

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

**TO: ALL CURRENT RECORD HOLDERS AND BENEFICIAL OWNERS OF COMMON STOCK OF WYNN RESORTS, LTD. (“WYNN RESORTS” OR THE “COMPANY”) AS OF DECEMBER 11, 2019 (THE “RECORD DATE”) (“CURRENT WYNN RESORTS SHAREHOLDERS”).**

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

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

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

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

Thomas P. DiNapoli, Comptroller of the State of New York, as Administrative Head of the New York State and Local Retirement System and Trustee of the New York State Common Retirement Fund, and the New York City Pension Fund<sup>1</sup> (together, “Plaintiffs”), Nominal Defendant Wynn Resorts, Ltd. (“Wynn Resorts” or the “Company”), and Defendants D. Boone Wayson, John J. Hagenbuch, Ray R. Irani, Jay L. Johnson, Robert J. Miller, Patricia Mulroy, Clark T. Randt, Jr., Alvin V. Shoemaker, and J. Edward Virtue (“Director Defendants”), Stephen A. Wynn, Kimmarie Sinatra, and Matthew Maddox (together with the Director Defendants, the “Defendants” and, together with Plaintiffs and Wynn Resorts, the “Parties” and each a “Party”) have agreed upon terms to settle the Action on the terms set forth in the Stipulation and Agreement

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

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

On February 12, 2020, at 1:15 P.M., in Courtroom 3H of the Regional Justice Center located at 200 Lewis Avenue, Las Vegas, Nevada 89101, the Court will hold a hearing (the “Final Hearing”) in the Action. The purpose of the Final Hearing is to determine: (i) whether the terms of the Agreement are fair, reasonable, and adequate and should be approved; (ii) whether a final judgment should be entered; and (iii) such other matters as may be necessary or proper under the circumstances.

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

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

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

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

On May 10, 2018, the Court signed an order consolidating the DiNapoli Action with the other aforementioned derivative suits, excluding the Rogers Action, (the “Action”) and made the March 23, 2018 complaint the operative complaint (the “Complaint”). In the same order, the Court designated Thomas P. DiNapoli, Comptroller of the State of New York, as Administrative Head

of the New York State and Local Retirement System and Trustee of the New York State Common Retirement Fund, and the New York City Pension Funds, collectively, as Lead Plaintiffs (“Lead Plaintiffs”) and the law firm of Cohen Milstein Sellers & Toll PLLC as Lead Counsel for the Action and the law firm of Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP as Liaison Counsel (collectively, “Plaintiffs’ Counsel”). In the Complaint, Plaintiffs allege that Wynn Resorts suffered injury as a result of Plaintiffs’ Allegations.

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

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

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

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

### 3. SETTLEMENT

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

1. **Majority Vote Requirement:** The Board of Directors shall adopt a bylaw at the first board meeting after the Effective Date that requires a majority vote for all director elections and re-elections, except in the case of a proxy context.
2. **10b5-1 Plan:** The Board of Directors shall adopt (i) a requirement that Directors wishing to sell Company stock must do so pursuant to a 10b5-1 plan and (ii) a requirement that executives wishing to sell Company stock who have stock in the Company worth more than \$15 million must do so pursuant to a 10b5-1 plan.
3. **Succession Plan:** The Nominating & Governance Committee will enhance its succession planning and provide a succession plan for executive officers and directors to the Board of Directors.
4. **Separation of Chairman and CEO:** The Board of Directors shall adopt a bylaw at the first board meeting after the Effective Date that mandates the separation of Chairman and CEO, and requires that the Chairman be independent.

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

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

1. Substantially revised and updated Corporate Prevention of Harassment Policy, Personal Relationships and Potential Conflicts of Interest Policy, Spa and Salon Policy and Code of Personal Conduct;
2. Significantly enhanced sexual harassment and diversity training for all employees;
3. Significant enhancements to the ability to report complaints, including extending the hours of the Employee Relations Department and the establishment of a third-party hotline;
4. The creation of a Compliance Program and Compliance Committee, comprised of individuals with extensive experience and familiarity with law enforcement regulated businesses, ethics, and/or gaming compliance, who are not otherwise affiliated with the Company, to oversee and promote the Company's compliance and ensure that it meets the Company's strict policy to conduct business at the highest levels of honesty and integrity;
5. Prohibition of employer-forced arbitration clauses and non-disclosures agreements;  
and
6. The adoption of a "Rooney Rule" in the Board's Nominating and Governance Charter for evaluation of candidates.

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

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

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

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

The Court did not decide in favor of the Plaintiff or the Defendants. The proposed Settlement was negotiated at arm's-length by attorneys for the Parties. The attorneys for all of the Parties have extensive experience in shareholder derivative cases, and they all believe the Settlement is in the best interest of their clients. Wynn Resorts and Plaintiffs believe that the Settlement provides substantial benefits upon Wynn Resorts and its shareholders.

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

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

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

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

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

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

## **6. FINAL HEARING**

On February 12, 2020, at 1:15 P.M., in Courtroom 3H of the Regional Justice Center located at 200 Lewis Avenue, Las Vegas, Nevada 89101, the Court will hold the Final Hearing. At the Final Hearing, the Court will consider whether the terms of the Settlement are fair, reasonable, and adequate and thus should be finally approved, and whether the Action should be dismissed with prejudice pursuant to the Agreement.

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

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

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

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

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

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

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

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

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

The Court Clerk's address is:

Clerk of the Court  
Regional Justice Center  
2nd Floor  
200 Lewis Avenue  
Las Vegas, Nevada 89101

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

Counsel's addresses are:

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**9. HOW TO OBTAIN ADDITIONAL INFORMATION**

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

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

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

DATED: December 11, 2019  
BY ORDER OF THE COURT  
DISTRICT COURT OF NEVADA  
CLARK COUNTY