



1 **COMPC**  
THE O'MARA LAW FIRM, P.C.  
2 DAVID C. O'MARA  
Nevada State Bar No. 8599  
3 311 E. Liberty Street  
Reno, NV 89501  
4 Telephone: (775) 323-1321  
Facsimile: (775) 323-4082

CASE NO: A-19-795981-B  
Department 16

5 *Counsel for Plaintiff*

6 **IN THE EIGHTH JUDICIAL DISTRICT COURT**  
7 **IN AND FOR THE COUNTY OF CLARK**

8 DENNIS ROSEN,

CASE NO.:

9 Plaintiff,

DEPT. NO.:

10 vs.

11 STEPHEN A. WYNN, KIMMARIE  
12 SINATRA, FRANK SCHRECK, JAMES  
PISANELLI, GREGORY KAMER, SCOTT  
13 ABBOTT, MARC RUBINSTEIN, ESTATE OF  
BARRY LANGBERG, JONATHAN LAYNE,  
14 KEVIN TOUREK, JEROME COBEN, BARRY  
I. SLOTNICK, RUSSELL GOLDSMITH,  
15 DOREEN WHENNEN, MARC D. SCHORR,  
MAURICE WOODEN, ARTHUR NATHAN,  
16 BRIAN GULLBRANTS, JOHN J.  
HAGENBUCH, RAY R. IRANI, JAY L  
17 JOHNSON, ROBERT J. MILLER, PATRICIA  
MULROY, CLARK T. RANDT, JR., ALVIN  
18 V. SHOEMAKER, J. EDWARD VIRTUE, D.  
BOONE WAYSON, MATTHEW MADDOX,  
19 KAMER ZUCKER ABBOTT LLP, AND  
BROWNSTEIN HYATT FARBER  
20 SCHRECK, LLP, GIBSON DUNN &  
CRUTCHER LLP, AND PISANELLI BICE  
21 PLLC,

SHAREHOLDER DERIVATIVE  
COMPLAINT FOR BREACH OF  
FIDUCIARY DUTY, NEGLIGENCE  
IN PROFESSIONAL CONDUCT  
AND LEGAL MALPRACTICE,  
AIDING AND ABETTING BREACH  
OF FIDUCIARY DUTY, UNJUST  
ENRICHMENT, CORPORATE  
WASTE, AND ABUSE OF  
CONTROL

**JURY TRIAL DEMANDED**

22 Defendants,

23 --and --

1 WYNN RESORTS LTD.

2 Nominal Defendant.

3 **SHAREHOLDER DERIVATIVE COMPLAINT FOR VIOLATION OF NEVADA LAWS**

4 Plaintiff Dennis Rosen, an individual, brings this stockholder derivative action on behalf  
5 of nominal Defendant Wynn Resorts, Ltd. (“Wynn Resorts” or the “Company”) against certain  
6 inside and outside counsel of Wynn Resorts, as well as against certain current and former officers  
7 and directors of Wynn Resorts, for breaches of fiduciary duties, negligence in professional conduct  
8 and legal malpractice, corporate waste, aiding and abetting breaches of fiduciary duties, abuse of  
9 control, and unjust enrichment. Plaintiff makes these allegations upon personal knowledge as to  
10 his own actions and ownership of Wynn Resorts stock and, as to all other matters, upon the  
11 investigation of his undersigned counsel which included, among other things, review and analysis  
12 of (1) the Massachusetts Gaming Commission Decision and Order in *In the Matter of Wynn MA,*  
13 *LLC*, April 30, 2019; (2) the publicly available version of the March 15, 2019 report entitled  
14 *Investigative Report Regarding Ongoing Suitability of Wynn MA, LLC*, submitted to the  
15 Massachusetts Gaming Commission; (3) the January 25, 2019 Complaint in *Nevada Gaming*  
16 *Control Board v. Wynn Las Vegas, LLC, et al (Nev. Gam. Comm’n)*; (4) Wynn Resorts public  
17 filings with the United States Securities and Exchange Commission (“SEC”); (5) press releases,  
18 news articles, and other public statements issued by or concerning Wynn Resorts and Steve Wynn;  
19 (6) court records, including, but not limited to, pleadings filed in *Wynn Resorts, Ltd. v. Okada et*  
20 *al.*, No. A-12-656710-B (Clark County, Nevada), *Louisiana Mun. Police Emps.’ Ret. Sys. v. Wynn*  
21 *et al.*, No. 2:12-cv-00509-JCM-GWF (D. Nev.), and *DiNapoli v. Wynn, et al.*, No. A-18-770013-  
22 B (Clark County, Nevada). Plaintiff believes that substantial additional evidence will exist for the  
23 allegations set forth herein after a reasonable opportunity for discovery.

1  
2 **INTRODUCTION**

3 *“A group of former lawyers connected to Wynn Resorts were involved in long-running*  
4 *efforts to conceal allegations of sexual assault and misconduct against the casino*  
5 *giant’s founder, Steve Wynn, according to a report released Tuesday by the*  
6 *Massachusetts Gaming Commission.*

7 The **200-page report** was released in conjunction with a three-day hearing the regulatory  
8 body kicked off on Tuesday to determine the suitability of the company for a  
9 Massachusetts gaming license, and whether it will be able to run a casino and resort  
10 scheduled to open this summer in Boston.

11 *The report says a group of executives, including two former general counsels, and*  
12 *outside lawyers disregarded company policies by failing to report allegations of sexual*  
13 *misconduct against Wynn to the company’s board.* The report also notes that most of the  
14 individuals involved are no longer at the company, including Steve Wynn, who resigned  
15 in February last year.

16 “Their efforts at secrecy made it exceedingly difficult, if not impossible, for gaming  
17 regulators to detect this potentially derogatory information through typical regulatory  
18 means, which rely heavily on robust self-disclosures,” the investigators wrote.

19 *Wynn Resorts said it does not dispute the findings in the regulatory body’s report.”*

20 See Roy Strom, “Wynn Resorts’ Ex-Lawyers Helped Conceal Sexual Assault Claims,  
21 Report Says,” THE AMERICAN LAWYER, April 2, 2019.

22 1. This is a case about holding the enablers of Steve Wynn’s decades-long predatory  
23 behavior towards women accountable for their wrongdoing. Steve Wynn’s sexual harassment of  
24 female employees at Wynn Resorts was egregious and long-standing. Simply put, Mr. Wynn took  
25 advantage of his control over the employment status of working women who needed their jobs at  
Wynn Resorts to support their children and families to coerce the women into performing sex acts  
on him at work. Egregiously, his conduct was actively aided and abetted by the attorney  
defendants and executives named herein – *all of whom owed heightened fiduciary duties*. These  
attorneys and executives not only turned a blind eye to Wynn’s open and notorious predatory  
behavior, but provided active assistance to Mr. Wynn by helping him structure and operate shell

1 companies to pay off the affected women and by failing to report the relevant facts, thereby  
2 allowing the misconduct to continue for years and victimize numerous additional women.

3         2.         As just one example, Frank Schreck, chairman of the gaming practice at Brownstein  
4 Hyatt Farber Schreck, was involved in the settlement negotiations with a woman raped by Steve  
5 Wynn in 2005, according to the 200-page report dated March 15, 2019 from the Massachusetts  
6 Gaming Commission, a true and correct copy of which is attached hereto as **Exhibit 1** and  
7 incorporated herein by reference. Schreck helped structure a new business entity to make \$7.5  
8 million worth of payments over a 10-year period to the alleged victim, according to the report from  
9 the Massachusetts Gaming Commission. It notes the settlement was “structured for utmost  
10 secrecy.”

11         3.         Schreck, whom the gaming commission’s report says had a relationship with Wynn  
12 spanning decades, represented the Company in the settlement negotiations, according to a  
13 deposition of another outside lawyer involved in the case. But the investigators found that Schreck  
14 failed to alert the Company’s then-general counsel to the issue and didn’t seek a waiver or consent  
15 from either Wynn or the Company before taking on the matter, saying that was “the way it’s been  
16 for 40 years.”

17         4.         Moreover, Marc Rubinstein, Wynn’s general counsel at the time of the allegations,  
18 later learned of the settlement agreement with the manicurist after receiving bills from outside  
19 lawyers that he didn’t recognize, the report says. Rubinstein inquired about the legal bills and was  
20 eventually allowed to see the settlement agreement in Schreck’s office under the condition that he  
21 not take any notes, photos or copies, the report says. After that encounter, Rubinstein asked Jerome  
22 Coben, then a partner at Skadden, Arps, Slate, Meagher & Flom, if he needed to advise the  
23 Company’s board of directors about the matter, the report says.

1           5.       A few months after learning of the settlement, Rubinstein told investigators that  
2 Steve Wynn approached him, saying he needed “loyalty to him first and to the company second.”  
3 The report says Rubinstein told investigators he was offered the chance to resign with severance  
4 or work at the Company on an at-will basis. Rubinstein resigned in 2006.

5           6.       “It is concerning that the general counsel and outside counsel for the company did  
6 not recommend notification to the board (via disclosure to the audit committee) or any action at  
7 the corporate level, or that the general counsel did not take the further step to address with the  
8 board the dysfunction that general counsel for the company was not apprised of the matter in the  
9 first place,” the Massachusetts Gaming Commission’s report says.

10          7.       To redress this wrongdoing and obtain damages for the harm caused to Wynn  
11 Resorts and its shareholders, this stockholder derivative action seeks relief against attorneys and  
12 executives at Wynn Resorts for breaches of fiduciary duty, negligence in professional conduct and  
13 legal malpractice by numerous inside and outside counsel of the Company, including the  
14 Company’s former General Counsels: Kimmarie Sinatra (“Sinatra”) and Marc Rubinstein and  
15 Wynn Las Vegas’ former General Counsel Kevin Tourek. This stockholder derivative action also  
16 alleges breaches of fiduciary duty by Steve Wynn, former CEO and namesake of the Company;  
17 former and current members of the Company’s Board<sup>1</sup>; Wynn Resorts’ current CEO and President  
18 Matthew Maddox (“Maddox”); and various current and former Company executives. These  
19 breaches of fiduciary duty occurred from at least 2005 through the present (the “Relevant Period”).  
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22           <sup>1</sup> The current Board consists of Defendants, Jay L. Johnson (“Johnson”), Patricia Mulroy  
23 (“Mulroy”), Clark T. Randt, Jr. (“Randt”), Matt Maddox (“Maddox”), (together, the “Director  
24 Defendants”), Philip G. Satre (“Satre”), Betsy S. Atkins (“Atkins”), Richard J. Byrne (“Byrne”),  
25 Margaret J. “Dee Dee” Myers (“Myers”), and Winifred “Wendy” Webb (“Webb”).

1 These breaches expose a systematic pattern, amounting to an unwritten Company policy of abusing  
2 power and authority to cover up civil and criminal wrongdoing and protect Company executives  
3 — most notably, Steve Wynn — at the expense of just and humane working conditions for  
4 Company employees, erosion of Company reputation, and loss of stockholder value and  
5 confidence.

6 8. The Defendants actively participated in a decades-long pattern of covering up,  
7 silencing, and perpetuating a hostile work environment at the Company that included unrestrained  
8 sexual abuse and harassment by Steve Wynn, resulting in a breach of the Defendants' duty of  
9 loyalty and other fiduciary duties to the Company and its stockholders.

10 9. The Attorney Defendants breached their legal, ethical, and fiduciary obligations to  
11 the Company, resulting in harm to the Company and to the Company's stockholders, by, among  
12 other things, aiding and abetting breaches of fiduciary duties by Company Officers and Directors  
13 and engaging in impermissible conflicts of interest that harmed the Company, its female  
14 employees, and its shareholders.

15 10. The Director Defendants and Defendants Sinatra, Maddox, Schorr, Whennen and  
16 the other executive Defendants (the "Officer Defendants") furthered Steve Wynn's ongoing  
17 pattern of sexual abuse and harassment, actively violated Wynn's Company Code regarding  
18 serious civil and possibly criminal violations, concealed legitimate employee complaints, and  
19 protected Steve Wynn at the expense of Wynn Resorts, and ultimately permitted Steve Wynn to  
20 resign from the Company without being held accountable for his serious wrongdoing.

21 11. To date, these breaches of fiduciary duties by the Defendants have resulted in a  
22 record \$20 million fine imposed on Wynn Resorts by the Nevada Gaming Commission ("NGC")  
23 on February 26, 2019; the explosive, damaging allegations of pervasive cover up and blatant  
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1 disregard for Company policies uncovered by the Investigative Report Regarding Ongoing  
2 Suitability of Wynn MA, LLC (the “MA Suitability Report”) dated March 15, 2019 and made  
3 public on April 2, 2019; another record fine of \$35 million imposed on the Company by the  
4 Massachusetts Gaming Commission (“MGC”), and a \$500,000 fine levied by the MGC against  
5 Defendant Maddox personally while requiring the Company to employ a coach to teach Mr.  
6 Maddox executive skills, conditioning Defendant Maddox’s qualifier status. (A “qualifier” is an  
7 individual or an entity with a professional interest in a gaming license or the business of a gaming  
8 licensee). Meanwhile Wynn Resorts has suffered a massive loss of market capitalization and faces  
9 the likely loss of gaming licenses in Macau or further fines, mounting lawsuits, massive  
10 reputational damage, and other regulatory sanctions.

#### 11 JURISDICTION AND VENUE

12 12. The claims asserted herein arise under and pursuant to Nevada common law.

13 13. This Court has jurisdiction over this action because the Company is headquartered  
14 in this judicial district and all other defendants are either located in this district or engaged in  
15 substantial conduct in this district giving rise to the claims asserted herein.

#### 16 PARTIES

17 14. **Plaintiff Dennis Rosen** is a current stockholder of Wynn Resorts, Ltd. and has  
18 continuously held shares of Wynn Resorts at all relevant times herein.

19 15. **Nominal Defendant Wynn Resorts, Ltd.** is a Nevada corporation, with its  
20 principal offices located in Las Vegas, Nevada. Wynn Resort’s stock is traded on the Nasdaq  
21 under the ticker symbol WYNN.

22 16. Wynn Resorts owns and operates Wynn Las Vegas and Encore Las Vegas, both in  
23 Nevada, as well as Wynn Macau and the Wynn Palace, Cotai, both located in the People’s Republic  
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1 of China. Wynn Las Vegas recently opened Wynn Plaza, a Strip-front expansion that offers a  
2 collection of world-renowned luxury, contemporary, and lifestyle brands. Wynn Resorts is  
3 currently finishing construction on Encore Boston Harbor located in Everett, Massachusetts,  
4 expected to open in June 2019.

5 17. As alleged herein, the Nevada Gaming Commission (“NGC”) has imposed a record  
6 \$20 million fine on Wynn and uncovered ongoing violations of law by Wynn’s officers and  
7 directors.

8 18. Similarly citing “systemic failures” at Wynn Resorts, the MGC levied a \$35 million  
9 dollar fine against Wynn Resorts, a \$500,000 personal fine against Defendant Maddox, and  
10 imposed conditions upon Defendant Maddox’s qualifier status. The Investigations and  
11 Enforcement Bureau (“IEB”) of the MGC issued the MA Suitability Report, which highlighted  
12 blatant disregard of Company policy, active concealment by inside and outside counsel of  
13 potentially criminal wrongdoing by the Company’s most senior executives, and an ongoing  
14 unwillingness to hold Company officers and directors accountable. The MGC hearings culminated  
15 in the April 30, 2019 findings set forth in more detail below.

16 19. Macau gaming authorities continue to investigate the Company’s and its  
17 executives’ suitability as gaming operators. Given the outcomes of the Nevada and Massachusetts  
18 investigations, it is probable that Wynn Resorts and its executives will face further fines and/or  
19 revocation of or restrictions upon its Macau gaming licenses.

20 20. **Defendant Stephen A. Wynn** is a citizen of Nevada and the former Chairman and  
21 Chief Executive Officer of Wynn Resorts. Steve Wynn co-founded Wynn Resorts in April 2000  
22 with his then wife, Elaine Wynn, offering stock to the public in 2002. He served as Chairman and  
23 CEO of the Company from June 2002 until his resignation on February 6, 2018. Steve Wynn  
24  
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1 previously served as an Executive Director, the Chairman of the Board of Directors, and the CEO  
 2 of Wynn Macau, Limited, a majority owned subsidiary of the Company, from September 2009  
 3 until his resignation on February 6, 2018. In 2017, Steve Wynn received more than \$34 million  
 4 in total compensation from Wynn Resorts. During fiscal years 2009 through 2018 Wynn Resorts  
 5 paid Steve Wynn more than \$185 million in total compensation, with \$63,466,041 of that amount  
 6 awarded from 2016 to 2018.<sup>2</sup> Steve Wynn sold his shares in Wynn Resorts in March, 2018, for  
 7 over \$2.1 billion. Upon information and belief, and at all times relevant herein, Steve Wynn is  
 8 and has been a resident of Clark County, Nevada.

9 21. Between 2009 and 2018, Steve Wynn sold 3,000,000 shares of Wynn Resorts  
 10 common stock while in possession of material non-public information concerning his longstanding  
 11 pattern of sexual abuse and harassment, for proceeds of \$217,319,003.80.

| 12 | <b>Executive Name</b> | <b>Sell Date</b> | <b>Number of Shares Sold</b> | <b>Price</b>     | <b>Selling Proceeds</b> |
|----|-----------------------|------------------|------------------------------|------------------|-------------------------|
| 13 | Wynn, Stephen A.      | 12/1/2010        | 1,000,000                    | \$103.30         | \$103,300,000.00        |
| 14 | Wynn, Stephen A.      | 8/14/2009        | 1,401,805                    | \$56.21          | \$78,795,459.05         |
| 15 | Wynn, Stephen A.      | 8/14/2009        | 259,980                      | \$58.29          | \$15,154,234.20         |
| 16 | Wynn, Stephen A.      | 8/14/2009        | 243,234                      | \$59.03          | \$14,358,103.02         |
| 17 | Wynn, Stephen A.      | 8/14/2009        | 94,981                       | \$60.13          | \$5,711,207.53          |
| 18 | <b>TOTAL:</b>         |                  |                              | <b>3,000,000</b> | <b>\$217,319,003.80</b> |

19 22. **Defendant Kimmarie Sinatra** is a citizen of Nevada and served as the Company's  
 20 General Counsel and Secretary from March 2006 to July 2018, and as the Company's Senior Vice  
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23 <sup>2</sup> Compensation amounts are taken from Wynn Resorts proxy statements on file with the  
 24 SEC.  
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1 President from January 2004 to July 2018. Sinatra also served as a director for Wynn Macau,  
 2 Limited, had been Senior Vice President and General Counsel of Worldwide Wynn, LLC since  
 3 January 2004, and served as an officer of several other of the Company's subsidiaries. Defendant  
 4 Sinatra's compensation from 2009 through 2018 was \$47,038,029, including compensation of just  
 5 under \$5 million in 2018 (through her August 3 departure from the Company).

6 23. Between 2009 and 2018, Defendant Sinatra sold 231,735 shares of Wynn Resorts  
 7 common stock while in possession of material non-public information concerning Steve Wynn's  
 8 longstanding pattern of sexual abuse and harassment, for proceeds of \$27,874,815.26:

| Executive Name    | Sell Date  | Number of Shares Sold | Price    | Selling Proceeds       |
|-------------------|------------|-----------------------|----------|------------------------|
| Sinatra, Kimmarie | 11/9/2017  | 15                    | \$152.07 | \$2,281.05             |
| Sinatra, Kimmarie | 11/8/2017  | 20,795                | \$152.03 | \$3,161,463.85         |
| Sinatra, Kimmarie | 9/15/2017  | 21,451                | \$143.62 | \$3,080,792.62         |
| Sinatra, Kimmarie | 6/9/2017   | 22,624                | \$129.12 | \$2,921,210.88         |
| Sinatra, Kimmarie | 11/29/2016 | 41,743                | \$99.76  | \$4,164,281.68         |
| Sinatra, Kimmarie | 11/29/2016 | 600                   | \$100.22 | \$60,132.00            |
| Sinatra, Kimmarie | 5/9/2014   | 13,807                | \$198.74 | \$2,744,003.18         |
| Sinatra, Kimmarie | 5/9/2014   | 100                   | \$199.20 | \$19,920.00            |
| Sinatra, Kimmarie | 11/14/2013 | 10,000                | \$168.38 | \$1,683,800.00         |
| Sinatra, Kimmarie | 5/7/2013   | 15,600                | \$138.80 | \$2,165,280.00         |
| Sinatra, Kimmarie | 5/25/2011  | 25,000                | \$141.13 | \$3,528,250.00         |
| Sinatra, Kimmarie | 8/26/2010  | 25,000                | \$83.94  | \$2,098,500.00         |
| Sinatra, Kimmarie | 11/20/2009 | 35,000                | \$64.14  | \$2,244,900.00         |
| <b>TOTAL:</b>     |            | <b>231,735</b>        |          | <b>\$27,874,815.26</b> |

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2           24.     **Defendant Attorney Frank Schreck** is a citizen of Nevada and the chairman of  
3 the gaming practice at Brownstein Hyatt Farber Schreck LLP (formerly Schreck Brignone PC).  
4 He is a licensed attorney in Nevada. He served as both personal counsel to Steve Wynn and the  
5 Company's outside counsel at various times over the last 40 years.

6           25.     **Defendant Attorney James Pisanelli** is a citizen of Nevada and a partner at  
7 Pisanelli Bice, PLLC, former partner of Attorney Schreck at Schreck Brignone PC, and sole  
8 manager of Entity Y LLC. He is a licensed attorney in Nevada.

9           26.     **Defendant Pisanelli Bice PLLC** is a law firm located at 400 S 7th St, Las Vegas,  
10 NV 89101.

11           27.     **Defendant Attorney Gregory Kamer** is a citizen of Nevada and partner at Kamer  
12 Zucker Abbott, LLP. He is a licensed attorney in Nevada, holds himself out as exclusively  
13 representing employers in labor and employment matters, and acted as outside counsel for the  
14 Company in sexual harassment matters.

15           28.     **Defendant Attorney Scott Abbott** is a citizen of Nevada and a partner at Kamer  
16 Zucker Abbott, LLP. He is a licensed attorney in Nevada specializing in labor and employment  
17 law and acted as outside counsel for the Company in sexual harassment matters.

18           29.     **Defendant Estate of Barry Langberg** is the estate of attorney Barry Landberg.  
19 Langberg was an attorney at Brownstein Hyatt Farber Schreck, LLP and performed legal services  
20 for Wynn Resorts.

21           30.     **Defendant Jonathan Layne** is an attorney with Gibson Dunn & Crutcher LLP and  
22 is located in the firm's Los Angeles office. Layne provided legal services and advice to Wynn  
23 Resorts and its outside directors in connection with an investigation into Steve Wynn's misconduct  
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1 and the cross-complaint filed by Elaine Wynn in the *Okada* litigation. As part of his provision of  
2 legal services to the outside directors, Layne allowed Defendant Sinatra (who herself had worked  
3 at Gibson Dunn prior to joining Wynn Resorts), Defendant Langberg, and others who were not  
4 independent and who had strong loyalty to Steve Wynn to heavily influence the collection of  
5 information and making of decisions related to these matters, ultimately causing the outside  
6 director to determine that no disclosure was needed regarding Steve Wynn's 2005 settlement with  
7 the manicurist at Wynn Resorts who had alleged that Steve Wynn had raped her. Layne and his  
8 firm Gibson Dunn were specifically hired to provide independent advice to the outside directors  
9 of the Company about a matter where Steve Wynn and the Company's General Counsel Sinatra  
10 were implicated and faced potential liability. Layne and Gibson Dunn were negligent in their  
11 provision of legal services and failed to comply with the standard of care of the legal profession;  
12 they aided and abetted the other defendants' misconduct, thereby allowing Wynn to victimize more  
13 women in the ensuing years and causing severe damage to Wynn Resorts.

14       31.     **Defendant Gibson Dunn & Crutcher LLP** is a national law firm. Through its  
15 partner Jonathan Layne, it provided legal services to Wynn Resorts and its outside directors as  
16 indicated above. Defendant Sinatra was an attorney at Gibson Dunn before she became Wynn  
17 Resorts' general counsel.

18       32.     **Defendant Attorney Marc Rubinstein** is a citizen of Nevada and currently a  
19 partner at Reid Rubinstein Bogatz. He is a licensed attorney in Nevada and served as a senior vice  
20 president, general counsel, and secretary for the Company from approximately 2001 through 2006.

21       33.     **Defendant Attorney Kevin Tourek** is a citizen of Nevada and a licensed attorney  
22 in Nevada and served as former general counsel for Wynn Las Vegas.  
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1           34.     **Defendant Attorney Jerome Coben** is a licensed attorney in California. He is not  
2 a licensed attorney in Nevada. Attorney Coben was a partner at Skadden Arps Slate Meagher  
3 Flom LLP, retiring from the firm’s Los Angeles office in 2008. He acted as outside corporate  
4 counsel for Wynn.

5           35.     **Defendant Attorney Barry I. Slotnick** is a licensed New York attorney and is Of  
6 Counsel with Buchanan Ingersoll & Rooney. He is not a licensed attorney in Nevada. Attorney  
7 Slotnick served as outside counsel for both the Company and Steve Wynn regarding Steve Wynn  
8 sexual harassment of employees and other matters. Attorney Slotnick holds himself out on the  
9 Buchanan Ingersoll & Rooney website as having represented both Steve Wynn and Wynn Resorts.

10          36.     **Defendant Brownstein Hyatt Farber Schreck, LLP** is a lobbying and law firm  
11 located at 100 N City Pkwy Ste 1600, Las Vegas, NV 89106.

12          37.     **Defendant Kamer Zucker Abbott, LLP** is a law firm located at 3000 W  
13 Charleston Blvd #3, Las Vegas, NV 89102.

14          38.     Defendants Sinatra, Schreck, Pisanelli, Kamer, Abbott, Estate of Barry Landberg,  
15 Rubinstein, Layne, Gibson Dunn & Crutcher LLP, Tourek, Coben, Slotnick, Defendant Kamer  
16 Zucker Abbott, LLP, Defendant Pisanelli Bice PLLC, and Brownstein Hyatt Farber Schreck, LLP  
17 are collectively the “Attorney Defendants.”

18          39.     **Defendant John J. Hagenbuch** served as a director of the Company from  
19 December 2012 to May 2018. Defendant Hagenbuch served as the Chairman of the Audit  
20 Committee and as a member of the Compensation Committee. During fiscal years 2012 through  
21 2018 Wynn Resorts paid Defendant Hagenbuch \$2,427,604 in total compensation.

1           40.     In 2017, Defendant Hagenbuch sold 1,150 shares of Wynn Resorts common stock  
2 while in possession of material non-public information concerning Steve Wynn’s longstanding  
3 pattern of sexual abuse and harassment, for proceeds of \$147,661.50:

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

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8           41.     **Defendant Dr. Ray R. Irani** served as a director of the Company from October  
9 2007 through March 5, 2018, when he abruptly resigned as a Director. Defendant Irani served as  
10 a member of the Corporate Governance Committee. During fiscal years 2012 through 2018 Wynn  
11 Resorts paid Defendant Irani \$2,247,945 in total compensation. According to the Company’s  
12 Proxy Statement filed on March 24, 2008, Defendant Irani was nominated as a director by Steve  
13 Wynn.

14           42.     **Defendant Jay L. Johnson** has served as a director of the Company since August  
15 2016. Defendant Johnson served as a member of the Compensation Committee and is currently  
16 the Chairperson of the Corporate Governance Committee. From 2016 through 2018, Wynn  
17 Resorts paid Defendant Johnson \$1,202,281 in total compensation. As of March 2017, Defendant  
18 Johnson held 10,000 shares of Wynn Resorts stock and options. When Johnson was CEO of  
19 General Dynamics, the parent company of Gulfstream Aerospace Corp., Steve Wynn was one of  
20 Gulfstream’s loyal customers because of his private jet purchases. For example, in December  
21 2012, Wynn Resorts purchased the first-delivered Gulfstream G650 for \$65 million. In 2014,  
22 Steve Wynn replaced his Gulfstream G650 with a Gulfstream G650ER.

1           43.     Johnson has a history of being complacent and complicit in the face of sexual  
2 harassment. During Congressional hearings in 1996 regarding the massive sexual misconduct  
3 scandal involving the annual “Tailhook” conventions, Defendant Johnson admitted his  
4 participation as a Naval officer in the 1990 and 1991 conventions in Las Vegas and that he was  
5 aware of an atmosphere in which 83 women and 7 men were sexually assaulted but took no action.

6 A statement from a member of the Senate Armed Services Committee to Johnson noted:

7           The Tailhook incident, the manner in which it was handled, and the  
8 perceptions it created regarding the attitudes on Naval officers  
9 toward women have attracted significant attention for almost five  
10 years. Of particular concern is the fact, while many senior officers  
11 were aware of the type of behavior for which Tailhook conventions  
12 had become famous over the years, no one took action to preclude  
that type of behavior at Tailhook '91. Additionally, while senior  
officers either witnessed inappropriate behavior at the Convention  
or specifically avoided certain locations to avoid witnessing this  
behavior, few took action until the behavior of certain attendees  
attracted national attention.

13           44.     In his statements, Johnson acknowledged his complicity in these events and his  
14 complacency in permitting them to happen:

15           As you know, I attended Tailhook '91. Bad things happened there  
16 and we, the leadership of Naval Aviation, permitted an atmosphere  
17 to exist wherein such things could happen. I deeply regret that. We  
18 should have been more proactive in raising the behavior standard for  
19 the symposium. We did not--and I can't change the past. However,  
I can learn from our collective--and my personal--inaction and I  
have learned. Because I was there and have seen and felt first hand  
how much Tailhook hurt our great Navy, I am even more committed  
to ensuring that such an atmosphere will never again be tolerated.

20 ///

21           45.     Notwithstanding his oath to Congress that he would behave differently, as a  
22 Director of Wynn Resorts, Johnson “permitted an atmosphere to exist wherein” Steve Wynn’s  
23 misconduct remained unchecked for years.  
24  
25

1           46.     **Defendant Robert J. Miller** is a citizen of Nevada and served as a director of the  
2 Company from October 2002 to May 2018. Defendant Miller served as the Company’s Lead  
3 Independent Director, Chairman of the Corporate Governance Committee, and as a member of the  
4 Audit Committee. Defendant Miller was also the Chairman of the Company’s Compliance  
5 Committee and served as the Company’s Compliance Director. On February 27, 2014, the Board  
6 acted to combine these roles under the Chairman of the Company’s Compliance Committee.  
7 Previously, Defendant Miller served as President and then Counselor to the International  
8 Association of Gaming Advisors from 1999-2012. During fiscal years 2012 through 2018, Wynn  
9 Resorts paid Defendant Miller \$3,116,905 in total compensation.

10           47.     Miller has been complacent and complicit in the face of sexual harassment. In  
11 published reports in 1993 and 1999, Miller was criticized during his term as governor of Nevada  
12 for allowing numerous sexual harassment claims against officials in the Division of Wildlife and  
13 the Department of Motor Vehicles (“DMV”) to go unpunished. In particular, in 1999 Miller  
14 purportedly refused to do anything when the Division of Wildlife administrator had two sexual  
15 discrimination lawsuits against him and had joked about sexual harassment in an official state  
16 department bulletin. Similarly, as reported in 1993, numerous complaints of sexual harassment by  
17 administrators and executives at the DMV had been reported, including a meeting where fortune  
18 cookies with inappropriate racial and sexual messages were distributed to attendees. After the fact,  
19 Miller referred to this DMV Director as having “impeccable quality and character.”

20           48.     **Defendant Patricia Mulroy** is a citizen of Nevada and has served as a director of  
21 the Company since October 2015. Defendant Mulroy serves as a member of the Corporate  
22 Governance Committee, the Audit Committee, and the Company’s Compliance Committee. From  
23 July 2014 through October 2015, Defendant Mulroy served on the Nevada Gaming Commission.  
24  
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1 Upon information and belief, and at all times relevant herein, Defendant Mulroy is a resident of  
2 Clark County, Nevada. During fiscal years 2015 through 2018, Wynn Resorts paid Defendant  
3 Mulroy \$1,540,486 in total compensation.

4 49. In 2017 Defendant Mulroy sold 2,226 shares of Wynn Resorts common stock while  
5 in possession of material non-public information concerning Steve Wynn's longstanding pattern  
6 of sexual abuse and harassment, for proceeds of \$285,106.08:

7 ///

| 8  | <b>Director</b> | <b>Sell Date</b> | <b>Number of</b>   | <b>Price</b> | <b>Selling</b>      |
|----|-----------------|------------------|--------------------|--------------|---------------------|
| 9  | <b>Name</b>     |                  | <b>Shares Sold</b> |              | <b>Proceeds</b>     |
|    | Mulroy,         | 5/16/2017        | 2,226              | \$128.08     | \$285,106.08        |
| 10 | Patricia        |                  |                    |              |                     |
|    | <b>TOTAL:</b>   |                  | <b>2,226</b>       |              | <b>\$285,106.08</b> |

11 50. **Defendant Clark T. Randt, Jr.** is a citizen of Utah and has served as a director of  
12 the Company since October 2015. Randt received a \$600,000 consulting agreement in 2015 before  
13 his appointment to the Board. The Company admits that Defendant Randt is not independent under  
14 NASDAQ independence criteria. During fiscal years 2015 through 2018 Wynn Resorts paid Randt  
15 \$1,255,311 in total compensation.

16 51. In 2017, Defendant Randt sold 3,000 shares of Wynn Resorts common stock while  
17 in possession of material non-public information concerning Steve Wynn's longstanding pattern  
18 of sexual abuse and harassment, for proceeds of \$387,000:

| 19 | <b>Director</b> | <b>Sell Date</b> | <b>Number of</b>   | <b>Price</b> | <b>Selling</b>      |
|----|-----------------|------------------|--------------------|--------------|---------------------|
| 20 | <b>Name</b>     |                  | <b>Shares Sold</b> |              | <b>Proceeds</b>     |
|    | Randt, Clark    | 7/31/2017        | 3,000              | \$129.00     | \$387,000.00        |
|    | <b>TOTAL:</b>   |                  | <b>3,000</b>       |              | <b>\$387,000.00</b> |

21 52. **Defendant Alvin V. Shoemaker** has served as a director of the Company from  
22 December 2002 to December 2018. Defendant Shoemaker served as a member of the  
23  
24  
25

1 Compensation Committee and as a member of the Audit Committee. During fiscal years 2012  
 2 through 2018 Wynn Resorts paid Defendant Shoemaker \$2,550,311 in total compensation.

3 53. In 2017, Defendant Shoemaker sold 15,000 shares of Wynn Resorts common stock  
 4 while in possession of material non-public information concerning Steve Wynn’s longstanding  
 5 pattern of sexual abuse and harassment, for proceeds of \$2,276,100:

| 6 Executive Name   | Sell Date | Number of Shares Sold | Price    | Selling Proceeds      |
|--------------------|-----------|-----------------------|----------|-----------------------|
| 7 Shoemaker, Alvin | 11/8/2017 | 15,000                | \$151.74 | \$2,276,100.00        |
| 8 <b>TOTAL:</b>    |           | <b>15,000</b>         |          | <b>\$2,276,100.00</b> |

9 54. **Defendant J. Edward Virtue** served as a director of the Company from November  
 10 2012 to May 2018. Virtue served as Chairman of the Compensation Committee and as a member  
 11 of the Corporate Governance Committee. Virtue managed the Wynn family’s money prior to his  
 12 appointment to the Board in 2012. During fiscal years 2012 through 2018 Wynn Resorts paid  
 13 Defendant Virtue \$2,387,195 in total compensation.

14 55. **Defendant D. Boone Wayson** served as a director of the Company from August  
 15 2003 to November 2018. Wayson served as a member of the Audit Committee and as a member  
 16 of the Corporate Governance Committee. From February 6, 2018 to November 2018, Defendant  
 17 Wayson served as the Non-Executive Chairman of the Board. During fiscal years 2012 through  
 18 2018, Wynn Resorts paid Defendant Wayson \$2,706,553 in total compensation.

19 56. In 2016, Defendant Wayson sold 37,500 shares of Wynn Resorts common stock  
 20 while in possession of material non-public information concerning Steve Wynn’s longstanding  
 21 pattern of sexual abuse and harassment, for proceeds of \$3,267,000:

| 22 Director Name | Sell Date | Number of Shares Sold | Price | Selling Proceeds |
|------------------|-----------|-----------------------|-------|------------------|
| 23               |           |                       |       |                  |
| 24               |           |                       |       |                  |
| 25               |           |                       |       |                  |

|                     |           |               |         |                       |
|---------------------|-----------|---------------|---------|-----------------------|
| Wayson, D.<br>Boone | 11/9/2016 | 37,500        | \$87.12 | \$3,267,000.00        |
| <b>TOTAL:</b>       |           | <b>37,500</b> |         | <b>\$3,267,000.00</b> |

57. Wayson has known of Steve Wynn’s history of sexual misconduct since at least 1997, when eleven waitresses at the Wynn-owned Mirage, where Wayson was then a director, filed suit in Nevada federal district court, alleging a culture of harassment, coerced sexual relations, and misconduct by Steve Wynn. The case, captioned *Arrowsmith, et al. v. Mirage Casino-Hotel*, 2:97-cv-00638-RLH-LRL (D. Nev. 1997), settled in 2003. The *Arrowsmith* complaint alleged that Steve Wynn told certain waitresses that they were too fat to serve drinks. A few days later, they were required to sign a uniform and appearance standards form that required them to gain no more than six pounds from their weight at the time they were hired or be placed on probation. Wayson’s position as a director of Mirage when the lawsuit was filed, and longstanding position on the Wynn Resorts Governance Committee, provided Wayson with actual knowledge of Steve Wynn’s mistreatment of women and related potential liability for Wynn Resorts.

58. **Defendant Matthew Maddox** has been President of Wynn Resorts since November 2013. Since joining Wynn Resorts in 2002, he has also served as Chief Financial Officer, Senior Vice President of Business Development and Treasurer of the Company. On February 6, 2018, Maddox became CEO of Wynn Resorts, replacing Steve Wynn, and joined the Company’s Board on August 3, 2018. Maddox also serves as the CEO and Executive Director of Wynn Macau, Limited, a majority owned subsidiary of the Company. Mr. Maddox was a non-executive Director of Wynn Macau, Limited from March 28, 2013 until he was appointed as an executive director. Defendant Maddox’s total compensation from 2012 through 2018 was approximately \$62 million. In 2018, Mr. Maddox’s total compensation was 387 times the total

1 annual compensation of the Company’s median compensated employee. On information and  
2 belief, Maddox is a resident of Clark County, Nevada.

3 59. In 2017, Defendant Maddox sold 206,469 shares of Wynn Resorts common stock  
4 while in possession of material non-public information concerning Steve Wynn’s longstanding  
5 pattern of sexual abuse and harassment, for proceeds of \$28,753,934.55. Defendant Maddox has  
6 admitted he knew of the 2005 sexual misconduct allegations involving Steve Wynn no later than  
7 March 28, 2016 when Elaine Wynn filed court documents revealing the alleged assault and the  
8 “pattern of reckless risk-taking” behavior by Steve Wynn that “left the directors and the Company  
9 vulnerable to potential liability and regulatory exposure.”<sup>3</sup> Maddox’s subsequent denial of any  
10 knowledge of Steve Wynn’s pervasive pattern of sexual misconduct cannot be reconciled with his  
11 awareness of Elaine Wynn’s March 28, 2016, court filing.

| 12 | <b>Executive Name</b> | <b>Sell Date</b> | <b>Number of Shares Sold</b> | <b>Price</b> | <b>Selling Proceeds</b> |
|----|-----------------------|------------------|------------------------------|--------------|-------------------------|
| 13 | Maddox, Matt          | 11/13/2017       | 58,258                       | \$155.11     | \$9,036,398.38          |
| 14 | Maddox, Matt          | 11/13/2017       | 1,002                        | \$155.74     | \$156,051.48            |
| 15 | Maddox, Matt          | 9/15/2017        | 40,833                       | \$143.41     | \$5,855,860.53          |
| 16 | Maddox, Matt          | 9/15/2017        | 2,067                        | \$144.03     | \$297,710.01            |
| 17 | Maddox, Matt          | 6/16/2017        | 44,309                       | \$134.35     | \$5,952,914.15          |
| 18 | Maddox, Matt          | 4/27/2017        | 60,000                       | \$124.25     | \$7,455,000.00          |
| 19 | <b>TOTAL:</b>         |                  | <b>206,469</b>               |              | <b>\$28,753,934.55</b>  |

20 60. **Defendant Marc D. Schorr** is a citizen of Nevada and served as the COO of Wynn  
21 Resorts from June 2002 to June 2013; as the President and CEO of Wynn Las Vegas from June  
22 2000 to October 2005; and as a Director of Wynn Resorts from July 2010 to December 2012.

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23 <sup>3</sup> Richard N Velotta *Call from Steve Wynn led Maddox to career in casino work*, LAS  
24 VEGAS REVIEW JOURNAL, Feb 20 2018 *available at*  
25 <https://www.reviewjournal.com/business/casinos-gaming/call-from-steve-wynn-led-maddox-to-career-in-casino-work/>

61. From 2009 to 2013, Defendant Schorr sold 723,723 shares of Wynn Resorts common stock while in possession of material non-public information concerning Steve Wynn’s longstanding pattern of sexual abuse and harassment, for proceeds of \$57,510,956.84.

| Executive Name | Sell Date  | Number of Shares Sold | Price      | Selling Proceeds       |
|----------------|------------|-----------------------|------------|------------------------|
| Schorr, Marc   | 05/06/2013 | 50,000                | \$138.92   | \$6,946,000            |
| Schorr, Marc   | 12/17/2012 | 10,000                | \$114.09   | \$1,140,900            |
| Schorr, Marc   | 12/17/2012 | 10,000                | \$113.04   | \$1,130,400            |
| Schorr, Marc   | 11/16/2012 | 10,000                | \$105      | \$1,050,000            |
| Schorr, Marc   | 11/15/2012 | 20,000                | \$104.0037 | \$2,080,074            |
| Schorr, Marc   | 05/06/2011 | 50,000                | \$145.0029 | \$7,250,145            |
| Schorr, Marc   | 12/20/2010 | 15,800                | \$105.38   | \$1,665,004            |
| Schorr, Marc   | 08/06/2010 | 100,000               | \$89.0742  | \$8,907,420            |
| Schorr, Marc   | 12/15/2009 | 9,200                 | \$62.444   | \$574,484.80           |
| Schorr, Marc   | 12/03/2009 | 125,000               | \$67.064   | \$8,383,000            |
| Schorr, Marc   | 12/03/2009 | 173,723               | \$66.3805  | \$11,531,819.6015      |
| Schorr, Marc   | 07/31/2009 | 150,000               | \$49       | \$7,350,000            |
| <b>TOTAL:</b>  |            | <b>723,723</b>        |            | <b>\$57,510,956.84</b> |

62. Defendants Wynn, Hagenbuch, Mulroy, Randt, Shoemaker, Wayson, Sinatra, Maddox and Schorr are referred to as the “Selling Defendants.”

63. **Defendant Russell D. Goldsmith** served as a director of the Company from May 2008 to 2012. The Wynn Resorts 2012 Proxy Statement stated that in addition to serving as the Chairman and CEO of City National Bank during his term of service to the Wynn Resorts Board, Defendant Goldsmith “also chair[ed] the Los Angeles Coalition for the Economy & Jobs, an independent organization of leading economic stakeholders representing business, labor, higher education and the nonprofit sectors.” Russell Goldsmith’s late father-in-law, Jerome D. Mack, was a close friend of Steve Wynn.

64. **Defendant Doreen Whennen** served as vice president of hotel operations at Wynn Resorts from 2005 to 2014.

1           65.     **Defendant Maurice Wooden** is a citizen of Nevada and served as the President of  
2 Wynn Las Vegas from 2013 through the end of 2018. He also served as the Chairman of the Board  
3 of the Las Vegas Convention and Visitors Authority (“LVCVA”) in 2018 as it was being  
4 criminally investigated regarding the personal use of public funds by CEO Rossi Ralenkotter.

5           66.     **Defendant Arthur Nathan** served as the senior vice president and chief human  
6 resources officer for Wynn Resorts from January 2003 to October 2006 and served as the chief  
7 human resources officer at Wynn Las Vegas (and former Wynn properties the Bellagio and the  
8 Mirage) from 1983 through 2006.

9           67.     **Defendant Brian Gullbrants** is a former executive vice president and general  
10 manager of Wynn Las Vegas and current executive vice president of operations at Encore Boston  
11 Harbor.

12           68.     Defendant Wynn Resorts, the Selling Defendants, the Attorney Defendants and all  
13 other named defendants are collectively referred to herein as the “Defendants.”

14 **I.     Duties Owed by Defendants**

15         **A.     Ethical and Fiduciary Duties**

16           69.     Each outside and in-house defendant attorney acting for or on behalf of the  
17 Company owes the Company the duties of competent and diligent representation. Further, each  
18 outside and in-house attorney acting for or on behalf of the Company owes the Company the duty  
19 of prompt and informed communication, particularly including the duty to consult with the client  
20 regarding any relevant limitations on the attorney’s conduct and explanation of all matters  
21 necessary to allow the client to make informed decisions regarding the representation. The  
22 Attorney Defendants, as detailed below, breached their duties of competent and diligent  
23 representation and prompt and informed communication.

1           70. Each Attorney Defendant acting for or on behalf of the Company owes the  
2 Company the duty to avoid a concurrent conflict of interest. Each Attorney Defendant owed a  
3 duty to refrain from representing a client if there is a significant risk that the representation will be  
4 materially limited by the attorney's responsibilities to another client. The Attorney Defendants, as  
5 detailed below, breached their duties of avoiding a concurrent conflict of interest.

6           71. Each Attorney Defendant representing the Company and any of its directors,  
7 officers, employees, members, shareholders or other constituents, must comply with the limitations  
8 of and rules governing concurrent conflicts. When the Company's consent to the dual  
9 representation is required, the consent shall be given by an appropriate official of the Company  
10 other than the individual who is to be represented, or by the shareholders. The Attorney  
11 Defendants, as detailed below, breached their duties of compliance with the limitations of and rules  
12 governing concurrent conflicts, including the requirement of appropriate consent.

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

1           73. Each officer and director of Wynn Resorts owes to the Company and its  
2 stockholders the fiduciary duty to exercise good faith and diligence in the administration of the  
3 affairs of the Company and in the use and preservation of its property and assets, and the highest  
4 obligations of fair dealing.

5           **B. Duty to Exercise Authority in Company's Best Interests**

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

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

20           **C. Duty to Exercise Reasonable and Prudent Supervision**

21           76. To discharge their duties and to comply with good corporate governance,  
22 Defendants were required to exercise reasonable and prudent supervision over the management,  
23  
24  
25



1 policies, practices, and controls of the business and financial and legal affairs of the Company. By  
2 virtue of such duties, the Defendants were required to, among other things:

3 (a) ensure that the Company complied with applicable legal obligations,  
4 requirements, and regulations, including acting only within the scope of its  
5 legal authority and disseminating truthful and accurate statements to the  
6 investing public;

7 (b) conduct the affairs of the Company in an efficient, business-like manner so  
8 as to make it possible to provide the highest quality performance of its  
9 business, to avoid wasting the Company's assets, and to maximize the value  
10 of the Company's stock;

11 (c) remain informed as to how Wynn Resorts conducted its operations and,  
12 upon receipt of notice or information of imprudent or unsound conditions  
13 or practices, make reasonable inquiry in connection therewith and take steps  
14 to correct such conditions or practices and make such disclosures as  
15 necessary to comply with the law;

16 (d) ensure that Wynn Resorts was operated in a diligent, honest and prudent  
17 manner in compliance with applicable laws, rules and regulations;

18 (e) properly and accurately guide investors and analysts as to the true financial  
19 condition of the Company, including making accurate statements about the  
20 Company's operations and financial results;

21 (f) refrain from trading on proprietary and material non-public information  
22 concerning Wynn Resorts and its business;

- 1 (g) implement adequate internal controls to ensure that the Company was  
2 promptly informed of any sexual harassment, sexual misconduct, or sexual  
3 abuse, committed by a Company employee, including an officer or director;  
4 and  
5 (h) establish and implement internal controls and appropriate risk assessment  
6 and risk management procedures.

7 77. The Board also had a fiduciary duty to oversee the Company's areas of risk. The  
8 Company's 2019 Proxy represented that:

9 The Board has an active role in overseeing the Company's areas of  
10 risk.

11 —

12 The Board and its Committees, in consultation with management  
13 and the Company's independent auditors, regularly review the  
14 Company's risk profile and have identified specific areas of risk  
including: regulatory compliance; legal and human resources;  
legislative and political conditions; capital availability and liquidity;  
gaming credit extension and collection; construction; catastrophic  
events; and succession planning.

15 —

16 The Board (as a whole and through its Committees) has reviewed  
17 and approved management's process for identifying, managing and  
18 mitigating these risks. While the full Board has overall  
responsibility for risk oversight, the Board has assigned certain areas  
of risk oversight to its Committees as well as to the Company's  
Compliance Committee.

19 —

20 Throughout the year, the Board, its Committees and the Company's  
21 Compliance Committee receive reports from management that  
22 include information regarding major risks and exposures facing the  
23 Company and the steps management has taken to monitor and  
24 control such risks and exposures. In 2018, the Board also  
25 implemented a process to allow for direct communication of risks  
and issues from employees to the Board of Directors.

—

1 In addition, throughout the year, the Board, its Committees and the  
2 Company's Compliance Committee dedicate a portion of their  
meetings to review and discuss specific risk topics in greater detail.

3 –  
4 The Audit Committee is primarily responsible for the oversight of  
credit, related party, information security, construction and general  
5 financial risks.

6 –  
7 The Company's Compliance Committee primarily oversees risks  
relating to regulatory, security, workplace conduct, and political  
compliance.

8 –  
9 For the 2018 fiscal year, management completed a review of the  
Company's compensation policies and practices and presented its  
10 analysis to the Compensation Committee. The Compensation  
Committee concurred with management's conclusion that such  
11 policies and practices do not present risks that are reasonably likely  
to have a material adverse effect on the Company.

12 ///

13 **D. Duty to Enforce Wynn Resorts' Corporate Governance Guidelines**

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

18 79. The Board's stated goals "are to build value for the Company's stockholders and to  
19 promote the vitality and sustainability of the Company for its customers, employees and the other  
20 individuals and organizations that depend on the Company." To that end, "the Board monitors the  
21 performance of the Company (in relation to its goals, strategy, risks and competitors) and, through  
22 the Compensation Committee, evaluates and addresses the performance of management, including  
23 the Chief Executive Officer."  
24  
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1           80.     Moreover, the Company’s Nominating and Corporate Governance Committee  
2 (consisting of Defendants Johnson, Mulroy, Randt, and non-defendants Atkins, Myers and Satre  
3 and formerly including Defendants Hagenbuch, Miller, Shoemaker, and Wayson) is responsible  
4 for “overseeing corporate governance matters generally and developing and recommending to the  
5 Board Company-appropriate corporate governance guidelines.” Accordingly, each of them was  
6 responsible for Wynn Resorts’ compliance with federal and state laws regarding sexual harassment  
7 and workplace misconduct.

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

12           **E.     Duty to Comply with Conflict of Interest Duties Pursuant to Wynn Resorts’**  
13           **Code of Business Conduct and Ethics**

14           82.     The Company has a conflict of interest policy (“Conflict Policy”) in its Code of  
15 Business Conduct and Ethics (“Ethics Code”) that was adopted in 2004 and subsequently revised  
16 several times. All versions of the Conflict Policy state that a conflict occurs when the employee’s  
17 private interests either interfere or appear to interfere with the interests of the Company. Special  
18 rules apply to the Company’s officers and directors who engage in conduct that creates an *actual,*  
19 *apparent, or potential* conflict of interest (emphasis supplied). *Before* engaging in such conduct,  
20 Company Officers and Directors are required to make “full disclosure of all facts and  
21 circumstances” to the Company’s secretary (and later general counsel) who shall inform and seek  
22 the prior approval of the audit committee (emphasis supplied). Therefore, in all the circumstances  
23 set forth herein, the Company Officers and Directors involved were required, but failed, to disclose  
24  
25

1 to the Company and seek approval from the audit committee regarding all employee conflict  
2 matters.

3 83. The Company's Ethics Code also laid out additional specific duties that Defendants  
4 owed to Wynn Resorts and its stockholders. The purpose of the Ethics Code is not just to comply  
5 with laws and regulations but "to reinforce and enhance the Company's commitment to an ethical  
6 way of doing business." Compliance with the Code is mandatory and requires each employee,  
7 officer and director to sign an annual acknowledgement of having "read, understood, and complied  
8 with its contents." As Steve Wynn emphasized in his cover letter to employees, "Our goal is not  
9 just to comply with the laws, rules and regulations that apply to our business; we also continuously  
10 strive to abide by high standards of ethical business conduct." The Code imposes mandatory  
11 reporting requirements for suspected violations of "applicable laws, rules or regulations, the Code,  
12 or the Company's related policies ...."

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

19 85. Section 5.5 of the Code states that the Company's Insider Trading Policy prohibits  
20 the "buying or selling [of] securities of any company at a time when you are in possession of  
21 'material non-public information' about that company." The Code provides that "[i]nformation is  
22 'material' if (a) there is a substantial likelihood that a reasonable investor would find the  
23 information 'important' in determining whether to trade in a security; or (b) the information, if  
24  
25

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

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

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

15 **F. Duty to Comply with Additional Duties of the Audit Committee Defendants**

16 88. In addition to these duties, under the Company’s Audit Committee Charter, the  
17 Audit Committee Defendants (Defendant Mulroy (currently serving with Non-Defendant  
18 Directors Byrne and Webb), and former Committee members Defendants Hagenbuch, Johnson,  
19 Miller, Shoemaker, and Wayson) owed specific duties to Wynn Resorts and its stockholders to  
20 review and update the Company’s compliance program with respect to legal and regulatory matters  
21 and the Company’s policies and procedures for monitoring compliance. The Audit Committee  
22 meets in executive session “ to discuss accounting principles, financial and accounting controls,  
23 the scope of the annual audit, internal controls, regulatory compliance, and other matters” and “to  
24  
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1 discuss the results of their audits and their opinions on the adequacy of internal controls, quality  
2 of financial reporting, and other accounting and auditing matters.”

3 89. Specifically, Section D of the Audit Committee Charter imposes a duty on  
4 committee members with respect to compliance and risk oversight, and requires the Audit  
5 Committee to review and make recommendations to the Board on changes to and enforcement of  
6 the Code “and other policies relating to management conduct.” The Audit Committee is also  
7 charged with overseeing “procedures and practices to promote compliance” with the Code and  
8 other policies. The responsibilities include, at a minimum, an annual review of the  
9 “implementation and effectiveness of the Corporation’s compliance program with the General  
10 Counsel and Compliance Officer ... about actual and alleged violations of the Corporation’s Code  
11 ... , including any matters involving criminal or potential criminal conduct.”

12 90. Further, the Audit Committee Charter provided that it: “Discuss[es] periodically  
13 with management, receive[s] relevant reports regarding, and oversee[s] management’s evaluation  
14 of the Corporation’s major risk exposures and, without limiting the foregoing, the Corporation’s  
15 credit, related party, information security, construction and financial risk exposures, and the steps  
16 management has taken or proposes to take to monitor and control such exposures.”

17 91. The Audit Committee also met at least quarterly in executive session with the  
18 Company’s independent auditors, General Counsel, Chief Audit Executive, Chief Financial  
19 Officer and Compliance Officer to discuss various accounting issues, annual audits, financial and  
20 internal controls, regulatory compliance and other matters. The Audit Committee is also charged  
21 with the duty of reviewing with Company’s “legal advisers legal matters that may have a material  
22 effect on the financial statements, the Corporation’s compliance policies and any material reports  
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1 or inquiries received from regulators or governmental agencies relating to any matter that may  
2 have a material effect on the Corporation’s financial statements.”

3 92. The Audit Committee Defendants’ misconduct permitted sexual harassment and  
4 abuse to exist in the workplace at Wynn Resorts in violation of various laws and regulations and  
5 the Company’s Audit Committee Charter. Based in part on the information provided by Elaine  
6 Wynn concerning Steve Wynn’s misconduct, the Audit Committee failed to meet its  
7 responsibilities and obligations under the Audit Committee Charter thereby diminishing the  
8 Company’s value, as described further herein. Ms. Wynn has also accused the Audit Committee  
9 of destroying documents also in violation of their fiduciary duties and applicable law.

10 **G. Duty to Comply with Wynn Resorts’ Regulatory Obligations**

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

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

3 5.011 Grounds for disciplinary action. The board and the  
4 commission deem any activity on the part of any licensee, his agents  
5 or employees, that is inimical to the public health, safety, morals,  
6 good order and general welfare of the people of the State of Nevada,  
7 or that would reflect or tend to reflect discredit upon the State of  
8 Nevada or the gaming industry, to be an unsuitable method of  
operation and shall be grounds for disciplinary action by the board  
and the commission in accordance with the Nevada Gaming Control  
Act and the regulations of the board and the commission. Without  
limiting the generality of the foregoing, the following acts or  
omissions may be determined to be unsuitable methods of operation:

9 ...

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

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

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

17 ///

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

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

14 97. Defendants’ misconduct, as detailed herein, violated or aided in the violation of  
15 Nevada, Massachusetts, and Macau gaming laws and regulations, and Defendants’ unsuitability  
16 under those laws and regulations, among other things, exposes the Company to the potential loss  
17 of its gaming licenses in the Macau jurisdictions, as well as additional fines and sanctions on top  
18 of the \$55.5 million accumulated fines levied by Nevada and Massachusetts against Wynn Resorts  
19 and Defendant Maddox personally.

20 **SUBSTANTIVE ALLEGATIONS**

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1 **I. Steve Wynn Amasses Casino Power**

2 98. Steve Wynn began his career in the gaming industry at Wayson's Bingo in  
3 Maryland in the late 1960s. Wynn held the Maryland bingo operation and leased the hall from the  
4 Waysons through 1983, when the Wayson family bought it back.

5 99. During that time, Wynn created a gaming fiefdom centered in Las Vegas. In 1971,  
6 Steve Wynn acquired a controlling interest in the Golden Nugget Las Vegas, and, in 1973, formed  
7 Golden Nugget Companies, Inc., of which he was a majority owner.

8 100. In 1989, Steve Wynn opened The Mirage, a major casino on the Las Vegas Strip.  
9 Following the completion of The Mirage, Steve Wynn changed the name of his company to Mirage  
10 Resorts, Inc. On October 15, 1998, Steve Wynn opened the Bellagio, a \$1.6 billion resort. In  
11 2000, Mirage Resorts, Inc. was acquired by MGM Grand Inc. after Steve Wynn lost control of the  
12 company amidst stockholder criticism of his spending on art and hotel construction.

13 101. Steve Wynn then partnered with Japanese billionaire, Kazuo Okada for his next  
14 venture, Wynn Resorts. Steve Wynn became Chairman and CEO and Okada became Vice-  
15 Chairman of the Board. Wynn Resorts made its initial public offering on the NASDAQ on October  
16 25, 2002, trading under the WYNN ticker symbol. On April 28, 2005, the Company's first project,  
17 Wynn Las Vegas, opened on the Las Vegas Strip. The Company's second project, Wynn Macau,  
18 opened on September 5, 2006, in Macau, China. Steve Wynn also served as the Executive  
19 Director, Chairman, and CEO of Wynn Resorts subsidiaries Wynn Macau and Wynn Resorts  
20 (Macau) S.A. The Company is currently developing a luxury resort and casino in Massachusetts.

21 102. At the time of his resignation, Steve Wynn owned 11.8% of the stock of the  
22 Company. Pursuant to two stock purchase agreements entered into on March 22, 2018, Steve  
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1 Wynn sold the balance of his shares for \$2.1 billion. Steve Wynn, whose signature is the  
2 Company's logo, was touted by the Company as integral to its success.

3 103. The Massachusetts IEB revealed several themes involving breaches of duties at the  
4 Company during Steve Wynn's tenure, including:

- 5 (a) Failure to apply certain of the Company's own policies and procedures to  
6 Mr. Wynn, the highest ranking employee at the Company. Of particular  
7 concern is that certain high ranking Company executives who knew about  
8 allegations lodged against Mr. Wynn by employees failed to follow  
9 Company policy mandating an investigation.
- 10 (b) Failure to train Mr. Wynn on the Company's "zero tolerance" sexual  
11 harassment policy.
- 12 (c) Failure to document and record sexual misconduct allegations made against  
13 Mr. Wynn in a personnel or other centralized file.
- 14 (d) Failure of the Company to require an evaluation of whether outside counsel  
15 could simultaneously represent the legal interests of both the Company and  
16 Mr. Wynn, in circumstances where Mr. Wynn was alleged to have engaged  
17 in sexual misconduct with employees. A fair and objective investigation  
18 into the allegations would have informed the Company whether its interests  
19 with Mr. Wynn aligned or diverged.
- 20 (e) Failure by certain executives with knowledge of allegations of sexual  
21 misconduct by Mr. Wynn to make reports to the Company's board of  
22 directors, or to the board's audit or compliance committees. The apparent  
23 existence of a culture at the Company where employees hesitated to report  
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1                   allegations of sexual misconduct against Mr. Wynn to management, with  
2                   employees fearful of employment-related consequences, or believing that  
3                   reporting to management would be futile.

4                   (f) Failures at the Company potentially diminished the company’s ability to  
5                   safeguard the well-being of its employees.

6 **II. The Defendants Enable, Further, and Cover Up Steve Wynn’s Continued Sexual**  
7 **Harassment and Abuse at Wynn Las Vegas**

8 **A. Defendants’ Breaches Over the First 2005 Rape and Assault Allegations**

9                   104. In 2005, Steve Wynn opened his flagship resort, Wynn Las Vegas. Shortly  
10 thereafter in July 2005, according to the WSJ Article and the MGC, a married manicurist who  
11 worked at the Wynn Las Vegas told a supervisor that Steve Wynn had raped and impregnated her.  
12 The manicurist filed a written and detailed report to the HR department. She then received a call  
13 from Doreen Whennen, a Wynn Las Vegas executive, who reprimanded the manicurist for filing  
14 a report with HR and said she should have taken the matter directly to Whennen. The Wynn  
15 Resorts Code specifies filing documentation with the HR department for this type of allegation.

16                   105. The manicurist’s supervisor and/or Defendant Whennen told Defendant Schorr,  
17 then CEO and President of Wynn Las Vegas and COO of Wynn Resorts, of the allegations.  
18 Defendant Schorr personally met with the manicurist and told her there would be an investigation  
19 into the matter and that she should go home. The Company’s Code required this promised  
20 investigation. Defendant Schorr did not conduct and did not direct anyone else to conduct the  
21 promised investigation and failed to document the allegation.

22                   106. Instead, within days Defendant Steve Wynn reached a settlement with the  
23 manicurist that included a retraction, a non-disclosure provision, and a structured payment  
24 schedule. The manicurist “resigned” within days of her meeting with Defendant Schorr.  
25

1           107. Related to the settlement of the rape and paternity allegations, Defendants Steve  
2 Wynn, Attorney Schreck, and Attorney Pisanelli worked together to create Entity Y, a Limited  
3 Liability Company. Entity Y was funded with Defendant Steve Wynn's personal funds and was  
4 used to pay out the settlement over the course of ten years in order to disguise the source and nature  
5 of the payments. Defendants Steve Wynn, Attorney Schreck, and Attorney Pisanelli knew of the  
6 source and nature of the payments from Entity Y.

7           108. Defendant Whennen worked as the Vice President of Hotel Operations at Wynn  
8 Las Vegas until 2007 when she was transferred to Wynn Macau where she acted as Executive Vice  
9 President until she retired in 2014. During the course of the Okada litigation described herein, Ms.  
10 Whennen was deposed on July 14, 2017, where Ms. Whennen revealed that she retained certain  
11 notes from the 2005 investigation into the manicurist's allegations of sexual assault. On December  
12 8, 2017, in a further effort by Defendants to keep Steve Wynn's sexual misconduct under wraps,  
13 Worldwide Wynn LLC, a subsidiary of Wynn Resorts, sued Ms. Whennen for misappropriating  
14 and wrongfully retaining the notes from the investigation into the manicurist's allegations.  
15 According to the lawsuit, Ms. Whennen has repeatedly refused to turn over her notes to Wynn  
16 Resorts, claiming that they are her personal property.

17           109. In addition to Defendants Steve Wynn, Attorney Schreck, and Defendants  
18 Whennen and Schorr, Defendant Nathan knew of the rape allegation at or near the time that it was  
19 made. Attorney Pisanelli knew of the creation of Entity Y and Attorney Kamer knew of the  
20 settlement agreement. None of these Defendants contemporaneously shared this knowledge with  
21 the other Wynn Resorts Board Members or with General Counsel Attorney Rubinstein.

22           110. Shortly thereafter, when reviewing billings to Wynn Resorts from outside counsel,  
23 Defendant Attorney Rubinstein found a questionable entry related to the settlement. After being  
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1 put off by Defendant Schorr and engaging the services of Attorney Coben, Mr. Rubinstein  
2 discovered that Defendant Steve Wynn had engaged in what he claimed to be consensual sexual  
3 activity with an employee and that the claim by the employee included pregnancy and had resulted  
4 in a \$7.5 million dollar settlement with the employee.

5 111. Neither Defendant Rubinstein nor Defendant Coben pursued further investigation  
6 of the allegation or the settlement. Neither Defendant Rubinstein nor Defendant Coben informed  
7 the other Wynn Resorts Board Members of any of the information they had learned. Mr.  
8 Rubinstein left Wynn Resorts in 2006.

9 **B. Defendants' Breaches Over the 2006 Allegations**

10 112. In 2006, a former cocktail server at Wynn Las Vegas complained to Defendant  
11 Nathan that Defendant Steve Wynn had engaged her in what she had deemed a wrongful sexual  
12 relationship. Defendant Attorney Nathan, then Chief Human Resources Officer at Wynn Las  
13 Vegas, reported the accusation to Defendant Tourek, then VP and General Counsel for Wynn Las  
14 Vegas.

15 113. Defendant Steve Wynn thereafter reached a \$975,000 settlement with the cocktail  
16 server, once again utilizing his personal funds. In December 2006, Defendant Attorney Slotnick,  
17 several days after Defendant Nathan notified Wynn Resorts that he would resign effective March  
18 2007, signed the settlement on behalf of Defendant Steve Wynn. Similar to the 2005 settlement,  
19 the 2006 settlement included provisions requiring confidentiality, a release of claims against both  
20 Defendant Steve Wynn and Wynn Resorts, non-disparagement and no admissions of wrongdoing.

21 114. Defendants Steve Wynn, Nathan, Attorney Tourek, and on information and belief,  
22 Defendant Schorr, knew of the allegations of a wrongful sexual relationship. None of these  
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1 Defendants informed the other Wynn Resorts Board Members of any of the information they had  
2 learned. The Company did not document or investigate these allegations as required by the Code.

3 **C. Defendants' Breaches Over the 2008 Allegations**

4 115. In 2008, through counsel, a former cocktail service employee at Wynn Las Vegas  
5 alleged that she had a previous "intimate relationship" with Defendant Steve Wynn while she was  
6 employed by him at Mirage Resorts.

7 116. Wynn Resorts settled this complaint with \$700,000 of Company funds.

8 117. Wynn Resorts General Counsel at the time, Defendant Sinatra, participated in two  
9 meetings about the matter with Defendant Attorneys Kamer, Abbott, Slotnick and Tourek. These  
10 Defendants, as well as Defendant Steve Wynn, knew of the allegations and the settlement. None  
11 of these Defendants directly informed the other Wynn Resorts Board Members of any of the  
12 information they had learned. The Company did not document or investigate these allegations as  
13 required by the Code.

14 118. In 2009, Defendant Tourek entered the \$700,000 settlement payment as a  
15 disbursement on a quarterly statement to the Compliance Committee of the Board, identified as a  
16 legal settlement payable to G. Dallas Horton & Associates. When Defendant Maddox questioned  
17 the charge, he was informed that Defendant Steve Wynn and his wife, Elaine Wynn, wanted to  
18 help out a struggling employee. Neither Defendant Maddox nor other members of the Compliance  
19 Committee inquired further.

20 **D. Defendants' Breaches Over Elaine Wynn's 2009 Knowledge of Rape**  
21 **Allegations**

22 119. In April 2009, at the beginning of divorce proceedings between Elaine and Steve  
23 Wynn, Elaine Wynn learned of the 2005 rape allegations and settlement involving Steve Wynn.  
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1 Elaine Wynn discussed these allegations with Defendants Steve Wynn, Nathan, Whennen,  
2 Attorney Schreck and Director Goldsmith.

3 120. Elaine Wynn also reported these allegations to Defendant Sinatra in her role as  
4 General Counsel to Wynn Resorts. In 2009, neither Elaine Wynn nor Defendant Sinatra informed  
5 the other Wynn Resorts Board Members of any of the information they had learned. The Company  
6 did not document or investigate these allegations as required by the Code.

7 **E. Defendants' Breaches Over Wynn MA, LLC's 2013 Application for a**  
8 **Massachusetts Gaming License**

9 121. As part of its application for a gaming license, in January 2013 Wynn Resorts filed  
10 a form RFA-1 application with the Massachusetts Gaming Commission as the parent/company  
11 qualifier of Wynn MA, LLC. Defendants Steve Wynn, Elaine Wynn, Sinatra, and members of the  
12 Board of Directors of Wynn Resorts filed form RFA-1 applications as individual qualifiers.

13 122. Neither Wynn Resorts, Steve Wynn, Elaine Wynn, Sinatra, nor any of the  
14 individual Board qualifiers disclosed the 2005 allegations, the 2006 allegations, or the 2008  
15 allegations to the Massachusetts Gaming Commission during the 2013 application process.

16 **F. Defendants' Breaches Regarding the 2014 EEOC Mediation Revealing a**  
17 **Second 2005 Rape Allegation**

18 123. During the course of a 2014 mediation of EEOC claims brought by a fired cocktail  
19 server against Wynn Las Vegas, the fired server informed Wynn Resorts outside counsel,  
20 Defendant Attorney Abbott, that Defendant Steve Wynn had raped her in 2005.

21 124. Defendant Attorney Abbott summarized the allegation in an email to Defendant  
22 Attorney Tourek, then General Counsel for Wynn Las Vegas.

23 125. Defendant Attorney Abbott also spoke with Defendant Attorney Tourek and  
24 Defendant Wooden, then President of Wynn Las Vegas, about the allegation.  
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1           126. Defendant Attorney Tourek forwarded the email to Don Campbell, alleged personal  
2 attorney for Defendant Steve Wynn, who then forwarded the email to Defendant Sinatra.

3           127. The Company settled with the fired server for \$9,000 and paid the settlement with  
4 Company funds.

5           128. Neither Defendants Steve Wynn, Sinatra, Attorney Abbott, Attorney Tourek, nor  
6 Wooden informed the other Wynn Resorts Board Members of any of the information they had  
7 learned. The Company did not document or investigate these allegations as required by the Code.

8           129. On September 17, 2014, the MGC awarded the Region A gaming license to Wynn  
9 MA, LLC. No Defendants or anyone else connected with Wynn Resorts notified the MGC of the  
10 allegations of a second 2005 rape or of the settlements prior to the awarding of the Region A  
11 gaming license.

#### 12           **G. Defendants' Breaches Over 2014 and 2015 Spa Complaints**

13           130. From the end of 2014 to the beginning of 2015, Wynn Resorts received three  
14 complaints from two different massage therapists about Defendant Steve Wynn's inappropriate  
15 conduct.

16           131. The first complaint involved an allegation that Steve Wynn did not want to  
17 appropriately cover himself during a massage session. The complaint progressed from the  
18 therapist to the spa director to the executive director of spa services. From there, the complaint  
19 was forwarded to Defendant Gullbrants, then executive VP and General Manager of Wynn Las  
20 Vegas, and Defendant Wooden, then President of Wynn Las Vegas. Neither Gullbrants, Wooden  
21 nor Wynn Resorts investigated these allegations as required by the Code.

22           132. A few months after this violation, the same therapist lodged a second complaint,  
23 alleging that Defendant Steve Wynn requested a "sensual massage" during a couple's massage  
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1 with his wife. This complaint was also forwarded to Defendant Gullbrants and thereafter to  
2 Defendant Wooden. Defendant Wooden then informed Defendant Maddox, then President of  
3 Wynn Resorts, who directed Defendant Wooden to tell Defendant Steve Wynn to “knock it off.”  
4 Defendant Maddox did not document this instruction, and neither Defendants Maddox, Wooden,  
5 Gullbrants nor Wynn Resorts investigated these allegations as required by the Code.

6 133. Several months later, another massage therapist complained to the spa director that  
7 Defendant Steve Wynn made the therapist uncomfortable by insisting on inappropriate draping  
8 during a massage. This complaint, seen by the Spa Director as “the last straw,” was also forwarded  
9 to Defendant Gullbrants and thereafter to Defendant Wooden. Defendants Wooden and Gullbrants  
10 did not document this complaint and neither Defendants Wooden, Gullbrants nor Wynn Resorts  
11 investigated these allegations as required by the Code. Defendant Steve Wynn reached a  
12 settlement with this therapist, the details of which were never disclosed and which remain  
13 unknown.

#### 14 **H. Defendants’ Breaches Over the 2016 Development in the Okada Litigation**

15 134. Commenced in 2012, *Wynn Resorts, Ltd. v. Okada et al.*, No. A-12-656710-B  
16 (Clark County, Nevada), was litigation arising out of Steve Wynn’s purported plan to oust Okada,  
17 a major shareholder, from the Board and to force the Company to redeem Okada’s shares pursuant  
18 to the unsuitability provisions of the Company’s Articles. To effect this ouster, the Company,  
19 steered by Steve Wynn, launched an investigation into Okada’s alleged bribing of Philippine  
20 government officials. Purportedly, Steve Wynn wanted the board to get rid of Okada to protect  
21 Wynn’s dominance over the Company. All of Wynn Resorts’ Board members in place at the time  
22 voted in favor of removing Okada from the Board and redeeming his shares.

1           135. On September 20, 2012, in an affidavit filed by Steve Wynn in the Okada litigation  
2 supporting the Board’s decision to redeem Mr. Okada’s Wynn Resorts’ stock, Steve Wynn  
3 claimed: “My concern has been to uphold Wynn Resorts’ high standards, protect its existing  
4 licenses and future opportunities, and do what is best for the company and its stockholders.”  
5 Stephen A. Wynn Affidavit at ¶ 5. Mr. Wynn’s Affidavit further stated that, “Nevada’s gaming  
6 regulations as well as Wynn Resorts’ own compliance program prohibit any licensee from  
7 continuing to associate with someone who is unsuitable to be a licensee.” *Id.* at ¶ 10.

8           136. Also in 2012, after her divorce, Elaine Wynn filed a counterclaim against Steve  
9 Wynn in the Okada action, seeking to free herself from restrictions on the control of her estimated  
10 \$1.9 billion of Wynn Resorts stock. She also challenged Steve Wynn by asking governance-  
11 related questions, including the appropriateness of the \$7.5 million settlement payment to the  
12 alleged sexual assault victim of Steve Wynn. In response, in 2015, Steve Wynn persuaded the  
13 Board in place at the time not to re-nominate Elaine Wynn to the Board, instead decreasing the  
14 size of the Board by one and removing her position. The entire Board acquiesced, despite the fact  
15 that Elaine Wynn had co-founded Wynn Resorts and was its third-largest shareholder. Elaine  
16 Wynn launched a proxy fight in an effort to have Company stockholders vote her into an open  
17 Board seat, but lost that fight on April 24, 2015.

18           137. On March 28, 2016, Elaine Wynn filed her Fifth Amended Cross-Claim in the  
19 Okada action. She alleged that Steve Wynn “engaged in alleged misconduct on Company property  
20 against at least one Company employee serious enough to warrant a multimillion dollar  
21 payment[,]” that he “had used Company resources to conceal the allegations[,]” that he had  
22 engaged in a “pattern of reckless risk-taking” behavior that “left the directors and the Company  
23 vulnerable to potential liability and regulatory exposure.”

1           138. The Board, through Michael Weaver, the SVP of Marketing and Communications  
2 for Wynn Resorts, issued a press release the same day. It asserted that “the *independent directors*  
3 of the Company chose not [sic] re-nominate Ms. Wynn” (emphasis supplied), denied the  
4 allegations, and stated that “Elaine Wynn’s latest claims are consistent with the falsehoods and  
5 distortions she previously made against the Company and its CEO Steve Wynn[,]” and that “Ms.  
6 Wynn’s latest allegations regarding our Board, its composition and its independence are simply  
7 not true and are rehashed from her previous, unfounded statements made during her proxy  
8 campaign.” The Board further stated, “Wynn Resorts prides itself on transparency and full  
9 disclosure to regulators and shareholders. Allegations made by Ms. Wynn that the company would  
10 hide any relevant activities from our regulators are patently false.” The press release particularly  
11 emphasized that “[o]ur company has nine distinguished directors, *seven of whom are independent*  
12 under NASDAQ standards.” (emphasis supplied) The Board issued these statements with some  
13 of the members knowing that the statements were false and with the others failing to investigate  
14 the truth or falsity of the claims.

15           139. The Board, particularly the outside directors, after investigating the allegations of  
16 the Cross-Claim, became aware of the sexual nature of the allegations. Defendant Sinatra then  
17 hired outside counsel from her former firm, Gibson Dunn, to provide guidance on the Cross-Claim.  
18 Defendant Sinatra informed outside counsel that the allegations were “old and cold” and a “one-  
19 off.” Defendant Sinatra did not inform outside counsel or the outside directors about the other  
20 allegations and settlements.

21           140. After receiving draft versions of the fifth amended cross-claim, Attorney Sinatra  
22 brought in Defendant Attorney Jonathan Layne from Gibson Dunn to advise the outside directors  
23 and provide them with advice regarding a response to the Cross-Claim. Attorney Sinatra told IEB  
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1 investigators that the draft Cross-Claim had added her as a defendant, so she "didn't feel like, as  
2 the company's general counsel, that I could be helping them." She also told IEB investigators that  
3 she directed Attorney Layne "to work with the board . . . as to whether or not I should keep my  
4 job, because there's some bad allegations made against me here."

5       141. According to Defendant Attorney Layne, after reading the allegations in the draft  
6 crossclaim, he asked Attorney Sinatra about the reference in it to a settlement agreement. Layne  
7 told IEB investigators that Attorney Sinatra responded to him that she was aware of a prior  
8 settlement agreement, that it was quite dated, that she had not been general counsel at the time,  
9 that she did not have all of the details associated with it, and that there had been conversations that  
10 took place with outside counsel with respect to disclosure obligations. When Attorney Layne asked  
11 Attorney Sinatra which attorneys had been involved, she told him the attorneys were Attorney  
12 Schreck on the regulatory side and Attorney Coben on the non-regulatory side, and that their advice  
13 was that disclosure was not required. Attorney Layne also told investigators that he had  
14 conversations with Attorney Tourek as well (general counsel for Wynn Las Vegas at the time),  
15 and that Attorney Tourek told him that the settlement structure included a retraction by the  
individual making the claims.

16       142. On or about March 14, 2016, Attorney Sinatra and Attorney Layne participated in  
17 a conference call with the outside directors on the subject of the Cross-Claim. According to  
18 Attorney Layne, Attorney Sinatra was on the first part of the call, and she provided background  
19 information to the independent directors, including information on the 2005 settlement agreement.  
20 Attorney Layne told investigators that Attorney Sinatra confirmed for the outside directors that  
21 there had in fact been a settlement, that it related to an allegation by a former employee, and that  
the allegation was retracted as part of the settlement.

22       143. When asked whether Attorney Sinatra explained the nature of the allegation to the  
23 independent directors, Attorney Layne represented to IEB investigators "it was relating to some  
24 sort of wrongdoing, a sexual, you know, wrongdoing, conduct." Attorney Layne also told  
25

1 investigators that during that call, the board members inquired whether there were other instances  
2 of allegations of misconduct against Mr. Wynn, specifically asking about hotline complaints.  
3 Despite Sinatra's conflicts and well-known loyalty to Steve Wynn, Attorney Layne as advisor to  
4 the outside board members wrongfully allowed Sinatra to be the central source of information as  
5 to whether there were other complaints of sexual harassment against Steve Wynn. Indeed, after  
6 the call with the outside directors, Sinatra was given the assignment to determine if there were  
7 other complaints. IEB Investigators asked Attorney Layne whether Attorney Sinatra mentioned  
8 anything during the conference call with the outside directors about the 2006 settlement agreement,  
9 the 2008 settlement agreement, or the 2014 rape allegation. Attorney Layne told investigators that  
10 she did not. While Sinatra clearly breached her duties as an attorney and officer of the Company  
11 by not disclosing known past instances of Wynn's sexual harassment, Layne also breached his  
12 fiduciary duties as an attorney to the Board by not ensuring that an independent investigation was  
13 performed, especially given the allegation in Elaine Wynn's Cross-Complaint that Sinatra had  
14 engaged in wrongdoing by not previously disclosing Steven Wynn's misconduct. The entire  
15 purpose of Layne's retention was to supposedly provide independent advice to the outside board  
16 members, untainted by the conflicted prism of inside counsel like Sinatra. Layne completely failed  
17 to do so.

18 144. Indeed, even though Sinatra had been tasked after the call with investigating  
19 whether there were other instances of Wynn's misconduct, she did not perform any such investigation.  
20 When questioned about this by the IEB investigators, Sinatra said she did not do any further  
21 investigation because she considered herself conflicted due to being named as a defendant in the  
22 Cross-Claim:

23 **[Question]:** Did you at any point -- at this point did you look into it, whether or  
24 not this was a one-off? Did you ask any questions, talk to [Mr.  
25 Wynn]?

**[Sinatra]:** Again, I wasn't -- I had to recuse myself, because I was part of the

1 accused. And so from my perspective, it's just like the investigations that are going on now.  
2 People don't want to tell me what it was other than to know what I knew. There was a  
3 whole bunch of people spending a whole bunch of money and time looking at this issue.  
4 And I was specifically shunted out of it because I was part of it.<sup>4</sup>

5 145. Defendant Layne also apparently never performed any investigation in response to  
6 the outside directors' question as to whether there were other instances of alleged sexual  
7 harassment by Steve Wynn. Layne simply allowed the task to be delegated to Sinatra and never  
8 followed-up with whether Sinatra had actually performed any investigation or whether Sinatra was  
9 herself implicated in the cover-up, as Elaine Wynn alleged in the Cross-Complaint.

10 146. Moreover, Layne provided advice to the outside directors that the Company did not  
11 need to disclose Steve Wynn's 2005 settlement. This advice was negligent in light of the utter  
12 lack of any further real investigation of whether there were other instances of Wynn's sexual  
13 harassment, and in light of the allegation in Elaine Wynn's Cross-Complaint that the concealment  
14 of her husband's harassment exposed the Company to legal and regulatory liability.

15 147. Indeed, on March 28, 2016 (just two weeks after Layne participated in the  
16 conference call with the Company's outside directors), Ms. Wynn filed her fifth amended Cross-  
17 Claim with the court in the *Okada* litigation, adding new claims against Mr. Wynn, the Company,  
18 and Sinatra. The March 28, 2016 amended Cross-Claim included the following allegation:

19 He [Steve Wynn] has engaged in reckless, risk-taking behavior, leaving himself  
20 vulnerable to allegations of serious wrongdoing - that he made a multi-million  
21

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22  
23 <sup>4</sup> See Exhibit 1, at p. 117.  
24  
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1           dollar payment and used Company resources to silence (sic) and that he did not  
2           properly disclose to the Board of Directors. *This and other such decisions have*  
3           *left the directors and the Company vulnerable to potential liability and regulatory*  
4           *exposure.*

5           148. The Cross-Claim also alleged that:

6                     Among other things, Ms. Wynn learned that Mr. Wynn, using the services  
7                     of a private criminal defense attorney and a private gaming attorney, had  
8                     previously made a multi-million dollar payment after apparently being  
9                     threatened with allegations of serious misconduct occurring on Company  
10                    property against a Wynn Resorts employee. When Ms. Wynn made  
11                    inquiries of Ms. Sinatra, the Company's General Counsel, *Ms. Sinatra*  
12                    *stated that Mr. Wynn had decided that the matter should not be disclosed*  
13                    *to the Board* or other Company counsel even though Mr. Wynn, as the  
14                    Chairman and CEO of a public company, had exposed himself to  
15                    sufficiently serious allegations of wrongdoing that he had been forced to  
16                    pay millions of dollars and had used Company resources to conceal the  
17                    allegations.

18           149. Later, in 2018 after the WSJ Article was published, Wynn Resorts formed a Special  
19           Committee of three directors, including Defendant Mulroy. The Special Committee initially hired  
20           O'Melveny & Myers to represent it and to conduct an investigation of Steve Wynn's sexual  
21           harassment. Mr. Wynn thereafter resigned in short order, after which the Special Committee  
22           replaced O'Melveny with Gibson Dunn & Crutcher. With respect to the hiring of Gibson Dunn in  
23           2018, the IEB Report noted:

1 “The IEB expressed concern to Ms. Mulroy and Mr. Hagenbuch about the selection  
2 of Gibson Dunn to conduct the internal investigation, as Gibson Dunn had been  
3 advising the independent directors for years and therefore had an established  
4 business relationship with the Company. Also, Attorney Sinatra had  
5 previously been a partner at Gibson Dunn and her actions as general counsel for the  
6 Company were now an aspect of the internal investigation. Using a firm with an  
7 established relationship could potentially impact employee, public, and shareholder  
8 confidence in the independence of the investigation and could also potentially  
9 impact the willingness of witnesses to share derogatory information with the special  
10 committee investigators. In addition, Gibson Dunn partner Attorney Jonathan  
11 Layne had advised the independent directors during the contentious period leading  
12 up to Elaine Wynn's non-re-election to the  
13 board. Given that Ms. Wynn is a critical witness in this matter, the prior relationship  
14 could be perceived as giving rise to a potential for bias and impartiality on the part  
15 of Gibson Dunn.”<sup>5</sup>

16 150. After Elaine Wynn filed the Cross-Complaint, the outside directors, after  
17 consultation with Layne, decided that Steve Wynn’s 2005 settlement did not need to be disclosed  
18 to the SEC or the gaming commissions. Instead of making full disclosure and conducting a real,  
19 independent investigation, they took overt action to try to further conceal Steve Wynn’s  
20 misconduct. To do so, they engaged Attorney Barry Langberg, a partner of Attorney Schreck’s at  
21 Brownstein Hyatt Farger Schreck LLP, to evaluate a defamation action against Elaine Wynn.

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24 <sup>5</sup> See IEB Report (Exhibit 1 hereto), at p. 161, n.648.

1 Attorney Langberg, who had a close relationship with Steve Wynn,<sup>6</sup> did not conduct an  
2 investigation before presenting his defamation analysis. Without any basis other than interviews  
3 with his partner, Schreck, who had drafted the 2005 secret settlement agreement, and defendant  
4 Wynn, who stood accused, he misrepresented that the allegations were false and that “from a legal  
5 perspective, the manner in which the matter was handled at no time exposed the Company or the  
6 directors to liability.”<sup>7</sup> The outside directors reviewed the initial information and *concluded no*  
7 *further action related to the cross-claim referencing the settlement agreement was necessary.*<sup>8</sup>  
8 The minutes of the Company’s April 20, 2016 outside directors’ meeting suggest that, because a  
9 further investigation may not have been considered privileged, the Board wanted to avoid possible  
10 negative, even if truthful, publicity and failed to consider the risk to the welfare of the Company’s  
11 employees.<sup>9</sup>

12 151. Neither Attorney Layne nor the independent directors obtained any information on  
13 whether or not an investigation had been conducted in 2005 on the original allegation.<sup>10</sup> Attorney  
14 Layne told investigators that "the sense was that this was sort of a very old and cold situation and  
15 it was [a] one-off and by one-off meaning that there had not been any other incidences." Attorney  
16 Layne did not recall who told him it was a "one-off," but he thought it was part of the original

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20 <sup>6</sup> Attorney Langberg told the IEB investigators that he had a 20-year relationship with Mr.  
21 Wynn. He said, "I wouldn't say we were friends because I don't travel in the same social circles as  
22 he does, but when I would go to Wynn Resorts, when I would go be at the hotel for business or  
23 whatever, I'd often have dinner with him and his wife. He was at my wedding." See IEB Report,  
24 at p. 120, n.494.

<sup>7</sup> IEB Report, p. 119.

<sup>8</sup> IEB Report, p. 120.

<sup>9</sup> IEB Report, p. 121-2.

<sup>10</sup> IEB Report, p. 121.

1 conversations that he had with Attorney Sinatra and Attorney Tourek. Attorney Layne told  
2 investigators that he never spoke to Mr. Wynn directly about the 2005 matter.

3 152. Similarly, after learning of the 2005 settlement shortly after the 2016 filing of  
4 Elaine Wynn's Cross-Claim in the *Okada* matter, Defendant Maddox did no investigating or  
5 reporting beyond receiving Defendant Sinatra's self-interested and conflicted summary of the  
6 facts.

7 153. In August 2016 the outside directors adopted a communications protocol applicable  
8 to all executive managers of Wynn Resorts. Defendant Sinatra emailed the protocol to all  
9 Company managers, including Defendant Maddox, with a copy to all Board members.

10 154. Wynn Resorts ultimately settled with Okada, paying over \$2.6 billion to Okada's  
11 company as compensation for the redemption of Okada's stock in 2012. To raise such a large sum,  
12 Wynn Resorts obtained a loan of \$800 million. On February 5, 2018, relying on a sealed document  
13 allegedly showing that several Board members intended to oust Okada well before the conclusion  
14 of the Board's investigation, the Court ruled that Okada could bring claims against several Board  
15 members who voted to oust him.

16 155. As Ken Brown stated in the WSJ, regarding the March 8, 2018 settlement of the  
17 Okada litigation, "shareholders should be furious." The article concluded: "The real losers are  
18 Wynn's shareholders. This is another reason the Wynn Resorts board, which let Mr. Wynn start  
19 the fight in the first place, should take the blame and put in place real corporate governance. Or  
20 they should quit and let someone else do it."

21 **I. Defendants' Breaches Over Additional Allegations of Sexual Harassment**  
22 **from 2016 Forward**

23 156. In October of 2016, Steve Wynn's executive assistant, Cindy Mitchum, received  
24 an email from a former Wynn Resorts employee alleging that Steve Wynn engaged in sexual  
25

1 harassment and created a hostile work environment. She forwarded the email to Defendant Sinatra  
2 and Stacie Michaels, then general counsel of Wynn Las Vegas. Defendant Sinatra informed  
3 Michaels that she would handle the complaint. Defendant Sinatra reviewed the complaint with  
4 Defendant Steve Wynn. Neither Michaels, Defendant Sinatra, nor Defendant Steve Wynn  
5 investigated these allegations as required by the Code or informed the other members of the Wynn  
6 Resorts Board of Directors.

7 157. In 2017, as part of the *Okada* litigation, many Company Board Members,  
8 executives and outside counsel sat for depositions. During that time, the Company learned of the  
9 First 2005 Rape Allegation and Settlement. The Company failed to disclose this information to  
10 the Board under the Communications Protocol and failed to document or investigate the matter  
11 pursuant to the Company Code.

12 **III. The 2018 Wall Street Journal Article Brings Public Scrutiny to Steve Wynn’s**  
13 **History of Sexual Harassment and Abuse**

14 158. On January 26, 2018, the Wall Street Journal (“WSJ”) published an article that  
15 revealed numerous and longstanding allegations of civil and criminal sexual misconduct by  
16 Defendant Steve Wynn (the “WSJ Article”). Steve Wynn’s long history of sexual harassment and  
17 abuse spans decades and pre-dates the founding of Wynn Resorts and the First and Second 2005  
18 rape allegations.

19 159. The WSJ Article described that, in the early 1990s, Dennis Gomes, an executive at  
20 Golden Nugget in Las Vegas when Wynn ran the casino, testified at a deposition that Gomes  
21 “routinely received complaints from various department heads regarding Wynn’s chronic sexual  
22 harassment of female employees.” In a suit over Gomes’s departure from the Golden Nugget,  
23 Gomes described a “disgraceful pattern of personal and professional conduct” by Wynn that  
24 included him directing Gomes to get home phone numbers of cocktail waitresses. The parties  
25

1 agreed to dismiss the suit in 1994. In connection with the WSJ article, Gomes’s widow said, “I  
2 remember him saying, ‘I’m not his [Wynn’s] pimp.’”

3           160. On the heels of the WSJ Article, multiple articles published in the Las Vegas  
4 Review-Journal and the Nevada Forward chronicled reports by women who were sexually  
5 assaulted by Steve Wynn in the 1970s and 1980s, including a grandmother at the time. A  
6 consistent theme in the reports is the abuse of power and authority by Steve Wynn over subordinate  
7 female employees for sexual gratification.

8           161. In 1997, eleven waitresses at the Wynn-owned Mirage filed suit in Nevada federal  
9 district court, alleging a culture of harassment, coerced sexual relations, and misconduct by Wynn.  
10 According to the Las Vegas Review-Journal, the lawsuit, *Arrowsmith, et al. v. Mirage Casino-*  
11 *Hotel*, 2:97-cv-00638-RLH-LRL (D. Nev. 1997), contained allegations that supervisors did not  
12 protect women from gamblers who harassed them, and that waitresses were sent to sexually  
13 “accommodate” high rollers at the resort through the 1990s. The suit also alleged that in 1995  
14 Steve Wynn required the cocktail waitresses to meet with him in the Mirage’s executive offices,  
15 where he told them they had “fat asses” and unless they lost weight, he would transfer them to  
16 different departments. A few days later, the cocktail waitresses had to be weighed and measured  
17 and were forced to sign a document stating that if they gained 6 pounds or more they would be put  
18 on probation.

19           162. In 1998, two of the plaintiffs in *Arrowsmith* spoke with Las Vegas Review-Journal  
20 reporter Carri Geer. As she was preparing the story, Geer was called into a meeting with Wynn’s  
21 attorneys. After subjecting the plaintiffs to polygraph examinations, the newspaper killed the  
22 publication of the story, and ordered Geer to delete it from the newspaper’s computer system,  
23 demonstrating Steve Wynn’s extraordinary power and influence.

1           163. *Arrowsmith* settled in 2003. Because the case is public record and involved Wynn  
2 Resorts' CEO and Chairman, Wynn Resorts' Board members should have been aware of the  
3 litigation and the need to ensure that appropriate controls were in place to prevent Steve Wynn  
4 from engaging in similar misconduct at his flagship resort. In addition, Defendant Wayson was a  
5 director of Mirage Resorts, Inc. from 1997-2000 while *Arrowsmith* was being litigated, and thus  
6 can be presumed to have knowledge of the plaintiffs' allegations regarding Steve Wynn. The  
7 Board failed to implement proper corporate governance in the wake of *Arrowsmith*, and instead  
8 allowed Steve Wynn to continue his pattern of sexual harassment and abuse at Wynn Resorts.

9           164. In February and March of 2018, two different massage therapists and one  
10 manicurist came forward and filed suits against Wynn Resorts, Steve Wynn and/or Wynn Directors  
11 alleging that Steve Wynn damaged them by engaging in sexual assault and other sexual  
12 improprieties.

13           165. The first complaint from February 2018 details forced physical sex acts and  
14 demands for sex during massages beginning in 2006 and continuing for several years. In her  
15 lawsuit, the woman alleged that Wynn "mentally and emotionally" manipulated her into  
16 performing sexual acts on him by exploiting her financial dependency on her job. The woman  
17 recounted in her lawsuit that she "consistently objected" to the advances to no avail and that,  
18 following the sessions, Steve Wynn would leave her a "tip" of \$400. The harassment and pressure  
19 to not disclose his demands caused the Wynn Resorts employee extreme distress. Significantly,  
20 in the lawsuit, the woman alleges that the Wynn Resorts' board of directors was aware of Steve  
21 Wynn's "predatory behaviors" and that the Board failed to prevent harm to her.

22           166. The second lawsuit from March 2018 alleged that in or around 2011, Steve Wynn  
23 forced the massage therapist to perform multiple sex acts on him during massage sessions in his  
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1 private office at Wynn Resorts. Steve Wynn's office door was purportedly locked, with guard  
2 dogs posted outside. The complaint states that Steve Wynn discovered that the massage therapist  
3 was going through a divorce and relied on her salary at Wynn Resorts to support her children. The  
4 massage therapist feared for her physical and financial security if she did not comply with Steve  
5 Wynn's demands. The woman repeatedly told him she did not want to have sex with him, to  
6 perform sexual acts on him, or to see him naked. After these sessions, Mr. Wynn routinely  
7 "tipped" the woman \$1,000.

8 167. The third lawsuit filed in March 2018 alleged that Mr. Wynn would demand that  
9 the manicurist sit so close to Mr. Wynn that her knee was touching his crotch. Further, he would  
10 place his hand being manicured over his genitals necessitating her to touch them in order to  
11 perform her work. If she objected to this physical contact, Mr. Wynn became angry and agitated.  
12 The employee complained to her supervisor and management at Wynn Resorts and, despite  
13 elevating the complaint to those at the highest level at Wynn Resorts, was told that nothing would  
14 be done to change Mr. Wynn's misbehavior. Moreover, she learned that her co-workers had many  
15 similar stories of sexual harassment by Steve Wynn during the manicures and pedicures that they  
16 provided. The employee and her colleagues tried to avoid taking appointments with Steve Wynn.  
17 The employee alleges that Wynn Resorts' management never contacted her to investigate her  
18 claim.

19 168. In addition to these sexual, physical assaults, Steve Wynn's comments and behavior  
20 created a hostile working environment for female employees. For example, several former Wynn  
21 Las Vegas employees recalled that Wynn often walked around areas of the Wynn Las Vegas  
22 wearing inappropriately short shorts without underwear, and that he would expose his genitals  
23 while getting pedicures at the salon.



1           169. The WSJ Article reports that one former employee stated Wynn repeatedly  
2 propositioned her for sexual favors, often while touching or exposing himself. Once, as she was  
3 leaving his office, he grabbed her waist as she stood against a wall and told her to kiss him. She  
4 slipped out of his hold and left. After two weeks of pursuit, he stopped. The employee’s supervisor  
5 and another colleague confirmed being told of these advances at the time, but sought to “manage”  
6 the situation rather than report it for fear of repercussions.

7           170. The WSJ Article further detailed reports from multiple Wynn massage therapists  
8 where Wynn used his private office massage room to expose himself and demand sexual  
9 gratification during massage treatments from Wynn Resorts employees.

10          171. Former employees told the WSJ that they sometimes entered fake appointments in  
11 the books to help other female therapists avoid a request for services in Steve Wynn’s office or  
12 arranged for others to pose as assistants so they would not be alone with him.

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

18          173. Even after publication of the WSJ Article, the Board supported Steve Wynn by  
19 allowing him to intimidate salon employees by demanding that they publicly disavow his  
20 misconduct. As alleged in the manicurist’s March 2018 complaint, on January 31, 2018, Steve  
21 Wynn, accompanied by Wynn Resorts’ executives, came into the Claude Baruk Salon at Wynn  
22 Las Vegas (the “Salon”) and, in a group setting, instructed anyone who had ever felt assaulted or  
23 abused by Steve Wynn to raise their hands. The next day, on or about February 1, 2018, Steve  
24  
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1 Wynn returned to the Salon with audio and video recording personnel and demanded that all  
2 employees go on the record and state that Steve Wynn had never assaulted them.

3 174. Prior to conducting any type of investigation: (1) the Board issued a message of  
4 support for Steve Wynn to all Company employees and (2) the Company held employee meetings,  
5 some overseen by Steve Wynn himself, to rally support for Steve Wynn.

6 175. According to deposition testimony revealed in court on March 9, 2018, Steve Wynn  
7 testified that he skipped a mandatory sexual harassment training for all Wynn Resorts employees,  
8 including company executives. When asked if he had attended the training, Steve Wynn  
9 responded, "No. I don't need it."

10 176. In the wake of the WSJ Article, the Nevada Gaming Control Board received  
11 numerous reports about Steve Wynn, and the large volume of calls it received prompted it to  
12 introduce a new online system for the public to send in confidential complaints and tips.

13 177. On March 19, 2018, it was further reported by the WSJ that Steve Wynn had paid  
14 a settlement to another Wynn Resorts employee in 2006 relating to sexual harassment allegations.  
15 When she informed Steve Wynn that she wanted to publicly disclose the details of the event  
16 following the January 26, 2018 WSJ article, his attorneys contacted the FBI asking the agency to  
17 investigate her for extortion. The former employee only sought the ability to reveal information  
18 underlying her settlement; no money was ever demanded. The FBI closed the investigation two  
19 weeks later.

20 **IV. The Defendants Breached Their Fiduciary Duties by Refusing to Investigate**  
21 **Credible and Compelling Evidence of Steve Wynn's Sexual Harassment and Abuse**  
22 **and by Failing to Protect Employees from Him**

23 178. The Director Defendants knowingly and intentionally breached their fiduciary  
24 duties by failing to act in the face of Steve Wynn's repeated and systematic sexual misconduct  
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1 toward vulnerable female employees, detailed above. Other than Defendant Johnson, all Director  
2 Defendants knew of the 2005 assault allegation and Steve Wynn’s pattern of misconduct by at  
3 least March 28, 2016, when court documents filed by Elaine Wynn described a “multi-million-  
4 dollar payment” made by Steve Wynn following allegations that he engaged in “serious  
5 misconduct” “on company property against an employee” and detailed the “pattern of reckless  
6 risk-taking” behavior by Steve Wynn that “left the directors and the Company vulnerable to  
7 potential liability and regulatory exposure.” Other reports pinpoint Board members’ knowledge  
8 at an even earlier date. Reports explain that Elaine Wynn learned of the 2005 assault and \$7.5  
9 million settlement payment in 2009, while she was a current board member, and that she reported  
10 the information to Defendant Sinatra — Wynn Resorts’ General Counsel. According to a CNBC  
11 article, Elaine Wynn also reported the 2005 assault and settlement payment to a board  
12 representative “right away” after learning of it in 2009. The Company has admitted that Elaine  
13 Wynn informed the Board of the 2005 assault after she lost her Board seat in 2015.

14 179. Regardless of whether the entire Board knew of Steve Wynn’s misconduct in 2009,  
15 2015, or 2016, one thing is clear: the Director Defendants did absolutely nothing in response at  
16 any time. They failed to document, or direct the documentation of, allegations of sexual  
17 harassment against Steve Wynn. They failed to undertake, or direct the undertaking of, an  
18 investigation into Steve Wynn’s sexual harassment. Even after creating a communications  
19 protocol in 2016, the Board failed to comply with its own protocol to ensure workers were safe  
20 from sexual harassment, rape, and abuse.

21 180. Not only did the Director Defendants intentionally and knowingly fail to act in the  
22 face of known and credible allegations concerning the First 2005 rape by Steve Wynn of a  
23 Company employee on Company property and his “pattern” of reckless and risk-taking behavior,  
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1 they also intentionally and knowingly breached their fiduciary duties by failing to implement  
2 internal controls that would alert them to the hostile work environment created by Steve Wynn’s  
3 widespread sexual harassment and abuse, which was repeatedly reported to senior Company  
4 officials. Their failure to act imperiled the Company and put its gaming licenses, revenues, and  
5 goodwill at risk.

6 181. The Director Defendants also breached their fiduciary duties by knowingly and  
7 intentionally concealing Steve Wynn’s sexual misconduct from stockholders and gaming  
8 authorities and affirmatively misrepresenting the Company’s corporate governance framework.  
9 For example, the Company’s in-house counsel candidly admitted that she intentionally chose not  
10 to disclose the \$7.5 million settlement for the First 2005 assault to Massachusetts gaming  
11 regulators in the licensing process for Wynn Resorts new casino in the greater Boston area. Nor  
12 did the Director Defendants ever disclose the First 2005 assault to stockholders. Yet the  
13 Nominating Committee and the Board repeatedly allowed Steve Wynn to stand for re-election  
14 without advising stockholders of the toxic workplace environment created by Steve Wynn, because  
15 the Company viewed his leadership as critical to its success.

16 182. Further, although the Director Defendants, aside from Defendant Johnson, knew of  
17 Steve Wynn’s sexual harassment and abuse no later than March 2016, they falsely represented in  
18 the Company’s 2017 Proxy statement that the Board and management were “committed to sound  
19 and effective corporate governance” and that the “Company has established a comprehensive  
20 corporate governance framework, with policies and programs designed not only to satisfy the  
21 extensive regulatory requirements applicable” to the Company’s business but also to build value  
22 for stockholders and promote the vitality of the Company for employees.

1           183. Court filings by Elaine Wynn explain that despite the fact that Defendant Sinatra  
2 knew of the allegations since 2009, Sinatra set a “tone at the top” that “discouraged any challenge  
3 to Steve Wynn.” Indeed, Sinatra herself took no steps to investigate Steve Wynn or protect the  
4 Company from Steve Wynn’s sexual abuse and harassment, and breached her fiduciary duties to  
5 the Company and shareholders by knowingly and intentionally concealing the First 2005 assault  
6 and failing to act, as the Company’s chief legal officer, to address the known and credible  
7 allegations of the First 2005 assault and later-revealed assaults.

8           184. Further, by permitting Steve Wynn to retain his ownership stake in the Company  
9 following his resignation, the Director Defendants continued to breach their fiduciary duties by  
10 ignoring the Company’s Articles of Incorporation (“Articles”), which allowed the Board to redeem  
11 the shares of any officer who threatens the “suitability” of the Company under state gaming laws.  
12 Specifically, the Articles define an “Unsuitable Person” as one who, “in the sole discretion of the  
13 board of directors of the Corporation, is deemed likely to jeopardize the Corporation’s or any  
14 Affiliated Company’s application for, receipt of approval for, right to the use of, or entitlement to,  
15 any Gaming License.” Wynn’s First and Second 2005 alleged rapes of Company employees  
16 undoubtedly made him “unsuitable.” Article VII, Section 1(l). The Articles provide that an  
17 Unsuitable Person’s shares of the Company are “subject to redemption by the Corporation ... to  
18 the extent deemed necessary or advisable by the board of directors.” Article VII, Section 2(a).  
19 Despite multiple gaming authorities’ investigations into Steve Wynn’s misconduct and his  
20 suitability, the Director Defendants permitted Steve Wynn to retain his ownership share in the  
21 Company, until he voluntarily entered into stock purchase agreements to completely sell out his  
22 position in the Company by March 26, 2018, for \$2.1 billion. Because Steve Wynn’s sexual  
23 harassment and abuse seriously “jeopardize[d]” the Company’s gaming licenses, he was an  
24  
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1 “Unsuitable Person” under the Articles and the Director Defendants should have immediately  
2 acted to redeem his shares instead of allowing him to sell his shares for massive proceeds. Their  
3 failure to do so was a breach of their duties to the Company and to shareholders.

4 185. The Wynn Board and its various committees are responsible for promoting,  
5 protecting and preserving the Company’s assets and business interests. Instead, during the period  
6 when Steve Wynn’s misconduct was concealed from stockholders, the Board, acting through its  
7 Compensation Committee and its Audit Committee, gave Steve Wynn full access to the  
8 Company’s assets, providing him with a luxurious onsite all-expenses paid private abode  
9 overlooking the golf course at Wynn Las Vegas, unlimited private air travel, unlimited services of  
10 a private driver, unlimited access to medical services, “the personal use of [Wynn Resorts]  
11 employees, construction work and other personal services,” and other free Wynn Resorts  
12 “merchandise” of an undisclosed nature. Thus, Steve Wynn’s annual salary and massive bonuses  
13 had no limits. As detailed above, during fiscal years 2009-2016 alone, Wynn Resorts paid Steve  
14 Wynn more than \$150.98 million in total compensation, on top of his more than \$217.3 million in  
15 stock sales proceeds. Despite repeated criticism from the financial media and corporate  
16 governance experts about excessive compensation paid to Steve Wynn, the Board refused to act in  
17 the best interests of the Company and its stockholders.

18 **V. Defendants Irani and Wynn Breached Their Duties of Candor and Loyalty By**  
19 **Concealing Material Information from the Board and Gaming Commissions**

20 186. Defendants Wynn and Irani concealed material information from their fellow Board  
21 members and from various gaming commissions which had jurisdiction over the Company’s  
22 licenses.

23 187. Defendants Wynn and Irani were both “qualifiers” of Wynn Resorts.  
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1           188. Individual qualifiers, like Steve Wynn and Ray Irani, by virtue of their ownership  
2 or executive roles, have the ability to exercise control and provide direction to the gaming licensee  
3 (Wynn Resorts). As a consequence, individual qualifiers are considered reflective of the licensee's  
4 suitability. As a result, the personal conduct of the individual qualifiers is highly material to the  
5 ability of Wynn Resorts to obtain and maintain its gaming licenses, which are obviously critical to  
6 the Company's ability to earn revenue and operate its casinos.

7           189. For example, Wynn Resorts operates casinos in Massachusetts. That state's gaming  
8 commission requires, similar to all states that permit gaming, that all "qualifiers" have the utmost  
9 honesty and integrity. A conviction for fraud or dishonesty and many other crimes is an automatic  
10 disqualifier and risks loss of the gaming license. In Massachusetts, the gaming licensee (Wynn  
11 Resorts) and each qualifier (such as Steven Wynn and Ray Irani and the rest of the Company's  
12 Board members) have a continuing duty to update the Commission in the event of various  
13 occurrences enumerated in the regulations, and to inform the Gaming Commission of any action  
14 which the gaming licensee reasonably believes would constitute any violation of the Massachusetts  
15 gaming law.

16           190. ***Honesty and candor are imperative for licensees and qualifiers. Any licensee or***  
17 ***qualifier who willfully provides false or misleading information to the Commission shall have***  
18 ***its license conditioned, suspended, or revoked by the Commission. See Exhibit 1, at p. 5.***

19           191. Irani was hand-picked for the Wynn Resorts Board by Steve Wynn for his loyalty  
20 to Steve Wynn, and Irani and Wynn had a very close friendship. Irani was aware of Steve Wynn's  
21 philandering and sexual abuse of female employees at Wynn Resorts, yet did not disclose the many  
22 material adverse facts alleged herein to many of his fellow Wynn board members or to the various  
23 gaming commissions, as required by law.

1           192. Both Ray Irani and Steven Wynn were also aware of dishonesty and moral  
2 turpitude by Irani that should have been disclosed to their fellow Wynn directors and the gaming  
3 commissions, and yet they wrongfully concealed the information in breach of their duties of loyalty  
4 and candor to the Company.

5           193. For example, during the course of the investigation of the Massachusetts  
6 Investigations and Enforcement Bureau (“IEB”), investigators obtained a large number of  
7 deposition transcripts and exhibits from the Okada litigation. During a review of Defendant  
8 Attorney Tourek's May 9, 2016 deposition testimony in the *Okada* litigation, investigators noted  
9 the following line of questioning, which involved allegations of serious misconduct on the part of  
10 Defendant Ray Irani, a member of the Company's board of directors and a qualifier for Wynn's  
11 Massachusetts gaming license:

12  
13           [Question]: *Are you aware of any instances in which the company has investigated*  
14 *any allegations of misconduct or wrongdoing by anyone who was at the time a*  
*member of the board of directors?*

15           [Tourek]: *Mr. Okada*

16           [Question]: *Other than Mr. Okada, anyone else?*

17           [Tourek]: *I don't think so.*

18           [Question]: *Has it come to your attention recently that there are allegations*  
19 *that have been made in a lawsuit filed in Los Angeles against Dr.*  
*Irani that include, among other things, allegations that he was*  
*involved in the falsification of U.S. visas?*

20           [Tourek]: *I am aware of the lawsuit. I read it, yes*

21           [Question]: *I should clarify, it's actually involved in the falsification of*  
22 *information provided for US. visas. In your view, are the*  
*allegations something that warrant investigation by the company?*

23           [Tourek]: *In my view, the allegations do warrant investigation by the*  
24 *company.*



1  
2 194. The Massachusetts IEB Investigators located an article in the Los Angeles Times,  
3 dated April 6, 2016 and entitled, "Workers at Bel-Air mansion claim they were trafficked to U.S.  
4 via Middle East." The article reported that three women from the Philippines filed a lawsuit against  
5 Dr. Irani and his wife, alleging that they had been underpaid and overworked by them, and that  
6 two of the women were trafficked into the United States via Qatar and effectively confined to the  
7 Irani's Bel-Air home.

8 195. The article detailed allegations in the complaint, including that the women were  
9 forced to work long hours performing various household duties for \$1,200 a month, that their  
10 passports were taken from them, and that the Iranis' security guards kept close watch on their  
11 movements amounting to imprisonment in the home.

12 196. Investigators obtained and reviewed the complaint, which was filed in Los Angeles  
13 Superior Court on April 5, 2016. The 18-count complaint alleged: Human Trafficking, Hostile  
14 Work Environment Harassment - National Origin, Failure to Prevent Unlawful Harassment Due  
15 to National Origin, Hostile Work Environment Harassment - Race, Failure to Prevent Unlawful  
16 Harassment Due to Race, Hostile Work Environment Harassment- Ancestry, Failure to Prevent  
17 Unlawful Harassment Due to Ancestry, Intentional Infliction of Emotional Distress, Wrongful  
18 Conversion, False Imprisonment, Slander, Failure to Pay Overtime, Failure to Pay Minimum  
19 Wage, Failure to Provide Meal Periods, Failure to Provide Rest Periods, Failure to Keep and  
20 Furnish Accurate Wage Statements, Waiting Time Penalties, and Unfair Competition.

21 197. The IEB investigation confirmed that Wynn Resorts was aware of the matter  
22 involving Defendant Irani at the time. The Company notified the NGCB of the charges against Dr.  
23 Irani. In an email on April 15, 2016 from Attorney Tourek to an investigator with the NGCB,  
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1 Attorney Tourek wrote: "Also, I wanted to pass the attached document on to you-it (sic) a  
2 complaint that was filed in California against one of our independent directors. We are monitoring  
3 the matter and have spoken to the director, who denies everything in the complaint. We have not  
4 initiated any investigation at this stage since the allegations do not involve any Wynn entities."

5 198. The IEB noted that even though the allegations did not involve any Wynn entities,  
6 suitability standards for qualifiers of the casino licensee demand an examination of the qualifier's  
7 (Irani) behavior that extends beyond behavior directly related to Company activities. By law,  
8 suitability standards require an examination of "overall reputation," including integrity, honesty,  
9 and good character. Although the Company notified gaming regulators in Nevada of the matter,  
10 no notification was made to the Massachusetts Gaming Commission.

11 199. Defendants Wynn and Irani and Wynn's other Board members thus breached their  
12 fiduciary duties of candor and loyalty by not advising the Massachusetts Gaming Commission of  
13 the complaint filed against Irani, including the allegations of human trafficking.

14 200. The IEB investigators discussed the failure to disclose the lawsuit against Irani to  
15 the MGC with Wynn Compliance Committee member Patricia Mulroy. The MDG Report noted  
16 the following: "With respect to notification to the MGC, board member Patricia Mulroy told  
17 investigators that the IEB's "expectation is no different from Nevada Gaming Control Board's  
18 regulators' expectations. The burden is not on the regulator to investigate. The burden is on [the  
19 licensee] to disclose." See **Exhibit 1** at p. 129 n. 541.

20 201. At the time, Defendant Robert J. Miller, who served as Governor of Nevada from  
21 1989 to 1999, was the Chairman of Wynn's Compliance Committee. Defendant Miller also served  
22 at the time as the Company's Lead Independent Director, Chairman of the Corporate Governance  
23 Committee and as a member of the Audit Committee. Governor Miller was also the Company's  
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1 Compliance Director at the time. Defendant Tourek testified that he advised Wynn’s Compliance  
2 Committee of the lawsuit against Irani.

3 202. Wynn Resort’s 2017 Proxy Statement, filed with the SEC on March 10, 2017,  
4 touted Defendant Miller’s experience in regulatory and legal compliance:

5 *“Governor Miller’s extensive experience in regulatory and legal compliance, and in*  
6 *Nevada and federal government and politics, brings unique expertise and insight into*  
7 *law enforcement and state regulatory and public policy issues that directly impact the*  
8 *Company’s operations. In addition, his legal background and knowledge of Nevada*  
9 *gaming regulation support his service as Chairman of the Company’s Compliance*  
10 *Committee, which role is important in maintaining our regulatory structure and probity.*

11 In addition to serving the longest period as a Governor of the State of Nevada, Governor  
12 Miller has long standing experience in law enforcement, including terms as an elected  
13 judge, police attorney and elected district attorney.”

14 203. Wynn Resorts’ Proxy Statement from 2017 also stated the following as to the  
15 purpose of the Compliance Committee:

16 “In accordance with Nevada gaming laws, the Company has a Compliance Committee.  
17 The purpose of this committee is to assist the Company in maintaining the highest level of  
18 regulatory compliance, including, among other things, overseeing the administration of the  
19 Company’s Gaming Compliance Program.”

20 204. As the IEB Report (Exhibit 1) notes, Wynn Resorts notified its Compliance  
21 Committee, chaired by Defendant Miller, of the lawsuit against Dr. Irani. Defendant Patricia  
22 Mulroy was also a member of the Compliance Committee at the time, and also Defendant Maddox  
23 according to the MGC. A review of the minutes of the Compliance Committee meeting held on  
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1 May 12, 2016, shows the following: "Mr. Tourek informed the Committee that he had spoken to  
2 Dr. Irani's attorney and that the Company would continue to monitor the litigation." A four-  
3 sentence memorandum from Defendant Attorney Tourek to the compliance committee dated July  
4 21, 2016, states that Attorney Tourek "spoke with Mr. Irani and his attorney ... regarding the  
5 charges and was advised that the charges were untrue." This memorandum also states that the case  
6 had been dismissed with prejudice and the matter had concluded.

7 205. A review of the agenda for the August 1, 2016 Wynn Resorts Compliance  
8 Committee meeting shows that the Irani matter was placed on the meeting agenda; however, the  
9 minutes from the August 1, 2016 meeting do not reflect any discussion on the matter.

10 206. Investigators confirmed that a settlement in the case was quickly reached, and that  
11 the court minutes reflect the following entry made on August 15, 2016: "The Court orders the case  
12 dismissed. However, the Court shall retain jurisdiction to enforce the terms of the settlement  
13 pursuant to Code of Civil Procedure Section 664.6."

14 207. However, the terms of Irani's settlement with the women that accused him of  
15 human trafficking terms were never made public.

16 208. IEB investigators interviewed James Stem, the Company's senior vice president of  
17 corporate investigations and security, but he had no recollection of the matter involving Dr. Irani  
18 at all and indicated that he was not involved in any investigation involving allegations against Dr.  
19 Irani.

20 209. IEB investigators made inquiries of Attorney Sinatra and Attorney Tourek.  
21 Attorney Tourek was not made aware of the terms of the settlement. Attorney Sinatra stated that  
22 the Company "kept in touch with [Dr. Irani's} lawyers," and, "when they resolved it, I guess we  
23 accepted that resolution." *See Exhibit 1 at p. 130.* She further stated that the Company would  
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1 have independently investigated the matter "[i]fit had to do with the Wynn." *Id.* Investigators  
2 asked Defendant Maddox about this matter. He was on Wynn's Compliance Committee at the  
3 time. He stated that he had no recollection beyond reading about it in the LA Times and did not  
4 know the details of the allegations, what the settlement was, or whether or not he (Mr. Maddox)  
5 was on the compliance committee at the time it was reported to the Compliance Committee by  
6 Attorney Tourek.

7 210. Dr. Irani continued to serve as a director on the board and did not resign until March  
8 5, 2018, approximately five weeks after the WSJ Article was published regarding the allegations  
9 of workplace sexual misconduct against Mr. Wynn.

10 211. The IEB Report also included a finding that in 2016, the members of the Company's  
11 board of directors (including Irani) became aware of the Cross-Claim filed by Elaine Wynn in the  
12 *Okada* litigation, which involved a multimillion-dollar settlement by Mr. Wynn. There is also  
13 evidence that the board members became aware that the conduct at issue in the crossclaim was of  
14 a sexual nature."

15  
16 **VI. The Selling Defendants Breached Their Fiduciary Duties by Engaging in Improper**  
17 **Insider Trading While in Possession of Material Non-Public Information**  
18 **Concerning Steve Wynn's Pattern of Sexual Harassment and Abuse**

19 212. The Selling Defendants breached their fiduciary duty of loyalty by selling Company  
20 stock while in possession of material non-public information concerning Steve Wynn's sexual  
21 misconduct and "unsuitability" for gaming licenses. No later than March 28, 2016, and for certain  
22 Defendants, including Steve Wynn, Kimmarie Sinatra, and Marc Schorr, as early as 2009, the  
23 Selling Defendants knew of credible allegations that Steve Wynn had engaged in the 2005 assault  
24 with a Company employee on Company property and had engaged in a "pattern" of reckless and  
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1 risk-taking behavior, yet failed to undertake any investigation into Steve Wynn, and instead  
2 continued to certify Steve Wynn's suitability for gaming licenses and to publicly (and falsely)  
3 disclaim the truth of any allegations against Steve Wynn. Between 2009 and early 2018 (when the  
4 allegations became public), Steve Wynn, Kimmarie Sinatra and Marc Schorr collectively sold  
5 3,955,458 shares of Wynn Resorts common stock at artificially inflated prices for total proceeds  
6 of \$302,704,775.84. Following March 28, 2016, the other Selling Defendants collectively sold an  
7 additional 265,345 shares of Wynn Resorts common stock at artificially inflated prices for total  
8 proceeds of \$35,113,934.55. Notably, none, or almost none, of these sales was made pursuant to  
9 pre-arranged 10b5-1 trading plans.

10       213. On November 9, 2016, Defendant Wayson sold 37,500 shares, or 40% of his  
11 holdings in Wynn Resorts, for proceeds of \$3.3 million. At the time Defendant Wayson made this  
12 sale he knew of the Steve Wynn's settlement of the Arrowsmith litigation as well as the 2005  
13 assault and that Steve Wynn's pattern of misconduct put at risk the Company's gaming licenses,  
14 yet publicly (and falsely) disclaimed the truth of any allegations against Steve Wynn and continued  
15 to represent Steve Wynn's suitability to gaming regulators. Defendant Wayson's November 9,  
16 2016, sale was dramatically out of line with his prior trading practices — indeed, Defendant  
17 Wayson had not traded a single share of Wynn Resorts common stock in the previous five years.

18       214. On May 16 and 17, 2017, Defendant Hagenbuch disclaimed his beneficial  
19 ownership of 1,150 shares of Wynn Resorts common stock worth approximately \$147,661.50,  
20 constituting 100% of his total holdings. At the time Defendant Hagenbuch disclaimed his shares,  
21 he knew of the 2005 assault and that Steve Wynn's pattern of misconduct put at risk the Company's  
22 gaming licenses, yet publicly (and falsely) disclaimed the truth of any allegations against Steve  
23 Wynn and continued to represent Steve Wynn's suitability to gaming regulators. Defendant  
24  
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1 Hagenbuch's dispositions were out of line with his prior trading practices — indeed, prior to May  
2 16 and May 17, 2017, Defendant Hagenbuch had never sold a single share of Wynn Resorts  
3 common stock.

4 215. On May 16, 2017, Defendant Mulroy sold 2,226 shares, or 28% of her holdings of  
5 Wynn Resorts, reaping proceeds of approximately \$285,106.08. At the time Defendant Mulroy  
6 made this sale, she knew of the 2005 assault and that Steve Wynn's pattern of misconduct put at  
7 risk the Company's gaming licenses, yet publicly (and falsely) disclaimed the truth of any  
8 allegations against Steve Wynn and continued to represent Steve Wynn's suitability to gaming  
9 regulators. Defendant Mulroy's sales were dramatically out of line with her prior trading —  
10 indeed, the May 16, 2017, sale was the first time Defendant Mulroy ever sold any shares of Wynn  
11 Resorts common stock.

12 216. On July 31, 2017, Defendant Randt sold 3,000 shares of Wynn Resorts common  
13 stock, or nearly 40% of his total holdings, for \$387,000 in proceeds. At the time Defendant Randt  
14 made this sale, he knew of the 2005 assault and that Steve Wynn's pattern of misconduct put at  
15 risk the Company's gaming licenses, yet publicly (and falsely) disclaimed the truth of any  
16 allegations against Steve Wynn and continued to represent Steve Wynn's suitability to gaming  
17 regulators. Defendant Randt's sales were dramatically out of line with his prior trading — indeed,  
18 the July 31, 2017 sale was the first time Defendant Randt ever sold any shares of Wynn Resorts  
19 common stock.

20 217. From November 29, 2016, through November 9, 2017, Defendant Sinatra sold  
21 107,228 shares of Wynn Resorts common stock, nearly, for \$13,390,162 in proceeds. Significant  
22 portions of these sales — 20,810 shares — occurred in November 2017, well after the #MeToo  
23 movement began and likely after the WSJ began its investigation into allegations against Steve  
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1 Wynn. At the time Defendant Sinatra made her sales, she knew of the 2005 assault and that Steve  
2 Wynn's pattern of misconduct put at risk the Company's gaming licenses, yet sat by idly while the  
3 Board publicly and falsely disclaimed the truth of any allegations against Steve Wynn and  
4 continued to represent Steve Wynn's suitability to gaming regulators.

5 218. Defendant Shoemaker also sold significant shares in November 2017. On  
6 November 8, 2017, Defendant Shoemaker sold 15,000 shares of Wynn Resorts common stock, or  
7 62.08% of his total holdings, for \$2,276,100 in proceeds. At the time Defendant Shoemaker made  
8 this sale, he knew of the 2005 assault and that Steve Wynn's pattern of misconduct put at risk the  
9 Company's gaming licenses, yet publicly (and falsely) disclaimed the truth of any allegations  
10 against Steve Wynn and continued to represent Steve Wynn's suitability to gaming regulators.  
11 Defendant Shoemaker's sales were dramatically out of line with his prior trading practices. Prior  
12 to November 8, 2017, Shoemaker had not sold a single share of Wynn Resorts common stock for  
13 over two years.

14 219. Defendant Maddox also sold over 200,000 shares of Wynn Resorts common stock.  
15 At the time Maddox made these sales, all in 2017, and in any event no later than March 28, 2016,  
16 Maddox knew of the First 2005 assault and that Steve Wynn's pattern misconduct put at risk the  
17 Company's gaming licenses, yet publicly (and falsely) disclaimed the truth of any allegations  
18 against Steve Wynn and continued to represent Steve Wynn's suitability to gaming regulators.

19 220. Between 2009 and 2013, when he retired from the Company, Marc Schorr sold over  
20 700,000 shares of Wynn Resorts common stock for over \$57 million in proceeds. At the time  
21 Defendant Schorr made this sale, he knew of the First 2005 assault and that Steve Wynn's pattern  
22 of misconduct put at risk the Company's gaming licenses, reputation and employee safety.

23 **A. The Board Undertakes an Inadequate Investigation into Steve Wynn**  
24  
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1           221. Following the bombshell WSJ Article, the Board announced an internal  
2 investigation by a Special Committee on February 2, 2018, headed by the Company’s sole female  
3 director at the time, Defendant Mulroy. Yet, the Special Committee’s investigation fell far short  
4 of the independent and thorough investigation called for given the severity of the allegations  
5 against Steve Wynn and the related risk to the Company. The Company’s Special Committee  
6 included three Director Defendants, Mulroy, Hagenbuch, and Johnson, all of whom are beholden  
7 to Steve Wynn, as described in further detail below, and were thus unable to exercise independent  
8 and impartial judgment.

9           222. The Board’s switch of law firms is one indication of its lack of independence and  
10 impartiality. The Board initially retained the law firm O’Melveny to assist with the investigation.  
11 Following Steve Wynn’s resignation, however, the Board announced suddenly, and without  
12 explanation, that it was severing ties with the firm on February 9, 2018 — just one week after  
13 O’Melveny had been retained. Professor John C. Coffee Jr., an expert on corporate governance,  
14 considered the Board’s decision to cut ties with O’Melveny “a strong signal that not much has  
15 changed in the culture of the [B]oard.”

16           223. Following a weekend of heavy criticism, the Board announced in February 2018  
17 that Gibson Dunn, a firm with deep ties to Wynn Resorts, would “assist ... [with] an expanded and  
18 comprehensive review of Wynn Resorts’ internal policies and procedures ....” However, Gibson  
19 Dunn could not assist the Board with a truly independent investigation. Sinatra previously worked  
20 as a partner at Gibson Dunn and the firm represented Wynn Resorts in litigation against ousted  
21 Board members Kazuo Okada and Elaine Wynn. The firm has also represented Wynn Resorts in  
22 SEC and DOJ matters, as well as in business deals. Perhaps most importantly, Gibson Dunn and  
23 its partner, Defendant Layne, had provided negligent and conflicted work for Wynn Resorts as  
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1 part of the original investigation in 2006 as to whether Steve Wynn’s 2005 settlement with the  
2 manicurist who had accused him of rape needed to be reported. Gibson Dunn and Layne allowed  
3 Sinatra and others who were hopelessly conflicted and loyal to Wynn to assist then in fact-  
4 gathering, ultimately leading them to negligently advise the independent directors at the time that  
5 no disclosure of Wynn’s 2005 settlement was required. The conflict presented by Gibson’s Dunn’s  
6 retention was palpable — the firm was tasked with investigating the Company and the Board while  
7 defending the Company in other Wynn Resorts litigation where many of the same directors were  
8 accused of breaching their fiduciary duties in connection with their improper ousting of Okada.

9         224. Moreover, Defendant Mulroy admitted that Jason Schwartz of Gibson, Dunn &  
10 Crutcher was the Special Committee’s lead investigator. Mulroy was quoted earlier this year as  
11 stating the following with respect to her decision in 2006 not to disclose Steve Wynn’s 2005  
12 settlement with the manicurist: “Everything was seen through the filter of litigation and animosity  
13 to Mrs. Wynn,’ Mulroy said. ‘I could kick myself from here to China that I didn’t speak up, that I  
14 didn’t say who cares who’s making the accusation. I let myself get sucked into the vortex of that  
15 vitriol. I am furious at myself.’”<sup>11</sup>

16         225. Notably, although the Board belatedly initiated an investigation into Steve Wynn’s  
17 sexual abuse and misconduct, it allowed him to remain as CEO and Chairman of the Board until  
18 Steve Wynn voluntarily resigned. The Board chose not to redeem Steve Wynn’s common stock,  
19 thereby allowing him to enter into agreements to sell all his shares by March 26, 2018 for \$2.1  
20 billion — in breach of the Board’s duties under the Company’s Articles — despite the significant

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23 <sup>11</sup> See Shira Schoenberg, “Vitriol, animosity and hostility’ clouded decision not to investigate Steve  
Wynn allegations, Wynn Resorts board member says,” April 9, 2019, MassLive.com.

1 risks to the Company’s gaming licenses due to Steve Wynn’s unsuitability under applicable  
2 gaming regulations.

3 **B. Steve Wynn Resigns Under Mounting Public Pressure**

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

13 227. On February 6, 2018, facing extreme public pressure and citing an “avalanche of  
14 negative publicity” Wynn finally resigned as Chairman and CEO of Wynn Resorts.

15 228. The Board issued a tepid statement announcing Steve Wynn’s resignation. The  
16 Board explained that it accepted Steve Wynn’s resignation with a “collective heavy heart” calling  
17 Steve Wynn “our founder, CEO, and friend” as well as “industry giant, philanthropist and beloved  
18 leader and visionary.” After initially agreeing that Steve Wynn could remain in his villa on Wynn  
19 Resorts’ property indefinitely, the Board waffled and, on March 1, 2018, asked him to leave the  
20 villa by June 2018.

21 229. The Board’s favoritism shown to Steve Wynn, in light of credible accusations of a  
22 longstanding pattern of sexual abuse and harassment, stands in stark contrast with the Board’s  
23 treatment of Mr. Okada, described above, whom the Board removed for purported misconduct and  
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1 whose shares the Company redeemed at a significant discount pursuant to the Company's Articles  
2 of Incorporation.

3 **VII. Steve Wynn's Misconduct and Defendants' Breaches Have Severely Damaged the**  
4 **Company**

5 230. Steve Wynn's misconduct and Defendants' breaches of their fiduciary duties and  
6 ethical obligations have severely damaged the Company's reputation and goodwill, negatively  
7 impacted the Company's competitive position, negatively impacted the Company's financial  
8 position, exposed the Company to \$55.5 million in fines, potentially massive liability arising from  
9 lawsuits and investigations, endangered its gaming licenses, and has imperiled the Company's  
10 future projects.

11 231. The Company and Director Defendants have long admitted that the "loss of Stephen  
12 Wynn could significantly harm our business" and that the Company's "ability to maintain our  
13 competitive position is dependent to a large degree on the efforts, skills and reputation of Stephen  
14 A. Wynn." Analysts and investors have noted a "Wynn premium" that the Company enjoyed due  
15 to its association with Steve Wynn. One marketing firm noted that the "Wynn brand is going to  
16 take a hit, there's no question about it," while another observer remarked that "Steven Wynn is  
17 arguably the father of modern-day Las Vegas .... The fact that his name is, in and of itself, the  
18 brand makes it far more complicated, in a similar way that Harvey Weinstein's personal brand was  
19 also the name of his company." Other analysts have noted that "Steve Wynn's value to the  
20 company is unarguably profound as its chief visionary and diplomat. As such, we do not believe  
21 the company can grow at the same trajectory nor can it maintain its cutting-edge position."

22 232. The public revelation of Steve Wynn's misconduct has had significant financial  
23 ramifications for Wynn Resorts. The longstanding cover-up of rampant sexual, power-fueled  
24 misconduct revealed in the WSJ Article caused Wynn Resorts' share price to plummet, closing  
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1 down 10% the day the article was published and wiping out \$2 billion in market capitalization.  
2 The Company's stock continues to trade substantially lower. On May 29, 2019, the shares of  
3 Wynn Resorts were trading at \$114.39, over 36% lower than before the publication of the WSJ  
4 Article in January 2018.

5 233. Moreover, the Nevada Gaming Control Board and the Massachusetts Gaming  
6 Commission ("MGC") have both levied a combined \$55.5 million dollars in fines against Wynn  
7 Resorts and Defendant Maddox personally, and the MGC has qualified Defendant Maddox's  
8 suitability with a coach designed to oversee and train him on proper management and oversight.  
9 As Karen Wells, Director of the IEB, stated to the MGC in April, 2019, "Remedial measures are  
10 certainly important, but they do not erase the past. . . ." <sup>12</sup>

11 234. In its final comments, the IEB emphasized that "[t]hose changes [the departure of  
12 Steve Wynn and most of the other responsible parties] at the Company do not, however, erase the  
13 fact that the corporate failures revealed in this investigation are significant, repetitive, and  
14 reflective of the Company's historical governance practices." <sup>13</sup>

15 235. The Company also faces additional allegations of sexual harassment and abuse by  
16 Steve Wynn. As noted above, the Nevada Gaming Control Board has been inundated with  
17 complaints and tips regarding Steve Wynn's sexual abuse and harassment. The deluge of  
18 information was so intense that the Nevada Gaming Control Board implemented a new online  
19 system to handle such reports. These additional allegations of misconduct could subject the Board  
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22 <sup>12</sup> [https://www.wgbh.org/news/local-news/2019/04/02/former-wynn-execs-mishandled-](https://www.wgbh.org/news/local-news/2019/04/02/former-wynn-execs-mishandled-harassment-complaints-report-finds)  
23 [harassment-complaints-report-finds](https://www.wgbh.org/news/local-news/2019/04/02/former-wynn-execs-mishandled-harassment-complaints-report-finds)

24 <sup>13</sup> IEB Report, p. 199.

1 and Steve Wynn to further liability and further damage the Company's already tarnished  
2 reputation.

3 **VIII. Fraudulent Concealment and Equitable Tolling**

4 236. During the relevant period, Plaintiff did not discover and could not have discovered,  
5 through the exercise of reasonable diligence, the facts underlying Defendants' breaches of their  
6 fiduciary duties or their violations of Nevada law because Defendants did not disclose, and actively  
7 concealed, the allegations of rape, sexual assault, sexual harassment, creation of a hostile work  
8 environment and other misconduct against Steve Wynn by Company employees, and of the  
9 Attorney Defendants' active assistance and wrongdoing in helping Steve Wynn and the Board  
10 conceal the wrongdoing. Likewise, Defendants did not disclose, and actively concealed,  
11 settlements of those allegations.

12 237. Plaintiff was unaware of and had no knowledge of the relevant wrongdoing and the  
13 resultant cover-ups and settlements.

14 238. Plaintiff could not have discovered Defendants' breaches of fiduciary duties, aiding  
15 and abetting of breaches of fiduciary duties, and other violations of law prior to publication in  
16 March 2019 of the Attorney Defendants' breaches in the IEB's Report, because Defendants made  
17 absolutely no disclosure of the Company employees' allegations of rape, sexual assault, sexual  
18 harassment, creation of a hostile work environment and other misconduct against Steve Wynn, and  
19 the settlements thereof, to police authorities or to the Nevada Gaming Commission, the  
20 Massachusetts Gaming Commission and the Macau Gaming authorities.

21 239. Moreover, Defendants not only failed to disclose any information whatsoever that  
22 would have allowed Plaintiff, exercising reasonable diligence, to discover the misconduct  
23 underlying the breaches of fiduciary duties, but Defendants also intentionally concealed and  
24

1 attempted to disguise the allegations and settlements to avoid detection by Company stakeholders,  
2 customers and regulators.

3         240. Defendants fraudulently concealed their unlawful conduct by, among other things,  
4 engaging in strenuous efforts to keep the 2005 settlement, and the Company’s and Steve Wynn’s  
5 connection to it, secret including: 1) a non-disclosure provision prohibiting Amy the manicurist  
6 from communicating about the allegations and settlement; 2) the Company and Steve Wynn were  
7 not named parties in the settlement agreement, instead Entity Y was used as a cloaking device  
8 hiding their involvement; 3) spreading payments out over 10 years to prevent Amy and her husband  
9 from talking; 4) no actual party to the settlement maintained a copy of it and the only copy, held  
10 by Schreck Brignone, PC, could not be released without “express written consent of all the parties,  
11 by order of a court, or other governmental body of competent jurisdiction;” 5) KZA used  
12 safeguards and misleading language to disguise the nature of their work on the matter; 6) the  
13 Company failed to conduct any investigation of the matter; and 7) no documentation was placed  
14 in an employee or centralized file regarding Steve Wynn.<sup>14</sup>

15         241. The IEB’s Report, uncontested by Wynn Resorts, shows that “certain executives,  
16 with the assistance of outside counsel, took measures to conceal allegations against Mr. Wynn that  
17 came to their attention. Their efforts at secrecy made it exceedingly difficult, if not impossible,  
18 for gaming regulators to detect this potentially derogatory information through typical regulatory  
19 means, which rely heavily on robust self-disclosures by the applicant/licensee.”<sup>15</sup>

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23         <sup>14</sup> IEB Report, p. 42.

24         <sup>15</sup> IEB Report, p. 199.





1 Defendants face a substantial likelihood of liability in a manner not shared by the Company and  
2 its stockholders. The Director Defendants are also beholden to Steve Wynn for their highly  
3 lucrative directorships, and have significant personal and financial ties to him, thereby preventing  
4 them from independently and objectively considering a demand in this Action. Further, the  
5 Nevada Court has already found demand to be futile with respect to three Director Defendants,  
6 Johnson, Mulroy, and Randt, Jr.,<sup>16</sup> Director Maddox is a named Defendant and President and CEO  
7 of Wynn Resorts and therefore is not independent, and Director Byrne’s prior business dealings  
8 with Wynn and Maddox prevents him from independently and objectively considering a demand.  
9 In addition, the Wynn Resorts Board has been one of the least scrutinizing boards of a major public  
10 company and was routinely criticized for its poor governance.

11 **I. Steve Wynn Has Wielded Extraordinary Power Over the Most Compliant Board of**  
12 **Any Major Public Company**

13 247. According to former Board member Elaine Wynn, the Wynn Resorts Board was  
14 “the most compliant board of any major public company” and had only voted against Steve  
15 Wynn’s position on three occasions since the Company went public in 2002. Defendants Johnson,  
16 Mulroy, and Randt, Jr. were members of the “most compliant” Board.

17 248. Even with new directors in place, the Board has failed to take steps necessary to  
18 hold any of the Defendants accountable for their wrongdoing in the face of overwhelming and  
19 public information about their breaches of duty.

20 249. Regarding Director Defendants Johnson, Mulroy, and Randt, Jr., the Amended and  
21 Restated Stockholders Agreement, dated January 6, 2010 (“Stockholders Agreement”), provided

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23 <sup>16</sup> See Order Denying Defendants’ Motion to Dismiss and Granting Lead Plaintiffs’ Motion  
24 to Strike, *In Re Wynn Resorts, Ltd.*, Lead Case No. A-18-769630-B (Clark County, Nev.)

1 Steve Wynn with substantial rights to nominate a majority of the Board and virtually guarantee  
2 their election. Steve Wynn structured the Stockholders Agreement to create a Board with  
3 staggered terms, preventing the possibility that a single proxy vote could replace the entire Board.  
4 Pursuant to the Stockholders Agreement, Steve Wynn packed the Wynn Resorts Board with  
5 directors who were personally loyal to him, including Johnson, Mulroy, and Randt, Jr. Steve  
6 Wynn’s unilateral ability to nominate and re-nominate Board members and substantially influence  
7 the vote gave him significant power over each nominee. Further, Directors nominated by Steve  
8 Wynn received substantial monetary incentives — amounting to millions of dollars, not just from  
9 high annual fees, but from enormous stock options, sales of common stock, and other  
10 compensation. Underscoring Steve Wynn’s control over the Board, every director who ran for  
11 election or re-election had been unopposed, with the notable exception of Elaine Wynn, his ex-  
12 wife, in 2015.

13 250. Prior to Steve Wynn’s resignation and sale of his shares in 2018, the Board  
14 consistently chose not to investigate or even inquire into any subjects that could limit Steve  
15 Wynn’s lavish lifestyle or spending of corporate assets, despite their fiduciary obligation to do so.  
16 For example, the Board has never seriously assessed Steve Wynn’s spending of corporate assets  
17 on himself. As Elaine Wynn alleged in court documents, “on no occasion did the Audit Committee  
18 of the Board ever investigate or even conduct an in-depth review of the Company’s internal  
19 controls governing such large expenditures” — jets for Steve Wynn, his incredibly lavish lifestyle  
20 — and “there is evidence of regular shredding of audit committee materials and notes.” (emphasis  
21 added). In 2013, the Company allowed Steve Wynn to purchase any of the Company’s aircraft in  
22 exchange for giving up an option to buy 2 acres of land on Wynn Resorts’ golf course. In 2016,  
23 Steve Wynn received over \$28 million in compensation from Wynn Resorts and, in the last five  
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1 years of his tenure, his compensation totaled over \$111 million. None of this has ever been  
2 questioned by the previous or current Board.

3 251. All of this contributed to Wynn Resorts being ranked as one of the worst U.S. public  
4 companies in terms of corporate governance. As the WSJ has observed, the Wynn Resorts Board  
5 was “widely viewed as lacking independence,” which is “one of the many reasons that Wynn  
6 Resorts ranks last in corporate governance among 108 companies in the gambling and casino  
7 business, according to Sustainalytics.” In 2017, Institutional Shareholder Services, Inc., (“ISS”) a  
8 proxy advisory firm, gave Wynn Resorts its worst ranking for governance risk. In 2015, ISS  
9 recommended that stockholders withhold support from the two directors nominated for re-election,  
10 citing an “overall corporate governance profile that ranks among the worst, not the best, of U.S.  
11 companies” and stated that the Company suffered from “manifest failures of governance,”  
12 criticized Wynn Resorts’ executive compensation structure, questioned Steve Wynn’s excessive  
13 aircraft use, and questioned the atypical secrecy of the Board.

14 252. The Board’s unwillingness to act in the best interests of the Company was  
15 demonstrated by the Board’s failure to remove or even suspend Steve Wynn when the WSJ Article  
16 broke accusing him of paying \$7.5 million to settle an alleged sexual assault and recounting  
17 numerous other instances of sexual abuse and harassment at Wynn Resorts. Instead, the Board  
18 allowed Steve Wynn to remain at the helm of the Company and only with a “collective heavy  
19 heart” accepted the resignation of their “beloved leader” and “friend.” The Company executed a  
20 severance agreement with Steve Wynn on February 15, 2018 where he was allowed to retain his  
21 Wynn Resorts stock and all prior compensation.

22 253. The terms of Steve Wynn’s severance further demonstrate the Board’s continued  
23 breaches of fiduciary duties and their acquiescence to Steve Wynn’s interests over the Company’s,  
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1 as the Director Defendants allowed him to resign and retain his Wynn Resorts' common stock.  
2 Pursuant to two stock purchase agreements entered into on March 22, 2018, Steve Wynn sold the  
3 balance of his shares on March 26, 2018, for a total of \$2.1 billion. The sales diluted shareholders  
4 and left them and the Company on the hook for Steve Wynn's liability.

5 254. The Board failed to investigate whether termination for cause was appropriate,  
6 including a possible redemption of Steve Wynn's shares (potentially at a discount) and revocation  
7 of his outstanding options, both of which were permitted under the Company's Articles of  
8 Incorporation. To add insult to injury, on March 7, 2018 Defendant Maddox accelerated the  
9 announcement of a Board approved increase in the annual dividend of 50% or \$1.00 more per  
10 share, effectively giving Steve Wynn a multi-million-dollar bonus just days after executing his  
11 severance agreement. Had the Board complied with the Articles of Incorporation and sought to  
12 redeem Steve Wynn's shares and revoke his options, the Company could have saved millions of  
13 dollars. The terms of the severance agreement approved by the Board has also cost the Company  
14 \$25 million in connection with a consent solicitation to certain debtholders for an agreement to  
15 modify the "change in control" provision in the event Steve Wynn sold his stock.

16 255. Further, Wynn Resorts has been and will continue to be exposed to significant  
17 losses due to Steve Wynn's misconduct, yet the Board has not filed any lawsuits against  
18 Defendants or those responsible for that wrongful conduct to attempt to recover any part of the  
19 damages suffered by Wynn Resorts.

20 **DEMAND FUTILITY ALLEGATIONS**

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1 **I. The Board Cannot Impartially Consider a Demand Because Four of the Director**  
2 **Defendants Are Subject to Liability for Failing to Act in the Face of Steve Wynn’s**  
3 **Pervasive Pattern of Sexual Harassment and Abuse**

4 256. Demand is futile as to the entire Board because, as detailed herein, the four Director  
5 Defendants violated their fiduciary duties by knowingly and intentionally failing to act in light of  
6 Steve Wynn’s known sexual misconduct, thereby abdicating their duty of oversight and subjecting  
7 themselves to liability. The Board’s conduct is so egregious that a substantial likelihood of liability  
8 exists. As detailed herein, the four Director Defendants, Johnson, Mulroy, Randt, Jr., and Maddox  
9 (President at the time, but currently a Director as well) knew of credible allegations of misconduct  
10 against Steve Wynn by, at the very latest, March 28, 2016, when Elaine Wynn amended her  
11 counterclaim in the Okada action to include allegations regarding the 2005 assault and Steve  
12 Wynn’s “pattern of reckless risk-taking” behavior. The Director Defendants failed to take any  
13 action to investigate the allegations, stop Steve Wynn from continuing to engage in sexual  
14 misconduct, or to implement any meaningful changes to the Company’s internal controls regarding  
15 the Company’s sexual harassment and abuse reporting practices and policies. Indeed, as detailed  
16 herein, there is no indication the Board would have ever taken action in response to Steve Wynn’s  
17 pervasive sexual harassment and abuse against Wynn Resorts employees had the WSJ Article not  
18 been published. The Board’s intentional and knowing decision to protect Steve Wynn and  
19 therefore enable his pervasive harassment exposes all Director Defendants to liability for breach  
20 of fiduciary duties, rendering the Board incapable of impartially considering a demand. Thus,  
21 demand is futile and therefore excused as to all Director Defendants.

22 257. Demand is also futile because the Director Defendants have been named in multiple  
23 lawsuits brought by Wynn Resorts’ employees related to Steve Wynn’s sexual misconduct and  
24 therefore cannot impartially consider whether to bring this Action. Each of the Director  
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1 Defendants implicated in those cases is potentially liable for allowing an unsafe and abusive  
2 workplace environment at Wynn Resorts and permitting Steve Wynn to engage in sexual  
3 misconduct for years. The members of the Board of Directors have already been sued by multiple  
4 plaintiffs alleging negligent hiring, breach of contract, tortious breach of implied covenant of good  
5 faith and fair dealing, aiding and abetting Steve Wynn's assault and battery, concert of action, and  
6 civil conspiracy. There is a substantial likelihood that the Director Defendants will be liable for  
7 at least some of these allegations, especially considering the repeated nature of the allegations and  
8 the Director Defendants' knowing failure to act based on the information provided to them about  
9 Steve Wynn's misconduct. In addition, the Director Defendants' misconduct has led to multiple  
10 securities fraud class actions on behalf of purchasers of Wynn Resorts' common stock which  
11 further impairs their ability to be disinterested in rendering a decision on any demand.

12         258. Demand is futile and therefore excused as to the entire Board for the additional  
13 reason that the Director Defendants breached their fiduciary duties, and are therefore liable, by  
14 knowingly and intentionally violating or aiding in the violation of Nevada, Massachusetts, and  
15 Macau gaming laws and regulations, exposing the Company to substantial risks and subjecting the  
16 Company to additional liability to regulatory authorities. Moreover, the Director Defendants'  
17 failure to act in light of credible accusations of a longstanding pattern of sexual abuse and  
18 harassment by Steve Wynn has exposed the Director Defendants themselves to suitability reviews  
19 under Nevada, Massachusetts, and Macau law, exposing the Company to substantial risk and thus  
20 rendering the Director Defendants further unable to impartially consider a demand. Indeed, the  
21 MGC has conditioned Director Defendant Maddox's suitability and required a coach to oversee  
22 and train him on management and oversight.

1           259. Demand is futile and therefore excused as to the entire Board for the additional  
2 reason that the Director Defendants breached their fiduciary duties and face liability for knowingly  
3 and intentionally violating the Company’s Code and signing false acknowledgements on an annual  
4 basis.

5           260. Demand is futile and therefore excused as to the Audit Committee Defendants for  
6 the additional reason that the Audit Committee Defendants breached their fiduciary duties by  
7 knowingly and intentionally violating the Company’s Audit Committee Charter, subjecting the  
8 Audit Committee Defendants to additional liability.

9 **II. Demand Is Excused Because Three Members of the Board Are Liable for Insider**  
10 **Trading While in Possession of Material Non-Public Information About Steve**  
11 **Wynn’s Pattern of Sexual Harassment and Abuse**

12           261. Demand is excused for the separate reason that three members of the Board face a  
13 substantial likelihood of liability for breaching their fiduciary duty of loyalty and engaging in  
14 significant improper insider selling. Defendants Mulroy, Randt, and Maddox, who together  
15 constitute one third of the current board, collectively sold over 211,695 shares of Wynn Resorts  
16 common stock for proceeds of over \$29 million. These stock sales were made at a time when these  
17 Defendants were in possession of material non-public knowledge concerning Steve Wynn’s  
18 pattern of sexual abuse and harassment and his suitability for gaming licenses. By disclaiming the  
19 truth of any allegations about Steve Wynn’s misconduct and continuing to represent his suitability  
20 to gaming regulators, these directors, in violation of their fiduciary duties, were able to capitalize  
21 on Wynn Resorts’ artificially inflated stock price by selling massive amounts of Wynn Resorts  
22 common stock on the open market. Given Mulroy, Randt, and Maddox’s participation in improper  
23 insider selling and their exposure to potential individual financial liability for trading on  
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1 proprietary information of Wynn Resorts, they are not disinterested and cannot exercise  
2 independent judgment on the issue of whether Wynn Resorts should prosecute this Action.

3 **III. Demand Is Excused Because the Director Defendants Are Not Disinterested**

4 262. The Court in *In Re Wynn Resorts Ltd.* has held that, at least with respect to Directors  
5 Johnson, Mulroy, and Randt, Jr., under similar allegations of knowledge and wrongdoing, and  
6 drawing all inferences in favor of the plaintiff, that demand was “futile since the Board faces a  
7 substantial likelihood of liability for its knowing and conscious inaction.” Court Order in Case  
8 No. A-18-769630-B, 9/5/2018. Further, the Court held that, with respect to Directors Mulroy and  
9 Randt, Jr., that they collectively sold, along with other then-current Directors, a significant portion  
10 of their holdings and that it was out of line with their trading practices, leading to an independent  
11 basis to find that the Board was incapable of considering a demand. *Id.* Since that time Director  
12 Maddox has joined the Board and, as noted above, has also engaged in an uncharacteristic series  
13 of sales of stock in 2017 when in possession of material non-public information, with total illegal  
14 insider selling proceeds realized by Mr. Maddox of \$28,753,934.55. These illegal insider selling  
15 proceeds represent an improper personal financial benefit realized by Mr. Maddox, thus making  
16 him interested and incapable of considering any demand in a disinterested and objective manner.

17 263. In addition to the specific facts pled above the Director Defendants cannot  
18 independently consider a demand for the additional reasons set forth below.

19 **A. Defendant Randt**

20 264. In 2018, Wynn Resorts paid Randt \$364,651 in total compensation. As of May  
21 2019, Defendant Randt held 7,788 shares of Wynn Resorts stock, valued at over \$890,869.32 based  
22 on Wynn Resorts’ current market price.



1           265. Defendant Randt is also not disinterested because (as detailed above) he engaged  
2 in improper insider trading; he is conflicted due to his potential liability in numerous sexual  
3 harassment suits; he ignored years of Steve Wynn’s sexual misconduct; failed to properly oversee  
4 the Company’s internal controls and risks regarding sexual harassment; and helped to conceal  
5 Steve Wynn’s pattern of sexual harassment and abuse until it was ultimately disclosed in the WSJ  
6 Article.

7           **B. Defendant Mulroy**

8           266. Defendant Mulroy is not disinterested because (as detailed above) she engaged in  
9 improper insider trading; she is conflicted and interested due to her potential liability in numerous  
10 sexual harassment suits; she ignored years of Steve Wynn’s sexual misconduct; failed to properly  
11 oversee the Company’s internal controls and risks regarding sexual harassment; and helped to  
12 conceal Steve Wynn’s pattern of sexual harassment and abuse until it was ultimately disclosed in  
13 the WSJ Article.

14           267. Defendant Mulroy and Steve Wynn have known each other for nearly 30 years.  
15 Defendant Mulroy, the former General Manager of Las Vegas Valley Water District and Southern  
16 Nevada Water Authority, has been referred to as Las Vegas’ “water czar” and “water empress”  
17 and has been credited with transforming Las Vegas’ water usage. In 1991, Defendant Mulroy  
18 declared a moratorium on new water permits in Las Vegas. As a result, Steve Wynn “summoned  
19 her into his Las Vegas office and asked, in Mulroy’s words, what exactly she was up to.”  
20 Defendant Mulroy explained, “he wanted to know what the hell was going on.” Soon after that  
21 meeting, Defendant Mulroy lifted the moratorium and never issued another one. Wynn went on  
22 to develop The Mirage, Treasure Island, and Bellagio resorts (all of which he later sold), as well  
23 as Wynn Las Vegas and Encore. Reports also indicate that Steve Wynn gave Defendant Mulroy  
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1 \$100,000 for water conservation projects and told her to “go up and down the strip and have them  
2 [other casinos] match me.”

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

17 269. According to the ethics opinion, Steve Wynn contacted Defendant Mulroy directly  
18 on August 12, 2015, to determine if she would consider joining the Board. Since joining the Board,  
19 Defendant Mulroy has repeatedly done Steve Wynn’s bidding at substantial personal profit. During  
20 the relatively short time she has served on the Board, she has received millions of dollars in fees  
21 and stock awards, and, as of May 2018, not including stock she has sold during her tenure on the  
22 Board, she owned directly and indirectly 8,448.34 Company shares valued at over \$966,000 based  
23 on Wynn Resorts’ current market price. She has never voted against Steve Wynn on any issue.

1           270. A directorship on Wynn Resorts' Board provides numerous ancillary benefits as  
2 well. Mulroy's daughter began working at IGT, the gaming company, as a Senior Specialist,  
3 Global Communications and Gaming in October 2017 after Mulroy was sitting on the Wynn  
4 Board. Wynn Resorts is an IGT customer, Defendant Miller sits on its Board and Steve Wynn  
5 supported IGT head Chuck Mathewson during a proxy fight.

6           **C. Defendant Johnson**

7           271. Defendant Johnson is not disinterested because (as detailed above) he is conflicted  
8 due to his potential liability in numerous sexual harassment suits; he ignored years of Steve  
9 Wynn's sexual misconduct; failed to properly oversee the Company's internal controls and risks  
10 regarding sexual harassment; and helped to conceal Steve Wynn's until it was ultimately disclosed  
11 in the WSJ article.

12           272. Defendant Johnson has been a member of the Wynn Resorts Board since August  
13 2016. Since that time, Johnson has repeatedly done Steve Wynn's bidding at substantial personal  
14 profit. During the time he served on the Board, he has received substantial compensation, and, as  
15 of May 2019, not including stock he has sold during his tenure on the Board, he owned directly  
16 and indirectly 5,229 Company shares valued at \$598,145.31 based on Wynn Resorts' current  
17 market price. He has never voted against Steve Wynn on any issue.

18           273. Defendant Johnson has a history of tolerating sexual harassment. During  
19 Congressional hearings in 1996 regarding the massive sexual misconduct scandal involving the  
20 annual "Tailhook" conventions, Defendant Johnson admitted his participation as a Naval officer  
21 in the 1990 and 1991 conventions in Las Vegas and that he was aware of an atmosphere in which  
22 83 women and 7 men were sexually assaulted but took no action. In his opening statement,  
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1 demonstrating Johnson's longstanding pattern of complicity in sexual misconduct, Johnson  
2 acknowledged his role in these events and his passiveness in permitting them to happen:

3 Now, the final subject I'd like to address is my attendance at  
4 Tailhook. As you said, I attended Tailhook. I did it in 1990 and  
5 1991 in my official capacity as Assistant Chief of Naval Personnel  
6 for Distribution. We, the leadership of naval aviation, including  
7 myself, permitted an atmosphere to exist wherein bad things could  
8 happen and did happen. We should have been, as you said, Mr.  
9 Chairman, more proactive in raising the standard of behavior.

7 274. A statement from a member of the Senate Armed Services Committee to Johnson  
8 noted:

9 The Tailhook incident, the manner in which it was handled, and the  
10 perceptions it created regarding the attitudes on Naval officers  
11 toward women have attracted significant attention for almost five  
12 years. Of particular concern is the fact, while many senior officers  
13 were aware of the type of behavior for which Tailhook conventions  
14 had become famous over the years, no one took action to preclude  
15 that type of behavior at Tailhook '91. Additionally, while senior  
16 officers either witnessed inappropriate behavior at the Convention  
17 or specifically avoided certain locations to avoid witnessing this  
18 behavior, few took action until the behavior of certain attendees  
19 attracted national attention.

15 275. Further, when Johnson was CEO of General Dynamics, the parent company of  
16 Gulfstream Aerospace Corp., Steve Wynn was one of Gulfstream's loyal customers because of his  
17 private jet purchases. For example, in December 2012, Wynn Resorts purchased the first-delivered  
18 Gulfstream G650 for \$65 million. In 2014, Steve Wynn replaced his Gulfstream G650 with a  
19 Gulfstream G650ER.

20 **D. Defendant Maddox**

21 276. Defendant Maddox is not disinterested because he is the President and CEO of the  
22 Company, is not listed as independent on the Company's 2019 Proxy statement, and does not meet  
23 the NASDAQ's criteria for director independence.

1           277. Defendant Maddox is not disinterested because (as detailed above) he engaged in  
2 improper insider trading; he is conflicted and interested due to his potential liability in numerous  
3 sexual harassment suits; he ignored years of Steve Wynn’s sexual misconduct; failed to properly  
4 oversee the Company’s internal controls and risks regarding sexual harassment; and helped to  
5 conceal Steve Wynn’s pattern of sexual harassment and abuse until it was ultimately disclosed in  
6 the WSJ Article.

7           278. Moreover, Maddox was a senior executive of Wynn Resorts at the time of Steve  
8 Wynn’s misconduct. Maddox was advised during the relevant time period of Steve Wynn’s  
9 requests for “sensual massages” and about complaints of Wynn Resorts employees about Steve  
10 Wynn. Maddox was also advised in 2006 by Defendant Sinatra about Wynn’s 2005 settlement  
11 with the manicurist employee, who alleged Wynn raped her. Maddox was also on the Compliance  
12 Committee at the time the Committee was advised of the lawsuit against Defendant Irani. Yet  
13 Maddox failed to cause Wynn Resorts to disclose these matters, thereby breaching his duty of  
14 candor and loyalty to the Company. In fact, the IEB Report that Maddox gave no consideration  
15 to the welfare of Wynn Resorts employees who were faced with significant harm from Steve  
16 Wynn’s misconduct. *See* Exhibit 1 at p. 122. Maddox therefore breached his duties as an officer  
17 of the Company and engaged in egregious misconduct that posed a significant risk of harm to the  
18 safety, health, and welfare of Wynn Resorts employees.

19           279. Defendant Maddox has been an executive member of the Wynn Resorts Board  
20 since August 2018. Since joining Wynn Resorts in 2002, he has repeatedly done Steve Wynn’s  
21 bidding at substantial personal profit. During the time he served with the Company, he has received  
22 substantial compensation, and, as of May 2019, not including stock he has sold during his tenure  
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1 at the Company, he owned 460,954 Company shares valued at over \$52 million based on Wynn  
2 Resorts' current market price.

3 **E. Defendant Satre**

4 Defendant Satre was added to Wynn's Board in August 2018 pursuant to a Settlement  
5 Agreement with Elaine Wynn. Satre is thus Elaine Wynn's appointee on the Board. Satre is  
6 thus not independent since he was appointed to protect Elaine Wynn's interests, not the best  
7 interests of the Company or its public shareholders. Indeed, when Satre was appointed, Wynn  
8 Resorts filed a Form 8-K with the SEC on August 6, 2018 which included a quote from outgoing  
9 Chairman Wayson stating: "Wayson continued, 'This appointment is the result of a  
10 collaborative effort with co-founder Elaine Wynn, which I believe will serve as the beginning of  
11 a constructive and unified effort by all parties to move the Company forward.'" Elaine Wynn  
12 herself is interested in the matters alleged in this litigation since she was aware of her husband's  
13 illegal conduct and yet failed to take sufficient action as a director of Wynn Resorts to disclose  
14 her husband's conduct to the SEC, the public, and the Company's shareholders. Since Satre was  
15 appointed to protect Elaine Wynn, and Elaine Wynn faces a substantial likelihood of liability,  
16 Satre is also interested and incapable of considering a demand to bring suit against the  
17 defendants named in this lawsuit. Indeed, as part of Elaine Wynn's settlement with Wynn  
18 Resorts, which included her right to name Satre to the Board, Elaine Wynn released the culpable  
19 defendants from liability. Satre is bound by that settlement agreement and thus he lacks  
20 independence and disinterestedness. Since assuming his role as director of Wynn Resorts in  
21 August 2018, Satre has done absolutely nothing to remedy the wrongdoing. He has been on  
22 actual notice that Steve Wynn and many of her fellow directors face a substantial likelihood of  
23 liability due to the court order in the shareholder derivative case denying defendants' motion to  
24 dismiss on demand futility grounds.

25 280. As a result, Satre has had actual knowledge that the Company possesses valuable  
claims against Steve Wynn and many of her fellow directors since at least September 4, 2018,

1 when the order denying the motion to dismiss was issued in IN RE WYNN RESORTS, LTD.  
2 DERIVATIVE LITIGATION, Case No. A-18-769630-B (District Court, Clark County, Nevada).  
3 Despite being aware of the valuable claims possessed by Wynn Resorts, Satre has done nothing to  
4 cause the Company to pursue the claims and instead has taken action along with his fellow  
5 directors, who are named in the case, to thwart the claims and protect the Individual Defendants  
6 rather than pursue the best interests of Wynn Resorts. As a result, Satre has breached his duty of  
7 loyalty. Breaches of the duty of loyalty cannot be indemnified. Therefore, Satre faces a substantial  
8 likelihood of liability for his conduct since assuming the role of director of Wynn Resorts in August  
9 2018.

9 **F.**

10 **Defendant Atkins**

11 281. Defendant Atkins was added to Wynn's Board in April 2018, ostensibly to add a  
12 female director to the Board who could help address the rampant past sexual abuse and harassment  
13 at Wynn Resorts. However, in reality Atkins was added merely to protect the incumbent Board  
14 members who face liability from failing to properly address the wrongdoing. Since assuming his  
15 role as director of Wynn Resorts in April 2018, Atkins has done absolutely nothing to remedy the  
16 wrongdoing.

17 282. Atkins has had detailed knowledge of defendants' wrongdoing since the summer  
18 of 2018. The Company's original Special Committee and its investigative team briefed the  
19 Company's board of directors, including Atkins, on two nonconsecutive days (July 18, 2018 and  
20 August 3, 2018), regarding its final investigatory findings and also made a number of  
21 recommendations to the board regarding policy and training, human resources operations, and  
22 conflict of interest and internal controls. The Special Committee's findings were accepted by the  
23 Board, including Atkins, and yet Atkins has done nothing to pursue additional remedies,  
24 notwithstanding knowledge that the Special Committee's report was inadequate and conflicted  
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1 (having been prepared by Defendant Gibson Dunn, Sinatra's old law firm which faced  
2 irreconcilable conflicts), nor has Atkins pursued legal redress against the wrongdoers, thereby  
3 breaching her duty of loyalty and care to the Company.

4 283. She has also been on actual notice that Steve Wynn and many of her fellow directors  
5 face a substantial likelihood of liability due to the court order in the shareholder derivative case  
6 denying defendants' motion to dismiss on demand futility grounds, which was issued on  
7 September 4, 2018, in IN RE WYNN RESORTS, LTD. DERIVATIVE LITIGATION, Case No.  
8 A-18-769630-B (District Court, Clark County, Nevada). Despite being aware of the valuable  
9 claims possessed by Wynn Resorts, Atkins has done nothing to cause the Company to pursue the  
10 claims and instead has taken action along with her fellow directors, who are named in the case, to  
11 thwart the claims and protect the Individual Defendants rather than pursue the best interests of  
12 Wynn Resorts. As a result, Atkins has breached her duty of loyalty. Breaches of the duty of  
13 loyalty cannot be indemnified. Therefore, Atkins faces a substantial likelihood of liability for her  
14 conduct since assuming the role of director of Wynn Resorts in April 2018.

15 **G. Defendant Byrne**

16 284. Defendant Byrne is not disinterested because he is conflicted due to his  
17 longstanding business and financial ties to and benefits from Wynn Resorts. Defendant Byrne  
18 joined the Company's Board of Directors on August 7, 2018, but he has maintained close financial  
19 ties with the Company since at least 2002. Throughout his career, Richard Byrne has worked  
20 extensively with numerous gaming companies, including Wynn Resorts, in arranging debt and  
21 equity financing and providing strategic advice. Deutsche Bank was the lead underwriter of the  
22 Wynn IPO in late 2002, and Mr. Byrne was a key member of that team at Deutsche Bank that  
23 helped Defendant Maddox raise \$450 million, benefitting greatly from Deutsche Bank's position  
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25



1 in that IPO. Defendant Byrne is beholden to Defendant Maddox and could not independently and  
2 disinterestedly evaluate a suit against Defendant Maddox.

3 285. Mr. Byrne is currently the President of Benefit Street Partners. He also serves as  
4 Chairman and Chief Executive Officer of Business Development Corporation of America and  
5 Chairman and Chief Executive Officer of Benefit Street Partners Realty Trust, Inc. Prior to joining  
6 Benefit Street Partners in April 2013, Mr. Byrne was Chief Executive Officer of Deutsche Bank  
7 Securities, Inc. He was also the Global Co-Head of Capital Markets at Deutsche Bank as well as a  
8 member of the Global Banking Executive Committee and the Global Markets Executive  
9 Committee.

10 286. Defendant Byrne was added to Wynn's Board in August 2018, ostensibly to add a  
11 director to the Board who could help address the rampant past sexual abuse and harassment at  
12 Wynn Resorts. However, in reality Byrne was added merely to protect the incumbent Board  
13 members who face liability from failing to properly address the wrongdoing. Since assuming his  
14 role as director of Wynn Resorts in August 2018, Byrne has done absolutely nothing to remedy  
15 the wrongdoing. Among other things, he allowed Defendant Sinatra to resign effective July 15,  
16 2018 rather than being fired for cause and authorized millions of dollars in severance to be paid to  
17 Sinatra, despite being aware of Sinatra's culpability, which should have resulted in Sinatra being  
18 fired for cause. He has been on actual notice that Steve Wynn and many of his fellow directors  
19 face a substantial likelihood of liability due to the court order in the shareholder derivative case  
20 denying defendants' motion to dismiss on demand futility grounds.

21 287. As a result, Byrne has had actual knowledge that the Company possesses valuable  
22 claims against Steve Wynn and many of her fellow directors since at least September 4, 2018,  
23 when the order denying the motion to dismiss was issued in IN RE WYNN RESORTS, LTD.  
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1 DERIVATIVE LITIGATION, Case No. A-18-769630-B (District Court, Clark County, Nevada).  
2 Despite being aware of the valuable claims possessed by Wynn Resorts, Byrne has done nothing  
3 to cause the Company to pursue the claims and instead has taken action along with his fellow  
4 directors, who are named in the case, to thwart the claims and protect the Individual Defendants  
5 rather than pursue the best interests of Wynn Resorts. As a result, Byrne has breached his duty of  
6 loyalty. Breaches of the duty of loyalty cannot be indemnified. Therefore, Byrne faces a  
7 substantial likelihood of liability for his conduct since assuming the role of director of Wynn  
8 Resorts in August 2018.

9 **Defendant Myers**

10 288. Defendant Myers was added to Wynn's Board in April 2018, ostensibly to add a  
11 female director to the Board who could help address the rampant past sexual abuse and harassment  
12 at Wynn Resorts. However, in reality Myers was added merely to protect the incumbent Board  
13 members who face liability from failing to properly address the wrongdoing. Since assuming her  
14 role as director of Wynn Resorts in April 2018, Myers has done absolutely nothing to remedy the  
15 wrongdoing. Among other things, she allowed Defendant Sinatra to resign effective July 15, 2018  
16 rather than being fired for cause and authorized millions of dollars in severance to be paid to  
17 Sinatra, despite being aware of Sinatra's culpability which should have resulted in Sinatra being  
18 fired for cause.

19 289. Myers has had detailed knowledge of defendants' wrongdoing since the summer of  
20 2018. The Company's original Special Committee and its investigative team briefed the  
21 Company's board of directors, including Myers, on two nonconsecutive days (July 18, 2018 and  
22 August 3, 2018), regarding its final investigatory findings and also made a number of  
23 recommendations to the board regarding policy and training, human resources operations, and  
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1 conflict of interest and internal controls. The Special Committee's findings were accepted by the  
2 Board, including Myers, notwithstanding knowledge that the Special Committee's report was  
3 inadequate and conflicted (having been prepared by Defendant Gibson Dunn, Sinatra's old law  
4 firm which faced irreconcilable conflicts), nor has Myers pursued legal redress against the  
5 wrongdoers, thereby breaching her duty of loyalty and care to the Company.

6         290. She has also been on actual notice that Steve Wynn and many of her fellow directors  
7 face a substantial likelihood of liability due to the court order in the shareholder derivative case  
8 denying defendants' motion to dismiss on demand futility grounds, dated September 4, 2018, in  
9 IN RE WYNN RESORTS, LTD. DERIVATIVE LITIGATION, Case No. A-18-769630-B  
10 (District Court, Clark County, Nevada). Despite being aware of the valuable claims possessed by  
11 Wynn Resorts, Myers has done nothing to cause the Company to pursue the claims and instead  
12 has taken action along with her fellow directors, who are named in the case, to thwart the claims  
13 and protect the Individual Defendants rather than pursue the best interests of Wynn Resorts. As a  
14 result, Myers has breached her duty of loyalty. Breaches of the duty of loyalty cannot be  
15 indemnified. Therefore, Myers faces a substantial likelihood of liability for her conduct since  
16 assuming the role of director of Wynn Resorts in April 2018.

17         **H. Defendant Webb**

18         291. Defendant Webb was added to Wynn's Board in April 2018, ostensibly to add a  
19 female director to the Board who could help address the rampant past sexual abuse and harassment  
20 at Wynn Resorts. However, in reality Webb was added merely to protect the incumbent Board  
21 members who face liability from failing to properly address the wrongdoing. Since assuming her  
22 role as director of Wynn Resorts in April 2018, Webb has done absolutely nothing to remedy the  
23 wrongdoing. Among other things, she allowed Defendant Sinatra to resign effective July 15, 2018  
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1 rather than being fired for cause and authorized millions of dollars in severance to be paid to  
2 Sinatra, despite being aware of Sinatra's culpability which should have resulted in Sinatra being  
3 fired for cause.

4 292. Webb has had detailed knowledge of defendants' wrongdoing since the summer of  
5 2018. The Company's original Special Committee and its investigative team briefed the  
6 Company's board of directors, including Webb, on two nonconsecutive days (July 18, 2018 and  
7 August 3, 2018), regarding its final investigatory findings and also made a number of  
8 recommendations to the board regarding policy and training, human resources operations, and  
9 conflict of interest and internal controls. The Special Committee's findings were accepted by the  
10 Board, including Webb, notwithstanding knowledge that the Special Committee's report was  
11 inadequate and conflicted (having been prepared by Defendant Gibson Dunn, Sinatra's old law  
12 firm which faced irreconcilable conflicts), nor has Webb pursued legal redress against the  
13 wrongdoers, thereby breaching her duty of loyalty and care to the Company.

14 293. She has also been on actual notice that Steve Wynn and many of her fellow  
15 directors face a substantial likelihood of liability due to the court order in the shareholder derivative  
16 case denying defendants' motion to dismiss on demand futility grounds, dated September 4, 2018,  
17 in IN RE WYNN RESORTS, LTD. DERIVATIVE LITIGATION, Case No. A-18-769630-B  
18 (District Court, Clark County, Nevada). Despite being aware of the valuable claims possessed by  
19 Wynn Resorts, Webb has done nothing to cause the Company to pursue the claims and instead has  
20 taken action along with her fellow directors, who are named in the case, to thwart the claims and  
21 protect the Individual Defendants rather than pursue the best interests of Wynn Resorts. As a  
22 result, Webb has breached her duty of loyalty. Breaches of the duty of loyalty cannot be  
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1 indemnified. Therefore, Webb faces a substantial likelihood of liability for her conduct since  
2 assuming the role of director of Wynn Resorts in April 2018.

3 ///

4 **FIRST CLAIM FOR RELIEF**

5 **Negligence in Professional Conduct and Legal Malpractice Against the Attorney**  
6 **Defendants**

7 294. Plaintiff incorporates by reference and realleges each and every allegation  
8 contained above as though fully set forth herein.

9 295. An attorney client relationship existed between the Company and the Attorney  
10 Defendants.

11 296. Frank Schreck and Frank Schreck’s law firm, Schreck Brignone, PC provided legal  
12 services to Wynn Resorts. In 2006 Brownstein Hyatt & Farber entered into a merger with Schreck  
13 Brignone PC to form Brownstein Hyatt Farber Schreck, LLP, which assumed all the assets and  
14 liabilities of the merged firms. Thereafter, Schreck performed his legal services as a partner at  
15 Brownstein Hyatt Farber Schreck, LLP, and his conduct is imputed to the firm, which is liable for  
16 Schreck’s malpractice and wrongful conduct. The IEB listed both Franck Schreck and Schreck  
17 Brignone, PC as outside attorneys involved in the allegations and investigations. Further, Mr.  
18 Schorr (President and CEO of Wynn Las Vegas in 2005) declared in the Okada litigation that, in  
19 relation to the 2005 assault allegations, “The next day, I was contacted by the Company’s outside  
20 counsel, Frank Schreck, Esq., who had been engaged to address the allegations. Mr. Schreck asked  
21 me questions related to his investigation of the accusations.” The IEB further elaborated on the  
22 attorney client relationships as follows: “In addition, Attorney Frank Schreck, who worked on the  
23 settlement involving Amy [and the 2005 rape allegations] on behalf of Mr. Wynn and the  
24 Company. . .” IEB Report, pp. 15, 31.

1           297. Although the order of contact remains unclear, according to Attorney Schreck, most  
2 likely Marc Schorr contacted him first regarding the 2005 assault allegations. Thereafter, Attorney  
3 Schreck spoke with Steve Wynn regarding the allegations. IEB Report, p. 32.

4           298. According to the IEB Report, p. 31, Steve Wynn also had a decades long attorney-  
5 client relationship with Attorney Frank Schreck.

6           299. An attorney client relationship existed between the Company, James Pisanelli, and  
7 Mr. Pisanelli's law firm, Schreck Brignone, PC. The IEB listed both James Pisanelli, and Schreck  
8 Brignone, PC as outside attorneys involved in the allegations and investigations. IEB Report, p.  
9 15. Further, Attorney Schreck brought in Attorney Pisanelli to assist with certain details of the  
10 settlement of the 2005 assault allegations that was crafted on behalf of both the Company and  
11 Steve Wynn. IEB Report, p. 32. In 2006 Brownstein Hyatt & Farber entered into a merger with  
12 Schreck Brignone PC to form Brownstein Hyatt Farber Schreck, LLP, which assumed all the assets  
13 and liabilities of the merged firms. Thereafter, Pisanelli performed his legal services as a partner  
14 at Brownstein Hyatt Farber Schreck, LLP until 2010, and thereafter as a partner at Pisanelli Bice  
15 PLLC, and his conduct is imputed to the firms, which are liable for Pisanelli's malpractice and  
16 wrongful conduct. The settlement agreement upon which Attorney Pisanelli worked contained a  
17 retraction and denial by Amy of "allegations and claims to Wynn Las Vegas" and also included a  
18 retraction, with prejudice, of "any and all accusations and/or cla[i]ms against Wynn Las Vegas  
19 and any of its employees, supervisors, managers, directors, corporate officers, members of its  
20 board of directors, customers, vendors and agents."

21           300. As part of the settlement, Mr. Pisanelli formed Entity Y, LLC so that the Company  
22 and Mr. Wynn could avoid being listed as parties to the settlement agreement. Mr. Pisanelli did  
23 this on an expedited basis and he was listed as the sole manager of Entity Y. His instructions  
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1 regarding the settlement were “to get it resolved and to preserve confidentiality for all parties.”  
2 IEB Report, pp. 33-4.

3 301. Attorney Pisanelli understood that the \$7.5 million settlement funds were provided  
4 by Steve Wynn. Attorney Pisanelli understood from information provided to him by Marc Schorr,  
5 Arthur Nathan, and Attorney Gregory Kamer that Wynn Resorts had not provided any of the \$7.5  
6 million but that Wynn Resorts wanted to be protected.

7 302. Attorney Pisanelli asserts that he was unaware that this high figure settlement and  
8 unusual payment and confidentiality arrangements were based upon allegations of assault and rape  
9 until 2016. IEB Report, pp. 32, 34. Attorney Schreck was aware in 2005 that the plaintiff had  
10 alleged that Steve Wynn raped her. IEB Report, pp. 38.

11 303. Attorney Pisanelli stated that a normal structured settlement lump-sum payment  
12 would enter the firm’s trust account and then be disbursed to plaintiffs or their counsel. Here,  
13 however, the \$7.5 million assault settlement was pre-funded but to be paid out over ten years. To  
14 maintain confidentiality and keep the Wynn name disassociated with the payments, Attorney  
15 Schreck arranged to have Entity Y purchase certificates of deposit at a bank where Attorney  
16 Schreck was on the Board of Directors. Entity Y would be the account holder and Attorney  
17 Pisanelli would monitor the payment stream. If either the plaintiff, Steve Wynn or the Company  
18 defaulted on their obligations under the settlement, Mr. Pisanelli could respond appropriately. IEB  
19 Report, pp. 34-5.

20 304. Neither the Company nor Steve Wynn maintained a copy of the 2005 settlement,  
21 with the only copy being held by Schreck Brignone PC. IEB Report, p. 42.

1           305. The legal fees for the services of the Schreck Brignone, PC Attorneys, Schreck and  
2 Pisanelli, were either paid by Steve Wynn personally (according to Steve Wynn) or were provided  
3 pro bono (according to Attorney Schreck). IEB Report, p. 34.

4           306. Attorney Schreck told IEB investigators and testified in the *Okada* litigation that  
5 he represented both the Company and Mr. Wynn personally in the 2005 settlement. Marc Schorr  
6 identified Attorney Schreck as outside attorney for the Company in the 2005 settlement. Attorney  
7 Schreck did not seek and did not believe it was necessary to seek a waiver of or cosent to the  
8 conflicted dual representation, stating ““it’s the way it’s been for 40 years.”” IEB Report, p. 35.

9           307. An attorney client relationship existed between the Company, Attorney Gregory  
10 Kamer, Attorney Scott Abbott, and Attorney Kamer’s and Abbott’s law firm, Defendant Kamer  
11 Zucker Abbott LLP (KZA). KZA had represented the Company in labor and employment since  
12 its early days, Attorney Kamer was involved in the 2005 settlement, and Attorneys Abbott and  
13 Kamer represented the Company in the 2008 settlement. Attorney Kamer told IEB investigators  
14 that he represented the Company. IEB Report, p. 36.

15           308. The Company routinely consulted KZA for general advice on labor and  
16 employment and settlement questions. IEB Report, p. 36. A sworn statement from a neighbor of  
17 “Connie” was taken in 2008 at the law offices of KZA. IEB Report, p.64.

18           309. Attorney Kamer has apparently testified that he has no independent recollection of  
19 the 2005 assault allegations and settlement, but has stated that it would be “reasonable to conclude  
20 that KZA reviewed the settlement agreement to ensure that the language of the release provision  
21 adequately protected the Company from any potential claims.” IEB Report, p. 36.

22           310. The billings from KZA to the Company from July 2005 reference “general advice  
23 concerning sexual harassment investigation,” “protocols for sexual harassment investigation,”  
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1 “proposed draft letter for A. Nathan’s eyes only per direction from F. Schreck.” IEB Report, p. 36-  
2 7.

3 311. KZA’s invoice to the Company from July 31, 2005 itemized a “sexual harassment  
4 investigation protocol” and included a letter captioned “SexualHProtocol” that was a draft of a  
5 letter for Amy’s signature and to be reviewed only by A. Nathan that included statements about  
6 Amy being “well treated and respected” by the Company and that she “had only positive  
7 experiences” at the Company. IEB Report, p. 37.

8 312. As stated in the IEB Report, “The restricted receipt, the warning at the top of the  
9 draft letter, the captioning of the letter as ‘SexualHProtocol,’ and the listing of the billing records  
10 of this matter as ‘Sexual Harassment Investigation Protocol’ are all consistent with efforts  
11 effectuated by the Company’s outside employment counsel to maintain the 2005 matter with  
12 secrecy.” IEB Report, p. 37.

13 313. Attorney Rubinstein, general counsel for the Company in 2005, was not informed  
14 of the 2005 allegations or the settlement thereof at the time they happened. The following  
15 participants had knowledge of one or more elements of the allegations and settlement and failed  
16 to convey that knowledge at the time to Attorney Rubinstein: Attorney Schreck, Attorney Pisanelli,  
17 Attorney Kamer, Steve Wynn, Marc Schorr and Arthur Nathan. IEB Report, p. 43.

18 314. In August or September of 2005, Attorney Rubinstein questioned an invoice from  
19 KZA that itemized work Attorney Rubinstein did not recognize or authorize. When questioned,  
20 both Attorney Kamer and Marc Schorr rebuffed Attorney Rubinstein and would not reveal details  
21 of the matter. IEB Report, p. 43.

22 315. After consulting with Attorney Coben and notifying Marc Schorr of that fact,  
23 Attorney Rubinstein was allowed to view settlement related documents, without taking notes, in  
24  
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1 Attorney Schreck's office for five minutes. After that review, Attorney Rubinstein and Attorney  
2 Coben determined that disclosure to the Board was not necessary. IEB Report, p. 44. Attorney  
3 Rubinstein and Attorney Coben made this determination without receiving information regarding  
4 the original allegations of sexual assault. IEB Report, pp. 44-5. Shortly thereafter, Steve Wynn  
5 told Attorney Rubinstein that he could continue working without his employment contract or leave  
6 with severance stated in his employment contract. Attorney Rubinstein chose to leave the  
7 Company's employment and resigned in early 2006. IEB Report, p. 45.

8 316. In 2005, the Company's relevant Code provisions stated that "[a]ll sexual  
9 harassment complaints are forwarded to the employee relations department. An immediate,  
10 complete, thorough and (to the extent practicable) confidential investigation will be conducted."  
11 IEB Report, p. 45. Despite bringing her complaint to several managers, Mr. Schorr and Ms.  
12 Whennen, and coming to the attention of Steve Wynn, Arthur Nathan, Attorney Schreck, Attorney  
13 Pisanelli, Attorney Kamer, Attorney Rubinstein and Attorney Coben, no investigation was ever  
14 initiated. IEB Report, p. 46.

15 317. As noted by the IEB, "Any *bona fide* investigation would have been conducted by  
16 a person, internal or external to the Company, with the ability to remain objective and fair. An  
17 investigation also would have entailed interviewing other witnesses with potentially relevant  
18 information. By failing to conduct any investigation whatsoever, there was no opportunity to  
19 determine the facts of the incident at the time, or to evaluate whether other employees may be at  
20 risk of sexual misbehavior, or to gather information to allow the audit and compliance committees  
21 to evaluate whether the Company faced legal risk, financial risk, or risk of regulatory action.  
22 Moreover, even if an investigation revealed that the encounter between Amy and Mr. Wynn was  
23 'consensual,' as Mr. Wynn has insisted, the failure to investigate the allegation deprived the  
24  
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1 Company of the ability to evaluate whether consensual sexual conduct between a manicurist and  
2 the Company's Chairman and CEO raised an actual or potential conflict of interest under the  
3 Company's Code of Business Conduct and Ethics. The failure to investigate was contrary to the  
4 Company's "zero tolerance" sexual harassment policy." IEB Report, p. 46.

5 318. Regarding Steve Wynn's harassment policy training, there is no corroboration for  
6 Attorney Pisanelli's belief that in 2005 he added a short note to his law firm file that "someone"  
7 at the Company had informed him that Steve Wynn had been counseled, Attorney Sinatra's  
8 statement to the IEB that Attorney Tourek had informed her at some point that Steve Wynn had  
9 been counseled, and Attorney Tourek's belief, without current recollection, that Steve Wynn had  
10 been trained on the policy. There is contradicting evidence from Steve Wynn himself in a 2017  
11 deposition where he stated that he was not familiar with the details of the Company's sexual  
12 harassment policy, that he did not to receive training on it, and that he had no memory of receiving  
13 training on it. IEB Report, p. 47-8.

14 319. Steve Wynn's access to the Company spa and salon employees was not restricted  
15 or monitored after the rape allegations. IEB Report, p. 46.

16 320. Although Attorney Rubinstein and Attorney Coben claim they did not have full  
17 information regarding the extent of the 2005 assault allegations, they were in possession at the  
18 time of information that the Chairman and CEO of the Company had engaged in a sexual  
19 relationship of some kind with a subordinate employee. These allegations raise conflict of interest  
20 questions and implicate the Company's Code of Business Conduct and Ethics. Still, Attorney  
21 Rubinstein and Attorney Coben failed to inform either the Audit Committee or the entire Company  
22 Board of the allegations. Attorney Rubinstein and Attorney Coben also failed to inform either the  
23 Audit Committee or the entire Company Board that an upper level communications problem  
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1 existed because Attorney Rubinstein was excluded from the handling of the allegations. IEB  
2 Report, p. 49.

3 321. Notes provided by Elaine Wynn to the IEB indicate that Arthur Nathan wanted to  
4 bring the 2005 assault allegations to the Company's Board, but that Attorney Schreck and Attorney  
5 Slotnick felt disclosure to the Board would cause too much damage. IEB Report, p. 49.  
6 Nevertheless, Arthur Nathan, Attorney Schreck and Attorney Slotnick did not bring the 2005  
7 assault allegations to the Company Board's attention.

8 322. The Nevada Gaming Control Board's \$20 million fine against Wynn was based, in  
9 part, on the Company's failure to initiate and conduct an investigation into the 2005 assault  
10 allegations. IEB Report, p. 50.

11 323. An attorney client relationship existed between the Company and Attorney Sinatra.  
12 Attorney Sinatra's employment contracts with the Company included "the supervision of legal  
13 and compliance efforts" for the Company. IEB Report, p. 52.

14 324. In 2006, a woman named "Beth" alleged that she had been "wrongfully engaged in  
15 a sexual relationship with Steve Wynn." This allegation was made to Arthur Nathan, who  
16 forwarded the allegation to Attorney Tourek. This information was also shared with Steve Wynn  
17 and Marc Schorr. IEB Report, p. 54-5.

18 325. Beth's allegations led to a 2006 settlement, signed by Attorney Slotnick on behalf  
19 of Steve Wynn, and on information and belief, negotiated on behalf of Wynn Resorts and Steve  
20 Wynn, wherein Beth and her parents were paid a total of \$ 975,000 over the course of 2007. The  
21 settlement contained confidentiality, non-disparagement, and release of claims provisions similar  
22 to the 2005 settlement. IEB Report, p.52-3.

1           326. At the time, neither Attorney Tourek, Attorney Slotnick, Arthur Nathan, Marc  
2 Schorr, nor Steve Wynn initiated an investigation of the allegations underlying the 2006 settlement  
3 or reported the allegations to the Nevada Gaming Control Board.

4           327. In 2009, Elaine Wynn created notes, provided by the Company to the IEB, stating  
5 that Arthur Nathan had confided to her that the worst part of his job was dealing with ““repeated  
6 incidents of harassment that involved Steve [Wynn]. He claims they started in Atlantic City. He  
7 said there was a pattern of unethical behavior on the part of the chairman [Mr. Wynn] that was  
8 inappropriate and even illegal.”” He went on to reference an incident as he was leaving the  
9 Company at the end of 2006 and early 2007. The Company believes this was a reference to the  
10 2006 allegations and settlement. IEB Report, pp. 55-6.

11           328. Arthur Nathan was told by Attorney Slotnick and/or Attorney Tourek that the  
12 attorneys were handling the 2006 allegations “at a different level” and that Mr. Nathan was not to  
13 take any more action and was not to conduct any further investigation. The normal process would  
14 be for Mr. Nathan and his department at the Company to conduct an investigation, but he was  
15 directed not to do so by the inside and outside attorneys. IEB Report, pp. 56-7.

16           329. The lack of documentary and testimonial evidence supports the fact that no  
17 investigation was conducted into the 2006 allegations, it was not reported to the audit committee  
18 of the Board, and Steve Wynn did not receive any training, counseling or disciplinary action. IEB  
19 Report, p. 58.

20           330. In 2008, Attorneys Abbott, Kamer and Tourek coordinated regarding a demand for  
21 settlement sent by Connie’s attorney that contained allegations of a coerced sexual relationship  
22 between Steve Wynn and Connie while she was his employee, as well as allegations of interference  
23 with job prospects and physical assault. IEB Report, p. 65.

1           331. The 2008 settlement of these allegations contained a release of claims and  
2 confidentiality provisions that bound Steve Wynn, Elaine Wynn, Attorney Sinatra and Kevin  
3 Tourek. As noted in KZA's billing records, Attorneys Sinatra, Kamer, Abbott, Slotnick and  
4 Tourek all participated in meetings involving this matter. IEB Report, p. 66. Attorney Kamer  
5 explained to the IEB investigators that he knew in 2008 that "any decent law firm advising in the  
6 employee-relations area is going to be making sure that its policies and its supervisors understand  
7 that we have absolute liability if you have a relationship with a subordinate." IEB Report, p. 68.  
8 Neither Attorneys Sinatra, Kamer, Abbott, Slotnick and Tourek nor Steve or Elaine Wynn  
9 conducted an investigation of the 2008 allegations, reported them to the audit committee or trained  
10 Mr. Wynn on harassment policy. Attorney Tourek prepared a memorandum of disbursements in  
11 2009 for the Company Compliance committee that buried and disguised the nature of the 2008  
12 settlement payment by Wynn Resorts as a "Legal Settlement" paid to the "vendor" G. Dallas  
13 Horton & Associates. IEB Report, p. 68.

14           332. At times Attorney Slotnick is identified as Steve Wynn's attorney and also as  
15 participating in settlement negotiations between the Company and Steve Wynn's alleged victim.  
16 IEB Report, p. 70.

17           333. In early 2009, Elaine Wynn learned of the 2005 assault allegations and settlement  
18 and spoke about them with Steve Wynn, Attorney Schreck, Attorney Sinatra, and Arthur Nathan.  
19 IEB Report, p. 72-4. Elaine Wynn's notes of her conversation at the time with Arthur Nathan  
20 further demonstrate that Attorney Schreck, Arthur Nathan, Marc Schorr, Steve Wynn and Doreen  
21 Whennen knew in 2005 of the non-consensual nature of the allegations, knew the allegations were  
22 made more credible by Steve Wynn's reputation and past episodes, and knew the Company was  
23 at risk due to these allegations.

1           334. Attorney Sinatra was informed of the nature of the 2005 allegations and settlement  
2 in 2009 (or possibly 2010 or 2011) by Elaine Wynn. Attorney Sinatra informed Elaine Wynn that  
3 the 2005 assault allegations and settlement “was not a company matter” and that it had been  
4 handled appropriately. IEB Report, p. 78, 82. Attorney Sinatra contacted Attorney Tourek, Marc  
5 Schorr and Attorney Schreck about the matter. IEB Report, pp. 83, 84. Although Attorney Sinatra  
6 understood that Attorney Schreck had represented both the Company and Steve Wynn in the  
7 matter, she did not investigate any potential conflict of interest issue. IEB Report, p. 83.

8           335. In 2013, as part of the Massachusetts Commission’s evaluation of Wynn MA, LLC  
9 and its qualifiers, the investigators asked the Company in writing, through Attorney Sinatra, for  
10 “any and all internal documents dealing with . . . high profile issues that Mr. Wynn and [the  
11 Company] are dealing with *or have dealt with in the past. These matters may involve litigation  
12 and personal relationships* as well as business matters . . . .” (emphasis supplied) The IEB Report,  
13 p. 86, concluded that “[n]ondisclosure of derogatory information, particularly if such information  
14 was deliberately concealed in contravention of Company policy, may be considered as reflective  
15 of the honesty, integrity, and good character of the Company and/or the individual.” Steve Wynn  
16 and Attorney Sinatra were individual qualifiers for the Company.

17           336. When questioned in 2013 by the investigators for the Massachusetts Commission’s  
18 suitability investigation of the Wynn qualifiers, “Attorney Schreck did not disclose to investigators  
19 that he knew that Mr. Wynn had been accused of rape, the details of his initial conversation with  
20 Amy’s attorney, the circumstances regarding the settlement agreement and required retraction, the  
21 admission by Mr. Wynn to Attorney Schreck that he had sexual relations with a subordinate  
22 employee in his office area,[] or the fact that the Company did not follow required procedure and  
23 conduct an investigation.” IEB Report, pp. 90-1. In contrast to these actions, Attorney Schreck  
24  
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1 told the IEB investigators that he advises clients to err on the side of overdisclosure. IEB Report,  
2 pp. 91-2.

3 337. In June 2014, when Attorney Abbott of KZA was representing the Company in an  
4 EEOC mediation of an employment dispute, the former employee, “Debbie,” alleged that she had  
5 been raped by Steve Wynn in 2005. Over the course of two phone calls, Attorney Abbott informed  
6 Attorney Tourek, Mr. Wooden, Attorney Campbell and Mr. Wynn of the allegations. Attorney  
7 Abbott followed up this information with a written memorandum to Attorney Tourek regarding  
8 the rape, alleged to have occurred in Steve Wynn’s villa, including a summary of Attorney  
9 Abbott’s threats to bring a defamation suit against Debbie on behalf of the Company and Steve  
10 Wynn. IEB Report, pp. 94-5. Attorney Abbott’s phone calls and memorandum raise conflicts of  
11 interest and ethical violations.

12 338. Attorney Tourek forwarded the Abbott memorandum to Attorney Campbell (who  
13 believed he was working for Steve Wynn while the Company believed he was working for the  
14 Company) who forwarded the memorandum to Attorney Sinatra. Attorney Sinatra spoke at the  
15 time with at least Attorney Tourek about the matter. Despite the involvement and knowledge of  
16 inside and outside counsel for the Company, the President of Wynn Las Vegas, and Steve Wynn,  
17 and a Company payment of \$9,000 to Debbie, there was no Company follow up, investigation of  
18 Debbie’s rape allegation, documentation in Company files, or disclosure to Massachusetts gaming  
19 regulators. IEB Report, pp. 95-8.

20 339. Throughout 2014, at least two separate massage therapists made three distinct  
21 complaints to the Company’s director of spa services at Wynn and Encore spas against Steve Wynn  
22 for issues involving draping, genital exposure/nudity, and inappropriate requests for sensual  
23 massage elements. All the complaints were reported to Brial Gullbrants, who reported them to  
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1 Maurice Wooden, who reported at least one of them to Steve Maddox. These Company executives  
2 instructed Steve Wynn to “cut it out” but did not otherwise report any of the incidents to HR,  
3 comply with the Company’s HR policy by investigating the incident, and failed to document or  
4 record the incidents. IEB Report, pp. 99-112.

5 340. In 2016, when discussing the *Okada* litigation claims regarding the 2005 rape  
6 allegations settlement, the Company’s outside Directors asked Attorney Sinatra about any other  
7 allegations against Steve Wynn. Attorney Sinatra did not mention the 2006 settlement agreement,  
8 the 2008 settlement agreement, or the 2014 rape allegation. IEB Report, p. 116.

9 341. An attorney client relationship existed between the Company, Attorney Barry  
10 Langberg and Brownstein Hyatt Farber Schreck, LLP. In 2016, the Company, through Attorney  
11 Sinatra, hired Attorney Barry Langberg, of Brownstein Hyatt Farber Schreck, LLP, to analyze a  
12 possible defamation action against Elaine Wynn for her *Okada* claims regarding the 2005 rape  
13 allegations settlement. Attorney Langberg was a partner of Attorney Schreck who authored the  
14 subject settlement, and had a personal 20 year relationship with Steve Wynn such that Steve Wynn  
15 attended his wedding. IEB Report at 118, 120. There is no indication that Attorney Langberg  
16 presented the Company with any conflicts of interest disclosure or obtained formal consent to or  
17 waiver of any conflicts, although draft minutes indicated the directors “discussed and weighed the  
18 fact that Mr. Langberg’s firm represents and has represented the Company and Mr. Wynn in  
19 unrelated matters.” IEB Report, at 121.

20 342. Although his charge was to investigate the truth or falsity of the *Okada* claims (the  
21 very heart of a defamation action), Attorney Langberg only interviewed Steve Wynn and  
22 Langberg’s partner, Attorney Schreck. Despite his inadequate and unprofessional investigation,  
23 Attorney Langberg concluded that “From a legal perspective, the manner in which the matter was  
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1 handled at no time exposed the Company or the directors to liability.” IEB Report, at 118-9. In  
2 fact, the manner in which that and other matters were handled has led, so far, to over \$55 million  
3 dollars in fines against the Company.

4 343. In 2018, Attorney Langberg was engaged by the Company to try to prevent  
5 publication of the Wall Street Journal Article and letters by telling them they had defamatory  
6 information, in an effort to try to get the article "killed.”

7 344. Attorney Langberg’s actions violated his duties to the Company, ethical  
8 obligations, including his obligations of diligence and competence, violated conflicts of interest  
9 rules, and constituted legal malpractice.

10 345. An attorney client relationship existed between the Company and Attorney  
11 Jonathan Layne and Layne’s firm, Gibson Dunn & Crutcher. Layne provided legal services to the  
12 Company’s Board of Directors during the relevant time period, including in 2016 in connection  
13 with the outside directors’ review of the Okada Cross-Complaint and in 2018 in connection with  
14 the Special Committee’s work. As alleged herein, such work was negligent and failed to comply  
15 with the relevant standard of care.

16 346. Defendants Kimmarie Sinatra, Marc Rubinstein, Kevin Tourek, Frank Schreck,  
17 James Pisanelli, Gregory Kamer, Scott Abbott, Jerome Coben, Jonathan Layne, and Barry I.  
18 Slotnick (as well as their respective law firms), as attorneys, owe fiduciary duties to the Company  
19 and its stockholders. These duties include, but are not limited to, the duties enumerated in the  
20 Nevada Rules of Professional Conduct (“NRPC”).

21 347. Defendant Attorneys Kimmarie Sinatra, Marc Rubinstein, Kevin Tourek, Frank  
22 Schreck, James Pisanelli, Gregory Kamer, Scott Abbott, Jerome Coben, Jonathan Layne, and  
23 Barry I. Slotnick breached these duties and committed Negligence in Professional Conduct and  
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1 legal malpractice with respect to the legal opinions, advice and assistance that the Defendant  
2 Attorneys gave to the Board and the Company with respect to the legality and advisability of the  
3 steps taken by defendants alleged herein regarding various aspects of the allegations and  
4 settlements of Steve Wynn's sexual harassment and workplace misconduct.

5 348. Defendant Attorneys Kimmarie Sinatra, Marc Rubinstein, Kevin Tourek, Frank  
6 Schreck, James Pisanelli, Gregory Kamer, Scott Abbott, Jerome Coben, Jonathan Layne, and  
7 Barry I. Slotnick breached these duties and committed Negligence in Professional Conduct and  
8 legal malpractice with respect to the legal opinions, advice and assistance that the Defendant  
9 Attorneys failed to give by failing to inform the Board of the Company of, and by failing to require  
10 or initiate an investigation of, the workplace allegations against Steve Wynn, detailed above.

11 349. Kimmarie Sinatra committed Negligence in Professional Conduct and legal  
12 malpractice in 2009, through her opinions, advice and assistance related to receiving information  
13 from Elaine Wynn about Steve Wynn's 2005 rape allegations and settlement.

14 350. Kimmarie Sinatra committed Negligence in Professional Conduct and legal  
15 malpractice in 2013 when she filed a form RFA-1 application as an individual qualifier with the  
16 Massachusetts Gaming Commission without disclosing the information she knew about Steve  
17 Wynn and multiple allegations of his workplace misconduct.

18 351. Kimmarie Sinatra committed Negligence in Professional Conduct and legal  
19 malpractice in 2014 through her opinions, advice and assistance related to handling of the  
20 information regarding allegations against Steve Wynn of rape of a former cocktail server.

21 352. Kimmarie Sinatra committed Negligence in Professional Conduct and legal  
22 malpractice in 2016 through her opinions, advice and assistance related to the allegations of the  
23 2005 rape brought out by Elaine Wynn in the *Okada* litigation.

1           353. Kimmarré Sinatra committed Negligence in Professional Conduct and legal  
2 malpractice in 2016 through her opinions, advice and assistance related to the allegations  
3 forwarded to her by Cindy Mitchum that Steve Wynn engaged in sexual harassment and created a  
4 hostile work environment.

5           354. Marc Rubinstein committed Negligence in Professional Conduct and legal  
6 malpractice in or about 2005 through his opinions, advice and assistance related to his discovery  
7 of a questionable entry related to the settlement of the 2005 rape allegations against Steve Wynn.

8           355. Kevin Tourek committed Negligence in Professional Conduct and legal  
9 malpractice in 2009 through his opinions, advice and assistance related to the characterization, on  
10 a quarterly statement to the Compliance Committee of the Board, of the \$700,000 settlement  
11 payment of an inappropriate “intimate relationship” against Steve Wynn.

12           356. Frank Schreck and James Pisanelli committed Negligence in Professional Conduct  
13 and legal malpractice through the opinions, advice and assistance given by them to Steve Wynn  
14 and Wynn Resorts with respect to the creation and use of Entity Y, LLC, to settle the 2005 rape  
15 allegation and break the payments up over the course of ten years in order to disguise the source  
16 and nature of the payments.

17           357. Frank Schreck also committed Negligence in Professional Conduct and legal  
18 malpractice in April 2009, through his opinions, advice and assistance in discussions of the 2005  
19 rape allegations and settlement involving Steve Wynn with Elaine Wynn, and again in 2016  
20 through his opinions, advice and assistance when he was interviewed by Attorney Langberg.

21           358. Gregory Kamer committed Negligence in Professional Conduct and legal  
22 malpractice in 2005 through his opinions, advice and assistance when he participated in the  
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1 drafting of the settlement of the 2005 rape allegation and the concealment of facts regarding the  
2 same.

3 359. Jonathan Layne and Gibson Dunn & Crutcher committed Negligence in  
4 Professional Conduct and legal malpractice in 2006 and in 2018 through their opinions, advice and  
5 assistance to the Company's Board of Directors and Special Committee concerning the  
6 investigation of Steve Wynn and the settlement of the 2005 rape allegation and the concealment  
7 of facts regarding the same.

8 360. Kimmarie Sinatra, Kevin Tourek, Gregory Kamer, Scott Abbott and Barry I.  
9 Slotnick committed Negligence in Professional Conduct and legal malpractice in 2008 through  
10 their opinions, advice and assistance when they participated in two meetings about the allegations  
11 of an "intimate relationship" between Steve Wynn and an employee that were ultimately settled  
12 with \$700,000 of Company funds.

13 361. Scott Abbott and Kevin Tourek also committed Negligence in Professional  
14 Conduct and legal malpractice in 2014 through their opinions, advice and assistance in connection  
15 with their handling of information, received from a fired cocktail server, that Defendant Steve  
16 Wynn had raped her in 2005. Abbott summarized the allegation in an email to Attorney Tourek,  
17 then General Counsel for Wynn Las Vegas and also spoke with Tourek and Defendant Wooden,  
18 then President of Wynn Las Vegas, about the allegation.

19 362. Jerome Coben committed Negligence in Professional Conduct and legal  
20 malpractice in or about 2005 or 2006 through his opinions, advice and assistance in connection  
21 with his handling of information discussed with Attorney Rubinstein about the \$ 7.5 million dollar  
22 settlement of sexual allegations against Steve Wynn.

1           363. Barry Slotnick also committed Negligence in Professional Conduct and legal  
2 malpractice in December 2006 through his opinions, advice and assistance in connection with the  
3 settlement of allegations of an inappropriate relationship between Steve Wynn and a Company  
4 cocktail waitress for \$975,000.

5           364. Further, Defendant Attorneys Kimmarie Sinatra, Marc Rubinstein, Kevin Tourek,  
6 Frank Schreck, James Pisanelli, Gregory Kamer, Scott Abbott, Jerome Coben, Jonathan Layne,  
7 and Barry I. Slotnick violated Rule 1.1 of the NRPC in that they intentionally, recklessly and  
8 repeatedly failed to perform legal services with competence. Defendant Attorneys Kimmarie  
9 Sinatra, Marc Rubinstein, Kevin Tourek, Frank Schreck, James Pisanelli, Gregory Kamer, Scott  
10 Abbott, Jerome Coben, Jonathan Layne, and Barry I. Slotnick also violated rule 1.1 of the NRPC  
11 because they both advised and failed to advise Wynn Resorts and the Board regarding various  
12 aspects of allegations of Steve Wynn's sexual harassment without the legal knowledge, skill,  
13 thoroughness and preparation reasonably necessary for such advice.

14           365. Defendant Attorneys Kimmarie Sinatra, Marc Rubinstein, Kevin Tourek, Frank  
15 Schreck, James Pisanelli, Gregory Kamer, Scott Abbott, Jerome Coben, Jonathan Layne, and  
16 Barry I. Slotnick also violated rules 1.7 and 1.13 of the NRPC because they failed to properly  
17 obtain informed consent, confirmed in writing, of concurrent conflicts of interest arising from their  
18 representation of the Company and the other Individual Defendants' interests, particularly the  
19 interests of Steve Wynn.

20           366. Defendant Attorneys Kimmarie Sinatra, Marc Rubinstein, Kevin Tourek, Frank  
21 Schreck, James Pisanelli, Gregory Kamer, Scott Abbott, Jerome Coben, Jonathan Layne, and  
22 Barry I. Slotnick violated rule 1.13 (g) of the NRPC in that they failed to require that Wynn  
23 Resort's consent to a concurrent conflict of interest was approved by an appropriate official of  
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1 Wynn Resorts other than the individual (Steve Wynn) who was to be represented, or by the  
2 shareholders of Wynn Resorts.

3 367. Defendant Attorneys Kimmarie Sinatra, Marc Rubinstein, Kevin Tourek, Frank  
4 Schreck, James Pisanelli, Gregory Kamer, Scott Abbott, Jerome Coben, Jonathan Layne, and  
5 Barry I. Slotnick violated rule 1.13 (b) of the NRPC in that they failed to proceed as was reasonably  
6 necessary in the best interests of the Company. Defendant Attorneys Kimmarie Sinatra, Marc  
7 Rubinstein, Kevin Tourek, Frank Schreck, James Pisanelli, Gregory Kamer, Scott Abbott, Jerome  
8 Coben, Jonathan Layne, and Barry I. Slotnick violated rule 1.13 (f) of the NRPC in that they failed  
9 to take reasonable steps to ensure that the constituent employee understood the attorneys' client  
10 was the Company or that constituent employee understood the fact of multiple representation.

11 368. Defendant Attorneys Kimmarie Sinatra, Marc Rubinstein, Kevin Tourek, Frank  
12 Schreck, James Pisanelli, Gregory Kamer, Scott Abbott, Jerome Coben, Jonathan Layne, and  
13 Barry I. Slotnick violated rule 1.4 of the NRPC in that they failed to promptly inform the Wynn  
14 Resorts Board of circumstances requiring their consent to concurrent conflicts of interest; failed to  
15 reasonably consult with the Wynn Resorts Board and keep the Wynn Resorts Board reasonably  
16 informed; failed to consult with the Wynn Resorts Board or the Wynn Resorts shareholders  
17 regarding the relevant limitations on the lawyer's conduct under the rules; and failed to explain  
18 matters to the extent reasonably necessary to permit Wynn Resorts to make an informed decision  
19 regarding Defendant's conflicts in its representation.

20 369. The negligent acts or omissions by the Attorney Defendants alleged herein  
21 constitute failures by the Attorney Defendants to use such skill, prudence and diligence as lawyers  
22 of ordinary skill and capacity commonly possess and exercise in the performance of similar tasks  
23 of which they undertake.





1 (a) Defendants breached their fiduciary duties by failing to ensure that Wynn  
2 Resorts had adequate internal controls, risk management procedures and  
3 other policies to prevent its officers and directors from engaging in sexual  
4 misconduct in the workplace and creating an abusive workplace  
5 environment in violation of federal and state laws and regulations, and  
6 Wynn Resorts' Code, and by intentionally or recklessly overriding the  
7 internal controls that did exist;

8 (b) Defendants breached their duties by concealing the abusive workplace  
9 environment that allowed Steve Wynn's sexual misconduct to continue  
10 unimpeded for years; and

11 (c) Defendants breached their fiduciary duties by violating the Company's  
12 Corporate Governance Guidelines, Code of Business Ethics and other duties  
13 required of Board members as set forth in the Audit Committee Charter,  
14 Articles of Incorporation and other corporate governance documents.

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

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

3 **THIRD CLAIM FOR RELIEF**

4 **Unjust Enrichment Against All Defendants**

5 378. Plaintiff incorporates by reference and realleges each and every allegation  
6 contained above as though fully set forth herein.

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

9 380. Defendants were unjustly enriched for years as a result of compensation, stock  
10 options, stock awards, directors' fees and other remuneration they received while breaching their  
11 fiduciary duties owed to the Company.

12 381. Plaintiff, as a stockholder and representative of Wynn Resorts, seeks restitution  
13 from Defendants and seeks an order from this Court disgorging all profits, benefits, stock options,  
14 stock awards, and other compensation obtained by the Defendants from their wrongful conduct  
15 and fiduciary breaches.

16 382. Plaintiff, on behalf of Wynn Resorts, has no adequate remedy at law.

17 **FOURTH CLAIM FOR RELIEF**

18 **Breach of Fiduciary Duty Against Steve Wynn and the Officer Defendants**

19 383. Plaintiff incorporates by reference and realleges each and every allegation set forth  
20 above, as though fully set forth herein.

21 384. Steve Wynn was formerly Chairman of the Board and CEO of Wynn Resorts. On  
22 February 6, 2018, Steve Wynn resigned from his positions at the Company and the Board. Steve  
23 Wynn held those positions since 2002 when the Company went public. During his tenure as an  
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1 executive and director of Wynn Resorts, Steve Wynn owed Wynn Resorts and its stockholders the  
2 highest fiduciary duties of loyalty, good faith, fair dealing, due care, and oversight.

3 385. Steve Wynn engaged in the misconduct described above and knowingly and  
4 intentionally breached his fiduciary duties by engaging in a pattern of sexual harassment and abuse  
5 and actively concealing such misconduct in violation of Wynn Resorts' Code and various laws  
6 and regulations.

7 386. As a result of the misconduct alleged herein, Steve Wynn is liable to the Company  
8 for damages resulting directly and proximately from his breaches of fiduciary duty.

9 387. Defendant Sinatra served as the General Counsel, Secretary, and Senior Vice  
10 President of the Company. Defendant Sinatra engaged in the misconduct described above and  
11 knowingly, intentionally, and/or recklessly breached her fiduciary duties by actively concealing  
12 Steve Wynn's pattern of sexual harassment and abuse in violation of Wynn Resorts' Code and  
13 various laws and regulations.

14 388. As a result of the misconduct alleged herein, Defendant Sinatra is liable to the  
15 Company for damages resulting directly and proximately from her breaches of fiduciary duty.

16 389. Defendant Maddox is the current CEO and President of the Company. Defendant  
17 Maddox engaged in the misconduct described above and knowingly, intentionally, and/or  
18 recklessly breached his fiduciary duties by actively concealing Steve Wynn's pattern of sexual  
19 harassment and abuse in violation of Wynn Resorts' Code and various laws and regulations.

20 390. As a result of the misconduct alleged herein, Defendant Maddox is liable to the  
21 Company for damages resulting directly and proximately from his breaches of fiduciary duty.

22 391. Defendant Rubinstein served as a senior vice president, general counsel, and  
23 secretary for the Company from approximately 2001 through 2006. Defendant Rubinstein engaged  
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1 in the misconduct described above and knowingly, intentionally, and/or recklessly breached his  
2 fiduciary duties by actively concealing Steve Wynn's pattern of sexual harassment and abuse in  
3 violation of Wynn Resorts' Code and various laws and regulations.

4 392. As a result of the misconduct alleged herein, Defendant Rubinstein is liable to the  
5 Company for damages resulting directly and proximately from his breaches of fiduciary duty.

6 393. Defendant Tourek served as former general counsel for Wynn Las Vegas.  
7 Defendant Tourek engaged in the misconduct described above and knowingly, intentionally,  
8 and/or recklessly breached his fiduciary duties by actively concealing Steve Wynn's pattern of  
9 sexual harassment and abuse in violation of Wynn Resorts' Code and various laws and regulations.

10 394. As a result of the misconduct alleged herein, Defendant Tourek is liable to the  
11 Company for damages resulting directly and proximately from his breaches of fiduciary duty.

12 395. Defendant Schorr served as the COO of Wynn Resorts from June 2002 to June 2013  
13 and as the President and CEO of Wynn Las Vegas from June 2000 to October 2005. Defendant  
14 Schorr engaged in the misconduct described above and knowingly, intentionally, and/or recklessly  
15 breached his fiduciary duties by actively concealing Steve Wynn's pattern of sexual harassment  
16 and abuse in violation of Wynn Resorts' Code and various laws and regulations.

17 396. As a result of the misconduct alleged herein, Defendant Schorr is liable to the  
18 Company for damages resulting directly and proximately from his breaches of fiduciary duty.

19 397. Defendant Whennen served as vice president of hotel operations at Wynn Resorts  
20 from 2005 to 2014. Defendant Whennen engaged in the misconduct described above and  
21 knowingly, intentionally, and/or recklessly breached his fiduciary duties by actively concealing  
22 Steve Wynn's pattern of sexual harassment and abuse in violation of Wynn Resorts' Code and  
23 various laws and regulations.

1           398. As a result of the misconduct alleged herein, Defendant Whennen is liable to the  
2 Company for damages resulting directly and proximately from his breaches of fiduciary duty.

3           399. Defendant Maurice Wooden served as the President of Wynn Las Vegas from 2013  
4 through the end of 2018. Defendant Wooden engaged in the misconduct described above and  
5 knowingly, intentionally, and/or recklessly breached his fiduciary duties by actively concealing  
6 Steve Wynn's pattern of sexual harassment and abuse in violation of Wynn Resorts' Code and  
7 various laws and regulations.

8           400. As a result of the misconduct alleged herein, Defendant Wooden is liable to the  
9 Company for damages resulting directly and proximately from his breaches of fiduciary duty.

10           401. Defendant Arthur Nathan served as the senior vice president and chief human  
11 resources officer for Wynn Resorts from January 2003 to October 2006 and served as the chief  
12 human resources officer at Wynn Las Vegas (and former Wynn properties the Bellagio and the  
13 Mirage) from 1983 through 2006. Defendant Nathan engaged in the misconduct described above  
14 and knowingly, intentionally, and/or recklessly breached his fiduciary duties by actively  
15 concealing Steve Wynn's pattern of sexual harassment and abuse in violation of Wynn Resorts'  
16 Code and various laws and regulations.

17           402. As a result of the misconduct alleged herein, Defendant Nathan is liable to the  
18 Company for damages resulting directly and proximately from his breaches of fiduciary duty.

19           403. Defendant Gullbrants is a former executive vice president and general manager of  
20 Wynn Las Vegas and current executive vice president of operations at Encore Boston Harbor.  
21 Defendant Gullbrants engaged in the misconduct described above and knowingly, intentionally,  
22 and/or recklessly breached his fiduciary duties by actively concealing Steve Wynn's pattern of  
23 sexual harassment and abuse in violation of Wynn Resorts' Code and various laws and regulations.



1 by the reaction of the market to the WSJ Article, this information was not previously available or  
2 widely disseminated to the public. It was proprietary information belonging to the Company,  
3 which the Selling Defendants used for their own benefit when they sold Wynn Resorts' stock at  
4 artificially inflated prices.

5 410. Because use of the Company's proprietary information for personal gain constitutes  
6 a breach of the Selling Defendants' duties of loyalty and good faith, the Company is entitled to  
7 damages and to the imposition of a constructive trust on any profits obtained thereby.

8 **SIXTH CLAIM FOR RELIEF**  
9 **Derivative Claim for Aiding and Abetting Breach of Fiduciary Duty Against the Officer**  
10 **Defendants, the Attorney Defendants, and the Director Defendants**

11 411. Plaintiff incorporates by reference and realleges each and every allegation  
12 contained above, as though fully set forth herein.

13 412. Steve Wynn owed the Company the fiduciary duties of due care, loyalty, and good  
14 faith under Nevada law. These fiduciary duties on behalf of Steve Wynn were well-known to the  
15 Attorney Defendants, Director Defendants and the Officer Defendants.

16 413. As alleged herein, Steve Wynn knowingly and intentionally breached his fiduciary  
17 duties to the Company.

18 414. Each of the Attorney Defendants, Director Defendants and Officer Defendants  
19 aided and abetted Steve Wynn's breaches of fiduciary duty. The Attorney Defendants, Director  
20 Defendants and Officer Defendants knowingly, intentionally, or recklessly failed to act to  
21 investigate or prevent Steve Wynn's longstanding pattern of sexual harassment and abuse.

22 415. The Director Defendants' knowledge of Steve Wynn's breaches of fiduciary duty  
23 is based, in part, on their knowledge of the 2005 assault no later than March 28, 2016.  
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1 Resorts has sustained and continues to sustain significant damages. As a result of the misconduct  
2 alleged herein, the Individual Defendants are liable to the Company.

3 **EIGHTH CLAIM FOR RELIEF**

4 **Waste of Corporate Assets Against All Individual Defendants**

5 425. Plaintiff incorporates by reference and realleges each and every allegation  
6 contained above, as though fully set forth herein.

7 426. As a result of the wrongdoing detailed herein, the Individual Defendants have  
8 caused Wynn Resorts to waste its assets by paying money to resolve sexual harassment and  
9 discrimination by Steve Wynn, and by awarding and/or approving improper compensation and  
10 bonuses to certain of the Company's executive officers and directors who breached their fiduciary  
11 duties. Such waste of corporate assets includes millions of dollars paid to women who were raped  
12 or sexually harassed by Steve Wynn. There was absolutely no business purpose in expending  
13 corporate funds for the sexual gratification of Steve Wynn and to cover-up and conceal the illegal  
14 conduct.

15 427. As a result of the waste of corporate assets, the Individual Defendants are liable to  
16 the Company

17 428. Plaintiff, on behalf of the Company, has no adequate remedy at law.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff seeks the following relief:

20 A. Determination that this action is a proper derivative action and that demand on the  
21 Director Defendants is excused as futile;

22 B. A finding that Defendants breached their fiduciary duties;

1 C. An award against all of the Defendants and in favor of the Company for the amount  
2 of all damages sustained by Wynn Resorts as a result of Defendants' breaches of fiduciary duties  
3 and unjust enrichment, including any and all damages compensable by statute and/or law, as well  
4 as disgorgement of all profits, benefits and other compensation that Defendants obtained because  
5 of the misconduct alleged herein, including damages for insider trading, together with pre and  
6 post-judgment interest, in an amount in excess of \$15,000.00;

7 D. An order directing the Director Defendants to take necessary actions to enhance the  
8 Company's governance to comply with applicable laws and to protect Wynn Resorts, its employees,  
9 and its stockholders from repeating the harms described herein;

10 E. An award to Plaintiff of the costs and disbursements of this Action, including  
11 reasonable attorneys' fees, experts' fees, costs, and expenses; and,

12 F. An award of such other further relief as the Court deems just and equitable.

13 **DEMAND FOR TRIAL BY JURY**

14 Plaintiff hereby demands a trial by jury.

15 DATED: this 3rd day of June, 2019

Respectfully Submitted,  
Pursuant to NRS 53.045, I declare under  
penalty of perjury that the foregoing is true  
and correct

17 THE O'MARA LAW FIRM, P.C.

18  
19 /s/ David C. O'Mara

20 DAVID C. O'MARA, ESQ.  
311 E. Liberty Street  
Reno, NV 89501  
21 Telephone: (775) 323-1321  
22 Facsimile: (775) 323-4082  
Email: [david@omaralaw.net](mailto:david@omaralaw.net)

23 *Local Counsel for Plaintiff*

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BOTTINI & BOTTINI, INC.  
Francis A. Bottini, Jr.  
Albert Y. Chang  
Yury A. Kolesnikov  
7817 Ivanhoe Avenue, Suite 102  
La Jolla, California 92037  
Telephone: (858) 914-2001  
Facsimile: (858) 914-2002  
Email: [fbottini@bottinilaw.com](mailto:fbottini@bottinilaw.com)  
[achang@bottinilaw.com](mailto:achang@bottinilaw.com)  
[ykolesnikov@bottinilaw.com](mailto:ykolesnikov@bottinilaw.com)

*Attorneys for Plaintiff*

INDEX OF EXHIBITS

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## VERIFICATION

I, Dennis Rosen, verify that I am a shareholder of Wynn Resorts, Ltd. I have reviewed the allegations made in the Verified Shareholder Derivative Complaint (the "Complaint"). As to the allegations in the Complaint of which I have personal knowledge, I believe them to be true. As to those allegations of which I do not have personal knowledge, I rely upon my counsel and their investigation and believe them to be true. Having received a copy of this Complaint and reviewed it with my counsel, I authorize its filing.

Pursuant to Nevada Revised Statute § 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on May <sup>30</sup> \_\_, 2019.

DocuSigned by:  
*Dennis Rosen*

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Dennis Rosen