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15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 OPERATING ENGINEERS
18 CONSTRUCTION INDUSTRY AND
19 MISCELLANEOUS PENSION FUND,
20 derivatively on behalf of WYNN RESORTS,
21 LTD.,

22 Plaintiff,

23 v.

24 STEVEN A. WYNN, D. BOONE WAYSON,
25 JOHN J. HAGENBUCH, RAY R. IRANI,
26 JAY L. JOHNSON, ROBERT J. MILLER,
27 PATRICIA MULROY, CLARK T. RANDT
28 JR., ALVIN V. SHOEMAKER, J. EDWARD
VIRTUE,

Defendants,

and

WYNN RESORTS, LIMITED,
Nominal Defendant.

CASE NO. A-18-769630-B

DEPT. NO. Department 27

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

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

**VERIFIED STOCKHOLDER'S
DERIVATIVE COMPLAINT FOR
DAMAGES AND EQUITABLE
RELIEF**

**VERIFIED STOCKHOLDER'S DERIVATIVE COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF**

I. INTRODUCTION

1
2 1. For decades, Stephen Wynn (“Mr. Wynn”) preyed on female employees at his
3 company, Wynn Resorts Ltd. (“Wynn Resorts”), seeking sexual gratification from women who
4 were dependent upon him for their livelihoods. His unwaveringly loyal Board of Directors
5 (“Board”) turned a blind eye to reports of sexual harassment and coercion. When he finally
6 resigned after the Wall Street Journal recounted the repellent details of his reign, the Board only
7 reluctantly accepted the resignation, choosing to praise their “friend” rather than condemn his
8 exploitations.

9
10 2. That the Board acquiesced in the face of Mr. Wynn’s pervasive misconduct is a
11 symptom and a consequence of Mr. Wynn stacking the Board with loyal friends and business
12 beneficiaries. Described by a former director as one of the “most compliant boards” in corporate
13 history, the Wynn Resorts Board—through its action and inaction—permitted Mr. Wynn to
14 repeatedly coerce his female employees in sexual conduct.

15 3. On January 26, 2018, the Wall Street Journal (“Journal”) published the results of
16 its in-depth investigation at Wynn Resorts. The Journal’s front-page story made public—beyond
17 just the Company and the Board—some of the stories of the countless women subject to Mr.
18 Wynn’s predations. The Journal painted a clear picture of a pattern of abuse of Wynn Resorts’
19 female employees and of a Company that failed to respond to reports made about the extensive
20 harassment. In response to the Journal’s report, the Company indicated it would conduct an
21 investigation led by a three-member special committee of the Board assisted by an independent
22 law firm.

23 4. Within two weeks of the Journal’s revelations, Mr. Wynn resigned from the
24 Wynn Resorts and from its Board. Instead of condemning the pervasive misconduct that
25 culminated in his ouster, the Board lamented the departure of their “friend,” whose resignation
26 they only accepted “reluctantly.” The Board also terminated the law firm that they had hired just
27 days before to conduct the independent investigation.
28

1 5. While the full scope of Mr. Wynn’s habitual harassment is likely to be revealed
2 only in the coming weeks and months, and perhaps years, the harm to the Company has been
3 immediate. Mr. Wynn, a towering figure in the Las Vegas gaming industry, *was* the Wynn
4 brand. The Journal’s report caused Wynn Resorts stock prices immediately to tumble. In the
5 wake of the allegations, regulators from three separate jurisdictions have opened investigations
6 into whether Mr. Wynn should be permitted to continue to hold his gaming licenses. These
7 developments imperil the Company’s plans for expansion and, in fact, its very existence. The
8 Defendants must be held responsible for their breaches of fiduciary duty to the Company and for
9 the damage those breaches have caused.

10 **II. JURISDICTION AND VENUE**

11 6. The Court has jurisdiction over the Defendants because each is either (1) a
12 corporation incorporated and authorized to do business in Nevada; (2) an individual serving as a
13 director of a Nevada corporation; or (3) otherwise subject to this Court’s jurisdiction. Nominal
14 Defendant Wynn Resorts is a Nevada corporation. Each of the individual Defendants—aside
15 from Mr. Wynn—is currently a director of Wynn Resorts. Mr. Wynn is susceptible to
16 jurisdiction because of his sufficient minimum contacts with the state of Nevada, including his
17 residence within this state.

18 7. Venue is proper in Clark County because Wynn Resorts’ offices are located in
19 this county.
20

21 **III. PARTIES**

22 8. Plaintiff Operating Engineers Construction Industry and Miscellaneous Pension
23 Fund (“Plaintiff”) is an employee retirement plan located in Pennsylvania. Plaintiff is a
24 stockholder of Wynn Resorts, has been a stockholder at all relevant times hereto, and will
25 continue to hold stock in Wynn Resorts throughout the pendency of this action.

26 9. Nominal Defendant Wynn Resorts is a Nevada corporation with its principal
27 offices located in Las Vegas, Nevada. Wynn Resorts develops, owns, and operates a series of
28 high-end hotels and casinos. Wynn Resorts also owns a majority stake in its subsidiary Wynn

1 Macau, Limited, an entity it developed which operates three casino resorts in Macau, China.
2 Wynn Resorts also owns 100% of Wynn Las Vegas, which operates in Las Vegas. The
3 Company is engaged in expansion efforts, including plans to open a resort near Boston,
4 Massachusetts, in mid-2019, and a 72,000 square foot luxury retail complex—Wynn Plaza—in
5 early summer of 2018. Wynn Resorts trades on the NASDAQ exchange under the WYNN ticker
6 symbol.

7 10. Defendant Mr. Wynn, a resident of Clark County, Nevada, is the founder of
8 Wynn Resorts. Mr. Wynn served as Wynn Resorts’ Chairman and Chief Executive Officer
9 (“CEO”) since the Company went public in 2002 until his resignation on February 6, 2018.
10 Before establishing Wynn Resorts, Mr. Wynn built and operated the Mirage, Treasure Island,
11 and Bellagio casinos in Las Vegas. At the time of his resignation, he owned approximately
12 11.8% of the Company’s stock.

13 11. Defendant D. Boone Wayson (“Wayson”), a resident of Maryland, has served as a
14 director of Wynn Resorts and Wynn Resorts (Macau) S.A. since December 2003. He serves as
15 the Chairman of the Board, and a member of both the Audit Committee and the Nominating and
16 Corporate Governance Committee.

17 12. Defendant Ray R. Irani (“Irani”), a resident of California, has served as a director
18 of Wynn Resorts since October 2007. He is a member of the Nominating and Corporate
19 Governance Committee.

20 13. Defendant Jay L. Johnson (“Johnson”), a resident of Idaho, has served as a
21 director of Wynn Resorts since August 2016. He is a member of the Compensation Committee.

22 14. Defendant Robert J. Miller (“Miller”), a resident of Nevada, has served as a
23 director of Wynn Resorts since October 2012. He is considered to be the Company’s lead
24 independent director. He is the Chair of the Nominating and Corporate Governance Committee,
25 the Chair of the Compliance Committee, the Compliance Director, and a member of the Audit
26 Committee.
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1 15. Defendant Patricia Mulroy (“Mulroy”), a resident of Nevada, has served as a
2 director of Wynn Resorts since October 2015. She is also a member of the Nominating and
3 Corporate Governance committee, and the Compliance Committee. Mulroy served on the
4 Nevada Gaming Commission from July 2014 until October 2015.

5 16. Defendant Alvin V. Shoemaker (“Shoemaker”), a resident of Nevada, has served
6 as a director of Wynn Resorts since 2002. He sits on the Board’s Audit Committee and
7 Compensation Committee.

8 17. Defendant J. Edward Virtue (“Virtue”), a resident of Florida, has served as a
9 director of Wynn Resorts since 2012. He is the Chair of the Compensation Committee, as well
10 as a member of the Nominating and Corporate Governance Committee.

11 18. Defendant John J. Hagenbuch (“Hagenbuch”), a resident of Idaho, has served as a
12 director of Wynn Resorts since December 2012. He is the Chair of the Audit Committee and a
13 member of the Compensation Committee.

14 19. Defendant Clark T. Randt Jr. (“Randt”), a resident of Utah, has served as a
15 director of Wynn Resorts since October 2015. The Company concedes that Randt is not
16 independent.

17 20. The parties listed in paragraphs 10-19 are referred to herein collectively as
18 “Defendants.”

19 21. Defendants Wayson, Irani, Johnson, Miller, Mulroy, Shoemaker, Virtue,
20 Hagenbuch and Randt are the current members of the Board and are referred to herein
21 collectively as “Director Defendants.”
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23 **IV. FACTUAL ALLEGATIONS**

24 **A. MR. WYNN CREATES WYNN RESORTS, WHICH BECOMES A HIGHLY**
25 **PROFITABLE GAMING VENTURE**
26

27 22. Mr. Wynn is one of the most well-known gaming executives in the world. His
28 career took off after he built and operated some of most notable casino resorts in Las Vegas,
including the Mirage, Treasure Island, and the Bellagio.

1 23. In April 2000, Mr. Wynn began his namesake firm, founding Wynn Resorts with
2 his then-wife, Elaine Wynn, and Japanese gaming magnate Kazuo Okada. They took the
3 Company public in 2002, building it into one of the most profitable hotel-casinos in the world,
4 with expansion plans in several regions. After it went public, Wynn Resorts went on to develop
5 several subsidiaries, including Wynn Macau, which is operated in Macau, China. Until he
6 resigned, Mr. Wynn was serving as the Chairman and CEO of Wynn Resorts; the Executive
7 Director, Chairman and CEO of Wynn Macau; and the Director, Chairman and CEO of Wynn
8 Resorts (Macau) S.A. He also served as an officer and/or a director of several Wynn Resorts
9 subsidiaries.

10 24. In January 2010, Elaine Wynn and Mr. Wynn divorced. Following the divorce,
11 Elaine Wynn retained approximately 9% of the Company and Mr. Wynn retained approximately
12 11%. In connection with the divorce settlement, Mr. Wynn and Elaine Wynn, as well as Okada,
13 entered into a stockholders agreement on January 6, 2010 (“Stockholders’ Agreement”). As a
14 consequence of the Stockholders’ Agreement, although Elaine owned 9% of the Company, she
15 could not freely sell her shares, and she had to cede voting control over her shares to Mr. Wynn.
16 In 2012, she filed suit to lift those restrictions. After she filed suit, the Board voted in March
17 2015 against re-nominating her to the Board, despite the fact that she had co-founded the
18 Company and was its third-largest shareholder. The Board instead simply eliminated her seat. It
19 was the only time in the history of the Company that a director had been denied re-nomination.

20 25. Mr. Wynn dominated the Company he built. His name and persona were
21 synonymous with the Wynn brand. According to analysts from JPMorgan Chase, Wynn Resorts
22 has long had “the single largest individual CEO dependency” of any gambling entity covered by
23 JPMorgan Chase. On February 3, 2018, The Economist remarked that, “As with Harvey
24 Weinstein and The Weinstein Company, Mr. Wynn’s control over Wynn Resorts is viewed as
25 near-absolute.” He also intimidated those who worked for him. When staff threatened to
26 unionize over a pay dispute, Mr. Wynn banged on a table, repeatedly screaming that he was “the
27 most powerful man in Nevada.”
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B. MR. WYNN CREATES A LOYAL, PLIABLE BOARD

26. Carefully selected by Mr. Wynn, the Wynn Resorts Board is composed of loyal directors unwilling to take on their friend and benefactor, Mr. Wynn. Elaine Wynn—who served on the Board for 13 years before her ouster—noted in 2017 that “The Wynn Board may be the most compliant board of any major public company....In only three instances in the history of the Company has a director voted against Mr. Wynn’s position on any issue.”

27. The Wynn Resorts Board has staggered terms; no single proxy vote, therefore, can replace the entire Board. Because of the Stockholder Agreement, no member of the Board could be appointed without Mr. Wynn’s approval.¹

28. The Board consistently approved lavish pay packages and permitted other perks for Mr. Wynn and the executives he hand-picked. In 2012, Mr. Wynn enjoyed more than \$1 million in personal travel on the Wynn Resorts company jet; in December 2012, the Company purchased a \$65 million Gulfstream G650—one of only 7 in the world at the time—to shuttle him from his penthouse in New York City to the villa in Nevada that Wynn Resorts purchased for him in 2012. In 2013, the Company permitted Mr. Wynn to purchase any of its aircraft in exchange for giving up an option to buy just 2 acres of land on a golf course. Wynn Resorts has agreed to pay all of the insurance, security, and taxes connected with Mr. Wynn’s personal art which the Company has leased.

29. In 2017, Institutional Shareholder Services Inc. (“ISS”)—a proxy advisory firm—gave Wynn Resorts its worst possible ranking for governance risk. Mr. Wynn made more than \$28 million in compensation from Wynn Resorts in 2016. Over the past five years, he reported compensation totaling \$111.6 million. Even if the Company had to terminate him for losing his license to operate a gambling establishment, it would still have been required to fork over to him

¹ That voting agreement is still in place, although Mr. Wynn very recently agreed that he no longer wished to contest Elaine Wynn’s litigation position that the agreement is not valid.

1 \$110 million. ISS noted that Mr. Wynn’s pay kept increasing despite the Company’s long-term
2 underperformance.

3 30. For Decades, Mr. Wynn Preyed On Vulnerable Women Throughout The
4 Company

5 31. After contacting over 150 people who worked at Mr. Wynn’s casinos, and
6 conducting dozens of interviews, the Wall Street Journal reported that Mr. Wynn had engaged in
7 sexual misconduct for decades.

8 32. The Journal reported that Mr. Wynn would make requests for sexual services
9 from employees, who felt dependent upon him because of his power within the Company and the
10 industry, and because they held some of the most well-paid jobs. Employees were afraid to
11 speak out because they were concerned that in doing so, they would jeopardize their ability to
12 maintain employment in the industry in Las Vegas. Instead, some salon employees would hide
13 when he came for services, or would enter fake appointments in the appointment calendar to
14 make it appear that their female colleagues were occupied. One massage therapist informed the
15 Journal that Mr. Wynn instructed her to masturbate him to climax, and that he required her to do
16 so in each of their massage sessions for several months. He then asked her to perform oral sex;
17 when she refused, he stopped requesting her services. Another employee reported that Mr.
18 Wynn called her and asked, “So when are you going to come into my office and f--- me?” When
19 she was working in his office, he rubbed his genitals and discussed what he wanted to do with
20 her sexually. Reports of Mr. Wynn’s predations were repeatedly made to high-level executives
21 at Wynn Resorts, but nothing was done.

22 33. In 2005, Mr. Wynn paid \$7.5 million to a manicurist who accused Mr. Wynn of
23 pressuring her to have sexual intercourse. The manicurist alleged that during an appointment in
24 his office, Mr. Wynn pressured her to take her clothes off and have sexual intercourse with him,
25 even after she told him she was married and did not want to. After hearing about the episode,
26 the manicurist’s supervisor filed a report with Wynn Las Vegas detailing the manicurist’s
27 accusations. In response, the head of hotel operations at the time—Doreen Whennen—
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1 reprimanded the supervisor for filing a report rather than just discussing the issue directly with
 2 Ms. Whennen. Nothing was done.

3 34. Elaine Wynn learned of the settlement no later than 2009, and reportedly
 4 immediately told another Board member and outside legal counsel about it. In Elaine Wynn’s
 5 lawsuit it was disclosed no later than 2015 that Mr. Wynn had acted improperly towards an
 6 employee, and this information was publicized in the news by 2016.

7 35. Mr. Wynn’s sexual misconduct began—and was disclosed to his colleagues—
 8 long before he opened Wynn Resorts. In the early 1990s, Dennis Gomes—who served as an
 9 executive at Las Vegas’s Golden Nugget when Mr. Wynn owned and ran it—testified that he
 10 “routinely received complaints from various department heads regarding [Mr.] Wynn’s chronic
 11 sexual harassment of female employees.” He also described Mr. Wynn telling him to get the
 12 phone numbers for cocktail waitresses who worked for him at the Golden Nugget. Mr. Gomes’s
 13 widow told the Journal that Mr. Gomes—speaking of Mr. Wynn—said “I’m not his pimp.”

14 36. In response to the Journal’s extensive, detailed reporting, both Mr. Wynn and the
 15 Company remained defiant. The Company issued a statement, asserting that “[t]he recent
 16 allegations about Mr. Wynn reflect allegations made in court hearings by Mr. Wynn’s ex-wife,
 17 Elaine Wynn, in her legal battle with him and the company... It is clear that Mr. Wynn’s ex-
 18 wife has sought to use a negative public relations campaign to achieve what she has been unable
 19 to do in the courtroom: tarnish the reputation of Mr. Wynn in an attempt to pressure a revised
 20 divorce settlement from him.”

21 37. With pressure building in the press, though, the Board indicated it would form a
 22 special committee to investigate allegations against Mr. Wynn. Defendants Mulroy, Hagenbuch,
 23 and Johnson were appointed to the committee. On February 2, 2018, the Board hired the law
 24 firm of O’Melveny & Myers LLP (“O’Melveny”) to perform an independent investigation.
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26 38. Once Mr. Wynn resigned on February 9, 2018, though, the Board dismissed
 27 O’Melveny. The committee stated that it “no longer requires the services” of O’Melveny since
 28 Mr. Wynn has left the Company. The committee provided no explanation as to Mr. Wynn’s

1 departure renders O’Melveny’s investigation unnecessary. The Special Committee has provided
 2 almost no details about what and who it is investigating, and how any such investigation would
 3 be performed.

4 39. Days after dismissing O’Melveny, the Special Committee switched horses again,
 5 hiring Gibson, Dunn & Crutcher LLP as outside counsel to assist with the review. Gibson Dunn
 6 has significant ties to Wynn Resorts. The Company’s general counsel, Kim Sinatra, was a
 7 partner at the firm. A current Gibson Dunn partner represents Board members and executives in
 8 the Company’s current litigation with Okada and Elaine Wynn. Gibson Dunn also represented
 9 Wynn Resorts in matters related to the Securities and Exchange Commission and the Department
 10 of Justice, as well as with respect to business deals.

11 **C. THE COST OF THE DIRECTORS’ ACQUIESCENCE IN THE FACE OF MR.**
 12 **WYNN’S MISCONDUCT**

13 40. The Wynn Resort brand is indelibly tied to Mr. Wynn. The Company was
 14 founded by him and bears his name; indeed, the logo is his signature. In its most recent 10-K
 15 filing with the Securities and Exchange Commission, the very first “Risk Related to our
 16 Business” that Wynn Resorts discloses is “The loss of Stephen A. Wynn could significantly
 17 harm our business.” The Company represents that its “ability to maintain [its] competitive
 18 position is dependent to a large degree on the efforts, skills and reputation of Stephen A. Wynn. .
 19 . . . If [the Company] loses the services of Mr. Wynn, or if he is unable to devote sufficient
 20 attention to [its] operations for any other reason, [the] business may be significantly impaired.”

21 41. Analysts and investors ascribed a “Wynn premium” to the Company as a result of
 22 Wynn’s involvement. As Paul Friederichsen, a partner at the marketing firm of Blake Project
 23 remarked, “The Wynn brand is going to take a hit, there’s no question about it.” Likewise,
 24 Aaron Perlut—the founder of consulting firm Elasticity—remarked that “Steven Wynn is
 25 arguably the father of modern-day Last Vegas. . . . The fact that his name is, in and of itself, the
 26 brand makes it far more complicated, in a similar way that Harvey Weinstein’s personal brand
 27 was also the name of his company.” Jefferies similarly observed in a note that “Mr. Wynn’s
 28

1 value to the company is unarguably profound as its chief visionary and diplomat. As such, we
 2 do not believe the company can grow at the same trajectory nor can it maintain its cutting edge
 3 position.” Large groups and corporate entities—which make up a significant portion of the
 4 Wynn Resorts’s revenue—may avoid bookings at the Wynn hotels to avoid being associated
 5 with his misconduct.

6 42. The allegations against Mr. Wynn have attracted the attention of the Company’s
 7 regulators. The casino industry is heavily regulated. As a result of the Journal report, regulators
 8 have opened investigations into Mr. Wynn’s misconduct in Nevada, Macau, and Massachusetts.
 9 Such investigations could threaten the Wynn Resorts ability to proceed with its current
 10 operations and plans for expansion.

11 43. In Massachusetts, because of an effective local monopoly, the Wynn Boston
 12 Harbour is expected to be highly profitable after its planned opening in 2019. Indeed, it is
 13 expected to generate 9% of the Company’s worldwide earnings (approximately \$252 million
 14 EBTIDA).
 15

16 44. Because of Mr. Wynn’s sexual misconduct, the Massachusetts Gaming
 17 Commission (“MGC”) has initiated an investigation into whether Mr. Wynn and his partners are
 18 “suitable” to continue to hold the license to build the new resort. That 15-year license is based
 19 on a law that requires the MGC to consider the “integrity, honesty, good character and reputation
 20 of the applicant.” When Wynn Resorts applied for that license in 2013, the Company failed to
 21 disclose Mr. Wynn’s prior \$7.5 million settlement with his female employee, despite the fact that
 22 the application requires the applicant to disclose information about any litigation to which he has
 23 been a party, including the disposition of that litigation. On February 7, 2018, MGC Chairman
 24 Stephen Crosby said at a meeting that its investigation will focus on what the Board and
 25 Company executives knew about the sexual misconduct allegations against Mr. Wynn. The
 26 MGC’s Director of Communications called the allegations “troubling” and committed that the
 27 Commission would take them “very seriously.” Earlier the same week, the MGC’s executive
 28

1 director indicated that they would evaluating “how the company, from the board on down,
2 handles the allegations.”

3 45. In Nevada, an applicant for a gaming license must be someone “of good
4 character, honesty, and integrity.” On January 30, 2018, the Nevada Gaming Control Board
5 (“NGCB”) instituted a formal investigation into Mr. Wynn’s sexual misconduct. That
6 investigation continues notwithstanding Mr. Wynn’s resignation. Once it completes its
7 investigation, the NGCB could fine Mr. Wynn, or even hold hearings to revoke his gaming
8 license.

9 46. Finally, the allegations have also attracted the attention of the Company’s
10 regulators in Macau. The Company’s Macau properties contributed 75% of its \$1.7 billion
11 EBTIDA in FY2017, and they constitute the world’s biggest gambling hub. The concession the
12 Macau properties enjoy from the Macau government is set to be reviewed for renewal in 2022.
13 One of the considerations in the process of approving licenses is the reputation of the operating
14 and its controlling shareholder. After the revelations of Mr. Wynn’s decades of harassment,
15 local government representatives from Macau’s Gaming Inspection and Coordination Bureau
16 demanded of the Company “detailed clarifications” regarding the investigations into Mr. Wynn.

17 47. On January 30, 2018, S&P Global Ratings revised the outlook on Wynn Resorts
18 from stable to negative, in recognition of the fact that the allegations of misconduct could
19 threaten the Company’s gambling licenses. The day of the report, Wynn Resorts share prices
20 tumbled about 10%, and fell another 9.3% the following Monday. As The Economist predicted,
21 Mr. Wynn’s departure leaves the firm vulnerable. According to an executive allied with one of
22 the competitors to the Wynn Resorts, “Everybody’s moving quickly.”

23 48. Plaintiff will adequately and fairly represent the interests of Wynn Resorts and its
24 stockholders in enforcing and prosecuting the Company’s rights. Plaintiff has retained counsel
25 competent and experienced in stockholder derivative litigation.
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V. DEMAND ON WYNN’S BOARD OF DIRECTORS WOULD BE FUTILE

49. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

50. Plaintiff has not made any demand on the Wynn Resorts Board to institute this action against the Defendants. Such demand would be a futile and useless act because Mr. Wynn’s sexual misconduct and the Defendants’ acquiescence to it, was not the product of a valid exercise of business judgment by the Board. The Board cannot be trusted to act in Wynn Resorts’s best interests with respect to prosecuting the defendants for their breaches of duty.

51. Demand Is Futile As To Each Of The Director Defendants Because They Face A Substantial Likelihood Of Liability

52. The Director Defendants knew, or had reason to know, of Mr. Wynn’s pervasive harassment long before the Journal put those allegations on the front page. Their knowing and intentional misconduct was not the product of good faith proper business judgment; instead, by failing to investigate and, indeed, by concealing the allegations against Mr. Wynn, the Director Defendants have exposed themselves to a substantial risk of personal liability. The Director Defendants, therefore, are not able to independently consider a demand for investigation or prosecution of the claims relating to Mr. Wynn’s misconduct.

53. The Director Defendants knowingly and intentionally failed to take any action against Mr. Wynn, despite repeated reports of his egregious misconduct against Company employees over the course of several decades. The Director Defendants’ conduct insulated their “friend” and Company co-founder Mr. Wynn, but caused significant harm to the Company, its employees, and its brand, and put at significant risk its ability to continue holding gaming licenses, which is essential for its survival.

54. Demand Is Futile As To Each Of The Director Defendants Because They Are Not Independent From Mr. Wynn

55. As the Wall Street Journal observed, the Wynn Resorts’s Board members “are widely viewed as lacking independence,” which is “one of the many reasons that Wynn Resorts

1 ranks last in corporate governance among 108 companies in the gambling and casino business,
 2 according to Sustainalytics.”

3 56. In fiscal year ending December 31, 2016, the Director Defendants earned the
 4 compensation set forth below:

Name	Fees Earned/Paid	Stock Awards	Option Awards	Other Comp.
Hagenbuch	\$144,000	\$249,963	n/a	\$7,010
Irani	\$105,433	\$249,963	n/a	\$7,010
Johnson	\$31,935	n/a	\$349,000	n/a
Miller	\$261,000	\$249,963	\$349,000	\$7,010
Mulroy	\$118,500	\$249,963	\$349,000	\$7,010
Randt	\$73,500	\$249,963	\$349,000	\$7,010
Shoemaker	\$127,500	\$249,963	\$349,000	\$7,010
Virtue	\$127,500	\$249,963	\$349,000	\$7,010
Wayson	\$127,500	\$249,963	\$349,000	\$7,010

16 57. A majority of the Demand Directors lack independence from Mr. Wynn because
 17 of a series of social and professional relationships, which render them beholden to Mr. Wynn,
 18 who faces a particularly high risk of liability because he is the perpetrator of an egregious pattern
 19 of sexual aggression and harassment. This lack of independence renders a majority of the Board
 20 incapable of impartially consider whether to enforce the breaches of fiduciary duty committed by
 21 the Director Defendants and Mr. Wynn.

22 **Defendant Randt**

23 58. By acknowledging in its March 10, 2017 proxy statement that Mr. Wynn and
 24 Randt are not independent because they fail to satisfy the NASDAQ listing standards’
 25 independence criteria, the Company has conceded that demand is futile as to Randt.

26 **Defendant Wayson**

27 59. Demand is also futile as to Defendant Wayson. Wayson could not independently
 28 weigh a demand to bring claims against Mr. Wynn and the Director Defendants because he has

1 close familial and professional ties with Mr. Wynn, who specifically chose him to serve on the
 2 Wynn Resorts Board.

3 60. Wayson has spent nearly the entirety of his adult life involved in some way or
 4 another with Mr. Wynn’s gaming establishments. Indeed, Wayson and Mr. Wynn have personal
 5 ties that stretch back more than half a century. In the 1950s, Wayson’s father and Mr. Wynn’s
 6 father operated a bingo hall—Wayson’s Bingo—in Maryland. When Wayson graduated college,
 7 Mr. Wynn gave him a job at Golden Nugget in Las Vegas, where he worked until, in 1975, Mr.
 8 Wynn asked him to return to Maryland and manage Wayson’s Bingo, which Wayson did. In
 9 fact, Mr. Wynn himself held an interest in the Wayson’s Corner bingo, explaining to the Nevada
 10 Gaming Control Board in the 1970s that his interest in the bingo hall was integral to his
 11 financing of investment in the Golden Nugget. Wayson returned to Atlantic City in 1977 at Mr.
 12 Wynn’s behest, to assist with the opening of the Golden Nugget there. Wayson continued to
 13 work there for seven years, eventually rising to the title of President and CEO of the Atlantic
 14 City Golden Nugget. Two years later, when Mr. Wynn opened the Mirage in Las Vegas, he
 15 invited Wayson to join as a director of the board, where he remained until the Mirage was sold in
 16 2000. In 2003, Mr. Wynn invited Wayson to serve as a director of his newest venture, Wynn
 17 Resorts, where he now serves as Chairman.

19 61. For the Waysons, working with Mr. Wynn was a family affair. Wynn Resorts
 20 hired Waysons’s sister, Sarah Wayson, as a spokesperson. Wayson’s brother, Edward O.
 21 Wayson, was a close friend to Mr. Wynn and served as Mr. Wynn’s personal legal advisor.

22 62. As a result of his close familial and professional ties, and because he owes his
 23 career and his Board seat to Mr. Wynn, Wayson is incapable of independently weighing a
 24 demand with respect to the claims asserted herein.

25 **Defendant Hagenbuch**

26 63. Demand is also futile as to Defendant Hagenbuch. Hagenbuch could not
 27 independently weigh a demand to bring claims against Mr. Wynn and the Director Defendants
 28

1 because he is friends with Mr. Wynn, who specifically chose him to serve on the Wynn Resorts
 2 Board.

3 64. Hagenbuch came to know Mr. Wynn as a result of them both owning homes near
 4 Ketchum, Idaho, and they subsequently became very friendly. When the Board eliminated a seat
 5 during the 2015 proxy fight with Elaine Wynn, Mr. Wynn invited Hagenbuch to join, and
 6 supported his candidacy.

7 **Defendant Miller**

8 65. Demand is futile as to Defendant Miller, who could not independently weigh a
 9 demand to bring claims against Mr. Wynn and the Director Defendants because of his close
 10 personal friendship with, and patronage from, Mr. Wynn, who specifically chose him to serve on
 11 the Wynn Resorts Board.

12 66. Miller and Mr. Wynn are longtime friends. Mr. Wynn supported Miller’s
 13 gubernatorial re-election campaign in Nevada in 1994, including by making a \$70,000 donation,
 14 and by discouraging a would-be challenger from running against him. Miller was re-elected.
 15 Later, when Miller’s son ran for Nevada Secretary of State between 2006 and 2012, Mr. Wynn
 16 made contributions to his campaign as well. When Mr. Wynn brought a suit for libel against a
 17 publisher for an unauthorized biography, Miller testified on Mr. Wynn’s behalf, referring to
 18 himself as a “23 year old friend of Wynn’s.” Miller is also an insider at several vendors
 19 (including Nevada Rose LLC and International Gaming Technology) with which Wynn Resorts
 20 and its subsidiaries have contracted for supplies and services. Miller is also a principal in Wynn
 21 PA, Inc. When Mr. Wynn decided to take Wynn Resorts public, he contacted Miller to invite
 22 him to the Board.

23 **Defendant Mulroy**

24 67. Demand is futile as to Defendant Mulroy, who could not independently weigh a
 25 demand to bring claims against Mr. Wynn and the Director Defendants because she owed Mr.
 26 Wynn for his assistance and advocacy in connection with her prior role at the Southern Nevada
 27 Water Authority, and because he specifically chose her to serve on the Wynn Resorts Board.
 28

1 68. During her tenure as the General Manager of the Southern Nevada Water
 2 Authority from 1993 to 2014, Mulroy worked closely with Mr. Wynn to support development in
 3 the region. As ProPublica reports, “Wynn, forever an ally, made phone calls on [Mulroy’s]
 4 behalf, helping to raise funds to further her public relations campaign and fill billboards across
 5 Las Vegas with appeals to save water and heed the drought.” Mr. Wynn also made donations to
 6 the water district’s water conservation efforts. In fact, Mr. Wynn was considered one of her
 7 most vocal advocates. No surprise then that she is now widely considered to be an ally of Mr.
 8 Wynn. She also served on the Nevada Gaming Commission—where she regulated Wynn
 9 Resorts—but left after less than two years of service for the higher compensated position of a
 10 director at Wynn Resorts. The move raised concerns because she was joining a regulated entity
 11 shortly after leaving a regulating agency, but, as State Senator Tick Segerblom noted, “who is
 12 going to commit political suicide and oppose someone as powerful as Steven Wynn?”
 13

14 **Defendant Virtue**

15 69. Demand is futile as to Defendant Virtue, who could not independently weigh a
 16 demand to bring claims against Mr. Wynn and the Director Defendants because of his friendship
 17 and his financial dealings with Mr. Wynn, who specifically chose him to serve on the Wynn
 18 Resorts Board.

19 70. Virtue and Mr. Wynn have known each other for at least a quarter of a century.
 20 They first met in Virtue’s capacity as an investment banker at Drexel, Burnham, and Lambert,
 21 when Virtue was working on projects to raise financing for Mr. Wynn’s projects, including
 22 financing raised for the Mirage casino in 1986. Mr. Wynn even entrusted Virtue with
 23 management of his family’s money. At Deutsche Bank, Virtue advised Mr. Wynn on the 2001
 24 sale of the Mirage, and on raising financing for Wynn Resorts 2002. Virtue then established an
 25 entity called MidOcean Partners, which he formed in 2013 when he led a management buyout of
 26 Deutsche Bank’s private equity arm, Deutsche Bank Capital. Both Mr. Wynn and Elaine Wynn
 27 invested in MidOcean partners. Deutsche Bank retained a 20% interest in MidOcean Partners
 28 and thereafter was chosen to play a critical role in financing Wynn Resorts. In 2012, Mr. Wynn

1 offered Virtue a Board seat. When Virtue joined the Wynn Resorts Board, he was given a nearly
 2 \$1 million ownership stake, in part to compensate him for closing accounts he managed at
 3 MidOcean Partners. Mr. Wynn then supported Virtue’s re-election in the 2015 proxy fight
 4 involving Elaine Wynn.

5 **Defendant Irani**

6 71. Demand is futile as to Defendant Irani, who could not independently weigh a
 7 demand to bring claims against Mr. Wynn and the Director Defendants because of his reliance
 8 on Mr. Wynn for business for an affiliate and because Mr. Wynn specifically chose him to serve
 9 on the Wynn Resorts Board.

10 72. Irani served as a director of TCW Group, Inc., a subsidiary of Société Générale,
 11 until 2012. Société Générale was a global lead arranger for \$1.55 billion of financing for the
 12 Wynn Resort’s development in Macau in June 2007. Just four months after the financing was in
 13 place, Wynn Resorts made him a director. Irani voted against renominating Elaine Wynn.

14 **Defendant Shoemaker**

15 73. Shoemaker and Mr. Wynn have a long-standing relationship. They became
 16 friends when they both owned homes in Sun Valley, Idaho, having in common their enthusiasm
 17 for skiing and their education at the University of Pennsylvania. They remained friends for
 18 years, and when Wynn Resorts went public in 2002, Mr. Wynn invited Shoemaker to join the
 19 Board. Mr. Wynn also served with Shoemaker on the University of Pennsylvania Board of
 20 Trustees from 1986-1994. When Mr. Wynn asked him to join the Wynn Resorts Board,
 21 Shoemaker was reticent because he was not knowledgeable about the casino gaming industry,
 22 but joined because his family urged him to take part in a “fun” board of directors.

23 **Defendant Johnson**

24 74. Demand is futile as to Defendant Johnson, who could not independently weigh a
 25 demand to bring claims against Mr. Wynn and the Director Defendants because Mr. Wynn
 26 specifically chose him to serve on the Wynn Resorts Board.
 27
 28

1 75. Even the Board’s statement accompanying its acceptance of Mr. Wynn’s
 2 resignation is indicative of the level of fealty the Board’s members feel towards Mr. Wynn.
 3 Despite the litany of sexual harassment allegations, the Board said it accepted Mr. Wynn’s
 4 resignation only “reluctantly.” The Board’s press release extolled Mr. Wynn’s virtues, indicating
 5 the Board accepted the resignation of their “founder, CEO and friend” “with a collective heavy
 6 heart.” Instead of condemning his misconduct, the members praised Mr. Wynn as an “industry
 7 giant,” “a philanthropist and a beloved leader and visionary.” As the Wall Street Journal
 8 remarked, the only thing more surprising than Mr. Wynn’s resignation was the one with which
 9 the Board accepted it.

CLAIMS FOR RELIEF

COUNT I

**DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY
 AGAINST THE DIRECTOR DEFENDANTS**

15 76. Plaintiff repeats and realleges each and every allegation above as if set forth in
 16 full herein.

17 77. The Director Defendants—as members of the Board of Directors of Wynn
 18 Resorts—owe the Company the fiduciary duties of due care, loyalty, and good faith under
 19 Nevada law.

20 78. The Director Defendants had fiduciary obligations to conduct good faith oversight
 21 of the Company, including conducting investigations into legal and regulatory violations
 22 concerning sexual harassment. The Director Defendants had fiduciary obligations to protect the
 23 Company from the decades-long sexual predation of its female employees by Mr. Wynn and
 24 from the costly consequences of that misconduct, including the risk to Mr. Wynn’s gaming
 25 license and the catastrophic diminution of the brand.

26 79. Instead, through their knowing inaction, the Director Defendants permitted
 27 countless acts of sexual harassment, sexual coercion, and other misconduct to take place within
 28 the Company over a period of decades. They did so despite having received information that put

1 them on notice of Mr. Wynn’s terrorizing of female employees. The Director Defendants’
2 breaches constituted intentional misconduct and involved knowing violations of the law.

3 80. As a consequence of the Director Defendants’ breaches of their fiduciary duties,
4 the Company has been harmed and may continue to be harmed.

5 81. Plaintiff and the Company have no adequate remedy at law.

6 82. The harm to the Company as a result of the Director Defendants’ fiduciary
7 breaches exceeds fifteen thousand dollars (\$15,000.00).

8 83. The Director Defendants acted with fraud, malice, and oppression, and
9 consciously disregarded the rights and safety of the Company. Punitive damages in an amount
10 exceeding fifteen thousand dollars (\$15,000.00) should be imposed on each Director Defendant
11 for the sake of example and by way of punishing the Director Defendants.

12 84. Plaintiff has required the services of able counsel to represent him in this matter,
13 and Plaintiff is entitled to recover the fees and costs associated with that service.

14 **COUNT II**

15 **DERIVATIVE CLAIM AGAINST MR. WYNN FOR BREACH OF FIDUCIARY DUTY**

16 85. Plaintiff repeats and realleges each and every allegation above as if set forth in
17 full herein.

18 86. At all times relevant herein, Mr. Wynn was the Chairman and CEO of Wynn
19 Resorts and served as a member of the Board. As an officer and a director of the Company, he
20 owed the Company the fiduciary duties of due care, loyalty, and good faith under Nevada law.

21 87. Mr. Wynn knowingly and intentionally breached those duties by engaging in
22 serious misconduct and violating the law.

23 88. As a consequence of Mr. Wynn’s breaches of their fiduciary duties, the Company
24 has been harmed and may continue to be harmed.

25 89. Plaintiff and the Company have no adequate remedy at law.

26 90. The harm to the Company as a result of the Mr. Wynn’s fiduciary breaches
27 exceeds fifteen thousand dollars (\$15,000.00).
28

1 91. Mr. Wynn acted with fraud, malice, and oppression, and consciously disregarded
2 the rights and safety of others. Punitive damages in an amount exceeding fifteen thousand
3 dollars (\$15,000.00) should be imposed for the sake of example and by way of punishing Mr.
4 Wynn.

5 92. Plaintiff has required the services of able counsel to represent him in this matter,
6 and Plaintiff is entitled to recover the fees and costs associated with that service.

7 **COUNT III**

8 **DERIVATIVE CLAIM AGAINST THE DIRECTOR DEFENDANTS FOR AIDING AND**
9 **ABETTING MR. WYNN’S BREACH OF FIDUCIARY DUTY**

10 93. Plaintiff repeats and realleges each and every allegation above as if set forth in
11 full herein.

12 94. Mr. Wynn owned to the Company the fiduciary duties of due care, loyalty, and
13 good faith under Nevada law. That Mr. Wynn owned the Company these fiduciary duties was
14 well known to the Director Defendants.

15 95. As alleged herein, Mr. Wynn breached his fiduciary duty to the Company.

16 96. Each of the Director Defendants aided and abetted Mr. Wynn’s breaches of
17 fiduciary duty. The Director Defendants knowingly failed to act to investigate or arrest Mr.
18 Wynn’s frequent and egregious behavior, despite being on notice of it.

19 97. The Director Defendants’ knowledge of Mr. Wynn’s breaches of fiduciary duty is
20 based on, among other things, the disclosure in the context of Elaine Wynn’s lawsuit of his
21 settlement with the manicurist for \$7.5 million, as well as reports made by employees, and the
22 sheer number of incidents over several decades.

23 98. The Company has been harmed by Director Defendants’ aiding and abetting of
24 Mr. Wynn’s breaches of fiduciary duty.

25 99. The harm to the Company as a result of the Director Defendants’ aiding and
26 abetting of Mr. Wynn’s misconduct exceeds fifteen thousand dollars (\$15,000.00).
27
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1 100. The Director Defendants acted with fraud, malice, and oppression, and
2 consciously disregarded the rights and safety of the Company. Punitive damages in an amount
3 exceeding fifteen thousand dollars (\$15,000.00) should be imposed on each Director Defendant
4 for the sake of example and by way of punishing the Director Defendants.

5 **RELIEF REQUESTED**

6 WHEREFORE, Plaintiff demands judgment as follows:

- 7 a) Finding that demand on the Director Defendants is excused as futile;
8 b) Finding the Defendants liable for breaching their fiduciary duties;
9 c) Awarding the Company compensatory damages, together with pre- and post-judgment
10 interest;
11 d) Ordering the Company to develop comprehensive sexual harassment training,
12 reporting, investigation, and disciplinary policies;
13 e) Awarding Plaintiff the costs and disbursements of this action, including attorneys',
14 accountants', and experts' fees; and
15 f) Awarding such other and further relief as is just and equitable.

16 DATED: February 15, 2018

17 **EGLET PRINCE**

18 

19 ROBERT T. EGLET, ESQ.
20 ROBERT M. ADAMS, ESQ.
21 ERICA D. ENSTMINGER, ESQ.
22 400 South Seventh Street, Suite 400
23 Las Vegas, Nevada 89101

24 *-and-*

25 MICHAEL J. BARRY, ESQ. (Pro Hac Pending)
26 JEFF A. ALMEIDA, ESQ. (Pro Hac Pending)
27 REBECCA A. MUSARRA, ESQ. (Pro Hac Pending)
28 **GRANT & EISENHOFER PA**
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Wilmington, DE 19801
Attorneys for Plaintiff

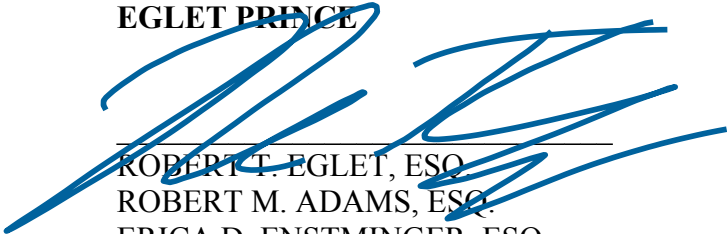
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DEMAND FOR JURY TRIAL

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

DATED: February 15, 2018

EGLET PRINCE



ROBERT T. EGLET, ESQ.
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ERICA D. ENSTMINGER, ESQ.
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101

-and-

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7 *Attorneys for Plaintiff*

8
9 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
CLARK COUNTY

10 OPERATING ENGINEERS CONSTRUCTION
11 INDUSTRY AND MISCELLANEOUS
12 PENSION FUND, derivatively on behalf of
WYNN RESORTS, LTD.,

13 Plaintiff,

14 v.

15 STEVEN A. WYNN, D. BOONE WAYSON,
JOHN J. HAGENBUCH, RAY R. IRANI, JAY
16 L. JOHNSON, ROBERT J. MILLER,
PATRICIA MULROY, CLARK T. RANDT JR.,
17 ALVIN V. SHOEMAKER, J. EDWARD
VIRTUE,

18 Defendants,

19 and

20 WYNN RESORTS, LIMITED,

21 Nominal Defendant.

Case No.

Dept. No.

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

**AFFIDAVIT AND VERIFICATION OF
M. SCOTT ANDERSON**

22 **AFFIDAVIT AND VERIFICATION OF**
M. SCOTT ANDERSON PURSUANT TO NRCP 23.1

23
24 I, M. Scott Anderson, do hereby state as follows:

25 1. I am the Administrator of Plaintiff Operating Engineers Construction Industry and
26 Miscellaneous Pension Fund ("Plaintiff").

27 2. I am authorized to make this Affidavit and Verification on behalf of Plaintiff.

28 3. I make this Affidavit and Verification pursuant to NRCP 23.1.


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4. Plaintiff currently owns shares of Wynn Resorts, Limited, common stock, and has owned such shares continuously during the relevant times alleged in the Complaint.

5. Plaintiff has retained counsel in connection with this litigation. I have reviewed the Complaint and I am familiar with the allegations of the Complaint. To the extent the allegations in the Complaint concern the Plaintiff, I know those allegations to be true and correct. To the extent the allegations in the Complaint concern the actions of parties other than Plaintiff, I believe those allegations to be true and correct.

6. I make this Affidavit and Verification under penalty of perjury that the foregoing is true and correct.

Executed this 14 day of February, 2018



M. Scott Anderson, Administrator
Operating Engineers Construction Industry and
Miscellaneous Pension Fund