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DISTRICT COURT

CLARK COUNTY, NEVADA

12 THE STATE OF OREGON, BY AND
13 THROUGH THE OREGON STATE
14 TREASURER AND THE OREGON
15 PUBLIC EMPLOYEE RETIREMENT
16 BOARD, ON BEHALF OF THE OREGON
17 PUBLIC EMPLOYEE RETIREMENT
18 FUND, Derivatively on Behalf of WYNN
19 RESORTS, LIMITED,

Plaintiff,

v.

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

Defendants,

-and-

WYNN RESORTS, LIMITED,

Nominal Defendant.

CASE NO. A-18-770578-B

DEPT. NO. Department 15

**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT**

AND

DEMAND FOR JURY TRIAL

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

**(Exempt from Arbitration – Damages Exceed
\$50,000)**

EGLET PRINCE


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I. NATURE AND SUMMARY OF THE ACTION

1
 2 1. This is a shareholder derivative action necessitated by the failure of the board of
 3 directors (the “Board”) of Wynn Resorts (“Wynn Resorts,” or the “Company”) to exercise the
 4 good-faith business judgment of independent directors that is required by Nevada law. As a
 5 sovereign state, Oregon recognizes that Nevada is very protective of corporate boards that
 6 properly exercise their independent business judgment. However, if ever there was a corporate
 7 board that cannot fairly consider its own actions, it is the Board of Wynn Resorts. For nearly a
 8 decade, the Board remained willfully blind to the sexual predation of Wynn Resort’s former
 9 Chief Executive Officer, Steve Wynn. Even after this damaging information came to the
 10 Board’s attention, the directors decided to align themselves with Steve Wynn—not the
 11 Company, its shareholders, or its employees. In fact, for the next three years, the Board actively
 12 engaged in a scheme to conceal and cover-up Steve Wynn’s sexual assault and sexual
 13 harassment. The Board’s cover-up is, by definition, not in the interests of the Company and not
 14 an exercise of its good-faith business judgment.

15 2. As the world now knows, Steve Wynn has for decades tyrannized the Company
 16 that he founded and built into a world-renowned gambling and entertainment empire. Steve
 17 Wynn has routinely misused corporate resources to enable his sexual harassment and assault of
 18 Wynn Resorts employees and to avoid any consequences for his misconduct. Indeed, with the
 19 Board’s knowledge and approval, Steve Wynn has used the Company’s legal resources to
 20 suppress any information concerning a \$7.5 million settlement he paid in 2005 for forcing a
 21 Company employee to have sex with him, including filing lawsuits against a former director and
 22 a former executive to keep such information from becoming public. Now that the truth about
 23 Steve Wynn has emerged, the Company has already suffered, and will continue to suffer
 24 substantial financial damage. Since January 25, 2018, when *The Wall Street Journal* published a
 25 detailed account of Steve Wynn’s sexual misconduct and reign of terror, Wynn Resorts has lost
 26 about \$2 billion in market capitalization. And perhaps most important, Wynn Resorts has
 27 suffered extreme reputational harm among its shareholders, customers, and the general public.
 28

1 Wynn Resorts has spent, and will continue to spend, millions of dollars on legal fees as a direct
 2 result of Steve Wynn’s and the Board’s misconduct.

3 3. The harm to the Company, however, has been far greater than that incurred from
 4 the immediate public reaction to Steve Wynn’s misconduct. It is now clear that the Board
 5 breached the terms of the Company’s Articles of Incorporation, and ran the risk of imminent
 6 regulatory action, by for years refusing to investigate and assess whether Mr. Wynn is
 7 “unsuitable” as an officer and director of a gambling establishment. This determination is
 8 critical to the Company’s licensing and operations in Nevada, Massachusetts, and Macau. In
 9 addition, under the Articles of Incorporation, if the Board determines in good faith that an officer
 10 or director is “unsuitable,” the Company has the power and obligation to redeem that
 11 individual’s shares; it may not issue dividends for those shares; and that individual must not be
 12 paid for any work they perform for the company. Steve Wynn has received and, absent Court
 13 intervention, will likely continue to receive *hundreds of millions of dollars* in inappropriately
 14 bestowed compensation, even after the Board was put on notice of his clear unsuitability.
 15 Moreover, by actively concealing Steve Wynn’s misconduct, the Board members *themselves* are
 16 “unsuitable” under gambling regulations—inextricably tying their interests to Steve Wynn’s and
 17 destroying any pretense of independence.

18
 19 4. The Board revealed its conflicted nature on February 6, 2018, when the Board
 20 announced Steve Wynn’s resignation. In that press release, Defendant Wayson remarked, “It is
 21 with a collective heavy heart, that the board of directors of Wynn Resorts today accepted the
 22 resignation of our founder, CEO and friend Steve Wynn. . . . Steve Wynn is an industry giant.
 23 He is a philanthropist and a beloved leader and visionary.” A few days later, on February 10,
 24 2018, the Board announced that, because Steve Wynn had resigned, it had cut ties with the
 25 outside law firm it retained to represent it during its short-lived, independent investigation. As
 26 noted by John C. Coffee Jr., a Columbia Law School professor and known corporate governance
 27
 28

1 expert, “The board’s decision to cut ties with the outside counsel is ‘a strong signal that not
2 much has changed in the culture of the board.’”¹

3 5. The story of Steve Wynn is a cliché: a powerful man preying on the powerless.
4 But the Directors of Wynn Resorts were not powerless. They were the only people with the
5 knowledge and ability—and the duty to the Company—to investigate and stop Steve Wynn’s
6 misconduct. They chose, instead, to be complicit with Steve Wynn and use Company resources
7 to attempt to cover up his behavior out of self-interest. Plaintiff brings this derivative action on
8 behalf of the Company to compensate the Company for the extensive damage caused by the
9 Defendants’ breaches of fiduciary duty and to cause the Defendants to strengthen the Company’s
10 internal controls to prevent this from ever happening again.

11 **II. JURISDICTION AND VENUE**

12 6. This Court has jurisdiction over each Defendant named herein. Wynn Resorts is a
13 Nevada corporation. The Individual Defendants have sufficient minimum contacts with Nevada
14 so as to render the exercise of personal jurisdiction over them by this Court permissible under
15 traditional notions of fair play and substantial justice.

16 7. Venue is proper in this Court because the conduct at issue had an effect in this
17 County.

18 **III. PARTIES**

19 **A. Plaintiff**

20 8. Plaintiff the State of Oregon, by and through the Oregon State Treasurer and the
21 Oregon Public Employee Retirement Board, on behalf of the Oregon Public Employee
22 Retirement Fund, is currently a shareholder of Wynn Resorts, was a shareholder of Wynn
23 Resorts at the time of the wrongdoing alleged herein, and has been a shareholder of Wynn
24 Resorts continuously since that time.
25
26

27
28 ¹ <https://www.wsj.com/articles/wynn-resorts-board-cancels-outside-investigation-of-steve-wynns-conduct-1518218666>

B. Nominal Defendant

9. Nominal Defendant Wynn Resorts, Limited (“Wynn Resorts” or the “Company”) is incorporated under the laws of the state of Nevada and maintains its principal executive offices at 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109. Wynn Resort’s shares are listed on the Nasdaq Global Select Market (“NASDAQ”) under the ticker symbol “WYNN.”

C. Defendants

10. Defendant John J. Hagenbuch (“Hagenbuch”) has served as a member of the Company’s Board since December 2012. Hagenbuch is a member of the Audit Committee (Chair) and a member of the Compensation Committee. In 2016, Wynn Resorts paid Hagenbuch \$400,973 in total compensation.

11. Defendant Dr. Ray R. Irani (“Irani”) has served as a member of the Company’s Board since October 2007. Irani is a member of the Corporate Governance Committee. According to the Company’s Proxy Statement filed on March 24, 2008, Irani was nominated by Steve Wynn himself. In 2016, Wynn Resorts paid Irani \$362,406 in total compensation.

12. Defendant Jay L. Johnson (“Johnson”) has served as a member of the Company’s Board since August 2016. Johnson is a member of the Compensation Committee. In 2016 Wynn Resorts paid Johnson \$380,935 in total compensation.

13. Defendant Robert J. Miller (“Miller”) has served as a member of the Company’s Board since October 2002. Miller serves as the Company’s Lead Independent Director, Chairman of the Corporate Governance Committee and as a member of the Audit Committee. Miller is also the Chairman of the Company’s Compliance Committee and serves as the Company’s Compliance Director. On February 27, 2014, the Board combined these roles under the Chairman of the Company’s Compliance Committee. Previously, Miller served as President and then Counselor to the International Association of Gaming Advisors from 1999-2012. In 2016, Wynn Resorts paid Miller \$517,973 in total compensation.

14. Defendant Patricia Mulroy (“Mulroy”) has served as a member of the Company’s Board since October 2015. Mulroy is a member of the Corporate Governance Committee and

1 Compliance Committee. From July 2014 through October 2015, Mulroy served on the Nevada
 2 Gaming Commission. In 2016, Wynn Resorts paid Mulroy \$382,302 in total compensation.

3 15. Defendant Clark T. Randt, Jr. (“Randt”) has served as a member of the
 4 Company’s Board since October 2015. Randt received a \$600,000 consulting agreement in 2015
 5 before his appointment to the Board. The Company admits that Randt is not independent under
 6 NASDAQ independence criteria. In 2016, Wynn Resorts paid Randt \$327,302 in total
 7 compensation.

8 16. Defendant Alvin V. Shoemaker (“Shoemaker”) has served as a member of the
 9 Company’s Board since December 2002. Shoemaker is a member of the Compensation
 10 Committee and Audit Committee. In 2016, Wynn Resorts paid Shoemaker \$384,473 in total
 11 compensation.

12 17. Defendant J. Edward Virtue (“Virtue”) has served as a member of the Company’s
 13 Board since November 2012. Virtue is a member of the Compensation Committee (Chair) and
 14 Corporate Governance Committee. Virtue managed money for the Wynn family prior to 2012,
 15 Glass Lewis noted.² In 2016, Wynn Resorts paid Virtue \$384,473 in total compensation.

16 18. Defendant D. Boone Wayson (“Wayson”) has served as a member of the
 17 Company’s Board since August 2003. Wayson is a member of the Audit Committee and
 18 Corporate Governance Committee. Wayson has been integral to Steve Wynn’s rise. Steve
 19 Wynn’s father was a partner, with Defendant Wayson’s father, in the start of Wayson’s Bingo, a
 20 bingo and gaming hall in Maryland, and he eventually became owner of the Golden Nugget in
 21 Atlantic City, which Wayson ran as vice president. Wayson served on the Board of MGM
 22 Mirage from 1987 through May 2000, served on the Board of Directors of Mirage Resorts, and
 23 also served as President and Chief Executive Officer of the Golden Nugget Atlantic City from
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28 ² January 29, 2018 *Bloomberg* article.

1 1984 until its sale in 1987.³ In 2016, Wynn Resorts paid Wayson \$384,473 in total
 2 compensation. On February 6, 2018, Wayson was named the Non-Executive Chairman of the
 3 Board.

4 19. Defendant Stephen A. Wynn (“Steve Wynn”) served as Chairman and Chief
 5 Executive Officer of the Company from June 2002 until February 6, 2018. Prior to his
 6 resignation, Steve Wynn was Executive Director, the Chairman of the Board of Directors and
 7 Chief Executive Officer of Wynn Macau, Limited, a majority owned subsidiary of the Company,
 8 since September 2009 and President of Wynn Macau, Limited From September 2009 until
 9 January 2014. Steve Wynn also served as Director, Chairman and Chief Executive Officer of
 10 Wynn Resorts (Macau) S.A. from October 2001 until February 6, 2018. Steve Wynn also served
 11 as an officer and/or director of several subsidiaries of Wynn Resorts, Limited. During his time
 12 as Chairman, Chief Executive Officer and President of Mirage Resorts, Steve Wynn developed,
 13 opened and operated the Mirage, Treasure Island and Bellagio in 1989, 1993 and 1998,
 14 respectively. Wynn holds approximately 11.8% of the common stock of the Company. In 2016,
 15 Steve Wynn received more than \$28 million in compensation from Wynn Resorts. On February
 16 6, 2018, the Company announced the resignation of Steve Wynn.

17
 18 20. Defendant Kimmarie Sinatra (“Kim Sinatra”) serves as Executive Vice President,
 19 General Counsel and Secretary at Wynn Resorts, Limited since February 2006. Sinatra has been
 20 Senior Vice President and General Counsel of Worldwide Wynn, LLC since January 2004. She
 21 also serves as an officer of several of Wynn Resorts’ subsidiaries. She served as Senior Vice
 22 President of Wynn Resorts, Limited since January 2004. Sinatra’s compensation from 2009
 23 through 2016 was approximately \$29 million, including compensation of over \$2.64 million in
 24 2016 alone.

25 21. Defendants Hagenbuch, Irani, Johnson, Miller, Mulroy, Randt, Shoemaker,
 26 Virtue, and Wayson are collectively referred to herein as the “Director Defendants.” Defendants
 27
 28

³ <https://www.businesswire.com/news/home/20030811005761/en/Boone-Wayson-Joins-Board-Directors-Wynn-Resorts>

1 Steve Wynn, and Sinatra are collectively referred to herein as the “Officer Defendants.” All of
2 the individuals are collectively referred to herein as the “Individual Defendants.”

3
4 **IV. DEFENDANTS’ DUTIES**

5 **A. Fiduciary Duties**

6 22. The Defendants, because of their positions as officers and/or directors, had the
7 ability to control the business and corporate affairs of Wynn Resorts and were able and obligated
8 to and did, directly and/or indirectly, exercise control over the wrongful acts complained of
9 herein. By reason of their positions, the Defendants owe the Company and its shareholders the
10 fiduciary obligations of trust, loyalty, good faith, candor, and due care, and were required to do
11 their utmost to control and manage the affairs of Wynn Resorts in a fair, just, honest, and
12 equitable manner. The Defendants were required to act in furtherance of the best interests of
13 Wynn Resorts and its shareholders so as to benefit all shareholders equally, and not in
14 furtherance of their own personal interest or benefit.

15 23. Each officer and director of Wynn Resorts owes to the Company and its
16 shareholders the fiduciary duty to exercise good faith and diligence in the administration of the
17 affairs of the Company and in the use and preservation of its property and assets, and the highest
18 obligations of fair dealing.

19 24. The Defendants, because of their advisory, executive, managerial, and directorial
20 positions, as well as their knowledge of Steve Wynn’s sexual harassment and the abusive
21 workplace environment at Wynn Resorts that was tolerated and concealed for years by
22 Defendants and others, each had access to adverse, non-public information about Steve Wynn’s
23 sexual misconduct. As a result of their fiduciary and other duties, there were obligated to use
24 that information only for the best interests of the Company.

25
26 **B. Reasonable and Prudent Supervision**

27 25. To discharge their duties and to comply with good corporate governance,
28 Defendants were required to exercise reasonable and prudent supervision over the management,
policies, practices and controls of the business and financial affairs of the Company. By virtue

1 of such duties, the Defendants were required to, among other things: (a) ensure that the
2 Company complied with applicable legal obligations, requirements and regulations, including
3 acting only within the scope of its legal authority and disseminating truthful and accurate
4 statements to the investing public; (b) conduct the affairs of the Company in an efficient,
5 business-like manner so as to make it possible to provide the highest quality performance of its
6 business, to avoid wasting the Company's assets, and to maximize the value of the Company's
7 stock; (c) remain informed as to how Wynn Resorts conducted its operations and, upon receipt of
8 notice or information of imprudent or unsound conditions or practices, make reasonable inquiry
9 in connection therewith and take steps to correct such conditions or practices and make such
10 disclosures as necessary to comply with the law; (d) ensure that Wynn Resorts was operated in a
11 diligent, honest and prudent manner in compliance with applicable laws, rules and regulations;
12 (e) properly and accurately guide investors and analysts as to the true financial condition of the
13 Company, including making accurate statements about the Company's operations and financial
14 results; (f) implement adequate internal controls to ensure that the Company was promptly
15 informed of any sexual harassment, sexual misconduct, or sexual abuse, committed by a
16 Company employee, including an officer or director; and (g) establish and implement internal
17 controls and appropriate risk assessment and risk management procedures.
18

19 **C. Wynn Resorts' Corporate Governance Guidelines**

20 26. Wynn Resorts' Board has adopted a set of Corporate Governance Guidelines
21 ("Guidelines") which are reviewed annually by the Nominating and Corporate Governance
22 Committees. "The Guidelines reflect the Board's commitment to monitor the effectiveness of
23 policy and decision-making both at the Board and management level, with a view to enhancing
24 stockholder value." The Board's stated goals "are to build value for the Company's stockholders
25 and to promote the vitality and sustainability of the Company for its customers, employees and
26 the other individuals and organizations that depend on the Company." To that end, "the Board
27 monitors the performance of the Company (in relation to its goals, strategy, risks and
28 competitors) and, through the Compensation Committee, evaluates and addresses the

1 performance of management, including the Chief Executive Officer.” The Director Defendants’
2 misconduct permitted sexual harassment and abuse to exist in the workplace at Wynn Resorts in
3 violation of various laws and regulations as well as Wynn Resorts’ Guidelines. Their complicity
4 has diminished the Company’s value, as described further herein.

5 **D. Additional Duties under Wynn Resorts’ Code of Business Conduct and**
6 **Ethics**

7 27. Under the Company’s Code of Business Conduct and Ethics (the “Code”), as
8 approved by the Board, Defendants owed additional specific duties to Wynn Resorts and its
9 shareholders. The purpose of the Code, which applies to all officers, directors, employees,
10 agents and representatives, is not just to comply with laws and regulations but “to reinforce and
11 enhance the Company’s commitment to an ethical way of doing business.” Compliance with the
12 Code is mandatory and requires each employee, officer and director to sign an annual
13 acknowledgement of having “read, understood, and complied with its contents.” As Steve Wynn
14 emphasized in his cover letter to employees, “Our goal is not just to comply with the laws, rules
15 and regulations that apply to our business; we also continuously strive to abide by high standards
16 of ethical business conduct.” The Code imposes mandatory reporting requirements for suspected
17 violations of “applicable laws, rules or regulations, the Code, or the Company’s related policies .
18 . . .”

20 28. Section 2.2 of the Code emphasizes the Company’s commitment to compliance
21 with all state and federal employment laws and specifically states that “[h]arassment or
22 discrimination of any sort will not be tolerated.” Moreover, as reflected in Section 3 of the
23 Code, Defendants “are expected to dedicate their best efforts to advancing the Company’s
24 interests and to make decisions that affect the Company based on the Company’s best interests,
25 independent of outside influences.”

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

1 30. Defendants’ misconduct permitted sexual harassment and abuse to exist in the
 2 workplace at Wynn Resorts in violation of various laws and regulations, violated the Company’s
 3 Code, and diminished the Company’s value.

4 **E. Additional Duties of the Audit Committee Defendants**

5 31. In addition to these duties, under the Company’s Audit Committee Charter, the
 6 Audit Committee Defendants (Defendants Hagenbuch, Johnson, Miller, Shoemaker and
 7 Wayson) owed specific duties to Wynn Resorts and its stockholders to review and update the
 8 Company’s compliance program with respect to legal and regulatory matters and the Company’s
 9 policies and procedures for monitoring compliance. The Audit Committee also was charged
 10 with oversight responsibility relating to “management’s evaluation of certain risk exposures” and
 11 any “steps management has taken or proposes to take to monitor and control such exposure.”
 12

13 32. Specifically, Section D of the Audit Committee Charter imposes a duty on
 14 committee members with respect to compliance and risk oversight, and requires the Audit
 15 Committee to review and make recommendations to the Board on changes to and enforcement of
 16 the Code “and other policies relating to management conduct.” The Audit Committee is also
 17 charged with overseeing “procedures and practices to promote compliance” with the Code and
 18 other policies. The responsibilities include, at a minimum, an annual review of “implementation
 19 and effectiveness of the Corporation’s compliance program with the General Counsel and
 20 Compliance Officer . . . about actual and alleged violations of the Corporation’s Code . . . ,
 21 including any matters involving criminal or potential criminal conduct.”
 22

23 33. The Audit Committee Defendants’ misconduct permitted sexual harassment and
 24 abuse to exist in the workplace at Wynn Resorts in violation of various laws and regulations and
 25 the Company’s Audit Committee Charter. Their misconduct diminished the Company’s value,
 26 as described further herein.

27 **F. Wynn Resorts’ Regulatory Obligations**

28 34. Because Wynn Resorts and its subsidiaries operate in the gaming industry, they
 are governed by various laws and strict regulations in the states and countries in which they do

1 business. A violation of such regulations could result in the loss of gaming licenses critical to
2 the Company's success. Wynn Resorts is incorporated and headquartered in Nevada and must
3 comply with the gaming laws of the state. Wynn Resorts' two most profitable casino properties
4 are located in Macau, China and the Company is developing a casino property in Massachusetts,
5 scheduled to open in 2019. All of these jurisdictions require the casino operator (including its
6 officers, directors, employees, agents and stockholders), to be "suitable" in order to obtain and
7 keep its respective licenses.

8 35. Nevada law imposes comprehensive regulatory requirements upon gaming
9 licensees, including obligations that those associated with the licensee possess the necessary
10 character, qualifications, and integrity to be suitable to hold that privilege so as not to pose a
11 threat to the public interest or the integrity of the regulation and control of gaming. In particular,
12 the Nevada gaming regulations provide, in pertinent part, as follows:
13

14 5.011 Grounds for disciplinary action. The board and the
15 commission deem any activity on the part of any licensee, his
16 agents or employees, that is inimical to the public health, safety,
17 morals, good order and general welfare of the people of the State
18 of Nevada, or that would reflect or tend to reflect discredit upon
19 the State of Nevada or the gaming industry, to be an unsuitable
20 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:

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

24 * * *

25
26 5. Catering to, assisting, employing or associating with,
27 either socially or in business affairs, persons of notorious or
28 unsavory reputation . . . or the employing either directly or
through a contract, or any other means, of any . . .
individual in any capacity where the repute of the State of
Nevada or the gaming industry is liable to be damaged
because of the unsuitability of the . . . individual

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* * *

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

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

37. Macau law also imposes comprehensive regulatory requirements upon gaming licensees. Macau Administrative Regulation number 6/2002 (Gaming Promoters Act) requires prospective licensees to duly evidence their reputation and suitability. Articles 14 and 15 of the Macau Gaming Law require licensees to demonstrate, among other things, repute and probity, which must be maintained and verified throughout the twenty-year duration of the gaming license. Further, all directors and stockholders holding at least 5% of the gaming operator’s corporate capital, as well as key employees, are subject to monitoring for suitability by the Macau Inspection and Coordination Bureau. Through his ownership of stock in Wynn Resorts, Steve Wynn effectively owns approximately 8.5% of Wynn Macau’s shares.

1 Resorts' public filings admit that the government of Macau and the States of Nevada and
 2 Massachusetts require such determinations with respect to high-level company insiders and large
 3 shareholders.

4 43. According to the Nevada Gaming Control Act, the purpose of suitability
 5 determinations is to prevent "unsavory or unsuitable persons from being directly or indirectly
 6 involved in with gaming at any time or in any capacity." Similar standards apply in Macau and
 7 Massachusetts. For instance, the MGC has publicly announced its intention to have "the highest
 8 possible standards" for suitability.

9 44. In assessing suitability, gaming authorities review, among other things, whether
 10 an applicant or other key person: (i) submitted an application for a gaming license which
 11 contains false or misleading information, *e.g.*, M.G.L. c.23K § 16(a)(ii); (ii) committed prior
 12 acts which have not been prosecuted or in which the an applicant or other key person was not
 13 convicted but form a pattern of misconduct that makes the applicant unsuitable for a license, *e.g.*,
 14 M.G.L. c.23K § 16(a)(iii); Nev. Rev. Stat. Ann. § 463.170.2(b); (iii) has affiliates or close
 15 associates that would not qualify for a license or whose relationship with the applicant may pose
 16 an injurious threat to the interests of the jurisdiction in awarding a gaming license to the
 17 applicant, *e.g.*, M.G.L. c.23K § 16(a)(iv); (iv) demonstrate integrity, honesty, good character and
 18 reputation, *e.g.*, M.G.L. c.23K § 12(a)(1); Nev. Rev. Stat. Ann. § 463.170.2(a); (v) failed to
 19 demonstrate responsible business practices in any jurisdiction, *e.g.*, M.G.L. c.23K § 12(b)(ii).
 20

21 45. Typically, before an applicant is granted a gaming license, the applicant has the
 22 burden of proving by clear and convincing evidence that each applicant and key person is
 23 qualified for licensure, including that he or she meets the suitability requirements at all times.
 24 Indeed, in connection with Wynn Resorts' application for a gaming license to open the only
 25 casino-resort in southeastern Massachusetts; the MGC launched an enormously in-depth
 26 investigation of "individual person qualifiers" Steve Wynn and Kim Sinatra, as well as each of
 27 the Director Defendants.
 28

1 46. In the event that any gaming authority determines that Wynn Resorts has violated
 2 gaming laws, regulations, or ordinances (including suitability requirements), the Gaming
 3 Commission can limit, condition, suspend, or revoke the Company’s registrations and gaming
 4 license, and make a finding of “unsuitability” for any individual person qualifiers. Given the
 5 severity of the potential penalties associated with the suitability requirements, the Company has
 6 taken steps to ensure that the Board has the authority to remove any person it deems
 7 “unsuitable.” Specifically, the Company’s Articles of Incorporation codify the suitability
 8 requirements of all international and domestic gaming authorities. The Articles of Incorporation
 9 define “Unsuitable Person” as a person who, among other things, (i) “causes the Corporation or
 10 any Affiliated Company to lose or to be threatened with loss of any Gaming License,” or (ii) “in
 11 the sole discretion of the board of directors of the Corporation, is deemed likely to jeopardize the
 12 Corporation’s or any Affiliated Company’s application for, receipt of approval for, right to the
 13 use of, or entitlement to, any Gaming License.” As such, the Board has a duty in good faith to
 14 take all steps necessary to investigate whether a person is unsuitable to protect the Company
 15 from adverse regulatory actions.
 16

17 47. In the event the Board determines a person to be unsuitable, the Board has the
 18 power and obligation to take affirmative steps to: (i) restrict the payment of any dividends or
 19 interests with regard to securities to the Unsuitable Person; (ii) prohibit the Unsuitable Person
 20 from voting his or her shares; (iii) refuse to pay the Unsuitable Person any remuneration in any
 21 form from the Company for services rendered, and (iv) redeem the Unsuitable Person’s Wynn
 22 Resorts shares for fair value.

23 48. As discussed below, the Board has experience in invoking the unsuitability clause
 24 against a major shareholder—it forcibly redeemed former Board member and formerly the
 25 Company’s largest shareholder Kazuo Okada’s (“Okada”) 20 percent stake in the Company in
 26 2011. By taking this action against Okada, the Board has established a precedent of taking swift
 27 action against Unsuitable Persons in order to avoid regulatory fines, suspensions, or
 28 terminations. However, as alleged herein, the Board has not taken similar steps—or indeed, until

1 February 2018, any steps—against Steve Wynn, given its loyalty to him and its concern that a
2 finding of unsuitability against Steve Wynn would lead to a finding of unsuitability against itself.

3 2. Wynn Has Exercised Complete Control Over Wynn Resorts

4 49. Since the Company’s founding, Steve Wynn has protected his control over Wynn
5 Resorts through numerous partnerships and voting agreements. According to Elaine Wynn, a
6 Board member for 13 years, “The Wynn Board may be the most compliant board of any major
7 public company. In only three instances in the history of the Company has a director voted
8 against [Steve] Wynn’s position on any issue.” Steve Wynn has rigorously enforced the Board’s
9 compliance with his directives. From Wynn Resorts’ earliest days, Steve Wynn partnered with
10 Japanese gambling mogul Kazuo Okada to develop what would become the Wynn hotel in Las
11 Vegas, and the two owned almost half of the stock in the Company. When Wynn Resorts went
12 public, Okada was the company’s Vice Chairman and its second largest shareholder behind then-
13 married Steve and Elaine Wynn. The Wynns and Okada had a pact to vote their shares as a
14 block, including supporting each other’s nominees for directorships, with the Wynns choosing
15 the majority of directors. Following the Wynns’ divorce in 2010, Steve Wynn was at risk of
16 losing half his holdings to Elaine Wynn. According to Elaine Wynn’s filings in their divorce
17 proceedings, Steve Wynn convinced her to sign a shareholder agreement, whereby the three
18 shareholders agreed to continue to vote their shares together to protect their control—an
19 agreement that would also prevent Okada from engineering a takeover of the Company.

20 50. As a result of Steve Wynn’s control of the Company, the Wynn Resorts Board
21 has long been viewed as “worst in class” by corporate governance experts. Groups like
22 Institutional Shareholder Services (“ISS”), for instance, rank boards based on measures like pay
23 for performance or responsiveness to shareholders. ISS rates the Wynn Resorts Board a “10,” its
24 lowest ranking, meaning that the Board is at high risk of governance problems. In addition, ISS
25 and others look to the connections between a company’s directors and their CEOs to determine
26 whether a board of directors acts sufficiently independently in running an organization. In 2015,
27 ISS recommended that shareholders withhold support from all the Board nominees, noting the
28

1 Board's "tolerance" of "weak governance practices, poor pay practices, [and] an overall
2 corporate governance profile that ranks among the worst, not the best, of US companies."

3 51. Even the Company's largest shareholder, Kazuo Okada, has stated that "[Steve]
4 Wynn has run Wynn Resorts as a personal fiefdom, packing the Board with friends who do his
5 personal bidding, and paying key executives exorbitant amounts for their unwavering fealty."

6 52. The Board has taken steps to protect Steve Wynn's control, including by invoking
7 the suitability clause in the Company's Articles of Incorporation. Specifically, in 2011, Steve
8 Wynn had a fall out with his long-time business partner, Okada. The main reason for this
9 dispute was that Okada had filed a books and records lawsuit in Nevada State Court seeking
10 information regarding a \$135 million donation made by Wynn Resorts to the University of
11 Macau, which had been approved by the Board (except Okada). In response, the Board
12 commissioned an investigation into Okada, alleging that he violated the Foreign Corrupt
13 Practices Act. The Board hired former Director of the FBI Louis Freeh to conduct the
14 investigation (the "Freeh Investigation").
15

16 53. The Freeh Investigation focused on whether Okada had made improper payments
17 to Philippine gaming regulators. Following the Freeh Investigation, a report was issued that
18 concluded Okada had in fact made improper payments. Based on the report, the Board of
19 Directors of Wynn Resorts determined that Okada (and his affiliates) were "unsuitable persons"
20 under Article VII of the Company's Articles of Incorporation. Importantly, the Board made this
21 determination without any gaming commissioner identifying Okada as unsuitable.

22 54. The Board then took unprecedented actions to protect the Company and its
23 operations from any influence of an unsuitable person, as determined by the Board. First, the
24 Board established an Executive Committee of the Board to manage the business and affairs of
25 the Company during the period between each annual meeting. All members of the Board, except
26 Okada, were appointed to the Executive Committee. Second, the Board requested that Okada
27 resign as a director of Wynn Resorts and recommended that Okada be removed as a director of
28 Wynn Macau, Ltd. Third, the Board invoked Article VII of the Company's Articles of

1 Incorporation to forcibly repurchase Okada’s 20 percent stake in the Company, which was worth
 2 \$1.9 billion.

3 55. Following these extreme measures, in 2012, Okada sued Steve Wynn and the
 4 Board alleging that the Company improperly redeemed his shares (the “Okada Lawsuit”). The
 5 Board is currently represented by Gibson, Dunn & Crutcher LLP (“Gibson Dunn”) in the Okada
 6 Lawsuit. One of Okada’s contentions is that the investigation was little more than a pretense to
 7 do what Wynn wanted to do in the first place: limit Okada’s influence over the Company.
 8 Recently, on February 5, 2018, Judge Elizabeth Gonzalez ruled that Okada is permitted to bring
 9 claims against several of the Wynn Resorts Board members who voted against him. The ruling
 10 relied on a sealed document that allegedly shows several Wynn Resorts directors intended to
 11 oust Okada from the Company prior to the completion of the investigation.

12 56. On January 25, 2018, the Nevada Gaming Commission, upon the
 13 recommendation of the Nevada Gaming Control Board, approved the application of Wynn
 14 Resorts for an amendment to its Order of Registration. In issuing its order the Nevada Gaming
 15 Commission stated that “Stephen Alan Wynn is found suitable, pursuant to NRS 463.643 and
 16 NGC Regulation 16.400, as a shareholder and controlling shareholder of Wynn Resorts,
 17 Limited.” Upon information and belief, the defendants failed to advise the Nevada Gaming
 18 Commission and the Nevada Gaming Control Board of Wynn’s sordid history of sexual abuse,
 19 nor did they disclose the 2005 Settlement (defined below).

20 57. The Nevada Gaming Commission also ordered on January 25, 2018 that Wynn
 21 Resorts:

22
 23 [M]aintain its gaming compliance program for the purpose of, at a
 24 minimum, performing due diligence, determining the suitability of
 25 relationships with other entities and individuals, and to ensure
 26 compliance by Wynn Resorts, Limited, its subsidiaries and any
 27 affiliated entities, with the Nevada Gaming Control Act (the
 28 “Act”), as amended, the Commission’s Regulations (the
 “Regulations”), as amended, and the laws and regulations of any
 other jurisdictions in which Wynn Resorts, Limited, its
 subsidiaries and any affiliated entities operate.

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B. STEVE WYNN ENGAGED IN A DECADES-LONG PATTERN OF ABUSE, MISCONDUCT, AND HARASSMENT, AND KEY COMPANY EXECUTIVES CONCEALED THIS INFORMATION FROM THE COMPANY.

1. *The Wall Street Journal* Reveals Explosive Allegations to the Public

58. On January 25, 2018, *The Wall Street Journal* published an astonishing exposé revealing that Steve Wynn had routinely coerced and forced Wynn employees to engage in sexual activity with him. Among numerous other well-sourced allegations, *The Wall Street Journal* revealed that Steve Wynn had paid a Wynn employee \$7.5 million to silence her after she accused him of forcing her to have sex with him. Specifically, according to *The Wall Street Journal*, in 2005, an employee who worked at the newly-opened Wynn Las Vegas casino gave Steve Wynn a manicure in his office. Before he allowed her to leave, however, he pressured the employee into taking her clothes off and lying down on the massage table that he kept in his office suite. Although she told Steve Wynn that she was married and didn't want to have sex with him, Steve Wynn persisted in his demands and ultimately and they had sex. Following the encounter, the employee returned to the salon where she worked, visibly distressed, and informed her supervisor of what had occurred. The employee's supervisor, the salon manager, filed a detailed report with the Company's human-resources department recounting Steve Wynn's assault. The salon manager stated that she later got a call from Doreen Whennan, a Wynn Las Vegas executive, who castigated the manager for filing the report with human-resources rather than with Whennan directly. The manager stated that no one from the Company followed up with her about her report.

59. At the time of this incident, Whennan was the Vice President of Hotel Operations at Wynn Las Vegas. An employee of Wynn Resorts in various locations from 1989 to 2014, Whennan rose through the ranks of the Company to become a high-ranking executive overseeing non-gaming hotel operations. In these roles, she supervised the non-gaming areas of several Wynn properties, managed thousands of employees, and tended to the needs of many thousands of guests and customers.

1 60. Shortly after the employee reported Steve Wynn’s assault to her supervisor, Steve
 2 Wynn paid the employee a \$7.5 million settlement, purportedly from his personal funds (the
 3 “2005 Settlement”). *The Wall Street Journal* reported that Steve Wynn and his personal legal
 4 counsel set up a limited liability company called Entity Y as a vehicle to handle the 2005
 5 Settlement. The LLC’s registered agent was Brownstein Hyatt Farber Schreck LLP, a law firm
 6 whose partner Frank Schreck served since 1976 as regulatory counsel for Steve Wynn, Wynn
 7 Resorts, and Steve Wynn’s previous gambling entities. The LLC’s manager was listed as James
 8 Pisanelli, previously an employee of the Brownstein firm and now a principal of his own firm,
 9 which regularly represents Steve Wynn. Additionally, *Bloomberg*, the *Huffington Post*, and
 10 other news outlets have reported that the 2005 Settlement involved a paternity claim, though
 11 there is no evidence that Steve Wynn actually fathered a child with the woman who reported the
 12 assault.

14 **2. The Initial Concealment**

15 61. Steve Wynn and Kim Sinatra sought to suppress any mention of the 2005
 16 Settlement within the Company. For example, Elaine Wynn first discovered the existence of the
 17 2005 Settlement during the 2009 negotiations regarding her divorce from Steve Wynn.
 18 Realizing the potential harm that the 2005 Settlement could bring to the Company, Elaine Wynn
 19 immediately began to probe high-level executives about the reasons why the 2005 Settlement
 20 was not brought to the Board’s attention at the time. According to a complaint filed in
 21 connection with the Wynns’ divorce, Elaine Wynn attempted to raise her concerns about the
 22 2005 Settlement and her former husband’s “reckless risk-taking” through “proper corporate
 23 processes and channels.” However, Elaine Wynn found that “[Steve] Wynn intentionally kept
 24 the Wynn Resorts Board in the dark and [had] turned the General Counsel of the Company into
 25 his co-conspirator.” Elaine Wynn also alleged that “[e]very time [she] sought information, as a
 26 director should, she confronted a ‘tone at the top’ that punished inquiry[.]” Even worse, Elaine
 27 Wynn alleged that “[she] and her fellow Board members were intentionally fed misinformation
 28 by Steve Wynn and Kimmarie Sinatra, the Company’s General Counsel, a process that depended

1 on the deficiencies in the internal controls and their intentional circumvention with regard to the
 2 decisions of the Chairman and CEO.” Thus, as early as 2009, it is clear that Steve Wynn and
 3 Kim Sinatra were engaged in an elaborate, purposeful scheme to conceal material information
 4 from the Board.

5 62. Steve Wynn and Kim Sinatra, as well as others in the Company, not only initially
 6 concealed the 2005 Settlement and other misconduct from the Board, but they also hid it from
 7 gaming authorities in Macau, Nevada, and Massachusetts. At no time did the Company notify
 8 Nevada or Macau of the 2005 Settlement or Steve Wynn’s decades-long mistreatment of
 9 employees, in particular, women. Further, in 2013, Wynn Resorts applied for a gaming license
 10 in the State of Massachusetts. As discussed above, Massachusetts law requires the disclosure to
 11 the MGC of any settlements, patterns of misconduct, or any other activity that would call into
 12 question a person’s suitability to hold a gaming license. Nonetheless, Wynn Resorts failed to
 13 disclose the 2005 Settlement and Steve Wynn’s other misconduct, as well as the key executives’
 14 attempts to conceal this information from the Company. By failing to disclose these facts, Steve
 15 Wynn, Elaine Wynn, and Kim Sinatra (as well as any others with knowledge) actively deceived
 16 the MGC. This act of concealment rendered the Company’s key executives unsuitable under
 17 Massachusetts gaming regulations.
 18

19 **3. Decades of Steve Wynn’s Misconduct**

20 63. In the time since *The Wall Street Journal* first broke the news of Steve Wynn’s
 21 serial sexual assault and predatory behavior towards powerless casino workers on January 25,
 22 2018, numerous additional allegations against Steve Wynn have emerged. The details of these
 23 allegations reveal that the story of Steve Wynn’s abuse, sexual assault, sexual harassment, and
 24 workplace tyranny extends back decades. According to several news reports, the Las Vegas
 25 Metropolitan Police Department has now received two complaints by women alleging that Steve
 26 Wynn sexually assaulted them—one in Las Vegas, and the other in Chicago, both in the 1970s—
 27 the earliest reported allegations of assault against Steve Wynn.
 28

1 64. As the *New York Post* and other news outlets have reported, in the late 1980s, a
 2 single mother who was supporting eight children was working as a waitress at Steve Wynn’s
 3 Mirage casino when her first grandchild was born. She alleges that Steve Wynn pressured her
 4 into having sex with him, claiming that he had never had sex with a grandmother before, and he
 5 wanted to know what it felt like. He continued to pressure her into having sex with him for
 6 approximately a year. It has been reported that she agreed to have sex with him only because
 7 she was afraid that she would lose her job if she refused.

8 65. According to an article published in the Nevada Forward, another woman, who
 9 worked as a cocktail waitress at Steve Wynn’s Golden Nugget casino in the late 1980s, alleges
 10 that Steve Wynn—whom she had previously never met—arrived unannounced at her home after
 11 she had been working at his casino for three weeks. Steve Wynn allegedly told her that he
 12 wanted to welcome her to Las Vegas and to his casino; the woman was carrying two children in
 13 her arms at the time, so he left her alone. When she was at work, however, Steve Wynn singled
 14 her out. She reports that Steve Wynn was forceful and aggressive, and that he would request that
 15 she leave work early and come to his house. She tried to avoid his advances, but she often did
 16 not have a choice and acquiesced to Steve Wynn’s demands. She stated, “Did I want to have sex
 17 with him? No. He signed my checks. I had two little kids, and no child support. He made a
 18 habit of going after single moms who were scared and couldn’t afford to lose their jobs.”

19 66. In 1997, eleven cocktail waitresses sued Steve Wynn’s Mirage casino for gender
 20 discrimination. The filings and deposition testimony in this lawsuit illustrate not only that sexual
 21 harassment was commonplace and accepted at the Mirage, but also that it was written into the
 22 company’s handbook and policies. The lawsuit alleges that the cocktail servers’ manuals at the
 23 Mirage contained specific instructions governing female employees’ weight; the handbook
 24 provided that employees would be weighed upon first being hired, and if the server gained more
 25 than six pounds, she could be punished—placed on “weight probation.” A manager at the
 26 Mirage testified that Steve Wynn called a meeting after seeing several employees at the casino
 27 whom he believed looked overweight; after deciding not to weigh them himself, he berated them
 28

1 instead, stating, “Ladies, I’ve called you in to let you know you have fat asses.” Male employees
 2 at the Mirage parroted this behavior—taking their cues from the tone that Steve Wynn set—by
 3 calling their female colleagues “blue whales” and imitating whale sounds, in front of customers,
 4 to embarrass the waitresses.

5 67. This lawsuit also alleged that Steve Wynn called another waitress to his office for
 6 sex. When she reported his advances to her supervisor and stated that she no longer wanted to
 7 have sex with Steve Wynn, the supervisor responded, “This is [Steve] Wynn . . . he signs your
 8 paycheck. You can be fired if you don’t go.” Additionally, the plaintiffs accused The Mirage’s
 9 managers of sending waitresses to have sex with the casino’s “high rollers,” and of looking the
 10 other way when bettors on the casino floor assaulted female employees.

11 68. In a deposition given as part of this lawsuit, Dennis Gomes, who was an executive
 12 at the Golden Nugget in Las Vegas when Steve Wynn owned that casino, testified that he
 13 “routinely received complaints from various department heads regarding Steve Wynn’s chronic
 14 sexual harassment of female employees.” Mr. Gomes later engaged in litigation against Steve
 15 Wynn himself—regarding his departure from the Golden Nugget to work for a Trump-owned
 16 casino. During those proceedings, he described the “disgraceful pattern of personal and
 17 professional conduct” that he witnessed at the Golden Nugget. He stated that this conduct
 18 included Steve Wynn directing him to obtain the home phone numbers of cocktail waitresses at
 19 the casino. Although Mr. Gomes died in 2012, his widow, Barbara Gomes, stated in an interview
 20 with *The Wall Street Journal*, “I remember him saying, ‘I’m not his pimp,’” referring to Steve
 21 Wynn.
 22

23 69. The January 25, 2018 *Wall Street Journal* article, in addition to detailing the
 24 allegations about Steve Wynn’s 2005 sexual assault of the Wynn Las Vegas employee and the
 25 2005 Settlement, described decades of sexual misconduct and intimidation by Steve Wynn
 26 towards his employees. *The Wall Street Journal* interviewed more than 150 people who work or
 27 had worked directly with Steve Wynn and his Company over the years, most of whom told *The*
 28 *Wall Street Journal* that they worried that speaking up would hurt their ability to work elsewhere

1 because of Steve Wynn’s influence in the casino industry, in the city of Las Vegas, and in the
 2 state of Nevada.

3 70. *The Wall Street Journal* reported that Steve Wynn exploited his employees’ fear
 4 by confining employees in his office with one or more of his German shepherds, who were
 5 trained to respond to his commands in German.

6 71. Steve Wynn’s misconduct was well known to casino employees, who were
 7 “petrified” of being in a room with Steve Wynn. Many reported that they “repeatedly told high-
 8 level company executives that Steve Wynn’s sexual advances were causing a problem” but that
 9 “nobody was there to help us.” Female employees said that they sometimes entered fake
 10 appointments in their books to help other female workers avoid Steve Wynn’s requests for
 11 services in his office; others arranged for employees to pose as assistants so they would never
 12 find themselves alone with Steve Wynn. Still others hid in the bathroom or other hidden rooms
 13 to avoid Steve Wynn when they learned he was on his way to one of the resorts’ salons.

14 72. One former massage therapist at the Wynn Las Vegas spa stated that, several
 15 years ago, Steve Wynn booked multiple appointments each week with her in the private massage
 16 room in his office suite. During his massage sessions, he would adjust his towel to expose his
 17 genitals. Eventually he threw the towel off altogether and said, “Just get this thing off of me.”
 18 She said that from then on Steve Wynn did not let her use a towel to cover his genitals, which is
 19 a violation of state licensing regulations. He also began rubbing her leg while she massaged
 20 him. This same employee stated that after a few weeks of this behavior, Steve Wynn instructed
 21 her to massage his penis to climax. Because he was her boss, she stated, she felt she had no
 22 choice but to acquiesce. He insisted that she masturbate him at their massage sessions thereafter;
 23 he paid her \$1,000 in cash each time—the same amount as he paid her before he began sexually
 24 assaulting her. He later asked this employee to perform oral sex on him, describing in detail how
 25 he wanted it done. She refused, and he ceased requesting massages from her.
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1 73. Another employee reported that, while she was working as a massage therapist
2 for Steve Wynn, he would remove his towel and request that she “go higher” as she massaged
3 his thighs. When she refused, he also ceased requesting massages from her.

4 74. A former personal assistant to Steve Wynn’s former wife, Elaine Wynn, reported
5 that Steve Wynn repeatedly asked her to spend time with him outside of work, and often asked
6 her on the phone, “What are you wearing?”

7 75. Several former employees reported that Steve Wynn walked around his casino
8 complex in shorts that exposed his genitals, and he often sat in the salon, getting a pedicure, with
9 his legs and shorts arranged in such a way to expose his genitals.

10 76. A former employee reported that, after performing services in Steve Wynn’s
11 office for years, he asked if he could kiss her. She refused, and he later asked—when she was
12 performing services elsewhere in the casino—“When are you going to come into my office and
13 f--- me?” The same employee stated that Steve Wynn repeatedly rubbed his genitals as she
14 worked, and commented about things he would like to do to her sexually. He later grabbed her
15 by the waist and told her to kiss him.

16 77. Steve Wynn’s abusive behavior did not merely manifest itself in scenes of sexual
17 harassment or sexual assault. According to reporting by CNN affiliate KTLA, Steve Wynn has
18 also been known to verbally abuse and belittle employees, physically threaten them, and threaten
19 their jobs. In 2005, Steve Wynn allegedly verbally and physically assaulted a woman who
20 worked as a cleaning crew manager for Wynn Resorts. Steve Wynn apparently called the
21 woman and yelled at her to come to the Lure Nightclub “at the speed of light.” Worried that
22 someone may have been injured using a large marble-cleaning machine at the club, she ran
23 upstairs to find Steve Wynn, who yelled at her, grabbed onto her arm, tightened his grip, dragged
24 her, and berated her with questions. Her arm was injured in the incident, and she sought medical
25 and mental health treatment.

26 78. KTLA also reported that, in late 2006, Steve Wynn established a new policy at
27 Wynn Resorts that forced casino dealers to share their tips with their supervisors. The dealers
28

1 claimed that this change cost them as much as 20% of their take-home pay. After a meeting to
2 discuss the new tip policy, fifteen dealers filed a complaint against Steve Wynn with the
3 National Labor Relations Board (“NLRB”), alleging that Steve Wynn threatened the workers’
4 legal right to form a union and, among other things, called the dealers “muggers and thieves.”
5 One of the dealers alleged that Steve Wynn threatened to replace all the dealers if they attempted
6 to form a union, and stated that, because he owned the sidewalks, he could legally terminate
7 them for picketing. Another dealer, who was seated next to Steve Wynn at this meeting, recalled
8 telling Steve Wynn that losing \$15,000 to \$20,000 per year in tips was a tremendous financial
9 burden on her, to which Steve Wynn allegedly replied, “If \$15,000 to \$20,000 a year makes that
10 big of a difference in your life, then you’re doing something wrong.” The dealer, whom Steve
11 Wynn later referred to in testimony as “this gal,” reported that Steve Wynn then became irate,
12 stood up from his chair, leaned over her, and began screaming so close to her face that she could
13 feel his spit. Steve Wynn allegedly told the dealers at the meeting that he was the most powerful
14 man in Nevada and that because his name was on the building, he could do anything he wanted,
15 all while pounding his fist on the table repeatedly. In the NLRB proceeding, Judge Burton
16 Litvack ultimately ruled against Steve Wynn, holding that his remarks and behavior violated the
17 workers’ rights to form a union under the National Labor Relations Act. The judge wrote that
18 Steve Wynn’s “statements and actions during the meeting must be viewed in the context of his
19 desire to frighten and intimidate” his employees. Many years later, Judge Litvack told CNN that
20 Steve Wynn struck him as a chauvinist, haughty, disingenuous, and insolent, and that he was
21 appalled to listen to the employees’ testimony describing Steve Wynn’s disparaging, demeaning
22 comments towards his female employees in particular.
23

24 **4. Elaine Wynn Identifies Steve Wynn as a Threat to the Company, but**
25 **the Board Continues to Cover Up the Threat Rather than Adjudge**
26 **Steve Wynn As Unsuitable**

27 79. As alleged above, Elaine Wynn disclosed Steve Wynn’s misconduct to the Board
28 in 2009. According to a CNBC article, Elaine Wynn, upon discovering Steve Wynn’s
misconduct and the 2005 Settlement in 2009, immediately informed a representative of the

1 Board about the 2005 Settlement and other misconduct. Elaine Wynn herself was a member of
 2 the Board in 2009, and therefore had a duty to report the misconduct to the full Board.

3 80. After Elaine Wynn began to raise concerns about Steve Wynn’s misconduct, the
 4 Board made a concerted effort to silence her voice. According to a counterclaim complaint filed
 5 by Elaine Wynn, in February 2015, the Board did not re-nominate Elaine Wynn to the Board and
 6 sought to decrease the size of the Board by one. Elaine Wynn alleges that these actions
 7 represented “punishment for asking too many questions that Steve Wynn and Ms. Sinatra did not
 8 want to answer.” Given the fact that Elaine Wynn alleges she was removed from the Board for
 9 asking questions about Steve Wynn’s misconduct, it is reasonable to infer that the Board
 10 understood that Elaine Wynn was being forced off the Board for that reason.

11 81. In any event, in March 2016, Elaine Wynn filed an amended answer and cross-
 12 claim in a lawsuit against Steve Wynn and Wynn Resorts. The amended complaint charged that
 13 Steve Wynn, aided and abetted by Kim Sinatra, set a tone at the top of the Company that has
 14 given rise to years of unchecked business activities and reckless behavior within the Company.
 15 Among other things, the complaint asserted:

- 16 • Steve Wynn and certain members of the management team engaged in reckless
 17 behavior and created a tone at the top which punished dissent or inquiry;
- 18 • Steve Wynn was accused of misconduct on Company property involving at least
 19 one Company employee that was sufficiently serious to cause him to make a
 20 secret multi-million-dollar payment, and yet the Board was not told at the time of
 the settlement;
- 21 • Steve Wynn was forced to terminate employees who he never should have hired
 22 because of their associations with alleged illegal activity and, in at least one case,
 hid the reasons for the executive’s departure; and
- 23 • Steve Wynn stifled opposing views within the Company, even at the Board level;
 24 the only time in the Board’s history that it ever voted against Steve Wynn’s
 25 ostensible position on any issue was when it voted to oust Elaine Wynn, when in
 fact it was carrying out his actual direction in doing so.

26 82. Given the fact that the Company was named in the action, Elaine Wynn’s
 27 allegations regarding Steve Wynn’s misconduct were known to the Board by March 2016, at the
 28 latest. If there is any doubt about the Board’s knowledge, the Company’s most recent Form 10-

1 K, filed on February 24, 2017, made clear reference to Elaine Wynn’s claims. In reference to the
2 pending litigation, the Company’s Form 10-K states: “Elaine P. Wynn has asserted various
3 claims against Steve Wynn, the Company and various Company officers, which have and may
4 continue to draw adverse publicity or impugn the Company’s reputation.”

5 83. The Company’s Articles of Incorporation are clear that the Board has the sole
6 discretion to adjudge any executive, director, key employee, or shareholder of Wynn Resorts as
7 unsuitable. Under the plain language of Article VII of the Company’s Articles of Incorporation,
8 a person can be found unsuitable if (among other reasons), in the sole discretion of the board of
9 directors of the Corporation, that person is deemed likely to jeopardize the Corporation’s or any
10 Affiliated Company’s application for, receipt of approval for, right to the use of, or entitlement
11 to, any Gaming License.

12 84. Given the facts alleged herein, Steve Wynn, Elaine Wynn, and Kim Sinatra (at a
13 minimum) should have been determined unsuitable for failing to notify the MGC of (i) Steve
14 Wynn’s pattern of sexual misconduct, and (ii) the Company’s concealment of the 2005
15 Settlement.

16 85. Instead, to protect itself, the Board intentionally ignored its obligations to protect
17 the Company and its shareholders, and publicly denounced the allegations as “patently false.” In
18 a press release, Wynn Resorts stated that “Ms. Wynn’s latest allegations regarding our Board, its
19 composition and its independence are simply not true and are rehashed from her previous,
20 unfounded statements made during her proxy campaign.” The Company’s statement is clearly
21 false, as the Board had not conducted—in fact, was unwilling to conduct—an investigation into
22 Elaine Wynn’s credible allegations at that time. Had the Board conducted an investigation in
23 good faith, it would have found that Steve Wynn and other executives threatened the Company’s
24 ongoing business operations due to their actions that clearly made them unsuitable to own and
25 operate a casino.
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1 86. Further, as discussed in the next section, over the course of the next year, the
 2 Board intentionally set in motion a plan to use Company resources to take every action
 3 imaginable to conceal the 2005 Settlement from regulators and the public.

4 **5. The Board Intentionally Acts to Suppress Steve Wynn’s Egregious**
 5 **Conduct, Rendering the Board Complicit and, as a Result, Unsuitable**

6 87. Rather than investigate Steve Wynn’s actions or institute any remedial measures
 7 to protect the Company or its employees, the Board devoted substantial Company resources to
 8 cover up Steve Wynn’s egregious and pervasive sexual misconduct and to quieting anyone who
 9 could possibly bring the truth to light. These intentional actions are not protected under Nevada
 10 law.

11 88. After filing her counterclaim against Steve Wynn in March 2016, Elaine Wynn
 12 took additional steps to force action on the part of the Board. On October 6, 2016, Elaine Wynn
 13 filed a Petition for Writ of Prohibition or, In the Alternative, Mandamus, seeking protection as a
 14 whistleblower under the Dodd-Frank Act (the “Writ”). According to the Writ, Elaine Wynn
 15 privately raised serious questions concerning Wynn Resorts’ potential violations of federal
 16 securities laws to Wynn Resorts’ Audit Committee and outside auditors, Ernst & Young.
 17 Specifically, the Writ stated that, on July 12, 2016, Elaine Wynn sent a letter to Wynn Resorts’
 18 Audit Committee, raising questions about the conduct of Wynn Resorts and its management that
 19 she reasonably believed violated federal securities laws. The Writ further stated that the Audit
 20 Committee made clear that it did not intend to investigate the issues raised by Elaine Wynn.
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22 89. Rather than investigate the significant issues Elaine Wynn raised, the Audit
 23 Committee dismissed them, impeded an investigation by Ernst & Young, and engaged in a
 24 retaliatory attack against Elaine Wynn to intimidate and silence her based on “duties of
 25 confidentiality imposed upon [her] as a result of [her] tenure on the Board of Directors of Wynn
 26 Resorts, or by any court.”

27 90. Within a few months, the Audit Committee followed through on its promise to
 28 silence Elaine Wynn. At the direction of the Audit Committee, and given the reporting structure,
 with the Board’s full knowledge, Wynn Resorts went on the offensive in support of Steve Wynn,

1 initiating a lawsuit against Elaine Wynn that claimed that she had taken confidential and
 2 privileged information from Company computers without permission to aid in her March 2016
 3 counterclaim against Steve Wynn and the Company.

4 91. The complaint made clear that the Company was most concerned with Elaine
 5 Wynn’s use of documents concerning “Board discussions about Company management issues,”
 6 including the information concerning Steve Wynn’s serial sexual misconduct and the misuse of
 7 Company resources to conceal that misconduct that she had included in her March 2016
 8 counterclaim.

9 92. As Elaine Wynn’s case proceeded to discovery, new information regarding the
 10 2005 sexual assault of the Wynn Las Vegas employee began to emerge within the confidential
 11 bounds of discovery. During a deposition of Doreen Whennen, Ms. Whennen apparently
 12 informed Elaine Wynn’s counsel that she was in possession of notes summarizing the 2005
 13 sexual assault. According to a January 7, 2018 story in *The Nevada Independent*:

14
 15 The heart of Whennen’s career was spent at Wynn Las Vegas as
 16 the vice president of hotel operations, where she not only ran the
 17 company’s many non-gaming layers, but also managed thousands
 18 of employees working outside the casino pit.

19 During her tenure at Wynn Las Vegas, Whennen personally
 20 handled many confidential work-related employee complaints,
 21 apparently including sexual harassment grievances. Dedicated
 22 employee that she was, Whennen kept notes.

23 93. Immediately thereafter, in an effort to quiet Ms. Whennen and hide information
 24 regarding Steve Wynn, in December 2017, Worldwide Wynn, LLC filed suit against Ms.
 25 Whennen for breach of contract for taking handwritten notes related to the investigation of
 26 Wynn’s sexual assault resulting in the 2005 Settlement. Specifically, the Complaint asserts that
 27 Whennen:

28 While working at Wynn Las Vegas in 2005, [] participated in an
 investigation regarding an employee grievance. Given the
 anticipated litigation arising from this grievance, the Company’s
 investigation into this matter was supervised by outside counsel.
 As part of the investigation, Ms. Whennen compiled handwritten
 notes (hereinafter “Notes”).

1 94. A December 28, 2017 Bloomberg article noted that Elaine Wynn’s attorneys said
2 in an October 19, 2017 court filing:

3 Recent events in the media serve to highlight that the incident was
4 not, as Wynn Resorts and Mr. Wynn have contended, a “personal”
5 issue,” [and that] [s]uch misconduct is a matter central to
6 appropriate corporate governance.⁴

7 95. The Board has thus never expressed, implicitly or explicitly, any intention to hold
8 Steve Wynn accountable for his actions. Rather, as set forth herein, the Board has continued to
9 use Company resources, including the Company’s General Counsel, to conceal Steve Wynn’s
10 ongoing and pervasive sexual misconduct and to suppress the voice anyone in a position to
11 reveal it.

12 **6. For Years the Board Has Compensated Steve Wynn and Kim Sinatra
13 in Violation of the Company’s Charter**

14 96. Had the Board acted in good faith and immediately conducted a suitability
15 determination for Steve Wynn and Kim Sinatra, the Board could have avoided having the
16 Company pay Steve Wynn and Kim Sinatra substantial sums in compensation and dividends.
17 But the Board failed to do so.

18 97. Article VII of the Company’s Articles of Incorporation expressly states that a
19 person who is found unsuitable by the Board shall not receive any remuneration or dividends.
20 As such, by intentionally refusing to make a suitability determination with respect to Steve
21 Wynn and Kim Sinatra since at least 2009, the Board willfully violated the terms of the
22 Company’s Articles of Incorporation. As a result of the Board’s breaches of fiduciary duty,
23 Steve Wynn and Kim Sinatra have received hundreds of millions of dollars in ill-gotten gains in
24 the form of compensation and dividends. For example, Steve Wynn’s compensation from 2005

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⁴<https://www.bloomberg.com/news/articles/2017-12-28/steve-wynn-s-settlement-with-worker-haunts-him-in-ex-wife-s-suit>

1 through 2016 has totaled in excess of \$186 million—averaging approximately \$16 million per
 2 year. Sinatra’s total compensation from 2009 through 2016 approximated \$29 million.⁵

	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	All Other Compensation (\$)	Total Compensation (\$)
6 Stephen A. Wynn 7 Chairman and Chief Executive Officer	2016	2,500,000	—	12,500,000	—	12,500,000	656,985	28,156,985
	2015	2,500,000	—	8,750,000	—	8,750,000	680,391	20,680,391
	2014	4,000,000	—	10,000,000	—	10,000,000	1,396,896	25,396,896
	2013	4,000,000	4,000,000	—	—	10,000,000	1,601,381	19,601,381
	2012	4,000,000	2,000,000	—	—	10,000,000	1,743,434	17,743,434
	2011	3,878,846	2,000,000	—	—	9,062,500	1,533,361	16,474,707
	2010	2,950,000	3,218,750	—	—	6,906,250	1,540,779	14,615,779
	2009	2,953,125	4,062,500	—	—	—	1,370,206	8,385,831
	2008	3,250,000	—	—	—	4,062,500	1,141,588	8,454,088
	2007	3,173,077	—	—	—	7,500,000	573,428	11,246,505
2006	2,825,000	—	—	—	6,875,000	262,915	9,962,915	
2005	2,343,151	3,221,833	—	—	—	557,249	6,122,233	
14 Kim Sinatra 15 EVP, General Counsel and Secretary	2016	873,654	—	850,000	—	850,000	65,086	2,638,740
	2015	850,000	—	680,000	—	680,000	129,156	2,339,156
	2014	840,769	—	2,474,875	—	850,000	160,310	4,325,954
	2013	800,000	—	—	—	1,600,000	180,881	2,580,881
	2012	671,346	—	—	—	1,300,000	241,352	2,212,698
	2011	647,920	—	—	—	1,300,000	189,156	2,137,076
	2010	595,940	—	—	—	1,105,000	426,500	2,127,440
	2009	535,582	2,750,000	—	6,956,870	—	207,801	10,450,253

20 98. Further, through their own concealment of the 2005 Settlement, Steve Wynn and
 21 Kim Sinatra also breached their fiduciary duties since at least 2005. Had Steve Wynn and Kim
 22 Sinatra informed the Board of the 2005 Settlement at the time it occurred, the Board would have
 23 had an opportunity to make a suitability determination in accordance with the Company’s
 24 Articles of Incorporation. As a result of their breaches of fiduciary duty, Steve Wynn and Kim
 25 Sinatra have received hundreds of millions of dollars in ill-gotten gains in the form of
 26 compensation and dividends.
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⁵ Sinatra’s compensation prior to 2009 is not disclosed.

1 V. THE TRUTH IS ED

2
3 C. THE JANUARY 25, 2018 WALL STREET JOURNAL ARTICLE

4 1. The WSJ Article Opens the Floodgates of Further Allegations Against
5 Steve Wynn, Resulting in Substantial Financial and Reputational Harm to
6 the Company

7 103. The January 25, 2018, *The Wall Street Journal* broke the story of Steve Wynn’s
8 sexual misconduct and revealed to the public what those close to Steve Wynn—notably the
9 Director and Officer Defendants—had known for years and expressly not disclosed: that Steve
10 Wynn had engaged in a “decades-long pattern” of harassment, abuse, and tyranny.

11 104. Since then, the floodgates have opened, with additional allegations against Steve
12 Wynn appearing almost immediately and continuing unceasingly in the weeks since January 25,
13 2018.

14 105. In response to an influx of communications from the public, the Nevada Gaming
15 Control Board has begun accepting complaints through its online portal. The Board reports it
16 was inundated by a deluge of complaints in the days and weeks after January 25, 2018, and
17 decided to revamp its method of communicating with the public for the sake of ease and
18 efficiency.

19 106. Institutions with which Steve Wynn—and by extension, Wynn Resorts—has
20 historically been associated through Steve Wynn’s philanthropic work have distanced
21 themselves from him in the wake of the allegations against him. The University of
22 Pennsylvania, where Steve Wynn was a substantial donor and a member of the Board of Trustees
23 until 2004, revoked Steve Wynn’s honorary degree, and the university removed his name from a
24 plaza on campus and a scholarship fund that he endowed.

25 107. The University of Iowa has removed Steve Wynn’s name from the institute to
26 which he donated \$25 million towards research on a cure for hereditary blindness. Additionally,
27 the Cornell University School of Hotel Administration rescinded its “Cornell Hospitality Icon”
28 award, which it awarded to Steve Wynn last year, stating, “[W]e can no longer consider Steve
Wynn to be an exemplary role model for the industry and, more importantly, for our students.

1 We have read with dismay the reports of his sexual misconduct, including the high incidence
 2 within his organization. Service employees are particularly vulnerable, and hospitality leaders
 3 have a keen responsibility to ensure that they provide a safe working environment for their
 4 employees, free from harassment of any kind.”

5 108. Immediately following publication of the January 25, 2018 *Wall Street Journal*
 6 article, Steve Wynn resigned from his position as finance chair of the Republican National
 7 Committee, a position for which he was handpicked by President Donald J. Trump. The
 8 Republican Governors Association has said that it will return the \$100,000 in donations it
 9 received over the past three years from Wynn Resorts.

10 109. In short, the name “Wynn” is sullied, and the Company and its shareholders are
 11 suffering the consequences.

12 110. As Wynn Resorts emphasizes in its own Code of Business Conduct and Ethics:

13 We live in an age where legal and ethical missteps of others have
 14 resulted in the law imposing special duties on our personal and
 15 business lives. In the midst of this unfortunate environment, the
 16 good name and reputation of Wynn Resorts are a result of the
 17 dedication and hard work of all of us. Together, we are responsible
 18 for preserving and strengthening this reputation. Our goal is not
 19 just to comply with the laws, rules and regulations that apply to
 20 our business; we also continuously strive to abide by high
 21 standards of ethical business conduct.⁶

22 111. The Defendants breached this trust by acting in direct contravention of the
 23 Company’s publicly-touted credo. This reputational harm translates into long-term damage to
 24 the Company. Moreover, Defendants knew that “the efforts, skills and reputation”⁷ of Steve
 25 Wynn were critical to the competitive position of the Company, as “the founder and creative and
 26 organizational force of Wynn Resorts.”⁸

27 112. Defendants’ wrongful conduct also caused a substantial drop in Wynn Resorts’
 28 stock price. The stock price dropped by 10% after *The Wall Street Journal* first reported that

⁶ Wynn Resorts Corporate Governance - Code of Business Conduct and Ethics, <https://wynnresortslimited.gcs-web.com/corporate-governance/code-business-conduct-and-ethics>

⁷ WYNN 2016 Form 10-K at 16 (Feb. 24, 2017).

⁸ WYNN 2017 DEF 14A at 7 (Mar. 10, 2017).

1 Steve Wynn sexualized his workplace and pressured workers to perform sex acts, wiping out
 2 well over \$2 billion of the Company’s market capitalization.

3 113. Further, several investment firms have downgraded Wynn Resorts’ stock after
 4 *The Wall Street Journal* story. For instance, UBS warned that the “risk to the outlook has
 5 increased as well, with recent allegations about the CEO prompting an investigation by the
 6 company’s board as well as reviews by the gaming regulatory bodies in Nevada and
 7 Massachusetts.”

8 114. On January 30, 2018, Standard & Poor’s Global Rating revised its outlook for
 9 Wynn Resorts from “stable” to “negative.” 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 renew its gaming licenses.”

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

19 116. *The Wall Street Journal* article has already triggered investigations by gaming
 20 regulators in Nevada, Massachusetts, and Macau.

21 117. In 2014, the Massachusetts Gaming Commission awarded Wynn Resorts a license
 22 for its planned Wynn Boston Harbor project. The Boston Harbor project, scheduled to open in
 23 2019, is planned to be a 27-story, 671-room hotel and casino located on 31 acres along the
 24 Mystic River in Everett, Massachusetts and adjoining a convention and expo center. The project
 25 was expected to generate \$252 million in earnings before interest, taxes, depreciation, and
 26 amortization for Wynn Resorts in the first full year of operation in 2020, equal to about 9% of
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1 earnings from the Company’s casinos worldwide, according to J.P. Morgan’s estimates. The
 2 Company said it had incurred \$1.13 billion in total project costs as of the end of last year.

3 118. As described above, under a 2011 Massachusetts state law, the MGC holds broad
 4 legal authority to decide who is and is not suitable to hold a state gaming license. Massachusetts
 5 has set out to maintain the highest possible standards for suitability of license holders and their
 6 principals; this goal was reportedly part of the bargaining process that allowed for expanded
 7 gaming in the state. Massachusetts law states that the MGC may consider the applicant’s
 8 character, reputation, and integrity as part of the application and licensing process; the state must
 9 renew each license every three years. The law also provides that licensees “shall have a
 10 continuing duty to maintain their integrity and financial stability.”

11 119. Two recent examples of the MGC’s disqualification of applicants for gaming
 12 licenses illustrate the stringency and rigor of Massachusetts’s suitability standard:

- 14 • In 2013, the MGC disqualified Caesars Entertainment from obtaining a gaming
 15 license due to suspicions that arose that an owner of the Gansevoort Hotel Group,
 16 with which Caesars entered into a brand licensing deal, was connected to Russian
 17 organized crime. This tangential connection to Caesars was enough for
 18 Massachusetts to bar the organization from the state instantaneously.
- 19 • Also in 2013, Massachusetts disqualified Ourway Realty, the prior owner of a
 20 race track in Plainville, Massachusetts, when MGC investigators discovered that
 21 the president of Ourway had made several unauthorized cash withdrawals from
 22 the track’s money room. In its suitability report on Ourway, the MGC stated:

24 For many years leading up to and including the
 25 commencement of the Bureau’s investigation into Ourway,
 26 Gary Piontkowski (hereinafter “Piontkowski”) was the
 27 functional head of the organization. The investigation
 28 unearthed a number of practices engaged in by Piontkowski
 that were deeply troubling. Though he is no longer part of
 the organization, we must consider the systemic issues that
 allowed those practices to take place, what has been done
 to remedy those deficiencies, and what the outlook for the
 future is vis-à-vis the operation of a category 2 gaming
 establishment. . . . They were not detected by the principals

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of the organization themselves. Indeed, the principals . . . purport to have been passive investors with no substantive oversight of the operation. . . . [W]e are able to conclude that they were either passive investors, as they claim, who offered little to no oversight, or that they were more involved and poorly exercised their duties. In either event, we find their past involvement in the operation of Ourway troublesome.

120. In both the Caesars and Ourway matters, Massachusetts did not accept either organization’s offer to remedy or cure the deficiencies that the MGC unearthed. In denying Caesars’s and Ourway’s gaming licenses, the MGC cited not only the particular offender’s individual conduct, but also the systemic issues and management-level practices that allowed such conduct to proceed—conduct that would undermine the public’s confidence in the company’s ability to responsibly hold a license to operate in the state.

121. On January 31, 2018, in the aftermath of *The Wall Street Journal* article, MGC commissioners met to discuss the allegations against Steve Wynn. The MGC has said that it is now reviewing the license that it issued to Wynn Resorts in 2014 to build Wynn Boston Harbor. Specifically, the MGC is scrutinizing four areas of concern regarding Wynn Resorts’ license:

- (1) The suitability of individual licensees, including Wynn and other qualifiers potentially involved in not disclosing the 2005 Settlement when the company was approved to build Wynn Boston Harbor in Everett in 2013;
- (2) A review of any corporate action or lack of action involving the alleged misconduct by Wynn, including questions of who knew what, and when, and whether any individuals took any action in response to it;
- (3) Monitoring and reporting to the MGC on the corporate response to the information regarding Wynn’s misconduct that is now in the public domain, including watching how the Company’s Board of Directors and executive officers handle and react to the allegations;
- (4) A review of how the current situation at the Company potentially impacts its financial viability.

1 122. Elaine Driscoll, a spokesperson for the MGC, said that Wynn Resorts did not
 2 report the 2005 Settlement, or Wynn’s alleged sexual misconduct, to the MGC in its application
 3 for the license. Ms. Driscoll said, “The Commission is now aware of and is taking very seriously
 4 the troubling allegations detailed in *The Wall Street Journal* article. The suitability and integrity
 5 of our gaming licensees is of the utmost importance, and ensuring that suitability is an active and
 6 ongoing process. Consequently, the MGC’s Investigations and Enforcement Bureau (“IEB”)
 7 will conduct a regulatory review of this matter to determine the appropriate next steps.”

8 123. The Company’s counsel has stated that the 2005 Settlement was not disclosed in
 9 the licensing process because it was not requested. This concession demonstrates that the
 10 Company, including Kim Sinatra, which knew of the allegations of egregious misconduct
 11 involving the Company, actively concealed them from the Massachusetts gaming regulators. As
 12 a result, Wynn Resorts spent over a billion dollars to develop the sole resort-casino in eastern
 13 Massachusetts, the license for which is now in jeopardy.

14 124. Massachusetts Governor Charlie Baker has called the allegations against Steve
 15 Wynn “appalling and disgraceful,” and has stated that if the allegations are true, he doesn’t
 16 believe Wynn Resorts meets the state regulator’s suitability standard. Governor Baker’s
 17 communications director Lizzy Guyton added that Governor Baker “finds these allegations
 18 horrifying and deeply disturbing and expects them to be taken seriously,” and that “Governor
 19 Baker believes it is the right decision for Wynn Resorts to terminate its relationship with Mr.
 20 Wynn in light of recent disturbing allegations, and supports the [MGC]’s ongoing review.” Setti
 21 Warren, a Democratic candidate for governor in Massachusetts agreed, “Steve Wynn is not a
 22 suitable partner for Massachusetts, but it is not enough that he steps down from his public
 23 role. In order for Wynn Resorts to be suitable to run the casino in Everett, the company must
 24 separate itself from every single person involved in covering up Steve Wynn’s terrible behavior
 25 and Wynn must give up his significant stake in the business.”

26 125. On February 7, 2018, at a meeting concerning the Company’s Boston Harbor
 27 project, MGC chairman Stephen Crosby stressed that the MGC was continuing to look closely
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1 not just at Steve Wynn, the 2005 Settlement, and other sexual assault allegations, but also the
 2 Company itself, including its Board and the “broader pattern of misconduct.” In fact,
 3 Massachusetts regulators have even asked for information about Steve Wynn’s behavior during
 4 the 1990’s when he was running Mirage Resorts, Inc. Indeed, MGC spokeswoman Driscoll
 5 recently stated that the “MGC continues to conduct an aggressive investigation on this very
 6 serious matter.”

7 126. Similarly, Nevada’s gaming statute provides that the state may consider in its
 8 review of applicants for gaming licensure any behavior that reflects “disrepute.” Regulation 5 of
 9 the Nevada casino law, provides that regulators must require that all establishments operate in a
 10 “manner suitable to protect the public health, safety, morals, good order, and general welfare” of
 11 state inhabitants. The Nevada Gaming Control Board has the legal power to conduct an
 12 investigation and bring the results to the three-member board, who are gubernatorial appointees.
 13 Although the Board does not comment on active, ongoing investigations, the Board has made
 14 clear that it has opened a formal investigation into the accusations against Steve Wynn. “Nevada
 15 regulators have a broad range of options when it comes to potential disciplining of a licensee,”
 16 stated AG Burnett, former chairman of the Nevada Gaming Control Board, “These include
 17 things like complaints, fines, and even potentially revocation.”

18 127. Nevada, like Massachusetts, has been known to take action in response to
 19 investigations that result in credible claims against those who own and operate casinos that the
 20 state licenses. In 2016, Nevada regulators required Lee Amaitis, the chief executive of CG
 21 technology, formerly known as Cantor Gaming, to step down to settle claims that the sports
 22 betting company underpaid customers.

23 128. Finally, officials in Macau, the gambling enclave and territory of China, have
 24 raised concerns about Steve Wynn’s sexual misconduct. Wynn Resorts is one of only a few
 25 companies licensed to operate casinos in Macau; the Company runs two resort-casinos there,
 26 Wynn Macau and Wynn Palace, which together generated about 65% of Wynn Resorts’ total
 27 operating profit last year. Macau’s government, through its Gaming Inspection and
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1 Coordination Bureau (“DICJ”), expressed concern during a meeting with Wynn Macau’s
 2 leadership about reports of Steve Wynn’s “involvement in inappropriate behavior,” and met with
 3 local Wynn management to seek further information. After the meeting, the DICJ issued a
 4 statement stressing the importance of major shareholders, directors, and key employees of casino
 5 operators in meeting suitability qualifications, stating that the Macau government “pays great
 6 attention to appropriate qualifications of gambling companies’ main shareholders, board
 7 members, as well as key employees holding important positions, and will strictly implement
 8 relevant provisions.”

9 129. It is clear that the investigations proceeding in Nevada, Massachusetts, and
 10 Macau are focused not on Steve Wynn alone—these investigations implicate Wynn Resorts’
 11 executive leadership, including Kim Sinatra, and the new CEO Matt Maddox, as well as other
 12 key employees and the Board of Directors. Regulators have broad power to review and
 13 investigate the suitability of all individuals even obliquely involved in Steve Wynn’s misconduct
 14 and the Company’s active concealment of it. The potential loss of Wynn Resorts’ gaming
 15 licenses—the natural consequence of a negative suitability review—poses grave, existential risks
 16 to the Company, many of which it outlined in its Form 10-K for 2017, filed with the SEC on
 17 February 29, 2016:

- 19 • “Major construction projects of the scope and scale of Wynn Palace and
 20 the Wynn resort in Massachusetts entail significant risks, including . . .
 21 delays in obtaining or inability to obtain requisite licenses, permits and
 22 authorizations from regulatory authorities”
- 23 • ***“We are subject to extensive state and local regulation, and licensing
 24 and gaming authorities have significant control over our operations.
 25 The cost of compliance or failure to comply with such regulations and
 26 authorities could have a negative effect on our business.*** The operations
 27 of our resorts are contingent upon our obtaining and maintaining all
 28 necessary licenses, permits, approvals, registrations, findings of
 suitability, orders and authorizations in the jurisdictions in which our
 resorts are located. The laws, regulations and ordinances requiring these
 licenses, permits and other approvals generally relate to the responsibility,
 financial stability and character of the owners and managers of gaming
 operations, as well as persons financially interested or involved in gaming
 operations. . . . Nevada and Massachusetts regulatory authorities also have
 broad powers to request detailed financial and other information, to limit,
 condition, suspend or revoke a registration, gaming license or related

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approvals, approve changes in our operations and levy fines or require forfeiture of assets for violations of gaming laws or regulations.”

- “We and our licensed Nevada subsidiaries also will be subject to disciplinary action by the Nevada Gaming Commission if our Macau-related subsidiaries: fail to conduct Wynn Macau’s operations in accordance with the standards of honesty and integrity required of Nevada gaming operations; [or] engage in any activity or enter into any association that is unsuitable for us because it poses an unreasonable threat to the control of gaming in Nevada, reflects or tends to reflect discredit or disrepute upon the State of Nevada or gaming in Nevada, or is contrary to Nevada gaming policies. . . .”

D. THE BOARD’S RESPONSE

1. In Response to the Onslaught of Negative Press Coverage, the Board of Directors Is Forced to Form a Special Litigation Committee and Allows Steve Wynn to Resign on His Terms

130. In the wake of *The Wall Street Journal* article, on February 2, 2018, the Board, assuring investors that it was “deeply committed to ensuring the safety and wellbeing” of all employees, finally announced that it had formed a Special Committee, comprised of purportedly independent directors, to investigate the allegations against Steve Wynn. The Special Committee consisted of Defendant Mulroy, as chairman, Defendant Johnson and Defendant Hagenbuch. As noted above, Defendant Hagenbuch was a member of the Audit Committee that received, and ignored, Elaine Wynn’s letter detailing Steve Wynn’s misconduct.

131. That same day, the Special Committee announced that it had hired the law firm of O’Melveny & Myers LLP (“O’Melveny”) to conduct a purportedly “independent” investigation. O’Melveny’s investigation was to be led by Apalla Chopra, Chair of O’Melveny’s Labor and Employment Practice, and Daniel Bookin, a former federal prosecutor. The Special Committee further announced that O’Melveny would create a telephonic and internet-based hotline for current and former Wynn employees to provide information about alleged sexual misconduct involving Steve Wynn.

132. Then, on February 6, 2018, Steve Wynn resigned as Chairman and CEO of Wynn Resorts. The Board issued a press release in which it “reluctantly announced” Steve Wynn’s

1 departure. Defendant Wayson (now Chairman of the Board) offered effusive praise to Steve
 2 Wynn:

3 It is with a collective heavy heart, that the board of directors of
 4 Wynn Resorts today accepted the resignation of our founder, CEO
 5 and friend Steve Wynn . . . Steve Wynn is an industry giant. He is
 6 a philanthropist and a beloved leader and visionary. He played the
 7 pivotal role in transforming Las Vegas into the entertainment
 8 destination it is today. He also assembled a world-class team of
 9 executives that will continue to meet the high standards of
 10 excellence that Steve Wynn created and the Wynn brand has come
 11 to represent.

9 133. The Board’s press release further stated that it would disclose the details of Steve
 10 Wynn’s separation agreement when it was finalized. According to Steve Wynn’s employment
 11 agreement, if Steve Wynn was terminated “without cause,” his severance package could be
 12 worth more than *\$330 million*. However, as set forth above, the Company’s Articles of
 13 Incorporation are clear that any Unsuitable Person “shall not be entitled to receive any
 14 remuneration in any form from the Corporation or any Affiliated Company for services rendered
 15 or otherwise.” Paying Steve Wynn, an alleged sexual assaulter and serial sexual harasser,
 16 hundreds of millions of dollars would fly directly in the face of this provision.

17 134. On February 15, 2018 Steve Wynn and the Company entered into a Separation
 18 Agreement pursuant to which Steve Wynn agreed that he was not entitled to any Separation
 19 Payment as described in his Employment Agreement. Steve Wynn, however, retained all of the
 20 shares of stock that had been given to him by the Company.

21 135. Rather than fully investigate Steve Wynn’s conduct and the Board’s inaction, the
 22 Board seized on Steve Wynn’s resignation to halt any real investigation into wider misconduct at
 23 the Company and by the Board. Just a week after announcing the creation of the Special
 24 Committee and its investigation, on February 12, 2018, the Board announced that it was
 25 canceling its investigation and terminating O’Melveny, stating that O’Melveny’s services were
 26 “no longer required.” The Special Committee did not comment on whether it would continue to
 27 maintain the hotlines for reports of information about Steve Wynn’s misconduct. John C. Coffee
 28 Jr., a Columbia Law School professor and known corporate governance expert observed that

1 “the board’s decision to cut ties with the outside counsel is ‘a strong signal that not much has
2 changed in the culture of the board.’”

3 136. But Steve Wynn’s resignation did nothing to curtail the ongoing investigations by
4 government gaming regulators caused by the Board’s blind-eye to Steve Wynn’s misconduct.

5 137. Gambling regulators in Nevada publicly stated that they were continuing their
6 own investigation of Wynn Resorts and Steve Wynn himself, despite his resignation.

7 138. Apparently realizing that the Board must maintain the appearance of an inquiry,
8 the Special Committee then hired Gibson Dunn & Crutcher LLP (“Gibson Dunn”) to “assist”
9 with the Special Committee’s review of the allegations against Steve Wynn. Notably, unlike the
10 O’Melveny retention, the Special Committee did not even claim that Gibson Dunn’s work would
11 constitute an “independent” investigation, instead claiming that Gibson Dunn would “conduct an
12 expanded and comprehensive review of Wynn Resorts’ internal policies and procedures with the
13 goal of ensuring the Company employs best practices to maintain a safe and respectful
14 workplace for all employees.” There was no mention of any investigation of Wynn, Sinatra or
15 other member of the Board.
16

17 139. The Board’s investigation of the allegations against former Board member Okada,
18 as described in the Massachusetts Gaming Commission’s report on its Suitability Investigation
19 for Wynn, MA, LLC, was far more thorough than the Board is contemplating for Steve Wynn’s
20 alleged serial sexual harassment and assault. In the Okada matter, the Board retained Louis
21 Freeh, the former Director of the Federal Bureau of Investigation, to conduct an investigation.
22 Freeh informed the Massachusetts Gaming Commission’s IEB that he was “afforded complete
23 access to any information and personnel they required”; that he was given permission to
24 interview any witness without providing any notice; and that *the witnesses could not be*
25 *“prepared’ in any way.”* Freeh was not given a deadline to complete the investigation, “and he
26 was given complete authority to broaden the investigation at any time.” As a result of his
27 investigation, Freeh concluded that there was sufficient evidence for the Board to “review
28 Okada’s suitability and take action” and, as a result, “the company was required to separate

1 [Okada] from the business.” In other words, the Board well knows how to constitute and pursue
 2 a thorough and independent investigation, but in the case of Steve Wynn, it has chosen not to do
 3 so.

4 140. The Special Committee’s decision to replace O’Melveny with Gibson Dunn, in
 5 particular, makes clear that the investigation is not independent. Gibson Dunn has longstanding
 6 and extensive ties to Wynn Resorts, including its prior and current representation of the Board,
 7 and it is unlikely Gibson Dunn would even be capable of performing an independent
 8 investigation. Notably, before joining Wynn Resorts, Defendant Sinatra was a partner in Gibson
 9 Dunn’s New York office. As discussed above, Kim Sinatra was intimately involved in covering
 10 up Steve Wynn’s misconduct. In addition to Kim Sinatra’s conflicts, Gibson Dunn has been
 11 representing the Board in the Company’s years-long litigation with former board members
 12 Okada and Elaine Wynn. Furthermore, Gibson Dunn has a longstanding role advising Wynn
 13 Resorts on matters before the SEC and DOJ.

14
 15 141. The selection of Gibson Dunn also is curious given the firm’s recent failure to
 16 create and maintain notes of witness interviews.⁹

17 **VI. DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

18 **E. Demand on the Wynn Resorts Board Would Have Been Futile**

19 142. Plaintiff is a current owner of Wynn Resorts common stock and has continuously
 20 held Wynn Resorts common stock during the periods at issue herein.
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25 ⁹ See, *United States v. Baroni*, 2:15-CR-00193-SDW, 2015 WL 9049528, at *4 (DNJ Dec 16, 2015) (“Although
 26 GDC did not delete or shred documents, the process of overwriting their interview notes and drafts of the summaries
 27 had the same effect. This was a clever tactic, but when public investigations are involved, straightforward lawyering
 28 is superior to calculated strategy. The taxpayers of the State of New Jersey paid GDC millions of dollars to conduct
 a transparent and thorough investigation. What they got instead was opacity and gamesmanship. They deserve
 better.”)

1 143. Plaintiff brings this action derivatively to redress injuries suffered, and to be
 2 suffered, by Wynn Resorts as a direct result of the breaches of fiduciary duty by the Individual
 3 Defendants.

4 144. Plaintiff has not made any demand upon the Wynn Resorts Board to bring an
 5 action on behalf of the Company to assert the claims alleged herein because such demand would
 6 be futile. Under the test articulated in *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984), demand is
 7 excused in this case because the directors' conduct was not a valid exercise of business
 8 judgment, and therefore is not protected by the business judgment rule.

9 145. At the time of filing of this Complaint, the Wynn Resorts Board consisted of the
 10 following nine Director Defendants, all of whom have been named as Individual Defendants
 11 herein: Defendants Hagenbuch, Irani, Johnson, Miller, Mulroy, Randt, Shoemaker, Virtue, and
 12 Wayson

13
 14 **F. Demand Is Excused Because the Directors Willfully Abdicated Their**
 15 **Fiduciary Duties to Monitor and Oversee the Company's Business**
 16 **Operations**

17 146. Demand is excused because the Director Defendants face a substantial likelihood
 18 of liability because they were aware of significant red flags indicating that Wynn Resorts'
 19 compliance program was failing, yet refused to implement adequate procedures to prevent Steve
 20 Wynn from engaging in a decades-long pattern of sexual misconduct that could expose the
 21 Company to abnormal risk or loss.

22 147. The Company's 2017 Proxy Statement asserts that "[t]he Board has an active role
 23 in overseeing the Company's areas of risk." The 2017 Proxy describes the Board's role in Risk
 24 oversight as follows:

25 The Board and its Committees regularly review information
 26 regarding the Company's risk profile and have, in consultation
 27 with management and the Company's independent auditors,
 28 identified specific areas of risk including: regulatory compliance;
 legal, legislative and political conditions; capital availability and
 liquidity; gaming credit extension and collection; construction;
 catastrophic events; and succession planning. The Board (as a
 whole and through its Committees) has reviewed and approved
 management's process for identifying, managing and mitigating
 these risks. While the full Board has overall responsibility for risk

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oversight, the Board has assigned certain areas of risk oversight to its Committees as well as to the Company's Compliance Committee. Throughout the year, the Board, its Committees and the Company's Compliance Committee receive reports from management that include information regarding major risks and exposures facing the Company and the steps management has taken to monitor and control such risks and exposures. In addition, throughout the year, the Board, its Committees and the Company's Compliance Committee dedicate a portion of their meetings to review and discuss specific risk topics in greater detail. The Audit Committee is primarily responsible for the oversight of credit, related party, construction and general financial risks. The Company's Compliance Committee primarily oversees risks relating to regulatory, security and political compliance.

148. More specifically, under the Wynn Resorts Board's Audit Committee Charter, the Audit Committee members, Defendants Hagenbuch (Chairman), Miller, Shoemaker, and Wayson, owe and/or owed specific additional duties to Wynn Resorts. The Audit Committee's Charter charges it with the obligation to oversee and monitor the Company's compliance program with respect to legal and regulatory compliance, and the Company's policies and procedures for monitoring compliance. The Audit Committee Charter further addresses Compliance and Risk Oversight as follows:

Review at least annually the implementation and effectiveness of the Corporation's compliance program with the General Counsel and the Compliance Officer, who shall have the authority to communicate directly to the Audit Committee promptly, about actual and alleged violations of the Corporation's Code of Business Conduct and Ethics, including any matters involving criminal or potential criminal conduct.

Discuss periodically with management, receive relevant reports regarding, and oversee management's evaluation of the Corporation's major risk exposures and, without limiting the foregoing, the Corporation's credit, related party, information security, construction and financial risk exposures, and the steps management has taken or proposes to take to monitor and control such exposures.

149. The Audit Committee meets at least quarterly in executive session with the Company's independent auditors, General Counsel, Chief Audit Executive, Chief Financial Officer and Compliance Officer to discuss accounting principles, financial and accounting controls, the scope of the annual audit, internal controls, regulatory compliance and other

1 matters. Further, the Audit Committee Charter states that one of the Audit Committee’s duties
2 related to the financial statements is to:

3 Review with the Corporation’s legal advisers legal matters that
4 may have a material effect on the financial statements, the
5 Corporation’s compliance policies and any material reports or
6 inquiries received from regulators or governmental agencies
7 relating to any matter that may have a material effect on the
8 Corporation’s financial statements.

9 150. This means that at a minimum, the Audit Committee received information on the
10 allegations made by Elaine Wynn in 2016 that Steve Wynn had been engaging in a “pattern of
11 reckless behavior.” Elaine Wynn specifically asserted that:

12 [Steve] Wynn was withholding information from the Board on
13 critical issues and using a public company to fund his lavish
14 lifestyle and personal politics. [Steve] Wynn, along with Ms.
15 Sinatra [the Company’s general counsel], effectively undermined
16 the role and proper decision-making authority of the board by
17 withholding information from or affirmatively misleading the
18 board, including on matters that indisputably should have been
19 reported to the Board, and by retaliating against [Elaine] Wynn for
20 raising proper inquiries in the conduct of the Company, including
21 by [Steve] Wynn.

22 151. Elaine Wynn continued that she had learned that:

23 [Steve] Wynn, using the services of a private criminal defense
24 attorney and a private gaming authority, had previously made a
25 multimillion dollar payment after apparently being threatened with
26 allegations of serious misconduct occurring on Company property
27 against a Wynn resort employee.

28 152. The members of the Audit Committee failed to meet their responsibilities and
obligations as provided in the Audit Committee Charter because, despite Elaine Wynn’s
allegations which included the withholding of information from the Board, multimillion dollar
payouts, and serious misconduct by Steve Wynn on Company property, they did not cause Wynn
Resorts to remediate those control problems. The Audit Committee’s deliberate failure of
oversight constituted breaches of its fiduciary duties to Wynn Resorts and has resulted in
significant harm to the Company.

1 153. The Board’s Compliance Committee members, Defendants Miller and Mulroy,
 2 owe and/or owed specific additional duties to Wynn Resorts. The Compliance Committee is
 3 charged with “assist[ing] the Company in maintaining the highest level of regulatory
 4 compliance, including, among other things, overseeing the administration of the Company’s
 5 Gaming Compliance Program.” The objectives of the Compliance Committee are to assist the
 6 licensee in avoiding associations with non-reputable entities, identify areas of concern that might
 7 adversely affect the good reputation of the licensee, and provide additional oversight of the
 8 licensee’s compliance with the laws and regulations of gaming jurisdictions.

9 154. On January 30, 2018, *The Nevada Independent* reported that the Nevada Gaming
 10 Control Board opened an investigation after reviewing the sexual misconduct allegations against
 11 Steve Wynn. Nevada gaming regulators have broad authority to make ethical judgments about
 12 the character of the individuals to whom they choose to grant gaming licenses. Nevada state law
 13 requires regulators to find each applicant for a gaming license “of good character, honesty and
 14 integrity” and bars licensees from engaging in activity that “reflects or tends to reflect discredit
 15 or disrepute upon this state or gaming in this state.” These Defendants breached their fiduciary
 16 obligations to the Company, and therefore cannot impartially consider a demand to address the
 17 wrongdoing detailed herein.

18 155. Under the Board’s Nominating and Corporate Governance Committee Charter,
 19 the Nominating and Corporate Governance Committee members, Defendants Irani, Miller,
 20 Mulroy, Virtue, and Wayson, owe and/or owed specific additional duties to Wynn Resorts. The
 21 Nominating and Corporate Governance Committee’s Charter charges its members with
 22 “assess[ing] at least annually and otherwise as appropriate, and mak[ing] recommendations to
 23 the Board, regarding the independence of Board members.” The Nominating and Corporate
 24 Governance Committee Charter also charged its members “[t]o recommend that the Board
 25 establish such special committees as may be desirable or necessary from time to time in order to
 26 address ethical, legal or other matters that may arise.” The members of the Nominating and
 27 Corporate Governance Committee failed to establish a special committee to investigate the
 28

1 serious allegations of sexual misconduct made by Elaine Wynn in 2016. Moreover, members of
 2 the Nominating and Corporate Governance Committee failed to assess the independence of
 3 Wynn Resorts' Board members despite continued reports and evidence of their lack of
 4 independence. For instance, a January 28, 2018 *Bloomberg* article reported that "[t]he 10-
 5 member Wynn board includes Clark Randt, who received a \$600,000 consulting agreement in
 6 2015 before his appointment to the board, and J. Edward Virtue." Thus, these Defendants now
 7 face a substantial likelihood of liability for their breach of fiduciary duties, making any demand
 8 upon them futile.

9 156. Pursuant to the Board's Compensation Committee Charter, the Compensation
 10 Committee members, Defendants Hagenbuch, Johnson, Shoemaker, and Virtue, owe and/or
 11 owed specific additional duties to Wynn Resorts. The Compensation Committee members are
 12 primarily responsible for monitoring risks relating to the Company's compensation policies and
 13 practices to determine whether they create risks that are reasonably likely to have a material
 14 adverse effect on the Company. Thus, the members of the Compensation Committee had
 15 heightened duties to consider the risks of whether the Company's incentive compensation
 16 practices were reasonably likely to have a material adverse effect on the Company. Because the
 17 members of the Compensation Committee failed to ensure that the Company's incentive
 18 compensation practices would comply with sound and safe business practices and in turn
 19 discourage excessive risk-taking, these Defendants now face a substantial likelihood of liability
 20 for their breach of fiduciary duties, making any demand upon them futile.

21 157. Given their membership on the Audit, Compliance, Compensation, and
 22 Nominating and Corporate Governance Committees, their respective responsibilities, and their
 23 failures to meet those responsibilities, defendants Hagenbuch, Irani, Johnson, Miller, Mulroy,
 24 Randt, Shoemaker, Virtue, and Wayson face a substantial likelihood of liability, and making a
 25 demand on them would be futile.

26 158. The Board as a whole had the duty to ensure that Wynn Resorts' systems were
 27 sufficiently well-designed to detect Steve Wynn's repeated, persistent, and egregious violations
 28

1 of law—in this case, sexual assault and other forms of sexual misconduct. The Board’s duty was
 2 heightened by the fact that Wynn Resorts participates in the heavily regulated gambling industry,
 3 and was made even more crucial in light of the fact that the Company’s “ability to maintain [its]
 4 competitive position is dependent to a large degree on the efforts, skills and reputation of Steve
 5 Wynn.”

6 159. The Board willfully failed to fulfill that duty, and its failure is even more
 7 egregious in light of the blatant warnings Wynn Resorts has received that its systems were not
 8 sufficient to detect or prevent the sexual misconduct at issue herein and to elevate it within the
 9 Company for resolution.

10 160. For these reasons, the Wynn Resorts Board is incapable or unwilling to take the
 11 actions required to seek the relief requested in this complaint.

12
 13 **G. Demand Is Excused Because the Directors Knew about Steve Wynn’s**
 14 **Misconduct and Intentionally Did Not Hold Him Accountable but Rather**
 15 **Sought to Suppress that Information**

16 161. As alleged herein, as early as 2009, Elaine Wynn had knowledge that Steve Wynn
 17 had engaged in pervasive sexual harassment of Wynn Resorts’ employees, including a sexual
 18 assault in 2005 leading to a clandestine settlement of \$7.5 million. In or around 2015, the Board
 19 had actual knowledge of Steve Wynn’s misconduct following Elaine Wynn’s repeated attempts
 20 to raise these issues with appropriate Company personnel. Specifically, Elaine Wynn began
 21 asking questions of Steve Wynn and Kim Sinatra about the underlying misconduct, when they
 22 would not provide her answers. As Elaine Wynn became more outspoken, the Board took steps
 23 to silence her for good by ousting her as a director of the Company.

24 162. In March 2016, Elaine Wynn filed suit against Wynn Resorts, Steve Wynn, and
 25 Kim Sinatra alleging that Steve Wynn had engaged in “reckless” conduct putting the Company
 26 at risk, that Steve Wynn had agreed to pay millions of dollars to settle a sexual harassment claim
 27 by a Wynn Resorts employee for a sexual assault taking place on Company property, that Steve
 28 Wynn and Kim Sinatra had actively concealed such information from the Company, the Board,
 and gaming regulators. The Board received notice of Elaine Wynn’s complaint immediately

1 thereafter. Despite knowing that a gaming organization must be forthcoming with relevant
 2 information with gaming commissioners, or face fines, suspensions, or loss of licenses, the
 3 Board failed to investigate these credible claims of misconduct based on the Company's own
 4 internal documents, and did nothing of substance to determine whether Steve Wynn and others
 5 were suitable to own and operate a casino under laws and regulations of Macau, Nevada, and
 6 Massachusetts.

7 163. The Board's misconduct did not stop there. In July 2016, Elaine Wynn sent a
 8 letter to the Audit Committee members asking them to investigate potential violations of the
 9 securities laws, including the allegations contained in her complaint. The Audit Committee
 10 again rebuffed Elaine Wynn's attempts to have the Board take action against Steve Wynn. In
 11 fact, the Audit Committee expressly threatened Elaine Wynn with a lawsuit in an attempt to
 12 deter her from continuing to raise her concerns. The Audit Committee also did not pass on the
 13 information provided by Elaine Wynn to the Company's auditor, Ernst & Young, even though it
 14 had an obligation to do so.

15 164. Thereafter, the Board followed through on its promise to sue Elaine Wynn. The
 16 Board's decision to sue Elaine Wynn was an intentional act designed to silence her and cover up
 17 the existence of Steve Wynn's sexual misconduct.

18 165. The Board also sought to silence others who might have disclosed Steve Wynn's
 19 years of sexual misconduct. In December 2017, a mere two months before the WSJ article was
 20 published, the Board sued Wheneen for misappropriation of Company property—for taking
 21 notes that referenced the 2005 Settlement and the allegations underlying that complaint. The
 22 Board's intentional act to sue a former Wynn Resorts' employee was part of a scheme to conceal
 23 Steve Wynn's misconduct.

24 166. In sum, the Board knowingly refused to investigate and hold accountable Steve
 25 Wynn for egregious acts of sexual assault. Worse yet, the Board intentionally sought to cover up
 26 Steve Wynn's misconduct, even going as far as filing lawsuits against Wynn Resort directors
 27
 28

1 and employees in attempt to silence those individuals and ensure that the information did not
2 leak to the public.

3 167. For these reasons, the Wynn Resorts Board is incapable or unwilling to take the
4 actions required to seek the relief requested in this complaint.

5 **H. Demand Is Excused Because the Board of Directors Willfully Ignored**
6 **Their Obligation to Make a Good Faith Determination as to Suitability**
7 **and Approved Compensation For Steve Wynn, Kim Sinatra, and Others**
8 **All In Violation of the Company Charter**

9 168. As alleged herein, under the Articles of Incorporation, the Board has an
10 affirmative obligation to ensure that all individuals who own and operate Wynn Resorts are
11 suitable to do so under the relevant gaming commission regulations. The Board intentionally
12 failed to exercise this obligation with respect to Steve Wynn and Kim Sinatra. Rather than
13 investigate their underlying misconduct, the Board turned a blind eye to Steve Wynn's sexual
14 assault and his fraudulent and surreptitious conduct. Despite having knowledge of these extreme
15 facts that called into question Steve Wynn and Kim Sinatra as suitable persons under the gaming
16 regulations, the Board willfully failed to hold them accountable under the Company's Articles of
17 Incorporation by conducting a suitability investigation as early as 2015. Even after having
18 knowledge, the Board knowingly approved the payment of compensation and dividends for
19 Steve Wynn and Kim Sinatra in clear violation of the Company's Articles of Incorporation.

20 169. For these reasons, the Wynn Resorts Board is incapable or unwilling to take the
21 actions required to seek the relief requested in this complaint.

22 **I. Demand Is Excused Because the Directors' Intentional Misconduct**
23 **Renders Them Unsuitable to Own or Operate a Casino**

24 170. As alleged herein, gaming commissioners from Macau, Nevada, and
25 Massachusetts are currently conducting investigations to determine whether Steve Wynn, Kim
26 Sinatra, and the Board are suitable to own and operate a casino. The Board cannot assess a
27 demand for corrective action because to do so would require them to unearth facts showing that
28 they failed to monitor Steve Wynn and Kim Sinatra and then subsequently engaged in a cover up
and failed to notify regulators of Steve Wynn's sexual assault and misconduct.

1 171. Under gaming regulations, a director, executive, or other key employee is not
 2 suitable if he or she: (i) submits an application for a gaming license which contains false or
 3 misleading information; (ii) commits prior acts which have not been prosecuted or in which the
 4 an applicant or other key person was not convicted but form a pattern of misconduct that makes
 5 the applicant unsuitable for a license; (iii) has affiliates or close associates that would not qualify
 6 for a license or whose relationship with the applicant may pose an injurious threat to the interests
 7 of the jurisdiction in awarding a gaming license to the applicant; (iv) does not demonstrate
 8 integrity, honesty, good character and reputation; (v) failed to demonstrate responsible business
 9 practices in any jurisdiction.

10 172. Under the plain language of the regulations, the members of the Board face a
 11 substantial risk of being found unsuitable. Because this action seeks to unearth facts that would
 12 further call into question the Board’s suitability, the Board is incapable of disinterestedly
 13 assessing a demand.

14 173. For these reasons, the Wynn Resorts Board is incapable or unwilling to take the
 15 actions required to seek the relief requested in this complaint.

16
 17 **J. Demand Is Futile as to All Defendants Because they Lack Independence**
 18 **from Steve Wynn, Who Is Interested and Who Previously Dominated and**
 19 **Controlled the Board**

20 174. Demand is further excused because a majority of the Board is not independent.
 21 An examination of the Board at Wynn Resorts explains why the Board took no action in the face
 22 of this crisis. A majority of the Board members are beholden to Steve Wynn or have a close
 23 personal relationship with Steve Wynn and have a history of acquiescence to Steve Wynn. This
 24 lack of independence is further evidenced by their knowing and intentional failure to investigate
 25 and knowing and intentional concealment of alleged egregious misconduct involving the
 26 Company which was obviously in violation of their duties as fiduciaries.

27 175. The Company’s proxy statement, filed March 10, 2017, acknowledged that Steve
 28 Wynn and Randt were not independent directors because they did not meet the independence
 criteria of the NASDAQ listing standards. Director independence under NASDAQ and under

1 Nevada demand futility law is virtually identical. Therefore, the Company has essentially
 2 conceded that demand is futile as to Randt.

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

22
 23 177. A majority of the Board also lacks independence from Steve Wynn because of a
 24 multitude of interrelated business, professional, and personal relationships that will prevent (and
 25 have previously prevented) the Board from taking the necessary and proper action on behalf of
 26 Wynn Resorts. Indeed, the history of many of Wynn’s relationships with member of the Board
 27 demonstrates his ability to use his power and wealth to control them and others.
 28

1 **Hagenbuch**

2 178. Hagenbuch could not comply with the fiduciary duties to independently consider
3 a pre-suit demand to bring the claims alleged herein because he was hand-picked by Steve
4 Wynn, who is directly implicated in the improper and illegal acts giving rise to this complaint, to
5 serve as a director of the Company. Because Hagenbuch was personally selected for board
6 membership by Steve Wynn, he is incapable of exercising independent objective judgment in
7 deciding whether to bring this action. Moreover, in the April 2015 proxy fights, Steve Wynn
8 supported Hagenbuch for reelection over Elaine Wynn. Hagenbuch was ultimately reelected
9 while Elaine Wynn lost her seat. Hagenbuch has received over \$1.9 million in compensation
10 from the Company between 2012 and 2016.

11 **Irani**

12 179. Irani could not comply with the fiduciary duties to independently consider a pre-
13 suit demand to bring the claims alleged herein because he was hand-picked by Steve Wynn, who
14 is directly implicated in the improper and illegal acts giving rise to this complaint, to serve as a
15 director of the Company. Because Irani was personally selected for board membership by Steve
16 Wynn, he is incapable of exercising independent objective judgment in deciding whether to
17 bring this action. Irani has received over \$2.9 million in compensation from the Company
18 between 2009 and 2016.

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

24 181. In March 1987, Irani joined the board of directors for the parent company of
25 Steve Wynn's resort-casinos and served until that company was bought out in May 2000.

1 **Johnson**

2 182. Johnson could not comply with the fiduciary duties to independently consider a
 3 pre-suit demand to bring the claims alleged herein because he was hand-picked by Steve Wynn,
 4 who is directly implicated in the improper and illegal acts giving rise to this complaint, to serve
 5 as a director of the Company. Because Johnson was personally selected for board membership
 6 by Steve Wynn, he is incapable of exercising independent objective judgment in deciding
 7 whether to bring this action. Johnson has received over \$380,000 in compensation from the
 8 Company since 2016.

9
 10 **Miller**

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

1 expanded into that very same market. In November 2005, Wynn Macau reported running an
 2 IGT casino system: Wynn Macau had “chosen MICros opera Enterprise as its hotel solution with
 3 OPERA Property Management and OPERA Gaming Integration to its IGT casino system.”
 4 Given Miller’s direct investment in Wynn Macau through IGT, and given that IGT provided the
 5 casino system for Wynn Macau, Miller has a financial interest and conflicting fiduciary duties in
 6 decisions exposing Steve Wynn to personal liability and sanctions.

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

18 185. In 1997, Miller testified at a trial in a libel case Steve Wynn had brought against
 19 the author of an unauthorized biography. In his testimony, Miller described himself as “a 23 year
 20 friend of Wynn’s.” Miller and Steve Wynn’s close relationship thus dates back more than 40
 21 years. Miller has received over \$3.7 million in compensation from the Company.
 22

23 **Mulroy**
 24

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

1 by Steve Wynn, she is incapable of exercising independent objective judgment in deciding
2 whether to bring this action. Mulroy has received over \$600,000 in compensation from the
3 company between 2015 and 2016.

4
5 **Randt**

6 187. As discussed above, Randt is not an independent director because he does not
7 meet the independence criteria of the NASDAQ listing standards. Additionally, Randt could not
8 comply with the fiduciary duties to independently consider a pre-suit demand to bring the claims
9 alleged herein because he was hand-picked by Steve Wynn, who is directly implicated in the
10 improper and illegal acts giving rise to this complaint, to serve as a director of the Company.
11 Because Randt was personally selected for board membership by Steve Wynn, he is incapable of
12 exercising independent objective judgment in deciding whether to bring this action. Randt has
13 received over \$500,000 in compensation from the Company between 2015 and 2016.

14
15 **Shoemaker**

16 188. Shoemaker could not comply with the fiduciary duties to independently consider
17 a pre-suit demand to bring the claims alleged herein because he was hand-picked by Steve
18 Wynn, who is directly implicated in the improper and illegal acts giving rise to this complaint, to
19 serve as a director of the Company. Because Shoemaker was personally selected for board
20 membership by Steve Wynn, he is incapable of exercising independent objective judgment in
21 deciding whether to bring this action. Shoemaker has received over \$3.0 million in
22 compensation from the Company between 2009 and 2016.

23
24 189. Shoemaker and Steve Wynn also have a long-standing relationship. From 1986
25 to 1994, Shoemaker served with Steve Wynn on the University of Pennsylvania Board of
26 Trustees. Shoemaker was Chair of the University of Pennsylvania Board of Trustees when Steve
27 Wynn was appointed to the Board in June 1994. Both Steve Wynn and Shoemaker are graduates
28 of the University of Pennsylvania. From 2009 until at least February 10, 2013, Shoemaker

1 served as Honorary Counsel for the Sun Valley Summer Symphony (the “Symphony”) and on
 2 April 16, 2008, the Stephen Wynn Foundation contributed \$50,000 in grants to the Symphony.

3 **Virtue**

4 190. Virtue could not comply with the fiduciary duties to independently consider a pre-
 5 suit demand to bring the claims alleged herein because he was hand-picked by Steve Wynn, who
 6 is directly implicated in the improper and illegal acts giving rise to this complaint, to serve as a
 7 director of the Company. Because Virtue was personally selected for board membership by
 8 Steve Wynn, he is incapable of exercising independent objective judgment in deciding whether
 9 to bring this action. Virtue has received over \$1.9 million in compensation from the Company
 10 between 2012 and 2016.

11 191. Virtue was nominated to the Wynn Resorts’ Board on September 20, 2012. Steve
 12 Wynn recommended Virtue to the Nominating Committee. Moreover, in the April 2015 proxy
 13 fight, Wynn supported Virtue for reelection over Elaine Wynn. Virtue was ultimately reelected
 14 while Elaine Wynn lost her seat. Virtue has both financial and business ties to Wynn. In
 15 February 2003, Virtue formed MidOcean Partners when he led a management buyout of 80% of
 16 DB Capital, Deutsche Bank’s private equity arm. Virtue had been head of Corporate
 17 Investments at Deutsche Bank until the buy-out by MidOcean Partners and until February 20,
 18 2003. Deutsche Bank retained a 20% interest in MidOcean Partners portfolio.

19 192. Despite his separation from Deutsche Bank at the time, Virtue remained
 20 connected to Deutsche Bank through business transactions. For instance, an amended agreement
 21 for consulting services between MidOcean and one of its portfolio companies reported that
 22 Deutsche Bank Trust Company Americas was the administrative agent for the agreement and
 23 Deutsche Bank Securities, Inc. was a co-lead arranger and book runner. Steve Wynn and Elaine
 24 Wynn invested in MidOcean Partners with Virtue. As noted above, Deutsche Bank retained a
 25 20% interest in MidOcean Partners at the time of the leveraged buy-out in February 2003 and
 26 Deutsche Bank continued to play a critical role in financing Wynn Resorts thereafter. On
 27 October 5, 2012, Wynn Las Vegas LLC and Wynn Las Vegas Capital Corp. reported:
 28

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

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

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

16
17
18 **Wayson**

19 195. Wayson could not comply with the fiduciary duties to independently consider a
20 pre-suit demand to bring the claims alleged herein because he was hand-picked by Steve Wynn,
21 who is directly implicated in the improper and illegal acts giving rise to this complaint, to serve
22 as a director of the Company. Wayson has received over \$3.0 million in compensation from the
23 Company between 2009 and 2016.

24 196. Steve Wynn's relationship with Wayson is so close, they are nearly family.
25 Wayson's father and Steve Wynn's father had a business relationship in the 1950s, when they
26 operated a bingo hall together in Wayson's Corner, Maryland. Wayson's brother and sister,
27 Edward O. Wayson and Sarah Wayson, have also worked with Steve Wynn throughout the
28 years—Edward served as Steve Wynn's legal advisor for many years and Sarah worked as a

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

10 197. As a result of familial or longstanding business or personal ties and loyalty to
11 Steve Wynn, further evidenced by their knowing and intentional failure to investigate and
12 concealment of the patently egregious misconduct involving the Company, a majority of the
13 Board is conflicted, and cannot be expected to act in a disinterested or independent manner.

14 198. Pre-suit demand is excused because a majority of the Board faces a substantial
15 likelihood of liability for abdicating their responsibility to exercise oversight of Wynn Resorts,
16 the settlement of claims of sexual misconduct relating to the conduct of Steve Wynn, and the
17 continuing misconduct.

18 199. The Board had knowledge of the allegations of egregious misconduct and/or
19 ignored credible “red flags” that should have alerted them to egregious wrongdoing and
20 existential risk to the Company.

21 200. For all the above reasons, demand upon the Board would be futile and is therefore
22 excused.

23
24 **K. Demand Is Excused Because the Directors’ Conduct Is Not a Valid**
25 **Exercise of Independent Business Judgment**

26 201. The Director Defendants’ challenged misconduct at the heart of this case is the
27 knowing and conscious choice not to address deficiencies in the Company’s risk controls and
28 monitoring systems.

1 202. This action does not arise from a single incident but from a decades-long pattern
 2 of sexual misconduct by Steve Wynn. As a result of the Board’s failure to design controls to
 3 detect and prevent Steve Wynn from engaging in sexual harassment of Wynn Resort employees
 4 and his use of corporate employees, such as the Company’s general counsel, and other resources
 5 to facilitate and/or obfuscate his sexual activity resulting in violations of law. There is no
 6 legitimate “business judgment” involved in devising or carrying out such an unlawful policy.
 7 Accordingly, demand on the Board is excused.

8 203. The Board cannot plausibly claim ignorance concerning its failure of oversight.
 9 The Board knew about Steve Wynn’s sexual misconduct from at least 2016. Indeed, Elaine
 10 Wynn alleged in her counterclaim in March 2016 that Steve Wynn had been engaging in a
 11 “pattern of reckless behavior” and had “made a multimillion dollar payment after apparently
 12 being threatened with allegations of serious misconduct occurring on Company property against
 13 a Wynn resort employee.” Similarly, *The Wall Street Journal* reported that Steve Wynn engaged
 14 in behavior that cumulatively would amount to a decades-long pattern of sexual misconduct by
 15 Steve Wynn. Some described him pressuring employees to perform sex acts. Yet the Board did
 16 nothing. Further, the length of time and the scope of the wrongdoing occurring at the Company
 17 concerning Steve Wynn’s decades-long sexual misconduct makes it implausible to suggest that
 18 the Board would be unaware of the wrongdoing if its members were fulfilling their fiduciary
 19 duties. The Board’s tacit or express approval of the Steve Wynn’s sexual misconduct, along
 20 with his improper use of corporate resources resulting in violations of law occurring at the
 21 Company could not have been the result of a fully informed business decision taken with the
 22 requisite due care. Therefore demand is excused.

COUNT I

Breach of Fiduciary Duty
(Against the Individual Defendants)

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

1 205. The Individual Defendants owed and owe fiduciary duties to Wynn Resorts and
2 its shareholders. By reason of their fiduciary relationships, the Director Defendants specifically
3 owed and owe Plaintiff and Wynn Resorts the highest obligation of good faith and loyalty in the
4 administration of the affairs of the Company, including, without limitation, the oversight of
5 Wynn Resorts' compliance with, and the duty to conduct a good faith investigation into, known
6 violations of laws, regulations, and internal policies concerning sexual harassment.

7 206. In addition, the Director Defendants have specific fiduciary duties as defined by
8 the Company's corporate governance documents, including the Code of Conduct and the
9 Charters of various Board committees that, had they been discharged in accordance with the
10 Director Defendants' obligations, would have necessarily prevented the misconduct and the
11 consequent harm to the Company alleged herein.

12 207. The Director Defendants consciously breached their fiduciary duties and violated
13 their corporate responsibilities by willfully abdicating their roles as fiduciaries and permitting a
14 hostile work environment, which included rampant sexual harassment and exploitation, to
15 continue unabated for more than a decade. The Director Defendants' dereliction of duty was
16 deliberate, as they unreasonably ignored red flags indicating prolonged sexual misconduct.

17 208. As a direct and proximate result of the Director Defendants' conscious failure to
18 perform their fiduciary duties, Wynn Resorts has sustained, and will continue to sustain,
19 significant damages—both financially and to its corporate image and goodwill. Such damages to
20 Wynn Resorts caused by the Director Defendants include and will include the substantial
21 penalties, fines, damages, awards, settlements, expenses, increased regulatory scrutiny, and other
22 liabilities described herein. Moreover, Wynn Resorts is subject to increased regulatory scrutiny
23 by the gaming commissions of Macau, Massachusetts and Nevada.

24 209. As a result of the misconduct alleged herein, the Director Defendants are liable to
25 the Company for the damages resulting directly and proximately from these breaches of
26 fiduciary duty, in an amount in excess of \$15,000.
27
28

1 result of the compensation and benefits they received while breaching their fiduciary duties to
2 the Company, and being unsuitable under the Company's charter, as alleged herein.

3 225. Plaintiff, as a shareholder of Wynn Resorts, seeks restitution from the Individual
4 Defendants, and seeks an order of this Court disgorging all profits, benefits, and other
5 compensation obtained by the Director Defendants, from their wrongful course of conduct and
6 fiduciary breaches.

7 226. By reason of the foregoing, Wynn Resorts was damaged in an amount in excess
8 of \$15,000.00.

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

10 228. It has been necessary for Plaintiff to retain attorneys to represent it and to bring
11 this action, and Plaintiff is entitled to recover attorney's fees and costs incurred herein.

12
13 **COUNT V**

14 **Unjust Enrichment**

15 **(Against Defendants Steve Wynn and Kimmarie Sinatra)**

16 229. Plaintiff incorporates by reference and realleges each and every allegation
17 contained above, as though fully set forth herein.

18 230. As alleged herein, Defendants Steve Wynn and Kimmarie Sinatra were unjustly
19 enriched at the expense of, and to the detriment of, the Company. Defendants Steve Wynn and
20 Kimmarie Sinatra were unjustly enriched as a result of the compensation and benefits they
21 received while breaching their fiduciary duties to the Company, and being unsuitable under the
22 Company's charter, as alleged herein.

23 231. Plaintiff, as a shareholder of Wynn Resorts, seeks restitution from Defendants
24 Steve Wynn and Kimmarie Sinatra, and seeks an order of this Court disgorging all profits,
25 benefits, and other compensation obtained by Steve Wynn and Kimmarie Sinatra from their
26 wrongful course of conduct and fiduciary breaches.

27 232. By reason of the foregoing, Wynn Resorts was damaged in an amount in excess
28 of \$15,000.00.

1 233. Plaintiff on behalf of Wynn Resorts, has no adequate remedy at law.

2 234. It has been necessary for Plaintiff to retain attorneys to represent it and to bring
3 this action, and Plaintiff is entitled to recover attorney's fees and costs incurred herein.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, plaintiff seeks the following relief:

- 6 A. A determination that this action is a proper derivative action maintainable under
7 the law and that demand was excused as futile;
- 8 B. A finding that the Individual Defendants breached their fiduciary duties by
9 deliberately choosing not to strengthen Wynn Resorts' internal controls despite
10 numerous red flags;
- 11 C. An award against all of the defendants and in favor of the Company for the
12 amount of all damages sustained by Wynn Resorts as a result of the Individual
13 Defendants' breaches of fiduciary duties, including any and all damages
14 compensable by statute and/or law, as well as disgorgement of all profits, benefits
15 and other compensation obtained by the defendants as a result of the misconduct
16 alleged herein, such award to include pre-judgment and post-judgment interest, in
17 an amount in excess of \$15,000.00;
- 18 D. An Order directing the Director Defendants to take all necessary actions to reform
19 and improve the Company's compliance procedures and governance policies to
20 comply with applicable laws and to protect Wynn Resorts and its shareholders
21 from a repeat of the damaging events described herein;
- 22 E. An award to plaintiff of the costs and disbursements of this action, including
23 reasonable attorneys' fees, experts' fees, costs, and expenses;
- 24
- 25
- 26

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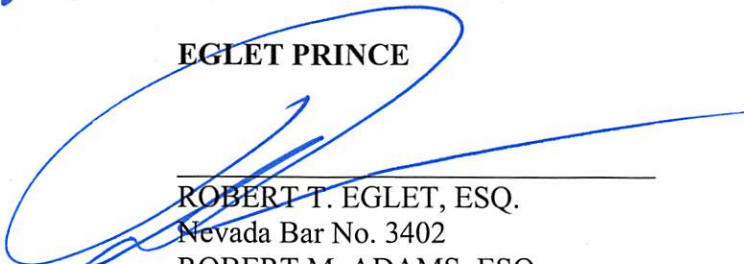
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F. A grant of such other and further relief as the Court deems just and proper.

DATED this 6th day of March, 2018.

EGLET PRINCE



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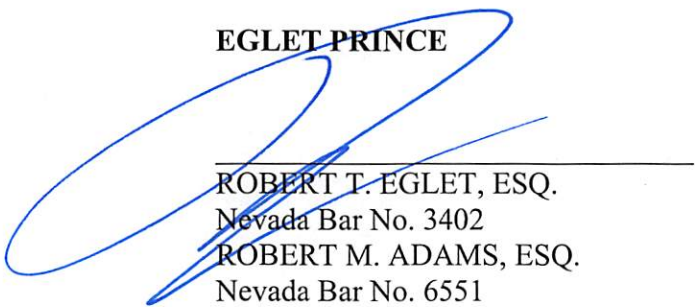
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DEMAND FOR JURY TRIAL

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

DATED this 6th day of March, 2018.

EGLET PRINCE



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6 **Attorneys for Plaintiff the State of Oregon,**
7 **by and through the Oregon State Treasurer**
and the Oregon Public Employee
8 **Retirement Board, on behalf of the Oregon**
Public Employee Retirement Fund

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 PLAINTIFF THE STATE OF)
OREGON, BY AND THROUGH THE)
13 OREGON STATE TREASURER AND)
THE OREGON PUBLIC EMPLOYEE)
14 RETIREMENT BOARD, ON BEHALF)
OF THE OREGON PUBLIC)
15 EMPLOYEE RETIREMENT FUND,)
Derivatively on Behalf of WYNN)
16 RESORTS, LIMITED,)

17 Plaintiff,

18 v.

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

23 Defendants,

24 -and-

25 WYNN RESORTS, LIMITED,
Nominal Defendant.

) Case No.
)
)
) Dept. No.
)
) (Exemption From Arbitration Requested.
) Damages Exceed \$50,000)
) Request for Business Court
) Assignment Pursuant to
) EDCR 1.61 (a)
)
) **VERIFICATION OF BRIAN A. DE HAAN**
) **IN SUPPORT OF DERIVATIVE**
) **COMPLAINT OF THE STATE OF**
) **OREGON, BY AND THROUGH THE**
) **OREGON STATE TREASURER AND**
) **THE OREGON PUBLIC EMPLOYEE**
) **RETIREMENT BOARD, ON BEHALF OF**
) **THE OREGON PUBLIC EMPLOYEE**
) **RETIREMENT FUND, PURSUANT TO**
) **THE NEVADA RULES OF CIVIL**
) **PROCEDURE RULE 23.1**

1 VERIFICATION OF BRIAN A. DE HAAN IN SUPPORT OF DERIVATIVE COMPLAINT
2 OF THE STATE OF OREGON, BY AND THROUGH THE OREGON STATE
3 TREASURER AND THE OREGON PUBLIC EMPLOYEE RETIREMENT BOARD, ON
4 BEHALF OF THE OREGON PUBLIC EMPLOYEE RETIREMENT FUND, PURSUANT
5 TO THE NEVADA RULES OF CIVIL PROCEDURE RULE 23.1

4 STATE OF OREGON)
5) ss.
6)
6 COUNTY OF MULTNOMAH)

7 Brian A. de Haan, being of full age, having been duly sworn according to law, upon his/her
8 oath, deposes and says:

9 1. I am a Senior Assistant Attorney General of the State of Oregon, plaintiff in the
10 above-captioned matter.

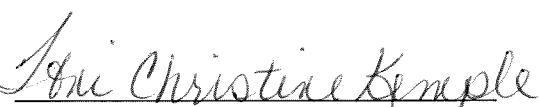
11 2. As stated in the Verified Shareholder Derivative Complaint, the Oregon Public
12 Employee Retirement Fund is and has been a shareholder of Wynn Resorts, Ltd., continuously at
13 the time of fiduciary wrongdoing and breaches underlying the claims alleged, and will continue to
14 hold Wynn Resorts, Limited shares at all times relevant to this action.

15 3. Plaintiff has retained counsel in connection with this litigation. I have reviewed the
16 Verified Shareholder Derivative Complaint and am familiar with the allegations of the Complaint.
17 To the extent the allegations in the Complaint concern the Plaintiff, I know those allegations to be
18 true and correct. To the extent the allegations in the Complaint concern actions of parties other than
19 the Plaintiff, I believe those allegations to be true and correct based upon information and belief and
20 the investigation of counsel.

21 4. I hereby declare under penalty and perjury that the foregoing is true and correct.
22 Dated: March 1, 2018 Oregon Public Employee Retirement Fund

23 By: 
24 BRIAN A. DE HAAN

25 Signed (or attested) before me on March 1, 2018, by Brian A DeHaan

26 
27 Notary Public – State of Oregon
28

