectify the damage they and Steve Wynn caused the Company.  
15 On February 2, 2018, the Board announced it had created a special investigative committee (the  
16 “Special Committee”), headed by the Board’s sole female director, Defendant Mulroy, to  
17 investigate the allegations against Steve Wynn. But, even that belated investigation falls short of  
18 the thorough and independent investigation called for given the severity of the allegations against  
19 Steve Wynn.

20           8.       With public pressure mounting, on February 6, 2018, Steve Wynn stepped down as  
21 CEO and Chairman of Wynn Resorts, although he still retains an 11.8% stake in the Company  
22 through his ownership of common stock. Even in the aftermath of the allegations against Steve  
23 Wynn, the Board remains loyal to him, publicly stating that they accepted his resignation “with a  
24 collective heavy heart,” calling Steve Wynn a “friend” and a “beloved leader and visionary.”

25           9.       In the wake of Steve Wynn’s resignation, on February 9, 2018, just a week after the  
26 Board investigation was commenced, the Board announced, without explanation, that it was  
27 severing ties with outside counsel, O’Melveny & Myers (“O’Melveny”), which the Board had  
28 retained to assist with its internal investigation. Incredibly, the Special Committee claimed it

1 could implement necessary reforms without investigating Steve Wynn because he had resigned.  
2 Columbia Law School professor and director of its Center on Corporate Governance, John C.  
3 Coffee Jr., swiftly criticized the board’s decision as “a strong signal that not much has changed in  
4 the culture of the board.”

5 10. Forced into an about-face because of the outrage levied at the Director Defendants  
6 for firing O’Melveny, on February 12, 2018, the Board announced that it would instead conduct  
7 the investigation with Gibson Dunn & Crutcher LLP (“Gibson Dunn”). Yet, rather than treat  
8 Gibson Dunn’s work as an independent investigation, the Board only stated that Gibson Dunn’s  
9 role would be to “conduct an expanded and comprehensive review of Wynn Resorts’ internal  
10 policies and procedures with the goal of ensuring the Company employs best practices to maintain  
11 a safe and respectful workplace for all employees.” It is unlikely that an investigation by Gibson  
12 Dunn would ensure the independence of the Board investigation, as the law firm has deep ties to  
13 the Company, with Sinatra previously working as a partner at the firm and the firm representing  
14 Wynn Resorts in current litigation with ousted board members Kazuo Okada and Elaine Wynn.  
15 The firm has also represented Wynn Resorts in SEC and Department of Justice (“DOJ”) matters,  
16 as well as in business deals.

17 11. Steve Wynn’s misconduct has placed the Company into chaos and has severely  
18 damaged the Company’s reputation. The *Wall Street Journal* article caused Wynn Resorts’ share  
19 price to plummet, closing down 10% the day the article was published and wiping out \$2 billion in  
20 market capitalization. The stock is now trading at about \$164.00, a sustained investor loss of  
21 17%, amid continuing controversy with the Board’s inadequate investigation and years of  
22 inaction. Further, Steve Wynn’s sexual abuse and harassment has led to investigations by gaming  
23 regulators in Massachusetts, Nevada and Macau, and has imperiled Wynn Resorts’ \$2.4 billion  
24 hotel casino project in the Greater Boston area.

25 12. Demand is excused in this Action because the entire Board faces liability for their  
26 breaches of fiduciary duty for their failure to act when presented with compelling and credible  
27 evidence of Steve Wynn’s sexual abuse and harassment, and the Board therefore cannot  
28 impartially consider a demand. Further, the Board, which has been described as the “most



1 compliant board of any public company,” has been publicly criticized for its members’ close  
2 financial and personal ties to Steve Wynn. The Board has allowed itself to be manipulated by  
3 Steve Wynn. They adhere to his preferences and cover his misdeeds. Put simply, the Board’s  
4 egregious misconduct demonstrates that it has placed its own interests and the interests of Steve  
5 Wynn above those of Wynn Resorts’ stockholders, and it cannot be trusted to independently  
6 consider a demand on the Company.

## 7 **II. JURISDICTION**

8 13. This Court has jurisdiction over all causes of action asserted herein pursuant to the  
9 Constitution of the State of Nevada. This Court has jurisdiction over each Defendant named  
10 herein because each Defendant is a Corporation or an individual who has sufficient minimum  
11 contacts with Nevada to render the exercise of jurisdiction by Nevada courts permissible under  
12 traditional notions of fair play and substantial justice. Wynn Resorts is a public corporation  
13 incorporated under the laws of Nevada, and Defendants are members or former members of the  
14 Wynn Resorts Board or senior officers of the Company that has harmed Wynn Resorts.

15 14. The Eighth Judicial District’s Business Court is the proper forum because this  
16 Action involves significant issues of Nevada corporate law.

## 17 **III. PARTIES**

18 15. **Plaintiff** Thomas P. DiNapoli, Comptroller of the State of New York, is  
19 Administrative Head of the New York State and Local Retirement System and Trustee of the New  
20 York State Common Retirement Fund (“NYSCRF”), a current owner of Wynn Resorts common  
21 stock. NYSCRF has been a stockholder of Wynn Resorts continuously since the time of fiduciary  
22 wrongdoing and breaches underlying the claims alleged herein, and will continue to hold Wynn  
23 Resorts shares at all time relevant to this Action.

24 16. **Nominal Defendant Wynn Resorts, Ltd.**, is a Nevada corporation, with its  
25 principal offices located in Las Vegas, Nevada. Wynn Resorts owns and operates Wynn Las  
26 Vegas and Encore in Las Vegas, Nevada, as well as Wynn Macau and the Wynn Palace located in  
27 the Special Administrative Region of Macau in the People’s Republic of China. A luxury retail  
28 Strip-front expansion, Wynn Plaza, is currently under construction in Las Vegas and is scheduled

1 to debut the third quarter of 2018. Wynn Resorts is currently constructing Wynn Boston Harbor  
2 located in Everett, Massachusetts. As alleged herein, Massachusetts, Nevada, and Macau gaming  
3 authorities are investigating the Company's and Steve Wynn's suitability as gaming operators in  
4 each respective jurisdiction. The Company is publicly traded on the NASDAQ exchange under  
5 the ticker symbol WYNN.

6 17. **Defendant Stephen A. Wynn** is a citizen of Nevada and the former Chairman and  
7 Chief Executive Officer of Wynn Resorts. Steve Wynn co-founded Wynn Resorts in April 2000  
8 with his then wife Elaine Wynn, and took it public in 2002. He served as Chairman and CEO of  
9 the Company from June 2002 until his resignation on February 6, 2018. Steve Wynn previously  
10 served as an Executive Director, the Chairman of the Board of Directors, and CEO of Wynn  
11 Macau, Limited, a majority owned subsidiary of the Company, from September 2009 until his  
12 resignation on February 6, 2018. In 2016, Steve Wynn received more than \$28 million in  
13 compensation from Wynn Resorts. Although Steve Wynn has resigned from his positions, he  
14 retains an 11.8% stake in the Company through his ownership of common stock. Upon  
15 information and belief, and at all times relevant herein, Steve Wynn is a resident of Clark County,  
16 Nevada.

17 18. **Defendant John J. Hagenbuch** is a citizen of Idaho and has served as a director of  
18 the Company since December 2012. Defendant Hagenbuch serves as the Chairman of the Audit  
19 Committee and as a member of the Compensation Committee. In 2016, Wynn Resorts paid  
20 Defendant Hagenbuch \$400,973 in total compensation. As of March 2017, Defendant Hagenbuch  
21 held 27,535 shares of Wynn Resorts stock.

22 19. During the Relevant Period, Defendant Hagenbuch sold 1,150 shares of Wynn  
23 Resorts common stock while in possession of material non-public information concerning Steve  
24 Wynn's longstanding pattern of sexual abuse and harassment, for proceeds of \$147,661.50:

| <b>Director Name</b> | <b>Sell Date</b> | <b>Number of Shares Sold</b> | <b>Price</b> | <b>Selling Proceeds</b> |
|----------------------|------------------|------------------------------|--------------|-------------------------|
| Hagenbuch, John J.   | 5/17/2017        | 50                           | \$126.23     | \$6,311.50              |
| Hagenbuch, John J.   | 5/16/2017        | 1,100                        | \$128.50     | \$141,350.00            |
| <b>TOTAL:</b>        |                  | <b>1,150</b>                 |              | <b>\$147,661.50</b>     |

1           20.     **Defendant Dr. Ray R. Irani** is a citizen of California and has served as a director  
2 of the Company since October 2007. Defendant Irani serves as a member of the Corporate  
3 Governance Committee. In 2016, Wynn Resorts paid Defendant Irani \$362,406 in total  
4 compensation. According to the Company's Proxy Statement filed on March 24, 2008, Defendant  
5 Irani was nominated as a potential director by Steve Wynn himself. As of March 2017, Defendant  
6 Irani held 91,137 shares of Wynn Resorts stock.

7           21.     **Defendant Jay L. Johnson** is a citizen of Idaho and has served as a director of the  
8 Company since August 2016. Defendant Johnson serves as a member of the Compensation  
9 Committee. In 2016, Wynn Resorts paid Defendant Johnson \$380,935 in total compensation. As  
10 of March 2017, Defendant Johnson held 10,000 shares of Wynn Resorts stock.

11          22.     **Defendant Robert J. Miller** is a citizen of Nevada and has served as a director of  
12 the Company since October 2002. Defendant Miller serves as the Company's Lead Independent  
13 Director, Chairman of the Corporate Governance Committee, and as a member of the Audit  
14 Committee. Defendant Miller is also the Chairman of the Company's Compliance Committee and  
15 serves as the Company's Compliance Director. On February 27, 2014, the Board acted to  
16 combine these roles under the Chairman of the Company's Compliance Committee. Previously,  
17 Defendant Miller served as President and then Counselor to the International Association of  
18 Gaming Advisors from 1999-2012. Upon information and belief, and at all times relevant herein,  
19 Defendant Miller is a resident of Clark County, Nevada. In 2016, Wynn Resorts paid Defendant  
20 Miller \$517,973 in total compensation. As of March 2017, Defendant Miller held 38,637 shares  
21 of Wynn Resorts stock.

22          23.     **Defendant Patricia Mulroy** is a citizen of Nevada and has served as a director of  
23 the Company since October 2015. Defendant Mulroy serves as a member of the Corporate  
24 Governance Committee and a member of the Company's Compliance Committee. From July  
25 2014 through October 2015, Defendant Mulroy served on the Nevada Gaming Commission.  
26 Upon information and belief, and at all times relevant herein, Defendant Mulroy is a resident of  
27 Clark County, Nevada. In 2016, Wynn Resorts paid Defendant Mulroy \$372,302 in total  
28 compensation. As of March 2017, Defendant Mulroy held 12,559 shares of Wynn Resorts stock.

1           24.       During the Relevant Period, Defendant Mulroy sold 2,226 shares of Wynn Resorts  
2 common stock while in possession of material non-public information concerning Steve Wynn’s  
3 longstanding pattern of sexual abuse and harassment, for proceeds of \$285,106.08:

| <b>Director Name</b> | <b>Sell Date</b> | <b>Number of<br/>Shares Sold</b> | <b>Price</b> | <b>Selling<br/>Proceeds</b> |
|----------------------|------------------|----------------------------------|--------------|-----------------------------|
| Mulroy, Patricia     | 5/16/2017        | 2,226                            | \$128.08     | \$285,106.08                |
| <b>TOTAL:</b>        |                  | <b>2,226</b>                     |              | <b>\$285,106.08</b>         |

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7           25.       **Defendant Clark T. Randt, Jr.** is a citizen of Utah and has served as a director of  
8 the Company since October 2015. Randt received a \$600,000 consulting agreement in 2015  
9 before his appointment to the Board. The Company admits that Defendant Randt is not  
10 independent under NASDAQ independence criteria. In 2016, Wynn Resorts paid Randt \$327,302  
11 in total compensation. As of March 2017, Defendant Randt held 12,559 shares of Wynn Resorts  
12 stock.

13           26.       During the Relevant Period, Defendant Randt sold 3,000 shares of Wynn Resorts  
14 common stock while in possession of material non-public information concerning Steve Wynn’s  
15 longstanding pattern of sexual abuse and harassment, for proceeds of \$387,000:

| <b>Director Name</b> | <b>Sell Date</b> | <b>Number of<br/>Shares Sold</b> | <b>Price</b> | <b>Selling<br/>Proceeds</b> |
|----------------------|------------------|----------------------------------|--------------|-----------------------------|
| Randt, Clark T.      | 7/31/2017        | 3,000                            | \$129.00     | \$387,000.00                |
| <b>TOTAL:</b>        |                  | <b>3,000</b>                     |              | <b>\$387,000.00</b>         |

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19           27.       **Defendant Alvin V. Shoemaker** is a citizen of Idaho and has served as a director  
20 of the Company since December 2002. Defendant Shoemaker serves as a member of the  
21 Compensation Committee and as a member of the Audit Committee. In 2016, Wynn Resorts paid  
22 Defendant Shoemaker \$384,473 in total compensation. As of March 2017, Defendant Shoemaker  
23 held 38,637 shares of Wynn Resorts stock.

24           28.       During the Relevant Period, Defendant Shoemaker sold 15,000 shares of Wynn  
25 Resorts common stock while in possession of material non-public information concerning Steve  
26 Wynn’s longstanding pattern of sexual abuse and harassment, for proceeds of \$2,276,100:

| Director Name    | Sell Date | Number of Shares Sold | Price    | Selling Proceeds      |
|------------------|-----------|-----------------------|----------|-----------------------|
| Shoemaker, Alvin | 11/8/2017 | 15,000                | \$151.74 | \$2,276,100.00        |
| <b>TOTAL:</b>    |           | <b>15,000</b>         |          | <b>\$2,276,100.00</b> |

29. **Defendant J. Edward Virtue** is a citizen of Florida and has served as a director of the Company since November 2012. Virtue serves as Chairman of the Compensation Committee and as a member of the Corporate Governance Committee. Virtue managed the Wynn family's money prior to his appointment to the Board in 2012. In 2016, Wynn Resorts paid Defendant Virtue \$384,473 in total compensation. As of March 2017, Defendant Virtue held 21,385 shares of Wynn Resorts stock.

30. **Defendant D. Boone Wayson** is a citizen of Maryland and has served as a director of the Company since August 2003. Wayson serves as a member of the Audit Committee and as a member of the Corporate Governance Committee. On February 6, 2018, Defendant Wayson was named the Non-Executive Chairman of the Board. In 2016, Wynn Resorts paid Defendant Wayson \$384,473 in total compensation. As of March 2017, Defendant Wayson held 123,637 shares of Wynn Resorts stock.

31. During the Relevant Period, Defendant Wayson sold 37,500 shares of Wynn Resorts common stock while in possession of material non-public information concerning Steve Wynn's longstanding pattern of sexual abuse and harassment, for proceeds of \$3,267,000:

| Director Name    | Sell Date | Number of Shares Sold | Price   | Selling Proceeds      |
|------------------|-----------|-----------------------|---------|-----------------------|
| Wayson, D. Boone | 11/9/2016 | 37,500                | \$87.12 | \$3,267,000.00        |
| <b>TOTAL:</b>    |           | <b>37,500</b>         |         | <b>\$3,267,000.00</b> |

32. **Defendant Kimmarie Sinatra** is a citizen of Nevada and has served as the Company's General Counsel and Secretary since March 2006, and as the Company's Senior Vice President since January 2004. Sinatra also serves as a director for Wynn Macau, Limited, has been Senior Vice President and General Counsel of Worldwide Wynn, LLC since January 2004, and serves as an officer of several other of the Company's subsidiaries. Defendant Sinatra's compensation from 2009 through 2016 was approximately \$29 million, including compensation of over \$2.64 million in 2016 alone.

1 33. During the Relevant Period, Defendant Sinatra sold 107,228 shares of Wynn  
2 Resorts common stock while in possession of material non-public information concerning Steve  
3 Wynn’s longstanding pattern of sexual abuse and harassment, for proceeds of \$13,390,162.08:

| <b>Executive Name</b> | <b>Sell Date</b> | <b>Number of Shares Sold</b> | <b>Price</b> | <b>Selling Proceeds</b> |
|-----------------------|------------------|------------------------------|--------------|-------------------------|
| Sinatra, Kimmarie     | 11/9/2017        | 15                           | \$152.07     | \$2,281.05              |
| Sinatra, Kimmarie     | 11/8/2017        | 20,795                       | \$152.03     | \$3,161,463.85          |
| Sinatra, Kimmarie     | 9/15/2017        | 21,451                       | \$143.62     | \$3,080,792.62          |
| Sinatra, Kimmarie     | 6/9/2017         | 22,624                       | \$129.12     | \$2,921,210.88          |
| Sinatra, Kimmarie     | 11/29/2016       | 41,743                       | \$99.76      | \$4,164,281.68          |
| Sinatra, Kimmarie     | 11/29/2016       | 600                          | \$100.22     | \$60,132.00             |
| <b>TOTAL:</b>         |                  | <b>107,228</b>               |              | <b>\$13,390,162.08</b>  |

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11 34. Defendants Hagenbuch, Mulroy, Randt, Shoemaker, Wayson, and Sinatra are  
12 referred to as the “Selling Defendants”.

13 **IV. DEFENDANTS’ DUTIES**

14 **A. Fiduciary Duties**

15 35. The Defendants, because of their positions of control and authority as directors  
16 and/or officers of the Company, were able to and did, directly and/or indirectly, exercise control  
17 over the wrongful acts complained of herein. By reasons of their positions as officers and/or  
18 directors and fiduciaries and because of their ability to control the business and corporate affairs of  
19 Wynn Resorts, the Defendants owe the Company and its stockholders the fiduciary obligations of  
20 trust, loyalty, good faith, candor, and due care, and were required to do their utmost to control and  
21 manage the affairs of Wynn Resorts in a fair, just, honest and equitable manner. The Defendants  
22 were required to act in furtherance of the best interests of Wynn Resorts and its stockholders so as  
23 to benefit all stockholders equally, and not in furtherance of their own personal interest or benefit.

24 36. Each officer and director of Wynn Resorts owes to the Company and its  
25 stockholders the fiduciary duty to exercise good faith and diligence in the administration of the  
26 affairs of the Company and in the use and preservation of its property and assets, and the highest  
27 obligations of fair dealing.

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1           **B. Control, Access, and Authority**

2           37. The Defendants, because of their positions of control and authority as officers  
3 and/or directors of Wynn Resorts, were able to, and did, directly and/or indirectly, exercise control  
4 over the wrongful acts complained of herein, as well as the contents of the various misleading  
5 public statements disseminated by the Company. Further, due to the knowing, reckless,  
6 fraudulent, intentional, and disloyal nature of the Defendants' wrongdoing, they are not entitled to  
7 the potential protection afforded by the exculpatory provisions of Nevada law, the Company's  
8 Articles of Incorporation and/or by-laws.

9           38. Because of their advisory, executive, managerial, and directorial positions, as well  
10 as their knowledge of Steve Wynn's sexual harassment and the abusive workplace environment at  
11 Wynn Resorts that was tolerated and concealed for years by Defendants and others, each of the  
12 Defendants had access to adverse, non-public information about Steve Wynn's sexual misconduct  
13 and had a duty to refrain from selling Wynn Resorts stock while in possession of such undisclosed  
14 material adverse information having not made full disclosure of such misconduct to regulators and  
15 shareholders.

16           **C. Reasonable and Prudent Supervision**

17           39. To discharge their duties and to comply with good corporate governance,  
18 Defendants were required to exercise reasonable and prudent supervision over the management,  
19 policies, practices and controls of the business and financial affairs of the Company. By virtue of  
20 such duties, the Defendants were required to, among other things:

- 21           (a) ensure that the Company complied with applicable legal obligations, requirements  
22 and regulations, including acting only within the scope of its legal authority and  
disseminating truthful and accurate statements to the investing public;
- 23           (b) conduct the affairs of the Company in an efficient, business-like manner so as to  
24 make it possible to provide the highest quality performance of its business, to avoid  
wasting the Company's assets, and to maximize the value of the Company's stock;
- 25           (c) remain informed as to how Wynn Resorts conducted its operations and, upon  
26 receipt of notice or information of imprudent or unsound conditions or practices,  
27 make reasonable inquiry in connection therewith and take steps to correct such  
conditions or practices and make such disclosures as necessary to comply with the  
28 law;

- (d) ensure that Wynn Resorts was operated in a diligent, honest and prudent manner in compliance with applicable laws, rules and regulations;
- (e) properly and accurately guide investors and analysts as to the true financial condition of the Company, including making accurate statements about the Company's operations and financial results;
- (f) implement adequate internal controls to ensure that the Company was promptly informed of any sexual harassment, sexual misconduct, or sexual abuse, committed by a Company employee, including an officer or director; and
- (g) establish and implement internal controls and appropriate risk assessment and risk management procedures.

**D. Wynn Resorts' Corporate Governance Guidelines**

40. Wynn Resorts' Board has adopted a set of Corporate Governance Guidelines ("Guidelines") which are reviewed annually by the Nominating and Corporate Governance Committees. "The Guidelines reflect the Board's commitment to monitor the effectiveness of policy and decision-making both at the Board and management level, with a view to enhancing stockholder value."

41. The Board's stated goals "are to build value for the Company's stockholders and to promote the vitality and sustainability of the Company for its customers, employees and the other individuals and organizations that depend on the Company." To that end, "the Board monitors the performance of the Company (in relation to its goals, strategy, risks and competitors) and, through the Compensation Committee, evaluates and addresses the performance of management, including the Chief Executive Officer."

42. The Director Defendants' misconduct permitted sexual harassment and abuse to exist in the workplace at Wynn Resorts in violation of various laws and regulations as well as Wynn Resorts' Guidelines. Their complicity has diminished the Company's value, as described further herein.

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1           **E. Additional Duties of Defendants under Wynn Resorts' Code of Business**  
2           **Conduct and Ethics**

3           43. Under the Company's Code of Business Conduct and Ethics<sup>2</sup> (the "Code"), as  
4 approved by the Board, Defendants owed additional specific duties to Wynn Resorts and its  
5 stockholders. The purpose of the Code, which applies to all officers, directors, employees, agents  
6 and representatives, is not just to comply with laws and regulations but "to reinforce and enhance  
7 the Company's commitment to an ethical way of doing business." Compliance with the Code is  
8 mandatory and requires each employee, officer and director to sign an annual acknowledgement of  
9 having "read, understood, and complied with its contents." As Steve Wynn emphasized in his  
10 cover letter to employees, "Our goal is not just to comply with the laws, rules and regulations that  
11 apply to our business; we also continuously strive to abide by high standards of ethical business  
12 conduct." The Code imposes mandatory reporting requirements for suspected violations of  
13 "applicable laws, rules or regulations, the Code, or the Company's related policies . . . ."

14           44. Section 2.2 of the Code emphasizes the Company's commitment to compliance  
15 with all state and federal employment laws and specifically states that "Harassment or  
16 discrimination of any sort will not be tolerated." Moreover, as reflected in Section 3 of the Code,  
17 Defendants "are expected to dedicate their best efforts to advancing the Company's interests and  
18 to make decisions that affect the Company based on the Company's best interests, independent of  
19 outside influences."

20           45. Section 5.5 of the Code states that the Company's Insider Trading Policy prohibits  
21 the "buying or selling [of] securities of any company at a time when you are in possession of  
22 'material non-public information' about that company." The Code provides that "[i]nformation is  
23 'material' if (a) there is a substantial likelihood that a reasonable investor would find the  
24 information 'important' in determining whether to trade in a security; or (b) the information, if

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26           <sup>2</sup> Wynn Resorts' Code of Business Conduct and Ethics is posted on the Company's website along with all other  
27 corporate governance documents.

1 made public, likely would affect the market price of a company’s securities.” The Code further  
2 provides that “[i]nformation is considered to be non-public unless it has been disclosed and  
3 broadly disseminated to the public by the Company, which means that the information must be  
4 publicly disclosed by the Company through appropriate channels (such as by means of a filing  
5 with the SEC, a press release or a widely disseminated statement from a senior officer) and  
6 adequate time (generally at least a full trading day) must have passed for the securities markets to  
7 digest the information.”

8 46. The Code further provides that “All reported violations . . . will be taken seriously  
9 and promptly investigated.” *See* Code Section 7.2. Violations of the “Code and other Company  
10 policies and procedures may [result in] disciplinary action, up to and including discharge.”

11 47. Defendants’ misconduct permitted sexual harassment and abuse to exist in the  
12 workplace at Wynn Resorts in violation of various laws and regulations, violated the Company’s  
13 Code, and diminished the Company’s value. The Selling Defendants’ misconduct, as described  
14 herein, violated the Company’s Code as it pertains to insider trading.

15 **F. Additional Duties of the Audit Committee Defendants**

16 48. In addition to these duties, under the Company’s Audit Committee Charter, the  
17 Audit Committee Defendants (Defendants Hagenbuch, Johnson, Miller, Shoemaker and Wayson)  
18 owed specific duties to Wynn Resorts and its stockholders to review and update the Company’s  
19 compliance program with respect to legal and regulatory matters and the Company’s policies and  
20 procedures for monitoring compliance. The Audit Committee also was charged with oversight  
21 responsibility relating to “management’s evaluation of certain risk exposures” and any “steps  
22 management has taken or proposes to take to monitor and control such exposure.”

23 49. Specifically, Section D of the Audit Committee Charter imposes a duty on  
24 committee members with respect to compliance and risk oversight, and requires the Audit  
25 Committee to review and make recommendations to the Board on changes to and enforcement of  
26 the Code “and other policies relating to management conduct.” The Audit Committee is also  
27 charged with overseeing “procedures and practices to promote compliance” with the Code and  
28 other policies. The responsibilities include, at a minimum, an annual review of the

1 “implementation and effectiveness of the Corporation’s compliance program with the General  
2 Counsel and Compliance Officer . . . about actual and alleged violations of the Corporation’s Code  
3 . . . , including any matters involving criminal or potential criminal conduct.”

4 50. The Audit Committee Defendants’ misconduct permitted sexual harassment and  
5 abuse to exist in the workplace at Wynn Resorts in violation of various laws and regulations and  
6 the Company’s Audit Committee Charter. Their misconduct diminished the Company’s value, as  
7 described further herein.

8 **G. Wynn Resorts’ Regulatory Obligations**

9 51. Because Wynn Resorts and its subsidiaries operate in the gaming industry, they are  
10 governed by various laws and strict regulations in the states and countries in which they do  
11 business. A violation of such regulations could result in the loss of gaming licenses critical to the  
12 Company’s success. Wynn Resorts is incorporated and headquartered in Nevada and must  
13 comply with the gaming laws of the state. Wynn Resorts’ two most profitable casino properties  
14 are located in Macau, China and the Company is developing a casino property in Massachusetts,  
15 scheduled to open in 2019. All of these jurisdictions require the casino operator (including its  
16 officers directors, employees, agents and stockholders), to be “suitable” in order to obtain and  
17 keep its respective licenses.

18 52. Nevada law imposes comprehensive regulatory requirements upon gaming  
19 licensees, including obligations that those associated with the licensee possess the necessary  
20 character, qualifications, and integrity to be suitable to hold that privilege so as not to pose a threat  
21 to the public interest or the integrity of the regulation and control of gaming. In particular, the  
22 Nevada gaming regulations provide, in pertinent part, as follows:

23 **5.011 Grounds for disciplinary action.** The board and the commission deem any  
24 activity on the part of any licensee, his agents or employees, that is inimical to the  
25 public health, safety, morals, good order and general welfare of the people of the  
26 State of Nevada, or that would reflect or tend to reflect discredit upon the State of  
27 Nevada or the gaming industry, to be an unsuitable method of operation and shall  
28 be grounds for disciplinary action by the board and the commission in accordance  
with the Nevada Gaming Control Act and the regulations of the board and the  
commission. Without limiting the generality of the foregoing, the following acts or  
omissions may be determined to be unsuitable methods of operation:

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1. Failure to exercise discretion and sound judgment to prevent incidents which might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry.

...  
5. Catering to, assisting, employing or associating with, either socially or in business affairs, persons of notorious or unsavory reputation . . . or the employing either directly or through a contract, or any other means, of any . . . individual in any capacity where the repute of the State of Nevada or the gaming industry is liable to be damaged because of the unsuitability of the . . . individual . . . .

...  
10. Failure to conduct gaming operations in accordance with proper standards of custom, decorum and decency, or permit any type of conduct in the gaming establishment which reflects or tends to reflect on the repute of the State of Nevada and act as a detriment to the gaming industry.

53. Massachusetts law also imposes comprehensive regulatory requirements upon gaming licensees, including obligations that those associated with the licensee possess the necessary character, qualifications, and integrity to be suitable to hold that privilege so as to not pose a threat to the public interest or the integrity of the regulation and control of gaming. In particular, the Massachusetts gaming regulations require the Massachusetts Gaming Commission to “consider the overall reputation of the applicant including, without limitation . . . (1) the integrity, honesty, good character and reputation of the applicant.” M.G.L. c. 23K § 12. The regulations further require the Massachusetts Gaming Commission to “deny an application for a gaming license . . . if the applicant . . . (ii) submitted an application for a license under this chapter that contains false or misleading information; [or] (iii) committed prior acts which have not been prosecuted or in which the applicant was not convicted but form a pattern of misconduct that makes the applicant unsuitable for a license . . . .” *Id.* § 16.

54. Macau law also imposes comprehensive regulatory requirements upon gaming licensees. Macau Administrative Regulation no. 6/2002 (Gaming Promoters Act) requires prospective licensees to duly evidence their reputation and suitability. Articles 14 and 15 of the Macau Gaming Law require licensees to demonstrate, among other things, repute and probity, which must be maintained and verified throughout the twenty-year duration of the gaming license. Further, all directors and stockholders holding at least 5% of the gaming operator’s corporate capital, as well as key employees, are subject to monitoring for suitability by the Macau Gaming

1 Inspection and Coordination Bureau. Through his ownership of stock in Wynn Resorts, Steve  
2 Wynn effectively owns approximately 8.5% of Wynn Macau's shares.

3 55. Defendants' misconduct, as detailed herein, violated or aided in the violation of  
4 Nevada, Massachusetts, and Macau gaming laws and regulations, and Defendants' unsuitability  
5 under those laws and regulations, among other things, exposes the Company to the potential loss  
6 of its gaming licenses in one or more jurisdictions, a result that would financially devastate the  
7 Company.

## 8 **V. SUBSTANTIVE ALLEGATIONS**

### 9 **A. Steve Wynn's Growth into a Casino Magnate**

10 56. Steve Wynn is a longtime player in the gaming industry, getting his start at  
11 Wayson's Bingo in the late 1960s and eventually building a gaming empire. In 1971, Steve Wynn  
12 acquired a controlling interest in the Golden Nugget Las Vegas, and, in 1973, formed Golden  
13 Nugget Companies, Inc., of which he was a majority owner.

14 57. In 1989, Steve Wynn opened The Mirage, a major casino on the Las Vegas Strip.  
15 Following the completion of The Mirage, Steve Wynn changed the name of his company to  
16 Mirage Resorts, Inc. On October 15, 1998, Steve Wynn opened the Bellagio, a \$1.6 billion resort.  
17 In 2000, Mirage Resorts, Inc. was acquired by MGM Grand Inc. after Steve Wynn lost control of  
18 the company amidst stockholder criticism of his spending on art and hotel construction.

19 58. Steve Wynn then partnered with Japanese billionaire Kazuo Okada for his next  
20 venture, Wynn Resorts. Steve Wynn became Chairman and CEO and Okada became Vice-  
21 Chairman of the Board. Wynn Resorts made its initial public offering on the NASDAQ on  
22 October 25, 2002, trading under the WYNN ticker symbol. On April 28, 2005, the Company's  
23 first project, Wynn Las Vegas, opened on the Las Vegas Strip. The Company's second project,  
24 Wynn Macau, opened on September 5, 2006, in Macau, China. Steve Wynn also served as the  
25 Executive Director, Chairman, and CEO of Wynn Resorts subsidiaries Wynn Macau and Wynn  
26 Resorts (Macau) S.A. The Company is currently developing a luxury resort and casino in  
27 Massachusetts.

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1           59. Steve Wynn currently owns 11.8% of the stock of the Company. As of January 25,  
2 2018, that stock had a market value of approximately \$2.4 billion. Steve Wynn, whose signature  
3 is the Company’s logo, is considered by the Company to be integral to its success. In a recent  
4 filing with the SEC citing possible risks to the Company, the Company said, “If we lose the  
5 services of Mr. Wynn, or he is unable to devote sufficient attention to our operation for any  
6 reason, our business may be significantly impaired.” Indeed, a JPMorgan Chase analysis of Wynn  
7 Resorts noted that the Company has “the single largest individual CEO dependency” of any  
8 gambling company JPMorgan Chase has analyzed.

9           **B. Steve Wynn’s History of Sexual Harassment and Abuse**

10           60. Steve Wynn has a long history of sexual harassment and abuse that spans decades  
11 and pre-dates the founding of Wynn Resorts.

12           61. According to the *Las Vegas Review-Journal*, in the days following the publication  
13 of the *Wall Street Journal* article, two women reported to Las Vegas police that they were sexually  
14 assaulted by Steve Wynn in the 1970s. One woman made a report from St. Louis, alleging that  
15 Steve Wynn sexually assaulted her in Las Vegas in the 1970s. A second woman filed a report a  
16 week later in person at a police substation in Las Vegas, alleging that Steve Wynn had assaulted  
17 her in Chicago, also in the 1970s.

18           62. An article in the *Nevada Forward* describes the account of a cocktail waitress at the  
19 Golden Nugget in the 1980s who stated that Steve Wynn was forceful and aggressive in his  
20 advances, and that he would request that she leave work early and come to his house. She stated  
21 that, though she tried to avoid his advances, she often did not have a choice but to acquiesce to his  
22 demands. She described his predatory behavior as follows: “Did I want to have sex with him?  
23 No. He signed my checks. I had two little kids, and no child support. He made a habit of going  
24 after single moms who were scared and couldn’t afford to lose their jobs.”

25           63. Shawn Cardinal, a personal assistant to Elaine Wynn, Mr. Wynn’s spouse at the  
26 time, said that around 1987 Steve Wynn repeatedly asked her to spend time with him outside of  
27 work, and continued asking despite her telling him she had plans with her husband and child. Ms.  
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1 Cardinal said Steve Wynn would ask her on the phone “what are you wearing? Why don’t you  
2 hang out with me after work?”

3 64. Another set of allegations that date back to the late 1980s involve Steve Wynn  
4 sexually harassing waitresses at The Mirage, which Steve Wynn owned at the time. The *Las*  
5 *Vegas Review-Journal* reports that Steve Wynn allegedly had sex with one of the waitresses he  
6 harassed – a grandmother – who asked Steve Wynn, “Why don’t you just leave me alone?” Steve  
7 Wynn reportedly responded that he had “never had [sex with] a grandmother before” and wanted  
8 “to see how it feels.”

9 65. The *Wall Street Journal* describes that, in the early 1990s, Dennis Gomes, an  
10 executive at Golden Nugget in Las Vegas when Wynn ran the casino, testified at a deposition that  
11 Gomes “routinely received complaints from various department heads regarding **Wynn’s chronic**  
12 **sexual harassment of female employees.**” (emphasis added). In a suit over Gomes’s departure  
13 from the Golden Nugget, Gomes described a “*disgraceful pattern of personal and professional*  
14 *conduct*” by Wynn that included him directing Gomes to get home phone numbers of cocktail  
15 waitresses. (emphasis added). The parties agreed to dismiss the suit in 1994. In connection with  
16 the *Wall Street Journal* article, Gomes’s widow said, “I remember him saying, ‘I’m not his  
17 [Wynn’s] pimp.’”

18 66. In 1997, eleven waitresses at the Wynn-owned Mirage filed suit in Nevada federal  
19 district court, alleging a culture of harassment, coerced sexual relations, and misconduct by Wynn.  
20 The case was styled *Arrowsmith, et al. v. Mirage Casino-Hotel*, 2:97-cv-00638-RLH-LRL (D.  
21 Nev. 1997). According to the *Las Vegas Review-Journal*, the lawsuit contained allegations that  
22 supervisors did not protect women from gamblers who harassed them, and that waitresses were  
23 sent to sexually “accommodate” high rollers at the resort through the 1990s. The suit also alleged  
24 that Steve Wynn told the waitresses they had “fat asses” and did not look good in their uniforms,  
25 and that the waitresses were required to maintain their weight at the time they were hired  
26 throughout their employment.

27 67. In 1998, two of the plaintiffs in *Arrowsmith* spoke with *Las Vegas Review-Journal*  
28 reporter Carri Geer. As she was preparing the story, Geer was called into a meeting with Wynn’s

1 attorneys. After subjecting the plaintiffs to polygraph examinations, the newspaper killed the  
2 publication of the story, and ordered Geer to delete it from the newspaper's computer system,  
3 demonstrating Steve Wynn's extraordinary power and influence.

4 68. *Arrowsmith* settled in 2003. Because the case is public record and involved Wynn  
5 Resorts' CEO and Chairman, all of Wynn Resorts' Board members, particularly Defendants  
6 Shoemaker, Wayson, and Miller, who were directors in 2003, should have been aware of the  
7 litigation and the need to ensure that appropriate controls were in place to prevent Steve Wynn  
8 from engaging in similar misconduct at his flagship resort. In addition, Defendant Wayson was a  
9 director of Mirage Resorts, Inc. from 1997-2000 while *Arrowsmith* was being litigated, and thus  
10 can be presumed to have knowledge of the plaintiffs' allegations regarding Steve Wynn. As  
11 detailed below, however, the Board failed to heed the warnings from *Arrowsmith*, and instead  
12 allowed Steve Wynn to continue his pattern of sexual harassment and abuse at Wynn Resorts.

13 **C. Steve Wynn Continues his Pattern of Sexual Harassment and Abuse at Wynn**  
14 **Las Vegas**

15 69. In 2005, Steve Wynn opened his flagship resort, Wynn Las Vegas. Shortly  
16 thereafter, according to the *Wall Street Journal* article, a manicurist who worked at the Wynn Las  
17 Vegas told a colleague Steve Wynn forced her to have sex with him. The manicurist filed a  
18 written and detailed report to the HR department. She then received a call from Doreen Whennen,  
19 a Wynn Las Vegas executive, who castigated the manicurist for filing a report with HR and said  
20 she should have taken the matter directly to Whennen. No one followed up with the manicurist  
21 regarding her complaint. Wynn ultimately paid the manicurist a \$7.5 million settlement in 2005.

22 70. In an effort to conceal the 2005 assault, Steve Wynn created a secret limited  
23 liability company, Entity Y, in 2005 to make the \$7.5 million settlement payment, according to  
24 *The Wall Street Journal*. Entity Y's manager is James Pisanelli, a lawyer who was at the time  
25 with Brownstein Hyatt Farber Schreck LLP and has served as Wynn Resorts' outside counsel for  
26 years.

27 71. In addition to the 2005 assault, Steve Wynn created a hostile working environment,  
28 where female employees were constantly uncomfortable. For example, several former Wynn Las



1 Vegas employees recalled that Wynn often walked around areas of the Wynn Las Vegas in short  
2 shorts without underwear, and that he would get pedicures at the salon and sit in a way so as to  
3 expose his genitals.

4 72. *The Wall Street Journal* article reports that one former employee said Wynn asked  
5 if he could kiss her. Another time he said, “So when are you going to come into my office and f---  
6 me?” Once he repeatedly rubbed his genitals, which were falling out of his shorts, and made  
7 comments about things he would like to do with her sexually. On another occasion, as she was  
8 leaving his office, he grabbed her waist as she stood against a wall and told her to kiss him. She  
9 slipped out of his hold and left. After two weeks of pursuit, he stopped. The employee’s  
10 supervisor and another colleague confirmed being told of these advances at the time, but sought to  
11 “manage” the situation rather than report it for fear of repercussions.

12 73. *The Wall Street Journal* article further reports that one former massage therapist  
13 said that several years ago Wynn booked multiple appointments a week with her in the private  
14 massage room in his office suite. He continually adjusted a towel to expose himself, and  
15 ultimately instructed her to masturbate him to climax. She felt she had no choice but to agree to  
16 his requests because he was her boss. She said masturbating him became a frequent part of the  
17 massage sessions for several months. In subsequent sessions, Wynn asked her to perform oral sex  
18 on him and described in detail how he wanted it done. She refused this request. She told a  
19 colleague that Wynn had generally been inappropriate with her.

20 74. That colleague told *The Wall Street Journal* that Wynn also made advances toward  
21 her while she massaged him in his office’s private massage room. Wynn would remove his towel  
22 and, while she massaged the front of his thighs, would tell her to “go higher,” which she  
23 understood to mean touch his genitals. After she told him this made her uncomfortable, his  
24 requests for her massages became less frequent.

25 75. Former employees told *The Wall Street Journal* they sometimes entered fake  
26 appointments in the books to help other women workers get around a request for services in  
27 Wynn’s office or arranged for others to pose as assistants so they would not be alone with him.

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1           76.     Former employees also told of female employees hiding in the bathroom or back  
2 rooms when they heard he was on the way to the salon. “Everybody was petrified,” said Jorgen  
3 Nielsen, a former artistic director at the salon. Nielsen said he and others *repeatedly told high-*  
4 *level company executives* Steve Wynn’s sexual advances were causing a problem, but “nobody  
5 was there to help us.”

6           77.     In the wake of the *Wall Street Journal* article, the Nevada Gaming Control Board  
7 received numerous reports about Steve Wynn, and the volume of calls it received prompted it to  
8 introduce a new online system for the public to send in confidential complaints and tips.

9           78.     According to CNN, National Labor Relations Board (“NLRB”) records also  
10 document Steve Wynn’s flagrant misogyny and abusive treatment of his female employees. In  
11 late 2006, Steve Wynn was involved in proceedings before Judge Burton Litvack of the NLRB  
12 stemming from a labor dispute with his employees in which Steve Wynn called some employees,  
13 among other things, “muggers and thieves.” In ruling against Steve Wynn, Judge Litvack wrote  
14 that Steve Wynn’s “statements and actions during the meeting [with employees] must be viewed  
15 in the context of his desire to frighten and intimidate” them. The Judge told CNN that he “came  
16 out of his chair” listening to Steve Wynn make “very disparaging comments about the women  
17 who were at the [employee] meeting, particularly some of them that . . . were crying.” Judge  
18 Litvack called Steve Wynn a chauvinist, and a haughty, disingenuous, and insolent person, and  
19 recalled that the descriptions of Steve Wynn’s misconduct toward his female employees “upset”  
20 him.

21           **D.     The Director Defendants and Defendant Sinatra Breached Their Fiduciary**  
22           **Duties by Refusing to Investigate Credible and Compelling Evidence of Steve Wynn’s**  
23           **Sexual Harassment and Abuse or to Protect Employees from It**

24           79.     The Director Defendants knowingly and intentionally breached their fiduciary  
25 duties by failing to act in the face of Steve Wynn’s rampant sexual misconduct, detailed above.  
26 Other than Defendant Johnson, all Director Defendants knew of the 2005 assault allegation by at  
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28

1 least March 28, 2016, when court documents filed by Elaine Wynn described a “multi-million-  
2 dollar payment” made by Steve Wynn following allegations that he engaged in “serious  
3 misconduct” “on company property against an employee.”<sup>3</sup> Other reports pinpoint Board  
4 members’ knowledge at an even earlier date. Reports explain that Elaine Wynn learned of the  
5 2005 assault and \$7.5 million settlement payment in 2009, *while she was a current board member*,  
6 and that she reported the information to Defendant Sinatra. According to a CNBC article, Elaine  
7 Wynn also reported the 2005 assault and settlement payment to a board representative “right  
8 away” after learning of it in 2009. The Company has admitted that Elaine Wynn informed the  
9 Board after she lost her Board seat in 2015. Regardless of whether the Board knew of Steve  
10 Wynn’s misconduct in 2009, 2015, or 2016, one thing is clear: the Director Defendants did  
11 absolutely nothing in response. They undertook no investigation into Steve Wynn and created no  
12 protocols to ensure workers were safe from sexual harassment and abuse.

13 80. Not only did the Director Defendants intentionally and knowingly fail to act in the  
14 face of known and credible allegations concerning the 2005 assault by Steve Wynn of a Company  
15 employee on Company property, they also intentionally and knowingly breached their fiduciary  
16 duties by failing to implement internal controls that would alert them to the hostile work  
17 environment created by Steve Wynn’s widespread sexual harassment and abuse, which was  
18 repeatedly reported to senior Company officials. Their failure to act imperiled the Company and  
19 put its gaming licenses, revenues, and goodwill at risk.

20 81. The Director Defendants also breached their fiduciary duties by knowingly and  
21 intentionally concealing Steve Wynn’s sexual misconduct from stockholders and gaming  
22 authorities and affirmatively misrepresenting the Company’s corporate governance framework.

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25 <sup>3</sup> Defendant Johnson joined the Board in August 2016 after a counterclaim filed by Elaine Wynn alerted the other  
26 Board members to the 2005 assault and while the litigation in which those court documents were filed was ongoing.  
27 Given that the Company was a party to that ongoing litigation, and given the seriousness of the allegations against Mr.  
28 Wynn in Elaine Wynn’s counterclaim, Defendant Johnson knew or intentionally disregarded Mr. Wynn’s  
longstanding pattern of sexual harassment and abuse and therefore intentionally and knowingly breached his fiduciary  
duties to the Company when he failed to take action.

1 For example, the Company’s in-house counsel candidly admitted that it intentionally chose not to  
2 disclose the \$7.5 million settlement for the 2005 assault to Massachusetts gaming regulators in the  
3 licensing process for Wynn Resorts new casino in the greater Boston area. Nor did the Director  
4 Defendants ever disclose the 2005 assault to stockholders. Yet the Nominating Committee and the  
5 Board repeatedly allowed Steve Wynn to stand for re-election without advising stockholders of the  
6 terrifying workplace environment created by Steve Wynn, because the Company viewed his  
7 leadership as critical to its success.

8 82. Further, although the Director Defendants, aside from Defendant Johnson, knew of  
9 Steve Wynn’s sexual harassment and abuse no later than March 2016, they falsely represented in  
10 the Company’s 2017 Proxy statement that the Board and management were “committed to sound  
11 and effective corporate governance” and that the “Company has established a comprehensive  
12 corporate governance framework, with policies and programs designed not only to satisfy the  
13 extensive regulatory requirements applicable” to the Company’s business but also to build value  
14 for stockholders and promote the vitality of the Company for employees. Defendant Johnson  
15 certainly knew of the 2005 assault when Steve Wynn was deposed in the *Okada* litigation  
16 regarding the 2005 assault.

17 83. Court filings by Elaine Wynn explain that despite the fact that Defendant Sinatra  
18 knew of the allegations since 2009, Sinatra set a “tone at the top” that “discouraged any challenge  
19 to Steve Wynn.” Indeed, Sinatra herself took no steps to investigate Steve Wynn or protect the  
20 Company from Steve Wynn’s sexual abuse and harassment, and breached her fiduciary duties to  
21 the Company and shareholders by knowingly and intentionally concealing the 2005 assault and  
22 failing to act, as the Company’s chief legal officer, to address the known and credible allegations  
23 of the 2005 assault.

24 84. Information concerning the Director Defendants’ inaction in response to Steve  
25 Wynn’s known pattern of sexual abuse and harassment continues to evolve, with lawyers for  
26 Elaine Wynn telling a Clark County, Nevada judge on February 13, 2018, that there was a “greater  
27 concern” at Wynn Resorts “to cover up certain things and to make sure my client [Elaine Wynn]  
28 didn’t pull the curtain back too far.”

1           85. Further, by permitting Steve Wynn to retain his 11.8% ownership stake in the  
2 Company, the Director Defendants continue to breach their fiduciary duties by ignoring the  
3 Company’s Articles of Incorporation (“Articles”), which allow the Board to redeem the shares of  
4 any officer who threatens the “suitability” of the Company under state gaming laws. Specifically,  
5 the Articles define an “Unsuitable Person” as one who, “in the sole discretion of the board of  
6 directors of the Corporation, is deemed likely to jeopardize the Corporation’s or any Affiliated  
7 Company’s application for, receipt of approval for, right to the use of, or entitlement to, any  
8 Gaming License.” Article VII, Section 1(l). The Articles provide that an Unsuitable Person’s  
9 shares of the Company are “subject to redemption by the Corporation . . . to the extent deemed  
10 necessary or advisable by the board of directors.” Article VII, Section 2(a). Despite multiple  
11 gaming authorities’ investigations into Steve Wynn’s misconduct and his suitability, the Director  
12 Defendants have nonetheless put Wynn Resorts’ gaming licenses at serious risk and placed Steve  
13 Wynn’s interests ahead of the Company’s by failing to redeem Steve Wynn’s shares. Because  
14 Steve Wynn’s sexual harassment and abuse seriously “jeopardize” the Company’s gaming  
15 licenses, he is an “Unsuitable Person” under the Articles and the Director Defendants must act to  
16 redeem his shares. Their failure to do so is a breach of their duties to the Company and to  
17 shareholders.

18           **E. The Selling Defendants Breached Their Fiduciary Duties by Engaging in**  
19           **Improper Insider Trading While in Possession of Material Non-Public Information**  
20           **Concerning Steve Wynn’s Pattern of Sexual Harassment and Abuse**

21           86. The Selling Defendants breached their fiduciary duty of loyalty by selling massive  
22 amounts of Company stock while in possession of material non-public information concerning  
23 Steve Wynn’s sexual misconduct and “unsuitability” for gaming licenses. As of March 28, 2016,  
24 the Selling Defendants knew of credible allegations that Steve Wynn had engaged in the 2005  
25 assault with a Company employee on Company property, yet failed to undertake any investigation  
26 into Steve Wynn, and instead continued to certify Steve Wynn’s suitability for gaming licenses  
27 and to publicly (and falsely) disclaim the truth of any allegations against Steve Wynn. Following  
28 March 28, 2016, the Selling Defendants collectively sold 166,104 shares of Wynn Resorts

1 common stock for total proceeds of \$19,753,029.66. Notably, none of these sales was made  
2 pursuant to pre-arranged 10b5-1 trading plans.

3 87. On November 9, 2016, Defendant Wayson sold 37,500 shares, or **40%** of his  
4 holdings in Wynn Resorts common stock, for proceeds of \$3.3 million. At the time Defendant  
5 Wayson made this sale he knew of the 2005 assault and that Steve Wynn's misconduct put at risk  
6 the Company's gaming licenses, yet publicly (and falsely) disclaimed the truth of any allegations  
7 against Steve Wynn and continued to represent Steve Wynn's suitability to gaming regulators.  
8 Defendant Wayson's November 9, 2016 sale was dramatically out of line with his prior trading  
9 practices – indeed, Defendant Wayson had not traded a single share of Wynn Resorts common  
10 stock in the previous five years.

11 88. On May 16 and 17, 2017, Defendant Hagenbuch disclaimed his beneficial  
12 ownership of 1,150 shares of Wynn Resorts common stock worth approximately \$147,661.50,  
13 constituting **100%** of his total holdings. At the time Defendant Hagenbuch disclaimed his shares,  
14 he knew of the 2005 assault and that Steve Wynn's misconduct put at risk the Company's gaming  
15 licenses, yet publicly (and falsely) disclaimed the truth of any allegations against Steve Wynn and  
16 continued to represent Steve Wynn's suitability to gaming regulators. Defendant Hagenbuch's  
17 sales were dramatically out of line with his prior trading practices – indeed, prior to May 16 and  
18 May 17, 2017, Defendant Hagenbuch had never sold a single share of Wynn Resorts common  
19 stock.

20 89. On May 16, 2017, Defendant Mulroy sold 2,226 shares, or **28%** of her holdings of  
21 Wynn Resorts common stock, reaping proceeds of approximately \$285,106.08. At the time  
22 Defendant Mulroy made this sale, she knew of the 2005 assault and that Steve Wynn's misconduct  
23 put at risk the Company's gaming licenses, yet publicly (and falsely) disclaimed the truth of any  
24 allegations against Steve Wynn and continued to represent Steve Wynn's suitability to gaming  
25 regulators. Defendant Mulroy's sales were dramatically out of line with her prior trading –  
26 indeed, the May 16, 2017, sale was the *first* time Defendant Mulroy ever sold any shares of Wynn  
27 Resorts common stock.

28

1           90.     On July 31, 2017, Defendant Randt sold 3,000 shares of Wynn Resorts common  
2 stock, or nearly **40%** of his total holdings, for \$387,000 in proceeds. At the time Defendant Randt  
3 made this sale, he knew of the 2005 assault and that Steve Wynn’s misconduct put at risk the  
4 Company’s gaming licenses, yet publicly (and falsely) disclaimed the truth of any allegations  
5 against Steve Wynn and continued to represent Steve Wynn’s suitability to gaming regulators.  
6 Defendant Randt’s sales were dramatically out of line with his prior trading – indeed, the July 31,  
7 2017 sale was the first time Defendant Randt ever sold any shares of Wynn Resorts common  
8 stock.

9           91.     From November 29, 2016, through November 9, 2017, Defendant Sinatra sold  
10 107,228 shares of Wynn Resorts common stock, nearly **58.69%** of her total holdings, for  
11 **\$13,390,162.08** in proceeds. Significant portions of these sales—20,810 shares—occurred in  
12 November 2017, well after the #MeToo movement began and likely after *The Wall Street Journal*  
13 began its investigation into allegations against Steve Wynn. At the time Defendant Sinatra made  
14 her sales, she knew of the 2005 assault and that Steve Wynn’s misconduct put at risk the  
15 Company’s gaming licenses, yet sat by idly while the Board publicly and falsely disclaimed the  
16 truth of any allegations against Steve Wynn and continued to represent Steve Wynn’s suitability to  
17 gaming regulators.

18           92.     Defendant Shoemaker also sold significant shares in November 2017. On  
19 November 8, 2017, Defendant Shoemaker sold 15,000 shares of Wynn Resorts common stock, or  
20 **62%** of his total holdings, for \$2.28 million in proceeds. At the time Defendant Shoemaker made  
21 this sale, he knew of the 2005 assault and that Steve Wynn’s misconduct put at risk the  
22 Company’s gaming licenses, yet publicly (and falsely) disclaimed the truth of any allegations  
23 against Steve Wynn and continued to represent Steve Wynn’s suitability to gaming regulators.  
24 Defendant Shoemaker’s sales were dramatically out of line with his prior trading practices. Prior  
25 to November 8, 2017, Shoemaker had not sold a single share of Wynn Resorts common stock for  
26 over two years.

27  
28

1           **F.       The Board Undertakes an Inadequate Investigation into Steve Wynn**

2           93.       Following the bombshell *Wall Street Journal* article, the Board announced an  
3 internal investigation by a Special Committee on February 2, 2018, headed by the Company’s sole  
4 female director, Defendant Mulroy. Yet, the Special Committee’s investigation falls far short of  
5 the independent and thorough investigation called for given the severity of the allegations against  
6 Steve Wynn and the concomitant risk to the Company. To begin with, the Special Committee  
7 formed by the Company is packed with three Director Defendants, Mulroy, Hagenbuch, and  
8 Johnson, all of whom are beholden to Steve Wynn, as described in further detail below, and are  
9 thus unable to exercise independent and impartial judgment.

10          94.       Significantly, (and reflecting the Director Defendants’ ongoing loyalty to Steve  
11 Wynn,) although the Board initially retained the independent law firm O’Melveny to assist with  
12 the investigation, following Steve Wynn’s resignation, the Board announced suddenly, and  
13 without explanation, that it was severing ties with the firm on February 9, 2018 – just one week  
14 after O’Melveny had been retained. Professor John C. Coffee Jr., an expert on corporate  
15 governance, considered the Board’s decision to cut ties with O’Melveny “a strong signal that not  
16 much has changed in the culture of the [B]oard.”

17          95.       Following a weekend of heavy criticism, the Board announced that Gibson Dunn, a  
18 firm with deep ties to Wynn Resorts, would “assist” the Special Committee with its investigation.  
19 The Board’s press release announcing its retention of Gibson Dunn dropped any pretense that the  
20 firm would assist with an independent investigation, stating only that it would “assist . . . [with] an  
21 expanded and comprehensive review of Wynn Resorts’ internal policies and procedures . . . .”  
22 Nor could Gibson Dunn assist the Board with a truly independent investigation. Sinatra  
23 previously worked as a partner at Gibson Dunn and the firm represents Wynn Resorts in current  
24 litigation against ousted Board members Kazuo Okada and Elaine Wynn. The firm has also  
25 represented Wynn Resorts in SEC and DOJ matters, as well as in business deals. The conflict  
26 presented by Gibson’s Dunn’s retention is palpable – the firm is tasked with investigating the  
27 Company and the Board while defending the Company in other Wynn Resorts litigation where  
28



1 many of the same directors are accused of breaching their fiduciary duties in connection with their  
2 ousting of Okada.

3 96. Notably, although the Board belatedly initiated an investigation into Steve Wynn’s  
4 sexual abuse and misconduct, it allowed him to remain as CEO and Chairman of the Board until  
5 Steve Wynn voluntarily resigned. The Board has also allowed Steve Wynn to keep his Wynn  
6 Resorts stock – in breach of their duties under the Company’s Articles – despite the significant  
7 risks to the Company’s gaming licenses due to Steve Wynn’s unsuitability under applicable  
8 gaming regulations.

9 **G. Steve Wynn Resigns Under Mounting Public Pressure**

10 97. Immediately following the *Wall Street Journal* article, Steve Wynn resigned from  
11 his position as Finance Chairman to the Republican National Committee, but remained the  
12 Company’s Board Chairman and CEO. On January 31, 2018, the University of Pennsylvania  
13 announced that it was revoking the honorary degree it had bestowed on Steve Wynn, something  
14 the University has not done in over a century. The University explained: “*The nature, severity,*  
15 *and extent of these allegations [against Steve Wynn], and the patterns of abusive behavior they*  
16 *describe, involve acts and conduct that are inimical to the core values of our University.*”  
17 (emphasis added). The University also announced it will remove “Wynn Commons” from a  
18 centrally located outdoor plaza on the campus and will remove Wynn’s name from a scholarship  
19 fund he created.

20 98. Then, on February 6, 2018, facing extreme public pressure and citing an “avalanche  
21 of negative publicity” Wynn finally resigned as Chairman and CEO of Wynn Resorts.

22 99. The Board issued a tepid statement announcing Steve Wynn’s resignation. The  
23 Board explained that it accepted Steve Wynn’s resignation with a “collective heavy heart” calling  
24 Steve Wynn “our founder, CEO, and friend” as well as “industry giant, philanthropist and beloved  
25 leader and visionary.” This treatment, in light of credible accusations of a longstanding pattern of  
26 sexual abuse and harassment, stands in stark contrast with the Board’s treatment of Mr. Okada,  
27 described further herein, whom the Board removed and whose shares the Company redeemed  
28 pursuant to the Company’s Articles based on allegedly pretextual reasons.

1           **H. Steve Wynn’s Misconduct and Defendants’ Breaches Have Severely Damaged**  
2           **the Company**

3           100. Steve Wynn’s misconduct and Defendants’ breaches of their fiduciary duties have  
4 severely damaged the Company’s reputation and goodwill, negatively impacted the Company’s  
5 competitive position, negatively impacted the Company’s financial position, exposed the  
6 Company to potentially massive liability arising from lawsuits and investigations, endangered its  
7 gaming licenses, and has imperiled the Company’s future projects.

8           101. The Company admits that the “loss of Stephen Wynn could significantly harm our  
9 business” and that the Company’s “ability to maintain our competitive position is dependent to a  
10 large degree on the efforts, skills and reputation of Stephen A. Wynn.” Analysts and investors  
11 have noted a “Wynn premium” that the Company enjoyed due to its association with Steve Wynn.  
12 Now that Steve Wynn has resigned, the Company is scrambling to retain its competitive position  
13 and repair its reputation and has faced an onslaught of negative publicity following the *Wall Street*  
14 *Journal* article. Indeed, one marketing firm noted that the “Wynn brand is going to take a hit,  
15 there’s no question about it,” while another observer remarked that “Steven Wynn is arguably the  
16 father of modern-day Las Vegas. . . . The fact that his name is, in and of itself, the brand makes it  
17 far more complicated, in a similar way that Harvey Weinstein’s personal brand was also the name  
18 of his company.” Other analysts have noted that “Steve Wynn’s value to the company is  
19 unarguably profound as its chief visionary and diplomat. As such, we do not believe the company  
20 can grow at the same trajectory nor can it maintain its cutting-edge position.”

21           102. The public revelation of Steve Wynn’s misconduct has had significant financial  
22 ramifications for Wynn Resorts. The *Wall Street Journal* article caused Wynn Resorts’ share  
23 price to plummet, closing down 10% the day the article was published and wiping out \$2 billion in  
24 market capitalization. S&P Global Ratings swiftly revised its outlook on Wynn Resorts from  
25 stable to negative, recognizing the threat Steve Wynn’s misconduct poses to the Company’s  
26 gambling licenses. UBS warned investors that the “risk to the outlook has increased as well, with  
27 recent allegations about the CEO prompting an investigation by the company’s board as well as  
28 reviews by the gaming regulatory bodies in Nevada and Massachusetts.” The Company’s stock is

1 now trading at about \$164.00, a sustained investor loss of 17%, amid continuing controversy with  
2 the Board's inadequate investigation. Moreover, as a result of Steve Wynn's misconduct, the  
3 Company is now subject to massive potential liability arising from stockholder lawsuits, securities  
4 lawsuits, and employment lawsuits. Several stockholder lawsuits have already been filed against  
5 the Company alleging breaches of fiduciary duty against the Director Defendants, Steve Wynn,  
6 and Sinatra. Additional lawsuits are likely to follow.

7       103. Moreover, the Nevada Gaming Control Board and the Massachusetts Gaming  
8 Commission ("MGC") have both opened investigations into Wynn Resorts. Fallout from these  
9 investigations could be severe. The Nevada Gaming Control Board could levy six- or seven-  
10 figure fines and/or revoke Wynn Resorts' license. Further, as described in detail above,  
11 Massachusetts law requires casino regulators to conduct themselves ethically and gives the MGC  
12 broad authority to determine which companies, and which company directors or officers, are  
13 suitable to hold a casino license. The MGC is now conducting a suitability review of individuals  
14 in Wynn Resorts including Steve Wynn and Defendant Sinatra, as well as all of the Director  
15 Defendants. The MGC has stated that it "is now aware of and is taking very seriously the  
16 troubling allegations detailed in the *Wall Street Journal* article. The suitability and integrity of our  
17 gaming licensees is of the utmost importance, and ensuring that suitability is an active and  
18 ongoing process. Consequently, the MGC's Investigations and Enforcement Bureau ("IEB") will  
19 conduct a regulatory review of this matter to determine the appropriate next steps." An adverse  
20 finding by the MGC could put an end to Wynn Resorts' planned \$2.4 billion casino currently  
21 under construction just outside of Boston. Central to the MGC's investigation is the \$7.5 million  
22 settlement paid by Steve Wynn to the victim of an alleged sexual assault. The head of the MGC's  
23 IEB explained: "The circumstances around this \$7.5 million settlement and the decision not to  
24 disclose it to investigators remain a critical element of this review." Gaming Commissioner Lloyd  
25 Macdonald stated: "But we must hold [Steve Wynn] accountable . . . Fortunately, at this time the  
26 most important thing is the facts, and our commitment to get to the bottom of them must be  
27 unambiguous." The commission has even asked for information regarding Steve Wynn's  
28 misconduct dating back to the 1990s. Additionally, the China arm of Steve Wynn's casinos,

1 Wynn Macau Ltd., also faces an investigation by Macau regulators because of Steve Wynn's  
2 misconduct.

3 104. The Company also faces additional allegations of sexual harassment and abuse by  
4 Steve Wynn. The Nevada Gaming Control Board has been inundated with complaints and tips  
5 regarding Steve Wynn's sexual abuse and harassment. The deluge of information was so intense  
6 that the Nevada Gaming Control Board implemented a new online system to handle such reports.  
7 These additional allegations of misconduct could subject the Board and Steve Wynn to further  
8 liability and further damage the Company's already tarnished reputation.

9 **VI. DERIVATIVE ALLEGATIONS**

10 105. Plaintiff brings this action derivatively in the right and for the benefit of Wynn  
11 Resorts to redress injuries suffered, and to be suffered, by Wynn Resorts as a direct result of  
12 breach of fiduciary duties by Defendants. Wynn Resorts is named as a Nominal Defendant solely  
13 in a derivative capacity.

14 106. Plaintiff will adequately and fairly represent the interests of Wynn Resorts in  
15 enforcing and prosecuting its rights.

16 107. Plaintiff was a stockholder of Wynn Resorts at the time of the wrongdoing  
17 complained of, has continuously been a stockholder since that time, and is a current stockholder of  
18 Wynn Resorts.

19 108. The Board of Wynn Resorts currently consists of Wayson, Hagenbuch, Irani,  
20 Johnson, Miller, Mulroy, Randt, Shoemaker, and Virtue. Plaintiff has not made a demand on the  
21 Board to pursue this Action because such demand would be futile. The Wynn Resorts Board is  
22 one of the least scrutinizing boards of a major public company and is routinely criticized for its  
23 poor governance. Further, each of the Director Defendants is liable for violating his or her  
24 fiduciary duties by failing to act in the face of Steve Wynn's known sexual abuse and harassment,  
25 acting to conceal Steve Wynn's pattern of sexual harassment and abuse, and failing to implement  
26 internal controls to ensure that the Board would be informed promptly of any sexual misconduct  
27 by Steve Wynn or others. The Director Defendants are also beholden to Steve Wynn for their  
28

1 highly lucrative directorships, and have significant personal and financial ties to him, thereby  
2 preventing them from independently and objectively considering a demand in this Action.

### 3 **VII. DEMAND FUTILITY ALLEGATIONS**

#### 4 **A. Steve Wynn has Wielded Extraordinary Power over the Most Compliant** 5 **Board of Any Major Public Company**

6 109. According to former Board member, Elaine Wynn, the Wynn Resorts Board is “the  
7 most compliant board of any major public company” and has only voted against Steve Wynn’s  
8 position on three occasions since the Company went public in 2002. The Economist has noted  
9 that, “[a]s with Harvey Weinstein and The Weinstein Company, Steve Wynn’s control over Wynn  
10 Resorts is viewed as near-absolute.”

11 110. The Board remains compliant for good reason. First, the Amended and Restated  
12 Stockholders Agreement, dated January 6, 2010 (“Stockholders Agreement”), provided Steve  
13 Wynn with substantial rights to nominate a majority of the Board and virtually guarantee their  
14 election. Due to the previous takeover of Mirage Resorts, Steve Wynn structured the Stockholders  
15 Agreement to create a Board with staggered terms, preventing the possibility that a single proxy  
16 vote could replace the entire Board. Pursuant to the Stockholders Agreement, Steve Wynn packed  
17 the Wynn Resorts Board with directors who were personally loyal to him. Steve Wynn’s  
18 unilateral ability to nominate and re-nominate Board members and substantially influence the vote  
19 gives him significant power over each nominee. Further, Directors nominated by Steve Wynn  
20 receive substantial monetary incentives – amounting to millions of dollars, not just from high  
21 annual fees, but in enormous stock options and other compensation. Underscoring Steve Wynn’s  
22 control over the Board, every director who has run for election or re-election has been unopposed,  
23 with the notable exception of Elaine Wynn in 2015.

24 111. Second, Steve Wynn retaliates against any board member who crosses him or  
25 threatens his dominance of the Company. In January 2010, Steve Wynn and his wife of 46 years,  
26 Elaine Wynn, divorced. Pursuant to the divorce agreement, Elaine Wynn, who was a co-founder  
27 of the Company and was, at the time, a Board member, received approximately 9% of the  
28 Company stock from Steve Wynn. The divorce agreement placed certain restrictions on both

1 Wynns from selling any shares of the Company without the other's consent and required them to  
2 vote in concert. As a result of Elaine Wynn's receipt of approximately 9% of Company stock  
3 from Steve Wynn, Steve Wynn's partner, Kazuo Okada, became the largest stockholder, owning  
4 approximately 20% of Company stock.

5 112. In litigation commenced in 2012, Mr. Okada claims that Steve Wynn crafted a plan  
6 to oust Okada from the Board and to force the Company to redeem Okada's shares pursuant to the  
7 unsuitability provisions of the Company's Articles. The Company, purportedly at Steve Wynn's  
8 behest, commenced a sham investigation into Okada's alleged bribing of Philippine government  
9 authorities as a pretext to oust Okada. In reality, Steve Wynn commandeered his compliant board  
10 into getting rid of Okada to protect Wynn's dominance over the Company regardless of the  
11 outcome of the sham investigation. All of Wynn Resorts' Board members in place at the time  
12 voted in favor of removing Okada from the Board and redeeming his shares. The resulting  
13 lawsuit, styled *Wynn Resorts, Ltd. v. Okada et al.*, No. A-12-656710-B (Clark County, Nevada) is  
14 ongoing and potentially exposes the Company to enormous liability. On February 5, 2018, relying  
15 on a sealed document allegedly showing that several Board members intended to oust Okada well  
16 before the conclusion of the Board's investigation, the Court ruled that Okada could bring claims  
17 against several Board members who voted to oust him.

18 113. As part of the power struggle stemming from the Wynns' divorce, in 2012, Elaine  
19 Wynn filed a counterclaim against Steve Wynn in the *Okada* action, seeking to free herself from  
20 restrictions on the control of her estimated \$1.9 billion of Wynn Resorts stock. She also  
21 challenged Steve Wynn by asking governance related questions, including the appropriateness of  
22 the \$7.5 million settlement payment to the alleged sexual assault victim that Steve Wynn allegedly  
23 assaulted on Company property. In response, in 2015, Steve Wynn persuaded the Board in place  
24 at the time not to re-nominate Elaine Wynn to the Board, instead decreasing the size of the Board  
25 by one and removing her position. The entire Board acquiesced, despite the fact that Elaine Wynn  
26 had co-founded Wynn Resorts and was its third-largest shareholder. Elaine Wynn launched a  
27 proxy fight in an effort to have Company stockholders vote her into an open Board seat, but lost  
28 that fight on April 24, 2015.

1           114. On March 28, 2016, Elaine Wynn amended her counterclaim in the *Okada* action to  
2 allege, among other things, that Steve Wynn “engaged in alleged misconduct on Company  
3 property against at least one Company employee serious enough to warrant a multimillion dollar  
4 payment[,]” that he “had used Company resources to conceal the allegations[,]” and that he  
5 exercises complete control over the Board and retaliates against anyone who crosses him.  
6 Remarkably, confirming their unwavering loyalty to Steve Wynn, the Board issued a press release  
7 on March 28, 2016, the same day Elaine Wynn filed her counterclaim, dismissing the allegations  
8 out of hand and stating, in relevant part, that “Elaine Wynn’s latest claims are consistent with the  
9 falsehoods and distortions she previously made against the Company and its CEO Steve Wynn[,]”  
10 and that “Ms. Wynn’s latest allegations regarding our Board, its composition and its independence  
11 are simply not true and are rehashed from her previous, unfounded statements made during her  
12 proxy campaign.” The Board further stated “[a]s a leader in a highly regulated industry, Wynn  
13 Resorts prides itself on transparency and full disclosure to regulators and shareholders.  
14 Allegations made by Ms. Wynn that the company would hide any relevant activities from our  
15 regulators are patently false.”

16           115. An attorney representing a party to the *Okada* suit stated that “[t]he Wynn board  
17 will pull out all the stops to go after, to attack anyone opposed to Steve Wynn, like Mr. Okada and  
18 Ms. Wynn. But when it comes to Steve Wynn and his friends, the board does nothing.”

19           116. Due to Steve Wynn’s power, the Board consistently chooses not to investigate or  
20 even inquire into any subjects that could limit Steve Wynn’s lavish lifestyle or spending of  
21 corporate assets, despite their fiduciary obligation to do so. For example, the Board has never  
22 seriously assessed Steve Wynn’s spending of corporate assets on himself. As Elaine Wynn  
23 alleged in court documents, “on no occasion did the Audit Committee of the Board ever  
24 investigate or even conduct an in-depth review of the Company’s internal controls governing such  
25 large expenditures” – a fleet of jets for Steve Wynn, his incredibly lavish lifestyle – and “*there is*  
26 *evidence of regular shredding of audit committee materials and notes.*” (emphasis added). In  
27 2013, the Company allowed Steve Wynn to purchase any of the Company’s aircraft in exchange  
28 for giving up an option to buy 2 acres of land on Wynn Resorts’ golf course. The Company leases

1 Steve Wynn’s personal art for *\$1 a year*, paid to Steve and Elaine Wynn, while picking up the cost  
2 of insurance, security, and taxes. In 2016, Steve Wynn received over \$28 million in compensation  
3 from Wynn Resorts and, over the past five years, his compensation totaled over \$111 million.  
4 None of this has ever been questioned by the Board.

5 117. All of this contributes to Wynn Resorts being ranked as one of the worst U.S.  
6 public companies in terms of corporate governance. As *The Wall Street Journal* has observed, the  
7 Wynn Resorts Board is “widely viewed as lacking independence,” which is “one of the many  
8 reasons that Wynn Resorts ranks last in corporate governance among 108 companies in the  
9 gambling and casino business, according to Sustainalytics.” Last year, Institutional Shareholder  
10 Services, Inc., (“ISS”) a proxy advisory firm, gave Wynn Resorts its worst ranking for governance  
11 risk. In 2015, ISS recommended that stockholders withhold support from the two directors  
12 nominated for re-election, citing an “overall corporate governance profile that ranks among the  
13 worst, not the best, of U.S. companies” and stated that the Company suffered from “manifest  
14 failures of governance,” criticized Wynn Resorts’ executive compensation structure, questioned  
15 Steve Wynn’s excessive aircraft use, and questioned the atypical secrecy of the Board. ISS also  
16 highlighted “the inordinately weak succession planning process that has both left Steve Wynn’s  
17 grip on the company so precarious, yet put forth no clear notion of how the 73-year-old corporate  
18 namesake would someday be replaced.”

19 118. Glass Lewis & Co., the second-biggest proxy advisory firm, has also given the  
20 Company poor marks on governance, grading its pay-for-performance practices an “F” the past  
21 two years. Similarly, investors Vanguard Group and BlackRock Inc. both voted against the  
22 Company’s pay package for top executives in 2017, and in 2017 Vanguard voted against the re-  
23 election of Mr. Miller, who is chairman of the Board’s Corporate Governance Committee.

24 119. The Board’s continued compliance and fealty to Steve Wynn is demonstrated by  
25 the Board’s failure to remove or even suspend Steve Wynn when the *Wall Street Journal* article  
26 broke accusing him of paying \$7.5 million to settle an alleged sexual assault and recounting  
27 numerous other instances of sexual abuse and harassment at Wynn Resorts. Instead, the Board  
28



1 allowed Steve Wynn to remain at the helm of the Company and only with a “collective heavy  
2 heart” accepted the resignation of their “beloved leader” and “friend.”

3 120. The terms of Steve Wynn’s severance further demonstrate the Board’s continued  
4 breaches of fiduciary duties and their acquiescence to Steve Wynn’s interests over the Company’s,  
5 as the Director Defendants allowed him to retain his Wynn Resorts’ common stock and provided  
6 for registration rights at some point in the future permitting him to sell his shares. Nor does the  
7 severance agreement provide Wynn Resorts any clawback rights for compensation improperly  
8 paid to Steve Wynn.

9 **B. The Board Cannot Impartially Consider a Demand Because the Director**  
10 **Defendants are Subject to Liability for Failing to Act in the Face of Mr. Wynn’s**  
11 **Pervasive Pattern of Sexual Harassment and Abuse**

12 121. Demand is futile as to the entire Board because, as detailed herein, all Director  
13 Defendants violated their fiduciary duties by knowingly and intentionally failing to act in light of  
14 Steve Wynn’s known sexual misconduct, thereby abdicating their duty of oversight and subjecting  
15 themselves to liability. As detailed herein, the entire Board knew of credible allegations of  
16 misconduct against Steve Wynn by, at the very latest, March 28, 2016, when Elaine Wynn  
17 amended her counterclaim in the *Okada* action to include allegations regarding the 2005 assault.  
18 The Director Defendants failed to take any action to investigate the allegations, stop Steve Wynn  
19 from continuing to engage in sexual misconduct, or to implement any meaningful changes to the  
20 Company’s internal controls regarding the Company’s sexual harassment and abuse reporting  
21 practices and policies. Indeed, as detailed herein, there is no indication the Board – which has  
22 been described as the most compliant board of any major public company – would have ever taken  
23 action in response to Steve Wynn’s pervasive sexual harassment and abuse against Wynn Resorts  
24 employees had the *Wall Street Journal* article not been published. The Board’s intentional and  
25 knowing decision to protect Steve Wynn and therefore enable his pervasive harassment exposes  
26 all Director Defendants to liability, rendering the Board incapable of impartially considering a  
27 demand. Thus, demand is futile and therefore excused as to all Director Defendants.

28 122. Demand is futile and therefore excused as to the entire Board for the additional  
reason that the Director Defendants breached their fiduciary duties by knowingly and intentionally

1 violating or aiding in the violation of Nevada, Massachusetts, and Macau gaming laws and  
2 regulations, exposing the Company to substantial risks and subjecting the Company to additional  
3 liability to regulatory authorities. Because, as explained in detail above, Macau law provides for  
4 continuous suitability monitoring for all stockholders holding 5% or more of a gaming company,  
5 and because the Director Defendants have allowed Steve Wynn to retain his 11.8% holdings in the  
6 Company – representing an 8.5% ownership share of Wynn Macau – the Director Defendants  
7 continue to breach their fiduciary duties by putting the Company’s Macau business in jeopardy.  
8 Moreover, the Director Defendants’ failure to act in light of credible accusations of a longstanding  
9 pattern of sexual abuse and harassment by Steve Wynn has exposed the Director Defendants  
10 themselves to suitability reviews under Nevada, Massachusetts, and Macau law, exposing the  
11 Company to substantial risk and thus rendering the Director Defendants further unable to  
12 impartially consider a demand. Further, the Board is incapable of impartially considering a  
13 demand because a majority of its members failed to disclose the 2005 assault and Steve Wynn’s  
14 other misconduct to the MGC, potentially rendering them unsuitable under Massachusetts gaming  
15 regulations. Demand is futile and therefore excused as to the entire Board for the additional  
16 reason that the Director Defendants breached their fiduciary duties by knowingly and intentionally  
17 violating the Company’s Code and signing false acknowledgements on an annual basis.

18       123. Demand is futile and therefore excused as to the Audit Committee Defendants for  
19 the additional reason that the Audit Committee Defendants breached their fiduciary duties by  
20 knowingly and intentionally violating the Company’s Audit Committee Charter, subjecting the  
21 Audit Committee Defendants to additional liability.

22       **C. Demand is Excused Because a Majority of the Board is Liable for Insider**  
23       **Trading while in Possession of Material Non-Public Information about Steve Wynn’s**  
24       **Pattern of Sexual Harassment and Abuse**

25       124. Demand is excused for the additional reason that a majority of Board members face  
26 potential liability for breaching their fiduciary duty of loyalty and engaging in significant improper  
27 insider selling. Defendants Hagenbuch, Mulroy, Randt, Shoemaker, and Wayson, who together  
28 constitute a majority of the nine-member board, collectively sold over 58,000 shares of Wynn  
Resorts common stock for proceeds of over \$6.36 million. These stock sales were made at a time

1 when these Defendants were in possession of material non-public knowledge concerning Steve  
2 Wynn's pattern of sexual abuse and harassment and his suitability for gaming licenses. By  
3 disclaiming any allegations against Steve Wynn and continuing to represent his suitability to  
4 gaming regulators, these directors, in violation of their fiduciary duties, were able to capitalize on  
5 Wynn Resorts' artificially inflated stock price by selling massive amounts of Wynn Resorts  
6 common stock on the open market. Given Hagenbuch, Mulroy, Randt, Shoemaker, and Wayson's  
7 participation in improper insider selling and their exposure to potential individual financial  
8 liability, they are not disinterested and cannot exercise independent judgment on the issue of  
9 whether Wynn Resorts should prosecute this Action.

10 **D. Demand is Excused Because the Director Defendants Lack Independence from**  
11 **Steve Wynn**

12 **1. Defendant Randt**

13 125. The Company's 2017 Proxy Statement acknowledges that Defendant Randt is not  
14 an independent director because he does not meet the independence criteria of the NASDAQ  
15 listing standards. Director independence under NASDAQ and under Nevada demand futility law  
16 is virtually identical. Therefore, the Company has effectively conceded that demand is futile as to  
17 Defendant Randt. In 2016, Wynn Resorts paid Randt \$327,302 in total compensation. As of  
18 March 2017, Defendant Randt held 12,559 shares of Wynn Resorts stock, valued at over \$2  
19 million based on Wynn Resorts' current market price

20 **2. Defendant Wayson**

21 126. Steve Wynn's relationship with Defendant Wayson is so close they are practically  
22 family. Defendant Wayson has publicly described Steve Wynn as a "friend" and a "beloved  
23 leader and visionary."

24 127. Defendant Wayson and Steve Wynn have known each other for nearly 60 years,  
25 and the Wynns and the Waysons have longstanding family connections dating back to the 1950s,  
26 when Steve Wynn and Defendant Wayson's fathers operated a bingo hall, Wayson's Bingo,  
27 together in Maryland. Indeed, in the 1960s, Steve Wynn got his start as a gambling operator at  
28 Wayson's Bingo.

1 128. Further, Steve Wynn and Defendant Wayson have worked together at Wynn-  
2 controlled entities since 1984, when Wayson served as President and CEO of Steve Wynn’s  
3 Golden Nugget in Atlantic City until 1987. From 1987 to 2000, Defendant Wayson served as a  
4 director of Steve Wynn’s Mirage Resorts.

5 129. Steve Wynn also has deep connections to Defendant Wayson’s late brother and  
6 sister. Defendant Wayson’s brother, Edward Wayson, was Steve Wynn’s legal advisor for many  
7 years and Wynn Resorts was a lobbying client of Edward’s. Reports described Edward and Steve  
8 Wynn as “close friends.” Further, Defendant Wayson’s sister, Sarah Wayson, previously worked  
9 as a spokeswoman for Wynn Resorts.

10 130. Since joining the Company’s Board in 2003, Wayson has repeatedly done Steve  
11 Wynn’s bidding at substantial personal profit. During the time he served on the Board, Wayson  
12 has received millions of dollars in fees and stock awards, and, as of March 2017, not including  
13 stock he has sold during his tenure on the Board, he owned 271,067 Company shares valued at  
14 over \$44.5 million based on Wynn Resorts’ current market price. He has never voted against  
15 Steve Wynn on any issue and was repeatedly nominated for re-election without any opposition.

16 **3. Defendant Mulroy**

17 131. Defendant Mulroy and Steve Wynn have known each other for nearly 30 years.  
18 Defendant Mulroy, the former General Manager of Las Vegas Valley Water District and Southern  
19 Nevada Water Authority, has been referred to as Las Vegas’ “water czar” and “water empress”  
20 and has been credited with transforming Las Vegas’ water usage. In 1991, Defendant Mulroy  
21 declared a moratorium on new water permits in Las Vegas. As a result, Steve Wynn “summoned  
22 her into his Las Vegas office and asked, in Mulroy’s words, what exactly she was up to.”  
23 Defendant Mulroy explained, “he wanted to know what the hell was going on.” Soon after that  
24 meeting, Defendant Mulroy lifted the moratorium and never issued another one. Wynn went on to  
25 develop The Mirage, Treasure Island, and Bellagio resorts (all of which he later sold), as well as  
26 Wynn Las Vegas and Encore. Reports also indicate that Steve Wynn gave Defendant Mulroy  
27 \$100,000 for water conservation projects and told her to “go up and down the strip and have them  
28 [other casinos] match me.”

1           132. Prior to joining Wynn’s Board, Defendant Mulroy requested an ethics opinion from  
2 the Nevada Commission on Ethics (the “Ethics Commission”) because she was a member of the  
3 Nevada Gaming Commission (the “Gaming Commission”) and state law requires a one year  
4 “cooling-off” period before a member of the Gaming Commission can accept employment with a  
5 licensed gaming company. The 2015 ethics opinion concluded that Defendant Mulroy could serve  
6 on the Board without satisfying the one year cooling-off period because she had not been privy to  
7 proprietary, confidential, or sensitive information about Wynn Resorts during her tenure on the  
8 Gaming Commission. The ethics opinion drew the ire of one state senator, who said the Ethics  
9 Commission “abandoned its duty by voting to allow Mulroy to avoid the one-year-waiting  
10 period.” Further, just two months before being elected to the Board, Defendant Mulroy, in her  
11 capacity on the Gaming Commission, voted favorably on a matter involving Wynn Resorts.  
12 Specifically, Defendant Mulroy voted with four other Gaming Commission members to approve a  
13 technical language change in Wynn Resorts’ orders of registration which cover the Company’s  
14 Las Vegas properties and the planned hotel in Massachusetts.

15           133. According to the ethics opinion, Steve Wynn contacted Defendant Mulroy directly  
16 on August 12, 2015, to determine if she would consider joining the Board. Since joining the  
17 Board, Defendant Mulroy has repeatedly done Steve Wynn’s bidding at substantial personal  
18 profit. During the relatively short time she has served on the Board, she has received millions of  
19 dollars in fees and stock awards, and, as of March 2017, not including stock she has sold during  
20 her tenure on the Board, she owned 12,559 Company shares valued at over \$2 million based on  
21 Wynn Resorts’ current market price. She has never voted against Steve Wynn on any issue.

#### 22                           **4. Defendant Hagenbuch**

23           134. Defendant Hagenbuch was placed on the Board by Steve Wynn directly after Steve  
24 Wynn eliminated Elaine Wynn’s seat. Hagenbuch’s “candidacy did not arise from a search by the  
25 Nominating and Corporate Governance Committee but rather was initiated by Steve [Wynn]  
26 himself.” As a handpicked director of Steve Wynn, Defendant Hagenbuch cannot impartially  
27 consider a decision to sue Steve Wynn. Indeed, Elaine Wynn, co-founder of Wynn Resorts and  
28 former long-time director, wrote to investors that Defendant Hagenbuch’s “close ties to Steve do

1 not make him well-suited to act with the kind of independence I have been able to demonstrate.”  
2 Hagenbuch and Steve Wynn became friends after meeting one another near Ketchum, Idaho,  
3 where they both own homes.

4 135. Indeed, since joining the Company’s Board in 2012, Hagenbuch has repeatedly  
5 done Steve Wynn’s bidding at substantial personal profit. During the time he served on the Board,  
6 he has received millions of dollars in fees and stock awards, and, as of March 2017, not including  
7 stock he has sold during his tenure on the Board, he owned 27,535 Company shares valued at over  
8 \$4.5 million based on Wynn Resorts’ current market price. He has never voted against Steve  
9 Wynn on any issue and was repeatedly nominated for re-election without any opposition.

10 136. Moreover, Hagenbuch’s loyalty to Steve Wynn is such that he is willing to risk his  
11 reputation rather than risk crossing Steve Wynn: as a member of the Wynn Resorts Compensation  
12 Committee, Defendant Hagenbuch has helped protect Steve Wynn’s outrageous compensation and  
13 corporate self-spending by voting in favor of Steve Wynn’s pay packages and other remuneration,  
14 even while Defendant Hagenbuch himself was facing incredible scrutiny for those decisions, and  
15 he thus “bore ‘direct responsibility’” for compensation issues at the Company – issues that he  
16 helped create through his role as a member of the Compensation Committee and loyalty to Steve  
17 Wynn.

## 18 5. Defendant Virtue

19 137. Defendant Virtue has financial and business ties with Steve Wynn and two former  
20 Wynn Resorts Board members. In February 2003, Defendant Virtue formed MidOcean Partners,  
21 in which Steve Wynn (as well as then-current directors Elaine Wynn and Marc Schorr) invested.  
22 Virtue formed MidOcean Partners as part of a management buyout of 80% of DB Capital,  
23 Deutsche Bank’s private equity arm. Deutsche Bank, where Virtue had been head of Corporate  
24 Investments until the buy-out, retained a 20% interest in MidOcean Partners’ portfolio, and played  
25 a critical role in financing for Wynn Resorts.

26 138. One of the conditions of Defendant Virtue joining the Board was for other Wynn  
27 Resorts insiders to close certain accounts at MidOcean that generated fees for Defendant Virtue.

28

1 After closing the accounts, Virtue was granted options for 10,000 shares of Wynn Resorts, valued  
2 at over \$1 million – before he even served for any reasonable time on the Board.

3 139. Additionally, Wynn Resorts received financing from Deutsche Bank and its  
4 affiliates while Defendant Virtue was employed with Deutsche Bank and DB Capital Partners  
5 from June 1999 to February 2003. During that timeframe, Deutsche Bank Trust Company  
6 Americas, an affiliate of Deutsche Bank Securities Inc., was the administrative agent under a  
7 \$1.05 billion credit facility entered into by Wynn Las Vegas, LLC and certain of its subsidiaries  
8 on October 20, 2001.

9 140. In an April 2015 proxy fight, Steve Wynn supported Defendant Virtue for re-  
10 election over Elaine Wynn. Virtue was ultimately reelected, and Elaine Wynn lost her seat on the  
11 Board.

12 141. Since joining the Company’s Board in 2002, Virtue has repeatedly done Steve  
13 Wynn’s bidding at substantial personal profit. During the time he served on the Board, he has  
14 received millions of dollars in fees and stock awards, and, as of March 2017, not including stock  
15 he has sold during his tenure on the Board, he owned 21,385 Company shares valued at over \$3.5  
16 million based on Wynn Resorts’ current market price. He has never voted against Steve Wynn on  
17 any issue and was repeatedly nominated for re-election without any opposition.

18 142. Further, according to reports, before joining the Board, Defendant Virtue managed  
19 money for the Wynn family, further demonstrating his material financial ties to Steve Wynn and  
20 his inability to impartially consider a demand.

21 **6. Defendant Shoemaker**

22 143. Defendant Shoemaker and Steve Wynn have a longstanding relationship. From  
23 1986-1994, Shoemaker served with Steve Wynn on the University of Pennsylvania Board of  
24 Trustees. Both Steve Wynn and Defendant Shoemaker are graduates of the University of  
25 Pennsylvania.

26 144. Since joining the Company’s Board in 2002, Shoemaker has repeatedly done Steve  
27 Wynn’s bidding at substantial personal profit. During the time he served on the Board, he has  
28 received millions of dollars in fees and stock awards, and, as of March 2017, not including stock

1 he has sold during his tenure on the Board, he owned 38,637 Company shares valued at over \$6.3  
2 million based on Wynn Resorts' current market price. He has never voted against Steve Wynn on  
3 any issue and was repeatedly nominated for re-election without any opposition.

#### 4 **7. Defendant Miller**

5 145. Steve Wynn's longstanding relationship with Defendant Miller strongly supports  
6 the inference that Steve Wynn has the ability to control Defendant Miller. Miller is the former  
7 Governor of the State of Nevada, serving from 1989 to 1999. Multiple accounts support the  
8 conclusion that Steve Wynn played a significant role in Miller's political success. For example,  
9 Miller's 1994 primary challenger, Las Vegas Mayor Jan Laverty Jones, said that in 1993 Steve  
10 Wynn "tried to discourage her" from challenging Miller in a primary. When she reminded Steve  
11 Wynn that she and him had been friends for a long time, he replied saying, "yes, and we will  
12 continue to be [friends] unless you run against Bob Miller." Jones eventually lost to Miller by a  
13 wide margin in the primary. Thirteen of the fifteen top contributors to Miller's 1994 re-election  
14 campaign were mostly Las Vegas-based casino companies or their top executives. Steve Wynn  
15 alone donated \$70,000, exploiting a loophole in the state law limiting any corporation's gift to  
16 \$20,000 by spreading separate donations across four subsidiaries. Ultimately, the gaming industry  
17 as a whole accounted for 54% and 43% of Miller's gubernatorial campaign funds in 1990 and  
18 1994 runs, respectively. Miller ultimately won the 1994 gubernatorial election.

19 146. In 1997, Defendant Miller testified at a trial in a libel case Steve Wynn had brought  
20 against the author of an unauthorized biography. In his testimony, Miller described himself as "a  
21 23 year old friend of Wynn's." Defendant Miller and Steve Wynn's close relationship thus dates  
22 back nearly 45 years.

23 147. On February 4, 2013, the Nevada Gaming Control Board informed Wynn Resorts it  
24 had concluded its investigation of certain allegations made by Okada and found no violations of  
25 the Nevada Gaming Control Act or Gaming Commission Regulations. At the time, Joseph A.  
26 Brown was a member of the Nevada Gaming Control Board Gaming Commission and the  
27 Director of the Jones Vargas law firm and President of Jones Vargas from 1992 to 2012.  
28 Defendant Miller was a partner at Jones Vargas from 2000 to 2005.



1           148. On March 12, 2013, Miller’s book, Son of a Gambling Man: My Journey from a  
2 Casino Family to the Governor’s Mansion, was published. The book details how Miller’s son,  
3 Ross Miller, “went to see Steve Wynn for his help in his first campaign for secretary of state . . . .”  
4 Wynn provided the requested help to Ross Miller, including through campaign contributions.  
5 Wynn Las Vegas contributed \$15,000 to Ross Miller’s campaign from 2006 to 2010. Wynn  
6 Resorts contributed \$25,799 from 2006 to 2012 and was the single largest contributor to the  
7 campaign during that time period.

8           149. Since joining the Company’s Board in 2002, Miller has repeatedly done Steve  
9 Wynn’s bidding at substantial personal profit. During the time he served on the Board, he has  
10 received millions of dollars in fees and stock awards, and, as of March 2017, not including stock  
11 he has sold during his tenure on the Board, he owned 38,637 Company shares valued at over \$6.3  
12 million based on Wynn Resorts’ current market price. He has never voted against Steve Wynn on  
13 any issue and was repeatedly nominated for re-election without any opposition.

14                           **8. Defendant Irani**

15           150. Defendant Irani has been a member of the Wynn Resorts Board since October  
16 2007. Since that time, Irani has repeatedly done Steve Wynn’s bidding at substantial personal  
17 profit. During the time he served on the Board, he has received millions of dollars in fees and  
18 stock awards, and, as of March 2017, not including stock he has sold during his tenure on the  
19 Board, he owned 91,137 Company shares valued at nearly \$15 million based on Wynn Resorts’  
20 current market price. He has never voted against Steve Wynn on any issue and was repeatedly  
21 nominated for re-election without any opposition.

22           151. Irani has further profited from his relationship with Steve Wynn. From at least  
23 October 31, 2007, to March 21, 2012, Irani served as a Director of TCW Group, Inc., a subsidiary  
24 of SociétéGénérale, a company that was instrumental in arranging and providing funding to Wynn  
25 Resorts for its Macau facilities. For example, SociétéGénérale served as the lead arranger for  
26 Wynn Macau’s \$1.55 billion financing in June 2007.

27           152. Irani’s loyalty to Steve Wynn is such that he is willing to risk his reputation rather  
28 than risk crossing Steve Wynn: as a board member, Irani did nothing to stop Steve Wynn’s

1 outrageous compensation and corporate self-spending, even after Defendant Irani himself was  
2 ousted in 2013 from his own company, Occidental Petroleum, after being criticized for excessive  
3 pay which was characterized as a “corporate giveaway program.”

4 **9. Defendant Johnson**

5 153. Defendant Johnson has been a member of the Wynn Resorts Board since August  
6 2016. Since that time, Johnson has repeatedly done Steve Wynn’s bidding at substantial personal  
7 profit. During the time he served on the Board, he has received substantial compensation, and, as  
8 of March 2017, not including stock he has sold during his tenure on the Board, he owned 10,000  
9 Company shares valued at \$1.66 million based on Wynn Resorts’ current market price. He has  
10 never voted against Steve Wynn on any issue.

11 **FIRST CLAIM FOR RELIEF**  
12 **(Breach of Fiduciary Duty Against Director Defendants)**

13 154. Plaintiff incorporates by reference and realleges each and every allegation  
14 contained above, as though fully set forth herein.

15 155. Defendants each owe Wynn Resorts and its stockholders the highest fiduciary  
16 duties of loyalty, good faith, fair dealing, due care, candor, and oversight in managing and  
17 administering the Company’s affairs.

18 156. Defendants knowingly, intentionally, and fraudulently violated and breached their  
19 fiduciary duties of good faith, fair dealing, loyalty, due care, candor, and oversight as a result of  
20 the misconduct described above.

21 157. Defendants have a duty to the Company and its stockholders to establish and  
22 maintain adequate internal controls to ensure the Company was operated in a prudent and lawful  
23 manner. Defendants have an affirmative obligation to maintain an internal control system to  
24 uncover wrongdoing and to act when informed of wrongdoing. Moreover, the Defendants have an  
25 obligation to ensure that, at all times, the Company, its officers and directors act in compliance  
26 with the law as detailed herein. The Defendants engaged in a sustained and systematic failure to  
27 properly exercise their fiduciary duties. Among other things:

- 1 (a) Defendants breached their fiduciary duties by failing to ensure that Wynn Resorts  
2 had adequate internal controls, risk management procedures and other policies to  
3 prevent its officers and directors from engaging in sexual misconduct in the  
4 workplace and creating an abusive workplace environment in violation of federal  
5 and state laws and regulations, and Wynn Resorts' Code;  
6 (b) Defendants breached their duties by concealing the abusive workplace environment  
7 that allowed Steve Wynn's sexual misconduct to continue unimpeded for years;  
8 and  
9 (c) Defendants breached their fiduciary duties by violating the Company's Corporate  
10 Governance Guidelines, Code of Business Ethics and other duties required of  
11 Board members as set forth in the Audit Committee Charter, Articles of  
12 Incorporation and other corporate governance documents.

13 158. Defendants each knowingly, intentionally, or fraudulently approved the issuance of  
14 false statements that misrepresented and failed to disclose material information concerning the  
15 Company in violation of their fiduciary duties. These actions could not have been a good faith  
16 exercise of prudent business judgment to protect and promote the Company's corporate interests.

17 159. As a direct and proximate result of Defendants' breaches of their fiduciary duties,  
18 Wynn Resorts has sustained significant damages in excess of \$15,000, including damages to its  
19 stock price and market capitalization, and suffered damage to its corporate image and goodwill.  
20 Damages also include, among other things, the cost of defending Wynn Resorts against  
21 government investigations and the penalties, fines and other liabilities and expenses associated  
22 with those investigations including the potential loss or denial of gaming licenses. As a result of  
23 the misconduct alleged herein, Defendants are liable to the Company and their continuing  
24 violations of duty should be enjoined.

25 **SECOND CLAIM FOR RELIEF**  
26 **(Unjust Enrichment Against All Defendants)**

27 160. Plaintiff incorporates by reference and realleges each and every allegation  
28 contained above as though fully set forth herein.

161. By their wrongful acts and omissions, Defendants were unjustly enriched at the  
expense, and to the detriment, of Wynn Resorts and its stockholders.



1 pattern of sexual harassment and abuse in violation of Wynn Resorts' Code and various laws and  
2 regulations.

3 170. As a result of the intentional misconduct alleged herein, Defendant Sinatra is liable  
4 to the Company for damages in excess of fifteen thousand dollars (\$15,000.00), resulting directly  
5 and proximately from her breached of fiduciary duty.

6 **FOURTH CLAIM FOR RELIEF**  
7 **(Derivative Claim for Insider Trading Against Insider Trading Defendants)**

8 171. Plaintiff incorporates by reference and realleges each and every allegation  
9 contained above, as though fully set forth herein.

10 172. The Selling Defendants owed and owe fiduciary duties to the Company to disclose  
11 material information to the Company's shareholders and to refrain from using non-public material  
12 information in connection with trading their personal holdings of Wynn Resorts stock.

13 173. The Selling Defendants knew and understood but concealed the following non-  
14 public material facts: (1) that Steve Wynn had engaged in sexual misconduct with a Wynn  
15 Resorts' employee in 2005, resulting in a multimillion dollar settlement, and created a hostile  
16 workplace environment due to an ongoing pattern of sexual harassment and abuse of Wynn  
17 Resorts' employees; (2) Steve Wynn's misconduct placed the Company's gaming licenses at risk  
18 due to possible findings of "unsuitability" by gaming regulators; (3) Defendants concealed these  
19 facts from the public, regulators, and stockholders and publicly and falsely stated that any  
20 allegations of misconduct against Steve Wynn and the Board were untrue; and (4) the Selling  
21 Defendants omitted material information about these matters from their public filings.

22 174. This information was proprietary, non-public information concerning the  
23 Company's business, operations, corporate governance, and regulatory issues. As demonstrated  
24 by the reaction of the market to the *Wall Street Journal* article, this information was not previously  
25 available or widely disseminated to the public. It was proprietary information belonging to the  
26 Company, which the Selling Defendants used for their own benefit when they sold Wynn Resorts  
27 stock during the Relevant Period.

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20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 THOMAS P. DiNAPOLI, COMPTROLLER  
OF THE STATE OF NEW YORK, AS  
23 ADMINISTRATIVE HEAD OF THE NEW  
YORK STATE AND LOCAL RETIREMENT  
24 SYSTEMS AND TRUSTEE OF THE NEW  
YORK STATE COMMON RETIREMENT  
25 FUND, derivatively on behalf of WYNN  
RESORTS, LTD.,  
26

27 Plaintiff,  
28

Case No.:  
Dept. No.:

**VERIFICATION OF NANCY G.  
GROENWEGEN IN SUPPORT OF  
DERIVATIVE COMPLAINT OF  
THOMAS P. DiNAPOLI,  
COMPTROLLER OF THE STATE OF  
NEW YORK, AS ADMINISTRATIVE  
HEAD OF THE NEW YORK STATE AND  
LOCAL RETIREMENT SYSTEMS AND**



