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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

21 **IN RE WYNN RESORTS, LTD.**  
22 **DERIVATIVE LITIGATION**

**Lead Case No. A-18-769630-B**

Consolidated with:

A-18-770013-B

A-18-770222-B

A-18-770578-B

A-18-771162-B

A-19-795981-B

Dept. No.: XVI

**NOTICE OF ENTRY OF FINAL  
JUDGMENT AND ORDER OF  
DISMISSAL**

1 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:  
2 PLEASE TAKE NOTICE that the **FINAL JUDGMENT AND ORDER OF**  
3 **DISMISSAL** was signed by the Judge on the 9th day of March, 2020 and filed with the Eighth  
4 Judicial District Court on the 10th day of March, a true and correct copy of which is attached  
5 hereto.

6 DATED this 10th day of March, 2020

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8 **SCHULMAN & RABKIN, LLP**

9 By: */s/ Don Springmeyer*

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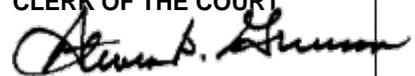
26 *Attorneys for Plaintiffs NYSCRF and the New*  
27 *York Funds*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of March, 2020, a true and correct copy **NOTICE OF ENTRY OF FINAL JUDGMENT AND ORDER OF DISMISSAL** was served by electronically filing with the Clerk of the Court using the Odyssey eFileNV system and serving all parties with an email-address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

By /s/ Christie Rehfeld  
Christie Rehfeld, an Employee of  
WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
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28 **DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

IN RE WYNN RESORTS, LTD.  
DERIVATIVE LITIGATION

Lead Case No. A-18-769630-B  
Dept. No.: XVI

**FINAL JUDGMENT AND ORDER OF DISMISSAL**

1 This matter came before the Court for hearing pursuant to the Order of this Court, dated  
2 December 11, 2019, on the application of the Parties for approval of the Settlement as set forth in  
3 the Stipulation and Agreement of Settlement and Release, dated November 21, 2019, and the  
4 exhibits thereto (the “Agreement”)<sup>1</sup>, and for approval of Lead Counsel’s Motion for an Award of  
5 Attorneys’ Fees and Reimbursement of Litigation Expenses. Due and adequate notice having been  
6 given to stockholders of Wynn Resorts, Ltd. (“Wynn Resorts”) as required in said Order, and the  
7 Court having considered all objections raised, and having considered all arguments made and  
8 papers filed and proceedings had herein, and otherwise being fully informed and good cause  
9 appearing therefore, the Court finds and concludes as follows:

10 **I. BACKGROUND**

11 On November 27, 2019, the Parties filed with the Court their Stipulation and Agreement of  
12 Settlement and Release (“Stipulation”) and the exhibits attached thereto. The Settlement detailed  
13 how counsel and individual representatives for Lead Plaintiffs, Defendants, the Special Litigation  
14 Committee (“SLC”), and the Company engaged in extensive arm’s-length negotiations concerning a  
15 possible settlement of the Action, including retaining JAMS mediator Jed D. Melnick, Esq., and  
16 conducting two full-day mediations complete with briefing from the parties. These efforts ultimately  
17 culminated in the Settlement.

18 On December 4, 2019, the Court held a hearing during which it permitted the parties to issue  
19 Notice of the Settlement and set a schedule for a Final Approval hearing. Although not required by  
20 Nevada law, during the hearing, Lead Counsel presented argument supporting the preliminary  
21 approval factors that courts may consider in granting preliminary approval. These factors include  
22 whether: (1) the settlement arose from non-collusive negotiations; (2) the settlement has any obvious  
23 deficiencies; (3) the settlement improperly prefers the class representatives or other class members;

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26 <sup>1</sup> Capitalized terms have the same meaning as defined in the Agreement.  
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1 and (4) the settlement falls within the range of possible approval. Lead Counsel also explained that  
2 this \$90 million Settlement is, by multiples, the largest derivative settlement in Nevada’s history,  
3 and that Defendant Stephen A. Wynn’s contribution is the second largest individual contribution to a  
4 derivative settlement nationwide.

5         Considering these factors, the Court held that the proposed settlement was fair, reasonable  
6 and adequate, and granted the parties permission to proceed with notice to Wynn Resorts  
7 stockholders of the Settlement, the timeframe for filing objections, and the date of the Final  
8 Approval hearing.

9         On December 12, 2019, the Court issued an Order Regarding Settlement Hearing, Notice and  
10 Related Matters, in which the Court approved the Notice of Pendency of Derivative Action,  
11 Proposed Settlement of Derivative Action, and Settlement Hearing (the “Notice”), and the Summary  
12 Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, and Settlement  
13 Hearing (the “Summary Notice”), and set a schedule for final approval of the Settlement.

14         On January 23, 2020, Lead Plaintiffs filed a Motion for Final Approval of Derivative  
15 Settlement and Lead Counsel filed a Motion for an Award of Attorneys’ Fees and Reimbursement of  
16 Litigation Expenses (the “Motions”). Filed with the Motions was the Declaration of Julie Goldsmith  
17 Reiser, which detailed, among other things, Lead Counsel’s and Liaison Counsel’s considerable  
18 work in the litigation, the extensive risks associated with protracted litigation, and the arms-length  
19 negotiation of the parties culminating in the Settlement. Attached to the Reiser Declaration were  
20 Declarations from the two Lead Plaintiffs, which detailed their significant oversight over the  
21 litigation and Lead Counsel’s time and expenses in the case, and which stated that they were in  
22 support of both the Settlement and Lead Counsel’s Fee and Expense Request.

23         On January 29, 2020, in accordance with the Court’s December 12, 2019 Order, Wynn  
24 Resorts’ counsel filed an affidavit affirming that Wynn Resorts caused full and complete copies of  
25 the Notice to be distributed to all Wynn Resorts stockholders of record on December 19, 2019, and  
26 also caused PR Newswire to issue the Summary Notice on December 13, 2019.

27         On February 12, 2020, the Court held a hearing during which it heard argument on the  
28 Motions for Final Approval of the Settlement and for Lead Counsel’s Fee and Expense Request. The

1 Court also heard argument from two Wynn Resorts’ stockholders who had filed briefs objecting to  
2 final approval of the Settlement, Dustin Gaj (“Gaj”) and Dennis Rosen (“Rosen”).

3 **A. The Terms of the Settlement**

4 The Settlement provides for (i) a \$41 million cash payment to Wynn Resorts, \$21 million of  
5 which will be paid by the Insurers and \$20 million of which will be paid by Stephen A. Wynn; and  
6 (ii) extensive and valuable Corporate Governance Reforms described more fully in the Stipulation  
7 (the “Reforms”). The parties to the Settlement agreed that Lead Plaintiffs’ role in obtaining the  
8 Reforms had a value of \$49 million to the Company.

9 In conjunction with their Motion for Final Approval, Lead Plaintiffs submitted a declaration  
10 from Columbia Law Professor Jeffrey N. Gordon, a well-respected expert on corporate law and  
11 governance (the “Gordon Declaration”). Professor Gordon opined that the Reforms secured in the  
12 Settlement conferred at least \$49 million in value on the Company and, in fact, that valuation likely  
13 significantly understates the impact of the Reforms.

14 In consideration for the valuable terms described above, the parties agreed to release claims  
15 against Wynn Resorts and its present and former officers and directors that could have been asserted  
16 derivatively and arose out of the same events and transactions alleged in Lead Plaintiffs’ complaint,  
17 excluding claims against former Director Elaine Wynn.<sup>2</sup>

18 Each of the interested parties, including counsel to the SLC, agreed to the terms of the  
19 Settlement and signed the Stipulation of Settlement, believing it to be in the best interests of the  
20 Company and fair, reasonable and adequate.

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<sup>2</sup> Section 2.2 of the Stipulation provides a complete description of the Released Claims.

1 **II. ANALYSIS**

2 **A. The Standard for Final Approval**

3 The settlement of a shareholder derivative action requires court approval. *See* Nev. R. Civ. P.  
4 23.1 (“Rule 23.1”). The approval of a proposed settlement is a matter within the sound discretion of  
5 the court. *Velsicol Chem. Corp. v. Davidson*, 811 P.2d 561, 561 (Nev. 1991). Nevada courts,  
6 recognizing that Rule 23.1 is patterned after Rule 23.1 of the Federal Rules of Civil Procedure, have  
7 found that federal authorities and decisions are persuasive in reaching a determination as to whether  
8 to approve a proposed derivative action settlement. *See Meyer v. Eighth Jud. Dist. Ct.*, 110 Nev.  
9 1357, 1363 (Nev. 1994) (noting that Rule 23.1 is “identical to its federal counterpart”).

10 At the final approval stage, the Court determines if the proposed settlement is fair,  
11 reasonable, and adequate and in the best interests of the Company and its stockholders. Rule 23.1;  
12 Nev. Ann. Manual for Complex Litigation §§ 13, 14, & 21.632, .633, & .662 (4th ed. 2016). The  
13 court’s evaluation of a derivative settlement is similar to that applicable when the court evaluates a  
14 settlement of a class action. *See 7 Newberg on Class Actions* §§22.110 (4th ed. 2016).

15 Courts consider, among other factors, the following factors to determine whether this  
16 standard has been met: (1) the amount offered in settlement; (2) the strength of the plaintiffs’ case;  
17 (3) the risk, expense, complexity, and likely duration of further litigation; (4) the experience and  
18 views of counsel; (5) the extent of discovery completed and the stage of the proceedings; (6) the  
19 class members’ reaction to the proposed settlement; and (7) the risk of maintaining the action  
20 throughout the trial. *In re Kitec Fitting Litig.*, No. A493302, 2009 WL 1817622, at \*1 (D. Nev. Mar.  
21 16, 2009) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), *overruled on other*  
22 *grounds by Wal-mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)).

23 **B. The Settlement is Fair, Reasonable and Adequate**

24 **(1) The Settlement Confers Substantial Benefits to the Company and its**  
25 **Shareholders**

26 This hard-fought Settlement provides historic value to Wynn Resorts and its shareholders. It  
27 offers a substantial monetary component to the Company, as well as significant, targeted corporate  
28 governance reforms aimed at preventing the recurrence of the alleged wrongdoing asserted in the

1 Actions. The Settlement is, by a factor of 12, the largest settlement in a derivative action in Nevada,  
2 and it includes the second largest individual contribution by a defendant ever in any derivative  
3 action. It also was approved by the SLC and Lead Plaintiffs. As set forth below, each of the seven  
4 factors set forth in *In re Kitec Fitting Litigation*, independently and taken together demonstrate that  
5 the Settlement is fair, reasonable, and adequate, and that it warrants final approval.

6 **a) The Settlement Provides Substantial Monetary Compensation for**  
7 **Wynn Resorts**

8 The monetary component of the Settlement provides \$41 million dollars in cash to Wynn  
9 Resorts. Of this \$41 million, \$20 million will be paid by Defendant Stephen A. Wynn individually.  
10 The parties have indicated that Stephen A. Wynn’s individual \$20 million contribution is the second-  
11 largest individual contribution made by an individual defendant in the history of derivative litigation.  
12 Notably, objector Gaj concedes that the Settlement contains significant monetary relief.

13 Wynn Resorts will benefit in multiple ways from the \$41 million payment in cash due under  
14 the Settlement. A monetary recovery, standing alone, is a significant benefit and one often not  
15 obtained in a derivative action. The \$20 million individual recovery from Defendant Stephen A.  
16 Wynn is particularly noteworthy because it comes *directly* from his own pocket – not the Company’s  
17 insurers.

18 Objector Rosen claims that this substantial recovery cannot be validly assessed without  
19 comparison to an estimate of the total possible value of the claims. The Court disagrees. No such  
20 comparison is required under the law. Further, given the risks and complexities of this action, any  
21 such number would be highly speculative. However, a reasonable proxy for the value of the claims is  
22 the \$55 million in fines imposed on Wynn Resorts by gaming regulators in connection with the  
23 allegations in this Action. Relative to those fines, the Settlement’s monetary component represents a  
24 recovery of nearly 75% of possible damages. The Court determines that the significance of the  
25 ultimate recovery is not only adequate, but remarkable for Wynn Resorts and its shareholders. This  
26 degree of success is notable in light of the aggressive positions counsel took throughout the litigation  
27 in advocating for their respective clients and the difficult negotiations that led to the monetary  
28 recovery alone.

1                                   **b)     The Settlement Secures Valuable and Extensive Corporate**  
2                                   **Governance Reforms**

3             The Settlement provides for critical corporate governance reforms, including a formal bylaw  
4 change requiring both a split between the CEO and Chairman positions, majority election voting, a  
5 Rule 10b5-1 trading plan and a complete overhaul of the Company’s regulatory compliance and  
6 sexual misconduct policies, procedures and guidelines. These Reforms constitute a meaningful and  
7 substantial benefit to Wynn Resorts and its shareholders.

8             Professor Gordon, a highly regarded expert, evaluated the benefits of these Reforms in his  
9 Declaration to the Court, and credibly concluded that the Reforms confer at least \$49 million-worth  
10 of value on Wynn Resorts and its shareholders, if not far more.

11            The Court, therefore, relies on the sophisticated parties’ agreed-upon valuation, as well as the  
12 insights from the Gordon Declaration, in determining that the Reforms offer significant value to  
13 Wynn Resorts and its shareholders.

14            The Court finds that, contrary to Rosen’s suggestion, Lead Plaintiffs played a crucial role in  
15 securing these Reforms. Lead Plaintiffs – two sophisticated institutional investors with extensive  
16 records of successful shareholder advocacy – sought corporate governance reforms from the outset  
17 of this litigation, including demands for such relief in their initial complaint. Moreover, all parties to  
18 this Settlement, including the SLC, agree that that the Complaint filed by Lead Plaintiffs in this  
19 Action and Lead Plaintiffs’ efforts throughout the litigation were a factor the Company considered  
20 when implementing numerous corporate reforms during the pendency of this Action.

21                                   **c)     The Scope of the Release is Appropriate**

22            Nevada has a well-established and strong public policy favoring settlements. *See Redrock*  
23 *Valley Ranch, LLC v. Washoe Cty.*, 254 P.3d 641, 648 (Nev. 2011). In order to achieve  
24 comprehensive resolutions and to avoid re-litigation of settled issues, Nevada courts routinely  
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1 approve settlements that release claims broader than those asserted in the operative complaint so  
2 long as the broader claims arise out of the same factual predicate underlying the claims in therein.<sup>3</sup>

3 The Court finds that the scope of release in the Settlement is a fair and reasonable exchange  
4 for the considerable benefits the Settlement provides to Wynn Resorts and its shareholders, and  
5 rejects the objectors' arguments to the contrary. The parties are entitled to and negotiated for  
6 complete and final peace, and carving out certain claims – as the Objectors request – would not  
7 provide the Released Parties with the negotiated benefit of the bargain. 6 Newberg on Class Actions  
8 § 18:20 (5th ed.) (“[a] defendant may be unlikely to settle a class action if class members can later  
9 pursue unasserted claims, or claims against non-parties, that may have the effect of re-opening the  
10 litigation.”). According to Defendants, there would not have been a settlement without the release as  
11 drafted.

12 Objector Gaj argues incorrectly, that the parties cannot release his federal Section 14(a) of  
13 the Securities Exchange Act of 1934 claim. There is no *per se* bar on releasing related federal claims  
14 in a Nevada state court action, and state courts routinely approve settlements releasing federal claims  
15 that would otherwise be outside of their jurisdiction. *See, e.g., Trunkbow Int'l Holdings Ltd.*  
16 *S'holders' Litig.*, No. 12A671652, 2014 WL 8239767, at \*2 (Nev. Dist. Ct. Clark Cty. Dec. 23,  
17 2014) (“[Plaintiff must release claims] . . . including class, derivative, individual, representative or  
18 other claims, whether based upon any local, state, federal, foreign, common law, statutory,  
19 regulatory, or other law or rule . . . .”); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1288 (9th  
20 Cir. 1992) (observing that several federal circuit courts “have held that a state court was within its  
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23 <sup>3</sup> *See, e.g., In re Arena Resources, Inc.*, No. CV10-01069, 2010 WL 7877145 (Nev. Dist. Ct.  
24 Sept. 30, 2010) (approving release of claims that relate to a list of “events, matters, and facts alleged  
25 or referred to in any complaint filed in the [Settled] Actions”); *In re Citadel Commc'ns Corp. Litig.*,  
26 No. 01A429400, 2001 WL 37114349, at \*3 (Nev. Dist. Ct. Nov. 06, 2001) (approving the release of  
27 claims that did arise, could have arisen, or otherwise relate to “the allegations, facts, events,  
28 transactions, acts, occurrences, statements, representations, misrepresentations, omissions or any  
other matter . . . set forth or otherwise related, directly or indirectly, to the [settled] complaints”).

1 power to approve the release of a federal claim, which could not have been brought in the state  
2 court”). Given that the Section 14(a) claims brought by Mr. Gaj are part and parcel of the claims  
3 brought by Lead Plaintiffs, and flow directly from the same common nucleus of fact, they may be  
4 properly released by the parties. Indeed, Mr. Gaj was told by the Company on January 7, 2019, that  
5 his claims were moot due to the instant action. Moreover, the Settlement Agreement includes a host  
6 of negotiated reforms that are specifically designed to address the Section 14(a) claim, including the  
7 formation of an external compliance committee precisely to assess risk and ensure that disclosures  
8 are proper. Accordingly, consideration has been received by the Company for this release.

9 **(2) The Strength of Plaintiffs’ Case**

10 Lead Plaintiffs succeeded in pleading that demand on the Board would have been futile.  
11 Specifically, a majority of the Board in place in February 2018 faced a substantial likelihood of  
12 liability for knowingly failing to act in the face of credible and corroborated reports that Steve Wynn  
13 sexually harassed Wynn Resorts’ employees, including their failure to notify regulators. Further,  
14 both the Nevada Gaming Commission Board and the Massachusetts Gaming Commission imposed  
15 substantial fines on the Company and found significant failings at the Company. These facts  
16 demonstrate that Lead Plaintiffs’ case was sufficiently strong so as to justify the historic relief  
17 obtained in the Settlement. Nevertheless, as discussed further below, there were still significant risks  
18 in further litigating this matter.

19 **(3) The Risks, Expense, Complexity, and Likely Duration of Further  
20 Litigation and of Maintaining the Action throughout the Trial**

21 Despite the strengths of Lead Plaintiffs’ case, they also faced great risk in pursuing the case  
22 through trial, judgment and appeal.

23 First, on September 19, 2018, the Company formed the SLC. Pursuant to *In re Dish Network*  
24 *Derivative Litigation*, 401 P.3d 1081 (Nev. 2017), the Lead Plaintiffs were required to establish that  
25 the SLC lacked independence or otherwise failed to conduct a good faith investigation in order to  
26 defeat a motion to dismiss by the SLC. No derivative plaintiff has ever met this standard in Nevada.

27 Here, the SLC was made up of two directors who joined Wynn Resorts’ Board after the  
28 alleged misconduct and a compliance expert with no prior relationship to Wynn Resorts.

1 Successfully challenging the independence of the SLC would have been difficult.

2 In the event that Lead Plaintiffs were unsuccessful in challenging the independence of the  
3 SLC, the SLC could have elected not to pursue any claims or to pursue only claims against Steve  
4 Wynn. In either case, the SLC was not empowered to effect governance changes for the long-term  
5 benefit of the Company, which this Settlement achieves.

6 Second, N.R.S. § 78.138(7)(b) requires a derivative plaintiff to demonstrate that a fiduciary  
7 duty breach occurred as a result of intentional misconduct, fraud or a knowing violation of the law  
8 where the Defendant knows her misconduct to be wrongful. Proving state of mind is inherently  
9 difficult and would have created a substantial hurdle to securing a judgment. This is particularly true  
10 where, as here, Defendants aggressively defended the claims and denied liability.

11 Third, while Lead Plaintiffs successfully obtained the first decision on demand futility in a  
12 sexual harassment case, securing the first ever judgment would have also been difficult, particularly  
13 given that it has not been done before. Defendants repeatedly argued to the Court that both gaming  
14 commission boards concluded the Directors did not have actual knowledge of contemporaneous  
15 allegations of sexual misconduct by Steve Wynn. And, they made clear that they intended to argue  
16 that they could not have breached a fiduciary duty based on inaction because of Nevada's  
17 exculpatory statute which requires knowledge that inaction is wrongful conduct. Further, they pled  
18 as an affirmative defense that to the extent they did act, it was on the advice of outside counsel.

19 Fourth, establishing harm to the Company would have been difficult. Defendants argued that  
20 Lead Plaintiffs could not establish damages because, even assuming the Board had acted in 2016, the  
21 same regulatory investigations and fines would have taken place then. They also noted that only two  
22 of the original eight members of Wynn Resorts' Board remain in place today. And, they likely would  
23 have also argued that by severing ties with Steve Wynn without a severance package, they saved the  
24 Company money, which more than offset total damages in the case.

25 Finally, there was significant risk and uncertainty to Lead Plaintiffs if this case went to trial,  
26 particularly given the subject matter of the action. Maintaining the litigation through trial also would  
27 have meant foregoing governance reforms within the Company, which help foster long-term  
28 shareholder value, and inevitably would have led to further appeals.

1                                   **(4) The Experience and Views of Counsel, the Extent of Discovery**  
2                                   **Completed and the Stage of the Proceedings**

3                   Lead Counsel have significant experience in derivative litigation. The Court previously found  
4 that Lead Counsel prepared a superior complaint. Thereafter, Lead Counsel obtained and reviewed  
5 extensive discovery, including review of over 80,000 pages of documents, dozens of deposition and  
6 interview transcripts, five sets of interrogatory responses and the substantial Massachusetts Gaming  
7 Commission Investigative Report, that provided them with substantial information to evaluate the  
8 strength of their case and the appropriate settlement range.

9                                   **(5) The Class Members' Reaction to the Proposed Settlement**

10                   The reaction of Wynn Resorts shareholders to the Settlement was overwhelmingly favorable.  
11 There are more than 107 million shares of Wynn Resorts stock currently outstanding. Notice was  
12 made to all current holders of Wynn Resorts stock. The holders of all but 11 of those shares support  
13 the Settlement, including all the other plaintiffs who filed derivative actions in February 2018 in this  
14 Court and the lead plaintiff in the federal derivative litigation. The near lack of objectors to the  
15 Settlement demonstrates that the Settlement is fair, reasonable, and adequate. *See In re Wirsbo Non-*  
16 *F1807 YBFs*, No. 2:08-CV-1223-NDF-(MLC), 2015 WL 13665077, at \*5 (D. Nev. Oct. 26, 2015)  
17 (“A court may appropriately infer that a class settlement is fair, adequate, and reasonable when few  
18 class members object to it.”).

19                                   **C. Class Members Received Appropriate Notice, Satisfying Due Process Concerns**

20                   While there is no preliminary approval requirement for class settlements in Nevada, as  
21 described above, on December 4, 2019, the Court held a hearing and Lead Plaintiffs provided  
22 sufficient information to the Court to demonstrate that the Settlement: (1) was not a product of  
23 collusive negotiations; (2) had no obvious deficiencies; (3) did not improperly prefer the Lead  
24 Plaintiffs over the Class; and (4) was within the range of possible approval. After careful  
25 consideration of these factors and review of the proposed Notice, which was attached to the  
26 Settlement submitted on November 27, 2019, the Court ordered that the parties could issue notice to  
27 shareholders.

28                   The time period provided for notice to shareholders and for objections to be filed was

1 appropriate. There is no specific time period required under Rule 23.1, instead Rule 23.1 entrusts  
2 that decision to the sound judgment of the Court, and as evident by the fact that no shareholder –  
3 including the two objectors – requested an extension of time, filed late, or requested supplemental  
4 briefing, no additional time was necessary.

5 The fact that the Company paid for the Notice to be disseminated was also appropriate. The  
6 Company’s dissemination of the Notice was a negotiated term of the Settlement and was paid for out  
7 of the proceeds of the \$41 million Settlement recovery. Companies routinely bear the minimal cost  
8 for notice either directly or out of settlement funds.

9 The content of the Notice was appropriate to inform shareholders about the terms of the  
10 Settlement and the effect of Court approval of the Settlement agreement on shareholder rights. The  
11 Notice also described Lead Counsel’s fee and expense reimbursement request, and the procedure and  
12 right for filing objections. *See In re Hewlett-Packard Co. S’holder Derivative Litig.*, 716 F. App’x  
13 603, 609 (9th Cir. 2017) (affirming the adequacy of a notice that provided “a summary of the  
14 litigation; the reasons for settlement; the settlement terms, including an overview of the proposed  
15 governance reforms; the effect of court approval of the settlement agreement on shareholders’ rights;  
16 the attorneys’ fees to be awarded; an explanation of a shareholder’s right to object, the deadline for  
17 objecting, and the right to appear at the final approval hearing”). Accordingly, despite objectors’  
18 arguments to the contrary, the Court finds the content of the Notice to have been fulsome and reject  
19 any claim that either the process for informing shareholders of the Settlement or the content of the  
20 notice were deficient in any way.

21 First, the Notice accurately describes the governance reforms obtained and the value added  
22 by Lead Plaintiffs’ and Lead Counsel’s role in obtaining them. The governance reforms are  
23 described accurately and in detail and it is clear that Lead Plaintiffs and Lead Counsel played a  
24 significant role in obtaining them for the Company, as is evidenced by the fact that the parties to the  
25 Stipulation, including the SLC, all agree as much, and the fact that many of the governance reforms  
26 had not previously been undertaken by the Company, including the creation of a Rule 10b5-1 trading  
27 plan, the introduction of majority voting for director elections, and the formal separation of the CEO  
28 and Chair positions in the Company’s bylaws. Further, all of the parties and a preeminent corporate

1 governance expert agree that Lead Counsel’s role in obtaining the Reforms was worth at least \$49  
2 million to the Company. The fact that certain of the reforms were enacted prior to the finalization of  
3 the Settlement is irrelevant given that the Defendants and SLC agree that Lead Plaintiffs and Lead  
4 Counsel were a factor motivating those changes. *See, e.g., In re Hewlett-Packard Co. S’holder*  
5 *Derivative Litig.*, 716 F. App’x at 607–08 (affirming district court’s determination that derivative  
6 plaintiff deserved credit as a “contributing factor” in company’s adoption of corporate governance  
7 reforms during the pendency of the litigation).

8 Second, providing further information regarding settlement negotiations is barred by N.R.S.  
9 § 48.109(2), which states that such communications are neither admissible nor discoverable.  
10 Participation of and approval by the SLC is self-apparent from the Settlement Agreement and the  
11 record herein.

12 Third, there is no requirement in Nevada that the form of notice include information  
13 regarding potential recoverable damages. *See In re Hewlett-Packard Co. S’holder Derivative Litig.*,  
14 716 F. App’x at 609 (declining to require a derivative settlement notice to include potential  
15 recoverable damages). Further, as Mr. Rosen himself acknowledges, the \$55 million in fines levied  
16 against the Company is a reasonable proxy for recoverable damages here.

17 Fourth, the legal malpractice claims that Mr. Rosen filed and believes should be valued in the  
18 Settlement, were not released, but instead dismissed. *See* Nov. 27, 2019 Order Granting Mot. for  
19 Clarification Under Rule 60 (“[a]fter conducting a thorough analysis and evaluation, Lead Plaintiffs  
20 have elected to dismiss all Law Firm Defendants named in the Rosen Complaint[] and affirm that the  
21 Verified Amended Shareholder Derivative Complaint filed on March 23, 2018 . . . remains the  
22 operative complaint.” (emphasis added)). And, regardless, such claims are of questionable value  
23 given that they potentially time-barred, and that nearly identical claims were dismissed by another  
24 Nevada state court. *See In re Rino Int’l Corp. Derivative Action*, Case No. 10-OC-00529-1B, 2016  
25 Nev. Dist. LEXIS 526 (Nev. Dist. Ct. June 14, 2016).

26 Finally, as discussed further below, there was no need for the Notice to state that other  
27 counsel may seek fees given that the provision of fees to other counsel is inappropriate because their  
28 actions were not in any way a contributing factor to the Settlement.

1           **D.     Lead Plaintiffs’ Fees and Expenses Reimbursement Request is Reasonable and**  
2           **Fair**

3           In Nevada, “the method upon which a reasonable fee is determined is subject to the  
4 discretion of the court, which is tempered only by reason and fairness.” *Shuette v. Beazer Homes*  
5 *Holdings Corp.*, 121 Nev. 837, 864 (2005) (internal quotation marks omitted). Lead Counsel seek  
6 12% of the total settlement value, or a total of \$10.8 million, for attorneys’ fee and reimbursement of  
7 expenses spent litigating the action. As set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev.  
8 345 (1969), courts analyze the following factors to determine whether the fee and expense  
9 reimbursement request is reasonable and fair: the advocate’s professional qualities, the nature of the  
10 litigation, the work performed, and the result obtained. Application of the *Brunzell* factors here  
11 demonstrates that Lead Counsel’s request for fees and expenses of 12% of the Settlement value is  
12 low, fair and well-justified by the risks and complexities of the action, particularly in light of the  
13 results achieved.

14                   **(1)     Lead Counsel’s Professional Qualities Were Excellent and Thorough**

15           Lead Counsel successfully obtained the first derivative demand futility decision in the  
16 country in a case involving claims of sexual misconduct, and after significant litigation, numerous  
17 hearings and substantial discovery, negotiated the largest derivative settlement in Nevada history.  
18 The litigation was incredibly hard-fought, contentious and required extensive briefing and motion  
19 practice, including two appeals to the Nevada Supreme Court. The negotiation of the Settlement was  
20 also quite difficult and arduous. At all times throughout the litigation, Lead Counsel’s work was  
21 professional and of exceptionally high quality. The Settlement achieved is a testament to their hard  
22 work throughout the litigation.

23                   **(2)     The Litigation Was Complex and Risky**

24           Lead Plaintiffs faced significant risks and challenges in pursuing their claims through trial.  
25 Most critically for Lead Plaintiffs, there was significant risk that Lead Plaintiffs would not have been  
26 able to demonstrate that the SLC lacked independence. *In re Dish Network Derivative Litig.*, 401  
27 P.3d 1081 (Nev. 2017).  
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2                   **(3) The Work Performed by Lead Counsel was Substantial and the Sole**  
3                   **Basis for the Recovery Obtained in the Settlement**

4                   The extent of work performed by Lead Counsel in order to secure the meaningful recovery in  
5 this case was substantial and appropriate. Lead Counsel independently investigated the relevant  
6 claims, obtained and analyzed critical evidence through the litigation, prepared robust and detailed  
7 complaints, researched, briefed and argued numerous motions, and negotiated the Settlement.  
8 Collectively, Lead Counsel expended over 9,500 hours litigating this matter, amounting to a lodestar  
9 of over \$5.5 million, and incurred close to \$160,000 in expenses. Lead Counsel's efforts and their  
10 hours and expenses were carefully scrutinized by sophisticated Lead Plaintiffs, giving the Court  
11 further assurance that the fees requested are reasonable and appropriate.

12                   Although not required, a lodestar cross-check further demonstrates that Lead Counsel's fee  
13 and expense reimbursement request is reasonable as the request equates to less than two times the  
14 lodestar expended by them in litigating this case. A multiplier of 2 is eminently reasonable in this  
15 matter, particularly given the risks involved in this litigation, and is below the standard in similar  
16 cases. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051-54 & n.6 (9th Cir. 2002) approving the  
17 lodestar method as a "cross-check" against a percentage award, noting that "courts have routinely  
18 enhanced the lodestar to reflect the risk of non-payment in common fund cases" and finding that  
19 multiples ranging from 1.0 to 4.0 are frequently awarded in common fund cases) (internal citation  
20 and quotations omitted). Notably, in similarly sized derivative settlements, significantly larger fee  
21 percentages were awarded. *See, e.g., El Paso S'holder Litig.*, No. 6949 (Del. Ch. Dec. 3, 2012) (25%  
22 of \$110 million total valuation awarded); *In re News Corp. S'holder Litig.*, No. 6285-VCN, (Del.  
23 Ch. June 26, 2013) (20% of \$139 million awarded); *PG&E San Bruno Fire Derivative Cases*, No.  
24 JCCP 4648-C (Cal. Super. Ct. San Mateo Cty. 2017) (28% of \$90 million awarded).

1           Despite claims to the contrary by the Objectors, the parties, the SLC and this Court agree that  
2 Lead Counsel were solely responsible for the Settlement. Objector Gaj – who now owns a single  
3 share of Wynn Resorts stock and who purchased the 50 shares he held when he first filed his federal  
4 action years after many of the facts at issue in the litigation<sup>4</sup> – did not make a demand on the Board  
5 until more than 6 months after leadership was decided in this case, and a number of months after it  
6 was decided in the federal derivative action. The Board informed Gaj at that time that his demand  
7 was mooted by this action. Nevertheless, in March 2019 *after* this Court determined that demand in  
8 this case would be futile and *after* the Nevada Gaming Commission fined the Company, he elected  
9 to still file suit in federal court claiming that his demand was wrongly refused. Motions to dismiss in  
10 his action were never decided – and, in fact, his action was stayed pending resolution of this action –  
11 he obtained no discovery and he had no role in negotiating the Settlement. Further, the Settlement  
12 Stipulation makes clear that the only parties responsible for the Company’s corporate governance  
13 changes were Lead Plaintiffs and Lead Counsel, and makes no mention of Gaj’s action as a  
14 contributing factor in either the adoption of corporate reforms or the parties’ decision to settle.

15           Objector Rosen – who owns 10 shares of Wynn Resorts stock– waited nearly 18 months after  
16 the leadership battle in this action to file what may be a time-barred complaint that largely repeated  
17 public statements in the MGC Report and which related to the subject matter of this action. He  
18 subsequently dismissed more than half the defendants he named, including one who sent him a Rule  
19 11 letter, and missed a deadline for opposing a motion to dismiss based on his failure to even attempt  
20 to effect service. He then fought, unsuccessfully, a motion to consolidate his action with this instant  
21 action as required under the leadership order. After being consolidated by this Court, Rosen  
22 continued serving defendants with his complaint, forcing this Court to find that his counsel had

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25           <sup>4</sup> As a result of these late purchases, Gaj did not have standing for the majority of the claims at  
26 issue. Nev. R. Civ. P. 23.1 (requiring a derivative complaint to “allege that the plaintiff was a  
27 shareholder . . . at the time of the transaction of which the plaintiff complains”).  
28

1 violated the Consolidation Order and to issue a second Order telling the exclusively Rosen  
2 defendants that they had no obligation to respond. He too, obtained no discovery and had no role in  
3 negotiating the Settlement, and the Settlement Stipulation makes clear that he was not responsible  
4 for the Company's corporate governance changes.

5 **(4) The Result Obtained is Extraordinary**

6 As described above, the result obtained in this Settlement is extraordinary. It is the largest  
7 derivative settlement in Nevada history and includes the second largest individual contribution ever  
8 in a derivative action. It also includes meaningful corporate governance reforms that will  
9 significantly transform the Company and help to ensure that a similar issue does not happen again.

10 Objector Rosen claims that the valuable and extensive corporate governance reforms secured  
11 by Lead Plaintiffs' efforts should not be taken into account when setting the fee award. This Court  
12 disagrees. Courts across the country value governance reforms in awarding fees, particularly where,  
13 as here, the parties to the Settlement agree that the Reforms have significant value to the Company.  
14 *See, e.g., In re Google Inc. S'holder Derivative Litig.*, No. CV-11-04248, 2015 WL 12990195 (N.D.  
15 Cal. Jan. 21, 2015) (awarding \$9.9 million fee in settlement exclusively involving corporate  
16 governance enhancements); *see also id.* at Dkt. 150 (attorney fee motion).<sup>5</sup>

17 And, it is clear – despite Rosen's unsupported argument to the contrary – that the governance  
18 reforms obtained are significant and have substantial value to the Company, likely far exceeding the  
19 \$49 million valuation attributed to Lead Counsel, as described by Professor Gordon. Regardless,  
20 while the net settlement value is the proper metric from which to analyze Lead Counsel's fee and  
21 expense request, even excluding the value of the governance reforms from the total Settlement value,  
22 the fee and expense reimbursement amount sought equates only to 26% of the monetary component  
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26 <sup>5</sup> Courts also approve multipliers on the basis of governance reforms. *See, e.g., In re United*  
27 *Health Group Inc. Shareholder Derivative Litig.* (D. Minn. 2009).  
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1 of the Settlement, which is well within the norm for attorneys’ fees in contingency litigation such as  
2 this one. *See, e.g., Sinanyan v. Luxury Suites Int’l, LLC*, No. 2:15-CV-00225-GMN-VCF, 2018 WL  
3 813864, at \*3 (D. Nev. Feb. 8, 2018) (“[T]he typical range of acceptable attorney fees in the Ninth  
4 Circuit is 20% to 30% of the total settlement value”); 5 Newberg on Class Actions § 15:83 (5th ed.)  
5 (observing, based on empirical study of fee awards, that “percentage awards in class actions are  
6 generally between 20–30%”).

7 **(5) Sophisticated Lead Plaintiffs Support the Fee and Expense Request**

8 Both Lead Plaintiffs – two sophisticated institutional investors – support Lead Counsel’s fee  
9 and expense request. Lead Plaintiffs actively supervised Lead Counsel’s work in this Action, and  
10 Lead Plaintiff NYSCRF carefully reviewed Lead Counsel’s billing and expense records before  
11 permitting Lead Counsel to file its request for fees and expenses with the Court.

12 Lead Counsel’s modest fee request was governed by a fee grid in the agreement that Lead  
13 Plaintiffs and Lead Counsel executed prior to the initiation of this case. Fee requests submitted  
14 pursuant to a retainer agreement entered into between counsel and well-informed lead plaintiffs *ex*  
15 *ante* are presumptively reasonable.

16 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:**

- 17 1. For purposes of this Final Judgment and Order of Dismissal (the “Judgment”) the Court  
18 incorporates by reference the definitions in the Agreement, and all capitalized terms used  
19 herein shall have the same meanings as set forth in the Agreement.
- 20 2. This Court has jurisdiction over the subject matter of the Action, including all matters  
21 necessary to effectuate the Agreement, and over all Parties, including nominal defendant  
22 Wynn Resorts and its stockholders.
- 23 3. Pursuant to Rule 23.1 of the Nevada Rules of Civil Procedure, this Court hereby approves  
24 the Settlement set forth in the Agreement in all respects, and finds that said Settlement is,  
25 in all respects, fair, just, reasonable, adequate, and in the best interests of Wynn Resorts,  
26 Wynn Resorts’ stockholders, and Plaintiffs.
- 27 4. This Court further finds the Settlement set forth in the Agreement is the result of arm’s-  
28 length negotiations between experienced counsel representing the interests of the Parties.

1 Accordingly, the Settlement embodied in the Agreement is hereby approved in all  
2 respects and shall be consummated in accordance with its terms and provisions. The  
3 Parties are hereby directed to perform the terms of the Agreement.

- 4 5. The Action and all claims contained therein against the Defendants are dismissed with  
5 prejudice. The Parties are to bear their own costs, except as otherwise provided in the  
6 Agreement.
- 7 6. The methods of dissemination and publication of the Summary Notice and Notice,  
8 respectively, as provided for in the Agreement constituted the best notice practicable  
9 under the circumstances to Wynn Resorts' shareholders and meets the requirements of  
10 Nevada Rule of Civil Procedure 23.1, due process under both the Constitution of the  
11 State of Nevada and the Constitution of the United States, and any other applicable law,  
12 and constituted due and sufficient notice to all persons entitled thereto.
- 13 7. Upon the Effective Date, Plaintiffs and each and every other Wynn Resorts shareholder,  
14 for themselves and derivatively on behalf of Wynn Resorts, and for Plaintiff Releasing  
15 Parties, release and forever discharge the Defendant Released Parties from, and hereby  
16 covenant not to sue Defendant Released Parties for, any and all Defendants' Released  
17 Claims provided, however, that Defendants' Released Claims shall not include the right  
18 of Plaintiff Releasing Parties to enforce the terms of the Agreement or the Settlement,  
19 including Plaintiffs' Counsel's application for an award of fees and expenses.
- 20 8. Upon the Effective Date, Wynn Resorts, on behalf of Wynn Resorts Releasing Parties,  
21 shall release and forever discharge each of the Defendant Released Parties from, and  
22 covenant not to sue Defendant Released Parties for, any Wynn Resorts' Released Claims,  
23 provided, however, that Wynn Resorts' Released Claims shall not include the right of the  
24 Wynn Resorts Releasing Parties to enforce the terms of the Agreement or the Settlement.
- 25 9. Upon the Effective Date, each of the Defendant Released Parties and Wynn Resorts shall  
26 have, fully, finally, and forever released, relinquished, and discharged Plaintiffs and  
27 Plaintiffs' Counsel from all claims, arising out of, relating to, or in connection with their  
28 institution, prosecution, assertion, settlement, or resolution of the Plaintiffs' Released

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Claims provided, however, that Plaintiffs' Released Claims shall not include the right of the Defendants to enforce the terms of the Agreement or the Settlement.

- 10. The Court hereby approves the Fee Award in accordance with the Agreement and finds that the Fee Award is fair and reasonable.
- 11. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this Settlement; (b) the Parties thereto for the purpose of construing, enforcing, and administering the Stipulation; and (c) any other matter related or ancillary thereto.
- 12. The Court finds that the action was filed, prosecuted, and defended in good faith, and that during the course of the action, the Parties and their respective counsel at all times complied with the requirements of the Nevada Rules of Civil Procedure, and all other similar rules and statutes.
- 13. Neither the Agreement, nor the settlement contained therein, nor any of the negotiations or proceedings connected with it, shall be deemed, used or construed as an admission or concession by any of the Defendants in this Action, or as evidence of the truth or validity of any of the allegations in this Action, or of any liability, fault or wrongdoing of any kind. Neither the Agreement, nor the Settlement, nor any act performed or document executed pursuant to, or in furtherance of the Agreement or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the Agreement and except that the Released Parties may file the Agreement and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

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14. This Judgment is a final, appealable judgment and should be entered forthwith by the Clerk.

**IT IS SO ORDERED.**

Dated this 9 day of March, 2020

  
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DISTRICT COURT JUDGE  


Respectfully submitted:

**WOLF, RIFKIN, SHAPIRO,  
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