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12 *Additional Counsel on Signature Block*

13 *Attorneys for Defendants John J. Hagenbuch, Ray R.*  
14 *Irani, Jay L. Johnson, Matthew Maddox, Robert J.*  
15 *Miller, Patricia Mulroy, Clark T. Randt, Jr., Alvin V.*  
16 *Shoemaker, J. Edward Virtue, and D. Boone Wayson*

17 DISTRICT COURT  
18 CLARK COUNTY, NEVADA

19 IN RE WYNN RESORTS, LTD.  
20 DERIVATIVE LITIGATION

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

22 Consolidated with Case Nos.  
23 A-18-769673-B, A-18-770013-B, A-18-770222-B,  
24 A-18-770578-B, A-18-771162-B, A-19-795981-B

25 -AND-

26 **Coordinated Cases**

27 A-18-785076-B, A-18-785733-B, A-18-785771-B,  
28 A-18-785942-B, A-18-785970-B, A-18-786074-B,  
A-18-786149-B, A-18-786696-B, A-19-787070-B

29 AND ALL COORDINATED CASES

30 Dept. No.: XVI

31 **NOTICE OF SETTLEMENT**

32 PLEASE TAKE NOTICE the Parties to the actions consolidated as Case No.  
33 A-18-769630-B have reached an agreement in principle to resolve all claims related to this  
34 matter. A copy of the Stipulation and Agreement of Settlement and Release (“Agreement”) is  
35 attached hereto as **Exhibit 1**.

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The Parties wish to vacate all upcoming deadlines (except the December 4, 2019 status check), and, pursuant to the Agreement, as soon as practicable, will jointly apply for entry of an order substantially in the form attached to the Agreement as Exhibit B.

Dated: November 27, 2019

SNELL & WILMER L.L.P.

By: /s/ V.R. Bohman  
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**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On the below date, I caused to be served a true and correct copy of the foregoing **NOTICE OF SETTLEMENT** by the method indicated:

- BY U.S. MAIL:** by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below; and/or
- BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below; and/or
- BY PERSONAL DELIVERY:** by causing personal delivery by \_\_\_\_\_, a messenger service with which this firm maintains an account, of the document(s) listed above to the person(s) at the address(es) set forth below; and/or
- BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court’s Service List for the above-referenced case.

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the New York City Pension Funds*

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Dated this 27th day of November, 2019.

4836-2245-9822

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*Attorneys for Maurice Wooden and Authur Nathan*

/s/ Lyndsey Luxford  
An employee of SNELL & WILMER L.L.P.

# **EXHIBIT 1**

Stipulation and Agreement of Settlement and Release

1 Patrick G. Byrne (NV Bar #7636)  
2 Alex L. Fugazzi (NV Bar #9022)  
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12 *Additional Counsel on Signature Block*

13 *Attorneys for Defendants John J. Hagenbuch, Ray R.*  
14 *Irani, Jay L. Johnson, Matthew Maddox, Robert J.*  
15 *Miller, Patricia Mulroy, Clark T. Randt, Jr., Alvin V.*  
16 *Shoemaker, J. Edward Virtue, and D. Boone Wayson*

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A-18-786149-B, A-18-786696-B, A-19-787070-B

AND ALL COORDINATED  
CASES

Dept. No.: XVI

**STIPULATION AND AGREEMENT OF SETTLEMENT AND RELEASE**

This Stipulation and Agreement of Settlement and Release (“Agreement”) is entered into effective as of the date set forth below by and among: (1) 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, and the New York City Pension Funds<sup>1</sup>

<sup>1</sup> The New York City Pension Funds include: New York City Employees’ Retirement System, New York City Police Pension Fund, Police Officer’s Variable Supplements Fund, Police Supervisor Officers Variable Supplements Fund, New York City Fire Pension Fund, Fire Fighters’ Variable Supplements Fund, Fire Officers’ Variable Supplements Fund, Board of Education

1 (together, “Plaintiffs”), by and through Court-appointed Lead Counsel and Liaison Counsel for  
2 Plaintiffs, and derivatively on behalf of Nominal Defendant Wynn Resorts, Ltd. (“Wynn Resorts”  
3 or the “Company”); and (2) Defendants D. Boone Wayson, John J. Hagenbuch, Ray R. Irani, Jay  
4 L. Johnson, Robert J. Miller, Patricia Mulroy, Clark T. Randt, Jr., Alvin V. Shoemaker, and J.  
5 Edward Virtue (“Director Defendants”), Stephen A. Wynn, Kimmarie Sinatra, and Matthew  
6 Maddox (together with the Director Defendants, the “Defendants” and, together with Plaintiffs and  
7 Wynn Resorts, the “Parties” and each a “Party”).

### 8 RECITALS

9 WHEREAS, on February 22, 2018, Plaintiffs Thomas P. DiNapoli, Comptroller of the State  
10 of New York, as Administrative Head of the New York State and Local Retirement System and  
11 Trustee of the New York State Common Retirement Fund (“NYSCRF”), and New York City  
12 Employees’ Retirement System, New York City Police Pension Fund, Police Officers’ Variable  
13 Supplements Fund, Police Supervisor Officers’ Variable Supplements Fund, New York City Fire  
14 Pension Fund, Fire Fighters’ Variable Supplements Fund, Fire Officers’ Variable Supplements  
15 Fund, Board of Education Retirement System of The City of New York, Teachers’ Retirement  
16 System of The City of New York, and New York City Teachers’ Variable Annuity Program  
17 (collectively the “NYC Funds”) filed a stockholder derivative action in the District Court of  
18 Nevada, Clark County (the “Court”) on behalf of Nominal Defendant Wynn Resorts against the  
19 Defendants for breaches of fiduciary duty styled *DiNapoli v. Wynn, et al.*, Case No. A-18-770013-  
20 B (the “*DiNapoli Action*.”)

21 WHEREAS, seven other derivative complaints were filed in the Court, including,  
22 (1) *Operating Engineers, et al. v. Wynn, et al.*, Case No. A-18-769630-B (filed Feb. 15, 2018);  
23 (2) *Boynton Beach Mun. Firefighters’ Pension Trust Fund, et al. v. Wynn, et al.*, Case No. A-18-  
24 769673-B (filed Feb. 15, 2018); (3) *Erste-Sparinvest Kapitalanlagegesellschaft m.b.H. v. Wynn, et*  
25 *al.*, Case No. A-18-770013-B (filed Feb. 22, 2018); (4) *State of Oregon, et al. v. Wynn, et al.*, Case  
26 No. A-18-770578-B (filed Mar. 6, 2018); (5) *Insulators and Asbestos Workers Local No. 14*

27 \_\_\_\_\_  
28 Retirement System of the City of New York, Teachers’ Retirement System of the City of New  
York, and New York City Teachers’ Variable Annuity Program.

1 *Pension and Health and Welfare Funds, v. Wynn, et al.*, Case No. A-18-771162-B (filed Mar. 15,  
2 2018); (6) *C. Jeffrey Rogers v. Wynn, et al.*, Case No. A-18-773024-B (filed Apr. 18, 2018, the  
3 “*Rogers Action*”); and (7) *Dennis Rosen v. Stephen A. Wynn, et al.*, Case No. A-19-795981-B (filed  
4 June 3, 2019);

5 WHEREAS, the claims in each of the aforementioned lawsuits arise from a January 26,  
6 2018 Press Release referencing a March 28, 2016 pleading by Elaine Wynn, filed in a lawsuit  
7 seeking to lift restrictions on the sale of her stock, in which she accused Mr. Wynn of “misconduct”  
8 in 2005 that resulted in a “multimillion dollar payment”;

9 WHEREAS, on March 23, 2018, Plaintiffs filed their Verified Amended Stockholder  
10 Derivative Complaint in the *DiNapoli* Action alleging five causes of action: (a) breach of fiduciary  
11 duty against the Director Defendants; (b) unjust enrichment against all Defendants; (c) breach of  
12 fiduciary duty against Stephen A. Wynn, Kimmarie Sinatra, and Matthew Maddox; (d) insider  
13 trading against Stephen A. Wynn, John J. Hagenbuch, Patricia Mulroy, Clark T. Randt, Jr., Alvin  
14 V. Shoemaker, D. Boone Wayson, Kimmarie Sinatra, and Matthew Maddox; and (e) aiding and  
15 abetting Stephen A. Wynn’s breach of fiduciary duty against Kimmarie Sinatra, Matthew Maddox,  
16 and the Director Defendants (collectively, “Plaintiffs’ Allegations”);

17 WHEREAS, on May 10, 2018, the Court signed an order consolidating the *DiNapoli* Action  
18 with the other aforementioned derivative suits, excluding the *Rogers Action* (the “Action”), and  
19 made the March 23, 2018 complaint the operative complaint (the “Amended Complaint”);

20 WHEREAS, in the same order, the Court designated Thomas P. DiNapoli, Comptroller of  
21 the State of New York, as Administrative Head of the New York State and Local Retirement System  
22 and Trustee of the New York State Common Retirement Fund, and the New York City Pension  
23 Funds, collectively, as Lead Plaintiffs (“Lead Plaintiffs”), and the law firm of Cohen Milstein  
24 Sellers & Toll PLLC as Lead Counsel for the Action and the law firm of Wolf, Rifkin, Shapiro,  
25 Schulman & Rabkin, LLP as Liaison Counsel (collectively, “Plaintiffs’ Counsel”);

26 WHEREAS, in the Amended Complaint, Plaintiffs allege that Wynn Resorts suffered injury  
27 as a result of Plaintiffs’ Allegations (“Plaintiffs’ Claim”);  
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1           WHEREAS, on September 5, 2018, the Court denied Defendants’ motions to dismiss the  
2 Amended Complaint, finding that demand on the Board would be futile (“MTD Order”);

3           WHEREAS, on October 15, 2018, the Nevada Supreme Court summarily dismissed  
4 Defendants’ petition to reverse the Court’s MTD Order;

5           WHEREAS, on November 29, 2018, the Court denied a “renewed” motion to dismiss the  
6 Amended Complaint by Defendant Sinatra;

7           WHEREAS, on September 19, 2018, the Company’s Board of Directors (the “Board”)  
8 appointed an independent Special Litigation Committee (“SLC”) in accordance with *In re Dish*  
9 *Network Derivative Litig.*, 401 P.3d 1081 (Nev. 2017) (“*Dish Network*”). In accordance with *Dish*  
10 *Network*, the Board vested the SLC with plenary authority to review, investigate, and analyze the  
11 allegations and causes of action in the Amended Complaint, as well as making a determination as  
12 to whether it is in the Company’s best interest to prosecute, resolve, or dismiss some or all of the  
13 causes of action in the Amended Complaint.

14           WHEREAS, on November 30, 2018, the SLC filed a Motion to Intervene and Motion to  
15 Stay in the Action;

16           WHEREAS, on January 6, 2019, the Court granted the SLC’s motion to intervene and  
17 granted the SLC’s motion to stay in part (the “Stay”);

18           WHEREAS, Defendants produced approximately 65,673 pages of documents to Plaintiffs  
19 in response to Plaintiffs’ documents requests and responded to five sets of interrogatories  
20 propounded by Plaintiffs;

21           WHEREAS, Plaintiffs have thoughtfully considered and assessed the merits of each of the  
22 claims against each of the parties made in the consolidated Action;

23           WHEREAS, counsel for Plaintiffs and Defendants have engaged in extensive arm’s-length  
24 negotiations concerning a possible settlement of the Action, including retaining JAMS mediator  
25 Jed D. Melnick, Esq., and conducting two full-day mediations complete with briefing from the  
26 parties;

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1           WHEREAS, Plaintiffs believe that a settlement on the terms and on the conditions set forth  
2 herein (the “Settlement”) is fair, reasonable, and adequate, considering the benefits conferred upon  
3 Wynn Resorts by the Settlement, the anticipated significant risks and expenses of continued  
4 litigation (including to Wynn Resorts);

5           WHEREAS, Plaintiffs believe that the corporate governance reforms set forth in Section 1  
6 below and Exhibit A hereto will prevent or deter potential future breaches of fiduciary duty similar  
7 to those alleged in the Amended Complaint;

8           WHEREAS, Defendants, while denying Plaintiffs’ Allegations and any wrongdoing, and  
9 Nominal Defendant Wynn Resorts, believe that a settlement on the terms and conditions set forth  
10 herein is desirable and is in the best interests of Wynn Resorts, considering the anticipated  
11 significant expense and the risks of continued litigation;

12           WHEREAS, entry into the Agreement by Plaintiffs is not an admission to the lack of any  
13 merit of Plaintiffs’ Allegations or any of the claims asserted in the Action; and

14           NOW, THEREFORE, in consideration of the foregoing matters and other consideration,  
15 the Parties have entered into and agreed to this Agreement this 21st day of November 2019 (the  
16 “Settlement Date”), consisting of the following agreed terms and conditions:

17 **1       MONETARY SETTLEMENT AND CORPORATE GOVERNANCE REFORMS**

18           1.1     In consideration of the dismissal of this Action with prejudice, the releases between  
19 the Parties, and other terms contained in this Agreement, the Parties have agreed to (i) a \$41 million  
20 cash payment to Wynn Resorts, \$21 million of which will be paid by certain insurance carriers (the  
21 “Insurers”) and \$20 million of which will be paid by Stephen A. Wynn (the “Monetary  
22 Settlement”); and (ii) undertake certain corporate governance reforms, in addition to governance  
23 reforms that were implemented after the filing of this action, which are identified in Exhibit A  
24 hereto (the “Corporate Governance Reforms”).

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1           1.2     In consideration of the full settlement, satisfaction, compromise, and release of the  
2 Released Claims (as defined in Section 2.2 below), the Insurers shall pay Wynn Resorts \$21 million  
3 within thirty (30) calendar days of the Effective Date (as defined in Section 9 below).

4           1.3     In consideration of the full settlement, satisfaction, compromise, and release of the  
5 Released Claims, Stephen A. Wynn shall pay \$20 million to Wynn Resorts within thirty (30)  
6 calendar days of the Effective Date (as defined in Section 9 below).

7           1.4     Defendants, while denying Plaintiffs' Allegations and without admitting  
8 wrongdoing, acknowledge that the filing of Plaintiffs' original complaint in the Action, which  
9 occurred on February 22, 2018, was a factor considered by Wynn Resorts in deciding to undertake  
10 extensive remedial measures, including implementation of the Corporate Governance Reforms and  
11 that the Corporate Governance Reforms confer a substantial benefit on the Company.

12           1.5     The Parties agree that the Monetary Settlement and the Corporate Governance  
13 Reforms undertaken as part of the Settlement and as a result of Plaintiffs' Claims set forth in  
14 Exhibit A have a combined value to Wynn Resorts of approximately \$90 million.

15       **2     RELEASES**

16           2.1     In consideration of the releases, promises, and covenants herein and other good and  
17 valuable consideration, the sufficiency and receipt of which the Parties hereby acknowledge, the  
18 Parties agree as follows:

19           2.2     Plaintiffs' Releases. Upon the Effective Date, Plaintiffs and each and every other  
20 Wynn Resorts shareholder, for themselves and derivatively on behalf of Wynn Resorts, and for  
21 their heirs, successors, representatives, assigns, and beneficiaries, and for any person or entity that  
22 could assert any of the Defendants' Released Claims (defined herein) on their behalf (collectively  
23 "Plaintiff Releasing Parties"), release and forever discharge each of the Defendants and Wynn  
24 Resorts, including all of its affiliate and subsidiary entities, and all of their past and present officers,

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1 directors (with the exception of Elaine Wynn, who is expressly not a Defendant Released Party  
2 under this Agreement and to whom the releases in both this Section 2 and this Agreement do not  
3 extend), stockholders, members, partners, managers, employees, insurers, reinsurers, and their  
4 heirs, successors, predecessors, and assigns (collectively, “Defendant Released Parties”) from, and  
5 hereby covenant not to sue Defendant Released Parties for, any claims or causes of action  
6 (including Unknown Claims), including, but not limited to, any claims for damages, injunctive  
7 relief, interest, attorneys’ fees, expert, or consulting fees, and any and all other costs, expenses, or  
8 liabilities whatsoever, that were or could have been asserted by Plaintiffs derivatively on behalf of  
9 Wynn Resorts, or Wynn Resorts’ Stockholders, or any of them, against the Defendant Released  
10 Parties based upon or arising out of the facts, transactions, events, occurrences, disclosures,  
11 statements, acts, omissions, failures to act, alleged mismanagement, misconduct, concealment,  
12 misrepresentations, violation of law, sale of stock, or other matters that were or could have been  
13 alleged in or encompassed by the Action (including, but not limited to, any and all claims that are  
14 based upon, arise out of, relate in any way to, or involve, directly or indirectly, (i) any actions,  
15 deliberations, decisions, or negotiations or failure to act, deliberate, decide, or negotiate in  
16 connection with Plaintiffs’ Claim or Plaintiffs’ Allegations, including, but not limited to, the  
17 process of deliberation by the Company and any of its officers, directors or advisors; or (ii) the  
18 fiduciary obligations or any other duties of the Defendant Released Parties in connection with any  
19 claims related to Plaintiffs’ Claim or Plaintiffs’ Allegations) (collectively “Defendants’ Released  
20 Claims”) provided, however, that Defendants’ Released Claims shall not include the right of  
21 Plaintiff Releasing Parties to enforce the terms of the Agreement or the Settlement, including  
22 Plaintiffs’ Counsel’s application for an award of fees and expenses, as contemplated herein.<sup>2</sup> For  
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28 <sup>2</sup> The term “Released Claims” as used herein shall collectively refer to Defendants’ Released  
Claims, Wynn Resorts’ Released Claims, and Plaintiffs’ Released Claims.

1 purposes of clarity, and without narrowing the scope of the releases provided herein, “Defendants’  
2 Released Claims” does not release claims in the pending *Ferris, et al. v. Wynn Resorts Ltd., et al.*,  
3 No. 2:18-cv-00479-GMN-CWH (D. Nev.) (the “Federal Securities Class Action”) or case numbers  
4 A-18-785076-B, A-18-785733-B, A-18-785771-B, A-18-785942-B, A-18-785970-B, A-18-  
5 786074-B, A-18-786149-B, A-18-786696-B, A-18-787070-B coordinated with the *DiNapoli*  
6 action (the “Coordinated Cases”).

7       2.3     Wynn Resorts’ Releases. Upon the Effective Date, Wynn Resorts, on behalf of itself  
8 and its stockholders and its successors and assigns (collectively “Wynn Resorts Releasing Parties”),  
9 releases and forever discharges each of the Defendant Released Parties from, and hereby covenants  
10 not to sue Defendant Released Parties for, any claims or causes of action (including Unknown  
11 Claims), including, but not limited to, any claims for damages, injunctive relief, interest, attorneys’  
12 fees, expert, or consulting fees, and any and all other costs, expenses, or liabilities whatsoever, that  
13 were or could have been asserted by Plaintiffs derivatively on behalf of Wynn Resorts, or Wynn  
14 Resorts’ Stockholders, or any of them, against the Defendant Released Parties based upon or arising  
15 out of the facts, transactions, events, occurrences, disclosures, statements, acts, omissions, failures  
16 to act, alleged mismanagement, misconduct, concealment, misrepresentations, violation of law,  
17 sale of stock, or other matters that were or could have been alleged in or encompassed by the Action  
18 (including, but not limited to, any and all claims that are based upon, arise out of, relate in any way  
19 to, or involve, directly or indirectly, (i) any actions, deliberations, decisions, or negotiations or  
20 failure to act, deliberate, decide, or negotiate in connection with Plaintiffs’ Claim or Plaintiffs’  
21 Allegations, including, but not limited to, the process of deliberation by the Company and any of  
22 its officers, directors or advisors; or (ii) the fiduciary obligations or any other duties of the  
23 Defendant Released Parties in connection with any claims related to Plaintiffs’ Claim or Plaintiffs’  
24 Allegations) (collectively “Wynn Resorts’ Released Claims”) provided, however, that Wynn

1 Resorts' Released Claims shall not include the right of Wynn Resorts and Lead Plaintiffs to enforce  
2 the terms of the Agreement or the Settlement.

3 2.4 Releases by the Defendant Released Parties. Upon the Effective Date, each of the  
4 Defendant Released Parties and Wynn Resorts shall be deemed to have, and by operation of the  
5 Final Order and Judgment (the "Judgment," attached hereto as Exhibit E) shall have, fully, finally,  
6 and forever released, relinquished, and discharged Plaintiffs and Plaintiffs' Counsel from all claims,  
7 arising out of, relating to, or in connection with their institution, prosecution, assertion, settlement,  
8 or resolution of the Amended Complaint, Plaintiffs' Claim, and Plaintiffs' Allegations  
9 (collectively, "Plaintiffs' Released Claims") provided, however, that Plaintiffs' Released Claims  
10 shall not include the right of the Defendants to enforce the terms of the Agreement or the  
11 Settlement.<sup>3</sup>

12 2.5 Releases. Except as specified in Paragraph 7.1, the Parties, and each of them, further  
13 covenant and agree that they will not take any action, nor assert any claim, complaint, debt, damage,  
14 lien, cause of action, warranty, suit, liability, obligation, or demand, whether in law or in equity,  
15 contract or tort, judicially or administratively, against any other Party, or any of their stockholders,  
16 owners, members, managers, directors, officers, agents, partners, employees, successors, assigns,  
17 parents, subsidiaries, affiliates, or representatives, arising from, or in any way relating to, any act  
18 or omission that occurred before the final approval of this Agreement by the Court and that relates  
19 to, arises out of, or concerns Plaintiffs' Claim or Plaintiffs' Allegations. For the avoidance of doubt,  
20 nothing in this Section 2 shall be construed as a release of any claims of any kind against Elaine  
21 Wynn by any Party to this Agreement.

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28 <sup>3</sup> The term "Releasing Person" as used herein shall collectively refer to Defendants' Released  
Parties, Wynn Resorts' Releasing Parties, and Plaintiff Releasing Parties.

1       **3.       PROCEDURE FOR APPROVAL**

2               As soon as practicable after execution of this Agreement, the Parties shall submit this  
3 Agreement together with its exhibits to the Court and shall jointly apply for the entry of an order  
4 substantially in the form attached hereto as Exhibit B (the “Scheduling Order”).

5               3.1.     The Scheduling Order shall schedule a settlement hearing (the “Settlement  
6 Hearing”) at which the Court will (i) determine whether the Action may proceed as a stockholder  
7 derivative action pursuant to NRCPC Rule 23.1 (“Rule 23.1”), solely for purposes of the Settlement  
8 and without prejudice to the Company’s right to raise defenses under Rule 23.1 or any other  
9 defenses in the Action in the event that the Court fails to grant final approval of the Settlement;  
10 (ii) determine whether the Settlement, on the terms and conditions provided for in the Agreement  
11 is fair, reasonable, and adequate and in the best interests of the Company and its stockholders;  
12 (iii) determine whether the Court should finally approve the Settlement and enter a Judgment,  
13 substantially in the form attached hereto as Exhibit E, dismissing the Action with prejudice and  
14 extinguishing and releasing the claims as set forth herein; (iv) hear and determine any objections  
15 to the Settlement; (v) rule on Plaintiffs’ application for an award of attorneys’ fees and expenses;  
16 and (vi) rule on such other matters as the Court may deem appropriate.

17               3.2.     The Scheduling Order shall direct that the Notice (defined herein), with a  
18 summary of the content set forth in Exhibit C, but formatted to be postcard-sized and referring to  
19 the Wynn Resorts website, be mailed by the Company by first-class mail to all stockholders of  
20 record as of the close of business on the date of the Scheduling Order at the addresses provided on  
21 the books of the Company and posted on the Company’s corporate website no later than  
22 forty-five (45) days prior to the Settlement Hearing. If requested by any stockholder of record who  
23 holds shares on behalf of one or more beneficial holders, the Company promptly shall provide the  
24 stockholder of record with sufficient copies of the Notice for the stockholder of record to send to

1 the beneficial holders on whose behalf the stockholder of record holds shares. All costs incurred  
2 in identifying and notifying Company stockholders of the Settlement shall be paid by the Company,  
3 and in no event shall Plaintiffs or Plaintiffs' Counsel be responsible for any notice costs or expenses.  
4 Prior to the Settlement Hearing, Wynn Resorts shall file with the Court an appropriate declaration  
5 with respect to the preparation and dissemination of the Notice.

6 3.3. The Scheduling Order shall approve the form and content of the Notice and find that  
7 the giving of notice in the manner set forth in Section 10.1 meets the requirements of Rule 23.1 and  
8 due process, and is the best notice practicable under the circumstances.

9 **4. JUDGMENT**

10 At the Settlement Hearing, the Parties shall jointly request that the Judgment be entered  
11 substantially in the form attached hereto as Exhibit E.

12 4.1. The Judgment shall find that each of the requirements of Rule 23.1 has been satisfied  
13 and that the Action has been properly maintained according to the provisions of Rule 23.1.

14 4.2. The Judgment shall approve the Settlement, adjudging the Agreement to be fair,  
15 reasonable, adequate, and in the best interests of the Company and its stockholders, and directing  
16 the consummation of the Settlement in accordance with the terms and conditions of this Agreement.

17 4.3. The Judgment shall order dismissal of the Action on the merits with prejudice  
18 (subject only to compliance by the Parties with the terms of this Agreement and any Order of the  
19 Court concerning this Agreement) and shall fully, completely, and forever discharge, settle, release,  
20 and extinguish the Released Claims and bar and permanently enjoin the Releasing Persons (and  
21 any Person acting or purporting to act on any such Releasing Person's behalf) from asserting,  
22 commencing, prosecuting, assisting, instigating, or in any way participating in the commencement  
23 or prosecution of any action or other proceeding, in any forum, asserting any Released Claims,  
24 either directly, representatively, derivatively, or in any other capacity.

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1           4.4. The Judgment shall fully, completely, and forever discharge, settle, release, and  
2 extinguish Plaintiffs and Plaintiffs' Counsel from all claims, including Unknown Claims, arising  
3 out of or relating to the institution, prosecution, settlement, or resolution of the Action (provided,  
4 however, that the release, relinquishment, and discharge shall not include claims by the Parties  
5 hereto to enforce the terms of the Settlement or Agreement).

6           **5. TERMINATION RIGHTS AND EFFECT OF TERMINATION**

7           Prior to the Effective Date, any Party may terminate and withdraw from this Agreement by  
8 providing written notice of their election to do so to the undersigned counsel for all other Parties  
9 within thirty (30) days after (a) the Court declines to approve this Agreement in any material  
10 respect; (b) the Court declines to enter the Scheduling Order in any material respect; (c) the Court  
11 declines to enter the Judgment granting final approval to this Agreement in any material respect;  
12 (d) the Judgment is modified or reversed in any material respect; or (e) the Action is dismissed  
13 without prejudice. Neither a modification nor a reversal on appeal of the amount of fees, costs, or  
14 expenses awarded by the Court to Plaintiffs' Counsel shall be deemed a material modification or  
15 reversal of the Judgment or this Agreement. If the Effective Date does not occur, or if this  
16 Agreement is disapproved, canceled, or terminated in accordance with this Section 5, the Parties  
17 shall be restored to their respective litigation positions as of the date on which the Agreement was  
18 executed, and, except as otherwise expressly provided herein, the Parties shall proceed in all  
19 respects as if this Agreement had not been executed and any related orders had not been entered,  
20 and in that event all of their respective claims and defenses as to any issue in the Action shall be  
21 preserved without prejudice in any way.

22           **6. DENIAL OF WRONGDOING OR LIABILITY**

23           6.1. This Agreement, whether or not approved by the Court, and any proceedings taken  
24 pursuant to this Agreement, and any materials created by or received from another Party that were  
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1 used in, obtained during, or related to settlement discussions, including, but not limited to, all  
2 negotiations, documents, and statements in connection therewith, shall not be offered or received  
3 against any of the Parties as evidence of or construed as or deemed to be evidence of (a) any  
4 liability, negligence, fault, or wrongdoing of any of the Parties; (b) a presumption, concession, or  
5 admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to  
6 for any other reason as against any of the Parties, in any other civil, criminal, or administrative  
7 action or proceeding, other than such proceedings as may be necessary to effectuate the provisions  
8 of this Agreement; (c) a presumption, concession, or admission by any of the Parties with respect  
9 to the truth of any fact alleged in this Action or the validity of any of the claims or the deficiency  
10 of any defense that was or could have been asserted in this Action or of any infirmity in the claims  
11 asserted; or (d) an admission or concession that the consideration to be given hereunder represents  
12 the consideration that could be or would have been recovered at trial.

13 6.2. Nothing herein, however, shall prevent any of the Parties from using this  
14 Agreement, or any document or instrument delivered hereunder, (a) to effect or obtain Court  
15 approval of this Settlement; (b) to enforce the terms of the Agreement; (c) for the purpose of  
16 defending, on the grounds of *res judicata*, collateral estoppel, release, judgment bar or reduction,  
17 or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, any  
18 of the Released Claims; or (d) as otherwise required by law.

19 6.3. Defendants have denied, and continue to deny, each and all of the claims and  
20 contentions alleged in the Action. Defendants have denied, and continue to deny, any and all  
21 allegations of wrongdoing, fault, liability, or damage and deny that they or any of the Company's  
22 other officers or directors engaged in, committed, or aided or abetted the commission of any  
23 wrongdoing or violation of law or breach of duty, deny that the Company or any of its stockholders  
24 suffered any damage whatsoever, deny that they acted improperly in any way, believe that they  
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1 acted properly at all times, and maintain that they diligently and scrupulously complied with their  
2 fiduciary and other legal duties. Nonetheless, Defendants wish to settle all disputes on the terms  
3 and conditions stated in this Agreement solely to eliminate the uncertainties, burden, and expense  
4 of further protracted litigation, and to put the claims to be released hereby to rest finally and forever.

5 6.4. Plaintiffs' entry into the Settlement is not an admission as to the lack of merit of any  
6 of the claims asserted in the Action. Plaintiffs and Plaintiffs' Counsel believe that the claims  
7 asserted in the Action have merit. Plaintiffs and Plaintiffs' Counsel, however, recognize and  
8 acknowledge the expense and length of proceedings necessary to prosecute the Action against the  
9 Defendants through trial and, potentially, through appeals. Plaintiffs and Plaintiffs' Counsel also  
10 have taken into account the uncertain outcome and the risk of any litigation, especially in complex  
11 actions such as the Action, as well as the difficulties and delays inherent in such litigation. Plaintiffs  
12 and Plaintiffs' Counsel also are mindful of the inherent problems of proof under and possible  
13 defenses to the claims asserted in the Action.

14 **7. NO WAIVER OF ADVANCEMENT OR INDEMNIFICATION RIGHTS**

15 7.1. Nothing in this Agreement, whether or not approved by the Court, or any  
16 proceedings taken pursuant to this Agreement, or any materials created by or received from another  
17 Party that were used in, obtained during, or related to settlement discussions, including, but not  
18 limited to, all negotiations, documents, and statements in connection therewith, shall release any  
19 party from honoring its existing obligations to indemnify, or advance expenses to, any Person who  
20 is or was a director, officer, or employee of the Company prior to the Effective Date (with the  
21 exception of Elaine Wynn, to whom the covenants, releases and waivers set forth in this Section 7  
22 do not extend) to the extent that such Person was entitled to such indemnification or advancement  
23 of expenses pursuant to then-existing indemnification or advancement obligations.

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1 **8. RELEASE OF UNKNOWN CLAIMS**

2 Other than set forth in Sections 7 and 7.1 above, the releases contemplated by this  
3 Agreement extend to claims that any of the Releasing Persons do not know or suspect exist in his,  
4 her, or its favor at the time of the release of the Released Claims, which, if known, might have  
5 affected the decision to enter into this Settlement (the “Unknown Claims”). In granting the releases  
6 herein, the Parties acknowledge that they have read and understand California Civil Code Section  
7 1542, which reads as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
9 THAT THE CREDITOR OR RELEASING PARTY DOES NOT  
10 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
11 THE TIME OF EXECUTING THE RELEASE AND THAT, IF  
12 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
OR RELEASED PARTY.

13 The Parties stipulate and agree that upon the Effective Date, Plaintiffs and each of the other  
14 Releasing Persons shall be deemed to have, and by operation of the Judgment shall have, expressly  
15 waived, relinquished, and released all provisions, rights, and benefits conferred by or under  
16 California Civil Code Section 1542 or any law of the United States or any state of the United States  
17 or territory of the United States, or principle of common law, which is similar, comparable, or  
18 equivalent to California Civil Code Section 1542. The Parties acknowledge that the foregoing  
19 waiver, relinquishment, and release and the inclusion of “Unknown Claims” in the definition of  
20 “Released Claims” were separately bargained for, are key elements of this Settlement, and were  
21 relied upon by each and all of the Defendants in entering into this Agreement. Plaintiffs  
22 acknowledge, and each of the other Releasing Persons by operation of law shall be deemed to have  
23 acknowledged, that they may discover facts different from, or in addition to, those which they now  
24 know or believe to be true with respect to the Released Claims, and in this event agree, or by  
25 operation of law shall be deemed to have agreed, that the releases contained in this Agreement shall  
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1 be and remain effective in all respects and that it is the intention of the Releasing Persons to  
2 completely, fully, finally, and forever extinguish any and all Released Claims, known or unknown,  
3 suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and  
4 without regard to the subsequent discovery of additional or different facts. The release of Unknown  
5 Claims also applies to Plaintiffs' Released Claims as defined in Paragraph 2.4 herein.

6 **9. CONDITIONS AND EFFECTIVE DATE**

7 9.1. The Effective Date of this Agreement shall be deemed to occur when each and every  
8 one of the following conditions shall have occurred:

9 (a) The Court has approved in all material respects the Notice of Pendency of  
10 Derivative Action, Proposed Settlement of Derivative Action, and Settlement Hearing ("Notice")  
11 attached as Exhibit C to this Agreement; the Summary Notice of Pendency of Derivative Action,  
12 Proposed Settlement of Derivative Action, and Settlement Hearing ("Summary Notice") attached  
13 as Exhibit D to this Agreement; the manner of providing of the Notice by Wynn Resorts to its  
14 stockholders of record; and the manner of publication by Wynn Resorts of the Summary Notice as  
15 described in Paragraph 10.1 below;

16 (b) The Court has granted final approval of the Agreement and entered a Final  
17 Order and Judgment, in all material respects identical to that attached as Exhibit E hereto; and

18 (c) The times to appeal from the Final Order and Judgment have elapsed with  
19 no appeal being filed, or, alternatively, if any appeal(s) are taken the underlying orders are affirmed  
20 in their entirety in all material respects and are no longer subject to any further appeals or requests  
21 for rehearing.

22 9.2. The Parties agree, and agree to cause their respective counsel, to (i) use their best  
23 efforts to effectuate the terms and conditions of the Agreement in as expeditious a manner as  
24 possible; (ii) cooperate in preparing any and all necessary papers to pursue and effectuate the terms  
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1 and conditions of the Agreement; and (iii) cooperate with one another in seeking the necessary  
2 approvals and orders to effectuate the conditions described in Section 3.

3 9.3. Should any of the foregoing conditions fail to occur, including if the Court should  
4 decline to grant a requested approval, or if any of the conditions set forth in Section 3 above have  
5 failed to occur by the date of the final Settlement Hearing, this Agreement shall terminate, and,  
6 with the exception of this Section 9, be null and void and of no force and effect for all purposes,  
7 and all negotiations, transactions, and proceedings connected with the Agreement shall be without  
8 prejudice to the rights of any party in the Action, who shall be restored to their respective positions  
9 immediately prior to the execution of the Agreement.

10 **10. NOTICE**

11 10.1. Notice of the terms set forth in this Agreement shall be provided to current record  
12 holders and beneficial owners of common stock of Wynn Resorts pursuant to Order of the Court as  
13 follows:

14 (a) Wynn Resorts shall be responsible for mailing the Notice (Exhibit C) to the  
15 current record holders and beneficial owners of common stock of Wynn Resorts by first-class U.S.  
16 Mail as of the date ordered by the Court as well as to provide any additional copies of the Notice  
17 as requested by any such holder;

18 (b) Wynn Resorts shall cause the newswire service PR Newswire to issue the  
19 Summary Notice once to the public in the United States; and

20 (c) Until after the Court approves the Final Order and Judgment (Exhibit E),  
21 Wynn Resorts' website ([www.wynnresorts.com](http://www.wynnresorts.com)) will provide access to the content of the Notice  
22 (Exhibit C). The homepage of the Wynn Resorts website will contain a statement or heading  
23 identifying the Settlement, along with a hyperlink that brings users directly to a web page  
24 containing the content of the Notice.

1           10.2. Wynn Resorts shall bear the cost of mailing the Summary Notice as described in  
2 Paragraph 9.1(a) above. Wynn Resorts shall also bear the cost of the Notice set forth in Paragraphs  
3 9.1(b) and (c) above. None of the other Defendants shall be responsible for any costs associated  
4 with the notice of this Agreement.

5 **11. ATTORNEYS' FEES AND EXPENSES**

6           11.1. Defendants agree that, as a result of the Corporate Governance Reforms adopted by  
7 the Company as part of this settlement, Wynn Resorts and its public stockholders received material  
8 and substantial benefits. In light of benefits produced for Wynn Resorts by Plaintiffs and their  
9 Counsel in connection with this Agreement and the litigation leading up to it, Plaintiffs and  
10 Plaintiffs' Counsel intend to seek an aggregate award from the Court of no more than 12% of the  
11 combined monetary and corporate governance benefit to the Company as compensation for  
12 attorneys' fees and expenses, subject to Court approval. The aggregate award will include expenses  
13 not to exceed \$300,000.00, subject to Court approval ("Fee and Expense Award"). Plaintiffs and  
14 Plaintiffs' Counsel agree not to request that any greater aggregate amount be awarded to Plaintiffs'  
15 Counsel by the Court, not to seek payment of attorneys' fees and expenses from any person or  
16 entity other than Wynn Resorts, and that no other or greater payments or awards shall be requested  
17 from the Court. The Parties agree that any Court order requiring payments or providing awards of  
18 fees and expenses that is not consistent with the agreed limitations provided within the first two  
19 sentences of this Section 11.1 shall be deemed an unagreed material alteration of the terms of this  
20 Agreement and a failure to grant the approvals required by Section 3 hereof. Wynn Resorts and  
21 Defendants agree to support the requested fee award of no more than 12% of the combined  
22 monetary and corporate governance benefit to the Company, so long as it does not exceed \$10.8  
23 million.

1           11.2. Within thirty (30) calendar days of entry of the Judgment, Wynn Resorts shall pay  
2 such fees and expenses as may be awarded by the Court to be deposited into the account designated  
3 by Cohen Milstein Sellers & Toll LLC. In the event that any such order is reversed or modified on  
4 appeal, Plaintiffs' Counsel are jointly and severally obliged to refund to Wynn Resorts the amount  
5 by which the fees and expenses were reduced and all interest accrued or accumulated thereon.

6           11.3. Failure of the Court to approve a request for attorneys' fees and expenses in whole  
7 or in part shall have no effect whatsoever on the Settlement set forth in this Agreement. Final  
8 resolution of any such request for attorneys' fees and expenses shall not be a condition to the  
9 dismissal of the Action.

10 **12. ANNUAL MEETING**

11           12.1. No Proposals at Annual Meeting. In further consideration of the releases, promises,  
12 and covenants herein and other good and valuable consideration, the sufficiency and receipt of  
13 which the Parties hereby acknowledge, the Plaintiffs agree that they will not make any shareholder  
14 proposals at the next annual meeting of the Company following the Effective Date.

15 **13. MISCELLANEOUS**

16           13.1. Intent to Settle. The Parties and their respective counsel of record (a) acknowledge  
17 that it is their intent to consummate this Agreement, and (b) agree to act in good faith and cooperate  
18 to the extent reasonably necessary to effectuate and implement all terms and conditions of the  
19 Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of,  
20 and to obtain all necessary approvals of the Court required by, the Agreement (including, but not  
21 limited to, using their best efforts to resolve any objections raised to the Settlement).

22           13.2. Warranty of Stock Ownership. Plaintiffs and their co-lead counsel represent and  
23 warrant that Plaintiffs are stockholders of Wynn Resorts and were stockholders of Wynn Resorts  
24 at all relevant times for the purposes of maintaining standing in the Action.



1           13.3. Notice. All notices, requests, demands, claims, and other communications  
2 hereunder shall be in writing by personal delivery or reputable overnight courier as set forth below:

3           If to Plaintiffs, to:

4           Julie Goldsmith Reiser  
5           COHEN MILSTEIN SELLERS &  
6           TOLL LLC  
7           1100 New York Avenue NW, Suite 500  
8           Washington, D.C. 20005

9           If to the Director Defendants, to:

10          Matthew Solum, P.C.  
11          KIRKLAND & ELLIS LLP  
12          601 Lexington Avenue  
13          New York, New York 10022

14          and

15          Patrick G. Byrne (Nevada Bar #7636)  
16          SNELL & WILMER L.L.P.  
17          3883 Howard Hughes Parkway, Suite 1100  
18          Las Vegas, Nevada 89169

19          If to Wynn Resorts, to:

20          Brenoch R. Wirthlin  
21          FENNEMORE CRAIG P.C.  
22          300 South Fourth Street, Suite 1400  
23          Las Vegas, Nevada 89101

24          With a copy to:

25          Ellen Whitemore  
26          General Counsel  
27          WYNN RESORTS, LTD.  
28          3131 Las Vegas Boulevard South  
                Las Vegas, Nevada 89109

If to Kimmarie Sinatra, to:

                James N. Kramer  
                ORRICK, HERRINGTON &  
                SUTTCLIFFE LLP  
                405 Howard Street  
                San Francisco, California 94105

If to Stephen A. Wynn, to:

                Colleen C. Smith  
                LATHAM & WATKINS, LLP  
                12670 High Bluff Drive  
                San Diego, California 92130

1 Any Party hereto may change its address set forth above by giving notice to the other Parties in the  
2 manner set forth above.

3 13.4. Severability. The failure by any particular Defendant or Wynn Resorts to comply  
4 with any term of this Agreement or the Court Order approving this Agreement shall not give rise  
5 to a claim against any other Defendants or Parties who have complied. Nor shall the failure by any  
6 Defendant or Wynn Resorts to comply with any term of this Agreement or the Court Order  
7 approving this Agreement affect the releases of other Defendants or Parties who have complied.

8 13.5. Sophisticated Parties; No Construction Against Drafter. Each Party hereto received  
9 independent legal advice from attorneys of his, her, or its choosing with respect to the advisability  
10 of entering this Agreement, the releases provided for in this Agreement, and with respect to the  
11 terms and conditions of this Agreement. This Agreement has been negotiated by the Parties and  
12 counsel. It is not to be construed against any party as the drafting party. In the event that the Court  
13 or any other court is called upon to interpret this Agreement, no one party or group of parties shall  
14 be deemed to have drafted the Agreement.

15 13.6. Entire Agreement. This Agreement in the form as finally approved by the Court  
16 embodies the entire agreement of the Parties. There are no further or other promises, agreements,  
17 understandings, terms, conditions, or obligations other than those contained herein. This  
18 Agreement supersedes all previous communications, representations, or agreements, either verbal  
19 or written, between the Parties or their attorneys.

20 13.7. No Rights of Subrogation. Plaintiffs represent and warrant that no person, entity,  
21 firm, corporation, or insurance company has received any rights of subrogation, or substitution to  
22 the claims made, or which could have been asserted by Plaintiffs in the Action, and that there are  
23 no liens, voluntary, involuntary, statutory, or otherwise, relating to Plaintiffs' Claim in the Action,  
24 or this Agreement. Defendants and Wynn Resorts represent and warrant that no person, entity,  
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1 firm, corporation, or insurance company has received any rights of subrogation, or substitution to  
2 the claims, if any, which could have been asserted by Defendants and/or Wynn Resorts in the  
3 Action, and that there are no liens, voluntary, involuntary, statutory, or otherwise relating to such  
4 claims or this Agreement.

5 13.8. No Transfer or Assignment of Claims. Plaintiffs represent and warrant that they  
6 have not assigned, transferred, or conveyed, nor purported to assign, transfer, or convey, to any  
7 person, entity, firm, corporation, or insurance company, any rights, claims, or causes of action (or  
8 any portion thereof) they may have, or have had, against any or all of the Defendants, with respect  
9 to Plaintiffs' Claim in the Action or any matters described in the Action. The Defendants and Wynn  
10 Resorts represent and warrant they have not assigned, transferred, or conveyed, nor purported to  
11 assign, transfer, or convey, to any person, entity, firm, corporation, or insurance company, any  
12 rights, claims, or causes of action (or any portion thereof) they may have, or have had, against the  
13 Plaintiffs, with respect to the claims, if any, which could have been asserted by Defendants and/or  
14 Wynn Resorts in the Action.

15 13.9. Further Cooperation. The Parties agree to cooperate fully and execute any and all  
16 supplementary documents that may be necessary or appropriate to give full force and effect to the  
17 basic terms and intent of this Agreement.

18 13.10. Authority to Execute; Counterparts. The individuals executing this Agreement on  
19 behalf of the Parties represent and warrant that they have the authority to act on behalf of their  
20 principal and execute this document on their principal's behalf. This Agreement may be executed  
21 in counterparts, each of which shall be deemed an original, and, when taken together with the other  
22 signed counterparts, shall constitute one and the same instrument. Facsimile or .pdf signatures shall  
23 constitute valid evidence of execution. This Agreement shall be deemed to be executed as of the  
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1 date that all counsel for the Parties have executed a counterpart, even though no single counterpart  
2 is executed by all counsel for the Parties.

3 13.11. Limited Right to Appeal. The Parties covenant and agree not to appeal the Final  
4 Order and Judgment. Nothing in this paragraph should be construed to grant or confer any right of  
5 appeal to any party or nonparty to this Action, other than as already exists and as provided by  
6 applicable law, if any.

7 13.12. Stay of Proceedings. Pending Court approval of the Agreement, the Parties agree  
8 to stay any and all proceedings in the Action other than those incident to the Agreement itself. The  
9 Parties shall agree to extensions of time with respect to pleadings and other Court deadlines and  
10 filings as are appropriate in the context of this Agreement. Without further order of the Court, the  
11 Parties may agree to reasonable extensions of time not expressly set by the Court in order to carry  
12 out any of the provisions of this Agreement.

13 13.13. Third-Party Beneficiaries. No third parties are intended beneficiaries of this  
14 Agreement and the promises contained therein, with the exception of those non-Parties who are  
15 among the Released Parties to whom the Releases contained in Section 2 extend.

16 13.14. Exhibits. The Exhibits to this Agreement are a material and integral part hereof and  
17 are fully incorporated herein by this reference.

18 13.15. Amendments; Waiver. This Agreement may be amended or any of its provisions  
19 waived only by a written instrument executed by all Parties or by attorneys authorized to act on  
20 their behalf. Any failure by any Party to insist upon the strict performance by any other Party of  
21 any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions  
22 hereof, and such party, notwithstanding such failure, shall have the right thereafter to insist upon  
23 the strict performance of any and all of the provisions of this Agreement to be performed by such  
24 other Party. Waiver by any Party of any breach of this Agreement by any other Party shall not be  
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1 deemed a waiver of any other prior or subsequent breach of this Agreement, and failure by any  
2 Party to assert any claim for breach of this Agreement shall not be deemed to be a waiver as to that  
3 or any other breach and will not preclude any Party from seeking to remedy a breach and enforce  
4 the terms of this Agreement.

5 13.16. Governing Law. This Agreement shall be governed by the laws of Nevada, without  
6 regard to conflict of laws principles.

7 13.17. Headings. The section headings used throughout this Agreement are for  
8 convenience only and shall not affect the construction or interpretation of the Agreement.

9 13.18. Disparaging Remarks. Other than as required by law, none of the Parties, nor any  
10 of the Parties' respective attorneys or representatives, shall issue any press release or make any  
11 other public statement describing this Agreement which disparages any Party or accuses any Party  
12 of any wrongdoing. Recitation of the allegations in the Amended Complaint does not qualify as  
13 "disparagement" or an accusation of wrongdoing under this provision, so long as they are referred  
14 to as allegations.

15 13.19. Jurisdiction. The Court shall retain exclusive jurisdiction over the implementation  
16 and enforcement of this Agreement.

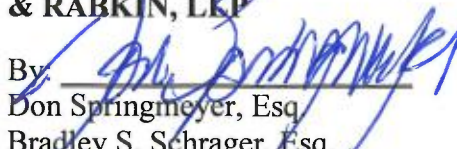
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1 Date: November 21, 2019

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2 **WOLF, RIFKIN, SHAPIRO, SCHULMAN  
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18 York, as Administrative Head of the New York  
19 State and Local Retirement System and  
Trustee of the New York State Common  
Pension Funds*

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Boone Wayson, John J. Hagenbuch, Ray R.  
Irani, Jay L. Johnson, Robert J. Miller,  
Patricia Mulroy, Clark T. Randt, Jr., Alvin V.  
Shoemaker, J., and Edward Virtue*

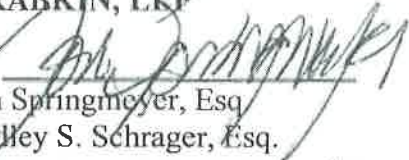
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19 York, as Administrative Head of the New York  
20 State and Local Retirement System and  
21 Trustee of the New York State Common  
22 Retirement Fund; and, for the New York City  
23 Pension Funds*

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Boone Wayson, John J. Hagenbuch, Ray R.  
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Date: November 21, 2019

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Date: November 21, 2019

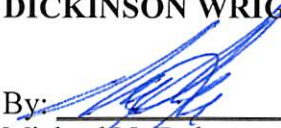
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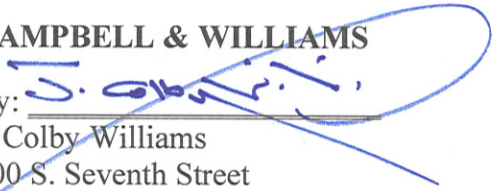
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Date: November 21, 2019

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1 **EXHIBIT A**  
2 **WYNN RESORTS, LTD. CORPORATE REFORMS**

3 In connection with a settlement of the derivative lawsuits facing Wynn Resorts, Ltd. (“Wynn  
4 Resorts” or the “Company”) and its directors and officers, titled *DiNapoli v. Wynn, et al.*, Case No.  
5 A-18-770013-B (the “Derivative Lawsuit”), Wynn Resorts, Ltd. implemented the following  
6 corporate reforms:

7 **NEW CORPORATE REFORMS**

- 8
- 9 **1. Majority Vote Requirement:** The Board of Directors shall submit and recommend a  
10 proposed bylaw change to Wynn shareholders for approval at the first annual general  
11 meeting after the Effective Date that requires a majority vote for all director elections and  
12 re-elections, except in the case of a proxy context. Upon approval, the Board of Directors  
13 will implement said change.
  - 14 **2. 10b5-1 Plan:** The Board of Directors shall adopt (i) a requirement that Directors wishing  
15 to sell Company stock must do so pursuant to a 10b5-1 plan and (ii) a requirement that  
16 executives wishing to sell Company stock who have stock in the Company worth more than  
17 \$15 million must do so pursuant to a 10b5-1 plan.
  - 18 **3. Succession Plan:** The Nominating & Governance Committee will enhance its succession  
19 planning and provide a succession plan for executive officers and directors to the Board of  
20 Directors.
  - 21 **4. Separation of Chairman and CEO:** The Board of Directors shall submit and recommend  
22 a proposed bylaw change to Wynn shareholders for approval at the first annual general  
23 meeting after the Effective Date that mandates the separation of Chairman and CEO, and  
24 requires that the Chairman be independent. Upon approval, the Board of Directors will  
25 implement said change.
  - 26 **5. Commitment to Diversity:** The Nominating & Governance Committee will publicly  
27 announce the intention of the Company to achieve 50% diversity of the Board of Directors.  
28

**MEASURES UNDERTAKEN**

19 The filing of Plaintiffs’ original complaint in the Action, which occurred on February 22,  
20 2018, was a factor considered by Wynn Resorts in deciding to undertake the following extensive  
21 remedial measures:

- 22 **1. Revised and Updated Corporate Prevention of Harassment Policies:** Among other  
23 policies, the Company revised and enhanced its Preventing Harassment and Discrimination  
24 Policy, including the following changes:
  - 25 • Updating the name of the Sexual Harassment Policy, from “Zero Tolerance” to  
26 “Preventing Harassment and Discrimination”;
  - 27 • Strengthening the Policy’s statement of corporate commitment to diversity,  
28 inclusion, and respect;
  - Clarifying that the Policy applies to all employees throughout the Company,  
including full-time, part-time, temporary, and seasonal employees, as well as the  
Board of Directors;

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- Clarifying the Company’s reporting procedure and emphasizing a manager’s duty to report all instances of complaints or harassment;
- Adding a reporting channel directly to the Audit Committee for any complaints involving senior executives;
- Adding additional channels for reporting and filing complaints to ensure that employees have multiple avenues through which they may feel safe making a report or filing a complaint;
- Strengthening and clarifying the Policy’s statement against retaliation by clearly defining “retaliation,” and emphasizing that employees who engage in retaliation may be subject to discipline, up to and including termination; and
- Clarifying that the Policy applies to third-party harassment and requiring all independent contractors, including employees thereof, to abide by the Company’s Preventing Harassment and Discrimination Policy.

The Company will also implement an annual survey to assess the efficacy of the enhancements. Surveys include the following questions: (1) I have not personally witnessed sexual harassment in this Company. (2) I am familiar with the proper reporting procedures for incidents of sexual harassment. (3) I feel comfortable reporting incidents of sexual harassment to management. (4) I believe the Company will take appropriate action in response to incidents of sexual harassment.

- 2. Enhanced Training:** Launched enhanced Workplace Compliance and Prevention of Sexual Harassment training for all employees, designed by a third-party expert and delivered in-person to all employees.
- 3. Women’s Leadership Council:** Launched a Women’s Leadership Council to promote equality within the workplace.
- 4. Equitable Pay and Promotion Study:** Commissioned pay and promotion equity studies to measure pay equality among men and women in the workforce.
- 5. Parental Leave Policy:** Launched a Paid Parental Leave program that provides paid time off to new parents.
- 6. Perfect Start Policy:** Qualified new parent employees receive \$250 upon the birth of a child.
- 7. Diversity Training:** Implemented new Diversity, Inclusion and Unconscious Bias training taught by third-party experts. Company senior executives completed an eight-hour training program.
- 8. Employee Relations Department:** Extended the hours of the Employee Relations Department to ensure greater access and availability for employees.
- 9. Reporting Hotline:** Retained a third-party expert in human resource matters to establish a third-party reporting hotline for employees.
- 10. Enhancements to Reporting and Investigative Processes:** Adopted new written protocols to memorialize the process of workplace conduct investigations and ensure that every report and complaint it receives is appropriately and consistently addressed.

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**11. Permitted Disclosures Policy:** Adopted a Permitted Disclosures Policy, which reaffirms to employees that nothing in any Company policy or employment-related confidentiality or non-disparagement agreement restricts them from engaging in legally-protected disclosures.

**12. Personal Relationships and Potential Conflicts of Interest Policy:** Updated the Personal Relationships and Potential Conflicts of Interest Policy to discourage personal relationships between all employees and expressly state that personal relationships must not interfere with any employees' professional behavior. The updated policy also provides added clarity by specifically defining "Restricted Relationships," and identifying certain personal relationships between employees that must be reported to Human Resources and to the Audit Committee of the Board of Directors. The new policy also enhances review and scrutiny of personal relationships in the Company's Legal, Compliance, Security, and Human Resources departments.

**13. Spa and Salon Policies and Initiatives:** Updated the Spa and Salon Policies in an effort to increase the safety and security of employees and minimize the potential for misconduct, including updates stating that:

- if an employee is uncomfortable or feels threatened during service, he or she should immediately end the service and leave the guestroom or treatment area;
- solicitation by guests of the private information of employees is inappropriate; and
- all inappropriate behavior must be reported to the manager on duty.

As part of these changes, the Company also made clear to all Spa and Salon employees that they are entitled to be escorted by a manager or security to and from any in-room service appointments. In addition, the Company has provided each guest-room attendant (and Spa and Salon employees going to guest rooms) a safety button that they can push in the case of an emergency. The Company also initiated a policy prohibiting the use of Spa and Salon services by executives and Board members.

**14. New Compliance Program:** Adopted a new Compliance Program with a reconstituted Compliance Committee comprised of individuals with extensive experience and familiarity with law enforcement regulated businesses, ethics, and/or gaming compliance, who are not otherwise affiliated with the Company, to oversee and promote the Company's compliance and ensure that it meets the Company's strict policy to conduct business at the highest levels of honesty and integrity. Two Board members also serve as *ex officio* members of the Compliance Committee. Under the new Compliance Program, the Compliance Committee is responsible for:

- Ensuring the Company's compliance with gaming laws in all applicable jurisdictions;
- Reviewing all transactions entered into during the previous quarter;
- Reviewing all claims of sexual harassment reported by employees;
- Meeting regularly with the Chief Global Compliance Officer and the Audit Committee;
- Sharing minutes between the Board and the Compliance Committee; and

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- Providing the Company’s gaming regulators with regular updates on, among other things, the following issues: (i) disciplinary actions, settlements, or terminations regarding harassment or discrimination by a senior executive; (ii) significant compliance developments; and (iii) any known lawsuits or other public filings against senior executives or Board members involving harassment or discrimination.

**15. Arbitration Clauses:** Prohibition of employer-forced arbitration clauses (other than for collective bargaining agreements) for discrimination or sexual misconduct claims.

**16. Non-Disclosure Agreements:** Prohibition of employer-forced Non-Disclosure Agreements in any settlement agreements relating to discrimination or sexual misconduct claims. Allow for permissive one-sided Non-Disclosure Agreements so that victim can disclose, but Wynn Resorts cannot force non-disclosure.

**17. Amendment to Code of Personal Conduct:** Amended the Code of Personal Conduct to require disclosure of any civil complaints, administrative charges, or settlements (whether or not as the result of a civil or administrative complaint) involving claims alleging that the employee engaged in sexual harassment.

**18. Adoption of “Rooney Rule”:** Adoption of a “Rooney Rule” in the Board’s Nominating and Governance Charter for evaluation of candidates.

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**EXHIBIT B**

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DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE WYNN RESORTS, LTD.  
DERIVATIVE LITIGATION

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

Consolidated with Case Nos.  
A-18-769673-B, A-18-770013-B, A-18-770222-B,  
A-18-770578-B, A-18-771162-B, A-19-795981-B

-AND-

**Coordinated Cases**

A-18-785076-B, A-18-785733-B, A-18-785771-B,  
A-18-785942-B, A-18-785970-B, A-18-786074-B,  
A-18-786149-B, A-18-786696-B, A-19-787070-B

AND ALL COORDINATED  
CASES

Dept. No.: XVI

**[PROPOSED] SCHEDULING ORDER**

This matter having come before the Court upon the parties’ joint submission of the Stipulation and Agreement of Settlement and Release, dated November 21, 2019, and the exhibits attached thereto (the “Agreement”), and the Court having reviewed the Agreement and being fully advised of the premises therein, IT IS HEREBY ORDERED that:

1. A hearing (the “Settlement Hearing”) shall be held before this Court on the \_\_\_\_ day of \_\_\_\_\_, 2020 at \_\_\_\_\_, to (i) determine whether the above-captioned action (the “Action”) may proceed as a stockholder derivative action pursuant to Nevada Rule of Civil



1 Procedure 23.1, solely for purposes of the Settlement and without prejudice to the Company’s right  
2 to raise defenses under Rule 23.1 or any other defenses in the Action in the event that the Court  
3 fails to grant final approval of the Settlement; (ii) determine whether the Settlement, on the terms  
4 and conditions provided for in the Agreement, is fair, reasonable, and adequate, and in the best  
5 interests of Wynn Resorts, Ltd. (“Wynn Resorts”) and its stockholders; (iii) determine whether the  
6 Court should finally approve the Settlement and enter a judgment, substantially in the form attached  
7 hereto as Exhibit E, dismissing the Action with prejudice and extinguishing and releasing the claims  
8 as set forth therein; (iv) hear and determine any objections to the Settlement; (v) rule on Plaintiffs’  
9 application for an award of attorneys’ fees and expenses; and (vi) rule on such other matters as the  
10 Court may deem appropriate.

11         2.       The Court approves, as to form and content, the Notice of Pendency of Derivative  
12 Action, Proposed Settlement of Derivative Action, and Settlement Hearing (the “Notice”), attached  
13 as Exhibit C to the Agreement, and the Summary Notice of Pendency of Derivative Action,  
14 Proposed Settlement of Derivative Action, and Settlement Hearing (the “Summary Notice”),  
15 attached as Exhibit D to the Agreement, and finds that the mailing and posting of these notices,  
16 substantially in the manner and form set forth in the Agreement, meets the requirements of Nevada  
17 Rule of Civil Procedure 23.1 and due process, are the best notice practicable under the  
18 circumstances, and shall constitute due and sufficient notice to Wynn Resorts’ stockholders.

19         3.       At least sixty **(60) business days** before the Settlement Hearing, Wynn Resorts shall  
20 cause the Notice, attached as Exhibit C to the Agreement, to be mailed by first-class mail to all  
21 stockholders of record as of the close of business on the date of this Order at the addresses provided  
22 on the books of Wynn Resorts.

23         4.       At least **sixty (60) business days** before the Settlement Hearing, Wynn Resorts shall  
24 cause the Notice to be posted on its corporate website.

25         5.       At least **sixty (60) business days** before the Settlement Hearing, Wynn Resorts shall  
26 cause the newswire service PR Newswire to issue the Summary Notice once to the public in the  
27 United States.

28

1           6.       At least **fourteen (14) days** before the Settlement Hearing, Wynn Resorts shall file  
2 with the Court proof, by appropriate declaration, of such mailing and posting described in  
3 Paragraphs 3, 4, and 5.

4           7.       All papers in support of the settlement shall be filed with the court and served at  
5 least **twenty (20) days** before the Settlement Hearing.

6           8.       Any Wynn Resorts stockholders may appear and show cause, if he, she, or it has  
7 any reason why the settlement should not be approved as fair, reasonable, and adequate, or why a  
8 judgment should not be entered thereon, or why attorneys' fees should not be awarded to Plaintiffs'  
9 counsel; provided, however, that no Wynn Resorts stockholder shall be heard or entitled to contest  
10 the approval of the terms and conditions of the settlement unless that person has, at least **thirty (30)**  
11 **days** before the Settlement Hearing, filed a detailed objection in writing (described further below)  
12 with the Clerk of Court and served on the following counsel so that it was received no later than  
13 **thirty (30) days** before the Settlement hearing:

14                   Julie Goldsmith Reiser  
15                   COHEN MILSTEIN SELLERS &  
16                   TOLL LLC  
17                   1100 New York Avenue NW, Suite 500  
18                   Washington, D.C. 20005  
19                   *Counsel for Lead Plaintiffs*

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24                   *Counsel for Director Defendants*

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                    FENNEMORE CRAIG P.C.  
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                    *Counsel for Wynn Resorts*

1 Such objections must contain the following information: (i) the Wynn Resorts stockholder's name,  
2 legal address, and telephone number; (ii) Proof of being a Current Wynn Resorts Shareholder as of  
3 the Record Date; (iii) The date(s) the Wynn Resorts stockholder purchased their Wynn Resorts  
4 shares; (iv) a statement of the Wynn Resorts stockholder's position with respect to the matters to  
5 be heard at the Final Hearing, including a statement of each objection being made; and (v) the  
6 grounds for each objection or the reasons for the Wynn Resorts stockholder desiring to appear and  
7 to be heard. Any Wynn Resorts stockholder who fails to object or otherwise request to be heard in  
8 the manner prescribed above will be deemed to have waived the right to object to any aspect of the  
9 settlement or to otherwise request to be heard (including the right to appeal) and will be forever  
10 barred from raising such objection or request to be heard in this or any other action or proceeding,  
11 and shall be bound by the settlement, the judgment, and the releases given.

12 9. All replies to any objections shall be filed and served at least **seven (7) days** before  
13 the Settlement Hearing.

14 **IT IS SO ORDERED.**

15 Dated this \_\_\_ day of \_\_\_\_\_, 2019

16 \_\_\_\_\_  
17 DISTRICT COURT JUDGE  
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**EXHIBIT C**

**NOTICE OF PENDENCY OF DERIVATIVE ACTION, PROPOSED AGREEMENT OF SETTLEMENT AND RELEASE, AND SETTLEMENT HEARING**

**TO: ALL CURRENT RECORD HOLDERS AND BENEFICIAL OWNERS OF COMMON STOCK OF WYNN RESORTS, LTD. (“WYNN RESORTS” OR THE “COMPANY”) AS OF \_\_\_\_\_ (THE “RECORD DATE”) (“CURRENT WYNN RESORTS SHAREHOLDERS”).**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT AND DISMISSAL OF *DINAPOLI V. WYNN, ET AL.*, CASE NO. A-18-770013-B (THE “ACTION”), A SHAREHOLDER DERIVATIVE ACTION, AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. IF THE COURT APPROVES THE SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE APPROVAL OF THE PROPOSED SETTLEMENT AND FROM PURSUING THE “RELEASED CLAIMS,” AS DEFINED HEREIN.**

**THE COURT HAS MADE NO FINDINGS OR DETERMINATIONS CONCERNING THE MERITS OF THE ACTION. THE RECITATION OF THE BACKGROUND AND CIRCUMSTANCES OF THE SETTLEMENT CONTAINED HEREIN DOES NOT CONSTITUTE THE FINDINGS OF THE COURT. IT IS BASED ON REPRESENTATIONS MADE TO THE COURT BY COUNSEL FOR THE PARTIES.**

Notice is hereby provided to you of the proposed settlement (the “Settlement”) of this shareholder derivative lawsuit. This Notice is provided by Order of the District Court of Nevada, Clark County (the “Court”). It is not an expression of any opinion by the Court. It is to notify you of the terms of the proposed Settlement, and your rights related thereto.

**1. WHY THE COMPANY HAS ISSUED THIS NOTICE**

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, and the New York City Pension Fund<sup>4</sup> (together, “Plaintiffs”), Nominal Defendant Wynn Resorts, Ltd. (“Wynn Resorts” or the “Company”), and Defendants D. Boone Wayson, John J. Hagenbuch, Ray R. Irani, Jay L. Johnson, Robert J. Miller, Patricia Mulroy, Clark T. Randt, Jr., Alvin V. Shoemaker, and J. Edward Virtue (“Director Defendants”), Stephen A. Wynn, Kimmarré Sinatra, and Matthew Maddox (together with the Director Defendants, the “Defendants” and, together with Plaintiffs and Wynn Resorts, the “Parties” and each a “Party”) have agreed upon terms to settle the Action on the terms set forth in the Stipulation and Agreement

<sup>4</sup> The NYC Funds include: New York City Employees’ Retirement System, New York City Police Pension Fund, Police Officer’s Variable Supplements Fund, Police Supervisor Officers Variable Supplements Fund, New York City Fire Pension Fund, Fire Fighters’ Variable Supplements Fund, Fire Officers’ Variable Supplements Fund, Board of Education Retirement System of the City of New York, Teachers’ Retirement System of the City of New York, and New York City Teachers’ Variable Annuity Program.

1 of Settlement and Release, dated November 21, 2019 (“Agreement”), which can be viewed and/or  
2 downloaded at www.wynnresorts.com.

3 On \_\_\_\_\_, at \_\_\_\_\_, the Court will hold a hearing (the “Final Hearing”) in the  
4 Action. The purpose of the Final Hearing is to determine: (i) whether the terms of the Agreement  
5 are fair, reasonable, and adequate and should be approved; (ii) whether a final judgment should be  
6 entered; and (iii) such other matters as may be necessary or proper under the circumstances.

## 6 **2. SUMMARY OF THE ACTION**

7 On February 22, 2018, Plaintiffs Thomas P. DiNapoli, Comptroller of the State of New  
8 York, as Administrative Head of the New York State and Local Retirement System and Trustee of  
9 the New York State Common Retirement Fund (“NYSCRF”), and New York City Employees’  
10 Retirement System, New York City Police Pension Fund, Police Officer’s Variable Supplements  
11 Fund, Police Supervisor Officers’ Variable Supplements Fund, New York City Fire Pension Fund,  
12 Fire Fighters’ Variable Supplements Fund, Fire Officers’ Variable Supplements Fund, Board of  
13 Education Retirement System of The City of New York, Teachers’ Retirement System of The City  
14 of New York, and New York City Teachers’ Variable Annuity Program (collectively, the “NYC  
15 Funds”) filed a stockholder derivative action in the District Court of Nevada, Clark County (the  
16 “Court”), on behalf of Nominal Defendant Wynn Resorts against the Defendants for breaches of  
17 fiduciary duty styled *DiNapoli v. Wynn, et al.*, Case No. A-18-770013-B (the “DiNapoli Action”).

18 Six other derivative complaints were filed in the Court, including (1) *Operating Engineers,*  
19 *et al. v. Wynn, et al.*, Case No. A-18-769630-B (filed Feb. 15, 2018); (2) *Boynton Beach Mun*  
20 *Firefighters’ Pension Trust Fund, et al. v. Wynn, et al.*, Case No. A-18-769673-B (filed Feb. 15,  
21 2018); (3) *Erste-Sparinvest Kapitalanlagegesellschaft m.b.H. v. Wynn, et al.*, Case No. A-18-  
22 770013-B (filed Feb. 22, 2018); (4) *State of Oregon, et al. v. Wynn, et al.*, Case No. A-18-770578-  
23 B (filed Mar. 6, 2018); (5) *Insulators and Asbestos Workers Local No. 14 Pension and Health and*  
24 *Welfare Funds, v. Wynn, et al.*, Case No. A-18-771162-B (filed Mar. 15, 2018); and (6) *C. Jeffrey*  
25 *Rogers v. Wynn, et al.*, Case No. A-18-773024-B (filed Apr. 18, 2018, “Rogers Action”); and (7)  
26 *Dennis Rosen v. Stephen A. Wynn, et al.*, Case No. A-19-795981-B (filed June 3, 2019).

27 On March 23, 2018, Plaintiffs filed their Verified Amended Stockholder Derivative  
28 Complaint in the DiNapoli Action alleging five causes of action: (a) breach of fiduciary duty against  
the Director Defendants; (b) unjust enrichment against all Defendants; (c) breach of fiduciary duty  
against Stephen A. Wynn, Kimmarie Sinatra, and Matthew Maddox; (d) insider trading against  
Stephen A. Wynn, John J. Hagenbuch, Patricia Mulroy, Clark T. Randt, Jr., Alvin V. Shoemaker,  
D. Boone Wayson, Kimmarie Sinatra, and Matthew Maddox; and (e) aiding and abetting Stephen  
A. Wynn’s breach of fiduciary duty against Kimmarie Sinatra, Matthew Maddox, and the Director  
Defendants (collectively, “Plaintiffs’ Allegations”).

On May 10, 2018, the Court signed an order consolidating the DiNapoli Action with the  
other aforementioned derivative suits, excluding the Rogers Action, (the “Action”) and made the  
March 23, 2018 complaint the operative complaint (the “Complaint”). In the same order, the Court  
designated 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, and the New York City Pension Funds, collectively, as Lead Plaintiffs (“Lead  
Plaintiffs”) and the law firm of Cohen Milstein Sellers & Toll PLLC as Lead Counsel for the Action

1 and the law firm of Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP as Liaison Counsel  
2 (collectively, “Plaintiffs’ Counsel”). In the Complaint, Plaintiffs allege that Wynn Resorts suffered  
3 injury as a result of Plaintiffs’ Allegations.

4 On September 5, 2018, the Court denied Defendants’ motions to dismiss the Amended  
5 Complaint, finding that demand on the Board would be futile (“MTD Order”).

6 On September 19, 2018, the Company’s Board of Directors created and established a  
7 Special Litigation Committee (“SLC”) in accordance with *In re Dish Network Derivative Litig.*,  
8 401 P.3d 1081 (Nev. 2017) (“Dish Network”). In accordance with Dish Network, the Board tasked  
9 the SLC with reviewing, investigating, and analyzing the allegations and causes of action in the  
10 Amended Complaint, as well as making a determination as to whether it is in the Company’s best  
11 interest to prosecute, resolve, or dismiss some or all of the causes of action in the Amended  
12 Complaint. On November 30, 2018, the SLC filed a Motion to Intervene and Motion to Stay in the  
13 Action and on January 6, 2018, the Court granted the SLC’s motion to intervene and granted the  
14 SLC’s motion to stay in part (the “Stay”).

15 On October 15, 2018, the Nevada Supreme Court summarily dismissed Defendants’ petition  
16 to reverse the Court’s MTD Order.

17 On November 29, 2018, the Court denied a “renewed” motion to dismiss the Amended  
18 Complaint by Defendant Sinatra.

### 19 3. SETTLEMENT

20 On November 21, 2019, Plaintiffs and Defendants entered into the Agreement to resolve  
21 the Action. Pursuant to the Agreement, Wynn Resorts will institute certain corporate governance  
22 reforms, including:

- 23 1. **Majority Vote Requirement:** The Board of Directors shall submit and recommend a  
24 proposed bylaw change to Wynn shareholders for approval at its 2020 annual general  
25 meeting that requires a majority vote for all director elections and re-elections, except in  
26 the case of a proxy context. Upon approval, the Board of Directors will implement said  
27 change.
- 28 2. **10b5-1 Plan:** The Board of Directors shall adopt (i) a requirement that Directors wishing  
to sell Company stock must do so pursuant to a 10b5-1 plan and (ii) a requirement that  
executives wishing to sell Company stock who have stock in the Company worth more  
than \$15 million must do so pursuant to a 10b5-1 plan.
3. **Succession Plan:** The Nominating & Governance Committee will enhance its succession  
planning and provide a succession plan for executive officers and directors to the Board of  
Directors.
4. **Separation of Chairman and CEO:** The Board of Directors shall submit and  
recommend a proposed bylaw change to Wynn shareholders for approval at its 2020  
annual general meeting that mandates the separation of Chairman and CEO, and requires  
that the Chairman be independent. Upon approval, the Board of Directors will implement  
said change.

1           **5. Commitment to Diversity:** The Nominating & Governance Committee will publicly  
2           announce the intention of the Company to achieve 50% diversity of the Board of  
3           Directors.

4           In addition, consistent with Plaintiffs' claims and after the filing of the Amended Complaint, Wynn  
5           Resorts has instituted a number of additional Corporate Governance reforms during the pendency  
6           of the litigation. These additional reforms, set forth in Exhibit A, include, but are not limited to:

7           1.       Substantially revised and updated Corporate Prevention of Harassment Policy,  
8           Personal Relationships and Potential Conflicts of Interest Policy, Spa and Salon Policy and Code  
9           of Personal Conduct;

10          2.       Significantly enhanced sexual harassment and diversity training for all employees;

11          3.       Significant enhancements to the ability to report complaints, including extending  
12          the hours of the Employee Relations Department and the establishment of a third-party hotline;

13          4.       The creation of a Compliance Program and Compliance Committee, comprised of  
14          individuals with extensive experience and familiarity with law enforcement regulated businesses,  
15          ethics, and/or gaming compliance, who are not otherwise affiliated with the Company, to oversee  
16          and promote the Company's compliance and ensure that it meets the Company's strict policy to  
17          conduct business at the highest levels of honesty and integrity;

18          5.       Prohibition of employer-forced arbitration clauses and non-disclosures agreements;  
19          and

20          6.       The adoption of a "Rooney Rule" in the Board's Nominating and Governance  
21          Charter for evaluation of candidates.

22                The Agreement also provides for the entry of judgment dismissing the Action against the  
23                Defendants with prejudice and, as explained in more detail in the Agreement, releasing and  
24                discharging certain known and unknown claims that could have been brought in any court by the  
25                Plaintiffs in the Action or by Wynn Resorts, or any of its shareholders, derivatively against the  
26                Defendants and Wynn Resorts and all of their past, present, and future officers, directors,  
27                shareholders, members, partners, managers, agents, attorneys, and insurers that relate to, arise out  
28                of, or concern Plaintiffs' Allegations.

#### 29           **4. PLAINTIFF'S ATTORNEYS' FEES AND EXPENSES**

30           After negotiating corporate governance reforms, counsel for the Plaintiff, the Company and  
31           Defendants, negotiated the attorneys' fees that Defendants would pay to Plaintiff's Counsel. In light  
32           of benefits produced for Wynn Resorts by Plaintiffs and their Counsel in connection with this  
33           Agreement and the litigation leading up to it, Plaintiffs and Plaintiffs' Counsel intend to seek an  
34           aggregate award from the Court of no more than 12% of the combined monetary and corporate  
35           governance benefit to the Company as compensation for attorneys' fees and expenses, subject to  
36           Court approval. The aggregate award will include expenses not to exceed \$300,000.00, subject to  
37           Court approval.

#### 38           **5. REASONS FOR THE SETTLEMENT**

39           The Court did not decide in favor of the Plaintiff or the Defendants. The proposed  
40           Settlement was negotiated at arm's-length by attorneys for the Parties. The attorneys for all of the

1 Parties have extensive experience in shareholder derivative cases, and they all believe the  
2 Settlement is in the best interest of their clients. Wynn Resorts and Plaintiffs believe that the  
3 Settlement provides substantial benefits upon Wynn Resorts and its shareholders.

### 4 **5.1 Why Did Plaintiffs Agree to Settle?**

5 Plaintiffs' Counsel investigated claims and the underlying events and transactions alleged  
6 in the Action. Plaintiffs' Counsel have analyzed the evidence adduced during their investigation,  
7 and have researched the applicable law with respect to the claims of Plaintiffs, Wynn Resorts, and  
8 its shareholders against the Defendants and the potential defenses thereto.

9 Based upon their investigation, Plaintiffs and its counsel have concluded that the terms and  
10 conditions of the Agreement are fair, reasonable, and adequate to Plaintiffs, Current Wynn Resorts  
11 Shareholders, and Wynn Resorts, and in their best interests, and have agreed to settle the claims  
12 raised in the Action pursuant to the terms and provisions of the Agreement after considering, among  
13 other things: (a) the substantial benefits that Wynn Resorts and its shareholders will receive from  
14 the Agreement, (b) the attendant risks of continued litigation of the Action, and (c) the desirability  
15 of permitting the Settlement to be consummated.

16 In particular, Plaintiffs and their counsel considered the significant litigation risk inherent  
17 in this Action. The law imposes significant burdens on Plaintiffs for pleading and proving a  
18 shareholder derivative claim. Further, there was a significant risk that the Special Litigation  
19 Committee of the Board of Wynn Resorts, formed by the Board on September 19, 2018 to  
20 investigate the claims in the Action, would recommend that the Company take no action or limited  
21 action, a recommendation that would have been very difficult to overcome. While Plaintiffs believe  
22 their claims are meritorious, Plaintiffs acknowledge that there is a substantial risk that the Action  
23 may not succeed in producing a recovery in light of the applicable legal standards and possible  
24 defenses. Plaintiffs and their counsel believe that, under the circumstances, they have obtained the  
25 best possible relief for Wynn Resorts and its shareholders.

### 26 **5.2 Why Did the Defendants Agree to Settle?**

27 Litigation presents inherent risks. Although Defendants deny that they acted improperly,  
28 the defense of the Action requires an expenditure of corporate resources, in particular, of  
management time and attention. After investigation of the underlying facts and analyzing the  
applicable law, Defendants believe that the arm's length settlement negotiated with Plaintiffs is  
appropriate under the circumstances. The settlement provides a certain and specific resolution of  
the disputes and provides a corporate governance change that is beneficial to Wynn Resorts  
shareholders. As well, the settlement permits Wynn Resorts' management to focus their attention  
on Wynn Resorts business affairs, which is where the focus of management should be.

## 29 **6. FINAL HEARING**

30 On \_\_\_\_\_, 2020, at \_\_\_\_\_, in Department 16, Courtroom 3H, of the Regional Justice  
31 Center, 200 Lewis Avenue, Las Vegas, Nevada 89101, the Court will hold the Final Hearing. At  
32 the Final Hearing, the Court will consider whether the terms of the Settlement are fair, reasonable,  
33 and adequate and thus should be finally approved, and whether the Action should be dismissed with  
34 prejudice pursuant to the Agreement.



1 **7. RIGHT TO ATTEND FINAL HEARING**

2 Any Current Wynn Resorts Shareholder may, but is not required to, appear in person at the  
3 Final Hearing. If you want to be heard at the Final Hearing, then you must first comply with the  
4 procedures for objecting, which are set forth below. The Court has the right to change the hearing  
5 dates or times without further notice. Thus, if you are planning to attend the Final Hearing, you  
6 should confirm the date and time before going to the Court. **CURRENT WYNN RESORTS  
SHAREHOLDERS WHO HAVE NO OBJECTION TO THE SETTLEMENT DO NOT NEED  
TO APPEAR AT THE FINAL HEARING OR TAKE ANY OTHER ACTION.**

7 **8. RIGHT TO OBJECT TO SETTLEMENT AND PROCEDURES FOR DOING SO**

8 You have the right to object to any aspect of the Settlement. You must object in writing,  
9 and you may request to be heard at the Final Hearing. If you choose to object, then you must follow  
these procedures.

10 **8.1 You Must Make Detailed Objections in Writing**

11 Any objection must be presented in writing and must contain the following information.  
12 The Court may not consider any objection that does not substantially include the following  
13 information:

- 14 1. Your name, legal address, and telephone number;
- 15 2. Proof of being a Current Wynn Resorts Shareholder as of the Record Date;
- 16 3. The date(s) you purchased your Wynn Resorts shares;
- 17 4. A statement of your position with respect to the matters to be heard at the Final  
Hearing, including a statement of each objection being made;
- 18 5. The grounds for each objection or the reasons for your desiring to appear and  
to be heard;
- 19 6. Notice of whether you intend to appear at the Final Hearing (this is not  
20 required if you have lodged your objection with the Court); and
- 21 7. Copies of any papers you intend to submit to the Court, along with the names  
22 of any witness(es) you intend to call to testify at the Final Hearing and the  
subject(s) of their testimony.

23 **8.2 You Must Timely Deliver Written Objections to the Court, Plaintiffs' Counsel, and  
24 Defendants' Counsel**

25 **YOUR WRITTEN OBJECTIONS MUST BE ON FILE WITH THE CLERK OF THE  
26 COURT NO LATER THAN 20 CALENDAR DAYS BEFORE THE FINAL HEARING.**

27 The Court Clerk's address is:  
28

1 Clerk of the Court  
2 200 Lewis Avenue  
3 Las Vegas, Nevada 89155

4 YOU ALSO MUST DELIVER COPIES OF THE MATERIALS TO COUNSEL FOR  
5 PLAINTIFFS AND COUNSEL FOR DEFENDANTS SO THEY ARE RECEIVED NO LATER  
6 THAN 20 CALENDAR DAYS BEFORE THE FINAL HEARING.

7 Counsel's addresses are:

8 Julie Goldsmith Reiser  
9 COHEN MILSTEIN SELLERS &  
10 TOLL LLC  
11 1100 New York Avenue NW, Suite 500  
12 Washington, D.C. 20005  
13 *Counsel for Lead Plaintiffs*

14 Matthew Solum, P.C.  
15 KIRKLAND & ELLIS LLP  
16 601 Lexington Avenue  
17 New York, New York 10022  
18 *Counsel for Director Defendants*

19 Colleen Smith  
20 LATHAM & WATKINS LLP  
21 12670 High Bluff Drive  
22 San Diego, California 92130  
23 *Counsel for Stephen A. Wynn*

24 James N. Kramer  
25 ORRICK, HERRINGTON &  
26 SUTCLIFFE LLP  
27 405 Howard Street  
28 San Francisco, CA 94105  
*Counsel for Kimmarie Sinatra*

Brenoch R. Wirthlin  
FENNEMORE CRAIG P.C.  
300 South Fourth Street, Suite 1400  
Las Vegas, Nevada 89101  
*Counsel for Wynn Resorts*

24 **9. HOW TO OBTAIN ADDITIONAL INFORMATION**

25 This Notice summarizes the Agreement. It is not a complete statement of the events of the  
26 Action or the Agreement.

27 You may inspect the Agreement and other papers in the Action at the District Court of  
28 Nevada, Clark County clerk's office at any time during regular business hours of each business  
day.

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PLEASE DO NOT CALL, WRITE, OR OTHERWISE DIRECT QUESTIONS TO EITHER THE COURT OR THE CLERK'S OFFICE. Any questions you have about matters in this Notice should be directed by telephone to Julie Goldsmith Reiser of Cohen Milstein Sellers & Toll LLC at (202) 408-4600 or in writing to Cohen Milstein Sellers & Toll LLC 1100 New York Avenue NW, Suite 500, Washington, D.C. 20005.

DATED: \_\_\_\_\_, 2019  
BY ORDER OF THE COURT  
DISTRICT COURT OF NEVADA  
CLARK COUNTY

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**EXHIBIT D**

**SUMMARY NOTICE**

**THE DISTRICT COURT OF NEVADA, CLARK COUNTY *DINAPOLI V. WYNN, ET AL.*, CASE NO. A-18-770013-B (THE “ACTION”), SUMMARY NOTICE OF PENDENCY OF DERIVATIVE ACTION, AGREEMENT OF SETTLEMENT AND RELEASE, AND SETTLEMENT HEARING**

**TO: ALL CURRENT RECORD HOLDERS AND BENEFICIAL OWNERS OF COMMON STOCK OF WYNN RESORTS, LTD. (“WYNN RESORTS” OR THE “COMPANY”) AS OF \_\_\_\_\_ (THE “RECORD DATE”) (“CURRENT WYNN RESORTS SHAREHOLDERS”).**

YOU ARE HEREBY NOTIFIED that the parties to the Action have reached a settlement to resolve the issues raised in the Action (“Settlement”).

PLEASE BE FURTHER ADVISED that, pursuant to the Order of the District Court of Nevada, Clark County, on \_\_\_\_\_, at \_\_\_\_\_, in Department 16, Courtroom 3H, of the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89101, a hearing will be held to determine: (i) whether the terms of the Agreement are fair, reasonable, and adequate and should be approved; (ii) whether a final judgment should be entered; and (iii) such other matters as may be necessary or proper under the circumstances.

If you are a Current Wynn Resorts Shareholder, you may have certain rights in connection with the proposed settlement. You should obtain a copy of the full printed Notice of Pendency of Derivative Action, Proposed Agreement of Settlement and Release, and Settlement Hearing, at [www.wynnresorts.com](http://www.wynnresorts.com) or by writing Cohen Milstein Sellers & Toll LLC 1100 New York Avenue NW, Suite 500, Washington, D.C. 20005.

If you are a Current Wynn Resorts Shareholder and do not take steps to appear in this action or to object to the proposed Settlement, you will be bound by the Order and Final Judgment of the Court, you will forever be barred from raising an objection to such Settlement in this or any other action or proceeding, and certain claims that you might have may be released.

You may obtain further information by writing Cohen Milstein Sellers & Toll LLC at the address above.

**PLEASE DO NOT CALL, WRITE, OR OTHERWISE DIRECT QUESTIONS TO EITHER THE COURT OR THE CLERK’S OFFICE.**

DATED: \_\_\_\_\_, 2019  
BY ORDER OF THE COURT  
DISTRICT COURT OF NEVADA  
CLARK COUNTY

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**EXHIBIT E**

Patrick G. Byrne (NV Bar #7636)  
Alex L. Fugazzi (NV Bar #9022)  
V. R. Bohman (NV Bar #13075)  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
Telephone: 702.784.5200  
Facsimile: 702.784.5252  
Email: [pbyrne@swlaw.com](mailto:pbyrne@swlaw.com)  
[afugazzi@swlaw.com](mailto:afugazzi@swlaw.com)  
[vbohman@swlaw.com](mailto:vbohman@swlaw.com)

*Additional Counsel on Signature Block*

*Attorneys for Defendants John J. Hagenbuch, Ray R. Irani, Jay L. Johnson, Matthew Maddox, Robert J. Miller, Patricia Mulroy, Clark T. Randt, Jr., Alvin V. Shoemaker, J. Edward Virtue, and D. Boone Wayson*

DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE WYNN RESORTS, LTD.  
DERIVATIVE LITIGATION

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

Consolidated with Case Nos.  
A-18-769673-B, A-18-770013-B, A-18-770222-B,  
A-18-770578-B, A-18-771162-B, A-19-795981-B

-AND-

**Coordinated Cases**

A-18-785076-B, A-18-785733-B, A-18-785771-B,  
A-18-785942-B, A-18-785970-B, A-18-786074-B,  
A-18-786149-B, A-18-786696-B, A-19-787070-B

AND ALL COORDINATED  
CASES

Dept. No.: XVI

**[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL**

This matter came before the Court for hearing pursuant to the Order of this Court, dated \_\_\_\_\_, 2019, on the application of the Parties for approval of the Settlement set forth in the Stipulation and Agreement of Settlement and Release, dated November 21, 2019, and the exhibits thereto (the "Agreement"). Due and adequate notice having been given to stockholders of Wynn Resorts, Ltd. ("Wynn Resorts") as required in said Order, and the Court having considered all objections raised, if any, and having considered all arguments made and papers filed and proceedings had herein, and otherwise being fully informed and good cause appearing therefore,

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

2 **1.** For purposes of this Final Judgment and Order of Dismissal (the “Judgment”) the  
3 Court incorporates by reference the definitions in the Agreement, and all capitalized terms used  
4 herein shall have the same meanings as set forth in the Agreement.

5 **2.** This Court has jurisdiction over the subject matter of the Action, including all  
6 matters necessary to effectuate the Agreement, and over all Parties, including nominal defendant  
7 Wynn Resorts and its stockholders.

8  
9 **3.** Pursuant to Rule 23.1 of the Nevada Rules of Civil Procedure, this Court hereby  
10 approves the Settlement set forth in the Agreement in all respects, and finds that said Settlement is,  
11 in all respects, fair, just, reasonable, and adequate to, and in the best interests of Wynn Resorts,  
12 Wynn Resort’s stockholders, and Plaintiffs.

13 **4.** This Court further finds the Settlement set forth in the Agreement is the result of  
14 arm’s-length negotiations between experienced counsel representing the interests of the Parties.  
15 Accordingly, the Settlement embodied in the Agreement is hereby approved in all respects and  
16 shall be consummated in accordance with its terms and provisions. The Parties are hereby directed  
17 to perform the terms of the Agreement.

18 **5.** The Action and all claims contained therein against the Defendants are dismissed  
19 with prejudice. The Parties are to bear their own costs, except as otherwise provided in the  
20 Agreement.

21 **6.** The methods of dissemination and publication of the Summary Notice and Notice,  
22 respectively, as provided for in the Agreement constituted the best notice practicable under the  
23 circumstances to Wynn Resorts’ shareholders and meets the requirements of Nevada Rule of Civil  
24 Procedure 23.1, due process under both the Constitution of the State of Nevada and the Constitution  
25 of the United States, and any other applicable law, and constituted due and sufficient notice to all  
26 persons entitled thereto.

27 **7.** Upon the Effective Date, Plaintiffs and each and every other Wynn Resorts  
28 shareholder, for themselves and derivatively on behalf of Wynn Resorts, and for Plaintiff Releasing

1 Parties, release and forever discharge the Defendant Released Parties from, and hereby covenant  
2 not to sue Defendant Released Parties for, any and all Defendants' Released Claims provided,  
3 however, that Defendants' Released Claims shall not include the right of Plaintiff Releasing Parties  
4 to enforce the terms of the Agreement or the Settlement, including Plaintiffs' Counsel's application  
5 for an award of fees and expenses.

6 **8.** Upon the Effective Date, Wynn Resorts, on behalf of Wynn Resorts Releasing  
7 Parties, shall release and forever discharge each of the Defendant Released Parties from, and  
8 covenant not to sue Defendant Released Parties for, any Wynn Resorts' Released Claims, provided,  
9 however, that Wynn Resorts' Released Claims shall not include the right of the Wynn Resorts  
10 Releasing Parties to enforce the terms of the Agreement or the Settlement.

11 **9.** Upon the Effective Date, each of the Defendant Released Parties and Wynn Resorts  
12 shall have, fully, finally, and forever released, relinquished, and discharged Plaintiffs and Plaintiffs'  
13 Counsel from all claims, arising out of, relating to, or in connection with their institution,  
14 prosecution, assertion, settlement, or resolution of the Plaintiffs' Released Claims provided,  
15 however, that Plaintiffs' Released Claims shall not include the right of the Defendants to enforce  
16 the terms of the Agreement or the Settlement.

17 **10.** The Court hereby approves the Fee Award in accordance with the Agreement and  
18 finds that the Fee Award is fair and reasonable.

19 **11.** Without affecting the finality of this Judgment in any way, this Court hereby retains  
20 continuing jurisdiction over: (a) implementation of this Settlement; (b) the Parties thereto for the  
21 purpose of construing, enforcing, and administering the Stipulation; and (c) any other matter related  
22 or ancillary thereto.

23 **12.** The Court finds that the action was filed, prosecuted, and defended in good faith,  
24 and that during the course of the action, the Parties and their respective counsel at all times complied  
25 with the requirements of the Nevada Rules of Civil Procedure, and all other similar rules and  
26 statutes.

27 **13.** Neither the Agreement, nor the settlement contained therein, nor any of the  
28 negotiations or proceedings connected with it, shall be deemed, used or construed as an admission

1 or concession by any of the Defendants in this Action, or as evidence of the truth or validity of any  
2 of the allegations in this Action, or of any liability, fault or wrongdoing of any kind. Neither the  
3 Agreement, nor the Settlement, nor any act performed or document executed pursuant to, or in  
4 furtherance of the Agreement or the Settlement, shall be admissible in any proceeding for any  
5 purpose, except to enforce the terms of the Agreement and except that the Released Parties may  
6 file the Agreement and/or the Judgment in any action that may be brought against them in order to  
7 support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release,  
8 good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue  
9 preclusion or similar defense or counterclaim.

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

12 **IT IS SO ORDERED.**

13 Dated this \_\_\_ day of \_\_\_\_\_, 2019

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DISTRICT COURT JUDGE

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