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20 **DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

22 NORFOLK COUNTY RETIREMENT)
23 SYSTEM, derivatively on behalf of WYNN)
24 RESORTS LIMITED,)

25 Plaintiffs,)

26 v.)

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

Defendants,)

And)

WYNN RESORTS, LIMITED,)

Nominal Defendant)

CASE NO. A-18-769062-B

DEPT. NO. Department 27

(Exemption From Arbitration Requested.
Damages Exceed \$50,000)

**Request for Business Court
Assignment Pursuant to
EDCR 1.61 (a)**

**VERIFIED STOCKHOLDER
DERIVATIVE COMPLAINT**



NATURE OF THE ACTION

1
2 This action asserts derivative claims on behalf of Wynn Resorts Limited (“Wynn
3 Resorts” or “Company”) to redress the injury and losses sustained by the Company as a result of
4 egregious breaches of fiduciary duty, abuses of fiduciary power and violations of law involving
5 the Company committed by the Company’s founder, Chairman and Chief Executive Officer,
6 Stephen A. Wynn (“Mr. Wynn”), breaches of fiduciary duty by the Company’s Senior Vice
7 President, General Counsel and Secretary, Kimmarie Sinatra (“Sinatra”), and breaches of
8 fiduciary duty by the Company’s Board of Directors. As alleged more particularly herein, Mr.
9 Wynn engaged in a pervasive pattern of egregious misconduct involving the Company in his
10 positions of leadership, and the Company’s General Counsel and Board of Directors turned a
11 blind eye and continued to: endorse Mr. Wynn’s leadership of the Company and Mr. Wynn’s
12 continued positions as director, Chairman of the Board and Chief Executive Officer and
13 suitability as a gaming operator; pay extraordinary lavish compensation and benefits to Mr.
14 Wynn; assure the stockholders that the Company’s risk, compliance and governance controls
15 were extensive and effective to detect, prevent and remedy such misconduct, in seeking votes in
16 favor of their continuation as directors; and expose the Company to existential jeopardy in its
17 business and licensing, which are fundamentally important to the Company’s existence and
18 value. Mr. Wynn’s reported decades of sustained egregious misconduct involving the Company
19 in his position and the Board’s and General Counsel’s intentional disregard of the misconduct, as
20 alleged herein, has caused substantial losses and injury to the Company, the value of the business
21 and expansion projects and the continued operation and licensure of the Company’s core
22 business. The actions and inactions by Defendants alleged herein constitute knowing and
23 intentional breaches of their fiduciary duties as Directors and/or Officers of the Company and
24 involved intentional misconduct, fraud or a knowing violation of law, for which Defendants are

1 liable personally to the Company. Further, the compensation and benefits paid to Mr. Wynn and
2 the directors during their fiduciary misconduct unjustly enriched them at the expense of the
3 Company.

4
5 **JURISDICTION**

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

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

17 **PARTIES**

18 3. Plaintiff Norfolk County Retirement System (“Plaintiff”) is an employee
19 retirement plan located in Massachusetts and has been a stockholder of Wynn Resorts
20 continuously at the time of fiduciary wrongdoing and breaches underlying the claims alleged
21 herein, and will continue to hold Wynn Resorts shares at all time relevant to this action.

23 4. Nominal Defendant Wynn Resorts, Limited is a Nevada corporation, with its
24 principal offices located in Las Vegas, Nevada. Wynn Resorts owns and operates Wynn Las
25 Vegas and Encore in Las Vegas, Nevada as well as Wynn Macau and the Wynn Palace located
26 in the Special Administrative Region of Macau in the People’s Republic of China. A luxury
27 retail Strip-front expansion, Wynn Plaza, is currently under construction in Las Vegas and is
28 scheduled to debut the third quarter of 2018. Wynn Resorts is currently constructing Wynn

1 Boston Harbor located in Everett, Massachusetts. As alleged herein, the Massachusetts gaming
2 authorities are investigating the Company's and Mr. Wynn's suitability as a gaming operator for
3 this property. The Company is publicly traded on the NASDAQ exchange under the ticker
4 symbol WYNN.
5

6 5. Defendant Stephen A. Wynn is a citizen of Nevada and the Chairman and Chief
7 Executive Officer of Wynn Resorts. Mr. Wynn co-founded Wynn Resorts in April 2000 with his
8 wife Elaine Wynn, and took it public in 2002. He has served as Chairman and Chief Executive
9 Officer of the Company since June 2002. Mr. Wynn has been an Executive Director, the
10 Chairman of the Board of Directors and Chief Executive Officer of Wynn Macau, Limited, a
11 majority owned subsidiary of the Company, since September 2009 and President of Wynn
12 Macau, Limited until January 2014. Mr. Wynn has also served as Director, Chairman and Chief
13 Executive Officer of Wynn Resorts (Macau) S.A. since October 2001. Mr. Wynn serves as an
14 officer and/or director of several subsidiaries of Wynn Resorts, Limited. During his time as
15 Chairman, Chief Executive Officer and President of Mirage Resorts, Mr. Wynn developed,
16 opened and operated The Mirage, Treasure Island and Bellagio in 1989, 1993 and 1998,
17 respectively. Mr. Wynn holds approximately 11.8% of the common stock of the Company. The
18 Company admits that Mr. Wynn is not independent. Upon information and belief, and at all
19 times relevant herein, Mr. Wynn is a resident of Clark County, Nevada.
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23 6. Defendant John J. Hagenbuch ("Hagenbuch") is a citizen of Idaho and has served
24 as a director of the Company since December 2012. Hagenbuch serves as the Chairman of the
25 Audit Committee and as a member of the Compensation Committee.

26 7. Defendant Dr. Ray R. Irani ("Irani") is a citizen of California and has served as a
27 director of the Company since October 2007. Irani serves as a member of the Corporate
28 Governance Committee.

1 8. Defendant Jay L. Johnson (“Johnson”) is a citizen of Idaho and has served as a
2 director of the Company since August 2016. Johnson serves as a member of the Compensation
3 Committee.

4
5 9. Defendant Robert J. Miller (“Miller”) is a citizen of Nevada and has served as a
6 director of the Company since October 2002. Miller serves as the Company’s Lead Independent
7 Director, Chairman of the Corporate Governance Committee and as a member of the Audit
8 Committee. Miller is also the Chairman of the Company’s Compliance Committee and serves as
9 the Company’s Compliance Director. On February 27, 2014, the Board acted to combine these
10 roles under the Chairman of the Company’s Compliance Committee. Upon information and
11 belief, and at all times relevant herein, Mr. Miller is a resident of Clark County, Nevada.

12
13 10. Defendant Patricia Mulroy (“Mulroy”) is a citizen of Nevada and has served as a
14 director of the Company since October 2015. Mulroy serves as a member of the Corporate
15 Governance Committee and also serves as a member of the Company’s Compliance Committee.
16 From July 2014 through October 2015, Ms. Mulroy served on the Nevada Gaming Commission.
17 Upon information and belief, and at all times relevant herein, Ms. Mulroy is a resident of Clark
18 County, Nevada.

19
20 11. Defendant Clark T. Randt, Jr. (“Randt”) is a citizen of Utah and has served as a
21 director of the Company since October 2015. Randt received a \$600,000 consulting agreement
22 in 2015 before his appointment to the Board. The Company admits that Defendant Randt is not
23 independent.

24
25 12. Defendant Alvin V. Shoemaker (“Shoemaker”) is a citizen of Idaho and has
26 served as a director of the Company since December 2002. Shoemaker serves as a member of
27 the Compensation Committee and as a member of the Audit Committee.
28

1 September 5, 2006 and is now the largest-grossing casino in the region. Encore, an extension to
 2 Wynn Las Vegas, broke ground on April 28, 2006. Encore at Wynn Macau, the company's
 3 second project on the Macau Peninsula, Macau, People's Republic of China, opened on April 21,
 4 2010. A second resort in Macau, Wynn Palace on the Cotai Strip, opened August 22, 2016.

5
 6 20. Mr. Wynn's 11.8% of the stock of the Company had a market value of
 7 approximately \$2.4 billion as of January 25, 2018. Mr. Wynn is considered by some as integral
 8 to the Company's success. Mr. Wynn is so ingrained into the identity of the Company that his
 9 signature is the Company's logo. In a recent securities filing citing possible risks to the business,
 10 the Company said, "If we lose the services of Mr. Wynn, or he is unable to devote sufficient
 11 attention to our operation for any reason, our business may be significantly impaired."

12
 13 21. In January 2010, Mr. Wynn and his wife of 46 years, Elaine Wynn, divorced.
 14 Following the divorce, Elaine Wynn received approximately 9% of the Company stock in the
 15 divorce agreement. The divorce agreement placed certain restrictions on both Wynns from
 16 selling any shares of the company without the other's consent and required them to vote in
 17 concert. In 2012 Elaine Wynn sued Mr. Wynn in federal court to alter their arrangement and give
 18 her the power to sell her shares at will, *Wynn Resorts Ltd v Okada et al*, Nevada District Court,
 19 Clark County, No. A-12-656710-B.

20
 21
 22 22. In response to Ms. Wynn's lawsuit, despite having co-founded Wynn Resorts and
 23 serving as a Board member for 12 years, the Wynn Resorts directors sided with Mr. Wynn, and
 24 ousted Ms. Wynn from the Company's Board in March 2015. According to the New York
 25 Times, Defendant Miller reported that the Board found Elaine Wynn's continuing lawsuit and
 26 apparent desire to sell made her unsuitable for Board service because they showed her to be
 27 acting out of self-interest and not the Company's interest. Ms. Wynn stated that she was ousted
 28 from the Board for asking too many questions about the Company's governance and losing Mr.

1 Wynn’s favor. Elaine Wynn launched a Proxy fight in an effort to have Company shareholders
2 vote her into an open Board seat, but lost that fight on April 24, 2015.

3 **The Board Has a History of Acquiescing to Mr. Wynn**

4 23. Five of the ten Board members have sat on the Board for more than 10 years.

5 24. The Board members serve staggered terms, meaning a minority of board members
6 come up for re-election each year, insulating the board from being ousted during a single proxy
7 fight.
8

9 25. In a court filing in May 2017, Elaine Wynn said, “The Wynn Board may be the
10 most compliant board of any major public company...In only three instances in the history of the
11 Company has a director voted against Mr. Wynn’s position on any issue.”

12 26. The Board has previously come under fire for its weak corporate governance and
13 deference to Mr. Wynn. Specifically, the Board has been criticized for overpaying Mr. Wynn
14 and other executives while allowing perks such as corporate jets and a land deal between the
15 Company and Wynn. In 2013, the New York Times reported that Mr. Wynn had enjoyed more
16 than a million dollars’ worth of personal travel in 2012 on the Company’s private jet.

17 27. In 2013, the Company allowed Mr. Wynn to purchase one of the Company’s
18 aircraft in exchange for giving up an option to buy 2 acres of land on Wynn Resorts’ golf course.

19 28. In 2014, a Company spokesperson said the Board “significantly restructured”
20 Wynn’s compensation, reducing his base salary and curtailing some benefits such as a housing
21 allowance and access to corporate aircraft for personal use.
22

23 29. Still, in 2015 and 2016, Institutional Shareholder Services, Inc. (“ISS”)
24 recommended withholding votes to re-elect members of the Board’s Compensation Committee.
25 ISS cited Mr. Wynn’s sizable pay packages compared with other CEOs and a severance
26 agreement equating to \$330 million that “exceeds the upper parameter of acceptable amounts,”
27
28

1 according to a report from ISS last year. Glass Lewis & Co, another advisory firm, also
2 recommended that shareholders vote against the Company’s compensation package, citing “poor
3 overall design” and “performance disconnect.” In fact, Glass Lewis gave the Company an “F”
4 for its pay-for-performance practices for the last two years.
5

6 30. The Company also leases Mr. Wynn’s personal art for \$1 a year, while picking up
7 the cost of insurance, security and taxes.

8 31. In February 2018 a Nevada District Court Judge allowed claims against certain
9 members of the Board based on their 2012 decision to remove Kazou Okada (“Okada”) from the
10 Board and redeem his shares to go forward. *Wynn Resorts v. Okada*, A-12-656710-B, Clark
11 County District Court, Nevada (Las Vegas). Mr. Wynn and Okada have been feuding for six
12 years, since Mr. Wynn pushed Okada out of Wynn Resorts, alleging he bribed Philippine gaming
13 officials. Okada has presented evidence that several directors intended to oust him from the
14 Company months before an investigation into Okada’s alleged misconduct was concluded.
15 Defendants Wynn, Wayson, Sinatra, Shoemaker, Miller and Irani are all Plaintiff-Counter-
16 Defendants in the suit which was originally brought by Wynn Resorts against Okada in February
17 2012.
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19

20 32. In 2017, ISS gave Wynn Resorts its worst ranking for governance risk.

21 33. Vanguard Group and Blackrock Inc. also point to a lack of current corporate
22 experience on the board. In addition to Defendant Mulroy, a former head of a regional water
23 authority, the Wynn Resorts Board includes a former Nevada Governor, a former U.S.
24 ambassador to China, the retired heads of three big businesses and three heads of smaller firms.
25 Defendant Miller, the lead independent director, has never worked for a business, according to
26 his Wynn Resorts biography.
27
28

1 34. The Wynn Resorts poor governance practices have also come under scrutiny from
 2 large investors. BlackRock Inc., which owns nearly 5% of the Company’s stock, voted against
 3 the Company’s pay package in 2017 and opposed reelection of certain directors. Vanguard,
 4 owner of 8% of the Company’s stock, has also voted against the Company’s pay practices and
 5 the reelection of certain directors, including Defendant Miller, who is also chairman of the
 6 Board’s corporate-governance committee.
 7

8 35. For the fiscal years ending December 31, 2009 through December 31, 2016, the
 9 Defendants have been paid the following compensation from the Company:
 10

Name	Total Compensation								Total
	2009	2010	2011	2012	2013	2014	2015	2016	
Wynn	\$8,385,831	\$14,615,779	\$16,474,707	\$17,743,434	\$19,601,381	\$25,396,896	\$20,680,391	\$28,156,985	\$151,055,404
Sinatra	\$10,450,253	\$2,127,440	\$2,137,076	\$2,212,698	\$2,580,881	\$4,325,954	\$2,339,156	\$2,638,740	\$28,812,198
Hagenbuch	-	-	-	\$377,186	\$367,870	\$374,029	\$384,561	\$400,973	\$1,904,619
Irani	\$377,500	\$393,637	\$324,912	\$405,459	\$369,758	\$360,529	\$366,811	\$362,406	\$2,961,012
Johnson	-	-	-	-	-	-	-	\$380,935	\$380,935
Miller	\$435,500	\$468,887	\$378,412	\$458,917	\$458,064	\$506,029	\$507,811	\$517,973	\$3,731,593
Mulroy	-	-	-	-	-	-	\$245,275	\$372,302	\$617,577
Randt	-	-	-	-	-	-	\$237,243	\$327,302	\$564,545
Shoemaker	\$393,000	\$421,637	\$329,412	\$402,959	\$376,064	\$372,529	\$375,811	\$384,473	\$3,055,885
Virtue	-	-	-	\$414,630	\$370,870	\$372,529	\$378,811	\$384,473	\$1,921,313
Wayson	\$403,000	\$433,637	\$342,912	\$420,959	\$392,564	\$389,029	\$382,061	\$384,473	\$3,148,635

18 **Mr. Wynn’s Alleged Pervasive Pattern of Egregious Misconduct Involving the Company**

19 36. On January 26, 2018, the Wall Street Journal published a report (“WSJ Report”)
 20 setting forth accounts of former employees of Mr. Wynn describing a decades long pattern of
 21 sexual misconduct with Company employees by Mr. Wynn. The Wall Street Journal reportedly
 22 contacted more than 150 people who work or had worked with Mr. Wynn. Most of those who
 23 spoke with the Journal stated they worried that doing so could hurt their future employment
 24 options because of Mr. Wynn’s influence in the casino industry.
 25

26 37. Among other allegations, the WSJ Report stated that in 2005, a manicurist who
 27 worked at Wynn Las Vegas was forced by Mr. Wynn to have sex with Mr. Wynn after giving
 28 him a manicure in his office suite. According to the WSJ Report, Mr. Wynn repeatedly pressured

1 the manicurist to take her clothes off and lie on a massage table, despite the manicurist’s protests
 2 that she did not want to have sex and was married, and Mr. Wynn persisted in his demands.

3 38. According to the WSJ Report, following the encounter, the manicurist returned to
 4 the on-site salon visibly distressed and informed her supervisor of what occurred, and the
 5 supervisor filed a detailed report to the Company’s human-resources department recounting the
 6 episode. The salon manager said she got a call from an executive, Doreen Whennen, castigating
 7 her for submitting the filing to HR and saying she should have taken the matter directly to Ms.
 8 Whennen. The former manager said no one followed up with her about the matter. The
 9 manicurist soon left the Company and Wynn ultimately paid her a \$7.5 million settlement. The
 10 Las Vegas Review-Journal reported that the \$7.5 million settlement involved a paternity claim
 11 by the manicurist.
 12

13 39. The Las Vegas Review-Journal reported that Wynn paid the settlement from his
 14 personal funds and deliberately kept it secret so it would not distract from the recent opening of
 15 the Wynn Las Vegas and the impending opening of Wynn Macau.
 16

17 40. Allegations of such egregious fiduciary misconduct by the Company’s Chairman
 18 and CEO involving the Company could not be ignored without an investigation by fiduciaries
 19 acting in good faith based on any proper rational business purpose. The Wynn Board knowingly
 20 failed to investigate the credible allegations and continued to support Mr. Wynn’s positions of
 21 leadership, compensation and suitability as a gaming operator. The Las Vegas Review-Journal
 22 also reported that Elaine Wynn learned of the incident in 2009 while preparing documents for
 23 her divorce filing. Elaine Wynn then spoke with two company officials who already had
 24 knowledge of the allegations and shared the information with about the conversations with her
 25 divorce lawyers. Likewise, the WSJ Report stated that Elaine Wynn raised the issue internally
 26 when she learned of it. A CNBC article reported that Elaine Wynn brought it to the attention of
 27
 28

1 a representative of the Board immediately after learning about it. Ms. Wynn herself was a
 2 member of the Board in 2009.

3 41. In addition, the allegations of egregious misconduct by Mr. Wynn involving the
 4 Company were referenced in the lawsuit in which Elaine Wynn sought to lift restrictions on the
 5 sale of her stock in Wynn Resorts. In the lawsuit between the Wynns, Ms. Wynn cited a
 6 “multimillion dollar payment” made by Mr. Wynn following allegations he had engaged in
 7 “serious misconduct” on company property against an employee. A filing said Ms. Wynn had
 8 learned of the settlement in 2009. The amended complaint in the litigation alleges that Sinatra,
 9 the Company’s General Counsel, knew about the settlement. Elaine Wynn’s attorneys have
 10 argued that in making the settlement in 2005 without telling the Board, Mr. Wynn recklessly
 11 exposed the Company and other directors to liability. The Board, however, eventually learned of
 12 the allegations of egregious misconduct involving the Company. Ms. Wynn’s lawsuit also
 13 accuses Mr. Wynn of using the Company “to fund his lavish lifestyle and personal politics” and
 14 displaying “reckless risk-taking behavior” that places the Company in jeopardy and has exposed
 15 it to legal challenges. Thus, regardless of whether Mr. Wynn initially concealed the settlement
 16 and allegations of egregious misconduct involving the Company, the Board knew of the
 17 settlement and allegations of patently egregious misconduct involving the Company by at least
 18 2015 and failed to act and continued to support and recommend to the stockholders Mr. Wynn’s
 19 continued leadership and compensation. The Board knowingly failed to investigate the
 20 allegations of patently egregious misconduct by the Chairman and CEO and Mr. Wynn’s
 21 suitability for his fiduciary positions and regulatory compliance and his suitability as a gaming
 22 operator. Knowing failure to act by the Board on the allegations of such egregious misconduct
 23 involving the Company constituted a knowing and intentional violation of its fiduciary duties to
 24 the Company for which the Director Defendants are liable.

1 42. The Wall Street Journal reportedly interviewed dozens of people who have
 2 worked at Wynn’s casinos and described a pattern of sexual misconduct. They told of “behavior
 3 that cumulatively would amount to a decades-long pattern of sexual misconduct” by Mr. Wynn.
 4
 5 The WSJ Report states that some of the interviewees described Mr. Wynn as pressuring
 6 employees to perform sex acts. The former employees said that their awareness of Mr. Wynn’s
 7 power in Las Vegas, combined with the knowledge that the jobs they held were amount the best-
 8 paying available there, added up to a feeling of dependence and intimidation when Mr. Wynn
 9 made requests of them.

10
 11 43. Former employees reported that they have resorted to entering fake appointments
 12 in the books to help other female workers get around a request for services in Mr. Wynn’s office
 13 or arranged for others to pose as assistants so they wouldn’t be alone with him. They told of
 14 female employees hiding in the bathroom or back rooms when they learned he was on the way to
 15 the salon. “Everybody was petrified,” said Jorgen Nielsen, a former artistic director at the salon.
 16 Mr. Nielsen said he and others repeatedly told high-level company executives Mr. Wynn’s
 17 sexual advances were causing a problem, but “nobody was there to help us.”

18
 19 44. One former massage therapist at the Wynn Las Vegas spa said that several years
 20 ago, when Mr. Wynn was booking multiple appointments a week with her in the private massage
 21 room in his office suite, he would continually adjust a towel to expose himself. Then at one
 22 session, she said, he threw it off and said, “Just get this thing off of me.” She said he wouldn’t let
 23 her use a towel to cover his genitals after that, contrary to state licensing regulations, and he also
 24 began rubbing her leg while she massaged him. After a few weeks, the former employee
 25 repeatedly said Mr. Wynn instructed her to massage his penis to climax. The woman said that
 26 because he was her boss, she felt she had no choice but to agree to some of Mr. Wynn’s requests,
 27 and this specific request became a frequent part of the massage sessions for several months. In
 28

1 subsequent sessions, the woman said, Mr. Wynn asked her to perform oral sex on him and
 2 described in detail how he wanted it done, which she refused.

3 45. Several former employees have also reported that Mr. Wynn often walked around
 4 some areas of the complex in extremely short shorts without underwear, and he would sit in the
 5 salon to get pedicures in such a way that his genitals were exposed. One former employee
 6 reported that Mr. Wynn asked if he could kiss her. The former employee laughed off the request,
 7 hoping to leave without upsetting him. However, on a subsequent occasion, which she was
 8 working in the casino, Mr. Wynn asked the former employee a vulgar question. She said that
 9 she again laughed off the proposition. Mr. Wynn continued the inappropriate actions rubbing
 10 himself in front of the former employee and making comments about things he would like to do
 11 with her sexually, and grabbing her by the waist and telling her to kiss him. After further pursuit,
 12 this woman reportedly said, Mr. Wynn stopped. The former employee’s supervisor and another
 13 colleague confirmed being told of these advances in detail at the time. The employee and the
 14 supervisor said they sought to manage the situation rather than report it because they believed
 15 there would be repercussions if they did.

16 46. The WSJ Report also uncovered evidence of harassment by Mr. Wynn dating
 17 back decades at his former companies. Dennis Gomes, who was an executive at the Golden
 18 Nugget in Las Vegas when Mr. Wynn was running that casino decades ago, said in a deposition
 19 in an early-1990s lawsuit that Mr. Gomes “routinely received complaints from various
 20 department heads regarding Mr. Wynn’s chronic sexual harassment of female employees,”
 21 according to a court filing that summarized his testimony. In the suit over Mr. Gomes’s
 22 departure to work for a Trump casino, Mr. Gomes described what he called a “disgraceful
 23 pattern of personal and professional conduct” that he said included Mr. Wynn’s directing him to
 24 get the home phone numbers of casino cocktail waitresses. Mr. Gomes died in 2012. His widow,
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 26
 27
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1 Barbara Gomes, in an interview for the WSJ Report, said, “I remember him saying, ‘I’m not his
2 pimp,’ ” referring to Mr. Wynn.

3 **The Board’s Intentional Inaction Regarding Allegations of Patently Egregious Misconduct**
4 **Involving the Company**

5 47. Mr. Wynn’s conduct and repeated pattern of sexual harassment was pervasive and
6 well known. As alleged above, the Board of Directors knew the allegations of egregious
7 misconduct as a result of Elaine Wynn, then a Company Board member, learning of the
8 misconduct in 2009 and alerting a representative of the Board regarding the 2005 \$7.5 million
9 settlement. In addition, Mr. Wynn’s conduct was referenced in the lawsuit filed by Elaine Wynn
10 that the Board cited as the reason for removing her from the Board. Moreover, numerous former
11 employees have stated that they reported the sexual misconduct to management of Wynn
12 Resorts. In fact, a Company spokesman confirmed that the Board knew of allegations and when
13 questioned whether the Board investigated the allegations when it learned of them, did not
14 respond to the question. In addition, Company counsel stated that the Company intentionally did
15 not disclose the \$7.5 million settlement to Massachusetts gaming regulators in the licensing
16 process which is continuing for the Wynn Boston Harbor. The Board knowingly turned a blind
17 eye to allegations of patently egregious misconduct by Mr. Wynn involving the Company, taking
18 no action to protect the Company and its suitability for regulatory compliance and to discharge
19 the directors’ known fiduciary duties to the Company to do otherwise until the WSJ Report shed
20 light to the public, and even then the Board is merely conducting an internal investigation.
21 Additionally, the Board continued to approve of licensing applications to gambling authorities
22 that omitted Wynn’s conduct as the Board continued to take no action to investigate the
23 allegations of egregious misconduct involving the Company.
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1 48. In the wake of the WSJ Report, the Board, saying it is “deeply committed to
2 ensuring the safety and wellbeing” of all employees reportedly formed a special committee
3 comprised of allegedly independent directors to investigate the allegations. An independent
4 Board acting in good faith to protect the Company would have engaged a truly independent
5 investigation. Defendant Mulroy will serve as chair of the special committee. Defendants
6 Hagenbuch and Johnson will also serve on the special committee. The creation of a special
7 committee in response to the WSJ Report evidences that the Wynn Board has not previously
8 investigated allegations of Mr. Wynn’s patently egregious misconduct involving the Company
9 and knowingly turned a blind-eye as the directors, Mr. Wynn and Ms. Sinatra continued to reap
10 substantial compensation and benefits at the Company’s expense and the Company continued
11 with a cancerous existential threat from its Chairman and CEO.

14 49. The Special Committee has hired O’Melveny & Myers LLP. O’Melveny said on
15 February 2, 2018 it would create a telephonic and internet-based reporting system for current and
16 former Wynn employees to provide information that could be relevant to the investigation of
17 Wynn. Again, however, the Board will control this information.

19 50. On October 4, 2002, Wynn Resorts entered into an Employment Agreement with
20 Mr. Wynn which contemplated Mr. Wynn’s employment as the Company’s Chief Executive
21 Officer for a term of five (5) years (the “Employment Agreement”). Mr. Wynn’s compensation
22 under the Employment Agreement included, among other things, an annual base salary that
23 increased from \$1,250,000 to \$2,750,000 per annum, a bonus that would be determined at the
24 Board’s discretion, a Company paid automobile and use of the Company’s aircraft subject to a
25 time-sharing agreement which required Mr. Wynn to reimburse the Company for the lesser of
26 the direct costs incurred in using the aircraft or the amount required by applicable federal
27 aviation regulations.
28

1 51. The Employment Agreement can be terminated upon the occurrence of certain
2 events, including:

- 3 • Written notice by the Company to Mr. Wynn of the termination of the
4 Employment Agreement upon the discharge of Mr. Wynn for Cause; and
- 5 • Written notice by the Company to Mr. Wynn of the termination of the
6 Employment Agreement following a denial or revocation of any license,
7 registration, permit or other approval issued by a Gaming Authority.

8 52. The Employment Agreement defines a termination for Cause as including:

- 9 • A willful and knowing material misrepresentation to the Board;
- 10 • A willful violation of material policy of the Company, which does or could result
11 in material harm to the Company’s or the Company’s reputation; and
- 12 • Mr. Wynn’s material violation of a statutory or common law duty of loyalty or
13 fiduciary duty to the Company.

14 53. The Employment Agreement has been amended seven (7) times since the
15 Employment Agreement was initially executed. These amendments have resulted in the
16 following relevant changes to the terms of the Employment Agreement.

- 17 • The Employment Agreement shall terminate on October 24, 2022;
- 18 • Mr. Wynn’s base salary is \$2,500,000 per annum;
- 19 • Mr. Wynn shall be entitled to use the Company’s aircraft without a requirement
20 to reimburse the Company.

21 54. Under the terms of the Employment Agreement and the amendments thereto, if
22 Mr. Wynn is terminated for losing a license with a gaming authority, the Company will be
23 obligated to pay Mr. Wynn roughly \$110 million.

24 55. The Board has allowed and endorsed Mr. Wynn to continue in his positions as
25 both Chairman and CEO and to reap the lavish compensation and benefits bestowed on him by
26 the Board.

1 **Defendants Concealed Wynn’s Actions From Stockholders and Regulators And Promoted**
2 **The Company’s Controls and Themselves**

3 56. The Wynn Resorts directors assured stockholders in seeking their votes to be
4 elected to continue for another term on the Board and to justify the compensation and benefits
5 they awarded themselves, that the Board and management was “committed to sound and
6 effective corporate governance,” as stated in the Wynn Resorts’ 2017 Proxy Statement (“2017
7 Proxy”). Specifically, the Wynn Resorts Board touted that the “Company has established a
8 comprehensive corporate governance framework, with policies and programs designed not only
9 to satisfy the extensive regulatory requirements applicable” to the Company’s business but also
10 to build value for stockholders and promote the vitality of the Company for employees.

11
12
13 57. The Wynn Resorts Board referred to its extensive industry and regulatory
14 experience to support its representation to the Company’s stockholders that the Company had a
15 comprehensive corporate governance and risk compliance programs to protect the Company. In
16 fact, Miller’s and Mulroy’s biographies specifically highlight their experience with the Nevada
17 Gaming Commission as reasons for their position on the Board Defendant Miller’s position as
18 Lead Independent Director.

19
20 58. In the Compensation Discussion and Analysis, the 2017 Proxy highlighted the
21 Company’s recent expansion and expected future value from expansion as the reasons why the
22 Company’s Board and executives were entitled to their lavish compensation and benefits and
23 continuation in their positions. According to the 2017 Proxy, the Compensation Committee
24 viewed 2016 as a successful year in part due to the opening of the Cotai area of Macau Casino
25 and significant investments designed to drive the Company’s future growth. The key
26 accomplishments for 2016 underscored by the Board included: (i) the recent opening of the
27 Wynn Palace in Macau which generated in excess of \$100 million in its first 132 days of
28

1 operation and the Company expected to gain market share throughout 2017; and (ii) the
2 commencement of construction activities on the Wynn Boston Harbor, which was scheduled to
3 open in mid-2019.

4
5 59. The key accomplishments came at a great expense to and investment of capital by
6 the Company. For the year ended December 31, 2016, Wynn Resorts spent over \$1.23 billion in
7 capital expenditures (“CAPEX”) to complete the Wynn Palace (\$838.3 million) and Wynn
8 Boston Harbor (\$212.2 million). In 2015, Wynn Resorts spent \$1.57 billion in CAPEX to build
9 the Wynn Palace. As of September 30, 2017, Wynn Boston Harbor has already accrued an
10 additional \$650.3 million in CAPEX.

11
12 60. The Board, however, knowingly and intentionally did not employ the corporate
13 governance controls and framework to investigate the allegations and protect the Company and
14 hid Mr. Wynn’s misconduct involving the Company from the stockholders and regulators. As
15 discussed above, the Board knew of allegations of egregious misconduct by Mr. Wynn, yet did
16 nothing to address the existential risks posed to the Company or to prevent Defendant Wynn
17 from continuing with egregious misconduct. Moreover, as a result of the extensive industry
18 experience highlighted in the 2017 Proxy, the Board knew that the allegations of patently
19 egregious misconduct involving the Company detailed in the WSJ Report and previously known
20 to the Board posed as an existential threat to the Company that could result in, among other
21 things, the loss of current or rejection of future gaming licenses.

22
23
24 61. The Board failed to disclose to stockholders that all of future expansion and
25 revenue touted in the 2017 Proxy was in jeopardy and may never be recovered, as discussed
26 below, due to Mr. Wynn’s conduct and the Board’s failure to address or disclose the conduct to
27 the licensing and gaming regulators.
28

1 **Defendants’ Knowing and Intentional Breaches of Fiduciary Duty Have Resulted in and**
 2 **Exacerbated Injury to the Company**

3 62. As detailed below, Defendants’ knowing and intentional breaches of duty have
 4 caused significant losses and harm to date, with the potential for more.

5 63. Shares of Wynn Resorts fell 10% on January 26, 2018, the day the WSJ Report
 6 was released. On the following Monday, shares fell an additional 9.3%.

7
 8 64. On January 30, 2018, Standard Poor’s Global Rating revised its outlook for Wynn
 9 Resorts to “negative” from “stable.” The ratings downgrade reflected the “Significant
 10 uncertainty” over the resolution of the various investigations into Wynn’s misconduct discussed
 11 below. The ratings agency further stated that the misconduct allegations “could impair the
 12 Company’s brand and ability to maintain or review its gaming licenses.”

13
 14 65. Joseph Greff, an analyst with J.P. Morgan, projected shares could drop to around
 15 the \$150 level before the fallout is over. “Steve’s name is on each one of his resorts in Las Vegas
 16 and Macau and therefore they are potentially susceptible to downward swings in patronage,”
 17 Greff said in his report. “Such allegations (in the Journal article) can’t be helpful to Wynn in
 18 competitive integrated resort license and development globally, such as in Japan, or in gaming
 19 license renewals in Macau and Nevada.”

20
 21 66. The WSJ Report has already triggered investigating by gaming regulators in
 22 Nevada, Massachusetts and Macau.

23
 24 67. On January 30, 2018, after a preliminary review of the accusations against Mr.
 25 Wynn, the Nevada gambling regulators opened a formal investigation into the sexual-misconduct
 26 allegations. “Nevada regulators have a broad range of options when it comes to potential
 27 disciplining of a licensee,” AG Burnett, former chairman of the Nevada Gaming Control Board,
 28 the state’s main regulatory body, stated. “These include things like complaints, fines, and even

1 potentially revocation.” Regulation 5, a chapter in Nevada casino law, says regulators must
2 require that all establishments operate in a “manner suitable to protect the public health, safety,
3 morals, good order and general welfare” of state inhabitants. In 2016, Nevada regulators
4 required Lee Amaitis, the chief executive of CG technology, formerly known as Cantor Gaming,
5 step down to settle claims that the sports betting company underpaid customers. The Nevada
6 Gaming Control Board has the legal power to conduct an investigation and bring the results to
7 the three-member board, who are gubernatorial appointees.
8

9
10 68. Gaming regulators in Massachusetts, where Wynn Resorts is building a \$2.4
11 billion property on Boston Harbor, are also investigating the allegations. Massachusetts
12 gambling commissioners met on January 31, 2018 to discuss the allegations against Mr. Wynn.
13 Wynn Resorts was granted a license based on a 2011 state law which required the gambling
14 commission to consider the “integrity, honesty, good character and reputation of the applicant”
15 when considering bids for a gambling license. The law also notes that licensees “shall have a
16 continuing duty to maintain their integrity and financial stability.” Elaine Driscoll, a state
17 gambling-commission spokeswoman, said the 2005 settlement and the alleged sexual
18 misconduct weren’t reported by Wynn Resorts in its application for the license, awarded in
19 September 2014. The Las Vegas Review-Journal reported that lawyers from Wynn resorts
20 confirmed that the \$7.5 million settlement “was not disclosed to investigators on advice of
21 counsel.” This concession demonstrates that the Company, including Ms. Sinatra, knew of the
22 allegations of egregious misconduct involving the Company and actively concealed it from the
23 Massachusetts gaming regulators. Wynn Resorts was granted a 15-year license to operate the
24 sole eastern Massachusetts resort casino license subject to a continuing duty to maintain integrity
25 and suitability, which is now in jeopardy.
26
27
28

1 69. Ms. Driscoll said the gambling commission opens a review if it becomes aware
 2 through media reports, other regulators or other sources “that a licensee or qualifier’s suitability
 3 should be reviewed.” Massachusetts Governor Charlie Baker has called the allegations against
 4 Wynn “appalling and disgraceful,” and has stated that he doesn’t believe Wynn Resorts meets
 5 the state regulator’s suitability standard, if the allegations are true. The Company’s counsel
 6 stated that the \$7.5 million settlement was not disclosed in the licensing process because it was
 7 not requested.
 8

9 70. The Boston project, scheduled to open in 2019, was expected to generate \$252
 10 million in earnings before interest, taxes, depreciation and amortization for Wynn Resorts in the
 11 first full year of operation in 2020, equal to about 9% of earnings from the Company’s casinos
 12 world-wide, according to J.P. Morgan estimates. The Company said it had incurred \$1.13 billion
 13 in total project costs, as of the end of last year.
 14

15 71. Macau’s government, through its Gaming Inspection and Coordination Bureau
 16 (“DICJ”), has met with local Wynn management to seek information. After the meeting the DICJ
 17 issued a statement stressing the importance of major shareholders, directors and key employees
 18 of casino operator meeting suitable qualifications. The Wynn Macau generates more than 70%
 19 of the Company’s business.
 20

21 72. On January 27, 2018, Mr. Wynn resigned as finance chairman for the Republican
 22 National Committee. The Republican Governors Association has said it will return the \$100,000
 23 in donations it received over the past three years from Wynn Resorts.
 24

DERIVATIVE ALLEGATIONS

25 73. Plaintiff brings this action derivatively in the right and for the benefit of Wynn
 26 Resorts to redress the knowing and intentional breaches of fiduciary duty and other violations of
 27 law by Defendants as alleged herein. Plaintiff is a current stockholder of the Company and was
 28

1 a stockholder during fiduciary misconduct alleged herein underlying the claims, and has held
2 Wynn Resorts continuously. Plaintiff will continue to hold Wynn Resorts through the resolution
3 of this action.

4
5 74. Plaintiff will adequately and fairly represent the interest of Wynn Resorts and its
6 public stockholders in enforcing and prosecuting the Company’s rights, and Plaintiff has retained
7 counsel experienced in prosecuting this type of derivative action.

8 **DEMAND FUTILITY ALLEGATIONS**

9 75. Plaintiff brings this action derivatively to redress injuries suffered by the
10 Company as a direct result of the knowing and intentional breaches of fiduciary duty by all
11 members of the Board. As of the date of the filing of this action, at least a majority of the ten
12 current Board members are not disinterested and independent, as alleged below. As such,
13 Plaintiff has not made a demand on the Board to bring suit asserting the claims set forth herein
14 because pre-suit demand would have been futile as a majority of the Board is not disinterested
15 and independent, thus, is excused as a matter of law.

16
17
18 **Demand Is Futile as to All of the Defendants Because Their Actions and Inactions
19 Constituted Knowing and Intentional Breaches of Duty for Which They Face a Substantial
Likelihood of Liability**

20 76. As a result of Director Defendants’ bad faith intentional misconduct, as described
21 herein, a majority of the Board knowingly and intentionally breached their fiduciary duties to the
22 Company and did not exercise good faith proper business judgment to protect the best interests
23 of the Company by knowingly and intentionally disregarding, failing to investigate and
24 concealing the allegations of patently egregious misconduct by the Chairman and CEO involving
25 the Company, faces a substantial likelihood of personal liability for knowing and intentional
26 breaches of duty and is therefore unable to independently investigate or prosecute the claims
27 alleged herein on behalf of the Company.
28

1 77. Defendants knowingly and intentionally violated their fiduciary duties by, among
 2 other things, knowingly and intentionally failing to act in the face and with knowledge of
 3 credible allegations of patently egregious and pervasive misconduct by the Company’s founder,
 4 Chairman and Chief Executive Officer, involving the Company, and involving the Company’s
 5 regulatory compliance and suitability. The Board’s knowing and intentional misconduct
 6 constituted knowing and intentional fiduciary misconduct and violation of law for which
 7 Defendants have personal non-exculpated liability under Nevada law.
 8

9 **Demand Is Futile as to All Defendants Because they Lack Independence from Stephen**
 10 **Wynn, Who Is Interested and Who Dominates and Controls the Board**

11 78. Demand is further excused because a majority of the Board is not independent.
 12 An examination of the Board at Wynn Resorts explains why the Board took no action in the face
 13 of this crisis. A majority of the Board members are beholden to Mr. Wynn or have a close
 14 personal relationship with Mr. Wynn and have a history of acquiescence to Mr. Wynn’s. This
 15 lack of independence is further evidenced by their knowing and intentional failure to investigate
 16 and knowing and intentional concealment of alleged egregious misconduct involving the
 17 Company which was obviously in violation of their duties as fiduciaries.
 18

19 79. The Company’s proxy statement, filed March 10, 2017, acknowledges that
 20 Defendants Mr. Wynn and Randt are not independent directors because they do not meet the
 21 independence criteria of the NASDAQ listing standards. Director independence under
 22 NASDAQ and under Nevada demand futility law is virtually identical. Therefore, the Company
 23 has essentially conceded that demand is futile as to Defendants Wynn and Randt.
 24

25 80. The principal professional occupation of Mr. Wynn is his employment with Wynn
 26 Resorts, pursuant to which he has received and continues to receive substantial monetary
 27 compensation and other benefits. Accordingly, Mr. Wynn lacks independence from the
 28

1 remaining members of the Board due to his interest in maintaining his executive positions at
2 Wynn Resorts and avoiding personal legal exposure. This lack of independence renders
3 defendant Mr. Wynn incapable of impartially considering a demand to commence and
4 vigorously prosecute this action. In 2016, Mr. Wynn Resorts paid Mr. Wynn \$28,156,985 in
5 total compensation.
6

7 81. Wynn Resorts is run and dominated by Mr. Wynn and all the directors are loyal to
8 him. As a former Board member explains, “Mr. Wynn has run Wynn Resorts as a personal
9 fiefdom, packing the Board with friends who do his personal bidding, and paying key executives
10 exorbitant amounts for their unwavering fealty.” Mr. Wynn’s domination over the Wynn
11 Resorts’ Board is evidenced by, among other things, a longstanding voting agreement dating
12 back to April 2002 that ensures that a majority of the Wynn Resorts’ Board would be comprised
13 of candidates specifically chosen by Mr. Wynn. On January 6, 2010, Mr. Wynn, Elaine Wynn
14 and Kazou Okada agreed “to vote all Shares held by them... in a manner so as to elect to Wynn
15 [Resorts’] Board of Directors each of the nominees contained on each and every slate of
16 directors endorsed by SAW [Wynn].” As a result of this agreement, no person can serve on the
17 Wynn Resorts’ Board unless they are chosen by Stephen Wynn, even though the Board’s
18 Nominating and Governance Committee is ostensibly charged with choosing candidates for
19 Wynn Resorts’ Board. Each member of the Board has been hand-picked by Mr. Wynn, is
20 virtually guaranteed election to the Board by virtue of the voting agreement and, therefore, is
21 beholden to Mr. Wynn for his or her nomination and selection to the Board and will not take
22 action against him. Elaine Wynn has corroborated the control that Mr. Wynn has over the Board
23 when she stated: “The Wynn Board may be the most compliant board of any major public
24 company...In only three instances in the history of the Company has a director voted against Mr.
25 Wynn’s position on any issue.”
26
27
28

82. The table below summarizes the substantial total compensation awarded to, earned by or paid to each of the non-employee directors for the fiscal year ended December 31, 2016.

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$) ⁽¹⁾	Option Awards (\$) ⁽²⁾⁽³⁾	All Other Compensation (\$) ⁽⁴⁾	Total (\$)
John J. Hagenbuch	\$ 144,000	\$249,963	—	\$ 7,010	\$400,973
Dr. Ray R. Irani	\$ 105,433	\$249,963	—	\$ 7,010	\$362,406
Jay L. Johnson ⁽⁵⁾	\$ 31,935	—	\$349,000	—	\$380,935
Robert J. Miller ⁽⁶⁾	\$ 261,000	\$249,963	—	\$ 7,010	\$517,973
Patricia Mulroy	\$ 118,500	\$249,963	—	\$ 3,839	\$372,302
Clark T. Randt, Jr.	\$ 73,500	\$249,963	—	\$ 3,839	\$327,302
Alvin V. Shoemaker	\$ 127,500	\$249,963	—	\$ 7,010	\$384,473
J. Edward Virtue	\$ 127,500	\$249,963	—	\$ 7,010	\$384,473
D. Boone Wayson	\$ 127,500	\$249,963	—	\$ 7,010	\$384,473

83. Mr. Wynn was personally responsible for the alleged patently egregious and intentional fiduciary misconduct and therefore lacks disinterestedness because he faces a substantial likelihood of liability for these intentional breaches of fiduciary duty and violations of law.

84. A majority of the Board lacks independence from Wynn because of a multitude of interrelated business, professional, and personal relationships that will prevent (and have previously prevented) the Defendants from taking the necessary and proper action on behalf of Wynn Resorts. Indeed, the history of many of Wynn's relationships with Defendants demonstrates his ability to use his power and wealth to control them and others.

Defendant Hagenbuch

85. Defendant Hagenbuch could not comply with the fiduciary duties to independently consider a pre-suit demand to bring the claims alleged herein because he was hand-picked by Mr. Wynn, who is directly implicated in the improper and illegal acts giving rise

1 to this complaint, to serve as a director of the Company. Because Defendant Hagembuch was
 2 personally selected for board membership by Mr. Wynn, he is incapable of exercising
 3 independent objective judgment in deciding whether to bring this action. Moreover, in the April
 4 2015 proxy fights, Mr. Wynn supported Hagenbuch for reelection over Elaine Wynn.
 5 Hagenbuch was ultimately reelected while Elaine Wynn lost her seat.
 6

7 **Defendant Irani**

8 86. Defendant Irani could not comply with the fiduciary duties to independently
 9 consider a pre-suit demand to bring the claims alleged herein because he was hand-picked by
 10 Mr. Wynn, who is directly implicated in the improper and illegal acts giving rise to this
 11 complaint, to serve as a director of the Company. Because Defendant Irani was personally
 12 selected for board membership by Mr. Wynn, he is incapable of exercising independent
 13 objective judgment in deciding whether to bring this action.
 14

15 87. Defendant Irani has been a member of the Wynn Resorts Board since October
 16 2007. During that same time period, Irani served as a director of TCW Group, Inc., a subsidiary
 17 of SocieteGenerale, a company that was instrumental in arranging and providing funding to
 18 Wynn Resorts for its Macau facilities. For example, SocieteGenerale served as the lead arranger
 19 for Wynn Macau’s \$1.55 billion financing in June, 2007.
 20

21 88. In March 1987, Defendant Irani joined the board of directors for the parent
 22 company of Mr. Wynn’s resort-casinos and served until that company was bought out in May
 23 2000.
 24

25 **Defendant Johnson**

26 89. Defendant Johnson could not comply with the fiduciary duties to independently
 27 consider a pre-suit demand to bring the claims alleged herein because he was hand-picked by
 28 Mr. Wynn, who is directly implicated in the improper and illegal acts giving rise to this

1 complaint, to serve as a director of the Company. Because Defendant Johnson was personally
 2 selected for board membership by Mr. Wynn, he is incapable of exercising independent
 3 objective judgment in deciding whether to bring this action.

4
 5 **Defendant Miller**

6 90. Defendant Miller’s longstanding relationship with Wynn also strongly supports
 7 the inference that Wynn has the ability to control Defendant Miller. Further, Miller’s strong and
 8 direct business ties to Wynn Resorts renders him an interested directors. From November 2004
 9 to at least September 20, 2012, Defendant Miller is or was a partner in Nevada Rose, LLC, the
 10 parent company to a group of companies engaged in importing and selling rose nectar, including
 11 in Macau. Products imported by Nevada Rose, LLC are used at Wynn Resorts giving Miller a
 12 material financial interest in the business relationship. From 2000 to at least September 20,
 13 2012, Defendant Miller has been a director of International Gaming Technology (“IGT”), a Las
 14 Vegas corporation that engages in the design, development, manufacture, and marketing of
 15 casino games, gaming equipment, and systems technology for land-based and on-line social
 16 gaming and wagering markets worldwide. IGT and Wynn Resorts have a long-standing and
 17 ongoing business relationship. For example, in 2005, an estimated 70% of the Wynn Las Vegas
 18 gaming floor was comprised of IGT machines. More recently, Wynn voluntarily interjected
 19 himself into an IGT proxy fight in defense of ex-IGT CEO Charles Mathewson. In February
 20 2013, Wynn issued a statement in support of Mathewson, professing that Wynn has “known
 21 Mathewson as a businessman and friend for over 30 years.” Mr. Wynn said his casinos bought
 22 slot machines from IGT during Mathewson’s 17 years as Chairman and CEO, during which time
 23 Defendant Miller was a director. IGT expanded into the Macau gaming market around the same
 24 time Wynn Resorts expanded into that very same market. In November 2005, Wynn Macau
 25 reported running an IGT casino system: Wynn Macau had “chosen MICros opera Enterprise as
 26
 27
 28

1 its hotel solution with OPERA Property Management and OPERA Gaming Integration to its IGT
 2 casino system.” Given Miller’s direct investment in Wynn Macau through IGT, and given that
 3 IGT provided the casino system for Wynn Macau, Miller has a financial interest and conflicting
 4 fiduciary duties in decisions exposing Mr. Wynn to personal liability and sanctions.
 5

6 91. Additionally, multiple accounts support the conclusion that Mr. Wynn played a
 7 significant role in Miller’s political success. For example, Miller’s 1994 primary challenger in
 8 the 1994 Nevada gubernatorial election, Las Vega Mayor Jan Laverty Jones, said that in 1993
 9 Wynn “tried to discourage her” from challenging Miller in a primary. When she reminded Wynn
 10 that she and Wynn had been friends for a long time, he replied saying “yes, and we will continue
 11 to be [friends] unless your run against Bob Miller.” She eventually lost to Miller by a wide
 12 margin in the primary. Thirteen of the fifteen top contributors to Miller’s 1994 reelection
 13 campaign were (mostly Las Vegas-based) casino companies or their top executives. Wynn alone
 14 donated \$70,000, exploiting a loophole across four subsidiaries. Ultimately, the gaming industry
 15 as a whole accounted for 54% and 43% of Miller’s gubernatorial campaign funds in 1990 and
 16 1994 runs, respectively. Defendant Miller ultimately won the 1994 gubernatorial election.
 17

18
 19 92. In 1997, Defendant Miller testified at a trial in a libel case Mr. Wynn had brought
 20 against the author of an unauthorized biography. In his testimony, Miller described himself as “a
 21 23 year friend of Wynn’s.” Miller and Mr. Wynn’s close relationship thus dates back more than
 22 40 years.
 23

24 **Defendant Mulroy**

25 93. Defendant Mulroy could not comply with the fiduciary duties to independently
 26 consider a pre-suit demand to bring the claims alleged herein because she was hand-picked by
 27 Mr. Wynn, who is directly implicated in the improper and illegal acts giving rise to this
 28 complaint, to serve as a director of the Company. Because Defendant Mulroy was personally

1 selected for board membership by Mr. Wynn, she is incapable of exercising independent
 2 objective judgment in deciding whether to bring this action.

3 **Defendant Randt**

4
 5 94. As discussed above, Defendant Randt is not an independent director because he
 6 does not meet the independence criteria of the NASDAQ listing standards. Additionally,
 7 Defendant Randt could not comply with the fiduciary duties to independently consider a pre-suit
 8 demand to bring the claims alleged herein because he was hand-picked by Mr. Wynn, who is
 9 directly implicated in the improper and illegal acts giving rise to this complaint, to serve as a
 10 director of the Company. Because Defendant Randt was personally selected for board
 11 membership by Mr. Wynn, he is incapable of exercising independent objective judgment in
 12 deciding whether to bring this action.
 13

14 **Defendant Shoemaker**

15
 16 95. Defendant Shoemaker could not comply with the fiduciary duties to
 17 independently consider a pre-suit demand to bring the claims alleged herein because he was
 18 hand-picked by Mr. Wynn, who is directly implicated in the improper and illegal acts giving rise
 19 to this complaint, to serve as a director of the Company. Because Defendant Shoemaker was
 20 personally selected for board membership by Mr. Wynn, he is incapable of exercising
 21 independent objective judgment in deciding whether to bring this action.
 22

23 96. Defendant Shoemaker and Mr. Wynn also have a long-standing relationship.
 24 From 1986 to 1994, Shoemaker served with Mr. Wynn on the University of Pennsylvania Board
 25 of Trustees. Shoemaker was Chair of the University of Pennsylvania Board of Trustees when
 26 Wynn was appointed to the Board in June 1994. Both Mr. Wynn and Defendant Shoemaker are
 27 graduates of the University of Pennsylvania. From 2009 until at least February 10, 2013,
 28 Defendant Shoemaker served as Honorary Counsel for the Sun Valley Summer Symphony (the

1 “Symphony”) and on April 16, 2008, the Stephen Wynn Foundation contributed \$50,000 in
 2 grants to the Symphony.

3 **Defendant Virtue**

4
 5 97. Defendant Virtue could not comply with the fiduciary duties to independently
 6 consider a pre-suit demand to bring the claims alleged herein because he was hand-picked by
 7 Wynn, who is directly implicated in the improper and illegal acts giving rise to this complaint, to
 8 serve as a director of the Company. Because Defendant Virtue was personally selected for board
 9 membership by Wynn, he is incapable of exercising independent objective judgment in deciding
 10 whether to bring this action.

11
 12 98. Defendant Virtue was nominated to the Wynn Resorts’ Board on September 20,
 13 2012. Mr. Wynn recommended Virtue to the Nominating Committee. Moreover, in the April
 14 2015 proxy fight, Wynn supported Virtue for reelection over Elaine Wynn. Virtue was
 15 ultimately reelected while Elaine Wynn lost her seat. Virtue has both financial and business ties
 16 to Wynn. In February 2003, Virtue formed MidOcean Partners when he led a management
 17 buyout of 80% of DB Capital, Deutsche Bank’s private equity arm. Virtue had been head of
 18 Corporate Investments at Deutsche Bank until the buy-out by MidOcean Partners and until
 19 February 20, 2003. Deutsche Bank retained a 20% interest in MidOcean Partners portfolio.
 20 Despite his separation from Deutsche Bank at the time, Virtue remained connected to Deutsche
 21 Bank through business transactions. For instance, an amended agreement for consulting services
 22 between MidOcean and one of its portfolio companies reported that Deutsche Bank Trust
 23 Company Americas was the administrative agent for the agreement and Deutsche Bank
 24 Securities, Inc. was a co-lead arranger and book runner. Wynn and Elaine Wynn invested in
 25 MidOcean Partners with Virtue. As noted above, Deutsche Bank retained a 20% interest in
 26 MidOcean Partners at the time of the leveraged buy-out in February 2003 and Deutsche Bank

1 continued to play a critical role in financing Wynn Resorts thereafter. On October 5, 2012,
 2 Wynn Las Vegas LLC and Wynn Las Vegas Capital Corp. reported,

3 With respect to Mr. Virtue, the Nominating and Corporate Governance
 4 Committee of Wynn Resorts considered that Mr. Wynn, Ms. Wynn, and
 5 Messrs. Schorr, Maddox and Strzemp had invested in MidOcean Partners,
 6 a private investment firm of which Mr. Virtue serves as Chief Executive
 Officer.

7 99. One of the conditions of Virtue joining the Board was for the Wynn Resorts insiders
 8 to close certain accounts at MidOcean which generated fees for Virtue. However, Virtue's
 9 interest in fees from these accounts continued almost to the date he joined the Board, when,
 10 seemingly in return for lost fees as a result of the closed accounts, he was granted options for
 11 10,000 shares of Wynn Resorts having a value of well over \$1 million.

12 100. Additionally, Wynn Resorts received financing from Deutsche Bank and its
 13 affiliates while Virtue was employed with Deutsche Bank and DB Capital Partners from June
 14 1999 to February 2003. During that timeframe, Deutsche Bank Trust Company Americas, an
 15 affiliate of Deutsche Bank Securities, Inc. was the administrative agent under a \$1.05 billion
 16 credit facility entered into by Wynn Las Vegas, LLC and certain of its subsidiaries on October
 17 20, 2001.

18 **Defendant Wayson**

19 101. Defendant Wayson could not comply with the fiduciary duties to independently
 20 consider a pre-suit demand to bring the claims alleged herein because he was hand-picked by
 21 Wynn, who is directly implicated in the improper and illegal acts giving rise to this complaint, to
 22 serve as a director of the Company.

23 102. Wynn's relationship with Defendant Wayson is so close, they are nearly family.
 24 Wayson's father and Wynn's father had a business relationship in the 1950s, when they operated
 25 a bingo hall together in Wayson's Corner, Maryland. Defendant Wayson's brother and sister,
 26
 27
 28

1 Edward O. Wayson and Sarah Wayson, have also worked with Wynn throughout the years—
2 Edward served as Wynn’s legal advisor for many years and Sarah worked as a spokesperson for
3 Wynn. Defendant Wayson has worked together with Mr. Wynn at Wynn-controlled enterprises
4 for many years, over several decades, pursuant to which he has received substantial monetary
5 compensation and benefits. Specifically, Wayson worked for Mr. Wynn as the President and
6 CEO of the Golden Nugget in Atlantic City from December 1984 to February 1987. Mr. Wynn
7 was the Chairman, President and Chief Executive Officer of Mirage Resorts, Inc. and its
8 predecessor Golden Nugget, Inc. between 1973 and 2000. Defendant Wayson served as a
9 director of Mirage Resorts, Inc. from 1987 to 2000. Defendant Wayson worked with Mr. Wynn
10 in his prior leadership role at Mirage Resorts, even when appearances seemed that Mr. Wynn
11 was “running Mirage Resorts... as if it were his private empire.” (Vanity Fair, June 2005).
12

13
14 103. As a result of familial or longstanding business or personal ties and loyalty to Mr.
15 Wynn, further evidenced by their knowing and intentional failure to investigate and concealment
16 of the patently egregious misconduct involving the Company, a majority of the Board is
17 conflicted, and cannot be expected to act in a disinterested or independent manner.
18

19 104. Pre-suit demand is excused because a majority of the Board faces a substantial
20 likelihood of liability for abdicating their responsibility to exercise oversight of Wynn Resorts,
21 the settlement of claims of sexual misconduct relating to the conduct of Wynn, and the
22 continuing misconduct.
23

24 105. The Board had knowledge of the allegations of egregious misconduct and/or
25 ignored credible “red flags” that should have alerted them to egregious wrongdoing and
26 existential risk to the Company.
27

28 106. For all the above reasons, demand upon the Board would be futile and is therefore
excused.

CLAIMS FOR RELIEF

COUNT I
BREACH OF FIDUCIARY DUTY
(AGAINST STEPHEN A. WYNN)

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

108. Stephen A. Wynn is Chairman and Chief Executive Officer and a director of Wynn Resorts and, as such, owed and continues to owe Plaintiff and Wynn Resorts the highest obligation of due care, loyalty, and good faith under Nevada law.

109. By reason of the foregoing, Stephen Wynn knowingly and intentionally breached his fiduciary duties by engaging in a pattern of intentional egregious misconduct and violations of law involving Wynn Resorts.

110. Plaintiff and the Company have no adequate remedy at law.

111. As a result of the intentional fiduciary misconduct alleged herein, Stephen Wynn is liable to the Company for the damages resulting directly and proximately from his breaches of fiduciary duty.

112. As a direct and proximate result of all the foregoing and as a result of the acts and/or omissions of Defendants, the Company has sustained damage in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

113. That at all times mentioned herein, Defendants, and each of them, acted with fraud, oppression, and/or malice toward the Company, exhibited an intention and willingness to injure the Company and/or a conscious disregard for the rights and safety of the Company, and each Defendant, should be punished and made an example of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

1 injure the Company and/or a conscious disregard for the rights and safety of the Company, and
2 each Defendant, should be punished and made an example of by imposition of punitive or
3 exemplary damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

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5 122. It has been necessary for Plaintiff to retain attorneys to represent them and to
6 bring this action, and Plaintiff is entitled to recover attorney's fees and costs incurred herein.

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8 **COUNT III**
9 **BREACH OF FIDUCIARY DUTY**
10 **(AGAINST DIRECTOR DEFENDANTS IN THEIR CAPACITY AS**
11 **DIRECTORS)**

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

15 124. Defendants Hagenbuch, Irani, Johnson, Miller, Mulroy, Randt, Shoemaker,
16 Virtue and Wayson owed and owe fiduciary duties to Wynn Resorts and its stockholders. By
17 reason of their fiduciary relationships, Hagenbuch, Irani, Johnson, Miller, Mulroy, Randt,
18 Shoemaker, Virtue and Wayson specifically owed and continue to owe Plaintiff and Wynn
19 Resorts the highest obligation of due care, loyalty, and good faith in the administration of the
20 affairs of the Company, including, without limitation, the oversight of Wynn Resorts'
21 compliance with and the duty to conduct a good faith investigation into known violations of
22 laws, regulations, and internal policies concerning sexual harassment.

23 125. Defendants Hagenbuch, Irani, Johnson, Miller, Mulroy, Randt, Shoemaker,
24 Virtue and Wayson knowingly and intentionally breached their fiduciary duties and violated
25 their corporate responsibilities by, among other actions, failing to investigate and obviate the
26 existential risk and injury posed to the Company thereby permitting Mr. Wynn's egregious
27 misconduct involving the Company to continue and the Company to commit to substantial
28 capital projects jeopardized by the Company's and Mr. Wynn's true suitability for a regulated

1 business. These breaches of fiduciary duty involved intentional misconduct and violations of
2 law.

3 126. Plaintiff and the Company have no adequate remedy at law.

4 127. As a result of Hagenbuch, Irani, Johnson, Miller, Mulroy, Randt, Shoemaker,
5 Virtue and Wayson’s knowingly and intentionally breached of fiduciary duties, the Company has
6 suffered and will continue to suffer harm, as alleged herein.

7 128. As a direct and proximate result of all the foregoing and as a result of the acts
8 and/or omissions of Defendants, the Company has sustained damage in an amount in excess of
9 Fifteen Thousand Dollars (\$15,000.00).

10 129. That at all times mentioned herein, Defendants, and each of them, acted with
11 fraud, oppression, and/or malice toward the Company, exhibited an intention and willingness to
12 injure the Company and/or a conscious disregard for the rights and safety of the Company, and
13 each Defendant, should be punished and made an example of by imposition of punitive or
14 exemplary damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

15 130. It has been necessary for Plaintiff to retain attorneys to represent them and to
16 bring this action, and Plaintiff is entitled to recover attorney's fees and costs incurred herein.

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18 **COUNT IV**
19 **UNJUST ENRICHMENT**
20 **(AGAINST STEPHEN A. WYNN AND KIMMARIE SINATRA)**

21 131. Plaintiff incorporates by reference and realleges each and every allegation set
22 forth above, as though fully set forth herein.

23 132. By their wrongful acts and omissions, Defendants Wynn and Sinatra have been
24 unjustly enriched at the expense of, and to the detriment of, Wynn Resorts.

1 133. Defendants Wynn and Sinatra have been unjustly enriched as a result of the
2 compensation and perquisites they received while breaching their fiduciary duties owed to Wynn
3 Resorts.

4
5 134. Plaintiff, as a stockholder and representative of Wynn Resorts, seeks restitution
6 and disgorgement from Defendants Wynn and Sinatra and seeks an order from this Court
7 directing disgorgement of all profits, benefits, and enrichment and other compensation obtained
8 by Defendants Wynn and Sinatra from their wrongful conduct and fiduciary breaches.

9
10 135. Plaintiff, on behalf of Wynn Resorts, has no adequate remedy at law.

11 136. As a direct and proximate result of all the foregoing and as a result of the acts
12 and/or omissions of Defendants, the Company has sustained damage in an amount in excess of
13 Fifteen Thousand Dollars (\$15,000.00).

14 137. That at all times mentioned herein, Defendants, and each of them, acted with
15 fraud, oppression, and/or malice toward the Company, exhibited an intention and willingness to
16 injure the Company and/or a conscious disregard for the rights and safety of the Company, and
17 each Defendant, should be punished and made an example of by imposition of punitive or
18 exemplary damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

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20 138. It has been necessary for Plaintiff to retain attorneys to represent them and to
21 bring this action, and Plaintiff is entitled to recover attorney's fees and costs incurred herein.

22
23 **COUNT V**
24 **UNJUST ENRICHMENT**
25 **(AGAINST ALL DIRECTOR DEFENDANTS)**

26 139. Plaintiff incorporates by reference and realleges each and every allegation set
27 forth above, as though fully set forth herein.
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1 140. By their wrongful acts and omissions, Defendants Hagenbuch, Irani, Johnson,
2 Miller, Mulroy, Randt, Shoemaker, Virtue and Wayson were unjustly enriched at the expense of,
3 and to the detriment of, Wynn Resorts.

4 141. Defendants Hagenbuch, Irani, Johnson, Miller, Mulroy, Randt, Shoemaker,
5 Virtue and Wayson were unjustly enriched as a result of the compensation and benefits they
6 received while breaching their fiduciary duties owed to Wynn Resorts and representations that
7 the Company’s compliance and risk controls were extensive and effective.

8 142. Plaintiff, as a stockholder and representative of Wynn Resorts, seeks restitution
9 and disgorgement from Defendants Hagenbuch, Irani, Johnson, Miller, Mulroy, Randt,
10 Shoemaker, Virtue and Wayson and seeks an order from this Court disgorging all profits,
11 benefits, and other compensation obtained by these Defendants from their wrongful conduct and
12 fiduciary breaches.

13 143. Plaintiff, on behalf of Wynn Resorts, has no adequate remedy at law.

14 144. As a direct and proximate result of all the foregoing and as a result of the acts
15 and/or omissions of Defendants, the Company has sustained damage in an amount in excess of
16 Fifteen Thousand Dollars (\$15,000.00).

17 145. That at all times mentioned herein, Defendants, and each of them, acted with
18 fraud, oppression, and/or malice toward the Company, exhibited an intention and willingness to
19 injure the Company and/or a conscious disregard for the rights and safety of the Company, and
20 each Defendant, should be punished and made an example of by imposition of punitive or
21 exemplary damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

22 146. It has been necessary for Plaintiff to retain attorneys to represent them and to
23 bring this action, and Plaintiff is entitled to recover attorney's fees and costs incurred herein.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

- (a) Declaring that this action is a proper derivative action maintainable under Nevada law and demand was excused;
- (b) Finding that the members of the Board have knowingly and intentionally breached their fiduciary duties to Wynn Resorts;
- (c) Finding that Stephen A. Wynn knowingly and intentionally breached his fiduciary duties as an officer and director;
- (d) Finding that Kimmarie Sinatra knowingly and intentionally breached her fiduciary duties as an officer;
- (e) Against all Defendants and in favor of the Company for the amount of any and all damages sustained by the Company and unjust profits obtained from the Company as a result of Defendants’ breaches of fiduciary duty, plus pre- and post-judgment interest in the maximum amount allowed by law;
- (f) Against all Defendants and in favor of the Company for extraordinary equitable and injunctive relief as permitted by law and/or equity, plus pre- and post-judgment interest;
- (g) Directing the Company to take all necessary actions to reform and improve its internal controls and Board oversight concerning sexual harassment;
- (h) Awarding Plaintiff the cost and disbursements of this action, including reasonable attorneys’ and expert’s fees; and

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(i) Granting such other and further relief as the Court deems just and proper.

Dated: February 6, 2018

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Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff by and through their attorneys of record hereby demands a jury trial of all of the issues in the above matter.

Dated: February 6, 2018

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Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NORFOLK COUNTY RETIREMENT SYSTEM, derivatively on behalf of WYNN RESORTS LIMITED,)	
)	CASE NO.
)	DEPT. NO.
)	
Plaintiffs,)	
v.)	
)	
STEPHEN A. WYNN, JOHN J. HAGENBUCH, RAY R. IRANI, JAY L. JOHNSON, ROBERT J. MILLER, PATRICIA MULROY, CLARK T. RANDT, JR., ALVIN V. SHOEMAKER, J. EDWARD VIRTUE AND D. BOONE WAYSON, KIM SINATRA)	
)	
Defendants,)	
)	
And)	
)	
WYNN RESORTS, LIMITED,)	
)	
Nominal Defendant)	

**VERIFICATION OF JAMES E. TIMILTY IN SUPPORT OF DERIVATIVE
COMPLAINT OF NORFOLK COUNTY RETIREMENT SYSTEM PURSUANT TO THE
NEVADA RULES OF CIVIL PROCEDURE RULE 23.1**

Commonwealth of Massachusetts)	
)	S. S.
County of Norfolk)	

James E. Timilty, being of full age, having been duly sworn according to law, upon his oath, deposes and says:

1. I am the Chairman of the Board for the Norfolk County Retirement System ("Norfolk County"), plaintiff in the above captioned matter.
2. As stated in the complaint, Norfolk County is and has been has been a stockholder of Wynn Resorts, Limited continuously at the time of fiduciary wrongdoing and

breaches underlying the claims alleged, and will continue to hold Wynn Resorts, Limited shares at all time relevant to this action.

3. I have read the complaint and consulted with counsel and the allegations therein are true based upon my personal knowledge, except for those matters set forth upon information and belief, in which case I believe them to be true.
4. I hereby declare under penalty and perjury that the foregoing is true and correct,

NORFOLK COUNTY RETIREMENT SYSTEM

By: 
James E. Timilty
Chairman of the Board

SWORN TO AND SUBSCRIBED before me this 6th day of February, 2018.

Notary: Lori A. Bellotti

