

## IN THE SUPREME COURT OF THE STATE OF NEVADA

### INDICATE FULL CAPTION:

MARIO LABARBERA, an individual,  
Appellant,

vs.

WYNN LAS VEGAS, LLC,  
Respondent.

No. 71276

Electronically Filed  
Sep 29 2016 11:56 a.m.

Tracie K. Lindeman  
Clerk of the Supreme Court

DOCKETING STATEMENT  
CIVIL APPEALS

### GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

### WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 28  
County Clark Judge Hon. Ronald Israel  
District Ct. Case No. A-14-695025-C

**2. Attorney filing this docketing statement:**

Attorney Jeffrey R. Albregts, Esq. Telephone 702-483-5026  
Firm Jeffrey R. Albregts, LLC  
Address 701 Shadow Lane, Suite 150  
Las Vegas, NV 89106

Client(s) Mario LaBarbera

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Lawrence J. Semenza Telephone 702-835-6803  
Firm Lawrence J. Semenza, III, P.C.  
Address 10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145

Client(s) Appellant Wynn Las Vegas, LLC, d/b/a Wynn Las Vegas

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial             | <input type="checkbox"/> Dismissal:                                     |
| <input checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                       | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                       | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief      | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction             | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief     | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination         | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.



**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This is and was an action by the Wynn to collect 12 unpaid gaming Markers from Mr. LaBarbera totaling \$1 million that were executed in a 24 hour span there. Mr. LaBarbera, known to the Wynn to be a compulsive gambler (and indeed registered as one in Italy), was recruited to gamble there by Alex Pariente, but the Wynn refused to produce him to testify in this case. Mr. Pariente was Mr. LaBarbera's host and the individual who conned him in to signing the Markers in question. Mr. LaBarbera does not speak English whatsoever, was inebriated most of the time he gambled at the Wynn, and was clearly a compulsive gambler while gaming there. On public policy grounds alone this verdict should be overturned by this Court.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether the Wynn is barred as a matter of law or on public policy grounds from enforcing a Judgment based on this jury's verdict against Mr. LaBarbera for breach of contract because it purposefully caused a bench warrant to be issued for his arrest by the Clark County District Attorney's Office for passing bad checks knowing full well that, he not only would be unable to attend his own trial here thereby requiring his counsel to present an "empty chair" defense on his behalf, but the Markers are not actually checks because they cannot be cashed or redeemed according to the testimony of the Wynn's own witness, i.e., Markers are only treated by the Wynn as bad checks if they are not paid as they cannot be negotiated for cash.

(See continuation sheet attached hereto.)

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None known at this time.

Appellant's Docketing Statement

**Continuation Sheet – No. 9**

2. Whether the trial court erred and/ abused its discretion in not allowing defense counsel to elaborate and explain to the jury why Mr. LaBarbera was not present there for his own trial because of a bench warrant obtained by the Wynn with the Clark County District Attorney's Office for passing bad checks that would have resulted in his arrest if he had entered this country to attend his trial, and the Markers are not actually checks because they cannot be cashed or redeemed according to the testimony of the Wynn's own witness at trial.

3. Whether the trial court erred in excluding evidence from the jury of Mr. LaBarbera's gambling sickness or addiction as certified in his home country of Italy, as well as instructing the jury that gambling sickness or addiction is not a defense to gaming debts in Nevada, notwithstanding NRS 463.368(6) because the Wynn uses that defense as a "sword and a shield" contrary to sound public policy.

4. Whether the trial court erred in excluding evidence from the jury of Mr. LaBarbera's intoxication while he gambled at the Wynn and executed the Markers presented to him by Mr. Pariente.

5. Whether the trial court erred in instructing the jury that Mr. LaBarbera's inability to speak English was not a defense to his execution of the gaming Markers in question given that the Wynn refused to produce Mr. Pariente to testify in this case and he was the only individual who translated anything for Mr. LaBarbera when he was at the Wynn.

6. Whether the trial court abused its discretion in awarding attorney's fees, costs and prejudgment interest to the Wynn, too.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain: The issue was not raised by Mr. LaBarbera at trial.

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: Whether it is a denial of Mr. LaBarbera's constitutional right to due process to prevent him from personally attending his own trial to defend his liability on gaming debts alleged by the Wynn, as well as to explain to the jury that he is a certified gambling addict in his home country of Italy, does not speak English whatsoever and relied on Mr. Pariente for translation, was intoxicated the entire time he gambled at the Wynn and, according to the Wynn's own records, managed to lose \$2 million during his 3 day stay there.



**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Not applicable.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 3

Was it a bench or jury trial? Jury trial.

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** August 3, 2016.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

**17. Date written notice of entry of judgment or order was served** August 10, 2016.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing Not applicable

☐ NRCP 52(b)      Date of filing Not applicable

☐ NRCP 59      Date of filing Not applicable

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion Not applicable

(c) Date written notice of entry of order resolving tolling motion was served N/A

Was service by:

☐ Delivery

☐ Mail



**19. Date notice of appeal filed** September 9, 2016

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Not applicable.

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

### **SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) \_\_\_\_\_

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This is an appeal from a Judgment on Jury Verdict in the Clark County District Court.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

The Wynn Las Vegas, LLC d/b/a Wynn Las Vegas, Plaintiff

Mario LaBarbera, Defendant

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Not applicable.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Plaintiff/Respondent: Breach of Contract.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:

N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

Not applicable.

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order



## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Mario LaBarbera  
Name of appellant

Jeffrey R. Albregts, Esq.  
Name of counsel of record

September 28, 2016  
Date

  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 29<sup>th</sup> day of September, 2016, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Lawrence J. Semenza, Esq. Mr. Christopher Kircher, Esq., Mr. Jarrod Rickard, Esq.  
Lawrence J. Semenza, III, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145

Ms. Janet Trost, Settlement Judge  
501 S. Rancho Drive, Ste H-56  
Las Vegas, NV 89106

Dated this 29<sup>th</sup> day of September, 2016

  
Signature

LaBarbera v. Wynn

Nev. Supreme Court No. 71276

**EXHIBIT A**

COMPLAINT FILED

JANUARY 24, 2014

## CIVIL COVER SHEET

County, Nevada

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

A- 14- 695025- C

XXVI I I

**I. Party Information**

Plaintiff(s) (name/address/phone): Wynn Las Vegas, LLC  
d/b/a Wynn Las Vegas  
3131 Las Vegas Blvd. So.  
Las Vegas, Nevada 89109  
Kim Sinatra, 3131 LV Blvd  
Las Vegas, Nevada 89109  
(702) 733-6410

Defendant(s) (name/address/phone): Mario La Barbera  
Via Modello 4040,  
Santa Flavia  
Palermo, Italy 90017

Attorney (name/address/phone):

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence</b> <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition


**Probate****Other Civil Filing Types**

Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input checked="" type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input checked="" type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters
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**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88   | <input type="checkbox"/> Investments (NRS 104 Art.-8)        | <input type="checkbox"/> Enhanced Case Mgmt/Business  |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90)  | <input type="checkbox"/> Trademarks (NRS 690A)               |   |

January 29, 14  
Date

  
Signature of initiating party or representative

See other side for family-related case filings.





CLERK OF THE COURT

1 **COMP**  
2 Kimmarie Sinatra  
3 Nevada Bar No. 8665  
4 Stacie Michaels  
5 Nevada Bar No. 9705  
6 Wynn Las Vegas, LLC  
7 3131 Las Vegas Boulevard South  
8 Las Vegas, Nevada 89109  
9 (702) 770-2112 *Direct*  
10 (702) 770-1518 *Facsimile*  
11 Attorney for Plaintiff

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 WYNN LAS VEGAS, LLC  
15 d/b/a WYNN LAS VEGAS,  
16 Plaintiff,

17 vs.

18 MARIO LA BARBERA,  
19 Defendant

A- 14- 695025- C

Case No.: XXVII I I

Dept No.:

**COMPLAINT**

20 Plaintiff Wynn Las Vegas, LLC d/b/a Wynn Las Vegas ("Wynn") complains against  
21 Defendant Mario La Barbera ("La Barbera") as follows:

22 **PARTIES**

23 1. Wynn is a Nevada Limited Liability Company existing under and by virtue of  
24 the laws of the State of Nevada.

25 2. Upon information and belief, La Barbera is a resident of the country of Italy.

26 **BACKGROUND**

27 3. On April 1, 2008, La Barbera executed one (1) credit instrument in favor of  
28 Wynn; Document Number 70601126 in the amount of \$120,000.00.

1           4.       On April 3, 2008, La Barbera executed eleven (11) credit instruments in favor of  
2 Wynn totaling \$1,070,000.00 as follows:

3

No.	Item No.	Amount
4       1	70602091	\$100,000.00
5       2	70602095	\$100,000.00
6       3	70601892	\$100,000.00
7       4	70601898	\$100,000.00
8       5	70601900	\$ 50,000.00
9       6	70601883	\$100,000.00
10      7	70601886	\$ 50,000.00
11      8	70601890	\$ 50,000.00
12      9	70602099	\$100,000.00
13     10	70602104	\$100,000.00
14     11	70602124	\$100,000.00

15  
16  
17

18           5.       To date La Barbera has paid \$70,000 and balance of \$1,000,000.00 remains  
19 unpaid.

20           6.       La Barbera presently owes Wynn \$1,000,000.00 plus its reasonable attorneys'  
21 fees, costs and interest.

22           7.       Wynn employees and/or representatives made attempts to resolve payment of the  
23 outstanding amounts, but were unsuccessful.  
24

25 ///

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **(Breach of Contract)**

3 8. Wynn incorporates the allegations contained in paragraphs 1 to 6 as though fully  
4 set forth herein.  
5

6 9. In consideration of the \$1,000,000.00 in credit given to La Barbera, which he  
7 willingly accepted from Wynn, La Barbera agreed to repay his debt.

8 10. To date and despite repeated demands, La Barbera has refused to repay the  
9 \$1,000,000.00 that he owes to Wynn.  
10

11 11. As a result, Wynn has been damaged in an amount that exceeds \$10,000.00.

12 12. Wynn has been forced to hire an attorney to prosecute this action and therefore  
13 seeks recovery of its attorneys' fees and court costs.

14 **SECOND CAUSE OF ACTION**

15 **(Conversion)**

16 13. Wynn incorporates the allegations contained in paragraphs 1 to 11 as though  
17 fully set forth herein.  
18

19 14. By taking the \$1,000,000.00 in credit and refusing to pay the amount despite  
20 repeated attempts by Wynn to collect payment, La Barbera has wrongfully exercised  
21 dominion and control over Wynn's property.  
22

23 15. La Barbera has exercised this dominion in derogation, exclusion and defiance of  
24 Wynn's rights in its property.

25 16. As a result, Wynn has been damaged in an amount that exceeds \$10,000.00.

26 17. Wynn has been forced to hire an attorney to prosecute this action and therefore  
27 seeks recovery of its attorneys' fees and court costs.  
28



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18. Wynn incorporates the allegations contained in paragraphs 1 to 16 as though fully set forth herein.

20. Given the nature of this benefit, it would be inequitable to allow La Barbera to accept and retain the \$1,000,000.00 in credit without repayment of the value thereof.

22. Because La Barbera has refused to repay the value of this benefit, he has been unjustly enriched in an amount equal to \$1,000,000.00.

**(Breach of the Covenant of Good Faith and Fair Dealing)**

24. Implied in every contract is the obligation of good faith and fair dealing.

26. As a result, Wynn has been damaged in an amount that exceeds \$10,000.00.

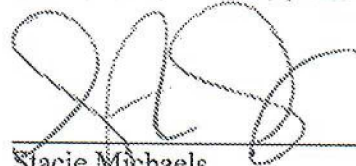
III

1 WHEREFORE, Wynn prays for judgment as follows:

- 2 1. For damages in an amount to be determined at trial, but in excess of \$10,000.00;
- 3 2. Attorney's fees and costs of suit;
- 4 3. Prejudgment and post-judgment interest on the amounts owed; and
- 5 4. Any further relief this Court deems proper.
- 6

7 Dated this 24 day of January 2014.

8 WYNN LAS VEGAS, LLC

9 

10 Stacie Michaels  
11 Nevada Bar No. 9705  
12 3131 Las Vegas Boulevard South  
13 Las Vegas, Nevada 89109  
14 Attorney for Plaintiff  
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LaBarbera v. Wynn

Nev. Supreme Court No. 71276

**EXHIBIT B**

ANSWER TO COMPLAINT FILED

September 16, 2014





CLERK OF THE COURT

1 **ANS**  
2 JEFFREY R. ALBREGTS, ESQ.  
3 Nevada Bar No. 0066  
4 E-mail: jalbregts@nevadafirm.com  
5 HOLLEY, DRIGGS, WALCH,  
6 PUZEY & THOMPSON  
7 400 South Fourth Street, Third Floor  
8 Las Vegas, Nevada 89101  
9 Telephone: 702/791-0308  
10 Facsimile: 702/791-1912

11 *Attorneys for Defendant*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 WYNN LAS VEGAS, LLC,  
15 d/b/a WYNN LAS VEGAS,

16 Plaintiff,

17 v.

18 MARIO LA BARBERA,

19 Defendant.

Case No.: A-14-695025-C

Dept. No.: XXVIII

**ANSWER TO COMPLAINT**

20 Defendant, MARIO LA BARBERA, in answer to the Complaint on file herein, hereby  
21 admits, denies and alleges, as follows:

22 **PARTIES**

23 1. Defendant is without sufficient information or knowledge to form a belief as to  
24 the truth of the allegations contained in Paragraph 1 and therefore denies the same.

25 2. Admits the allegations contained in Paragraph 2.

26 **BACKGROUND**

27 3. Defendant is without sufficient information or knowledge to form a belief as to  
28 the truth of the allegations contained in Paragraph 3 and therefore denies the same.

4. Defendant is without sufficient information or knowledge to form a belief as to  
the truth of the allegations contained in Paragraph 4 and therefore denies the same.

5. Admits that Defendant LA BARBERA has paid at least \$70,000 to the Wynn, if  
not more over the years, but is without sufficient information or knowledge to form a belief as to

1 the truth of the allegations contained in Paragraph 5 and therefore denies the same

2 6. Denies the allegations contained in Paragraph 6.

3 7. Defendant is without sufficient information or knowledge to form a belief as to  
4 the truth of the allegations contained in Paragraph 7 and therefore denies the same.

5 **FIRST CAUSE OF ACTION**  
6 **(Breach of Contract)**

7 8. Defendant repeats and realleges as though fully set forth herein his answers to  
8 paragraphs 1 through 7 of the Complaint.

9 9. Denies the allegations contained in Paragraph 9.

10 10. Defendant is without sufficient information or knowledge to form a belief as to  
11 the truth of the allegations contained in Paragraph 10 and therefore denies the same.

12 11. Denies the allegations contained in Paragraph 11.

13 12. Denies the allegations contained in Paragraph 12.

14 **SECOND CAUSE OF ACTION**  
15 **(Conversion)**

16 13. Defendant repeats and realleges as though fully set forth herein his answers to  
17 paragraphs 1 through 12 of the Complaint.

18 14. Denies the allegations contained in Paragraph 14.

19 15. Denies the allegations contained in Paragraph 15.

20 16. Denies the allegations contained in Paragraph 16.

21 17. Denies the allegations contained in Paragraph 17.

22 **THIRD CAUSE OF ACTION**  
23 **(Unjust Enrichment)**

24 18. Defendant repeats and realleges as though fully set forth herein his answers to  
25 paragraphs 1 through 17 of the Complaint.

26 19. Denies the allegations contained in Paragraph 19.

27 20. Denies the allegations contained in Paragraph 20.

28 21. Denies the allegations contained in Paragraph 21.



1           22.     Denies the allegations contained in Paragraph 22.

2                               **FOURTH CAUSE OF ACTION**  
3                               **(Breach of the Covenant of Good Faith and Fair Dealing)**

4           23.     Defendant repeats and realleges as though fully set forth herein his answers to  
5 paragraphs 1 through 22 of the Complaint.

6           24.     Admits the allegations contained in Paragraph 24.

7           25.     Denies the allegations contained in Paragraph 25.

8           26.     Denies the allegations contained in Paragraph 26.

9           27.     Denies the allegations contained in Paragraph 27.

10                           **AFFIRMATIVE DEFENSES**

11                           **FIRST AFFIRMATIVE DEFENSE**

12           The claims set forth in the Complaint fail for want or lack of consideration.

13                           **SECOND AFFIRMATIVE DEFENSE**

14           The claims set forth in the Complaint are barred by the equitable doctrine of laches.

15                           **THIRD AFFIRMATIVE DEFENSE**

16           Three of the claims set forth in the Complaint are barred by the applicable statute of  
17 limitations. Specifically, Plaintiff's Second Cause of Action for Conversion is barred by the three  
18 year statute of limitations set forth in NRS 11.190(3)(c); Plaintiff's Third Cause of Action for  
19 Unjust Enrichment is barred by the four year statute of limitations set forth in NRS 11.190(2)(c);  
20 and Plaintiff's Fourth Cause of Action for Breach Of The Covenant Of Good Faith And Fair  
21 Dealing is barred by the two year statute of limitations set forth in NRS 11.190(4)(e).

22                           **FOURTH AFFIRMATIVE DEFENSE**

23           The claims of Plaintiff are barred by the equitable doctrine of estoppel including both  
24 promissory and equitable estoppel.

25                           **FIFTH AFFIRMATIVE DEFENSE**

26           The claims of Plaintiff are barred by the equitable doctrine of waiver.

27                           **SIXTH AFFIRMATIVE DEFENSE**

28           There is no privity of contract between the Wynn and this Defendant.



1 **SEVENTH AFFIRMATIVE DEFENSE**

2 The alleged credit instruments which Plaintiff seeks to enforce and recover from this  
3 Defendant are or were incomplete and therefore unenforceable under Nevada and/or Italian law.

4 **EIGHTH AFFIRMATIVE DEFENSE**

5 To the extent this Defendant executed any legitimate credit instrument on behalf of  
6 Plaintiff, he was fraudulently induced to do so by Plaintiff and, indeed, he does not read or write  
7 English.

8 **NINTH AFFIRMATIVE DEFENSE**

9 Defendant, as a resident and citizen of the sovereign country of Italy, is entitled as a  
10 matter of law to the protections and privileges of Italian law and citizenship including, without  
11 limitation, that gambling markers, instruments or contracts for gambling debt, are unenforceable  
12 in Italy as a matter of public policy.

13 **TENTH AFFIRMATIVE DEFENSE**

14 As a matter of law, this Defendant has not converted any property of Plaintiff and,  
15 indeed, this Defendant has never been in possession of any property of Plaintiff, tangible or  
16 intangible, nor does providing someone "credit" create property which could be converted. In  
17 other words, credit is intangible at best and does not create rights in property which may be  
18 subject to claims for conversion once that credit is not paid. In summary, Plaintiff did not make  
19 any kind of loan to this Defendant as no funds were ever exchanged between them.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 This Defendant has not been unjustly enriched at the expense and to the detriment of  
22 Plaintiff and, indeed, the Wynn is out of pocket nothing here.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 To the extent that the Complaint states any claim in tort against this Defendant, the  
25 damages sustained by Plaintiff, if any, were caused by its own errors, acts and/or omissions.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 To the extent that the Complaint states any claim in tort against this Defendant, the  
28 damages sustained by Plaintiff, if any, were caused by the acts, errors and/or omissions of third

1 parties over whom this Defendant had no authority or control.

2 **FOURTEENTH AFFIRMATIVE DEFENSE**

3 To the extent that this Defendant executed any credit instruments or markers in favor of  
4 Plaintiff, such instruments or markers were procured by Plaintiff from him through a series of  
5 misrepresentations by Plaintiff to him including, without limitation, that the markers would not  
6 be enforced; that if the markers were enforced, they would be discounted; or if the markers were  
7 enforced, Defendant would be able to make payments to Plaintiff over time; and that the  
8 instruments or markers were enforceable in Italy (which is not true).

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 To the extent that this Defendant executed any gaming markers or credit instruments on  
11 behalf of Plaintiff, he was not aware of what they were when he executed the same, meaning he  
12 mistakenly executed as much at the instance and request of Plaintiff and without any  
13 understanding or knowledge of what they were, let alone whether they were enforceable here or  
14 in Italy.

15 **SIXTEENTH AFFIRMATIVE DEFENSE**

16 The claims of Plaintiff are barred by the equitable doctrine of unclean hands.

17 **SEVENTEENTH AFFIRMATIVE DEFENSE**

18 Plaintiff did not properly present any credit instruments or markers to Defendant's bank  
19 in Italy and is therefore barred from enforcing the same here or there.

20 **EIGHTEENTH AFFIRMATIVE DEFENSE**

21 Plaintiff unduly influenced and coerced this Defendant into executing any markers or  
22 gaming instruments for its benefit, to the extent that this Defendant actually executed any.

23 **NINETEENTH AFFIRMATIVE DEFENSE**

24 Plaintiff's claims are barred against this Defendant because Plaintiff exploited him as a  
25 sick and compulsive gambler who has no rational or reasoned ability to stop gambling, all of  
26 which Wynn knew when it asked Defendant to execute the alleged gaming or credit instruments  
27 it seeks to enforce against him herein, but it also used duress, deceit and undue influence in  
28 coercing him to execute any credit instruments.



1  
2 **TWENTIETH AFFIRMATIVE DEFENSE**

3 As a matter of public policy and law, Plaintiff Wynn is legally and equitably barred from  
4 using NRS 463.368 as a shield to its liability for, or to negate affirmative defenses to, its  
5 intentional exploitation of Defendant LaBarbera's "mental or behavioral disorder involving  
6 gambling," i.e., gambling sickness or addiction, *vis a vis* unduly influencing and/or coercing him  
7 into executing gaming markers or credit instruments including, without limitation, making false  
8 promises to him that such instruments would not be enforced; using alcohol and *comps* to unduly  
9 influence or coerce him into executing such gaming markers or credit instruments; having him  
10 execute such gaming markers or credit instruments while he was clearly inebriated and/or  
11 otherwise impaired; and extending gaming credit to him while knowing full well that he suffered  
12 from a "mental or behavioral disorder involving gambling," such as addiction or sickness. In  
13 short, although this defense may be barred by statute, the Wynn cannot purposely exploit Mr.  
14 LaBarbera's gambling addiction for its own gain and profit and then shield itself from liability  
15 for the same pursuant to NRS 463.368.

16 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

17 This Defendant has been required to retain an attorney to defend himself and may be  
18 entitled to recover attorneys' fees and costs under Nevada law.

19 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

20 Pursuant to the provision of Nevada Rule of Civil Procedure 11, at the time of filing of  
21 the Answer/Amended Answer to the Complaint, all possible affirmative defenses may not have  
22 been alleged inasmuch as insufficient facts and relevant information may not have been available  
23 after reasonable inquiry, and therefore, Defendant reserves the right to amend this Answer to the  
24 Complaint to allege additional affirmative defenses if subsequent investigation so warrants.

25 WHEREFORE, Defendant prays for judgment, as follows:

26 1. That Plaintiff WYNN take nothing by reason of its complaint filed against him  
27 herein; that this action be dismissed against him with prejudice.  
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2. For attorney's fees plus costs of suit incurred herein.
3. For such other relief as just and proper in the premises.

Dated this 16th day of September, 2014.

**HOLLEY DRIGGS, WALCH,  
PUZEY & THOMPSON**

\_\_\_\_\_  
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