Case No. 82263

IN THE SUPREME COURT OF THE STATE OF NEVADA

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NEVADA GAMING COMMISSION AND NEVADA GAMING CONTROL BOARD,

Appellants,

v.

STEPHEN A. WYNN,

Respondent.

On Appeal from the Eighth Judicial District Court, CASE NO. A-20-809249-J

JOINT APPENDIX – VOLUME I OF III

AARON D. FORD
Nevada Attorney General
STEVE SHEVORSKI
Chief Litigation Counsel
(Bar No. 8256)
Attorneys for Appellant
Nevada Gaming Control Board
DARLENE CARUSO
Chief Deputy Attorney General
(Bar No. 5866)
KIEL B. IRELAND
Deputy Attorney General
(Bar No. 15368C)
Attorneys for Appellant
Nevada Gaming Commission
Office of the Attorney General
555 E. Washington Ave., #3900
Las Vegas, NV 89101

DONALD J. CAMPBELL
(Bar No. 1216)
J. COLBY WILLIAMS
(Bar No. 5549)
CAMPBELL & WILLIAMS
710 S. Seventh St.
Las Vegas, NV 89101

Attorneys for Respondent

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INDEX

VOL.	DOCUMENT	Page(s)
II	Acceptance of Service for Nevada Gaming Commission, filed 1/30/20	292-293
II	Acceptance of Service for Nevada Gaming Control Board, filed 1/30/20	294-295
I	Complaint (NGC 19-03), filed 10/14/19	1-23
II	Initial Appearance Fee Disclosure, filed 1/27/20	291
I	Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction, filed 11/14/19	27-173
III	Nevada Gaming Commission's Notice of Appeal, filed 12/23/20	643-664
II	Nevada Gaming Commission's Opposition to Wynn's Petition and Countermotion to Dismiss, filed 4/10/20	342-373
II-III	Nevada Gaming Commission's Reply Brief in Support of Its Countermotion to Dismiss Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition, filed 5/22/20	481-503
I	Nevada Gaming Control Board's Opposition to Stephen Alan Wynn's Motion to Dismiss Based on Lack of Subject Matter Jurisdiction, filed 11/27/19	175-187
III	Notice of Appeal, filed 12/23/20	665-685
II	Notice of Entry of Order, filed 5/20/20	473-480
III	Notice of Entry of Order, filed 8/12/20	523-532

III Notice of Entry of Order Granting Petitioner's Petition For Judicial Review, filed 11/25/20 625-642

II Notice of Entry of Stipulation and Order, filed 4/10/20 405-410

II Notice of Entry of Stipulation and Order, filed 4/28/20 415-422

II Notice of Entry of Stipulation and Order Regarding Briefing Schedule on Petition for Judicial Review and Related Matters, filed 2/19/20 300-307

I Notice of Meeting, dated 12/12/19 208-209

III Notice of Supplemental Authorities, filed 10/13/20 577-595

II Order Denying Respondent's Motion to Dismiss, filed 1/9/20 257-261

III Order Granting Petitioner's Petition for Judicial Review, filed 11/19/20 611-624

II Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition, (A-20-809249-J), filed 1/27/20 264-290

II Petitioner Stephen A. Wynn's Consolidated Opposition to Respondents' Countermotions to Dismiss and Reply Brief in Support of Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition, filed 5/1/20 423-457

II Petitioner Stephen A. Wynn's Opening Brief in Support of Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition, filed 3/13/20 308-341

II Petitioner's Ex Parte Application to Exceed 7,000 Words for His Consolidated Opposition to Respondents' Countermotions To Dismiss and Reply Brief in Support of Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition, filed 5/1/20 458-467

I Receipt of Copy of Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction, dated 11/14/19 174

I Receipt of Copy of Reply in Support of Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction, dated 12/9/19 188

I Reply in Support of Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction, filed 12/9/19 189-207

III Reply Supporting Respondent Nevada Gaming Control Board's Countermotion to Dismiss Under NRCP 12(b)(5), filed 5/22/20 504-511

II Respondent Nevada Gaming Control Board's Answering Brief and Countermotion to Dismiss Under NRCP 12(b)(5), filed 4/10/20 374-401

II Stipulation and Order, filed 4/10/20 402-404

II Stipulation and Order, filed 4/28/20 411-414

II Stipulation and Order, filed 5/19/20 468-472

I Stipulation and Order Re: Briefing Schedule and Hearing Date on Respondent's Forthcoming Motion to Dismiss, filed 11/8/19 24-26

II Stipulation and Order Re: Briefing Schedule on Petition for Judicial Review and Related Matters, filed 2/19/20 296-299

II Stipulation and Order Re: Continued Stay of Proceedings Pending Respondent's Forthcoming Petition for Judicial Review, filed 1/23/20 262-264

I-II Transcript of Hearing before the Nevada Gaming Commission on the Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction, dated 12/19/19 210-256

III Transcript of Hearing: Nevada Gaming Commission's Opposition to Wynn's Petition and Countermotion to Dismiss on 9/17/20, filed 1/14/2021 533-576

III Transcript of Proceedings on Petitioner's Motion to Strike Section II of the Nevada Gaming Commission's "Reply" in Support of Countermotion to Dismiss on 7/23/20, filed 1/14/21 512-522

III Transcript of Proceedings on Petition for Judicial Review on 11/17/20, filed 12/9/20 596-610

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 27th day of May, 2021, and e-served the same on all parties listed on the Court's Master Service List.

/s/ *Traci Plotnick*
Traci Plotnick, an employee of the
Office of the Nevada Attorney General

NGC 19-03

RECEIVED/FILED
OCT 14 2019
NEVADA GAMING COMMISSION
CARSON CITY, NEVADA

STATE OF NEVADA

BEFORE THE NEVADA GAMING COMMISSION

NEVADA GAMING CONTROL BOARD, Complainant, vs. STEPHEN ALAN WYNN, In his capacity as having been found suitable as Chief Executive Officer, Chairman of the Board, and shareholder and controlling shareholder of Wynn Resorts, Ltd.; Respondent.	**COMPLAINT**

The State of Nevada, on relation of its Nevada Gaming Control Board (Gaming Control Board), by and through its counsel, files this Complaint before the Nevada Gaming Commission (Gaming Commission) for disciplinary action against Respondent Stephen Alan Wynn (Mr. Wynn), pursuant to Nevada Revised Statute (NRS) 463.310(2), and alleges as follows:

INTRODUCTION

1. The Gaming Commission should revoke Mr. Wynn's Findings of Suitability. Mr. Wynn has repeatedly violated Nevada's gaming statutes and regulations, bringing discredit upon the State of Nevada and its gaming industry. He is unsuitable to be associated with a gaming enterprise or the gaming industry as a whole.

2. From its initial licensure in 2005, Wynn Resorts, Ltd. (Wynn Resorts and/or Wynn Company) was led by Mr. Wynn, who was—until his recent resignation—its Chairman, Chief Executive Officer (CEO), and controlling shareholder. During this time, multiple women in employment positions that were subordinate to Mr. Wynn reported that Mr. Wynn subjected them to unwanted sexual advances. Mr. Wynn never reported these

allegations to the appropriate individuals or departments, but instead, concealed at least some of them through nondisclosure agreements and various other means. When some of Mr. Wynn's alleged misconduct became public in 2018, it resulted in negative reporting that was widely disseminated in media outlets around the world. This negative reporting and the underlying conduct harmed Nevada's reputation and its gaming industry. It damaged the public's confidence and trust in an industry that is vitally important to the economy of the State of Nevada and the general welfare of its inhabitants.

3. As the Wynn Company admitted in its 2019 Settlement with the Gaming Control Board, (1) it did not enforce its policies and procedures with regard to Mr. Wynn following the reporting procedures for sexual harassment and related matters; (2) its past failures to enforce its policies and procedures have led to multiple instances where sexual harassment allegations concerning Mr. Wynn were not investigated; and (3) its past failures to enforce its policies and procedures have led to multiple instances where allegations of sexual harassment by Mr. Wynn were not appropriately addressed by the Wynn Company.

4. Given the Wynn Company's failure to properly monitor and investigate Mr. Wynn's conduct, the Gaming Control Board was obligated to undertake its own investigation into Mr. Wynn's conduct. That investigation revealed numerous potential instances of unwelcome sexual conduct by Mr. Wynn. Multiple female employees stated they experienced unwelcome sexual conduct by Mr. Wynn, including exposing himself, inappropriate comments and touching, coerced sex, and requests for oral and vaginal sex acts. Investigators identified individuals who asserted they witnessed Mr. Wynn engage in a series of encounters with subordinate female employees. These subordinate employees were vulnerable to Mr. Wynn's conduct due to their financial dependence on continued employment at resorts controlled and managed by him.

5. As part of its investigation, the Gaming Control Board noticed Mr. Wynn to appear and testify at an Investigative Hearing to address these and other allegations made against him. That notice informed Mr. Wynn that his failure to appear and testify fully

shall constitute grounds for the revocation of his Findings of Suitability. Mr. Wynn, however, refused to—and did not—attend that hearing.

6. In his capacity as a (if not the) key executive of a major casino, Mr. Wynn's conduct was inimical to the public health, safety, morals, good order, and general welfare of the people of the State of Nevada. He failed to exercise discretion and sound judgment to prevent incidents, which negatively reflected on the repute of the State of Nevada and acted as a detriment to the development of the gaming industry. In short, he brought discredit upon the State of Nevada and its gaming industry. And when the Board sought his testimony in response to these issues, Mr. Wynn failed to appear—despite knowing that doing so constituted grounds for the revocation of his Findings of Suitability.

7. At a minimum, Mr. Wynn's Findings of Suitability should be revoked.

JURISDICTION

8. The Gaming Control Board is an administrative agency of the State of Nevada duly organized and existing under and by virtue of Chapter 463 of the NRS. It is charged with the administration and enforcement of the gaming laws of this state as set forth in Title 41 of the NRS and the Regulations of the Gaming Commission.

9. Mr. Wynn was previously found suitable by the Gaming Commission as, and was at all times relevant to this Complaint, CEO, Chairman, shareholder, and controlling shareholder of Wynn Resorts, which is registered as a publicly traded company by the Gaming Commission and, through wholly owned intermediaries and holding companies, is the owner of Wynn Las Vegas, LLC (Wynn LV), which holds a nonrestricted gaming license. Although Mr. Wynn resigned as CEO and Chairman of Wynn Resorts and redeemed his shares in Wynn Resorts, the Gaming Control Board placed an administrative hold on Mr. Wynn's Findings of Suitability and retains jurisdiction over him for purposes that include disciplinary proceedings.

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BACKGROUND

A. Complaints about Mr. Wynn that the Wynn Company Failed to Investigate

10. Mr. Wynn subjected his subordinate employees to unwelcome sexual advances, according to multiple complaints made against him.

11. Mr. Wynn hid those complaints from his Board of Directors and other key executives by using his personal funds to settle privately the complaints and requiring the complaining women to sign nondisclosure agreements.

12. Many of the allegations against Mr. Wynn came to light on January 26, 2018, when the *Wall Street Journal* published an article titled "Dozens of People Recount Pattern of Sexual Misconduct by Las Vegas Mogul Steve Wynn" (WSJ Article).

13. The WSJ Article described allegations taking place in 2005 regarding Mr. Wynn and a manicurist who worked for Wynn LV. The WSJ Article explained that Mr. Wynn forced the manicurist to have sex with him and that the manicurist's supervisor learned of the allegations and "filed a detailed report to the casino's human-resources department recounting the episode." The WSJ Article stated, "according to people familiar with the matter," Mr. Wynn paid a $7.5 million settlement to the manicurist based on the allegations.

14. The WSJ Article stated Mr. Wynn's behavior went beyond the manicurist incident: "dozens of people The Wall Street Journal interviewed who have worked at Mr. Wynn's casinos told of behavior that cumulatively would amount to a decades-long pattern of sexual misconduct by Mr. Wynn."

15. The WSJ Article went on to describe further sexual incidents alleged against Mr. Wynn. It also stated how employees were aware of Mr. Wynn's power in Las Vegas and worried about how that power could influence their ability to work elsewhere.

B. Wynn Company Policies

16. Mr. Wynn, at all times relevant to this Complaint, was found suitable as the controlling shareholder of Wynn Resorts, found suitable as a shareholder of Wynn Resorts, ...

found suitable as the Chairman of the Board of Wynn Resorts, and found suitable as the CEO of Wynn Resorts.

17. During all times relevant to this Complaint, the Wynn Company maintained a policy concerning harassment and discrimination (Harassment Policy). The Harassment Policy was "to prohibit any conduct, whether intentional or unintentional which results in the harassment or discrimination of employees . . . ."

18. The Harassment Policy defined sexual harassment as "any unwelcomed sexual advances, request for sexual favors, or other conduct of a sexual nature either verbal or physical . . . ."

19. The Harassment Policy stated that:

> [A]ll employees, from the highest management to the part-time staff, are responsible for following this policy and aiding in its enforcement. Additionally, all employees are responsible for maintaining a professional work environment by treating everyone... with respect and by being aware of their own behavior toward others in the work place.

20. The Harassment Policy set out that an employee who experiences or witnesses sexual harassment "should immediately report the conduct to: 1. The Employee Relations Department; 2. The Vice President of Human Resources, the Legal department, or your particular Divisional Vice President; 3. Any other member of management with whom [the employee] feel[s] comfortable."

21. The Harassment Policy required that supervisors who observe or become aware of harassment "**must immediately** report" such harassment "to the Employee Relations department and take appropriate steps to stop the offending behavior." (Emphasis in original).

22. During all times relevant to this Complaint, the Wynn Company maintained an investigations policy concerning alleged workplace conduct violations (Investigations Policy). The Investigations Policy stated that the company "will promptly initiate an appropriate investigation into all possible violations of law and Wynn policy and procedures." The Investigations Policy established that Human Resources (HR) or the

Employee Relations (ER) department will have primary responsibility for investigating complaints relating to employee misconduct and set forth the steps to be taken for an investigation. Specifically, an investigation should consist of the following:

1. Obtain verbal and written statements from all parties involved, including the complainant and accused.
2. Take photographs/video of any injury or damage (*if applicable*).
3. Preserve all evidence, and secure the evidence in a locked location. Document all evidence obtained.
4. Determine if there is a potential for risk occurrence. If there is a potential, take all measures appropriate to protect employees.
5. Complete an investigation report and provide all relevant and necessary information, including findings.

23. The Investigations Policy also set out that, based on the investigation, ER and/or HR "should determine whether the allegation(s) were substantiated, unsubstantiated or inconclusive." Further the determinations are "violation found," "no violation found," or "inconclusive investigation."

24. During all times relevant to this Complaint, the Wynn Company maintained a Personal Relationships policy. This policy discouraged "romantic or intimate relationships involving a direct or indirect supervisory relationship between employees regardless of whether the relationship is voluntary and/or welcomed by both parties."

25. The Wynn Company's Personal Relationships policy also set out that "Department managers are responsible for conducting themselves in a professional manner and strictly maintaining professional relationships with their employees at all times."

C. Gaming Control Board Investigation

i. Scope of the Investigation

26. Immediately upon learning of the allegations raised against Mr. Wynn in the WSJ Article, the Gaming Control Board launched a thorough and extensive investigation, which utilized a variety of methods to gather information including telephonic and in-person interviews, formal investigative hearings, and document review.

27. Gaming Control Board Staff contacted former and current employees, many of whom consented to telephonic or in-person recorded interviews. Some, however, declined to comment or did not respond.

28. Gaming Control Board Staff also contacted current and former executives and board members of the Wynn Company.

29. Gaming Control Board Staff also reviewed transcripts and exhibits of sworn testimony associated with the Wynn Company from depositions that were taken in the litigation between Wynn Resorts and Kazuo Okada, Aruze USA, Inc. and Universal Entertainment Corporation (Nevada 8th JD, Case #A-12-656710-B).

30. Gaming Control Board Staff also reviewed three lawsuits filed in the District Court of Clark County, Nevada detailing allegations of unwelcome sexual conduct by Mr. Wynn involving the Wynn Company employees, demand letters directly related to these lawsuits, additional demand letters, EEOC complaints, and a police report detailing other alleged incidents of unwelcome sexual conduct by Mr. Wynn.

31. Gaming Control Board Staff also reviewed voluntary statements submitted through the Gaming Control Board website. Investigators pursued submissions relevant to the scope of the investigation. Investigators also conducted telephonic interviews with those individuals who responded to Gaming Control Board inquiries.

32. Gaming Control Board Staff also reviewed company policies and procedures relating to harassment, workplace hostility, and discrimination.

33. Gaming Control Board Staff also reviewed confidential settlement agreements between specific employees, Mr. Wynn, and the Wynn Company.

34. Gaming Control Board Staff also reviewed nearly 300 worldwide news articles.

35. Gaming Control Board Staff also received regular updates from Wynn Resorts' internal investigation into the allegations of unwelcome sexual conduct by Mr. Wynn and the company's response to them.

. . . .

ii. Findings from the Investigation

36. Through its seven-month investigation, the Gaming Control Board found evidence of sexual conduct by Mr. Wynn involving subordinate female employees, which Mr. Wynn conducted in disregard of the Wynn Company policy and procedure.

37. The evidence from the investigation demonstrates a pattern of Mr. Wynn recklessly engaging in sexual conduct with subordinate employees, which even if it was consensual as maintained by Mr. Wynn, is oblivious to the significant power imbalance between the CEO of a major gaming company and subordinate employees dependent upon Mr. Wynn's approval for continued employment.

38. Mr. Wynn was in position of power as CEO and the largest shareholder.

39. When asked during interviews why they did not just say "no" to Mr. Wynn's sexual demands or find another job, female employees identified financial dependency on their current jobs and fear of firing, blackballing, or other reprisals by Mr. Wynn.

40. Although Mr. Wynn has indicated elsewhere that all sexual conduct at issue was consensual, Mr. Wynn thwarted any investigation of such conduct between himself and a subordinate employee through his personal use of non-disclosure agreements.

41. For example, the Gaming Control Board tried to contact women who sent demand letters detailing unwelcome sexual conduct as part of their investigations.

42. The Gaming Control Board, however, was informed that the women had settled with Mr. Wynn. At that point, the women would not agree to an interview due to confidentiality clauses in their settlement agreements with Mr. Wynn.

43. The Gaming Control Board also noticed Mr. Wynn to appear and testify at an Investigative Hearing regarding these and other allegations.

44. That notice informed Mr. Wynn that his failure to appear constituted grounds for the revocation of his Findings of Suitability.

45. Mr. Wynn, however, failed to comply with that notice and did not attend the scheduled hearing.

. . . .

D. Wynn Company Settlement with Gaming Control Board

46. On or about January 25, 2019, the Gaming Control Board filed a Complaint (Wynn Company Complaint), Case No. NGC 18-15, against the Wynn Company arising out of the Gaming Control Board investigation.

47. On or about February 26, 2019, the Gaming Commission accepted a Stipulation for Settlement and Order (2019 Settlement Stipulation) entered into between the Gaming Control Board and the Wynn Company resolving the Wynn Company Complaint.

48. The Gaming Commission imposed a $20,000,000 fine against the Wynn Company.

49. In the 2019 Settlement Stipulation, the Wynn Company admitted to nearly all of the allegations in the Wynn Company Complaint, including that:

a. Mr. Wynn, while Chairman of the Board of Directors and Chief Executive Officer of Wynn Resorts, engaged in intimate and sexual conduct with employees.

b. Mr. Wynn failed to comply with the Wynn Company's policies that he maintain a professional work environment and/or failed to comply with the spirit of Wynn Resorts' policies that discouraged intimate relationships between himself and employees.

c. Mr. Wynn's conduct is inappropriate and unsuitable given his position as head of the Wynn Company and given the inherent disparity in power between himself and non-management employees.

d. The Wynn Company did not enforce its policies and procedures with regard to Mr. Wynn following the reporting procedures for sexual harassment and related matters.

e. The Wynn Company's past failures to enforce its policies and procedures have led to multiple instances where sexual harassment allegations concerning Mr. Wynn were not investigated.

. . . .

f. The Wynn Company's past failures to enforce its policies and procedures have led to multiple instances where allegations of sexual harassment by Mr. Wynn were not appropriately addressed by the Wynn Company.

g. The Wynn Company's past failures to appropriately address allegations of sexual harassment by Mr. Wynn resulted in negative articles published in widely disseminated media publications, including, but not limited to, the Wall Street Journal.

h. Through these actions and failures, the Wynn Company violated NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010 and/or 5.011.

50. Mr. Wynn, as the former Chairman of the Board of Directors and Chief Executive Officer of Wynn Resorts, is ultimately responsible for the failures alleged in the Wynn Company Complaint.

E. Massachusetts Gaming Commission Report and Proceedings

51. The Investigations and Enforcement Bureau (IEB) of the Massachusetts Gaming Commission (MGC) also conducted investigation into the ongoing suitability of Wynn MA, LLC, and its qualifiers after the January 26, 2018, WSJ article regarding the allegations of sexual harassment against Mr. Wynn.

52. The report prepared by the IEB contained a written statement provided by Mr. Wynn to the special committee set up by the Wynn Company.

53. In the written statement, Mr. Wynn admits to having "multiple consensual relationships during his tenure at Wynn Resorts . . . ." (IEB report dated 3/15/2019, pp. 162-63.) Mr. Wynn further admits that while employed by the Wynn Company he was aware that the Wynn Company had a "code of conduct and related policies," but states that he was not familiar with the details of those policies. (*Id.*)

54. In addition, during his testimony before the MGC, Matthew Maddox, the CEO of Wynn Company, testified as to the conduct of Mr. Wynn "that there were many victims [of Mr. Wynn], and those victims felt powerless...." (Adjudicatory Hearing Transcript Dated April 2, 2019, 28:6-7).

. . . .

55. In its Decision and Order, the MGC stated that it was "troubled by the systemic failures and pervasive culture of non-disclosure presented in the IEB report and adjudicatory hearing." (MGC Decision and Order, p. 49.) The MGC found that the "corporate culture of the founder-led organization led to disparate treatment of [Mr. Wynn] in ways that left the most vulnerable at grave risk." (*Id.*)

56. The MGC fined Wynn Resorts $35 million and an additional fine of $500 thousand against Matthew Maddox, the then CEO of Wynn Resorts.

RELEVANT LAW

57. Because "[t]he gaming industry is vitally important to the economy of the State and the general welfare of the inhabitants, . . . [p]ublic confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments . . . ." NRS 463.0129(1)(a)-(c).

58. For that reason, the legislature has granted the Gaming Commission "full and absolute power and authority to limit, condition, restrict, revoke or suspend any . . . finding of suitability . . . or fine any person . . . found suitable . . . for any cause deemed reasonable by the Commission." NRS 463.1405.

59. A finding of suitability—just like a license—may be denied, revoked, suspended, limited, conditioned, or restricted "upon the same grounds as [the Commission] may take such action with respect to licenses, licensees and licensing. . . ." Nev. Gaming Comm'n Reg. 3.080.

60. Further, each licensee or person found suitable bears the continuing obligation to continue to meet the standards and qualifications that were required to obtain the license or finding of suitability. NRS 463.170 and Nev. Gaming Comm'n Reg. 5.040.

61. To support the Gaming Commission's disciplinary decisions, the Gaming Control Board is authorized to observe the conduct of licensees and persons found suitable in order to ensure that the gaming operations or registered holding company are not being . . . .

operated in an unsuitable manner or by an unqualified or unsuitable person. NRS 463.1405(1) and Nev. Gaming Comm'n Reg. 5.040.

62. In support of that authority to observe, both the Gaming Control Board and the Gaming Commission have "full power and authority to issue subpoenas and compel the attendance of witnesses at any place within this state. . . ." NRS 463.140(5).

63. A person must not receive—or maintain—a license or finding of suitability unless the Commission is satisfied that the applicant is a (1) "person of good character, honesty and integrity;" (2) "whose prior activities, . . . reputation, habits and associations do not pose a threat to the public interest of this State;" and (3) is in "all other respects qualified to be licensed or found suitable consistently with the declared policy of the State." NRS 463.170(2).

64. The failure to continue to meet such standards and qualifications constitutes grounds for disciplinary action, including revocation. NRS 463.170(8).

65. Gaming Commission Regulation 5.010(1) explains that "all establishments wherein gaming is conducted in this state be operated in a manner suitable to protect the public health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada." It goes on to say in subsection 2 that "willful or persistent use or toleration of methods of operation deemed unsuitable will constitute grounds for license revocation or other disciplinary action."

66. The Gaming Control Board for numerous reasons can bring discipline.

67. Most notably, Gaming Commission Regulation 5.011 explains that discipline may be based on any activity (1) "that is inimical to the public health, safety, morals, good order and general welfare of the people of the State of Nevada," or (2) "that would reflect or tend to reflect discredit upon the State of Nevada or the gaming industry."

68. Regulation 5.011 goes on to provide a non-exhaustive list of grounds for discipline, including:

> 1. Failure to exercise discretion and sound judgment to prevent incidents which might reflect on the repute of the State of

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

69. Additionally, all licensees and persons found suitable have a duty to cooperate with investigations and provide testimony. Nev. Gaming Comm'n Reg. 5.070.

70. In that regard, any licensee or person found suitable is required to appear to testify before the Gaming Control Board when summoned on any matter the Gaming Control Board deems relevant. *Id.*

71. That hearing may be conducted by one or more members of the Gaming Control Board or a hearing examiner appointed by the Gaming Control Board. NRS 463.110(4) and Nev. Gaming Comm'n Regs. 2.060(2) and 5.070.

72. Importantly, "[f]ailure to so appear and testify fully at the time and place designated, unless excused, shall constitute grounds for the revocation or suspension of any license held by the person summoned, his or her principal or employer." *Id.*

73. Finally, violation of any provision of the Nevada Gaming Control Act or its regulations "shall be deemed contrary to the public health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada and grounds for suspension or revocation of a license." Nev. Gaming Comm'n Reg. 5.030.

COUNT ONE
VIOLATION OF NRS 463.170 and/or
GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

74. The Gaming Control Board realleges and incorporates the above paragraphs.

75. Nevada Revised Statute 463.170(2)(a) requires, inter alia, that Mr. Wynn be a person of good character.

76. Nevada Revised Statute 463.170(2)(b) requires, inter alia, that Mr. Wynn's activities, reputation, and habits do not pose a threat to the public interest of this State.

77. Mr. Wynn's conduct violated NRS 463.170(2)(a)-(b):

a. The Gaming Control Board's investigation found evidence of multiple instances of sexual conduct by Mr. Wynn involving subordinate employees. By engaging in this conduct, whether consensual or not, Mr. Wynn disregarded Wynn Company's policies and procedures. The Gaming Control Board's investigative findings are consistent with the Wynn Company's recitals in its settlement with the Nevada Gaming Commission, the Massachusetts Gaming Commissions' investigation, and Mr. Wynn's statement to investigators with the Massachusetts Gaming Commission.

b. Mr. Wynn's conduct was not consistent with good character and poses a threat to the public interest of the State of Nevada, as is evident by Matthew Maddox's testimony where he described subordinate employees whom Mr. Wynn had allegedly had interaction of a sexual nature with as "victims."

c. Mr. Wynn's description of his sexual encounters with subordinate employees as "consensual" in apparent ignorance that he held significant power and control over them is inimical to the public interest of the State, which requires that subordinate employees be free from unwelcome sexual conduct in the workplace.

d. Mr. Wynn serially disregarded his company's policies and procedures regarding personal relationships with subordinate Wynn Company employees. By doing so, Mr. Wynn exposed Wynn Company to potential legal liability and put the reputation of the gaming industry and the State of Nevada at risk.

78. This behavior is unacceptable within the Nevada gaming industry, and serves to disqualify Mr. Wynn from being suitable to hold the position of CEO, or any other position under the jurisdiction of the Nevada Gaming Commission.

79. For these reasons, Mr. Wynn failed to comply with NRS 463.170(2)(a), which requires that he be a person of good character. Mr. Wynn has also failed to comply with NRS 463.170(2)(b), which requires that his prior activities, reputation, and habits do not pose a threat to the public interest of this State.

. . . .

80. Mr. Wynn's conduct and/or his failure to follow the Wynn Company policies and procedures further constitutes a violation of Gaming Commission Regulations 5.010, 5.011, 5.011(1), 5.011(8), and/or 5.011(10).

81. Each separate incident alleged against Mr. Wynn constitutes a separate violation of the Gaming Control Act and its regulations.

82. Mr. Wynn's failure to comply with NRS 463.170(8) and/or Gaming Commission Regulations 5.010, 5.011, 5.011(1), 5.011(8), and/or 5.011(10) constitutes grounds for disciplinary action against Mr. Wynn under NRS 463.1405(4), 463.170(8), and 463.641, and Gaming Commissions Regulations 3.080, 5.010(2), and 5.030.

COUNT TWO
VIOLATION OF NRS 463.170 and/or
GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

83. The Gaming Control Board realleges and incorporates the above paragraphs.

84. Mr. Wynn engaged in sexual conduct with one or more Wynn Company employees while he served as Chairman of the Board and CEO of Wynn Resorts.

85. As the Wynn Company admitted in the 2019 Settlement Stipulation, in engaging in such conduct, Mr. Wynn failed to comply with the Wynn Company policies that he maintain a professional work environment and/or failed to comply with the spirit of the Wynn Company policies that discouraged intimate relationships between himself and employees.

86. As the Wynn Company further admitted in the 2019 Settlement Stipulation, regardless of whether Mr. Wynn's conduct expressly violated any policies or laws, such conduct is inappropriate and unsuitable given the position Mr. Wynn held as Chairman and CEO, and given the inherent disparity in power between himself and employees with whom he has had sexual relations.

87. Mr. Wynn's conduct and failures resulted in negative reporting in widely disseminated media outlets.

. . . .

. . . .

88. Mr. Wynn's actions and failure to follow the Wynn Company policies and procedures as described above constitutes a violation of NRS 463.170(8) and/or Gaming Commission Regulations 5.010, 5.011, 5.011(1), and/or 5.011(10).

89. Specifically, the conduct violates NRS 463.170(2)(a), which requires that an applicant be a person of good character.

90. The conduct also violates NRS 463.170(2)(b), which requires that an applicant's prior activities, reputation, and habits do not pose a threat to the public interest of this State.

91. The conduct is an unsuitable method of operation under Gaming Commission Regulation 5.011(1) because Mr. Wynn failed to exercise discretion and sound judgment to prevent incidents, which might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry.

92. The conduct is also an unsuitable method of operation under Gaming Commission Regulation 5.011(10) because Mr. Wynn (1) failed to conduct gaming operations in accordance with proper standards of custom, decorum, and decency; and (2) engaged in conduct in a gaming establishment which reflects or tends to reflect on the repute of the State of Nevada and act as a detriment to the gaming industry.

93. Each separate incident alleged against Mr. Wynn constitutes a separate violation of the Gaming Control Act and its regulations.

94. Mr. Wynn's failure to comply with NRS 463.170(8) and/or Gaming Commission Regulations 5.010, 5.011, 5.011(1), and/or 5.011(10) constitutes an unsuitable method of operation and is grounds for disciplinary action against Mr. Wynn under NRS 463.1405(4), 463.170(8), and 463.641, and Gaming Commissions Regulations 3.080, 5.010(2), and 5.030.

COUNT THREE
VIOLATION OF NRS 463.170 and/or
GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

95. The Gaming Control Board realleges and incorporates the above paragraphs.

. . . .

96. In 2005, an employee in the Wynn LV Salon (Manicurist[1]), alleged to various individuals at the Wynn LV that she had been sexually assaulted by Mr. Wynn and that she became pregnant as a result.

97. When faced with the Manicurist's allegations, Mr. Wynn did not report the allegations to the Wynn Company's human resources department. Instead, he elected to address the allegations through a private, confidential settlement with the Manicurist in which she and her husband were paid $7.5 million through a separate legal entity funded personally by Mr. Wynn (2005 Settlement).

98. The 2005 Settlement contained requirements that the Manicurist (1) retract her allegation; (2) agree not to file any claim, charge, and/or complaint concerning the allegation; and (3) agree to confidentiality and nondisclosure of both the existence of and facts surrounding the 2005 Settlement.

99. Mr. Wynn ensured the secrecy of the 2005 Settlement through not only its terms, but also by using a personal attorney and by creating a separate legal entity to serve as the named party to the Settlement in place of Mr. Wynn.

100. Indeed, as the Wynn Company admitted in the 2019 Settlement Stipulation, the Wynn Company did not conduct a timely investigation into the Manicurist's allegations or into Mr. Wynn's admitted sexual relationship with a subordinate.

101. These allegations and/or Mr. Wynn's conduct to cover them up resulted in negative reporting in widely disseminated media outlets and thus reflected and/or tended to reflect discredit upon the State of Nevada and/or the gaming industry.

102. Mr. Wynn's conduct and/or his failure to follow the Wynn Company policies and procedures as described above constitute a violation of NRS 463.170(8) and/or Gaming Commission Regulations 5.010, 5.011, 5.011(1), 5.011(8), and/or 5.011(10).

103. Specifically, the conduct violates NRS 463.170(2)(a), which requires that an applicant be a person of good character.

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[1] In order to protect the identities of the victims of and witnesses to unwelcome sexual conduct by Mr. Wynn, the various employees are given descriptive pseudonyms based on their jobs.

104. The conduct also violates NRS 463.170(2)(b), which requires that an applicant's prior activities, reputation, and habits do not pose a threat to the public interest of this State.

105. The conduct is an unsuitable method of operation under Gaming Commission Regulation 5.011(1) because Mr. Wynn failed to exercise discretion and sound judgment to prevent incidents, which might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry.

106. The conduct is also an unsuitable method of operation under Gaming Commission Regulation 5.011(10) because Mr. Wynn (1) failed to conduct gaming operations in accordance with proper standards of custom, decorum, and decency; and (2) engaged in conduct in a gaming establishment which reflects or tends to reflect on the repute of the State of Nevada and act as a detriment to the gaming industry.

107. Each separate incident alleged against Mr. Wynn constitutes a separate violation of the Gaming Control Act and its regulations.

108. Mr. Wynn's failure to comply with NRS 463.170(8) and/or Gaming Commission Regulations 5.010, 5.011, 5.011(1), 5.011(8), and/or 5.011(10) constitutes an unsuitable method of operation and is grounds for disciplinary action against Mr. Wynn under NRS 463.1405(4), 463.170(8), and 463.641, and Gaming Commissions Regulations 3.080, 5.010(2), and 5.030.

COUNT FOUR
VIOLATION OF NRS 463.170 and/or
GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

109. The Gaming Control Board realleges and incorporates the above paragraphs.

110. In 2006, a cocktail server at Wynn LV (Cocktail Server) alleged that Mr. Wynn sexually assaulted her.

111. When faced with the Cocktail Server's allegations, Mr. Wynn elected to resolve the matter through private negotiations with the Cocktail Server and her parents, which resulted in a $975,000 settlement entered into on December 6, 2006 (2006 Settlement).

112. To assist in the resolution of the Cocktail Server's allegations, Mr. Wynn involved a personal attorney who at some point instructed the Chief Human Resources Officer for Wynn LV that HR and/or ER were not to investigate the matter.

113. The 2006 Settlement contained requirements that the Cocktail Server (1) state only that "No claim was pursued because there was nothing to pursue" if asked about her claims; (2) agree not to file any claim, charge, and/or complaint concerning the allegations; and (3) agree to confidentiality and nondisclosure of both the existence of and facts surrounding the 2006 Settlement.

114. Mr. Wynn ensured the secrecy of the 2006 Settlement through not only its terms, but also by using a personal attorney.

115. Indeed, as the Wynn Company admitted in the 2019 Settlement Stipulation, the Wynn Company failed to initiate an ER investigation into the Cocktail Server's allegations of unwelcome sexual conduct in violation of the Wynn Company's policies and procedures.

116. These allegations and/or Mr. Wynn's conduct to cover them up resulted in negative reporting in widely disseminated media outlets and thus reflected and/or tended to reflect discredit upon the State of Nevada and/or the gaming industry.

117. Mr. Wynn's conduct and/or his failure to follow the Wynn Company policies and procedures as described above constitute a violation of NRS 463.170(8) and/or Gaming Commission Regulations 5.010, 5.011, 5.011(1), 5.011(8), and/or 5.011(10).

118. Specifically, the conduct violates NRS 463.170(2)(a), which requires that an applicant be a person of good character.

119. The conduct also violates NRS 463.170(2)(b), which requires that an applicant's prior activities, reputation, and habits do not pose a threat to the public interest of this State.

120. The conduct is an unsuitable method of operation under Gaming Commission Regulation 5.011(1) because Mr. Wynn failed to exercise discretion and sound judgment to

. . . .

prevent incidents, which might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry.

121. The conduct is also an unsuitable method of operation under Gaming Commission Regulation 5.011(10) because Mr. Wynn (1) failed to conduct gaming operations in accordance with proper standards of custom, decorum, and decency; and (2) engaged in conduct in a gaming establishment which reflects or tends to reflect on the repute of the State of Nevada and act as a detriment to the gaming industry.

122. Each separate incident alleged against Mr. Wynn constitutes a separate violation of the Gaming Control Act and its regulations.

123. Mr. Wynn's failure to comply with NRS 463.170(8) and/or Gaming Commission Regulations 5.010, 5.011, 5.011(1), 5.011(8), and/or 5.011(10) constitutes an unsuitable method of operation and is grounds for disciplinary action against Mr. Wynn under NRS 463.1405(4), 463.170(8), and 463.641, and Gaming Commissions Regulations 3.080, 5.010(2), and 5.030.

COUNT FIVE
VIOLATION OF NRS 463.170 and/or
GAMING COMMISSION REGULATIONS 5.010, 5.011, and/or 5.070

124. The Gaming Control Board realleges and incorporates the above paragraphs.

125. The Gaming Control Board has a duty to investigate and observe the conduct of licensees and persons found suitable in order to ensure that gaming licenses and Findings of Suitability are not held by unqualified or unsuitable persons or persons whose operations are conducted in an unsuitable manner. NRS 463.1405(1) and Gaming Commission Regulation 5.040.

126. The Gaming Control Board has a duty to investigate and observe the conduct of licensees, persons found suitable, and other persons having a material involvement directly or indirectly with a licensed gaming operation to ensure that unqualified or unsuitable persons have no direct or indirect material involvement with a licensed gaming operation. NRS 463.1405(1).

. . . .

127. The Gaming Control Board has a statutory duty to make appropriate investigations to determine whether there has been a violation of the Nevada Gaming Control Act or any regulations adopted thereunder. NRS 463.310.

128. The Gaming Control Board had a duty to investigate the allegations of unwelcome sexual conduct by Mr. Wynn as reported in the WSJ Article, including by seeking testimony from Mr. Wynn through an Investigative Hearing.

129. Pursuant to NRS 463.140(5), the Gaming Control Board issued a written Order to Appear requiring Mr. Wynn to appear at the Gaming Control Board's offices on Friday, September 7, 2018 at 11:00 a.m., to provide testimony under oath.

130. That Order to Appear was hand delivered to Mr. Wynn's attorney during a meeting with Gaming Control Board Staff on August 30, 2018.

131. The Order to Appear notified Mr. Wynn that pursuant to Gaming Commission Regulation 5.070, his failure to appear and testify at the Investigative Hearing was grounds for the revocation or suspension of any Findings of Suitability that he held.

132. During the August 30, 2018, meeting between Gaming Control Board Staff and Mr. Wynn's counsel, Gaming Control Board staff emphasized that Mr. Wynn's Findings of Suitability remained in effect.

133. Gaming Control Board Staff also informed Mr. Wynn's counsel in that meeting that Mr. Wynn's submission of written answers to Gaming Control Board questions in lieu of the Investigative Hearing was not an acceptable option, and the Investigative Hearing would proceed as scheduled to obtain testimony from Mr. Wynn.

134. On Wednesday, September 5, 2018, counsel for Mr. Wynn sent a letter to the Gaming Control Board claiming that Mr. Wynn was no longer a "bona-fide licensee" and "remains willing to consider any and all written inquiries which will assist [the Gaming Control Board] in [its] investigation. . ." The letter further stated that because Mr. Wynn had retained counsel with the intent to pursue defamation litigation related to the claims of Mr. Wynn's unwelcome sexual conduct, Mr. Wynn "cannot be reasonably expected to . . . .

waive any of his privileges except at the appropriate time and in the appropriate judicial forum."

135. The September 5, 2018, letter did not request Mr. Wynn's excusal from having to appear and testify at the Investigative Hearing scheduled for September 7, 2018.

136. Mr. Wynn failed to appear and testify on September 7, 2018, for the Gaming Control Board's Investigative Hearing.

137. Mr. Wynn's failure to attend and participate in the Investigative Hearing hindered the Gaming Control Board's ability to perform its duty to conduct the necessary investigation into allegations concerning Mr. Wynn's unwelcome sexual conduct.

138. By failing to appear and participate in the scheduled investigative hearing, Mr. Wynn deprived the Gaming Control Board of material information and testimony required to conduct a thorough and complete investigation into the serious allegations at issue.

139. Through his conduct described herein, Mr. Wynn failed to maintain the standards and qualifications of a finding of suitability. His conduct demonstrated that he is not a person of good character, honesty, and/or integrity. His conduct further establishes that he poses a threat to the public interest of the State of Nevada and that his holding of the Findings of Suitability issued to him is no longer consistent with the declared policy of the State of Nevada.

140. Mr. Wynn's failure to appear and testify at the Gaming Control Board's offices on September 7, 2018, in accordance with the Gaming Control Board's statutory and regulatory duty to investigate a matter of this magnitude, or otherwise be excused from the same, constitutes a violation Gaming Commission Regulation 5.070, which provides that the failure to appear and testify at an investigative hearing shall constitute grounds for the revocation or suspension of any license held by the person summoned.

141. Mr. Wynn's failure to comply with Gaming Commission Regulation 5.070 is an unsuitable method of operation. He should be disciplined under NRS 463.1405(4), 463.170(8), and 463.641, and Gaming Commissions Regulations 3.080, 5.010(2), and 5.030.

PRAYER FOR RELIEF

Pursuant to NRS 463.310 and Gaming Commission Regulations 5.010 and 5.030, and based upon these allegations, which constitute reasonable cause for disciplinary action against Mr. Wynn, the Gaming Control Board prays for the relief as follows:

1. That the Gaming Commission serve a copy of this Complaint on Mr. Wynn pursuant to NRS 463.312(2);

2. That the Gaming Commission fine Mr. Wynn a monetary sum pursuant to the parameters defined at NRS 463.310(4) for each separate violation of the provisions of the Nevada Gaming Control Act or the Regulations of the Gaming Commission;

3. That the Gaming Commission revoke Mr. Wynn's Findings of Suitability pursuant to the parameters defined in NRS 463.310(4); and

4. For such other and further relief as the Gaming Commission may deem just and proper.

DATED this 14th day of October, 2019.

NEVADA GAMING CONTROL BOARD

SANDRA MORGAN, Chairwoman

TERRY JOHNSON, Member

PHILIP KATSAROS, Member

Submitted by:

AARON D. FORD
Attorney General

Kyle George (NV Bar No. 13489)
First Assistant Attorney General
Steve Shevorski (NV Bar No. 8256)
Chief Litigation Counsel
Craig Newby (NV Bar No. 8591)
Deputy Solicitor General
Michael P. Somps (NV Bar No. 6507)
Senior Deputy Attorney General
Edward L. Magaw (NV Bar No. 9111)
Senior Deputy Attorney General

CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (1216)
djc@cwlawlv.com
J. COLBY WILLIAMS, ESQ. (5549)
jcw@cwlawlv.com
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

Attorneys for Respondent
Stephen A. Wynn

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LAS VEGAS, NEVADA

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

STATE OF NEVADA

BEFORE THE NEVADA GAMING COMMISSION

NEVADA GAMING CONTROL BOARD, Complainant, vs. STEPHEN ALAN WYNN, In his capacity as having been found suitable as Chief Executive Officer, Chairman of the Board, and shareholder and controlling shareholder of Wynn Resorts, Ltd.; Respondent.	CASE NO.: NGC 19-03 **STIPULATION AND ORDER RE: BRIEFING SCHEDULE AND HEARING DATE ON RESPONDENT'S FORTHCOMING MOTION TO DISMISS**

WHEREAS, the Nevada Gaming Control Board (the "Board") filed the above-captioned matter on October 14, 2019;

WHEREAS, counsel for Respondent Stephen A. Wynn ("Mr. Wynn") agreed to accept service of the Complaint, and actually accepted service on October 25, 2019;

WHEREAS, Mr. Wynn's counsel advised the Board's counsel of their intent to seek dismissal of the Complaint based on a lack of subject matter jurisdiction; and

WHEREAS, the parties' respective counsel agree it will promote economy and efficiency to address the jurisdictional question before proceeding to a substantive hearing in this matter, and

that such economy and efficiency can best be achieved through an agreed-upon briefing schedule and proposed hearing date as set forth below.

NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the parties, through their respective counsel of record as follows:

1. Mr. Wynn will file his forthcoming Motion to Dismiss on or before November 14, 2019. Mr. Wynn shall serve Board counsel electronically by November 14, and shall file a hard copy with the Nevada Gaming Commission (the "Commission") no later than November 15, 2019;

2. The Board shall file its Response to the Motion to Dismiss on or before November 27, 2019. The Board shall serve Mr. Wynn's counsel electronically and file with Commission by 12:00 p.m. noon on November 27;

3. Mr. Wynn shall file his Reply on or before December 9, 2019. Mr. Wynn shall serve Board counsel electronically by December 9, and shall file a hard copy with the Commission no later than December 10, 2019;

4. Subject to the Commission's discretion, the parties propose that a hearing be held on Mr. Wynn's Motion to Dismiss on December 19, 2019; and

5. During the pendency of Mr. Wynn's Motion to Dismiss, all other proceedings in this action shall be stayed. Each party shall have the right as provided in NRS Chapter 463 to seek a further stay from the Commission and from the District Court should either party file a petition for judicial review after the Commission issues its written decision on the Motion to Dismiss. If the Commission denies the Motion to Dismiss, and Mr. Wynn opts not to seek judicial review, then

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

his Answer shall be due 20 days after the Commision's written decision.

DATED this 7th day of November, 2019.

CAMPBELL & WILLIAMS

By _____
DONALD J. CAMPBELL, ESQ. (1216)
J. COLBY WILLIAMS, ESQ. (5549)
700 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Respondent
Stephen A. Wynn

AARON D. FORD
Attorney General

By _____ #8256
KYLE GEORGE (13488)
First Assistant Attorney General
STEVEN G. SHEVORSKI (8256)
Chief Litigation Counsel
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

Attorneys for Complainant
Nevada Gaming Control Board

IT IS SO ORDERED:

By _____
TONY ALAMO, M.D
Chairman, Nevada Gaming Commission

Approved as to form and content:

AARON D. FORD
Attorney General

By _____
DARLENE CARUSO (5866)
Chief Deputy Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for Nevada Gaming Commission

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (1216)
djc@cwlawlv.com
J. COLBY WILLIAMS, ESQ. (5549)
jcw@cwlawlv.com
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

Attorneys for Respondent
Stephen A. Wynn

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STATE OF NEVADA

BEFORE THE NEVADA GAMING COMMISSION

NEVADA GAMING CONTROL BOARD, Complainant, vs. STEPHEN ALAN WYNN, In his capacity as having been found suitable as Chief Executive Officer, Chairman of the Board, and shareholder and controlling shareholder of Wynn Resorts, Ltd.; Respondent.	CASE NO.: NGC 19-03 **MOTION TO DISMISS COMPLAINT BASED ON LACK OF SUBJECT MATTER JURISDICTION**

Respondent Stephen A. Wynn, by and through his undersigned counsel, hereby moves to dismiss the Complaint filed against him in the above-referenced action based on a lack of subject matter jurisdiction. This Motion is based on the papers and pleadings on file herein, the declarations and exhibits submitted herewith, the following Points and Authorities, and any oral argument permitted at the time of hearing.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

POINTS AND AUTHORITIES

I. INTRODUCTION

No one disputes the vital role legalized gaming plays in Nevada's economy. Nor does anyone dispute that the Nevada Gaming Control Board (the "NGCB") and the Nevada Gaming Commission (the "Commission") have broad power to regulate and control the gaming industry in a manner to protect the public's health, safety, and welfare. That said, "[i]t is unquestionably true that there are limitations on the police power of the state"—even when it comes to gaming. *State v. Glusman*, 98 Nev. 412, 423, 651 P.2d 639, 646 (1982). This case is about those limitations. The specific question presented is: Has the Nevada legislature expressly or impliedly authorized Nevada's gaming regulators to discipline a person who no longer has any involvement with a Nevada gaming licensee and, thus, no longer poses an alleged threat to the industry or the public at large? We submit the answer to that question is a resounding "No."

The NGCB has instituted disciplinary proceedings against Stephen A. Wynn ("Mr. Wynn" or "Steve Wynn") despite the NGCB-admitted and incontrovertible fact that Mr. Wynn voluntarily separated himself from the only Nevada licensees with which he was affiliated—Wynn Resorts, Limited ("Wynn Resorts" or the "Company") and its affiliates—nearly two years ago. The NGCB alleges that Mr. Wynn is no longer affiliated with any Nevada gaming licensee (with which Mr. Wynn agrees), but it purports to exercise continuing jurisdiction over him through a so-called NGCB "administrative hold" on his "Findings of Suitability."[1] Notably, however, the NGCB does not cite any statute or regulation providing for the imposition of an "administrative hold" on a licensee or someone who had been found suitable to hold a position with a licensee. The legislature granted powers and discretion to the NGCB or the Commission to regulate those who seek and

[1] *See* Comp. ¶ 9.

hold positions affecting gaming operations, but it did not grant any power or discretion to punish those who no longer hold such positions.

Whatever the motivation to bring disciplinary proceedings against Mr. Wynn at this late juncture, the plain language of Nevada's gaming regulations dictates that the NGCB and the Commission only have jurisdiction to make Findings of Suitability when a person is "***directly or indirectly involved with licensees***" and, then, only for "***so long as that involvement continues***." *See* Nev. Gaming Comm'n Reg. 4.030(10) (defining "Findings of Suitability") (emphasis added). By converse logic, then, the NGCB and the Commission can only "revoke" Findings of Suitability when those same circumstances exist—*i.e.*, a person is "directly or indirectly involved with licensees" and only for "so long as that involvement continues." Again, it is undisputed that Mr. Wynn has no continuing involvement with Wynn Resorts specifically or the gaming industry in general as he separated himself entirely from the Company he founded as of March 2018.

The limitation contained in Regulation 4.030(10) is consistent with others found in Nevada's statutory scheme. As an administrative agency, the Commission's (and the NGCB's) powers are limited to those specifically set forth in Chapter 463 of the Nevada Revised Statutes. While the legislature has authorized the NGCB "to continue to observe the conduct of all licensees and other persons ***having*** a material involvement directly or indirectly with a licensed gaming operation," *see* NRS 463.1405(1) (emphasis added), nothing in the gaming statutes or regulations authorizes the NGCB and the Commission to discipline persons who have left the industry simply because they formerly "[***had***] a material involvement directly or indirectly with a licensed gaming operation." In other words, verb tense matters.

An administrative agency cannot enlarge its own subject matter jurisdiction.[2] Sanctioning the viability of the instant disciplinary proceedings would be doing just that by bestowing gaming

[2] *See* 73 C.J.S. *Public Administrative Law* § 150 (through June 2019 update).

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

regulators with perpetual jurisdiction to impose untold fines and other sanctions against anyone who has ever received a gaming approval, no matter how long ago that person ceased any involvement with a specific licensee or gaming in general. Such a draconian concept of lifetime jurisdiction is found nowhere in the statutes or regulations relied upon by the NGCB. Mr. Wynn, accordingly, seeks dismissal of this action.

II. STATEMENT OF FACTS

A. Background.

1. Mr. Wynn has been the leading innovator in the gaming industry since his first Commission approvals at the Golden Nugget in the early 1970's.[3] In Mr. Wynn's 45+ year tenure as a gaming licensee, the NGCB has never brought any disciplinary action against him, and he and his companies have received numerous approvals from the Commission over the decades.[4]

2. Mr. Wynn is widely credited with reinventing modern Las Vegas with the opening of The Mirage Casino and Resort in or about 1989.[5] Mr. Wynn thereafter opened The Treasure Island Casino & Resort and The Bellagio under the umbrella of Mirage Resorts, Inc. *Id.* After achieving unprecedented success with the foregoing Las Vegas properties, Mr. Wynn sold Mirage Resorts and founded Wynn Resorts in 2002. *Id.* Once Mirage Resorts was sold, Mr. Wynn's

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[3] Pursuant to NRS 463.313(2), "[t]he Commission may take official notice of any generally accepted information . . . within the field of gaming, and of any other fact which may be judicially noticed by the courts of this state." Similarly "[a]ny relevant evidence may be admitted, and such evidence shall be sufficient in itself to support a finding it is reliable, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action." NRS 463.313(1)(d); *see also* Nev. Gaming Comm'n Reg. 7.160(2) (same).

[4] *See id.*

[5] *See* Declaration of Donald J. Campbell ("Campbell Decl.") ¶ 5; *see also* Steve Wynn Biography (https://www.biography.com/business-figure/steve-wynn) (last visited Nov. 7, 2019), a true and correct copy of which is attached hereto as Exhibit 1.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

gaming licenses and approvals ended, and he was required to undergo investigations and obtain findings of suitability as a new applicant when he sought to return to the industry in 2005. *Id.*

3. Wynn Resorts, through its wholly owned subsidiary, Wynn Las Vegas, LLC ("Wynn Las Vegas"), opened Wynn Las Vegas in 2005. *See* Campbell Decl. ¶ 6. The NGCB recommended, and the Commission approved, Wynn Las Vegas for a non-restricted gaming license, and likewise found Mr. Wynn suitable in his capacity as the Chairman and CEO of Wynn Resorts as well as in his capacity as the controlling shareholder of the Company.[6]

4. On or about February 19, 2012, Wynn Resorts commenced an action styled *Wynn Resorts, Limited v. Kazuo Okada, et al.*, Case No. A-12-656710-B (the "Okada Litigation"), which was pending in the Eighth Judicial District Court from or about February 2012 through Spring 2018, when the matter was resolved. *See* Campbell Decl. ¶ 7; *see also*, Comp. ¶ 29. The case arose from the Company's redemption of stock held by Aruze USA, Inc. ("Aruze"). *Id.* Aruze and its affiliates thereafter asserted counterclaims against Wynn Resorts, Mr. Wynn, the Company's other directors, and Kimmarie Sinatra, the Company's then-General Counsel. *Id.* Elaine Wynn, Mr. Wynn's ex-wife, who was sued by Aruze as a member of the Board at the time of the redemption, subsequently filed crossclaims against Mr. Wynn, the Company, and Ms. Sinatra. *Id.*

5. On January 26, 2018, during the final pre-trial stages of the Okada Litigation, *The Wall Street Journal* published an article alleging that "dozens" of former Wynn Resorts employees had accused Mr. Wynn of engaging in sexual misconduct while he was Chairman and CEO of the Company. *See* Campbell Decl. ¶ 8; *see also* Comp. ¶ 12. *The Wall Street Journal* and other media outlets thereafter published additional articles and stories on the same subject, many of which

[6] *See* NGCB Location Details for Wynn Las Vegas, a true and correct copy of which is attached hereto as Exhibit 2.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

contained demonstrably false statements of fact for which Mr. Wynn continues to pursue legal relief. *Id.*

6. In the wake of the media firestorm that ensued following the January 26 article, the NGCB and gaming regulators in Massachusetts ("Mass Gaming") announced that they would be investigating the allegations contained in the January 26 article to determine if Wynn Resorts remained suitable to hold a gaming license in their respective jurisdictions. *See* Campbell Decl. ¶ 9; *see also*, Comp. ¶ 26.

B. Mr. Wynn Completely Separates Himself from All Involvement with Wynn Resorts.

7. Confronted with the above allegations in the then-nascent "#metoo" era, Mr. Wynn made the decision to resign as Chairman and CEO of Wynn Resorts so that the Company he created could continue its success, and in order to ensure that Wynn Resorts' shareholders would not suffer from the distraction that allegations of this nature might cause. *See* Campbell Decl. ¶ 10. Mr. Wynn's resignation was effective February 6, 2018.[7] Mr. Wynn and Wynn Resorts (and Wynn Resorts Holdings, LLC) thereafter entered into a written agreement on February 15, 2018, outlining the terms of his separation from the Company and all of its affiliates, which included Mr. Wynn's agreement to forego pursuit of a severance package worth approximately $330 million.[8]

8. At the time of his resignation, Mr. Wynn owned approximately twelve percent of Wynn Resorts' stock through a family partnership. *See* Campbell Decl. ¶ 11. Mr. Wynn acted promptly to divest his stock ownership in an orderly manner. *Id.* On March 21, 2018, Mr. Wynn's

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[7] *See* Wynn Resorts Press Release dated Feb. 6, 2018, a true and correct copy of which is attached hereto as Exhibit 3; *see also* Comp. ¶ 9; Ex. 2 (Location Details) at 7.

[8] *See* Separation Agreement dated Feb. 15, 2018, a true and correct copy of which is attached hereto as Exhibit 4 (providing, in part, that Mr. Wynn "hereby confirms that he resigned as an employee, director and officer and chairman of the Board of the Company, including its subsidiaries and affiliates (and each of their respective boards of directors or other governing bodies[.]")).

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
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family partnership sold 4,104,999 shares of Wynn Resorts stock.[9] On March 22, 2018, Mr. Wynn's family partnership entered into agreements to sell its remaining ownership stake in the Company (approximately eight million shares).[10]

9. Although the parties' Separation Agreement permitted Mr. Wynn to remain in his residence at Wynn Las Vegas until June 1, 2018, Mr. Wynn moved out of his residence in or about April 2018. *See* Campbell Decl. ¶ 12. Similarly, although Wynn Resorts' bylaws permitted Mr. Wynn to vote at the Company's annual shareholders meeting on May 16, 2018 based on his stock ownership as of March 2018, Mr. Wynn did not vote or otherwise participate at said meeting. *Id.*

10. In short, Mr. Wynn ceased all direct or indirect ownership and involvement with Wynn Resorts and its affiliates between February and May 2018 at the latest. *See* Campbell Decl. ¶ 13.

11. Upon information and belief, Wynn Resorts submitted a written application to the NGCB and/or Commission in early 2018, seeking to remove Mr. Wynn as well as Aruze USA, Inc. (and its affiliates Kazuo Okada and Universal Entertainment Corporation) from the Nevada gaming license for Wynn Las Vegas. *See* Campbell Decl. ¶ 14. The NGCB Location Report for Wynn Las Vegas confirms that Mr. Wynn was removed as an officer and director from the Wynn Las Vegas license as of February 23, 2018 and removed as a shareholder as of March 28, 2013.[11]

C. Mass Gaming Determines that Mr. Wynn Is No Longer a "Qualifier."

12. On or about February 27, 2018, Mr. Wynn's counsel notified Mass Gaming of the changed circumstances described above, which raised the question of whether Mr. Wynn remained

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[9] *See* Wynn Resorts Press Release dated Mar. 22, 2018, a true and correct copy of which is attached hereto as Exhibit 5; *see also* Comp. ¶ 9; Ex. 2 (Location Details) at 7.

[10] *See id.*

[11] *See* Ex 2 at 7.

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an individual "qualifier" requiring approvals under the Massachusetts regulatory scheme. *See* Campbell Decl. ¶ 15. The Massachusetts Gaming Commission conducted a hearing on April 27, 2018 to consider the issue, and it issued a written Decision and Order on May 7, 2018, finding that Mr. Wynn would no longer be a qualifier after the Wynn Resorts Annual Shareholders Meeting on May 16, 2018, and that Wynn Resorts no longer needed to obtain Mass Gaming approval for Mr. Wynn.[12]

13. Mass Gaming made extensive findings regarding Mr. Wynn's non-qualifier status, which include in pertinent part:

> ***Mr. Wynn is no longer an officer or director of Wynn Resorts, Ltd., and accordingly, he can no longer exercise control or provide direction to Wynn MA, LLC or Wynn Resorts, Ltd. in either of those capacities as a matter of law.*** Further, it is clear that Mr. Wynn no longer owns any stock in Wynn Resorts, Ltd., and, at the conclusion of the next annual stockholders meeting, ***he can no longer exercise control or provide direction in that capacity either.*** Mr. Wynn's resignation as an officer and director and divestiture of stock holdings further demonstrates that ***he no longer holds a financial interest in the gaming establishment*** under construction in Everett, Massachusetts or in Wynn MA, LLC, the gaming licensee which holds the license issued by the Commission. These latter factors eliminate Mr. Wynn as a qualifier under categories 2 and 3.

Mass Gaming likewise determined that Mr. Wynn was (or would be) eliminated as a qualifier under the remaining five factors set forth in its licensing scheme upon the completion of Wynn Resorts' next annual shareholders meeting in May 2018 and upon the discharge of Mr. Wynn's city ledger account.[13]

14. Given his status as a non-qualifier, Mr. Wynn was under no obligation to cooperate with Mass Gaming's ongoing investigation into Wynn Resorts. *See* Campbell Decl. ¶ 17. Despite

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[12] *See* Mass Gaming Decision and Order dated May 7, 2018, a true and correct copy of which is attached hereto as Exhibit 6.

[13] *See id.* at 5-8 (emphases added).

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this fact, Mr. Wynn's counsel continued to field and respond to various inquiries from Mass Gaming investigators. *Id.*

D. NGCB's Interaction with Mr. Wynn's Counsel.

15. On or about June 29, 2018, a NGCB agent sent a letter to Mr. Wynn, in care of his counsel, notifying him that the NGCB intended to schedule an investigative hearing in late August 2018 at which he would be required to appear and present testimony. *See* Campbell Decl. ¶ 18.[14]

16. Even though Mr. Wynn had not been affiliated with any Nevada gaming licensee for months by that time, Mr. Wynn's counsel agreed to meet with NGCB agents in the spirit of cooperation just as they had continued to respond to occasional inquiries from Mass Gaming. *See* Campbell Decl. ¶ 19. Mr. Wynn's counsel flew to northern Nevada and met with NGCB agents on August 30, 2018 in Carson City. *Id.*

17. During the meeting, Mr. Wynn's counsel reaffirmed the undisputed fact that Mr. Wynn had completely separated himself from Wynn Resorts and, thus, was no longer directly or indirectly involved with any Nevada licensee such that he would remain subject to the jurisdiction of the NGCB and/or the Commission. *See* Campbell Decl. ¶ 20. Mr. Wynn's counsel further advised that Mr. Wynn had no intention of returning to any role involved with gaming in Nevada. *Id.* Finally, Mr. Wynn's counsel advised that while Mr. Wynn was willing to cooperate with the NGCB's investigation despite his departure from the gaming industry, such cooperation would necessarily have to be limited to answering written inquiries as Mr. Wynn was a party to a number of ongoing lawsuits seeking to vindicate his good name and had to be vigilant about protecting any applicable privileges and work product. *Id.*

[14] *See* NGCB Letter dated June 29, 2018, a true and correct copy of which is attached hereto as Exhibit 7.

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700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
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18. Despite the positions articulated by Mr. Wynn's counsel, the NGCB agents advised they intended to formally interview Mr. Wynn on September 7, 2018. *See* Campbell Decl. ¶ 21. Mr. Wynn's counsel provided written correspondence to the NGCB on September 5, 2018 wherein he reiterated the above points made at the August 30 meeting. *Id.*[15]

19. The NGCB greeted the letter from Mr. Wynn's counsel with silence. *See* Campbell Decl. ¶ 22. It never responded to the letter. *Id.* Nor did it ever contest that Mr. Wynn was no longer directly or indirectly involved with any Nevada licensee. *Id.*

E. The Commission Fines Wynn Resorts $20 Million.

20. On January 25, 2019, the NGCB filed a complaint against Wynn Resorts and Wynn Las Vegas, LLC based on its alleged failure to investigate allegations of wrongdoing made against Mr. Wynn.[16] The complaint is notable given NGCB's admission that Mr. Wynn had resigned from all positions he held with Wynn Resorts and its affiliates in February 2018 and that he held no ownership interest therein by March 2018.[17]

21. Simultaneously with the filing of the complaint, the NGCB and the respondents executed a Stipulation for Settlement and Order that remained subject to Commission approval.[18] The Commission approved the Stipulation for Settlement at a hearing held on February 26, 2019. The Commission further imposed a fine on Wynn Resorts in the amount of $20 million, as the

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[15] *See* Letter from D. Campbell dated Sept. 5, 2018, a true and correct copy of which is attached hereto as Exhibit 8.

[16] *See* Complaint dated Jan. 25, 2019, a true and correct copy of which is attached hereto as Exhibit 9. As continuing licensees, Wynn Resorts and Wynn Las Vegas remained subject to NGCB and Commission jurisdiction because of their gaming operations at Wynn Las Vegas and the adjoining Encore.

[17] *See id.* ¶¶ 24-25.

[18] *See* Stipulation for Settlement and Order dated filed Feb. 26, 2019, a true and correct copy of which is attached hereto as Exhibit 10.

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ATTORNEYS AT LAW
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Phone: 702.382.5222 • Fax: 702.382.0540
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Stipulation and Order allowed, which was memorialized in an Addendum to the Stipulation for Settlement and Order.[19]

F. Mass Gaming Fines Wynn Resorts $35 Million.

22. Just over a month after the Commission imposed its fine on Wynn Resorts, Mass Gaming conducted an adjudicatory hearing regarding the Company's suitability for a Massachusetts gaming license on April 2-4, 2019. *See* Campbell Decl. ¶ 25.

23. On or about April 30, 2019, Mass Gaming issued a written decision finding that Wynn Resorts, Wynn MA, LLC and their qualifiers were suitable to maintain a gaming license in the Commonwealth, subject to the fines and conditions set forth in the decision.[20]

24. Mass Gaming imposed a fine on Wynn Resorts in the amount of $35 million, nearly double that imposed by the Commission.[21]

G. The NGCB Files a Complaint Against Mr. Wynn Nearly Two Years After He Voluntarily Ceased all Involvement with Wynn Resorts.

25. In or about Summer 2019, Mr. Wynn's attorneys learned that the NGCB was considering the filing of a disciplinary action against Mr. Wynn. *See* Campbell Decl. ¶ 28. In an effort to spare taxpayers and Mr. Wynn the expense and fatigue associated with protracted administrative and/or judicial proceedings resurrecting the subject matter addressed in the Wynn Resorts disciplinary actions, Mr. Wynn's counsel contacted NGCB agents about a possible negotiated resolution. *Id.* Even though it is Mr. Wynn's position that the NGCB and the Commission have no jurisdiction over him given his lack of any involvement with a Nevada

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[19] *See* Addendum to Stipulation for Settlement and Order dated Feb. 26, 2019, a true and correct copy of which is attached hereto as Exhibit 11.

[20] *See* Mass Gaming Press Release dated Apr. 30, 2019, a true and correct copy of which is attached hereto as Exhibit 12.

[21] *See id.*

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ATTORNEYS AT LAW
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Phone: 702.382.5222 • Fax: 702.382.0540
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licensee, Mr. Wynn was nonetheless willing to consider entering a stipulation whereby he would agree not to seek any involvement in the Nevada gaming industry in the future. *Id.* The parties were unable to reach a resolution. *Id.*

26. On October 14, 2019, well over a year after Mr. Wynn's counsel had advised NGCB agents of their lack of jurisdiction over Mr. Wynn, the Chairwoman for the NGCB sent Mr. Wynn's counsel a letter advising that "the Nevada Gaming Control Board will seek to have the Nevada Gaming Commission revoke the Findings of Suitability for Mr. Stephen A. Wynn."[22]

27. The NGCB filed its Complaint against Mr. Wynn the same day, which expressly acknowledges that he is no longer an officer, director or stockholder of Wynn Resorts or its affiliates.[23] The Complaint instead alleges that the NGCB retains jurisdiction over Mr. Wynn because it placed an "administrative hold" on his Findings of Suitability.[24]

28. The statutes and regulations governing gaming in Nevada are devoid of any concept known as an "administrative hold." Upon information and belief, the NGCB never provided Mr. Wynn with any written notice that it was placing a so-called "administrative hold" on any of his prior gaming approvals. *See* Campbell Decl. ¶ 31.

29. The Complaint, in large measure, mirrors the complaint NGCB filed against Wynn Resorts.[25] Put differently, the Complaint against Mr. Wynn is not premised on any "new" developments or presently-occurring conditions, other than the allegation that he failed to appear at the September 7, 2018, interview in violation of the gaming statutes and regulations.

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[22] *See* Letter from S. Morgan dated Oct. 14, 2019, a true and correct copy of which is attached hereto as Exhibit 13.

[23] *See* Complaint (Case No. NGC 19-03) filed Oct. 14, 2019 ¶ 9, a true and correct copy of which is attached hereto as Exhibit 14.

[24] *See id.*

[25] *Compare, e.g.*, Ex. 9 ¶¶ 35 - 54 *with* Ex. 14 ¶¶ 95 - 123.

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Phone: 702.382.5222 • Fax: 702.382.0540
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30. The relief sought in the Complaint is two-fold. First, the NGCB requests the Commission "to fine Mr. Wynn a monetary sum pursuant to the parameters defined in NRS 463.310(4) for each separate violation of the provisions of the Nevada Gaming Control Act or the Regulations of the Gaming Commission." Second, the NGCB requests that the Commission "revoke Mr. Wynn's Findings of Suitability pursuant to the parameters defined in NRS 463.310(4)."[26]

31. On November 7, 2019, the Commission Chair approved a stipulation setting forth a procedural framework to address the threshold question of jurisdiction prior to conducting any substantive hearing on the merits.[27] This Motion follows, as referenced in the November 7, 2019 Commission stipulation and order.

III. ARGUMENT

A. Governing Standards.

Mr. Wynn moves to dismiss this action based on the Commission's and NGCB's lack of subject matter jurisdiction. While the regulations contemplate the filing of motions, *see* Nev. Gaming Comm'n Reg. 7.200, neither the statutes nor the regulations squarely address the standards that apply to the instant motion to dismiss. Mr. Wynn respectfully submits that the Nevada Rules of Civil Procedure and applicable case law should be used to fill in this gap. *Compare* Nev. Gaming Comm'n Reg. 7A.090 (permitting parties in patron disputes to take depositions "in the manner provided by the Nevada Rules of Civil Procedure[.]").

NRCP 12(b)(1) governs motions to dismiss for lack of subject matter jurisdiction. Relying on authorities interpreting the federal counterpart to NRCP 12(b)(1), the Nevada Supreme Court

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[26] *See* Ex. 14 at 23:7-11 (Prayer for Relief).

[27] *See* Stipulation and Order Re: Briefing Schedule and Hearing Date on Respondent's Forthcoming Motion to Dismiss filed Nov. 8, 2019.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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has observed that "the district court can take evidence on the claim that the complaint does not fall within the subject matter jurisdiction requirements of the court, and such evidence is not necessarily confined to the allegations of the complaint." *Morrison v. Beach City LLC*, 116 Nev. 34, 36-37, 991 P.2d 982, 983 (2000). "[W]hen considering a motion to dismiss pursuant to Rule 12(b)(1) the district court is not restricted to the face of the pleadings, but may review evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction." *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988); *see also Schmidt v. Guyton*, 93 F.R.D. 399, 400-01 (D. Nev. 1982) ("a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction may either attack the allegations of the complaint or be treated as a 'speaking motion' attacking subject matter jurisdiction in fact.").

"The burden of proving the jurisdictional requirement is properly placed on the plaintiff" or, in this case, the NGCB. *See Morrison*, 116 Nev. at 37, 991 P.2d at 983. It has not come close to meeting this burden.

B. The Commission and the NGCB Have No Inherent Regulatory Powers Beyond Those Expressly Granted or Clearly Implied by Statute.

The Commission and the NGCB are state administrative agencies created by the provisions of NRS Chapter 463. *See* NRS 463.022 (creation of Commission); NRS 463.030 (creation of NGCB). As administrative agencies, the Commission and the NGCB have "no general or common law powers, but only such powers as have been conferred by law expressly or by implication." *Andrews v. Nevada State Bd. of Cosmetology*, 86 Nev. 207, 208, 467 P.2d 96, 96 (1970). "Administrative agencies cannot enlarge their own jurisdiction nor is subject matter jurisdiction conferred upon an agency by consent or failure to raise the agency's lack of jurisdiction." *S. Nevada Mem'l Hosp. v. State Dep't of Human Res.*, 101 Nev. 387, 394, 705 P.2d 139, 144 (1985); *see also Andrews*, 86 Nev. at 208, 467 P.2d at 97 ("Official powers of an administrative agency

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ATTORNEYS AT LAW
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Phone: 702.382.5222 • Fax: 702.382.0540
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cannot be assumed by the agency, nor can they be created by the courts in the exercise of their judicial function.").

"The grant of authority to the agency must be clear." *Andrews*, 86 Nev. at 208, 467 P.2d at 97. "Accordingly, to ensure that the administrative powers of the [Commission and NGCB] are not overextended, any reasonable doubt of the existence of any power must be resolved against the exercise thereof." *Heber Light & Power Co. v. Utah Public Service Comm'n*, 231 P.3d 1203, 1208 (Utah 2010) (quotation omitted). Applying the foregoing principles and fundamental rules of statutory construction, it is clear the Nevada legislature neither expressly nor impliedly authorized the Commission and NGCB to discipline persons who no longer have any involvement with gaming licensees.[28]

1. Neither NRS Chapter 463 nor the Gaming Regulations *expressly* authorize the Commission or NGCB to punish persons who no longer have any involvement with gaming licensees.

"When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it." *City of Henderson v. Kilgore*, 122 Nev. 331, 334, 131 P.3d 11, 13 (2006). While the Complaint recites a laundry-list of "Relevant Law" that purportedly authorizes the NGCB to pursue (and the Commission to impose) discipline against Mr. Wynn, *see* Comp. ¶¶ 57-73, the plain language of those statutes demonstrates that the jurisdiction of the

[28] The present Motion is limited to addressing the NGCB's and Commission's lack of subject matter jurisdiction to proceed in this matter. Mr. Wynn contends that other aspects of this proceeding violate his rights under the United States and Nevada Constitutions and, thus, reserves his ability to raise those issues in the courts should he be required to seek judicial review. *See Glusman*, 98 Nev. at 419, 651 P.2d at 643-44 (exhaustion of administrative remedies is not required where the issues relate to the constitutionality of a statute); *cf. Sereika v. State*, 114 Nev. 142, 144, 955 P.2d 175, 176–77 (1998) (court may consider constitutional challenges on appeal even if not raised below).

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ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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Commission and the NGCB is limited to those seeking to enter the gaming industry or those presently involved with Nevada licensees. Mr. Wynn is neither.

NRS 463.0129. The NGCB, for instance, cites NRS 463.0129(1)(c) for the principle that "[p]ublic confidence and trust ***can only be maintained*** by strict regulation of ***all persons***, locations, practices, associations and activities ***related to the operation of licensed gaming establishments***[.]" *See* Comp. ¶ 57 (emphases added). The statute is phrased in the present tense when it states that the public trust "can only be maintained" and, hence, makes clear that the statute's focus is on current threats that would undermine the public's confidence and trust in the "operation of licensed gaming establishments" if not dealt with appropriately.[29] The statute goes on to authorize "strict regulation of all persons . . . related to the operation of licensed gaming establishments." NRS 463.0129(1)(c). But Mr. Wynn is undisputedly outside the purview of this statute as he is no longer "related to the operation" of any licensed gaming establishments given his resignation as an officer and director of Wynn Resorts in February 2018, and the sale of all of his Company stock in March 2018.[30]

NRS 463.1405. The NGCB next cites NRS 463.1405(4) for the proposition that the Commission has "full and absolute power and authority to deny any application or limit, condition, restrict, revoke or suspend any . . . finding of suitability . . . or fine any person . . . found suitable .

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[29] *See, e.g., State v. Lemon*, 825 So.2d 927, 930 (Fla. 2002) (observing "Webster's Dictionary defines 'can' (***present tense of 'could'***) as 'to be able to do, make, or accomplish.' *Merriam Webster's Collegiate Dictionary* 165 (10th ed.1999)) (emphasis added).

[30] The plain meaning of a term used in a statute can be ascertained through contemporaneous dictionary definitions. *See Advanced Pre-Settlement Funding LLC v. Gazda & Tadayon*, 437 P.3d 1050, 2019 WL 1422713, at *2 (Nev. Mar. 28, 2019). The Merriam-Webster Dictionary defines "related" as "connected by reason of an established or discoverable relation." *See* https://www.merriam-webster.com/dictionary/related (last visited Nov. 12, 2019); *see also Black's Law Dictionary* (11th ed. 2019) ("**related** *adj.* (17c) **1**. Connected in some way; having relationship to or with something else <a closely related subject>.") (emphasis in original). Mr. Wynn has not been "connected" to the operation of Wynn Resorts for nearly two years.

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Phone: 702.382.5222 • Fax: 702.382.0540
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. . for any cause deemed reasonable by the Commission." *See* Comp. ¶ 58. Respectfully, the NGCB is putting the cart before the horse as the Commission cannot make one of the determinations set forth in NRS 463.1405(4) until after the NGCB investigates pursuant to NRS 463.1405(1) and makes a recommendation pursuant to NRS 463.1405(3).

The plain language of NRS 463.1405(1), in turn, clearly limits the scope of the NGCB's jurisdiction to investigate and observe to (i) those who are seeking to enter the gaming industry (*i.e.*, an "applicant"), or (ii) those who are presently involved in the gaming industry on a continuing basis:

> The Board shall investigate the qualifications of each applicant under this chapter before any license or any registration, finding of suitability or approval of acts or transactions for which commission approval is required or permission is granted, ***and shall continue to observe the conduct of all licensees and other persons <u>having</u> a material involvement directly or indirectly with a licensed gaming operation***. . . .

Id. (emphasis added). Again, Mr. Wynn does not fall within the plain language of the statute. He is not an applicant for any gaming approval. Nor does he have any "material involvement directly or indirectly with a licensed gaming operation." Indeed, Mr. Wynn has no present involvement of any kind with any licensed gaming establishments.[31]

The key word in this statute is "having." The Seventh Circuit recently explained the meaning of the word "having" where used in a provision of the Americans with Disabilities Act:

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[31] The regulations define "material involvement," in the context of publicly traded corporations like Wynn Resorts, as follows: "A person may be deemed to have a material relationship to, or ***material involvement*** with, a corporation, affiliated company or a licensee if the person ***is*** a controlling person or key employee of the corporation, affiliated company or a licensee, or if the person, as an agent, consultant, advisor or otherwise, ***exercises*** a significant influence upon the management or affairs of the corporation, affiliated company or a licensee." Nev. Gaming Comm'n Reg. 16.400 (emphases added). As with the other statutes and regulations relied on by the NGCB in the Complaint, Regulation 16.400 is couched in the present tense and, therefore, does not authorize the Commission or the NGCB to exercise jurisdiction over a person who "[***was***] a controlling person or key employee of the corporation" or to a person who "[***exercised***] significant influence upon the management or affairs of the corporation."

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ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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> 'Having' means presently and continuously. It does not include something in the past that has ended or something yet to come. To settle the technical debate, it is a present participle, used to form a progressive tense. *See* Bryan A. Garner, Garner's Modern American Usage 1020 (4th ed. 2016) (defining 'present participle' as '[a] nonfinite verb form ending in -ing and used in verb phrases to signal the progressive aspect').

Shell v. Burlington N. Santa Fe Ry., Co., --- F.3d ---, ---, 2019 WL 5558090, at *3 (7th Cir. Oct. 29, 2019); *see also Laube v. Allen*, 506 F. Supp. 2d 969, 980 (M.D. Ala. 2007) ("[A] present participle . . . denotes action that is continuing or progressing, as distinct from . . . a perfect participle that denotes completion."). Applying the foregoing principles of statutory construction and basic grammar, no one can genuinely contend that the NGCB has express statutory authorization or jurisdiction to investigate and prosecute Mr. Wynn given that he has no present or continuous involvement—material, direct, indirect, or otherwise—with any licensed gaming operation.

Nev. Gaming Comm'n Reg. 4.030. The NGCB seeks to revoke Mr. Wynn's Findings of Suitability. *See* Comp. ¶ 7. The NGCB's Complaint, however, is devoid of any reference to the actual gaming regulation that addresses Findings of Suitability, Regulation 4.030(10). That omission is presumably because the subject regulation, like the statutes addressed above, similarly limits the scope of the Commission's and NGCB's jurisdiction:

> 10. Findings of Suitability. The Nevada Gaming Control Act and regulations thereunder require or permit the Commission to require certain persons, ***directly or indirectly involved with licensees***, be found suitable to hold a gaming license ***so long as that involvement continues. A finding of suitability relates only to the specified involvement for which it was made.*** If the nature of the involvement changes from that for which the applicant is found suitable, the applicant may be required to submit to a determination by the Commission of his or her suitability in the new capacity.

Nev. Gaming Comm'n Reg. 4.030(10) (emphases added).

The plain language of this regulation makes clear that the NGCB and the Commission only have jurisdiction to make Findings of Suitability when a person is "***directly or indirectly involved with licensees***" and, then, only for "***so long as that involvement continues***." By converse logic,

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ATTORNEYS AT LAW
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Phone: 702.382.5222 • Fax: 702.382.0540
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then, the NGCB and the Commission can only "revoke" Findings of Suitability when those same circumstances exist—*i.e.*, a person is "directly or indirectly involved with licensees" and only for "so long as that involvement continues." *Cf. State v. Glusman*, 98 Nev. at 421, 651 P.2d at 645 ("[NRS 463.170(2)] describes with specificity the standards of conduct applicable to a determination of suitability and, by converse logic, that conduct which is inconsistent with suitability[.]"). Again, it is undisputed that Mr. Wynn is not directly or indirectly involved with any Nevada licensee. Additionally, because a Finding of Suitability "***relates only to the specified involvement for which it was made***," the NGCB utterly fails to explain how Mr. Wynn's previous Findings of Suitability as a stockholder, as an officer and as a director of Wynn Resorts continue to survive in the ether—unmoored from any Nevada licensee or gaming property—now that Mr. Wynn is no longer a stockholder, an officer or a director, and has completely disassociated himself from Wynn Resorts and the gaming industry as a whole.

Simply put, there is nothing for the Commission to "revoke." Mr. Wynn's previous Findings of Suitability ended once Mr. Wynn was no longer an officer, director or controlling shareholder of Wynn Resorts. The Company thereafter had him removed from its gaming license. Because Mr. Wynn has no continuing involvement with Wynn Resorts, any other Nevada licensee or Nevada gaming in general, the NGCB and the Commission lack any express authority to exercise jurisdiction over him for purposes of imposing discipline.

2. Neither NRS Chapter 463 nor the Gaming Regulations *impliedly* authorize the Commission or NGCB to punish persons who no longer have any involvement with gaming licensees.

While the Nevada Supreme Court "has determined that an administrative agency may possess an implied limited power, ***any implied limited power must be essential to carry out an agency's express statutory duties***." *City of Henderson v. Kilgore*, 122 Nev. at 335, 131 P.3d at 14 (emphasis added). The ability to discipline persons who have ceased all involvement with gaming

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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licensees is not essential to the NGCB's and Commission's express statutory power to regulate Nevada's gaming industry.

The NGCB has the express statutory authority to investigate the qualifications of applicants seeking to enter Nevada's gaming industry. *See* NRS 463.1405(1). It also has the express statutory authority to observe and investigate all persons having a material involvement with licensees to ensure they remain suitable. *See id.* Finally, the NGCB is expressly authorized to make recommendations to the Commission regarding applicants and involved persons, and to bring disciplinary proceedings against the latter. *See* NRS 463.1405(3); NRS 463.310(1) and (2). The Commission, for its part, has the express power to deny the applications of those seeking to enter the industry, and can impose discipline against those persons who have a material involvement with licensees. *See* NRS 463.1405(4); NRS 463.310(4).

The present case seeks to expand the disciplinary jurisdiction of the NGCB and Commission to a third category of persons—those who had received a prior approval from the Commission but have since ended all involvement with a licensee or the gaming industry in general. This is clearly an overreach and not implied by the express legislative delegation of authority to regulate applicants and individuals involved in gaming operations, as it would mean that gaming regulators in Nevada have lifetime jurisdiction to impose discipline against anyone who has ever received a gaming approval, no matter how long ago the approval was received, no matter how long ago a purported infraction occurred, and no matter how long ago the person left the industry. That cannot be the law. *Cf. In re Crawley*, 460 B.R. 421, 433 n.12 (Bankr. E.D. Pa. 2011) ("a bankruptcy court does not obtain lifetime jurisdiction over the debtor") (quotation omitted).[32]

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[32] The NGCB seeks to accomplish the expansion of its jurisdiction in this manner through the use of a so-called "administrative hold" which, according to the NGCB, apparently allows it to retain disciplinary jurisdiction over a person in perpetuity. *See* Comp. ¶ 9. This is wrong. For starters, an administrative agency cannot enlarge its own jurisdiction. *See* Point III.B, *supra*. Nor can it assume any official powers. *See id.* Next, the words "administrative hold" are found nowhere in

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ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
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Nor is such an expansive concept of jurisdiction "essential to carry out [the NGCB's and Commission's] express statutory duties." *See City of Henderson*, 122 Nev. at 335, 131 P.3d at 14. The public policy of the state concerning gaming is expressed, in part, as follows:

> The continued growth and success of gaming is dependent upon public confidence and trust that licensed gaming . . . [is] conducted honestly and competitively, that establishments which hold restricted and nonrestricted licenses where gaming is conducted and where gambling devices are operated do not unduly impact the quality of life enjoyed by residents of the surrounding neighborhoods, that the rights of the creditors of licensees are protected and that gaming is free from criminal and corruptive elements.

NRS 463.0129(1)(b); *see also* NRS 463.0129(1)(d) (gaming establishments are to be "controlled and assisted to protect the public health, safety, morals, good order and general welfare of the inhabitants of the State."). Where, as here, a person ceases all involvement with the operations of a licensee and is out of the gaming industry altogether, the purposes of NRS 463.0129 no longer apply to that person. Indeed, once a person leaves the industry, the imposition of discipline is no longer necessary to ameliorate an alleged threat to the public health, safety, and welfare, because the goals to be achieved through the disciplinary process have already been accomplished. We address this issue in the following section.

C. Mr. Wynn Has Already Satisfied Any Purported Goals to Be Achieved Through Disciplinary Proceedings Given His Complete Separation from Wynn Resorts.

The NGCB is seeking the "revocation" of Mr. Wynn's Findings of Suitability. *See* Comp. ¶ 7. Mr. Wynn has already addressed the NGCB's and the Commission's lack of jurisdiction to

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NRS Chapter 463 or the Gaming Regulations, which means the legislature has not expressly authorized the NGCB to employ such a maneuver. The question then becomes whether the legislature has impliedly authorized such an action—*i.e.*, is it "essential" to the NGCB's ability to carry out its express statutory duties? *See City of Henderson*, 122 Nev. at 335, 131 P.3d at 14. Clearly not. The NGCB has express power to deal with applicants and persons who have an ongoing, direct or indirect, involvement in the operation of a licensee. For the reasons set forth herein, an "administrative hold" is not essential to the NGCB's ability to carry out its express duties regarding applicants and involved persons once someone has left the gaming industry altogether, and has no involvement in gaming operations of any licensee.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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pursue this disciplinary relief. Regardless, the current proceeding is wholly unnecessary to achieve the goals of revoked suitability, including the public's protection, given Mr. Wynn's separation from Wynn Resorts nearly two years ago.

First, the regulations expressly provide that "[a] finding of suitability relates only to the specified involvement for which it was made. ***If the nature of the involvement changes from that for which the applicant is found suitable, the applicant may be required to submit to a determination by the Commission of his or her suitability in the new capacity***." Nev. Gaming Comm'n Reg. 4.030(10) (emphasis added). Mr. Wynn's involvement with Wynn Resorts—the basis upon which he was previously found suitable—has undisputedly changed by virtue of his complete separation from the Company. Thus, if Mr. Wynn sought to re-enter the industry in some different capacity, he would be subject to seeking a new approval from the Commission at which time the NGCB and the Commission would be able to exercise their express statutory powers to investigate him and, if appropriate, to deny his application. *See* NRS 463.1405. Such a process unquestionably protects the public and satisfies the public policy of the State.

Second, if the Commission revokes any officer's, director's, or employee's Findings of Suitability, "the publicly traded corporation shall immediately remove that officer, director or employee from any office or position wherein the officer, director or employee is actively and directly engaged in the administration or supervision of, or any other significant involvement with, the gaming activities of the corporation or any of its affiliated or intermediary companies." NRS 463.637(2). This remedy has already occurred: Mr. Wynn voluntarily resigned from his positions as an officer, director or employee of Wynn Resorts, and the Company so notified the NGCB.

Third, if the Commission revokes a person's Findings of Suitability, the licensee that employed the person may not "[p]ay the person any remuneration for any service relating to the activities of a licensee, except for amounts due for services rendered before the date of receipt of

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700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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notice of such action by the Commission." NRS 463.645(1). This remedy has already occurred: Mr. Wynn voluntarily gave up his rights to severance benefits, which the Company accepted.

Fourth, if the Commission revokes the suitability of a controlling stockholder, the affiliated corporation must pursue lawful efforts to require such person to relinquish his or her voting securities, and said person cannot exercise any voting rights. *See* Nev. Gaming Comm'n Reg. 16.440. These remedies have already occurred: Mr. Wynn voluntarily sold his voting securities in orderly fashion, respecting the rights of the public markets, other stockholders, and regulatory authorities, without waiting for any "revocation" of his stockholder rights.

Fifth, if the NGCB's true concern is ensuring that Mr. Wynn's departure from Nevada's gaming industry is permanent, then the parties could have entered a stipulation or contract to that effect without the taxpayer expense associated with this disciplinary proceeding. Such an agreement would be enforceable under Nevada law. *See Cohen v. State*, 113 Nev. 180, 183-84, 930 P.2d 125, 127-28 (1997) (upholding enforceability of stipulated agreement entered into between NGCB and applicant, which had been approved by the Commission). Mr. Wynn was willing to consider a negotiated resolution along these lines to avoid the expense and spectacle of protracted administrative/judicial proceedings, *see* Campbell Decl. ¶ 28, but the parties were unable to reach an agreement. Mr. Wynn continues to be willing to enter into a stipulated agreement that he will not return to Nevada's gaming industry, and that any attempt to do so would constitute a new application for which the NGCB could recommend denial, and the Commission could adopt that recommendation. *See id.*

In the end, the only goal of the instant disciplinary proceedings that has not already been achieved is the professed ability of the Commission to impose significant fines upon Mr. Wynn. Nothing in the applicable statutes or regulations, however, expressly or impliedly authorizes the NGCB to seek, or the Commission to impose, what essentially amounts to an exorbitant "exit tax"

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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to leave Nevada's gaming industry. If the NGCB and the Commission seek to expand their jurisdiction to enable such actions, they must lobby the legislature.

IV. CONCLUSION

Based on the foregoing, Mr. Wynn respectfully submits that neither the NGCB nor the Commission have subject matter jurisdiction to pursue this action, and that the Complaint must be dismissed in its entirety.

DATED this 14th day of November, 2019.

CAMPBELL & WILLIAMS

By _____

DONALD J. CAMPBELL, ESQ. (1216)
J. COLBY WILLIAMS, ESQ. (5549)
700 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Respondent
Stephen A. Wynn

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

CERTIFICATE OF SERVICE

I certify that I am an employee of Campbell & Williams and that I did, on the 14th day of November, 2019, serve the foregoing **Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction** by e-mailing and sending via United States Mail, first class postage pre-paid, a copy thereof to the following attorneys of record for Complainant:

AARON D. FORD
Attorney General

Kyle George, First Assistant Attorney General
Steven G. Shevorski, Chief Litigation Counsel
Craig Newby, Deputy Solicitor General
Michael P. Somps, Senior Deputy Attorney General
Edward L. Magaw, Senior Deputy Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

By: _____
An Employee of Campbell & Williams

DECLARATION OF DONALD J. CAMPBELL

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

DECLARATION OF DONALD J. CAMPBELL

I, DONALD J. CAMPBELL, declare as follows:

1. I am a resident of Clark County, Nevada. I am over the age of eighteen and am competent to make this Declaration. This Declaration is based upon my personal knowledge unless otherwise so stated, and if called upon to testify, I would testify as set forth herein.

2. I am a licensed attorney in the State of Nevada, Bar Number 1216, and am one of the attorneys representing Respondent Stephen A. Wynn ("Mr. Wynn" or "Steve Wynn") in the above-captioned matter.

3. I make this Declaration in support of Mr. Wynn's Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction.

A. Background.

4. Mr. Wynn has been the leading innovator in the gaming industry since his first Commission approvals at the Golden Nugget in the early 1970's. In Mr. Wynn's 45+ year tenure as a gaming licensee, the NGCB has never brought any disciplinary action against him, and he has received numerous approvals from the Commission over the decades. I request that the Commission take judicial notice of the foregoing facts and those that follow pursuant to the authorities set forth in the accompanying Motion to Dismiss.

5. Mr. Wynn is widely credited with reinventing modern Las Vegas with the opening of The Mirage Casino and Resort in or about 1989.[1] Mr. Wynn thereafter opened The Treasure Island Casino & Resort and The Bellagio under the umbrella of Mirage Resorts, Inc. After achieving unprecedented success with the foregoing Las Vegas properties, Mr. Wynn sold Mirage Resorts and founded Wynn Resorts in 2002. Once Mirage Resorts was sold, Mr. Wynn's gaming

[1] *See* Steve Wynn Biography (https://www.biography.com/business-figure/steve-wynn) (last visited Nov. 7, 2019), a true and correct copy of which is attached hereto as Exhibit 1.

licenses and approvals ended, and he was required to undergo investigations and obtain findings of suitability as a new applicant when he sought to return to the industry in 2005.

6. Wynn Resorts, through its wholly owned subsidiary, Wynn Las Vegas, LLC ("Wynn Las Vegas"), opened Wynn Las Vegas in 2005. The NGCB recommended, and the Commission approved, Wynn Las Vegas for a non-restricted gaming license, and likewise found Mr. Wynn suitable in his capacity as the Chairman and CEO of Wynn Resorts as well as in his capacity as the controlling shareholder of the Company.[2]

7. On or about February 19, 2012, Wynn Resorts commenced an action styled *Wynn Resorts, Limited v. Kazuo Okada, et al.*, Case No. A-12-656710-B (the "Okada Litigation"), which was pending in the Eighth Judicial District Court from or about February 2012 through Spring 2018, when the matter was resolved. *See* Comp. ¶ 29. The case arose from the Company's redemption of stock held by Aruze USA, Inc. ("Aruze"). Aruze and its affiliates thereafter asserted counterclaims against Wynn Resorts, Mr. Wynn, the Company's other directors, and Kimmarie Sinatra, the Company's then-General Counsel. Elaine Wynn, Mr. Wynn's ex-wife, who was sued by Aruze as a member of the Board at the time of the redemption, subsequently filed crossclaims against Mr. Wynn, the Company, and Ms. Sinatra.

8. On January 26, 2018, during the final pre-trial stages of the Okada Litigation, *The Wall Street Journal* published an article alleging that "dozens" of former Wynn Resorts employees had accused Mr. Wynn of engaging in sexual misconduct while he was Chairman and CEO of the Company. *See* Comp. ¶ 12. *The Wall Street Journal* and other media outlets thereafter published additional articles and stories on the same subject, many of which contained demonstrably false statements of fact for which Mr. Wynn continues to pursue legal relief.

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[2] *See* NGCB Location Details for Wynn Las Vegas, a true and correct copy of which is attached hereto as Exhibit 2.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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9. In the wake of the media firestorm that ensued following the January 26 article, the NGCB and gaming regulators in Massachusetts ("Mass Gaming") announced that they would be investigating the allegations contained in the January 26 article to determine if Wynn Resorts remained suitable to hold a gaming license in their respective jurisdictions. *See* Comp. ¶ 26.

B. Mr. Wynn Completely Separates Himself from All Involvement with Wynn Resorts.

10. Confronted with the above allegations in the then-nascent "#metoo" era, Mr. Wynn made the decision to resign as Chairman and CEO of Wynn Resorts so that the Company he created could continue its success, and in order to ensure that Wynn Resorts' shareholders would not suffer from the distraction that allegations of this nature might cause. Mr. Wynn's resignation was effective February 6, 2018.[3] Mr. Wynn and Wynn Resorts (and Wynn Resorts Holdings, LLC) thereafter entered into a written agreement on February 15, 2018, outlining the terms of his separation from the Company and all of its affiliates, which included Mr. Wynn's agreement to forego pursuit of a severance package worth approximately $330 million.[4]

11. At the time of his resignation, Mr. Wynn owned approximately twelve percent of Wynn Resorts' stock through a family partnership. Mr. Wynn acted promptly to divest his stock ownership in an orderly manner. On March 21, 2018, Mr. Wynn's family partnership sold 4,104,999 shares of Wynn Resorts stock.[5] On March 22, 2018, Mr. Wynn's family partnership

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[3] *See* Wynn Resorts Press Release dated Feb. 6, 2018, a true and correct copy of which is attached hereto as Exhibit 3; *see also* Comp. ¶ 9; Ex. 2 (Location Details) at 7.

[4] *See* Separation Agreement dated Feb. 15, 2018, a true and correct copy of which is attached hereto as Exhibit 4 (providing, in part, that Mr. Wynn "hereby confirms that he resigned as an employee, director and officer and chairman of the Board of the Company, including its subsidiaries and affiliates (and each of their respective boards of directors or other governing bodies[.]")).

[5] *See* Wynn Resorts Press Release dated Mar. 22, 2018, a true and correct copy of which is attached hereto as Exhibit 5; *see also* Comp. ¶ 9; Ex. 2 (Location Details) at 7.

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entered into agreements to sell its remaining ownership stake in the Company (approximately eight million shares).[6]

12. Although the parties' Separation Agreement permitted Mr. Wynn to remain in his residence at Wynn Las Vegas until June 1, 2018, Mr. Wynn moved out of his residence in or about April 2018. Similarly, although Wynn Resorts' bylaws permitted Mr. Wynn to vote at the Company's annual shareholders meeting on May 16, 2018 based on his stock ownership as of March 2018, Mr. Wynn did not vote or otherwise participate at said meeting.

13. In short, Mr. Wynn ceased all direct or indirect ownership and involvement with Wynn Resorts and its affiliates between February and May 2018 at the latest.

14. Upon information and belief, Wynn Resorts submitted a written application to the NGCB and/or Commission in early 2018, seeking to remove Mr. Wynn as well as Aruze USA, Inc. (and its affiliates Kazuo Okada and Universal Entertainment Corporation) from the Nevada gaming license for Wynn Las Vegas. The NGCB Location Report for Wynn Las Vegas confirms that Mr. Wynn was removed as an officer and director from the Wynn Las Vegas license as of February 23, 2018 and removed as a shareholder as of March 28, 2013.[7]

C. Mass Gaming Determines that Mr. Wynn Is No Longer a "Qualifier."

15. On or about February 27, 2018, Mr. Wynn's counsel notified Mass Gaming of the changed circumstances described above, which raised the question of whether Mr. Wynn remained an individual "qualifier" requiring approvals under the Massachusetts regulatory scheme. The Massachusetts Gaming Commission conducted a hearing on April 27, 2018 to consider the issue, and it issued a written Decision and Order on May 7, 2018, finding that Mr. Wynn would no longer

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[6] *See id.*

[7] *See* Ex 2 at 7.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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be a qualifier after the Wynn Resorts Annual Shareholders Meeting on May 16, 2018, and that Wynn Resorts no longer needed to obtain Mass Gaming approval for Mr. Wynn.[8]

16. Mass Gaming made extensive findings regarding Mr. Wynn's non-qualifier status, which include in pertinent part:

> ***Mr. Wynn is no longer an officer or director of Wynn Resorts, Ltd., and accordingly, he can no longer exercise control or provide direction to Wynn MA, LLC or Wynn Resorts, Ltd. in either of those capacities as a matter of law.*** Further, it is clear that Mr. Wynn no longer owns any stock in Wynn Resorts, Ltd., and, at the conclusion of the next annual stockholders meeting, ***he can no longer exercise control or provide direction in that capacity either.*** Mr. Wynn's resignation as an officer and director and divestiture of stock holdings further demonstrates that ***he no longer holds a financial interest in the gaming establishment*** under construction in Everett, Massachusetts or in Wynn MA, LLC, the gaming licensee which holds the license issued by the Commission. These latter factors eliminate Mr. Wynn as a qualifier under categories 2 and 3.

Mass Gaming likewise determined that Mr. Wynn was (or would be) eliminated as a qualifier under the remaining five factors set forth in its licensing scheme upon the completion of Wynn Resorts' next annual shareholders meeting in May 2018 and upon the discharge of Mr. Wynn's city ledger account.[9]

17. Given his status as a non-qualifier, Mr. Wynn was under no obligation to cooperate with Mass Gaming's ongoing investigation into Wynn Resorts. Despite this fact, Mr. Wynn's counsel continued to field and respond to various inquiries from Mass Gaming investigators.

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[8] *See* Mass Gaming Decision and Order dated May 7, 2018, a true and correct copy of which is attached hereto as Exhibit 6.

[9] *See id.* at 5-8 (emphases added).

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
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D. NGCB's Interaction with Mr. Wynn's Counsel.

18. On or about June 29, 2018, a NGCB agent sent a letter to Mr. Wynn, in care of his counsel, notifying him that the NGCB intended to schedule an investigative hearing in late August 2018 at which he would be required to appear and present testimony.[10]

19. Even though Mr. Wynn had not been affiliated with any Nevada gaming licensee for months by that time, I agreed to meet with NGCB agents in the spirit of cooperation just as Mr. Wynn's counsel had continued to respond to occasional inquiries from Mass Gaming. My partner, Philip R. Erwin, and I flew to northern Nevada and met with NGCB agents on August 30, 2018 in Carson City.

20. During the meeting, Mr. Erwin and I reaffirmed the undisputed fact that Mr. Wynn had completely separated himself from Wynn Resorts and, thus, was no longer directly or indirectly involved with any Nevada licensee such that he would remain subject to the jurisdiction of the NGCB and/or the Commission. We further advised that Mr. Wynn had no intention of returning to any role involved with gaming in Nevada. Finally, we advised that while Mr. Wynn was willing to cooperate with the NGCB's investigation despite his departure from the gaming industry, such cooperation would necessarily have to be limited to answering written inquiries as Mr. Wynn was a party to a number of ongoing lawsuits seeking to vindicate his good name and had to be vigilant about protecting any applicable privileges and work product.

21. Despite our positions as set forth above, the NGCB agents advised they intended to formally interview Mr. Wynn on September 7, 2018. I thereafter provided written correspondence

[10] *See* NGCB Letter dated June 29, 2018, a true and correct copy of which is attached hereto as Exhibit 7.

to the NGCB on September 5, 2018 wherein I reiterated the above points made at the August 30 meeting.[11]

22. The NGCB greeted my letter with silence. It never responded to the letter. Nor did it ever contest that Mr. Wynn was no longer directly or indirectly involved with any Nevada licensee.

E. The Commission Fines Wynn Resorts $20 Million.

23. On January 25, 2019, the NGCB filed a complaint against Wynn Resorts and Wynn Las Vegas, LLC based on its alleged failure to investigate allegations of wrongdoing made against Mr. Wynn.[12] The complaint is notable given NGCB's admission that Mr. Wynn had resigned from all positions he held with Wynn Resorts and its affiliates in February 2018 and that he held no ownership interest therein by March 2018.[13]

24. Simultaneously with the filing of the complaint, the NGCB and the respondents executed a Stipulation for Settlement and Order that remained subject to Commission approval.[14] The Commission approved the Stipulation for Settlement at a hearing held on February 26, 2019. The Commission further imposed a fine on Wynn Resorts in the amount of $20 million, as the

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[11] *See* Letter from D. Campbell dated Sept. 5, 2018, a true and correct copy of which is attached hereto as Exhibit 8.

[12] *See* Complaint dated Jan. 25, 2019, a true and correct copy of which is attached hereto as Exhibit 9. As continuing licensees, Wynn Resorts and Wynn Las Vegas remained subject to NGCB and Commission jurisdiction because of their gaming operations at Wynn Las Vegas and the adjoining Encore.

[13] *See id.* ¶¶ 24-25.

[14] *See* Stipulation for Settlement and Order dated filed Feb. 26, 2019, a true and correct copy of which is attached hereto as Exhibit 10.

CAMPBELL & WILLIAMS
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700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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Stipulation and Order allowed, which was memorialized in an Addendum to the Stipulation for Settlement and Order.[15]

F. Mass Gaming Fines Wynn Resorts $35 Million.

25. Just over a month after the Commission imposed its fine on Wynn Resorts, Mass Gaming conducted an adjudicatory hearing regarding the Company's suitability for a Massachusetts gaming license on April 2-4, 2019.

26. On or about April 30, 2019, Mass Gaming issued a written decision finding that Wynn Resorts, Wynn MA, LLC and their qualifiers were suitable to maintain a gaming license in the Commonwealth, subject to the fines and conditions set forth in the decision.[16]

27. Mass Gaming imposed a fine on Wynn Resorts in the amount of $35 million, nearly double that imposed by the Commission.[17]

G. The NGCB Files a Complaint Against Mr. Wynn Nearly Two Years After He Voluntarily Ceased all Involvement with Wynn Resorts.

28. In or about Summer 2019, I learned that the NGCB was considering the filing of a disciplinary action against Mr. Wynn. In an effort to spare taxpayers and Mr. Wynn the expense and fatigue associated with protracted administrative and/or judicial proceedings resurrecting the subject matter addressed in the Wynn Resorts disciplinary actions, I contacted NGCB agents about a possible negotiated resolution. Even though it is Mr. Wynn's position that the NGCB and the Commission have no jurisdiction over him given his lack of any involvement with a Nevada licensee, Mr. Wynn was nonetheless willing to consider entering a stipulation whereby he would

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[15] *See* Addendum to Stipulation for Settlement and Order dated Feb. 26, 2019, a true and correct copy of which is attached hereto as Exhibit 11.

[16] *See* Mass Gaming Press Release dated Apr. 30, 2019, a true and correct copy of which is attached hereto as Exhibit 12.

[17] *See id.*

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
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Phone: 702.382.5222 • Fax: 702.382.0540
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agree not to seek any involvement in the Nevada gaming industry in the future. The parties were unable to reach a resolution. Mr. Wynn continues to be willing to enter into a stipulated agreement that he will not return to Nevada's gaming industry, and that any attempt to do so would constitute a new application for which the NGCB could recommend denial, and the Commission could adopt that recommendation.

29. On October 14, 2019, well over a year after Mr. Wynn's counsel had advised NGCB agents of their lack of jurisdiction over Mr. Wynn, the Chairwoman for the NGCB sent Mr. Wynn's counsel a letter advising that "the Nevada Gaming Control Board will seek to have the Nevada Gaming Commission revoke the Findings of Suitability for Mr. Stephen A. Wynn."[18]

30. The NGCB filed its Complaint against Mr. Wynn the same day, which expressly acknowledges that he is no longer an officer, director or stockholder of Wynn Resorts or its affiliates.[19] The Complaint instead alleges that the NGCB retains jurisdiction over Mr. Wynn because it placed an "administrative hold" on his Findings of Suitability.[20]

31. The statutes and regulations governing gaming in Nevada are devoid of any concept known as an "administrative hold." Upon information and belief, the NGCB never provided Mr. Wynn with any written notice that it was placing a so-called "administrative hold" on any of his prior gaming approvals.

32. The Complaint, in large measure, mirrors the complaint NGCB filed against Wynn Resorts.[21] Put differently, the Complaint against Mr. Wynn is not premised on any "new"

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[18] *See* Letter from S. Morgan dated Oct. 14, 2019, a true and correct copy of which is attached hereto as Exhibit 13.

[19] *See* Complaint (Case No. NGC 19-03) filed Oct. 14, 2019 ¶ 9, a true and correct copy of which is attached hereto as Exhibit 14.

[20] *See id.*

[21] *Compare, e.g.,* Ex. 9 ¶¶ 35 - 54 *with* Ex. 14 ¶¶ 95 - 123.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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developments or presently-occurring conditions, other than the allegation that he failed to appear at the September 7, 2018, interview in violation of the gaming statutes and regulations.

33. The relief sought in the Complaint is two-fold. First, the NGCB requests the Commission "to fine Mr. Wynn a monetary sum pursuant to the parameters defined in NRS 463.310(4) for each separate violation of the provisions of the Nevada Gaming Control Act or the Regulations of the Gaming Commission." Second, the NGCB requests that the Commission "revoke Mr. Wynn's Findings of Suitability pursuant to the parameters defined in NRS 463.310(4)."[22]

34. On November 7, 2019, the Commission Chair approved a stipulation setting forth a procedural framework to address the threshold question of jurisdiction prior to conducting any substantive hearing on the merits.[23]

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge.

DATED this 14th day of November, 2019.

DONALD J. CAMPBELL

[22] *See* Ex. 14 at 23:7-11 (Prayer for Relief).

[23] *See* Stipulation and Order Re: Briefing Schedule and Hearing Date on Respondent's Forthcoming Motion to Dismiss filed Nov. 8, 2019.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

EXHIBIT 1

NAME
Steve Wynn

BIRTH DATE
January 27, 1942
(age 77)

EDUCATION
University of Pennsylvania, Manlius School

PLACE OF BIRTH
New Haven, Connecticut

FULL NAME
Stephen Alan Wynn

ZODIAC SIGN
Aquarius

Steve Wynn Biography

(1942–)

UPDATED: APR 16, 2019 · ORIGINAL: FEB 7, 2018

Casino resort developer Steve Wynn brought new life to the Las Vegas strip by renovating the Golden Nugget and opening The Mirage and The Bellagio. He later served as finance chairman of the Republican National Committee.

Who Is Steve Wynn?

Steve Wynn was born on January 27, 1942, in New Haven, Connecticut. In 1967, he moved to Las Vegas, where he renovated and expanded the Golden Nugget. After acquiring interests in several other casinos, he built the high-end casinos The Mirage on the Strip and The Bellagio. In early 2018, Wynn resigned as chairman of Wynn Resorts and as finance chairman of the Republican National Committee over allegations of sexual misconduct.

Early Life

Developer Stephen Alan Wynn was born on January 27, 1942, in New Haven, Connecticut. After graduating from the exclusive Manlius School in upstate New York, Wynn attended the University of Pennsylvania. Following his father's death in 1963, Wynn left school to take over the family's bingo operation in Maryland.

Career Highlights

In 1967, Wynn moved to Las Vegas, where he renovated and expanded the tired and shabby Golden Nugget Las Vegas with great success, attracting a new upscale clientele to downtown. After acquiring interests in several other casinos, Wynn built The Mirage on the Strip, featuring some of the most luxe accommodations and eye-opening entertainment in town. His second high-end casino, The Bellagio, included an artificial lake and a gallery that housed museum-quality artworks. The Bellagio is credited with leading the resurgence of Las Vegas as a luxury destination for wealthy travelers in the 1990s.

After selling Mirage Resorts to MGM Grand Inc. in 2000, Wynn opened his most expensive project to date, the Wynn Las Vegas, in 2005. A year later, he opened Wynn Macau in the largest gaming jurisdiction in Asia. He went on to add the Encore Las Vegas and Encore Macau to his collection of resorts.

RNC Finance Chairman

Shortly after President Donald Trump took office in January 2017, Wynn became finance chairman of the Republican National Committee. The two men had known each other for years, though they weren't always on the best of terms; prior to coming around to the Republican nominee, Wynn had supported one of his rivals, Florida Senator Marco Rubio.

Resignation from RNC and Wynn Resorts

Wynn's tenure with the RNC lasted just shy of a year; one day after the *Wall Street Journal* reported on his alleged sexual misconduct involving casino employees, he announced he was stepping down on January 27, 2018.

"Effective today I'm resigning as finance chairman of the RNC," Wynn said. "The unbelievable success we have achieved must continue. The work we are doing to make America a better place is too important to be impaired by this distraction."

However, the resignation didn't put an end to his troubles, as the Massachusetts Gaming Commission and a separate committee of independent directors were set to investigate the allegations. Furthermore, it was announced that shares of Wynn Resorts stock had dropped from $201.30 on January 26, the day the *Wall Street Journal* report hit, to $163.48 on January 29, adding up to a loss of $463 million for its founder.

On February 6, the casino mogul announced he was also resigning as chairman and chief executive of Wynn Resorts, blaming "an avalanche of negative publicity" for creating a situation "in which a rush to judgment takes precedence over everything else, including the facts." In a statement, the company's board said it had "reluctantly" accepted its founder's resignation.

Citation Information

Article Title

Steve Wynn Biography

Author

Biography.com Editors

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April 1, 2014

EXHIBIT 2

Nevada Gaming Control Board

Location Details - Public

Location Information

01888-07 WYNN LAS VEGAS

Name: WYNN LAS VEGAS, LLC

DB As: WYNN LAS VEGAS

DB At:

Physical: 3131 S LAS VEGAS BLVD
LAS VEGAS NEVADA 89109

Status: Active

Account Type: Nonrestricted

Mailing: ATTN: SHANNON NADEAU
3131 S LAS VEGAS BLVD
LAS VEGAS NEVADA 89109

Status Dates

Approved: 03/24/2005

Started: 04/28/2005

Temp Closure Through: N/A

Admin Hold: N/A

Old Names

Name	Removed Date
DESERT INN	N/A
DESERT INN HOTEL	N/A
DESERT INN HOTEL & CASINO	N/A
DESERT INN RESORT & CASINO	N/A
SHERATON DESERT INN RESORT & CASINO	N/A
STARS' DESERT INN HOTEL AND COUNTRY CLUB	N/A

Location Approvals

	Approval Date	Limit		Approval Date		Approval Date
Slots:	04/28/2005	Unlimited	Race Book:	04/28/2005	Race Pari-Mutuel:	04/28/2005
Table Games:	04/28/2005	Unlimited	Sports Pool:	04/28/2005	Sports Pari-Mutuel:	04/28/2005
Counter Games:	–	3	Bingo:	N/A	Free Bingo:	N/A
Card Games:	04/28/2005	Unlimited	Keno:	04/28/2005	Parlays:	N/A
Gaming Salon:	04/28/2005	18	Prog Keno:	N/A		

Other Approvals

No approvals found.

Conditions

Status Date: 03/28/2019 Meeting Date: 03/28/2019 Inherited From: 28565-01
Action: Order Status: Active Office in Charge: CC Corp Security

PER NEVADA GAMING COMMISSION ORDER FILE NO. SD-171

Status Date: 04/28/2005 Meeting Date:
Action: Commission Status: Active Office in Charge: LV Audit

FOR THESE ADDITIONAL FOUR GAMING SALONS, WYNN LAS VEGAS SHALL ADHERE TO EXISTING INTERNAL CONTROL PROCEDURES ALREADY APPROVED BY GCB AUDIT DIVISION.

Status Date: 04/28/2005 Meeting Date:
Action: Commission Status: Active Office in Charge: LV Enforcement

THE PROPOSED FLOOR PLAN SHOWS A DOOR ENTERING INTO ROOM 4C377, WHICH TO DATE HAS NOT BEEN INSTALLED. ALSO, THE HALLWAY TO ROOM 4C371 IS CURRENTLY NOT ACCESSIBLE TO THE PUBLIC. ONCE THE DOOR HAS BEEN INSTALLED AND THE HALLWAY MADE FULLY ACCESSIBLE TO THE PUBLIC, WYNN LAS VEGAS MUST NOTIFY THE APPROPRIATE BOARD PERSONNEL.

Status Date: 04/28/2005 Meeting Date:
Action: Commission Status: Active Office in Charge: LV Enforcement

THE SURVEILLANCE SYSTEM FOR THE ADDITIONAL FOUR (4) GAMING SALONS MUST BE REVIEWED AND APPROVED BY THE GCB ENFORCEMENT DIVISION PRIOR TO THE OPERATION OF THE SALONS AND THEREAFTER BE MAINTAINED AT OR ABOVE THE STANDARD THAT IS APPROVED.

Status Date: 04/28/2005 Meeting Date: 03/24/2005
Action: Commission Status: Active Office in Charge: CC Investigations

WITHIN 60 DAYS OF THE APPOINTMENT OF ANY OFFICER, AS DEFINED BY THE AMENDED AND RESTATED OPERATING AGREEMENT OF WYNN LAS VEGAS, LLC. SUCH OFFICER SHALL FILE AN APPLICATION FOR LICENSURE AS A KEY EXECUTIVE.

Status Date: 04/28/2005 Meeting Date: 03/24/2005
Action: Commission Status: Active Office in Charge: LV Enforcement

THE INTERNATIONAL GAMING SALONS' SURVEILLANCE SYSTEM MUST BE REVIEWED AND APPROVED BY THE GCB ENFORCEMENT DIVISION PRIOR TO THE ISSUANCE OF A STATE GAMING LICENSE (APPROVED 09/29/05) AND THEREAFTER BE MAINTAINED AT OR ABOVE THE STANDARD WHICH IS APPROVED.

Status Date: 04/28/2005 Meeting Date: 03/24/2005
Action: Commission Status: Active Office in Charge: LV Enforcement

THE SURVEILLANCE SYSTEM MUST BE REVIEWED AND APPROVED BY THE GAMING CONTROL BOARD ENFORCEMENT DIVISION PRIOR TO THE ISSUANCE OF A STATE GAMING LICENSE (APPROVED 04/27/05) AND THEREAFTER BE MAINTAINED AT OR ABOVE THE STANDARD WHICH IS APPROVED.

Owners

WYNN LAS VEGAS **(01888-07)**

Name	Relationship	Status	Effective	Removed
WYNN LAS VEGAS, LLC (09587-01)	DBAS	Active	04/28/2005	

Nevada Gaming Control Board

Location Details - Public

WYNN LAS VEGAS, LLC **(09587-01)**

Name	Relationship	Status	Effective	Removed
WYNN LAS VEGAS HOLDINGS, LLC (32993-01)	OWNER: 100% ----- 08/2015 NGC MEETING	Active	09/08/2015	
	MANAGER	Active	09/08/2015	
WYNN RESORTS FINANCE, LLC (32992-01)	OWNER: 100% ----- 08/2015 NGC MEETING	Removed	09/08/2015	09/08/2015
	MANAGER	Removed	09/08/2015	09/08/2015
WYNN RESORTS HOLDINGS, LLC (28566-01)	OWNER: 100%	Removed	04/28/2005	09/08/2015
	MEMBER AND MANAGER	Removed	04/28/2005	09/08/2015
HOUGHTON, JAMES WILLIAM	CHIEF OFFICER (LKE) ----- KEY EMPLOYEE INFORMATION	Removed	09/22/2011	08/20/2012
	VICE PRESIDENT (LKE) ----- KEY EMPLOYEE	Removed	09/22/2011	08/20/2012
LAWRENCE, DEAN JOSEPH	CHIEF FINANCIAL OFFICER	Active	07/28/2016	
	SENIOR VICE PRESIDENT	Active	07/28/2016	
MICHAELS, STACIE	VICE PRESIDENT	Removed	03/17/2016	08/30/2017
	GENERAL COUNSEL ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	03/17/2016	12/13/2018
	SECRETARY ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	03/17/2016	12/13/2018
	SENIOR VICE PRESIDENT ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	08/30/2017	12/13/2018
OSELAND, ROBERT LEWIS II	EXECUTIVE VICE PRESIDENT ----- AND MARKETING CASINO OPERATIONS	Removed	04/28/2005	11/05/2010
	CHIEF OPERATING OFFICER ----- ENCORE	Removed	11/05/2010	02/15/2011
PARIENTE, ALEJANDRO	EXECUTIVE VICE PRESIDENT (LKE) ----- KEY EMPLOYEE OF INTERNATIONAL MARKETING	Removed	07/23/2009	07/22/2014
PETERSON, SCOTT EDWARD	CHIEF FINANCIAL OFFICER	Removed	07/22/2010	03/10/2015
	SENIOR VICE PRESIDENT	Removed	07/22/2010	03/10/2015

WYNN LAS VEGAS, LLC **(09587-01)**

Name	Relationship	Status	Effective	Removed
RUBINSTEIN, MARC HOWARD	SECRETARY	Removed	04/28/2005	08/15/2006
SCHORR, MARC DENNIS	CHIEF EXECUTIVE OFFICER	Removed	04/28/2005	10/17/2005
	PRESIDENT	Removed	04/28/2005	10/17/2005
SINATRA, KIMMARIE	GENERAL COUNSEL (LKE)	Removed	02/21/2008	12/29/2015
	SENIOR VICE PRESIDENT	Removed	02/21/2008	12/29/2015
	SECRETARY	Removed	02/21/2008	12/29/2015
	ASSISTANT SECRETARY ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	12/29/2015	08/13/2018
SISK, DAVID ROSS	CHIEF FINANCIAL OFFICER	Removed	04/28/2005	05/01/2009
SPIEGEL, MARILYN GRACE	PRESIDENT	Active	09/26/2019	
	PRESIDENT	Removed	10/20/2011	04/04/2013
TOUREK, KEVIN JAMES	ASSISTANT SECRETARY	Removed	12/31/2015	12/22/2016
	GENERAL COUNSEL	Removed	09/20/2007	11/17/2015
	GLOBAL COMPLIANCE OFFICER	Removed	11/17/2015	12/22/2016
	SENIOR VICE PRESIDENT	Removed	09/20/2007	11/17/2015
	SECRETARY	Removed	09/20/2007	11/17/2015
VOLLMER, STEVEN H	VICE PRESIDENT INFORMATION SYSTEMS	Removed	02/26/2013	08/28/2015
	SENIOR VICE PRESIDENT, CIO-USA ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	08/28/2015	12/28/2018
WEITMAN, STEVEN ALAN	CHIEF OPERATING OFFICER	Active	09/21/2017	
WOODEN, MAURICE L	PRESIDENT ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING	Removed	11/20/2014	12/28/2018

WYNN LAS VEGAS HOLDINGS, LLC **(32993-01)**

Name	Relationship	Status	Effective	Removed
WYNN RESORTS FINANCE, LLC (32992-01)	OWNER: 100%	Active	09/08/2015	
	MANAGER	Active	09/08/2015	

WYNN RESORTS FINANCE, LLC **(32992-01)**

Name	Relationship	Status	Effective	Removed
WYNN RESORTS HOLDINGS, LLC (28566-01)	OWNER: 100%	Active	09/08/2015	
	MANAGER	Active	09/08/2015	

WYNN RESORTS HOLDINGS, LLC **(28566-01)**

Name	Relationship	Status	Effective	Removed
WYNN RESORTS, LIMITED (28565-01)	OWNER: 100%	Active	04/28/2005	
	MANAGER	Active	04/28/2005	
SINATRA, KIMMARIE	GENERAL COUNSEL (LKE) ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	02/21/2008	08/13/2018
	SECRETARY ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	02/21/2008	08/13/2018
	SENIOR VICE PRESIDENT ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	02/21/2008	08/13/2018

WYNN RESORTS, LIMITED **(28565-01)**

Name	Relationship	Status	Effective	Removed
ARUZE USA, INC. (26554-01)	SHAREHOLDER ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING RELATED TO KAZUO OKADA.	Removed	04/28/2005	03/08/2018
UNIVERSAL ENTERTAINMENT CORPORATION (24971-01)	CONTROLLING SHAREHOLDER ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING RELATED TO KAZUO OKADA.	Removed	04/28/2005	03/08/2018
BILLINGS, CRAIG SCOTT	CHIEF FINANCIAL OFFICER	Active	04/25/2019	
	PRESIDENT	Active	06/05/2019	
	TREASURER	Active	04/25/2019	
COOTEY, STEPHEN LAWRENCE	CHIEF FINANCIAL OFFICER	Removed	07/23/2015	08/30/2017
	SENIOR VICE PRESIDENT (LKE)	Removed	07/23/2015	08/30/2017
	TREASURER	Removed	07/23/2015	08/30/2017

WYNN RESORTS, LIMITED (28565-01)

Name	Relationship	Status	Effective	Removed
HAGENBUCH, JOHN JACOB	AUDIT COMMITTEE CHAIRMAN ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	05/18/2017	08/28/2018
	DIRECTOR ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	05/18/2017	08/28/2018
KRAMER, RONALD JAY	DIRECTOR	Removed	04/28/2005	06/03/2008
	PRESIDENT	Removed	04/28/2005	06/03/2008
MADDOX, MATTHEW	CHIEF EXECUTIVE OFFICER	Active	02/23/2018	
	CHIEF FINANCIAL OFFICER (LKE)	Removed	01/21/2010	12/29/2015
	PRESIDENT	Removed	11/12/2013	06/05/2019
	TREASURER	Removed	01/21/2010	07/22/2014
OKADA, KAZUO	DIRECTOR	Removed	12/05/2011	04/04/2013
	VICE CHAIRMAN OF BOARD	Removed	04/28/2005	12/05/2011
PASCAL, ANDREW SCOTT	SENIOR VICE PRESIDENT ----- AND DEVELOPMENT PRODUCT MARKETING	Removed	04/28/2005	11/21/2005
	(LKE) ----- KEY EMPLOYEE	Removed	04/28/2005	11/21/2005
RUBINSTEIN, MARC HOWARD	SECRETARY	Removed	04/28/2005	08/15/2006
SATRE, PHILIP GLEN	CHAIRMAN OF THE BOARD	Active	08/22/2019	
SCHORR, MARC DENNIS	CHIEF OPERATING OFFICER	Removed	04/28/2005	07/22/2014
SINATRA, KIMMARIE	SENIOR VICE PRESIDENT	Removed	02/21/2008	12/29/2015
	EXECUTIVE VICE PRESIDENT ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	12/29/2015	08/13/2018
	GENERAL COUNSEL (LKE) ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	02/21/2008	08/13/2018
	SECRETARY ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	02/21/2008	08/13/2018
STRZEMP, JOHN	CHIEF ADMINISTRATION OFFICER	Removed	04/15/2008	08/30/2017
	EXECUTIVE VICE PRESIDENT	Removed	04/15/2008	08/30/2017

WYNN RESORTS, LIMITED **(28565-01)**

Name	Relationship	Status	Effective	Removed
STRZEMP, JOHN	CHIEF FINANCIAL OFFICER	Removed	04/28/2005	04/15/2008
	TREASURER	Removed	04/28/2005	04/15/2008
WAYSON, DANIEL BOONE	CHAIRMAN AUDIT COMMITTEE	Removed	09/26/2013	12/29/2015
	CHAIRMAN OF THE BOARD ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	02/23/2018	12/28/2018
	DIRECTOR ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	09/26/2013	12/28/2018
WYNN, STEPHEN ALAN	CONTROLLING SHAREHOLDER ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	04/28/2005	03/28/2018
	SHAREHOLDER ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	04/28/2005	03/28/2018
	CHAIRMAN OF THE BOARD ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING. INDIVIDUAL NO LONGER HOLDS POSITION.	Removed	04/28/2005	02/23/2018
	CHIEF EXECUTIVE OFFICER ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING. INDIVIDUAL NO LONGER HOLDS POSITION.	Removed	04/28/2005	02/23/2018

UNIVERSAL ENTERTAINMENT CORPORATION **(24971-01)**

Name	Relationship	Status	Effective	Removed
OKADA, KAZUO	OWNER: 50.05%	Removed	09/02/2008	05/05/2009
	CHAIRMAN OF THE BOARD ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	04/28/2005	03/08/2018
	CONTROLLING SHAREHOLDER ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	04/28/2005	03/08/2018

UNIVERSAL ENTERTAINMENT CORPORATION **(24971-01)**

Name	Relationship	Status	Effective	Removed
OKADA, KAZUO	DIRECTOR ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	04/28/2005	03/08/2018
	SHAREHOLDER ----- ADMINISTRATIVE HOLD - INVESTIGATION PENDING.	Removed	04/28/2005	03/08/2018
HIKIJI, TATSUO	EXECUTIVE OFFICER	Removed	01/26/2006	10/30/2006
	(LKE) ----- KEY EMPLOYEE SENIOR GENERAL MANAGER OF MANUFACTURING DIVISION	Removed	01/26/2006	10/30/2006
KIYOKAWA, MITSUO	EXECUTIVE OFFICER	Removed	01/26/2006	12/06/2007
	GENERAL MANAGER (LKE) ----- KEY EMPLOYEE OF CORPORATE PLANNING OFFICE	Removed	01/26/2006	12/06/2007
KOBAYASHI, TERUHIKO	GENERAL MANAGER (LKE) ----- ACCOUNTING ADMINISTRATION DEPARTMENT KEY EMPLOYEE OF FINANCE AND OF GENERAL	Removed	01/26/2006	11/03/2006
	EXECUTIVE OFFICER	Removed	01/26/2006	12/06/2007
	(LKE) ----- KEY EMPLOYEE SENIOR GENERAL MANAGER OF ADMINISTRATION DIVISION	Removed	01/26/2006	11/03/2006
	SENIOR GENERAL MANAGER OF ADMINISTRATION DIVISION	Removed	01/26/2006	11/03/2006
OKADA, TOMOHIRO	CONTROLLING SHAREHOLDER	Removed	04/28/2005	03/08/2018
	DIRECTOR	Removed	02/18/2010	03/08/2018
	SHAREHOLDER	Removed	04/28/2005	03/08/2018
SHOJI, YOSHIYUKI	EXECUTIVE OFFICER	Removed	04/28/2005	08/17/2005

UNIVERSAL ENTERTAINMENT CORPORATION **(24971-01)**

Name	Relationship	Status	Effective	Removed
SHOJI, YOSHIYUKI	GAMING COMPLIANCE OFFICER	Removed	12/20/2007	08/28/2013
	(LKE) ----- KEY EMPLOYEE GAMING COMPLIANCE OFFICER	Removed	12/20/2007	05/05/2009
TOKUDA, HAJIME	PRESIDENT	Removed	03/18/2010	09/30/2013
	(LKE) ----- KEY EMPLOYEE SR GEN MGR OF THE ADMINISTRATION DIV	Removed	03/18/2010	09/30/2013
	REPRESENTATIVE EXECUTIVE OFFICER	Removed	03/18/2010	01/12/2011
YOGO, KUNIHIKO	CHIEF EXECUTIVE OFFICER	Removed	11/21/2007	02/14/2008
	PRESIDENT	Removed	02/14/2008	08/04/2008
	INTERIM GENERAL MANAGER OF FINANCE AND ACCOUNTING DEPT.	Removed	11/21/2007	11/05/2008
	INTERIM SENIOR GENERAL MANAGER OF ADMINISTRATIVE DIVISION	Removed	11/21/2007	11/05/2008
	DIRECTOR ----- REPRESENTATIVE	Removed	11/21/2007	08/04/2008

ARUZE USA, INC. **(26554-01)**

Name	Relationship	Status	Effective	Removed
UNIVERSAL ENTERTAINMENT CORPORATION (24971-01)	OWNER: 100%	Removed	04/28/2005	03/08/2018
KIYOKAWA, MITSUO	DIRECTOR	Removed	01/26/2006	12/06/2007
	PRESIDENT	Removed	01/26/2006	12/06/2007
	SECRETARY	Removed	01/26/2006	12/06/2007
OKADA, KAZUO	CHAIRMAN OF THE BOARD	Removed	04/28/2005	04/21/2016
	PRESIDENT	Removed	03/18/2010	04/21/2016
	SECRETARY	Removed	03/18/2010	04/21/2016
	TREASURER	Removed	04/28/2005	04/21/2016
OKADA, TOMOHIRO	DIRECTOR	Removed	02/18/2010	03/08/2018
SHOJI, YOSHIYUKI	PRESIDENT	Removed	04/28/2005	08/17/2005
	SECRETARY	Removed	04/28/2005	08/17/2005

ARUZE USA, INC. **(26554-01)**

Name	Relationship	Status	Effective	Removed
ZIEMS, ROBERT BARRON	DIRECTOR	Removed	04/21/2016	08/16/2017
	PRESIDENT	Removed	04/21/2016	08/16/2017
	SECRETARY	Removed	04/21/2016	08/16/2017
	TREASURER	Removed	04/21/2016	08/16/2017

Archived Ownership Information (As of March 2015)

The information being displayed may not reflect the current license, and any questions concerning discrepancies should be directed to the Tax and License Division of the Nevada Gaming Control Board at (775) 684-7770

Added	Removed	
04/28/2005		WYNN RESORTS, LIMITED
		(100% MEMBER/MANAGER OF WYNN RESORTS HOLDINGS, LLC)
04/28/2005		STEPHEN ALAN WYNN/CHAIRMAN OF THE BOARD-
		CHIEF EXECUTIVE OFFICER-SHAREHOLDER-
		CONTROLLING SHAREHOLDER
04/28/2005	04/04/2013	KAZUO OKADA/DIRECTOR
04/28/2005	07/22/2014	MARC DENNIS SCHORR/CHIEF OPERATING OFFICER
04/28/2005	06/03/2008	RONALD JAY KRAMER/PRESIDENT-DIRECTOR
04/28/2005		JOHN STRZEMP/EXECUTIVE VICE PRESIDENT-CHIEF
		ADMINISTRATION OFFICER
02/21/2008		KIMMARIE SINATRA/SENIOR VICE PRESIDENT-SECRETARY
04/28/2005	08/15/2006	MARC HOWARD RUBINSTEIN/SECRETARY
01/21/2010		MATTHEW ODE MADDOX/PRESIDENT
09/26/2013		DANIEL BOONE WAYSON/CHAIRMAN AUDIT COMMITTEE-DIRECTOR
		KEY EMPLOYEE:
04/28/2005	11/21/2005	ANDREW SCOTT PASCAL/SENIOR VICE PRESIDENT OF
		PRODUCT MARKETING AND DEVELOPMENT
02/21/2008		KIMMARIE SINATRA/GENERAL COUNSEL
01/21/2010		MATTHEW ODE MADDOX/CHIEF FINANCIAL OFFICER
04/28/2005		UNIVERSAL ENTERTAINMENT CORPORATION/
		CONTROLLING SHAREHOLDER
		(100% OF ARUZE USA, INC.)
04/28/2005		KAZUO OKADA/CHAIRMAN OF THE BOARD-
		SHAREHOLDER-CONTROLLING SHAREHOLDER
04/28/2005		TOMOHIRO OKADA/SHAREHOLDER-CONTROLLING
		SHAREHOLDER-DIRECTOR
04/28/2005	08/17/2005	YOSHIYUKI SHOJI/EXECUTIVE OFFICER
01/26/2006	10/30/2006	TATSUO HIKIJI/EXECUTIVE OFFICER
01/26/2006	12/06/2007	TERUHIKO KOBAYASHI/EXECUTIVE OFFICER
01/26/2006	12/06/2007	MITSUO KIYOKAWA/EXECUTIVE OFFICER
11/21/2007	11/05/2008	KUNIHIKO YOGO/INTERIM GENERAL MANAGER OF FINANCE
		AND ACCOUNTING DEPARTMENT-INTERIM SENIOR GENERAL
		MANAGER OF ADMINISTRATIVE DIVISION

Added	Removed	
03/18/2010	09/30/2013	HAJIME TOKUDA/PRESIDENT
		KEY EMPLOYEE
01/26/2006	10/30/2006	TATSUO HIKIJI/SENIOR GENERAL MANAGER OF MANUFACTURING DIVISION
01/26/2006	12/06/2007	TERUHIKO KOBAYASHI/GENERAL MANAGER OF FINANCE AND ACCOUNTING DEPARTMENT
01/26/2006	12/06/2007	MITSUO KIYOKAWA/GENERAL MANAGER OF CORPORATE PLANNING OFFICE
12/20/2007	08/28/2013	YOSHIYUKI SHOJI/GAMING COMPLIANCE OFFICER
03/18/2010	09/30/2013	HAJIME TOKUDA/SENIOR GENERAL MANAGER OF THE ADMINISTRATION DIVISION
04/28/2005		ARUZE USA, INC./SHAREHOLDER
04/28/2005		KAZUO OKADA/CHAIRMAN OF THE BOARD-TREASURER-PRESIDENT-SECRETARY
04/28/2005	08/17/2005	YOSHIYUKI SHOJI/PRESIDENT-SECRETARY
01/26/2006	12/06/2007	MITSUO KIYOKAWA/PRESIDENT-SECRETARY-DIRECTOR
02/18/2010		TOMOHIRO OKADA/DIRECTOR

04/28/2005		WYNN RESORTS HOLDINGS, LLC
		(100% MEMBER/MANAGER OF WYNN LAS VEGAS, LLC)
02/21/2008		KIMMARIE SINATRA/SENIOR VICE PRESIDENT-SECRETARY
		KEY EMPLOYEE
02/21/2008		KIMMARIE SINATRA/GENERAL COUNSEL

04/28/2005		WYNN LAS VEGAS, LLC, DBA
		WYNN LAS VEGAS
04/28/2005	10/17/2005	MARC DENNIS SCHORR/PRESIDENT-CHIEF EXECUTIVE OFFICER
04/28/2005	05/01/2009	DAVID ROSS SISK/CHIEF FINANCIAL OFFICER
04/28/2005	02/15/2011	ROBERT LEWIS OSELAND, II/CHIEF OPERATING OFFICER - ENCORE
04/28/2005	08/15/2006	MARC HOWARD RUBINSTEIN/SECRETARY
09/20/2007		KEVIN JAMES TOUREK/SECRETARY-SENIOR VICE PRESIDENT-GENERAL COUNSEL
02/21/2008		KIMMARIE SINATRA/SENIOR VICE PRESIDENT-SECRETARY

Added	Removed	
07/22/2010	03/10/2015	SCOTT EDWARD PETERSON/SENIOR VICE PRESIDENT-CHIEF FINANCIAL OFFICER
10/20/2011	04/04/2013	MARILYN SPIEGEL/PRESIDENT
02/26/2013		STEVEN HENRY VOLLMER/VICE PRESIDENT INFORMATION SYSTEMS
11/20/2014		MAURICE LYNN WOODEN/PRESIDENT
		KEY EMPLOYEE
02/21/2008		KIMMARIE SINATRA/GENERAL COUNSEL
07/23/2009	07/22/2014	ALEJANDRO WALTER PARIENTE/EXECUTIVE VICE PRESIDENT OF INTERNATIONAL MARKETING
09/22/2011	08/20/2012	JAMES WILLIAM HOUGHTON/VICE PRESIDENT-CHIEF INFORMATION OFFICER

04/28/2005		APPROVAL OF RACE BOOK
04/28/2005		APPROVAL OF SPORTS POOL
04/28/2005		APPROVAL OF OFF-TRACK PARI-MUTUEL RACE WAGERING
04/28/2005		APPROVAL OF OFF-TRACK PARI-MUTUEL SPORTS WAGERING

04/28/2005		APPROVAL TO OPERATE THREE INTERNATIONAL GAMING SALONS
11/23/2005		APPROVAL TO OPERATE FOUR ADDITIONAL INTERNATIONAL GAMING SALONS
07/10/2006		APPROVAL TO OPERATE THREE ADDITIONAL INTERNATIONAL GAMING SALONS
12/12/2008		APPROVAL TO OPERATE EIGHT ADDITIONAL INTERNATIONAL GAMING SALONS

		CONDITIONED

EXHIBIT 3

PRESS RELEASE

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<< Back

Wynn Resorts CEO Steps Down

LAS VEGAS, Feb. 6, 2018 /PRNewswire/ -- Wynn Resorts released the following statements today regarding Chairman and CEO Steve Wynn:

STATEMENT FROM WYNN RESORTS:

The Board of Directors of Wynn Resorts reluctantly announced today that it accepted the resignation of Steve Wynn as CEO and Chairman of the Board of Directors. The board has appointed Matt Maddox, currently President of the Company, as its CEO, and Boone Wayson as Non-Executive Chairman of the Board of Directors, effective immediately.

"It is with a collective heavy heart, that the board of directors of Wynn Resorts today accepted the resignation of our founder, CEO and friend Steve Wynn," said non-executive director of the board Boone Wayson. "Steve Wynn is an industry giant. He is a philanthropist and a beloved leader and visionary. He played the pivotal role in transforming Las Vegas into the entertainment destination it is today. He also assembled a world-class team of executives that will continue to meet the high standards of excellence that Steve Wynn created and the Wynn brand has come to represent."

Steve Wynn created modern Las Vegas. He transformed the city into an economic powerhouse by making it a world-wide tourist destination. He designed, built and operated the most iconic resorts on the Las Vegas strip, beginning with the Mirage, then Treasure Island, the Bellagio, Wynn Las Vegas and Encore at Wynn Las Vegas. Wynn Macau, Mr. Wynn's first resort in the SAR of Macau in China, was designated by Forbes Travel Guide as the best resort in the world. Along with Wynn Palace in Cotai, the company built by Steve Wynn has been recognized as having more Five Star awards than any independent hotel company in the world.

Wynn Resorts remains as committed as ever to upholding the highest standards and being an inclusive and supportive employer. In fact, more than 40 percent of all Wynn Las Vegas management are women; the highest in the gaming industry. The company

will continue to fully focus on its operations at Wynn Macau, Wynn Palace and Wynn Las Vegas; the development and opening of the first phase of Wynn Paradise Park, currently under construction on the former Wynn golf course; as well as the construction of Wynn Boston Harbor, which will open in June 2019.

Details of Mr. Wynn's separation agreement will be disclosed when they are finalized.

STATEMENT FROM STEVE WYNN:

"In the last couple of weeks, I have found myself the focus of an avalanche of negative publicity. As I have reflected upon the environment this has created — one in which a rush to judgment takes precedence over everything else, including the facts — I have reached the conclusion I cannot continue to be effective in my current roles. Therefore, effective immediately, I have decided to step down as CEO and Chairman of the Board of Wynn Resorts, a company I founded and that I love.

"The Wynn Resorts team and I have built houses of brick. Which is to say, the institution we created — a collection of the finest designers and architects ever assembled, as well as an operating philosophy now ingrained in the minds and hearts of our entire team — will remain standing for the long term. I am extremely proud of everything we have built at this company. Most of all, I am proud of our employees.

"The succession plan laid out by the Board of Directors and which I wholeheartedly endorse now places Matt Maddox in the CEO seat. With Matt, Wynn Resorts is in good hands. He and his team are well positioned to carry on the plans and vision for the company I created.

I want to thank all of the employees who have made Wynn Resorts the most admired resort company in the world, and for the support I have received from them in recent weeks. Most importantly, I want everyone to continue to be proud of this company and the many unique ways it will forever continue to delight guests."

About Wynn Resorts

Wynn Resorts, Limited (Nasdaq: WYNN) is traded on the Nasdaq Global Select Market under the ticker symbol WYNN and is part of the S&P 500 Index. Wynn Resorts owns and operates Wynn and Encore Las Vegas (www.wynnlasvegas.com), Wynn Macau (www.wynnmacau.com) and Wynn Palace, Cotai (www.wynnpalace.com).

Wynn and Encore Las Vegas feature two luxury hotel towers with a total of 4,750 spacious hotel rooms, suites and villas, approximately 192,000 square feet of casino space, 21 dining experiences featuring signature chefs and 11 bars, two award-winning spas, approximately 290,000 square feet of meeting and convention space, approximately 103,000 square feet of retail space as well as three nightclubs, a beach club and recreation and leisure facilities. A luxury retail Strip-front expansion, Wynn Plaza, is currently under construction and is scheduled to debut the third quarter of 2018.

Wynn Macau is a luxury hotel and casino resort located in the Macau Special Administrative Region of the People's Republic of China with two luxury hotel towers with a total of 1,008 spacious rooms and suites, approximately 281,000 square feet of casino space, casual and fine dining in eight restaurants, approximately 31,000 square feet of meeting and convention space, approximately 59,000 square feet of retail

EXHIBIT 4

SEPARATION AGREEMENT

This Separation Agreement (the "**Agreement**") dated as of February 15, 2018, is executed and entered into by and between Stephen A. Wynn ("**Executive**") and Wynn Resorts, Limited, a Nevada corporation (the "**Company**"), and, solely for purposes of Section 3, Wynn Resorts Holdings, LLC, a Nevada limited liability company ("**Holdings**"). Throughout this Agreement, Executive and the Company may be referred to collectively as the "parties".

Recitals

A. Executive has been employed by the Company pursuant to the terms and conditions of an Employment Agreement with the Company dated as of October 4, 2002, as amended (the "**Employment Agreement**") and has served as a member of the Board of Directors (the "**Board**") of the Company. Executive and the Company mutually agree Executive's last day of employment by the Company and last day of service as a member of the Board was February 6, 2018 (the "**Separation Date**").

B. In order to effectuate a smooth transition of Executive's separation from the Company, Executive and the Company wish to enter into this Agreement to specify the terms of Executive's termination of service with the Company.

Agreement

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises contained below, it is agreed as follows:

1. Resignation. Executive hereby confirms that he resigned as an employee, director and officer and chairman of the Board of the Company, including its subsidiaries and affiliates (and each of their respective boards of directors or other governing bodies) effective as of 5:00 p.m. Las Vegas Time on the Separation Date. Executive further confirms that Executive will not be entitled to any severance payment or other compensation from the Company in connection with his resignation (including, without limitation, the Separation Payment (as defined in the Employment Agreement) or any multiple thereof). Since the Separation Date, Executive has had and will continue to have no further employment duties or responsibilities to the Company and no further authority to act on its behalf. Effective as of the Separation Date, the Employment Agreement shall be considered terminated and of no further force or effect.

2. Transition of Certain Benefits. The Company and Executive agree that in order to effectuate a smooth transition of Executive's separation from the Company, the Company agrees to the following:

(a) Villa Lease. During the period commencing on the Separation Date and ending on June 1, 2018 or such earlier date on which Executive elects to terminate the Lease (as defined below) by providing not less than three (3) business days advance written notice to the Company (the earlier of such dates, the "**Lease End Date**"), Executive shall have the right to continue to lease the property at Wynn Las Vegas currently used by Executive for his personal residence (the "**Lease**"), such Lease to be on the same terms and conditions as in effect with

respect thereto immediately prior to the Separation Date. Upon the Lease End Date, the lease agreement between Executive and the Company evidencing the Lease shall terminate, other than with respect to any terms thereof which by the terms of such agreement survive.

(b) Healthcare Continuation. During the period commencing on the Separation Date and ending on December 31, 2018, the Company shall provide Executive with health insurance coverage for Executive and Executive's dependents pursuant to the executive health insurance plan(s) and arrangements(s) under which Executive was eligible to participate immediately prior to the Separation Date on the same terms and conditions in effect from time to time for the Company's Chief Executive Officer and eligible senior executive officers.

(c) Administrative Support. To allow for a smooth transition of Executive's duties and responsibilities, during the period commencing on the Separation Date and ending on May 31, 2018, Executive shall continue to have the right to the personal use of an administrative assistant and administrative support to be provided by the Company at its sole expense.

3. Termination of Surname Agreement and Assignment of Trademarks. In the event that the Company ceases to use the WYNN name and trademark, it will provide written notice thereof to Executive (the "**Termination Notice**"), and Holdings shall assign all of its right, title, and interest in the WYNN Mark to Executive in accordance with the terms of the Surname Rights Agreement dated as of August 6, 2004, by and between Executive and Holdings. Upon Executive's receipt of the Termination Notice, the Surname Rights Agreement, dated as of August 6, 2004, by and between Executive and Holdings shall automatically and without further action terminate and cease to be of any further force or effect in accordance with the terms and conditions thereof.

4. Accrued Obligations. The parties acknowledge and agree that the Company has paid or shall, on or as promptly as practicable following the Separation Date, pay Executive all wages and salary earned, including any accrued, but unused or unpaid vacation pay, business expenses and other benefits, if any, to which Executive was entitled during employment, through the Separation Date. Executive shall provide the Company with final expense report(s) and the Company shall reimburse Executive for such expenses in accordance with the applicable Company policy in effect with respect to Executive as of the Separation Date. Notwithstanding the foregoing, Executive acknowledges and agrees that he shall not be entitled to any annual bonus from the Company for the fiscal year 2018 or any severance payment or other compensation from the Company in connection with his resignation (including, without limitation, the Separation Payment (as defined in the Employment Agreement) or any multiple thereof).

5. Section 409A. The payments made under this Agreement are intended to comply with, or be exempt from, section 409A of the Code, and applicable guidance issued thereunder ("**Section 409A**"). Amounts provided under this Agreement will be interpreted and construed consistent with such intent. To the extent that any reimbursements provided to Executive under this Agreement are deemed to constitute compensation to which Treasury Regulation Section 1.409A-3(i)(1)(iv) would apply, such reimbursements shall be made or provided in accordance with the requirements of Section 409A of the Code, including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during Executive's lifetime (or during a

shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred, and (iv) the right to reimbursement is not subject to liquidation or exchange for another benefit.

6. No Assignment. This Agreement shall not be assignable by Executive or by the Company without Executive's consent.

7. Cooperation.

(a) Executive agrees to provide reasonable cooperation and assistance to the Company in connection with the defense, prosecution or investigation relating to any private litigation or arbitration, and to the Board of Directors of the Company (or any committee thereof) in connection with any investigation by the Company, in each case involving the Company or its subsidiaries or affiliates, including testifying in any proceeding, to the extent such litigation, arbitration or investigation relates to services performed by Executive, pertinent knowledge possessed by Executive, or any act or omission by Executive, and with respect thereto, Executive shall have the right, at his own expense, to retain and have present independent legal counsel that represents Executive only. In requesting such services, the Company will consider other commitments that Executive may have at the time of the request, and Executive's availability and obligations under this Section 7 shall in all instances reasonably be subject to Executive's other commitments. The Company agrees to reimburse Executive for any reasonable, out-of-pocket expenses incurred in connection with Executive's performance of obligations pursuant to this Section for which Executive has obtained prior approval from the Company, and in the event that the services performed by Executive at the request of the Company pursuant to this Section require a material and ongoing time commitment by Executive, the parties will in good faith negotiate the amount of compensation to be paid by the Company to Executive with respect to such services.

(b) The parties agree that the Company and Executive shall work together in good faith to determine a mutually acceptable approach to handling end of employment related matters, including but not limited to, the method, content and timing of the announcement and other communications to Company clients, employees, franchisees, lenders, business partners and other stakeholders, or other third parties, through any form of media, regarding Executive's departure.

8. Non-Compete Covenant. Executive hereby covenants and agrees that, during the period commencing on the Separation Date and ending on the second anniversary of the Separation Date, Executive shall not directly or indirectly, either as a principal, agent, employee, employer, consultant, partner, member or manager of a limited liability company, shareholder of a closely held corporation, or shareholder in excess of two percent (2%) of a publicly traded corporation (other than the Company), corporate officer or director, or in any other individual or representative capacity, engage or otherwise participate in any manner or fashion in any gaming business that is in competition in any manner whatsoever with the principal business activity of the Company or its subsidiaries, in or about any market in which the Company or its subsidiaries have gaming operations or the Commonwealth of Massachusetts. Executive hereby further

covenants and agrees that the restrictive covenant contained in this Section 8 is reasonable as to duration, terms and geographical area and that the same protects the legitimate interests of the Company, imposes no undue hardship on Executive, and is not injurious to the public.

9. Registration Rights. The Company and Executive shall enter into a customary registration rights agreement providing Executive with six demand registration rights, six piggyback registration rights and the right to require the Company to file and maintain the effectiveness of a shelf registration statement with respect to the shares of the Company owned by Executive or which Executive has a right to acquire. The registration rights agreement will include, among other things, customary blackout period provisions during which registrations of shares, and sales pursuant to registration statements, shall be suspended. The registration rights agreement will provide that the Company will use reasonable best efforts to register all such shares on a shelf registration statement on Form S-3 (or, if the Company is not eligible to use Form S-3, Form S-1) as soon as reasonably practicable after the date of the registration rights agreement. The registration rights agreement also will provide that Executive may not sell more than one-third of the shares of common stock of the Company he holds as of the date of the registration rights agreement pursuant to a registration statement in any quarter after the date of such agreement, and that the Company may select the underwriter for any underwritten offering pursuant to such registration statement. Executive shall reimburse the Company for the reasonable expenses incurred by the Company and directly attributable to the registrations of shares executed pursuant to the registration rights agreement.

10. Truthful Testimony; Notice of Request for Testimony. Nothing in this Agreement is intended to or shall preclude either party from providing testimony that such party reasonably and in good faith believes to be truthful in response to a valid subpoena, court order, regulatory request or other judicial, administrative or legal process or otherwise as required by law. Executive shall notify the Company in writing as promptly as practicable after receiving any such request of the anticipated testimony and at least ten (10) days prior to providing such testimony (or, if such notice is not possible under the circumstances, with as much prior notice as is possible) to afford the Company a reasonable opportunity to challenge the subpoena, court order or similar legal process. Moreover, nothing in this Agreement shall be construed or applied so as to limit any person from providing candid statements that such party reasonably and in good faith believes to be truthful to any governmental or regulatory body or any self-regulatory organization.

11. Counterparts. This Agreement may be executed in counterparts, which taken together form one legal instrument. Multiple signature pages and signatures delivered via scanned-in PDF copy or facsimile will all constitute originals and together will constitute one and the same instrument.

12. Binding Agreement. This Agreement shall be binding upon, and inure to the benefit of, each party and its and his heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefit of the Company.

13. Severability. The provisions of this Agreement are severable, and if any part of it is found to be unlawful or unenforceable, the other provisions of this Agreement shall remain fully valid and enforceable to the maximum extent consistent with applicable law.

14. Entire Agreement/Survival; Modifications. Executive acknowledges that no promises or representations other than those set forth in this Agreement have been made to Executive to induce Executive to sign this Agreement, and that Executive only has relied on promises expressly stated herein. This Agreement sets forth the entire understanding between Executive and the Company and supersedes any prior agreements or understandings, express or implied, pertaining to the terms of Executive's employment with the Company and the termination of the employment relationship, including the Employment Agreement. For the avoidance of doubt, the parties acknowledge and agree that except as expressly provided herein, all agreements between Executive and the Company shall survive and remain in full force and effect in accordance with their terms. The provisions of this Agreement shall survive the Separation Date and the termination of Executive's employment. No amendments or modifications to this Agreement shall be binding unless made in a writing specifically referencing this Agreement and signed by Executive and the Company.

15. Notices. Any notice to be given pursuant to this Agreement by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid, with return receipt requested, or facsimile. Notice by mail shall be sent concurrently with any facsimile notice. Notices shall be addressed to the parties at the address specified below, but each party may change its address by written notice in accordance with this Section. Notices delivered personally shall be deemed communicated as of actual receipt; facsimile notices (with a concurrent mailing) shall be deemed communicated three (3) days after mailing.

To Executive: at Executive's most recent address on the books and records of the Company.

To the Company:

Wynn Resorts, Limited
3131 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Attention: Kim Sinatra – Executive Vice President and General Counsel

16. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Nevada, without regard to its conflict of laws provisions. The language of this Agreement shall not be construed for or against any particular party. The headings used herein are for reference only and shall not affect the construction of this Agreement.

17. Waiver. The failure by either party to insist upon strict compliance with any term or provision of this Agreement shall not operate or be construed as a waiver of such term or provision. The waiver by either party of a breach of any term or provision of this Agreement must be in writing signed by such party in order to be binding and, further, shall not operate or be construed as a waiver of a subsequent breach of the same provision by any party or of the breach of any other term or provision of this Agreement.

[Remainder of page intentionally left blank.]

The parties have executed this Agreement as of the dates indicated below.

Dated: February 15, 2018

WYNN RESORTS, LIMITED, the "Company"

By: _____
Name: Matthew Maddox
Title: Chief Executive Officer

Dated: February 15, 2018

Solely for purposes of Section 3 of the Agreement, WYNN RESORTS HOLDINGS, LLC, "Holdings"

By: WYNN RESORTS, LIMITED,
Its: Sole Member

By: _____
Name: Matthew Maddox
Title: Chief Executive Officer

[Signature Page to Separation Agreement]

Dated: February 15, 2018

Stephen A. Wynn, "Executive"

X

[Signature Page to Separation Agreement]

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EXHIBIT 5

PRESS RELEASE

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<< Back

Wynn Resorts Announces Issuance and Sale of 5.3 Million Shares of Common Stock, Stephen A. Wynn's Sale of 8.0 Million Shares of Common Stock, and Amendment of 2023 Indenture

LAS VEGAS--(BUSINESS WIRE)--Mar. 22, 2018-- Wynn Resorts, Limited (NASDAQ: WYNN) (the "Company") announced today that it agreed to sell 5,300,000 newly issued shares of Company common stock (the "Common Stock") at a price of $175 per share to Galaxy Entertainment Group in a public offering registered under the Securities Act of 1933, as amended (the "1933 Act").

The Company intends to use the net proceeds from that offering to repay amounts to be borrowed under the 364-day term loan facility contemplated by the commitment letters that the Company entered into on March 9, 2018, with an affiliate of Deutsche Bank Securities in an aggregate principal amount of up to $800 million. Deutsche Bank Securities is acting as sole book-running manager for the offering of Common Stock by the Company.

On March 21, 2018, the Wynn Family Limited Partnership ("WFLP" and together with Stephen A. Wynn, the "Selling Stockholder"), an entity affiliated with Stephen A. Wynn ("Mr. Wynn"), sold an aggregate of 4,104,999 shares of Common Stock at a price of $180 per share in open market transactions pursuant to Rule 144 under the 1933 Act.

Additionally, following the Rule 144 open market transactions, on March 22, 2018, the Selling Stockholder entered into agreements to sell approximately 8.0 million shares of Common Stock in privately negotiated transactions, representing all of his remaining holdings of the Company's Common Stock.

On March 20, 2018, the Company announced that its indirect wholly owned subsidiaries, Wynn Las Vegas, LLC and Wynn Las Vegas Capital Corp. (the "WLV Issuers"), had received the requisite consents to approve an amendment to the indenture (the "2023 Indenture") governing the WLV Issuers' 4.25% Senior Notes due 2023. The amendment conforms the definition of "change of control" relating to ownership of equity interests in the Company in the 2023 Indenture to the terms of the indentures governing the WLV Issuers' other outstanding notes.

The Common Stock being sold by the Company will be issued pursuant to an effective registration statement filed with the SEC on November 8, 2016. Copies of the prospectus supplement, when available, may be obtained by visiting EDGAR on the SEC's website at http://www.sec.gov.

This press release does not and shall not constitute an offer to sell or a solicitation of an offer to buy any Common Stock, nor shall there be any sale of Common Stock in any state or jurisdiction in which such an offer, sale or solicitation would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

Any offer, if made at all, will be made only by means of a prospectus supplement and an accompanying prospectus, or pursuant to an exemption for registration.

Forward-Looking Statements

This release contains forward-looking statements, including those related to the offering of the Common Stock by Wynn Resorts, Limited and whether or not Wynn Resorts, Limited will consummate the offering. Forward-looking information involves important risks and uncertainties that could significantly affect anticipated results in the future and, accordingly, such results may differ from those expressed in any forward-looking statements. These risks and uncertainties include, but are not limited to, competition in the casino/hotel and resorts industries, the controversy related to Stephen A. Wynn and his separation from Wynn Resorts, Limited, dependence on key employees, levels of travel, leisure and casino spending, general domestic or international economic conditions, and changes in gaming laws or regulations. Any actions Mr. Wynn might undertake may be made at any time and from time to time without prior notice and he has stated that will be dependent upon Mr. Wynn's review of numerous factors, including, but not limited to: an ongoing evaluation of the Company's business, financial condition, operations and prospects; price levels of the Common Stock; general market, industry and economic conditions; regulatory considerations; the relative attractiveness of alternative business and investment opportunities; and other future developments. Additional information concerning potential factors that could affect Wynn Resorts, Limited's financial results is included in Wynn Resorts, Limited's Annual Report on Form 10-K for the year ended December 31, 2017 and Wynn Resorts, Limited's other periodic reports filed with the Securities and Exchange Commission. Wynn Resorts, Limited is under no obligation to (and expressly disclaims any such obligation to) update or revise its forward-looking statements as a result of new information, future events or otherwise. Wynn Resorts, Limited is not under any obligation to (and expressly disclaim any such obligation to) update their forward-looking statements as a result of new information, future events or otherwise, except as required by law.

View source version on businesswire.com: https://www.businesswire.com/news/home/20180322006368/en/

Source: Wynn Resorts

Wynn Resorts, Limited
Craig Billings, 702-770-7000
Chief Financial Officer & Treasurer
investorrelations@wynnresorts.com

EXHIBIT 6

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. MASSACHUSETTS GAMING COMMISSION

In the Matter of:

Qualifier status of Stephen A. Wynn

DECISION AND ORDER

In or about November 2012, The Massachusetts Gaming Commission (hereinafter "the Commission") designated Stephen A. Wynn (hereinafter "Mr. Wynn") as a qualifier as part of Wynn MA, LLC's initial RFA-1 application for a Category 1 gaming license. At that time, Mr. Wynn was an officer and director of Wynn Resorts, Ltd. (the holding company for Wynn MA, LLC) as well as a major shareholder in the company. On March 27, 2018, counsel for Mr. Wynn notified the Commission of recent changes in circumstances, which raised the question of whether Mr. Wynn continues to be a qualifier under the statute. On April 27, 2018, the Commission convened a hearing to determine whether Mr. Wynn should continue to be designated a qualifier. Having conducted an adjudicatory hearing on April 27, 2018 pursuant to G.L. c.30A, the Commission now concludes that based on the present facts and circumstances Mr. Wynn continues to be a qualifier under the governing laws unless and until the upcoming Wynn shareholders meeting currently scheduled for May 16, 2018 has concluded. At that time, absent any additional change in circumstance, Mr. Wynn will no longer be a qualifier.

I. Background

In enacting *An Act Establishing Expanded Gaming in the Commonwealth*, St. 2011, c. 194, the Legislature and then Governor Patrick made clear that "ensuring public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme is the paramount policy objective of [the gaming laws]." G.L. c.23K, §1(1). An important component of that regulatory scheme is the designation and background check process relative to qualifiers.

G.L. c. 23K, §§4(11), 13(a), and 14 as well as 205 CMR 116.02 controls the manner in which the Commission determines whether individuals or entities are "qualified". To be 'qualified' refers to "the process of licensure set forth by the commission to determine that all persons who have a professional interest in a gaming license, [] or the business of a gaming licensee [], meet the same standards of suitability to operate or conduct business with a gaming establishment." G.L. c.23K, §2. Once designated, a qualifier is required to participate in the Commission's background investigation process and ultimately be issued a positive determination of suitability in order to continue any involvement with the gaming licensee. See 205 CMR 115.00.

The narrow issue presented in the matter now before the Commission is limited to the question of whether Mr. Wynn should remain designated a qualifier under the present facts and

circumstances.[1] Accordingly, the review conducted by the Commission is limited to that of the individual qualifier provisions of the law. Further, where the Commission is reviewing the designation of a qualifier in a post RFA-2[2] situation, as opposed to the initial review during the RFA-1 process, the Commission looks only to those provisions of the law that pertain to qualifiers to a gaming *licensee* or to the *gaming establishment* versus to an *applicant* for a gaming license. In a post RFA-2 status, there are 7 categories the Commission considers in determining whether an individual is a qualifier. They are as set out in the following chart:

#	Individual	Cite
1	A person who has a business association of any kind with a gaming licensee.	c. 23K, §4(11); 205 CMR 116.02(2)
2	Anyone with a financial interest in a gaming establishment.	c. 23K, §14(a)
3	Anyone with a financial interest in the business of the gaming licensee.	c. 23K, §14(a)
4	Anyone who is a close associate of a gaming licensee.	c. 23K, §14(a)
5	Any person involved in the financing of a gaming establishment.	c. 23K, §14(e)
6	An individual that can exercise control or provide direction to a gaming licensee.	c. 23K, §14(h); 205 CMR 116.02(1)(e)
7	An individual that can exercise control or provide direction to a holding, intermediary or subsidiary company of a gaming licensee.	c. 23K, §14(h); 205 CMR 116.02(1)(e)

Accordingly, the Commission must determine whether Mr. Wynn presently falls into any of these categories. If Mr. Wynn falls into categories identified in #2 through #7, the statute mandates that he shall be designated as a qualifier by the Commission. However, if he falls into category #1 as having a 'business association' with Wynn MA, LLC, the governing law provides that the Commission may, in its discretion, designate him as a qualifier. Generally, the Commission designates a qualifier under category #1 only if the association is of the nature and quality such that one's designation as a qualifier will in some way advance the above referenced paramount policy objectives of the gaming law.

II. Exhibits and witnesses

The following exhibits were taken into evidence at the proceeding without objection:

EXHIBIT 1: Notice of hearing including Addendum A dated April 19, 2018 (3 pages)
EXHIBIT 2: Cover letter and Brief of Wynn MA, LLC and Wynn Resorts, Limited in Support of a Determination by the Massachusetts Gaming Commission that Stephen A. Wynn No Longer Be Deemed a Qualifier of Wynn MA or Wynn Resorts dated April 24, 2018 (including Exhibits A through F)
EXHIBIT 3: Memorandum of Stephen A. Wynn Regarding Qualification Status dated April 24, 2018 (including Exhibits A through M)

[1] This matter is unrelated to Mr. Wynn's suitability or that of any other qualifiers.
[2] The application for a gaming license consisted of two parts. See 205 CMR 110.01. The first, called the RFA-1 application, essentially focused on the qualifications and suitability of the applicant and its qualifiers to hold a gaming license. See G.L. c. 23K, §12(a) and 205 CMR 115.00 through 117.00. The RFA-2 application focused on the site, design, operation and other attributes of the gaming facility itself. See generally 205 CMR 118.00 and 119.00. "The commission shall not entertain [an RFA-2] application for any applicant unless and until the commission has issued a positive suitability determination on that applicant." 205 CMR 110.01; see also 205 CMR 115.05(4) and 118.01(1) (a).

EXHIBIT 4: #wearewynn PowerPoint (6 pages)
EXHIBIT 5: Affidavit of Jacqui Krum (6 pages)
EXHIBIT 6: Qualifier Status of Stephen A. Wynn PowerPoint (7 pages)

Further, Matt Maddox, Chief Executive Officer and President of Wynn Resorts, Ltd., Kim Sinatra, Executive Vice President, General Counsel and Secretary of Wynn Resorts Ltd., and Jacqui Krum, Senior Vice President and General Counsel of Wynn Resorts Development, LLC, an affiliate of Wynn MA, LLC, all representing Wynn Resorts, were duly sworn and testified at the hearing.[3] The Commission finds that each witness testified credibly. All exhibits were considered in conjunction with the witness testimony, and certain publicly available information on file with the Securities and Exchange Commission as cited throughout the discussion and which was largely included as exhibits to the briefs marked as Exhibits 2 and 3, to collectively comprise substantial evidence in support of the Commission's final decision as described below.

III. Findings

The Commission hereby finds the following facts as they relate to the question at issue in this matter. On February 6, 2018 Mr. Wynn resigned as chair of the board of directors and as chief executive officer of Wynn Resorts, Limited. See Exhibit 2 (Form 8-K filed by Wynn Resorts, Limited on February 7, 2018).[4] On that date, the Board of Wynn Resorts, Limited, (hereinafter, "Board") appointed Matt Maddox as chief executive officer of the company in addition to serving as president of the company, which he had done since November 2013. See id. Also on that date, the Board appointed D. Boone Wayson to serve as non-executive chair. See id.

On February 15, 2018 Mr. Wynn, Wynn Resorts, Ltd., and Wynn Resorts Holdings, LLC executed a separation agreement outlining the terms of Mr. Wynn's separation from the company. See Exhibit 3 (Form 8-K filed by Wynn Resorts, Limited on February 16, 2018 (separation agreement attached)). The filing described the separation agreement as follows:

> The Separation Agreement terminates Mr. Wynn's previous employment agreement with the Company and confirms that Mr. Wynn is not entitled to any severance payment or other compensation from the Company under the employment agreement.
>
> Under the Separation Agreement, Mr. Wynn agrees not to compete against the Company for a period of two years and to provide reasonable cooperation and assistance to the Company in connection with any private litigation or arbitration and to the Board of Directors of the Company or any committee of the Board in connection with any investigation by the Company related to his service with the Company. In order to effectuate a smooth transition of Mr. Wynn's separation from the Company, and in consideration of the foregoing and other agreements described therein, the Separation Agreement provides that (i)

[3] Statements and arguments made by legal counsel were not considered as evidence.
[4] This is also confirmed in paragraph 1 of the separation agreement which provides, in pertinent part, that Mr. Wynn "hereby confirms that he resigned as an employee, director and officer and chairman of the Board of the Company, including its subsidiaries and affiliates (and each of their respective boards of directors or other governing bodies) . . . ."

> Mr. Wynn's lease of his personal residence at Wynn Las Vegas will terminate no later than June 1, 2018 and until such date Mr. Wynn shall continue to pay rent at the fair market value previously established by the Company based on an independent third-party expert opinion (as disclosed in the Company's 2017 proxy statement), unless Mr. Wynn elects to terminate the lease before such date, (ii) Mr. Wynn's current healthcare coverage will terminate on December 31, 2018, and (iii) administrative support for Mr. Wynn will terminate on May 31, 2018. Additionally, in order to conduct any sales of Company shares in an orderly fashion in the event that Mr. Wynn is permitted to and elects to sell any shares that he owns, the Company has agreed to enter into a registration rights agreement with Mr. Wynn, with Mr. Wynn to reimburse the Company for its reasonable expenses. Pursuant to such registration rights agreement, Mr. Wynn may not sell during any quarter after the date of such agreement more than one-third of the Company shares he holds as of the date of such agreement.

See id. Mr. Wynn has since moved out of the residence at Wynn Las Vegas. In addition, the separation agreement addresses the status of the surname agreement and assignment of trademarks between Mr. Wynn and Wynn Resorts Holdings. The surname agreement, which was entered into on August 6, 2004, was for a perpetual term for consideration already received. See Exhibits 2 & 3 (See also Form 8-K filed by Wynn Resorts, Limited on August 9, 2004). The separation agreement provides that in the event Wynn Resorts no longer wishes to make use of the name or trademarks it may notify Mr. Wynn and the agreement shall terminate. See id.

At the time of the resignations, Mr. Wynn owned approximately 12 percent of the stock in the company through the Wynn Family Limited Partnership (hereinafter, "WFLP"). The Schedule 14A Proxy Statement filed by Wynn Resorts, Limited on April 18, 2018 identifies the beneficial ownership of shares of the company by officers, directors, and shareholders owning in excess of 5% of the outstanding shares. It lists Mr. Wynn as owning 0 shares and explains that this computation is:

> based upon Schedules 13D/A, dated March 21 and March 22, 2018, filed by Mr. Wynn and Wynn Family Limited Partnership ("WFLP" and together with Mr. Wynn, the "Selling Shareholder"). The Selling Shareholder reported that on March 21, 2018, it sold an aggregate of 4,104,999 shares of Common Stock at a price of $180.00 per share in open market transactions pursuant to Rule 144 under the Securities Act of 1933, as amended, and that on March 22, 2018, the Selling Shareholder entered into stock purchase agreements pursuant to which it agreed to sell 3,026,708 shares of Common Stock at a price of $175.00 per share to T. Rowe Price Associates, Inc. and 5,000,000 shares of Common Stock at a price of $175.00 per share to certain funds managed or advised by Capital Research and Management Company. Upon completion of these sales, the Selling Shareholder had no remaining holdings of Common Stock.

Wynn Resorts, Ltd.'s next annual shareholders' meeting is currently scheduled for May 16, 2018. As a result of the rules governing voting rights, while Mr. Wynn no longer owns stock in

Wynn Resorts, Ltd., he is entitled to vote at that meeting based on his stock ownership in March 2018.

Based on the foregoing, the Commission makes the following findings. Mr. Wynn is no longer an officer or director of Wynn Resorts, Ltd., and accordingly, he can no longer exercise control or provide direction to Wynn MA, LLC or Wynn Resorts, Ltd.[5] in either of those capacities as a matter of law. Further, it is clear that Mr. Wynn no longer owns stock in Wynn Resorts, Ltd., and, at the conclusion of the next annual stockholders meeting, he can no longer exercise control or provide direction in that capacity either. Mr. Wynn's resignation as an officer and director and divestiture of stock holdings further demonstrates that he no longer holds a financial interest in the gaming establishment under construction in Everett, Massachusetts or in Wynn MA, LLC, the gaming licensee which holds the license issued by the Commission. These latter factors eliminate Mr. Wynn as a qualifier under categories 2 and 3.

Further, the evidence demonstrates that Mr. Wynn is not involved in the financing of the gaming establishment under construction. Whereas he is no longer formally affiliated with Wynn Resorts, Ltd. or Wynn MA, LLC, no longer holds any stock in the company, and none of the outstanding agreements with the company to which he is a party related to the financing of the gaming establishment, no grounds exist to designate him a qualifier under category 5.

Mr. Wynn's status under categories #4 and #7 are not as clear cut at this time. Under category #4, the Commission must determine if Mr. Wynn is a "close associate" of a gaming licensee. The term "close associate" is defined, in pertinent part, as "a person who holds a relevant financial interest in, or is entitled to exercise power in, the business of [a] licensee and, by virtue of that interest or power, is able to exercise a significant[6] influence over the management or operation of a gaming establishment or business licensed under [G.L. c.23K]." As previously noted, the facts demonstrate that Mr. Wynn no longer holds any financial interest in Wynn MA, LLC. Further, by reason of his separation from the company, Mr. Wynn is no longer entitled to exercise power in the business of Wynn MA, LLC. However, as pointed out by both CEO Maddox and counsel for Mr. Wynn, by nature of the laws governing proxy votes, Mr. Wynn can exercise his votes at the upcoming annual shareholders meeting. There is no legal prohibition that bars Mr. Wynn from changing his mind and voting at that meeting. Accordingly, until the conclusion of that meeting, Mr. Wynn is still a qualifier under category #4. The same holds true of Mr. Wynn's status under category #7 where he could "exercise control or provide direction to a holding [. . .] company of a gaming licensee" until the conclusion of that meeting. G.L. c. 23K, §14(h); 205 CMR 116.02(1)(e). The scope of the control or direction that Mr. Wynn maintains by virtue of his ability to exercise his right to vote is limited though, and does not offer him any sufficient ability to similarly influence the affairs of the gaming licensee, Wynn MA, LLC. Accordingly, this rationale does not render him a qualifier under category #6. Id.

While the above makes clear that Mr. Wynn remains a qualifier until the conclusion of the next Wynn shareholder's meeting, there remains the issue of whether, Mr. Wynn would continue to

[5] Wynn Resorts, Ltd. is the holding company of Wynn MA, LLC in accordance with the definition of 'holding company' provided by G.L. c.23K, §2.

[6] Where, as here, the statute does not define the term "significant," the Commission is guided by G.L. c.4, §6 which directs that "[w]ords and phrases shall be construed according to the common and approved usage of the language . . . ." The Oxford Dictionary (2018) defines 'significant' to mean "[s]ufficiently great or important to be worthy of attention; noteworthy."

be a qualifier under the discretionary category #1 for individuals having a "business association of any kind with a gaming licensee". G.L. c. 23K §4(11), 205 CMR 116.02(2). That is, does Mr. Wynn continue to have a business association with Wynn MA, LLC such that he should be designated a qualifier despite the steps that have been taken to separate Mr. Wynn's interests from those of the company. Any such business association would have to afford him the ability to exercise control or provide direction to Wynn MA, LLC or Wynn Resorts, Ltd.

The term 'business association' is not itself defined.[7] As such, we apply the principle of statutory interpretation "noscitur a sociis." This term essentially means that words are known by the company they keep; that is, when attempting to define a previously undefined term one should look to words related to the term for guidance. In this case, the term 'business association' must be viewed in the company of its companion qualifier provisions set forth in the gaming laws. Most of those companions apply to specific individuals. Here, it is clear that the law intended to afford the Commission discretion to include other individuals who may not meet the more specific requirements in the review process. To that end, in applying the requirement, we must consider whether there exists any relationship of a nature and quality that one's designation as a qualifier will in some way advance the paramount policy objectives of the gaming law, namely to preserve the public confidence in the integrity of the licensing process. As previously noted, though, not every association, or relationship, however small, need result in one's designation as a qualifier. To make this determination, we must review the present ties between Mr. Wynn and the company, most of which are addressed in Exhibit 5.

It is clear that there have been some communications between Mr. Wynn and some of the individual officers and directors since his resignation. It is certainly not unusual that there would be some sort of minimal communication during a transition of the magnitude that was undertaken in this instance. Taken in that context, those types of communications are not of great concern. The most voluminous communications, however, appear to have occurred with Mr. Maddox and Ms. Sinatra. Depending on the nature of those communications, there could be concern that Mr. Wynn is still actively involved in the operation of the company. The evidence demonstrates though that these communications, when viewed in context, were largely if not entirely related to Mr. Wynn's orderly separation from the company; whether for purposes of negotiating the terms of the separation agreement, use of the company plane, discussing fair value for the disposition of his ownership stake, ownership of the art collection, or the settlement of litigation. Each appears to have been appropriate under the circumstances. In fact, it would have been nearly impossible to achieve any of these results without such communication. Though Mr. Wynn may have inquired of Mr. Maddox as to 'how things are going,' it seems clear that Mr. Maddox is well aware of the pitfalls of engaging in such discussions and steered clear of offering any type of substantive responses to the inquiries. Ultimately, to allay any lingering concerns that Mr. Wynn may be directing the show from behind the curtain, Mr. Maddox stressed that this was not the case.[8]

In an effort to satisfy the Commission that Mr. Wynn would not be involved in the operation of the company moving forward, Wynn Resorts indicated that they have implemented a policy of

[7] The Commission declines to adopt the definition of the term recommended in Mr. Wynn's brief.

[8] Hearing transcript at p. 32 ("And, as CEO, I can tell you, there is no association with Steve Wynn. There is no business association with Steve Wynn. I'm my own man. And Kim Sinatra is her own woman. We are moving this company forward. We're excited to move it forward. We're excited to think about the future.")

sorts "asking" that all officers and directors notify Jacqui Krum, of any direct or indirect communications with Mr. Wynn within 48 hours. The companies have agreed to mandate that reporting and to forward any such notice of both the fact and nature of the communication to the Commission. The Commission will expect those notifications to be timely provided. While it would be impossible to expect that there be no communications between Mr. Wynn and any officers or directors, it is reasonable to expect that any such communications be minimal and unrelated to the operation of the company or its future endeavors.

The separation agreement addresses a number of ongoing connections between the company and Mr. Wynn though none of them rise to the level of necessitating his designation as a qualifier. Under the terms of the agreement, Mr. Wynn was permitted to remain in his villa at the Wynn Las Vegas until June 1, 2018. The Commission was advised that he has already vacated the premises. Further, the agreement afforded a healthcare continuation and administrative support which are similarly not of concern here. Finally, the agreement provides that Mr. Wynn is entitled to any accrued obligations he is owed by the company. According to the testimony at the hearing, and Exhibit 5, the only outstanding obligation relates to his 'city ledger account' which amounts to over $200,000. The Commission finds as follows for the discretionary category #1 provided that the city ledger account obligation shall be satisfied prior to this decision becoming effective.

The only other existing contractual arrangement worthy of note is the previously described surname rights agreement. Though that agreement is for a perpetual term which of course results in some ongoing relationship between Mr. Wynn and the company, there are no royalty or other payments associated with the arrangement. As such, this arrangement is not the business association of the nature and quality that supports Mr. Wynn's designation as a qualifier.

It is also notable that on March 8, 2018 the relevant parties settled part of the litigation involving the company, Mr. Wynn, Universal Entertainment Corp., and others, see Form 8-K filed by Wynn Resorts, Limited on March 9, 2018, and that the company, Mr. Wynn, Ms. Elaine Wynn, and others settled the remainder of the case on April 16, 2018. See Schedule 14A filed by Wynn Resorts, Limited on April 18, 2018. In the context of the present inquiry, the result is that Mr. Wynn is unable to exert any type of residual influence over the company via the litigation.

Based on the evidence presented, Wynn Resorts has worked quickly to separate itself from Mr. Wynn including emblematically changing the name of the Everett property to Encore Boston Harbor. The Commission rejects the characterization by Mr. Wynn's legal counsel that he is nothing more than an ordinary private citizen of the State of Nevada vis-à-vis Wynn Resorts. There is, however, substantial evidence that the relationship between Mr. Wynn and Wynn Resorts has been terminated in a meaningful way such that Mr. Wynn no longer falls with the definition of qualifier at the conclusion of the upcoming annual shareholders meeting.

IV. Conclusion and Order

For the foregoing reasons, after careful consideration of the evidence presented at the hearing of this matter, the Commission finds that effective upon (1) the conclusion of the next scheduled Wynn Resorts, Ltd. annual shareholders meeting, and (2) the discharge of the city ledger account, Stephen A. Wynn is no longer a qualifier to Wynn MA, LLC or Wynn Resorts, Ltd. As grounds therefore the Commission finds that, as discussed, Mr. Wynn does not meet any of the

criteria to be designated an individual qualifier in accordance with G.L. c.23K, §§4(11) or 14. Provided, however, this decision shall not take effect until (1) written verification is received from Wynn Resorts that Mr. Wynn did not exercise his voting rights at the 2018 annual meeting of shareholders for Wynn Resorts, Ltd., and (2) written verification is received from Wynn Resorts that Mr. Wynn's outstanding balance on his city ledger account has been resolved. Further, the Commission expects Attorney Krum to forward any reports of contact by Steve Wynn with current officers or directors of Wynn Resorts or Wynn MA, LLC to the Investigations and Enforcement Bureau of the Commission as previously described.

This decision is based on the facts as determined at the hearing. Should any of the information provided to the Commission change in any material fashion the Wynn MA, LLC and/or Wynn Resorts, Ltd. is expected to promptly report such change so the Commission may consider its impact on this decision, if any.

SO ORDERED.

MASSACHUSETTS GAMING COMMISSION

Stephen P. Crosby, Chair

Gayle Cameron, Commissioner

Bruce Stebbins, Commissioner

Enrique Zuniga, Commissioner

Eileen O'Brien, Commissioner

DATED: May 7, 2018

EXHIBIT 7

NEVADA GAMING CONTROL BOARD
1919 College Parkway, P.O. Box 8003, Carson City, Nevada 89702
555 E. Washington Avenue, Suite 2600, Las Vegas, Nevada 89101
3650 S. Pointe Circle, Suite 203, P.O. Box 31109, Laughlin, Nevada 89028
557 W. Silver Street, Suite 207, Elko, Nevada 89801
9790 Gateway Drive, Suite 100, Reno, Nevada 89521
750 Pilot Road, Suite I, Las Vegas, Nevada 89119

BRIAN SANDOVAL
Governor

BECKY HARRIS, *Chairwoman*
SHAWN R. REID, *Member*
TERRY JOHNSON, *Member*

Notice of Investigative Hearing

June 29, 2018

Mr. Steve Wynn
c/o Don Campbell
Campbell & Williams
700 South 7th Street
Las Vegas, NV 89101

Dear Mr. Wynn:

You are hereby notified that the Nevada Gaming Control Board intends to schedule an Investigative Hearing during which you will be required to appear and provide testimony under oath pursuant to NRS 463.140(5). The Investigative Hearing is anticipated to occur during the week of Monday, August 20, 2018, through Friday, August 24, 2018.

You will be notified of the time and place of the Investigative Hearing by means of a subsequent written Order to Appear.

Pursuant to Nevada Gaming Commission Regulation 5.070, failure to appear and testify fully at the time and place designated, unless excused, shall constitute grounds for the revocation or suspension of any license, finding of suitability, registration, or other approval held by the person summoned, his principal or employer.

If you have any questions, please call me at (775) 684-7870.

Sincerely,

Mike LaBadie
Chief – Investigations Division
Nevada Gaming Control Board

ML:jc

cc: Becky Harris, Chair
Carl Hoffman, Deputy Chief, Investigations Division
Jeff Zinn, Special Agent, Investigations Division
Joanne Chamberlain, Senior Agent, Investigations Division
Records & Research

EXHIBIT 8

CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

September 5, 2018

VIA E-MAIL ONLY

Joanne E. Chamberlain
Senior Agent, Investigations Division
Nevada Gaming Control Board
jchamberlain@gcb.nv.gov

Clark D. Hoffman
Deputy Chief, Investigations Division
Nevada Gaming Control Board
choffman@gcb.nv.gov

Mike LaBadie
Chief, Investigations Division
Nevada Gaming Control Board
mlabadie@gcb.nv.gov

Jeffrey D. Zinn
Special Agent, Investigations Division
Nevada Gaming Control Board
jzinn@gcb.nv.gov

Re: Nevada Gaming Control Board's Request to Interview Stephen A. Wynn

Dear Ms. Chamberlain and Messrs. Hoffman, LaBadie, and Zinn:

Following up on our meeting last Thursday, I wish to share with you the reservations of Mr. Wynn's legal team regarding your request to formally interview him this coming Friday, September 7, 2018.

As you all know, Mr. Wynn no longer maintains any relationship of any kind with the company he founded in 2002, Wynn Resorts, Ltd. (WRL). Not only did he resign as Chairman of the Board and Chief Executive Officer of WRL, but, in addition, he sold his entire holding of stock in that publicly-traded corporation as memorialized in numerous public disclosures filed with the United States Securities and Exchange Commission. As a consequence, Mr. Wynn is no longer a

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101

PHONE: 702/382-5222
FAX: 702/382-0540

licensee of WRL or any of its affiliated entities. Indeed, for the first time in fifty years, Mr. Wynn is not a bona-fide licensee of any gaming enterprise in the State of Nevada.

Despite this indisputable state of affairs, Mr. Wynn desires to cooperate with Nevada regulators in any reasonable manner which does not compromise his ongoing efforts to vindicate his good name. Toward that end, Mr. Wynn has retained the highly regarded defamation litigator, Mr. L. Lin Wood, Esq. of Atlanta, Georgia. Since his retention, Mr. Wood, along with his local co-counsel Peterson Baker, PLLC, has to date filed three separate defamation actions on behalf of Mr. Wynn, to wit: *Wynn v. The Associated Press, et. al.* – Case No. A-18-772715-C, *Wynn v. Nielsen*- Case No. A-18773531-C, and *Wynn v. Bloom, et. al.* – Case No. 2:18-cv- LCM-GWF.

In addition, Mr. Wynn has every intention to advance similar claims against *The Wall Street Journal*, its reporters, and so-called "unnamed sources" that were complicit in the propagation of outrageous libels that were intentionally channeled to other media entities.[1] And to this point, Mr. Wynn's defamation counsel and their investigators have uncovered a substantial collection of exculpatory evidence, which not only impeaches, but categorically refutes the many falsehoods targeted against Mr. Wynn.

This evidence, which is presently protected by the attorney-client and attorney-work product privileges, has been developed in support of Mr. Wynn's defamation suits through hundreds of hours of research as well as the expenditure of hundreds of thousands of dollars. It is the intention of Mr. Wynn's defamation counsel to use this evidence in the only forum which has the power to vindicate his reputation...a court of law. Accordingly, Mr. Wynn cannot be reasonably expected to waive any of his privileges except at the appropriate time and in the appropriate judicial forum.

Notwithstanding the above, Mr. Wynn remains willing to consider any and all written inquiries which will assist you in your investigation, yet not compromise Mr. Wynn's attorneys in their mission to expose the despicable misconduct, lies, and deceit engaged in by many of Mr. Wynn's accusers.[2]

---

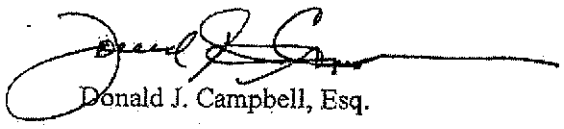
[1] In this regard, your collective attention is directed to the affidavits of numerous witnesses attesting to an elaborate scheme to publicly defame Mr. Wynn, which were filed in support of claims advanced in the case *Wynn v. Nielsen, supra.* In addition, the undersigned invites your collective attention to Mr. Wynn's voluminous testimony in the Kazuo Okada / Elaine Wynn litigation as well as the in-depth investigative piece published by *Boston Magazine* on August 27, 2018 and styled: *Wynn: The Anatomy of a #Me Too Accusation Gone Wrong.*

[2] As you were informed during our meeting, we have learned that certain "investigators" retained by WRL have tacitly encouraged some employees to sue Mr. Wynn, while browbeating and silencing other employees who categorically denied knowledge of any non-consensual misconduct engaged in by Mr. Wynn. And so there is no ambiguity on this point, **Mr. Wynn categorically denies *ever* engaging in any non-consensual behavior of *any* kind.**

Should you desire to accept Mr. Wynn's invitation to submit your inquiries to him in writing, you may do so by forwarding the same to me via my email address: djc@cwlawlv.com.

Most respectfully submitted,

CAMPBELL & WILLIAMS



Donald J. Campbell, Esq.

cc: L. Lin Wood, Esq.
(via email) lwood@linwoodlaw.com

Tammy Peterson, Esq.
(via email) tpeterson@petersonbaker.com

EXHIBIT 9

NGC 18-15

RECEIVED/FILED
JAN 25 2019
NEVADA GAMING COMMISSION
CARSON CITY, NEVADA

STATE OF NEVADA

BEFORE THE NEVADA GAMING COMMISSION

NEVADA GAMING CONTROL BOARD, Complainant, vs. WYNN LAS VEGAS, LLC dba WYNN LAS VEGAS; WYNN RESORTS, LIMITED (PTC) Respondents.	**COMPLAINT**

The State of Nevada, on relation of its NEVADA GAMING CONTROL BOARD (BOARD), Complainant herein, by and through its counsel, AARON D. FORD, Attorney General, by JOHN S. MICHELA, Senior Deputy Attorney General, MICHAEL P. SOMPS, Senior Deputy Attorney General, and EDWARD L. MAGAW, Deputy Attorney General, hereby files this Complaint for disciplinary action against WYNN LAS VEGAS, LLC, dba, WYNN LAS VEGAS (WYNN) and WYNN RESORTS, LIMITED (PTC) (RESORTS) (collectively RESPONDENTS), pursuant to Nevada Revised Statute (NRS) 463.310(2), and alleges as follows:

JURISDICTION

1. Complainant, BOARD, is an administrative agency of the State of Nevada duly organized and existing under and by virtue of Chapter 463 of the NRS and is charged with the administration and enforcement of the gaming laws of this state as set forth in Title 41 of the NRS and the Regulations of the Nevada Gaming Commission.

2. WYNN, located at 3131 Las Vegas Boulevard, Las Vegas, Nevada, is organized under the laws of Nevada and holds a nonrestricted gaming license, manufacturer license, and distributor license. WYNN activated these licenses on or about April 28, 2005.

3. RESORTS, located at 3131 Las Vegas Boulevard, Las Vegas, Nevada, is registered as a publicly traded company by the Nevada Gaming Commission and, through wholly owned intermediaries and holding companies, is the owner of WYNN. RESORTS activated its approvals with regard to WYNN on or about April 28, 2005.

RELEVANT LAW

4. The Nevada Legislature has declared under NRS 463.0129(1) that:

> (a) The gaming industry is vitally important to the economy of the State and the general welfare of the inhabitants.
> (b) The continued growth and success of gaming is dependent upon public confidence and trust that licensed gaming and the manufacture, sale and distribution of gaming devices and associated equipment are conducted honestly and competitively, that establishments which hold restricted and nonrestricted licenses where gaming is conducted and where gambling devices are operated do not unduly impact the quality of life enjoyed by residents of the surrounding neighborhoods, that the rights of the creditors of licensees are protected and that gaming is free from criminal and corruptive elements.
> (c) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments, the manufacture, sale or distribution of gaming devices and associated equipment and the operation of inter-casino linked systems.

NRS 463.0129(1)(a), (b) and (c).

5. The Nevada Gaming Commission has full and absolute power and authority to limit, condition, restrict, revoke or suspend any license, or fine any person licensed, for any cause deemed reasonable. *See* NRS 463.1405(4).

6. The BOARD is authorized to observe the conduct of licensees in order to ensure that the gaming operations are not being conducted in an unsuitable manner. *See* NRS 463.1405(1).

7. This continuing obligation is repeated in Nevada Gaming Commission Regulation 5.040, which provides as follows:

> A gaming license is a revocable privilege, and no holder thereof shall be deemed to have acquired any vested rights therein or thereunder. The burden of proving his or her qualifications to hold any license rests at all times on the licensee. The Board is charged by law with the duty of observing the conduct of all

licensees to the end that licenses shall not be held by unqualified or disqualified persons or unsuitable persons or persons whose operations are conducted in an unsuitable manner.

Nev. Gaming Comm'n Reg. 5.040.

8. Nevada Revised Statute 463.641 provides as follows:

> If any corporation, partnership, limited partnership, limited-liability company or other business organization holding a license is owned or controlled by a publicly traded corporation subject to the provisions of this chapter, or that publicly traded corporation, does not comply with the laws of this state and the regulations of the Commission, the Commission may in its discretion do any one, all or a combination of the following:
> 1. Revoke, limit, condition or suspend the license of the licensee; or
> 2. Fine the persons involved, the licensee or the publicly traded corporation, in accordance with the laws of this state and the regulations of the Commission.

NRS 463.641.

9. Nevada Gaming Commission Regulation 3.080 provides as follows:

> The Commission may deny, revoke, suspend, limit, condition, or restrict any registration or finding of suitability or application therefor upon the same grounds as it may take such action with respect to licenses, licensees and licensing; without exclusion of any other grounds. The Commission may take such action on the grounds that the registrant or person found suitable is associated with, or controls, or is controlled by, or is under common control with, an unsuitable person.

Nev. Gaming Comm'n Reg. 3.080.

10. Nevada Revised Statute 463.170 provides as follows:

> 1. Any person who the Commission determines is qualified to receive a license, to be found suitable or to receive any approval required under the provisions of this chapter, or to be found suitable regarding the operation of a charitable lottery under the provisions of chapter 462 of NRS, having due consideration for the proper protection of the health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada and the declared policy of this State, may be issued a state gaming license, be found suitable or receive any approval required by this chapter, as appropriate. The burden of proving an applicant's qualification to receive any license, be found suitable

or receive any approval required by this chapter is on the applicant.

2. An application to receive a license or be found suitable must not be granted unless the Commission is satisfied that the applicant is:

(a) A person of good character, honesty and integrity;

(b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this State or to the effective regulation and control of gaming or charitable lotteries, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or charitable lotteries or in the carrying on of the business and financial arrangements incidental thereto; and

(c) In all other respects qualified to be licensed or found suitable consistently with the declared policy of the State.

3. A license to operate a gaming establishment or an inter-casino linked system must not be granted unless the applicant has satisfied the Commission that:

(a) The applicant has adequate business probity, competence and experience, in gaming or generally; and

(b) The proposed financing of the entire operation is:

(1) Adequate for the nature of the proposed operation; and

(2) From a suitable source.

➥ Any lender or other source of money or credit which the Commission finds does not meet the standards set forth in subsection 2 may be deemed unsuitable.

4. An application to receive a license or be found suitable constitutes a request for a determination of the applicant's general character, integrity, and ability to participate or engage in, or be associated with gaming or the operation of a charitable lottery, as appropriate. Any written or oral statement made in the course of an official proceeding of the Board or Commission by any member thereof or any witness testifying under oath which is relevant to the purpose of the proceeding is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

5. The Commission may in its discretion grant a license to:

(a) A publicly traded corporation which has complied with the provisions of NRS 463.625 to 463.643, inclusive;

(b) Any other corporation which has complied with the provisions of NRS 463.490 to 463.530, inclusive;

(c) A limited partnership which has complied with the provisions of NRS 463.564 to 463.571, inclusive; and

(d) A limited-liability company which has complied with the provisions of NRS 463.5731 to 463.5737, inclusive.

6. No limited partnership, except one whose sole limited partner is a publicly traded corporation which has registered with the Commission, or a limited-liability company, or business trust or organization or other association of a quasi-corporate character is eligible to receive or hold any license under this chapter unless all persons having any direct or indirect interest therein of any nature whatever, whether financial, administrative, policymaking or supervisory, are individually qualified to be licensed under the provisions of this chapter.

> 7. The Commission may, by regulation:
> (a) Limit the number of persons who may be financially interested and the nature of their interest in any corporation, other than a publicly traded corporation, limited partnership, limited-liability company or other organization or association licensed under this chapter; and
> (b) Establish such other qualifications for licenses as it may, in its discretion, deem to be in the public interest and consistent with the declared policy of the State.
> 8. Any person granted a license or found suitable by the Commission shall continue to meet the applicable standards and qualifications set forth in this section and any other qualifications established by the Commission by regulation. The failure to continue to meet such standards and qualifications constitutes grounds for disciplinary action.

NRS 463.170.

11. Nevada Gaming Commission Regulation 5.010 provides as follows:

> 1. It is the policy of the Commission and the Board to require that all establishments wherein gaming is conducted in this state be operated in a manner suitable to protect the public health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada.
> 2. Responsibility for the employment and maintenance of suitable methods of operation rests with the licensee, and willful or persistent use or toleration of methods of operation deemed unsuitable will constitute grounds for license revocation or other disciplinary action.

Nev. Gaming Comm'n Reg. 5.010.

12. Nevada Gaming Commission Regulation 5.011 states, in relevant part, as follows:

> The Board and the Commission deem any activity on the part of any licensee, the licensee's agents or employees, that is inimical to the public health, safety, morals, good order and general welfare of the people of the State of Nevada, or that would reflect or tend to reflect discredit upon the State of Nevada or the gaming industry, to be an unsuitable method of operation and shall be grounds for disciplinary action by the Board and the Commission in accordance with the Nevada Gaming Control Act and the regulations of the Board and the Commission. Without limiting the generality of the foregoing, the following acts or omissions may be determined to be unsuitable methods of operation:
> 1. Failure to exercise discretion and sound judgment to prevent incidents which might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry.
> . . . .

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

Nev. Gaming Comm'n Reg. 5.011 (1), and (10).

13. Nevada Gaming Commission Regulation 5.030 provides as follows:

> ***Violation of any provision of the Nevada Gaming Control Act or of these regulations by a licensee, the licensee's agent or employee shall be deemed*** contrary to the public health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada and ***grounds for suspension or revocation of a license.*** Acceptance of a state gaming license or renewal thereof by a licensee constitutes an agreement on the part of the licensee to be bound by all of the regulations of the Commission as the same now are or may hereafter be amended or promulgated. It is the responsibility of the licensee to keep informed of the content of all such regulations, and ignorance thereof will not excuse violations.

Nev. Gaming Comm'n Reg. 5.030 (emphasis added).

BACKGROUND

14. On or about January 26, 2018, the *Wall Street Journal* published an article with the headline "Dozens of People Recount Pattern of Sexual Misconduct by Las Vegas Mogul Steve Wynn" (WSJ Article).

15. The WSJ Article commenced with a description of allegations taking place in 2005 regarding Stephen Alan Wynn, former RESORTS Chief Executive Officer, and a manicurist who worked for WYNN. The description of allegations contained in the WSJ Article included that Mr. Wynn forced the manicurist to have sex with him. The description of allegations contained in the WSJ Article included that the manicurist's supervisor learned of the allegations and "filed a detailed report to the casino's human-resources department recounting the episode." The WSJ Article stated, "according to people familiar with the matter," Mr. Wynn paid a $7.5 million settlement to the manicurist based on the allegations.

16. The WSJ Article stated Mr. Wynn's behavior went beyond the manicurist incident: "dozens of people The Wall Street Journal interviewed who have worked at Mr.

Wynn's casinos told of behavior that cumulatively would amount to a decades-long pattern of sexual misconduct by Mr. Wynn."

17. The WSJ Article went on to describe further sexual incidents alleged against Mr. Wynn and how employees were aware of Mr. Wynn's power in Las Vegas and worried about how this power could impact their ability to work elsewhere.

18. Immediately upon learning of the allegations raised against Mr. Wynn in the WSJ article, the BOARD launched a thorough and extensive investigation of RESPONDENTS and Mr. Wynn.

19. The BOARD set up an online portal through which members of the public could submit information to assist the BOARD.

20. The BOARD interviewed multiple individuals, including accusers, witnesses, current and former employees of RESPONDENTS, current and former members of RESPONDENTS' management, current and former directors and officers of RESPONDENTS.

21. The BOARD reviewed relevant documentation, including, but not limited to: personnel and other records of RESPONDENTS; court records; claims filed by employees of RESPONDENTS with the United States Equal Employment Opportunity Commission (EEOC) and the Nevada Equal Rights Commission; settlement agreements entered into between Mr. Wynn and employees or former employees of RESPONDENTS; information provided by RESORTS; administrative records of other government agencies; records provided by witnesses; and minutes of meetings of the Board of Directors and of the Special Committee.

22. Through its investigation, the BOARD discovered multiple allegations of sexual misconduct and/or sexual harassment against Mr. Wynn.

23. Mr. Wynn, at all times relevant to this Complaint, was found suitable as the controlling shareholder of RESORTS, found suitable as a shareholder of RESORTS, found suitable as the Chairman of the Board of RESORTS, and found suitable as the Chief Executive Officer of RESORTS.

24. On or about February 6, 2018, Mr. Wynn resigned from all positions held with RESPONDENTS.

25. On or before March 28, 2018, Mr. Wynn transferred all ownership interests he held in RESPONDENTS. Mr. Wynn presently does not hold any ownership interests in RESPONDENTS.

26. The BOARD has placed administrative holds on all Nevada Gaming Commission approvals of Mr. Wynn.

27. During all times relevant to this Complaint, RESPONDENTS maintained a policy concerning sexual harassment. RESPONDENTS' harassment policy was "to prohibit any conduct, whether intentional or unintentional which results in the harassment or discrimination of employees . . . ." RESPONDENTS' harassment policy specifically defined one type of harassment to be sexual harassment.

28. RESPONDENTS' harassment policy defined sexual harassment as "any unwelcomed sexual advances, request for sexual favors, or other conduct of a sexual nature either verbal or physical . . . ."

29. RESPONDENTS' harassment policy set out that an employee who experiences or witnesses sexual harassment "should immediately report the conduct to: 1. The Employee Relations Department; 2. The Vice President of Human Resources, the Legal department, or your particular Divisional Vice President; 3. Any other member of management with whom [the employee] feel[s] comfortable."

30. RESPONDENTS' harassment policy set out that supervisors who observe or become aware of harassment must immediately report such harassment "to the Employee Relations department and take appropriate steps to stop the offending behavior."

31. During all times relevant to this Complaint, RESPONDENTS maintained a personal relationships policy. This policy discouraged "romantic or intimate relationships involving a direct or indirect supervisory relationship between employees regardless of whether the relationship is voluntary and/or welcomed by both parties."

. . .

32. RESPONDENTS' personal relationships policy also set out "Department managers are responsible for conducting themselves in a professional manner and strictly maintaining professional relationships with their employees at all times."

33. During all times relevant to this Complaint, RESPONDENTS maintained a policy setting out how the Employee Relations Department (ER) should investigate alleged workplace conduct violations. Specifically:

> 1. Obtain verbal and written statements from all parties involved, including the complainant and accused. 2. Take photographs/video of any injury or damage (*if applicable*). 3. Preserve all evidence, and secure the evidence in a locked location. Document all evidence obtained. 4. Determine if there is a potential for risk occurrence. If there is a potential, take all measures appropriate to protect employees. 5. Complete an investigation report and provide all relevant and necessary information, including findings.

34. RESPONDENTS' investigations policy also set out that the ER should make and document findings as "violation found," "no violation found," or "inconclusive investigation."

COUNT ONE
VIOLATION OF NRS 463.170 and/or NEVADA GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

35. Complainant BOARD realleges and incorporates by reference as though set forth in full herein paragraphs 1 through 34 above.

36. In 2005, Employee 1, employed in the WYNN Salon, alleged to various individuals at the WYNN that she had been raped by Mr. Wynn and that she became pregnant as a result.

37. WYNN Salon management followed company policies and procedures by reporting Employee 1's allegations to WYNN Human Resources.

38. The following individuals learned about Employee 1's allegations at or around the time the allegations were made: Marc Schorr, former WYNN President and RESORTS Chief Operating Officer; Doreen Whennen, former WYNN Vice President of Hotel Operations; and Arte Nathan, former WYNN Senior Vice President and Chief Human Resources Officer.

39. Mr. Schorr, Ms. Whennen, and Mr. Nathan all failed to initiate an investigation into Employee 1's allegations of sexual misconduct in violation of RESPONDENTS' policies and procedures.

40. Mr. Wynn reached a private, confidential settlement with Employee 1 in which she and her husband were paid $7.5 million through a separate legal entity funded personally by Mr. Wynn (2005 Settlement).

41. In January 2012, at the latest, Kimmarie Sinatra, former General Counsel, Secretary, and Senior Vice President for RESORTS, learned of the 2005 Settlement. By July 2017, at the latest, Ms. Sinatra learned that Employee 1 had alleged that Mr. Wynn raped her.

42. RESORTS did not conduct a timely investigation into Employee 1's allegations or into Mr. Wynn's admitted sexual relationship with a subordinate.

43. At least four (4) former executives of RESORTS and WYNN, failed to initiate and/or conduct an investigation after obtaining knowledge of allegations of sexual misconduct against Mr. Wynn as required by RESPONDENTS' policies and procedures.

44. The failures of RESPONDENTS, RESPONDENTS' former agents, and/or RESPONDENTS' former employees to initiate and/or conduct an investigation as described herein, in whole or in part, constitute violations of NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010, 5.011(1) and/or 5.011(10).

45. Each separate occasion when RESPONDENTS, RESPONDENTS' former agents, and/or RESPONDENTS' former employees failed to initiate and/or conduct an investigation as described herein constitutes a separate violation of the Gaming Control Act and Regulations of the Commission, as herein specified, for purposes of NRS 463.310(4)(d)(2).

46. The failure of RESPONDENTS to comply with NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010, 5.011(1) and/or 5.011(10) is an unsuitable method of operation and is grounds for disciplinary action against RESPONDENTS.

. . .

See NRS 463.1405(4), NRS 463.170(8), NRS 463.641, and Nev. Gaming Comm'n Regs. 3.080, 5.010(2), and 5.030.

COUNT TWO
VIOLATION OF NRS 463.170 and/or NEVADA GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

47. Complainant BOARD realleges and incorporates by reference as though set forth in full herein paragraphs 1 through 46 above.

48. Employee 2, a cocktail server at WYNN, alleged that Mr. Wynn pressured her into a nonconsensual sexual relationship that lasted from 2005 through her departure from RESORTS in 2006. Mr. Wynn entered into a private settlement with Employee 2 and her parents in the amount of $975,000 on December 6, 2006 (2006 Settlement).

49. Marc Schorr, former WYNN President and RESORTS Chief Operating Officer, Arte Nathan, former WYNN Senior Vice President and Chief Human Resources Officer, and Kevin Tourek, former WYNN General Counsel, knew about Employee 2's allegations of sexual misconduct against Mr. Wynn in 2006.

50. Mr. Schorr, Mr. Nathan, and Mr. Tourek all failed to initiate an ER investigation into Employee 2's allegations of sexual misconduct in violation of RESPONDENTS' policies and procedures.

51. At least three (3) former executives of RESORTS and WYNN, failed to initiate and/or conduct an investigation after obtaining knowledge of allegations of sexual misconduct against Mr. Wynn as required by RESPONDENTS' policies and procedures.

52. The failures of RESPONDENTS, RESPONDENTS' former agents, and/or RESPONDENTS' former employees to initiate and/or conduct an investigation as described herein, in whole or in part, constitute violations of NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010, 5.011(1) and 5.011(10).

53. Each separate occasion when RESPONDENTS, RESPONDENTS' former agents, and/or RESPONDENTS' former employees failed to initiate and/or conduct an investigation as described herein constitutes a separate violation of the Gaming Control

. . .

Act and Regulations of the Commission, as herein specified, for purposes of NRS 463.310(4)(d)(2).

54. The failure of RESPONDENTS to comply with NRS 463.170(8) and Nevada Gaming Commission Regulations 5.011, 5.011(1) and 5.011(10) is an unsuitable method of operation and is grounds for disciplinary action against RESPONDENTS. See NRS 463.1405(4), NRS 463.170(8), NRS 463.641, and Nev. Gaming Comm'n Regs. 3.080, 5.010(2), and 5.030.

COUNT THREE
VIOLATION OF NRS 463.170 and/or NEVADA GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

55. Complainant BOARD realleges and incorporates by reference as though set forth in full herein paragraphs 1 through 54 above.

56. In 2014, Employee 3, a former WYNN Las Vegas cocktail server and flight attendant, alleged that Mr. Wynn engaged in sexual misconduct against her in 2005.

57. Kevin Tourek, former WYNN General Counsel, and Maurice Wooden, former WYNN President, were aware of the allegations of sexual misconduct made against Mr. Wynn by Employee 3.

58. Mr. Tourek and Mr. Wooden both failed to initiate an ER investigation into Employee 3's allegations of sexual misconduct in violation of RESORTS policies and procedures.

59. At least two (2) former executives of WYNN, failed to initiate and/or conduct an investigation after obtaining knowledge of allegations of sexual misconduct against Mr. Wynn as required by RESPONDENTS' policies and procedures.

60. The failures of RESPONDENTS, RESPONDENTS' former agents, and/or RESPONDENTS' former employees to initiate and/or conduct an investigation as described herein, in whole or in part, constitute violations of NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010, 5.011(1) and 5.011(10).

61. Each separate occasion when RESPONDENTS, RESPONDENTS' former agents, and/or RESPONDENTS' former employees failed to conduct and/or initiate an

investigation as described herein constitutes a separate violation of the Gaming Control Act and Regulations of the Commission, as herein specified, for purposes of NRS 463.310(4)(d)(2).

62. The failure of RESPONDENTS to comply with NRS 463.170(8) and Nevada Gaming Commission Regulations 5.011, 5.011(1) and 5.011(10) is an unsuitable method of operation and is grounds for disciplinary action against RESPONDENTS. See NRS 463.1405(4), NRS 463.170(8), NRS 463.641, and Nev. Gaming Comm'n Regs. 3.080, 5.010(2), and 5.030.

COUNT FOUR
VIOLATION OF NRS 463.170 and/or NEVADA GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

63. Complainant BOARD realleges and incorporates by reference as though set forth in full herein paragraphs 1 through 62 above.

64. Employee 4, Employee 5, and Employee 6, each of whom worked at WYNN's Encore Spa at all times relevant to this Complaint, made allegations that Mr. Wynn had engaged in sexual harassment during massages that were performed on him in 2014.

65. Employee 4, Employee 5, and Employee 6, reported some or all of the alleged sexual harassment by Mr. Wynn to RESPONDENTS' management, and those allegations were communicated among other members of RESPONDENTS' management, but no one in RESPONDENTS' management reported the allegations to ER, or otherwise ensured that the allegations had been reported thereto, as would have been required by RESPONDENTS' policies and procedures in effect at the time, so ER could conduct an investigation into the allegations.

66. Several individuals, including managers and executives of RESPONDENTS, became aware of some or all of the allegations of sexual harassment by Mr. Wynn made by Employee 4, Employee 5, and/or Employee 6 but did not report the allegations to ER, or otherwise ensure that the allegations had been reported thereto, as would have been required by RESPONDENTS' policies and procedures in effect at the time, so ER could conduct an investigation into the allegations.

67. The failure of RESPONDENTS, RESPONDENTS' agents, and/or RESPONDENTS' employees to report and/or investigate each instance of sexual harassment by Mr. Wynn alleged by Employee 4, Employee 5, and/or Employee 6, in whole or in part, constitutes a violation of NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010, 5.011(1), and/or 5.011(10).

68. Each occasion where RESPONDENTS, RESPONDENTS' agents, and/or RESPONDENTS' employees failed to report an allegation of sexual harassment by Mr. Wynn made by Employee 4, Employee 5, and/or Employee 6 to ER, and/or failed to initiate and/or conduct an investigation into each allegation, constitutes a separate violation of the Gaming Control Act and the regulations adopted thereunder, as herein specified, for purposes of NRS 463.310(4)(d)(2).

69. The failure of RESPONDENTS to comply with NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010, 5.011, 5.011(1), and/or 5.011(10) constitutes an unsuitable method of operation and provides grounds for disciplinary action against RESPONDENTS. See NRS 463.1405(4), NRS 463.170(8), NRS 463.341, and Nev. Gaming Comm'n Regs. 3.080, 5.010(2), and 5.030.

COUNT FIVE
VIOLATION OF NRS 463.170 and/or NEVADA GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

70. Complainant BOARD realleges and incorporates by reference as though set forth in full herein paragraphs 1 through 69 above.

71. Employee 7, who was a flight attendant with LV Jet, LLC (LV Jet), a wholly owned subsidiary of RESORTS, at all times relevant to this Complaint, submitted written correspondence to Mr. Wynn dated October 27, 2016, in which she made allegations that Mr. Wynn engaged in sexual harassment with multiple LV Jet flight attendants.

72. Kimmarie Sinatra, former RESORTS General Counsel, Secretary, and Executive Vice President, was made aware of Employee 7's allegations of multiple instances of sexual harassment by Mr. Wynn related to LV Jet flight attendants through the above-referenced written correspondence, which was forwarded to Ms. Sinatra by Mr.

Wynn's personal assistant. Ms. Sinatra, however, did not report the allegations to ER, or otherwise ensure that the allegations had been reported thereto, as would have been required by RESPONDENTS' policies and procedures in effect at the time, so ER could conduct an investigation into the allegations.

73. Stacie Michaels, former WYNN General Counsel, was made aware of Employee 7's allegations of multiple instances of sexual harassment by Mr. Wynn related to LV Jet flight attendants through the above-referenced written correspondence, which was forwarded to Ms. Michaels by Mr. Wynn's personal assistant. Ms. Michaels, however, did not report the allegations to ER, or otherwise ensure that the allegations had been reported thereto, as would have been required by RESPONDENTS' policies and procedures in effect at the time, so ER could conduct an investigation into the allegations.

74. The failure of RESPONDENTS, RESPONDENTS' former agents, and/or RESPONDENTS' former employees to report and/or investigate each instance of sexual harassment of Mr. Wynn alleged by Employee 7 in her written correspondence dated October 27, 2016 referenced above, in whole or in part, constitutes a violation of NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010, 5.011(1), and/or 5.011(10).

75. Each occasion where RESPONDENTS, RESPONDENTS' former agents, and/or RESPONDENTS' former employees failed to report an allegation of sexual harassment by Mr. Wynn made by Employee 7 in her written correspondence dated October 27, 2016 referenced above to ER, and/or failed to initiate and/or conduct an investigation into each allegation, constitutes a separate violation of the Gaming Control Act and the regulations adopted thereunder, as herein specified, for purposes of NRS 463.310(4)(d)(2).

76. The failure of RESPONDENTS to comply with NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010, 5.011, 5.011(1), and/or 5.011(10) constitutes an unsuitable method of operation and provides grounds for disciplinary action against RESPONDENTS. See NRS 463.1405(4), NRS 463.170(8), NRS 463.341, and Nev. Gaming Comm'n Regs. 3.080, 5.010(2), and 5.030.

COUNT SIX
VIOLATION OF NRS 463.170 and/or NEVADA GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

77. Complainant BOARD realleges and incorporates by reference as though set forth in full herein paragraphs 1 through 76 above.

78. Multiple allegations were made by various individuals that Employee 8 had facilitated sexual relationships between cocktail servers at WYNN and Mr. Wynn and/or guests of WYNN.

79. Arte Nathan, during his tenure as WYNN Senior Vice President and Chief Human Resources Officer, was aware of rumors that Employee 8 was facilitating the sexual relationships referred to above. Mr. Nathan, however, did not investigate the rumors, or otherwise ensure that the rumors had been reported thereto, as would have been required by RESPONDENTS' policies and procedures in effect at the time, so ER could conduct an investigation into the rumors.

80. The failure of RESPONDENTS, RESPONDENTS' former agents, and/or RESPONDENTS' former employees to report and/or investigate the allegations and/or rumors that Employee 8 was facilitating the sexual relationships referred to above, in whole or in part, constitutes a violation of NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010, 5.011(1), and/or 5.011(10).

81. Each occasion where RESPONDENTS, RESPONDENTS' former agents, and/or RESPONDENTS' former employees failed to report an allegation and/or rumor regarding the misconduct of Employee 8 referred to above, to ER, and/or failed to initiate and/or conduct an investigation into each allegation and/or rumor, constitutes a separate violation of the Gaming Control Act and the regulations adopted thereunder, as herein specified, for purposes of NRS 463.310(4)(d)(2).

82. The failure of RESPONDENTS to comply with NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010, 5.011, 5.011(1), and/or 5.011(10) constitutes an unsuitable method of operation and provides grounds for disciplinary action against . . .

RESPONDENTS. See NRS 463.1405(4), NRS 463.170(8), NRS 463.341, and Nev. Gaming Comm'n Regs. 3.080, 5.010(2), and 5.030.

COUNT SEVEN
VIOLATION OF NRS 463.170 and/or NEVADA GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

83. Complainant BOARD realleges and incorporates by reference as though set forth in full herein paragraphs 1 through 87 above.

84. In 2007, Kevin Tourek, former WYNN General Counsel, received an e-mail alleging a former executive "loves sleeping with cocktail servers."

85. Mr. Tourek did not report this allegation to ER or initiate and/or conduct an investigation after receiving the e-mail alleging the former executive's conduct with cocktail servers.

86. The failures of RESPONDENTS, RESPONDENTS' former agents, and/or RESPONDENTS' former employees to comply with RESPONDENTS' policies and procedures and failing to initiate and/or conduct an investigation as described herein, in whole or in part, constitute violations of NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010, 5.011(1) and/or 5.011(10).

87. Each separate occasion when RESPONDENTS, RESPONDENTS' former agents, and/or RESPONDENTS' former employees failed to comply with RESPONDENTS' policies and procedures and failed to initiate and/or conduct an investigation as described herein constitutes a separate violation of the Gaming Control Act and Regulations of the Commission, as herein specified, for purposes of NRS 463.310(4)(d)(2).

88. The failure of RESPONDENTS to comply with NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010 and/or 5.011 is an unsuitable method of operation and is grounds for disciplinary action against RESPONDENTS. See NRS 463.1405(4), NRS 463.170(8), NRS 463.641, and Nev. Gaming Comm'n Regs. 3.080, 5.010(2), and 5.030.

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. . .

COUNT EIGHT
VIOLATION OF NRS 463.170 and/or NEVADA GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

89. Complainant BOARD realleges and incorporates by reference as though set forth in full herein paragraphs 1 through 88 above.

90. RESPONDENTS' policies and procedures requiring employee attendance at annual compliance training were not applied to Mr. Wynn.

91. RESPONDENTS' policies and procedures pertaining to WYNN spas were not applied to Mr. Wynn.

92. RESPONDENTS' policies and procedures pertaining to conflicts of interest were not followed for several settlements, including, but not limited to, the 2005 Settlement, and the 2006 Settlement.

93. The ability of former WYNN executives to operate outside of Company policies and procedures, contributed to the internal control breakdowns that occurred in relation to allegations of misconduct as described in this Complaint.

94. RESPONDENTS' failure to ensure compliance with RESPONDENTS' policies and procedures, as described herein, in whole or in part, constitutes a violation of NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010, 5.011(1) and/or 5.011(10).

95. Each separate occasion when RESPONDENTS, RESPONDENTS' former agents, and/or RESPONDENTS' former employees failed to ensure compliance with RESPONDENTS' policies and procedures, as described herein, constitutes a separate violation of the Gaming Control Act and Regulations of the Commission, as herein specified, for purposes of NRS 463.310(4)(d)(2).

96. The failure of RESPONDENTS to comply with NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010, 5.011(1) and/or 5.011(10) is an unsuitable method of operation and is grounds for disciplinary action against RESPONDENTS. See NRS 463.1405(4), NRS 463.170(8), NRS 463.641, and Nev. Gaming Comm'n Regs. 3.080, 5.010(2), and 5.030.

COUNT NINE
VIOLATION OF NRS 463.170 and/or NEVADA GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

97. Complainant BOARD realleges and incorporates by reference as though set forth in full herein paragraphs 1 through 96 above.

98. At all times relevant to this Complaint, RESPONDENTS maintained a policy on personal relationships between employees that "discourage[d] romantic or intimate relationships involving a direct or indirect supervisory relationship between employees regardless of whether the relationship is voluntary and/or welcomed by both parties."

99. At all times relevant to this Complaint, RESPONDENTS maintained a policy for harassment and discrimination that stated that "all employees are responsible for maintaining a professional work environment by treating everyone . . . with respect and by being aware of their own behavior toward others in the work place."

100. Mr. Wynn, while Chairman of the Board of Directors and Chief Executive Officer of RESORTS, engaged in intimate and sexual conduct with WYNN employees.

101. Mr. Wynn failed to comply with RESPONDENTS' policies that he maintain a professional work environment and/or failed to comply with the spirit of RESPONDENTS' policies that discouraged intimate relationships between himself and employees.

102. Regardless of whether the conduct of Mr. Wynn, as described herein, expressly violated any of RESPONDENTS' policies, such conduct is inappropriate and unsuitable given the position of Mr. Wynn as head of RESORTS and WYNN and given the inherent disparity in power between himself and non-management employees.

103. RESPONDENTS are ultimately responsible for the actions of their agents and employees. *See* Nev. Gaming Comm'n Reg. 5.030.

104. RESPONDENTS failed to ensure that Mr. Wynn conducted himself in accordance with RESPONDENTS' policies and procedures and/or failed to ensure that Mr. Wynn conducted himself in an appropriate and suitable manner.

105. RESPONDENTS' failures, as described herein, resulted in negative reporting in widely disseminated media outlets, including, but not limited to, the Wall Street Journal.

106. RESPONDENTS' failures, as described herein, in whole or in part, constitute violations of NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010, 5.011(1) and/or 5.011(10).

107. The failure of RESPONDENTS to comply with NRS 463.170(8) and Nevada Gaming Commission Regulations 5.011, 5.011(1) and/or 5.011(10) is an unsuitable method of operation and is grounds for disciplinary action against RESPONDENTS. *See* NRS 463.1405(4), NRS 463.170(8), NRS 463.641, and Nev. Gaming Comm'n Regs. 3.080, 5.010(2), and 5.030.

COUNT TEN
VIOLATION OF NRS 463.170 and/or NEVADA GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

108. Complainant BOARD realleges and incorporates by reference as though set forth in full herein paragraphs 1 through 107 above.

109. RESPONDENTS did not enforce their policies and procedures with regard to their executives and other high level employees following the reporting procedures for sexual harassment and related matters.

110. RESPONDENTS' past failures to enforce its policies and procedures have led to multiple instances, a number of which are set out in this Complaint, where sexual harassment allegations concerning RESPONDENTS' executives were not investigated.

111. RESPONDENTS' past failures to enforce its policies and procedures have led to multiple instances where allegations of sexual harassment by executives of RESPONDENTS were not appropriately addressed by RESPONDENTS.

112. RESPONDENTS' past failures to appropriately address allegations of sexual harassment by executives and high level employees of RESPONDENTS resulted in negative articles published in widely disseminated media publications, including, but not limited to, the Wall Street Journal.

113. Thus, the BOARD, in order to protect gaming in the State of Nevada; to protect the welfare of the gaming industry; to protect the welfare of the inhabitants of the State of Nevada, including gaming industry employees; and to attempt to mitigate the discredit

caused by RESPONDENTS to the State of Nevada and the gaming industry, has had to file this Complaint.

114. By itself and/or in conjunction with the actions contained in the other counts of this Complaint, the failures of RESPONDENTS to ensure RESPONDENTS' policies and procedures were followed by and enforced against RESPONDENTS' executives and high level employees reflect or tend to reflect poorly on the reputation of gaming in the State of Nevada and/or acts as a detriment to the development of the gaming industry and/or reflect or tend to reflect discredit upon the State of Nevada or the gaming industry.

115. The past failures of RESPONDENTS to follow and enforce RESPONDENTS' policies and procedures as described herein, in whole or in part, constitute violations of NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010 and/or 5.011.

116. The past failures of RESPONDENTS to comply with NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010 and/or 5.011 is an unsuitable method of operation and is grounds for disciplinary action against RESPONDENTS. See NRS 463.1405(4), NRS 463.170(8), NRS 463.641, and Nev. Gaming Comm'n Regs. 3.080, 5.010(2), and 5.030.

PRAYER FOR RELIEF

WHEREFORE, based upon the allegations contained herein which constitute reasonable cause for disciplinary action against RESPONDENTS, pursuant to NRS 463.310 and Nevada Gaming Commission Regulations 5.010 and 5.030 the NEVADA GAMING CONTROL BOARD prays for the relief as follows:

1. That the Nevada Gaming Commission serve a copy of this Complaint on RESPONDENTS pursuant to NRS 463.312(2);

2. That the Nevada Gaming Commission fine RESPONDENTS a monetary sum pursuant to the parameters defined at NRS 463.310(4) for each separate violation of the provisions of the Nevada Gaming Control Act or the Regulations of the Nevada Gaming Commission;

. . .

3. That the Nevada Gaming Commission take action against RESPONDENTS' license or licenses, registration or registrations, and finding of suitability or findings of suitability pursuant to the parameters defined in NRS 463.310(4); and

4. For such other and further relief as the Nevada Gaming Commission may deem just and proper.

DATED this 25th day of January, 2019.

NEVADA GAMING CONTROL BOARD

BECKY HARRIS, Chairwoman

SHAWN R. REID, Member

TERRY JOHNSON, Member

Submitted by:

AARON D. FORD
Attorney General

By: _____
JOHN S. MICHELA (Bar No. 8189)
Senior Deputy Attorney General
MICHAEL P. SOMPS (Bar No. 6507)
Senior Deputy Attorney General
EDWARD L. MAGAW (Bar No. 9111)
Deputy Attorney General

Gaming Division
Attorney General's Office

EXHIBIT 10

RECEIVED/FILED
FEB 26 2019
NEVADA GAMING COMMISSION
LAS VEGAS, NEVADA

NGC 18-15

STATE OF NEVADA

BEFORE THE NEVADA GAMING COMMISSION

NEVADA GAMING CONTROL BOARD, Complainant, vs. WYNN LAS VEGAS, LLC dba WYNN LAS VEGAS; WYNN RESORTS, LIMITED (PTC) Respondents.	**STIPULATION FOR SETTLEMENT AND ORDER**

The State of Nevada, on relation of its NEVADA GAMING CONTROL BOARD (BOARD), Complainant herein, filed a Complaint, NGC Case No. 18-15 (Complaint) against WYNN LAS VEGAS, LLC, dba WYNN LAS VEGAS, and WYNN RESORTS, LIMITED (PTC) (collectively RESPONDENTS), alleging certain violations of the Nevada Gaming Control Act and Regulations of the Nevada Gaming Commission.

IT IS HEREBY STIPULATED AND AGREED to by the BOARD and RESPONDENTS that the Complaint, NGC Case No. 18-15, filed against RESPONDENTS in the above-entitled case shall be settled on the following terms and conditions:

1. RESPONDENTS admit each and every allegation set forth in the Complaint, NGC Case No. 18-15, except that RESPONDENTS neither admit nor deny paragraphs 72 – 73 of the Complaint and that portion of paragraph 57 of the Complaint that alleges Maurice Wooden was aware of the allegations of sexual misconduct.

2. RESPONDENTS fully understand and voluntarily waive the right to a public hearing on the charges and allegations set forth in the Complaint, the right to present and cross-examine witnesses, the right to a written decision on the merits of the Complaint, which must contain findings of fact and a determination of the issues presented, and the right to obtain judicial review of the Nevada Gaming Commission's (Commission) decision.

3. RESPONDENTS agree to pay a fine in an amount to be determined by the Commission when this Stipulation for Settlement is considered for approval by the Commission. Any such fine shall be electronically transferred to the *State of Nevada-Nevada Gaming Commission* within five (5) days of this Stipulation for Settlement being accepted and approved by the Commission. Interest on the Fine shall accrue in accordance with NRS 17.130 on any unpaid balance computed from the date payment is due until payment is made in full.

4. RESPONDENTS agree that the nonrestricted gaming license of WYNN LAS VEGAS, LLC and the registration of WYNN RESORTS, LIMITED (PTC) may be conditioned by the Commission when this Stipulation for Settlement is considered for approval by the Commission as deemed appropriate by the Commission.

5. The BOARD agrees that it is not seeking to revoke or limit RESPONDENTS' licenses, findings of suitability, or any other Commission approvals.

6. Nothing herein shall be construed to limit either the BOARD or RESPONDENTS from advocating for what either party believes is appropriate discipline within the parameters of this Stipulation for Settlement.

7. To assist the Nevada Gaming Commission in its evaluation of the matters encompassed by this stipulated settlement agreement, RESPONDENTS offer the following:

a. Since its creation almost two decades ago, RESPONDENTS have prided themselves on their culture of compliance and commitment to their employees. Over the last year, RESPONDENTS have realized, through the BOARD'S investigation as well as its own, that RESPONDENTS fell short of their culture and commitment in perhaps one of the most important areas for an employer – focusing on its employees. RESPONDENTS have focused on a single man, rather than the Company's greatest asset, its 25,000 employees.

b. RESPONDENTS have undergone an extensive self-examination over the last twelve months, intended to reinvigorate and implement meaningful change across all levels

of the organization, to cultivate a safe, healthy, and supportive workplace culture, and to build on their core values of respecting their employees, corporate responsibility and citizenship, and service to the community. And RESPONDENTS represent that they have been successful in that regard.

c. In sum, these 25,000 employees, led by CEO Matt Maddox and a reshaped Board of Directors, are the Company that stands before the Commission today, and not Steve Wynn.

d. Upon learning of the extent of the allegations contained in the Wall Street Journal article, RESPONDENTS immediately created a special committee comprised of independent members of RESPONDENTS' Board to investigate the allegations contained in the Wall Street Journal Article, and fully cooperated with the BOARD'S investigation.

e. RESPONDENTS also implemented significant changes in the leadership of the organization, including,

i. Appointing Matt Maddox as Chief Executive Officer.

ii. Commencing a robust Board refreshment process: 60% of the directors at the beginning of 2018 have now departed and the median tenure of directors is now less than two years. In April 2018, the Board elected three new female directors, resulting in a Board that is now nearly 50% women. Long time Nevada gaming executive Philip G. Satre was also elected Chairman of the Board.

iii. Appointed Ellen Whittemore, a recognized expert in gaming regulatory matters, as General Counsel.

iv. Appointed Marilyn Spiegel, an executive with significant hospitality and human resources experience, as President of Wynn Las Vegas.

v. Appointed Rose Huddleston, a seasoned human resources executive, to the newly created corporate position of Senior Vice President of Human Resources- North America.

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f. In addition, RESPONDENTS initiated important remedial actions to improve their workplace environment and to communicate their improvements to the appropriate employees, supervisors, executives, and Board members, including by:

i. Refocusing efforts on RESPONDENTS' workplace culture by making it a priority for the new Human Resources leadership.

ii. Launching enhanced Workplace Compliance and Prevention of Sexual Harassment training for all employees; designed and delivered by a third party.

iii. Launching a Women's Leadership Council to promote equality within the workplace. The group's first activity was to produce a speaker series, "Women Who Thrive," to educate and inspire employees through powerful female role models.

iv. Commissioning pay and promotion equity studies to measure pay equality among men and women in the workforce.

v. Launching a new Paid Parental Leave program that provides six weeks of paid time off to new parents.

vi. Implementing new Diversity, Inclusion and Unconscious Bias training for all employees taught by third-party experts. Company senior executives completed an eight-hour training program.

vii. Launching the Great Places to Work survey and focus groups which measure employee engagement against the Fortune "100 Best Places to Work."

viii. Launching a new annual Wynn Employee Foundation scholarship program, which awarded ten $7,500 college scholarships to employees and their dependents.

8. In consideration for the execution of this Stipulation for Settlement, RESPONDENTS, for themselves, their heirs, executors, administrators, successors, and assigns, hereby release and forever discharge the State of Nevada, the Commission, the BOARD, the Nevada Attorney General and each of their members, agents, and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims, and demands whatsoever

known or unknown, in law and equity, that RESPONDENTS ever had, now have, may have, or claim to have against any and all of the persons or entities named in this paragraph arising out of, or by reason of, the investigation of the allegations in the Complaint and this disciplinary action, NGC Case No. 18-15, or any other matter relating thereto.

9. In consideration for the execution of this Stipulation for Settlement, RESPONDENTS hereby indemnify and hold harmless the State of Nevada, the Commission, the BOARD, the Nevada Attorney General, and each of their members, agents, and employees in their individual and representative capacities against any and all claims, suits and actions, brought against the persons named in this paragraph by reason of the investigation of the allegations in the Complaint, filed in this disciplinary action, NGC Case No. 18-15, and all other matters relating thereto, and against any and all expenses, damages, charges and costs, including court costs and attorney fees, which may be sustained by the persons and entities named in this paragraph as a result of said claims, suits and actions.

10. RESPONDENTS enter into this Stipulation for Settlement freely and voluntarily and with the assistance of legal counsel. RESPONDENTS further acknowledge that this Stipulation for Settlement is not the product of force, threats, or any other form of coercion or duress, but is the product of discussions between RESPONDENTS and the attorney for the BOARD.

11. RESPONDENTS affirmatively represent that if RESPONDENTS, this Stipulation for Settlement, and/or any amounts distributed under this Stipulation for Settlement are subject to, or will become subject to, the jurisdiction of any bankruptcy court, the bankruptcy court's approval is not necessary for this Stipulation for Settlement to become effective, or that the bankruptcy court has already approved this Stipulation for Settlement.

12. RESPONDENTS and the BOARD acknowledge that this Stipulation for Settlement is made to avoid litigation and economize resources. The parties agree and understand that this Stipulation for Settlement is intended to operate as full and final

settlement of the Complaint filed solely against RESPONDENTS, in the above-entitled disciplinary case, NGC Case No. 18-15. This Stipulation for Settlement shall in no way be construed to limit or restrict the BOARD in pursuing discipline against any person or entity not otherwise identified as a Respondent in NGC Case No. 18-15 and shall not be construed to operate as a resolution or conclusion of any possible future complaint filed by the BOARD against any person or entity not otherwise identified as a Respondent in NGC Case No. 18-15.

13. RESPONDENTS and the BOARD recognize and agree that the Commission has the sole and absolute discretion to determine whether to accept this Stipulation for Settlement. RESPONDENTS and the BOARD hereby waive any right they may have to challenge the impartiality of the Commission to hear the above-entitled case on the matters embraced in the Complaint if the Commission determines not to accept this Stipulation for Settlement. If the Commission does not accept the Stipulation for Settlement, it shall be withdrawn as null and void and RESPONDENTS' admissions, if any, that certain violations of the Nevada Gaming Control Act and the Regulations of the Commission occurred shall be withdrawn.

14. RESPONDENTS and the BOARD agree and understand that this Stipulation for Settlement is intended to operate as full and final settlement of the Complaint filed in NGC Case No. 18-15. The parties further agree and understand that any oral representations are superseded by this Stipulation for Settlement and that only those terms memorialized in writing herein shall be effective.

15. RESPONDENTS agree and understand that although this Stipulation for Settlement, if approved by the Commission, will settle the Complaint filed in NGC Case No. 18-15, that the allegations contained in the Complaint filed in NGC Case No. 18-15 and the terms of this Stipulation for Settlement may be considered by the BOARD and/or the Commission, with regards to any and all applications by RESPONDENTS that are currently pending before the BOARD or the Commission, or that are filed in the future with the BOARD.

18. This Stipulation for Settlement shall become effective immediately upon approval by the Commission.

WYNN LAS VEGAS, LLC dba WYNN LAS VEGAS, WYNN RESORTS LIMITED (PTC)

By: _____ 1/25/19
MATT MADDOX Date
CEO of Wynn Resorts, Limited, and
Chairman of Wynn Las Vegas, LLC

By: _____ 1/25/19
ELLEN WHITTEMORE Date
EVP and General Counsel

BROWNSTEIN HYATT FARBER SCHRECK

By: _____ 1/25/19
GREGORY A. BROWER Date
Attorneys for Respondents

NEVADA GAMING CONTROL BOARD

_____ 1.25.19
BECKY HARRIS, Chair Date

_____ 1-25-19
SHAWN REID, Member Date

_____ 01/25/19
TERRY JOHNSON, Member Date

Submitted By:

AARON D. FORD
Attorney General

By: _____
JOHN S. MICHELA (Bar No. 8189)
Senior Deputy Attorney General
MICHAEL P. SOMPS (Bar No. 6507)
Senior Deputy Attorney General
EDWARD L. MAGAW (Bar No. 9111)
Deputy Attorney General
Gaming Division
Attorney General's Office

ORDER

IT IS SO ORDERED in NGC Case No. 18-15.

DATED this 26 day of Feb, 2019.

NEVADA GAMING COMMISSION

_____
TONY ALAMO, M.D., Chairman

EXHIBIT 11

NGC 18-15

RECEIVED/FILED
FEB 26 2019
NEVADA GAMING COMMISSION
LAS VEGAS, NEVADA

STATE OF NEVADA

BEFORE THE NEVADA GAMING COMMISSION

NEVADA GAMING CONTROL BOARD, Complainant, vs. WYNN LAS VEGAS, LLC dba WYNN LAS VEGAS; WYNN RESORTS, LIMITED (PTC), Respondents.	**ADDENDUM TO STIPULATION FOR SETTLEMENT AND ORDER**

The State of Nevada, on relation of its NEVADA GAMING CONTROL BOARD (BOARD), Complainant herein, filed a Complaint, NGC Case No. 18-15 (Complaint) against WYNN LAS VEGAS, LLC, dba WYNN LAS VEGAS, and WYNN RESORTS, LIMITED (PTC) (collectively RESPONDENTS), alleging certain violations of the Nevada Gaming Control Act and Regulations of the Nevada Gaming Commission. BOARD and RESPONDENTS entered a Stipulation for Settlement concerning the Complaint. The Nevada Gaming Commission approved the Stipulation for Settlement on February 26, 2019. Pursuant to the Stipulation for Settlement, the Nevada Gaming Commission determined the fine amount in paragraph 3 of the Stipulation for Settlement to be TWENTY MILLION DOLLARS and NO CENTS ($20,000,000.00). Thus, the amount

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RESPONDENTS shall pay pursuant to paragraph 3 of the Stipulation for Settlement approved by the Nevada Gaming Commission shall be TWENTY MILLION DOLLARS and NO CENTS ($20,000,000.00).

ORDER

IT IS SO ORDERED in NGC Case No. 18-15.

DATED this 26 day of Feb., 2019.

NEVADA GAMING COMMISSION

TONY ALAMO, M.D., Chairman

EXHIBIT 12

FOR IMMEDIATE RELEASE:
April 30, 2019

Media Contact:
Elaine Driscoll (MGC) 617-571-2964
Press release: 19-018

The Massachusetts Gaming Commission Issues Decision and Order Regarding Suitability of Wynn Resorts and Wynn MA, LLC

Commissioners Impose $35 Million Fine, Require Independent Monitor among other Penalties and Conditions, Citing 'Systemic Failures' and 'Pervasive Culture of Non-Disclosure'

Today the Massachusetts Gaming Commission (MGC) released its Decision and Order regarding the suitability of Wynn Resorts, Limited, Wynn MA, LLC, and its individual qualifiers. In reaching its decision, the five-member commission carefully considered all of the facts presented in the comprehensive Investigations and Enforcement Bureau (IEB) report, as well as the witness testimony and evidence, entered into the record during and after the adjudicatory hearing held on April 2-4, 2019.

This decision arises out of the MGC's year-long investigation into allegations of sexual assault, misconduct and other inappropriate behavior, and the handling of those allegations by the company.

"Ensuring public confidence in the integrity of the gaming industry and the strict oversight of the gaming establishments through rigorous regulation is our principal objective," said Chair Cathy Judd-Stein. "Our licensees will be held to the highest standards of compliance, including an obligation to maintain their integrity. The law of Massachusetts affords the Commission significant breadth in our decision making. With that comes an equally significant duty of fairness. We are confident that we have struck the correct balance and met our legal and ethical burdens."

After lengthy deliberations and for the reasons detailed in the written decision, commissioners conclude that Wynn Resorts, Wynn MA, LLC and its qualifiers remain and are suitable to maintain the Region A Category-1 gaming license, subject to the fines and conditions set forth in the decision.

According to the decision, the Commission identified "numerous violations of controlling statutes and regulations largely pertaining to a pervasive failure to properly investigate in accordance with existing policies and procedures, and to notify the Commission about certain allegations of wrongdoing."

As a result, the Commission will impose a **$35 million fine** on the licensee and require a series of license conditions, including an independent monitor to review and evaluate the company's adherence to policies and organizational changes outlined by Wynn Resorts in the adjudicatory record. Also, Chief Executive Officer Matthew Maddox, whose suitability was sustained by Commission majority, will be assessed a **$500,000 fine** and be subject to

license conditions for all the reasons described in the decision, including his clear failure to require an investigation about a specific spa employee complaint brought to his attention.

Although the Commission determined that there was a lack of substantial evidence to disrupt the licensee's suitability status, commissioners were profoundly disturbed by "repeated systemic failures and pervasive culture of non-disclosure presented in the IEB report and adjudicatory hearing."

"Specifically, the corporate culture of the founder-led organization led to disparate treatment of the CEO in ways that left the most vulnerable at grave risk. While the Company has made great strides in altering that system, this Commission remains concerned by the past failures and deficiencies," read the commissioners' decision.

To help ensure future compliance and to punish for past transgressions, the Commission imposes the following penalties and conditions:

1. The Commission will assess a $35 million fine on Wynn Resorts.
2. Wynn Resorts shall maintain the separation of Chair and CEO for at least the term of the license (15 years).
3. At Wynn's expense, the Commission, as more fully described in the decision, will select an independent monitor to conduct a full review and evaluation of all policies and organizational changes adopted by the Company as part of the Adjudicatory record.
4. The Board of Directors shall provide the Commission timely reports of all Directors' attendance records of both Board and assigned Committee meetings.
5. Wynn MA, LLC shall train all new employees on the Preventing Harassment and Discrimination Policy within three months of opening.
6. Any civil or criminal complaints or other actions filed in any court or administrative tribunal against a qualifier shall be reported to the Commission immediately upon notice of the action.
7. The Commission will assess a $500,000 fine on Wynn CEO Matthew Maddox.
    a. The Board of Directors shall engage an executive coach and any additional necessary resources to provide the coaching and training to Mr. Maddox focused on but not limited to (i) leadership development, (ii) effective and appropriate communication for internal, company-wide reporting and messaging, (iii) enhanced sensitivity to and awareness of human resource issues arising in complex workplace environments that, without limitation, relate to diversity (including disability), implicit bias, hostile work environments, inherent coercion, sexual harassment and assault, human

trafficking and domestic violence and (iv) team building and meaningful collaboration.

"Given our findings, it is now in the interest of the Commonwealth that the gaming licensee move forward in establishing and maintaining a successful gaming establishment in Massachusetts. One of the key metrics by which we will measure that success will be the overall well-being, safety, and welfare of the employees. A second but equally important metric is the importance of compliance and communication with the regulator. This penalty is designed to guarantee these practices," said commissioners in its decision.

The Commission acknowledges that the company has introduced a multitude of policy and organizational changes to address employee safety. Furthermore, the Commission concludes "[t]hese changes to the company's philosophy, training, and operations show a new found commitment and focus on all levels of employees, which combined with the ongoing successful business operations, continue to demonstrate that Wynn is likely to be a successful operator in Everett."

The Commission's decision with the full list of findings and conditions can be found here.

EXHIBIT 13

NEVADA GAMING CONTROL BOARD
1919 College Parkway, P.O. Box 8003, Carson City, Nevada 89702
555 E. Washington Avenue, Suite 2600, Las Vegas, Nevada 89101
3650 S. Pointe Circle, Suite 203, P.O. Box 31109, Laughlin, Nevada 89028
557 W. Silver Street, Suite 207, Elko, Nevada 89801
9790 Gateway Drive, Suite 100, Reno, Nevada 89521
750 Pilot Road, Suite I, Las Vegas, Nevada 89119

STEVE SISOLAK
Governor

SANDRA D. MORGAN, *Chairwoman*
TERRY JOHNSON, *Member*
PHIL KATSAROS, *Member*

October 14, 2019

Las Vegas
Ph: (702) 486-2000
F: (702) 486-2045

Donald Campbell
Campbell & Williams
700 S 7th Street
Las Vegas, NV 89101

Peter Bernhard
Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650
Las Vegas, NV 89135

SENT VIA ELECTRONIC MAIL & U.S. MAIL

Dear Messrs. Campbell and Bernhard:

Please be advised that the Nevada Gaming Control Board will seek to have the Nevada Gaming Commission revoke the Findings of Suitability for Mr. Stephen A. Wynn. The Nevada Gaming Control Board will file the complaint today and seek to have the Nevada Gaming Commission to serve the complaint on Mr. Wynn consistent with Nevada law.

Sincerely,

Sandra D. Morgan
Chairwoman, Nevada Gaming Control Board

SDM:hd

EXHIBIT 14

RECEIVED/FILED
OCT 14 2019
NEVADA GAMING COMMISSION
CARSON CITY, NEVADA

NGC 19-03

STATE OF NEVADA

BEFORE THE NEVADA GAMING COMMISSION

NEVADA GAMING CONTROL BOARD, Complainant, vs. STEPHEN ALAN WYNN, In his capacity as having been found suitable as Chief Executive Officer, Chairman of the Board, and shareholder and controlling shareholder of Wynn Resorts, Ltd.; Respondent.	**COMPLAINT**

The State of Nevada, on relation of its Nevada Gaming Control Board (Gaming Control Board), by and through its counsel, files this Complaint before the Nevada Gaming Commission (Gaming Commission) for disciplinary action against Respondent Stephen Alan Wynn (Mr. Wynn), pursuant to Nevada Revised Statute (NRS) 463.310(2), and alleges as follows:

INTRODUCTION

1. The Gaming Commission should revoke Mr. Wynn's Findings of Suitability. Mr. Wynn has repeatedly violated Nevada's gaming statutes and regulations, bringing discredit upon the State of Nevada and its gaming industry. He is unsuitable to be associated with a gaming enterprise or the gaming industry as a whole.

2. From its initial licensure in 2005, Wynn Resorts, Ltd. (Wynn Resorts and/or Wynn Company) was led by Mr. Wynn, who was—until his recent resignation—its Chairman, Chief Executive Officer (CEO), and controlling shareholder. During this time, multiple women in employment positions that were subordinate to Mr. Wynn reported that Mr. Wynn subjected them to unwanted sexual advances. Mr. Wynn never reported these

allegations to the appropriate individuals or departments, but instead, concealed at least some of them through nondisclosure agreements and various other means. When some of Mr. Wynn's alleged misconduct became public in 2018, it resulted in negative reporting that was widely disseminated in media outlets around the world. This negative reporting and the underlying conduct harmed Nevada's reputation and its gaming industry. It damaged the public's confidence and trust in an industry that is vitally important to the economy of the State of Nevada and the general welfare of its inhabitants.

3. As the Wynn Company admitted in its 2019 Settlement with the Gaming Control Board, (1) it did not enforce its policies and procedures with regard to Mr. Wynn following the reporting procedures for sexual harassment and related matters; (2) its past failures to enforce its policies and procedures have led to multiple instances where sexual harassment allegations concerning Mr. Wynn were not investigated; and (3) its past failures to enforce its policies and procedures have led to multiple instances where allegations of sexual harassment by Mr. Wynn were not appropriately addressed by the Wynn Company.

4. Given the Wynn Company's failure to properly monitor and investigate Mr. Wynn's conduct, the Gaming Control Board was obligated to undertake its own investigation into Mr. Wynn's conduct. That investigation revealed numerous potential instances of unwelcome sexual conduct by Mr. Wynn. Multiple female employees stated they experienced unwelcome sexual conduct by Mr. Wynn, including exposing himself, inappropriate comments and touching, coerced sex, and requests for oral and vaginal sex acts. Investigators identified individuals who asserted they witnessed Mr. Wynn engage in a series of encounters with subordinate female employees. These subordinate employees were vulnerable to Mr. Wynn's conduct due to their financial dependence on continued employment at resorts controlled and managed by him.

5. As part of its investigation, the Gaming Control Board noticed Mr. Wynn to appear and testify at an Investigative Hearing to address these and other allegations made against him. That notice informed Mr. Wynn that his failure to appear and testify fully

shall constitute grounds for the revocation of his Findings of Suitability. Mr. Wynn, however, refused to—and did not—attend that hearing.

6. In his capacity as a (if not the) key executive of a major casino, Mr. Wynn's conduct was inimical to the public health, safety, morals, good order, and general welfare of the people of the State of Nevada. He failed to exercise discretion and sound judgment to prevent incidents, which negatively reflected on the repute of the State of Nevada and acted as a detriment to the development of the gaming industry. In short, he brought discredit upon the State of Nevada and its gaming industry. And when the Board sought his testimony in response to these issues, Mr. Wynn failed to appear—despite knowing that doing so constituted grounds for the revocation of his Findings of Suitability.

7. At a minimum, Mr. Wynn's Findings of Suitability should be revoked.

JURISDICTION

8. The Gaming Control Board is an administrative agency of the State of Nevada duly organized and existing under and by virtue of Chapter 463 of the NRS. It is charged with the administration and enforcement of the gaming laws of this state as set forth in Title 41 of the NRS and the Regulations of the Gaming Commission.

9. Mr. Wynn was previously found suitable by the Gaming Commission as, and was at all times relevant to this Complaint, CEO, Chairman, shareholder, and controlling shareholder of Wynn Resorts, which is registered as a publicly traded company by the Gaming Commission and, through wholly owned intermediaries and holding companies, is the owner of Wynn Las Vegas, LLC (Wynn LV), which holds a nonrestricted gaming license. Although Mr. Wynn resigned as CEO and Chairman of Wynn Resorts and redeemed his shares in Wynn Resorts, the Gaming Control Board placed an administrative hold on Mr. Wynn's Findings of Suitability and retains jurisdiction over him for purposes that include disciplinary proceedings.

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BACKGROUND

A. Complaints about Mr. Wynn that the Wynn Company Failed to Investigate

10. Mr. Wynn subjected his subordinate employees to unwelcome sexual advances, according to multiple complaints made against him.

11. Mr. Wynn hid those complaints from his Board of Directors and other key executives by using his personal funds to settle privately the complaints and requiring the complaining women to sign nondisclosure agreements.

12. Many of the allegations against Mr. Wynn came to light on January 26, 2018, when the *Wall Street Journal* published an article titled "Dozens of People Recount Pattern of Sexual Misconduct by Las Vegas Mogul Steve Wynn" (WSJ Article).

13. The WSJ Article described allegations taking place in 2005 regarding Mr. Wynn and a manicurist who worked for Wynn LV. The WSJ Article explained that Mr. Wynn forced the manicurist to have sex with him and that the manicurist's supervisor learned of the allegations and "filed a detailed report to the casino's human-resources department recounting the episode." The WSJ Article stated, "according to people familiar with the matter," Mr. Wynn paid a $7.5 million settlement to the manicurist based on the allegations.

14. The WSJ Article stated Mr. Wynn's behavior went beyond the manicurist incident: "dozens of people The Wall Street Journal interviewed who have worked at Mr. Wynn's casinos told of behavior that cumulatively would amount to a decades-long pattern of sexual misconduct by Mr. Wynn."

15. The WSJ Article went on to describe further sexual incidents alleged against Mr. Wynn. It also stated how employees were aware of Mr. Wynn's power in Las Vegas and worried about how that power could influence their ability to work elsewhere.

B. Wynn Company Policies

16. Mr. Wynn, at all times relevant to this Complaint, was found suitable as the controlling shareholder of Wynn Resorts, found suitable as a shareholder of Wynn Resorts, ...

found suitable as the Chairman of the Board of Wynn Resorts, and found suitable as the CEO of Wynn Resorts.

17. During all times relevant to this Complaint, the Wynn Company maintained a policy concerning harassment and discrimination (Harassment Policy). The Harassment Policy was "to prohibit any conduct, whether intentional or unintentional which results in the harassment or discrimination of employees . . . ."

18. The Harassment Policy defined sexual harassment as "any unwelcomed sexual advances, request for sexual favors, or other conduct of a sexual nature either verbal or physical . . . ."

19. The Harassment Policy stated that:

> [A]ll employees, from the highest management to the part-time staff, are responsible for following this policy and aiding in its enforcement. Additionally, all employees are responsible for maintaining a professional work environment by treating everyone... with respect and by being aware of their own behavior toward others in the work place.

20. The Harassment Policy set out that an employee who experiences or witnesses sexual harassment "should immediately report the conduct to: 1. The Employee Relations Department; 2. The Vice President of Human Resources, the Legal department, or your particular Divisional Vice President; 3. Any other member of management with whom [the employee] feel[s] comfortable."

21. The Harassment Policy required that supervisors who observe or become aware of harassment "**must immediately** report" such harassment "to the Employee Relations department and take appropriate steps to stop the offending behavior." (Emphasis in original).

22. During all times relevant to this Complaint, the Wynn Company maintained an investigations policy concerning alleged workplace conduct violations (Investigations Policy). The Investigations Policy stated that the company "will promptly initiate an appropriate investigation into all possible violations of law and Wynn policy and procedures." The Investigations Policy established that Human Resources (HR) or the

Employee Relations (ER) department will have primary responsibility for investigating complaints relating to employee misconduct and set forth the steps to be taken for an investigation. Specifically, an investigation should consist of the following:

1. Obtain verbal and written statements from all parties involved, including the complainant and accused.
2. Take photographs/video of any injury or damage (*if applicable*).
3. Preserve all evidence, and secure the evidence in a locked location. Document all evidence obtained.
4. Determine if there is a potential for risk occurrence. If there is a potential, take all measures appropriate to protect employees.
5. Complete an investigation report and provide all relevant and necessary information, including findings.

23. The Investigations Policy also set out that, based on the investigation, ER and/or HR "should determine whether the allegation(s) were substantiated, unsubstantiated or inconclusive." Further the determinations are "violation found," "no violation found," or "inconclusive investigation."

24. During all times relevant to this Complaint, the Wynn Company maintained a Personal Relationships policy. This policy discouraged "romantic or intimate relationships involving a direct or indirect supervisory relationship between employees regardless of whether the relationship is voluntary and/or welcomed by both parties."

25. The Wynn Company's Personal Relationships policy also set out that "Department managers are responsible for conducting themselves in a professional manner and strictly maintaining professional relationships with their employees at all times."

C. Gaming Control Board Investigation

i. Scope of the Investigation

26. Immediately upon learning of the allegations raised against Mr. Wynn in the WSJ Article, the Gaming Control Board launched a thorough and extensive investigation, which utilized a variety of methods to gather information including telephonic and in-person interviews, formal investigative hearings, and document review.

27. Gaming Control Board Staff contacted former and current employees, many of whom consented to telephonic or in-person recorded interviews. Some, however, declined to comment or did not respond.

28. Gaming Control Board Staff also contacted current and former executives and board members of the Wynn Company.

29. Gaming Control Board Staff also reviewed transcripts and exhibits of sworn testimony associated with the Wynn Company from depositions that were taken in the litigation between Wynn Resorts and Kazuo Okada, Aruze USA, Inc. and Universal Entertainment Corporation (Nevada 8th JD, Case #A-12-656710-B).

30. Gaming Control Board Staff also reviewed three lawsuits filed in the District Court of Clark County, Nevada detailing allegations of unwelcome sexual conduct by Mr. Wynn involving the Wynn Company employees, demand letters directly related to these lawsuits, additional demand letters, EEOC complaints, and a police report detailing other alleged incidents of unwelcome sexual conduct by Mr. Wynn.

31. Gaming Control Board Staff also reviewed voluntary statements submitted through the Gaming Control Board website. Investigators pursued submissions relevant to the scope of the investigation. Investigators also conducted telephonic interviews with those individuals who responded to Gaming Control Board inquiries.

32. Gaming Control Board Staff also reviewed company policies and procedures relating to harassment, workplace hostility, and discrimination.

33. Gaming Control Board Staff also reviewed confidential settlement agreements between specific employees, Mr. Wynn, and the Wynn Company.

34. Gaming Control Board Staff also reviewed nearly 300 worldwide news articles.

35. Gaming Control Board Staff also received regular updates from Wynn Resorts' internal investigation into the allegations of unwelcome sexual conduct by Mr. Wynn and the company's response to them.

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ii. Findings from the Investigation

36. Through its seven-month investigation, the Gaming Control Board found evidence of sexual conduct by Mr. Wynn involving subordinate female employees, which Mr. Wynn conducted in disregard of the Wynn Company policy and procedure.

37. The evidence from the investigation demonstrates a pattern of Mr. Wynn recklessly engaging in sexual conduct with subordinate employees, which even if it was consensual as maintained by Mr. Wynn, is oblivious to the significant power imbalance between the CEO of a major gaming company and subordinate employees dependent upon Mr. Wynn's approval for continued employment.

38. Mr. Wynn was in position of power as CEO and the largest shareholder.

39. When asked during interviews why they did not just say "no" to Mr. Wynn's sexual demands or find another job, female employees identified financial dependency on their current jobs and fear of firing, blackballing, or other reprisals by Mr. Wynn.

40. Although Mr. Wynn has indicated elsewhere that all sexual conduct at issue was consensual, Mr. Wynn thwarted any investigation of such conduct between himself and a subordinate employee through his personal use of non-disclosure agreements.

41. For example, the Gaming Control Board tried to contact women who sent demand letters detailing unwelcome sexual conduct as part of their investigations.

42. The Gaming Control Board, however, was informed that the women had settled with Mr. Wynn. At that point, the women would not agree to an interview due to confidentiality clauses in their settlement agreements with Mr. Wynn.

43. The Gaming Control Board also noticed Mr. Wynn to appear and testify at an Investigative Hearing regarding these and other allegations.

44. That notice informed Mr. Wynn that his failure to appear constituted grounds for the revocation of his Findings of Suitability.

45. Mr. Wynn, however, failed to comply with that notice and did not attend the scheduled hearing.

. . . .

D. Wynn Company Settlement with Gaming Control Board

46. On or about January 25, 2019, the Gaming Control Board filed a Complaint (Wynn Company Complaint), Case No. NGC 18-15, against the Wynn Company arising out of the Gaming Control Board investigation.

47. On or about February 26, 2019, the Gaming Commission accepted a Stipulation for Settlement and Order (2019 Settlement Stipulation) entered into between the Gaming Control Board and the Wynn Company resolving the Wynn Company Complaint.

48. The Gaming Commission imposed a $20,000,000 fine against the Wynn Company.

49. In the 2019 Settlement Stipulation, the Wynn Company admitted to nearly all of the allegations in the Wynn Company Complaint, including that:

a. Mr. Wynn, while Chairman of the Board of Directors and Chief Executive Officer of Wynn Resorts, engaged in intimate and sexual conduct with employees.

b. Mr. Wynn failed to comply with the Wynn Company's policies that he maintain a professional work environment and/or failed to comply with the spirit of Wynn Resorts' policies that discouraged intimate relationships between himself and employees.

c. Mr. Wynn's conduct is inappropriate and unsuitable given his position as head of the Wynn Company and given the inherent disparity in power between himself and non-management employees.

d. The Wynn Company did not enforce its policies and procedures with regard to Mr. Wynn following the reporting procedures for sexual harassment and related matters.

e. The Wynn Company's past failures to enforce its policies and procedures have led to multiple instances where sexual harassment allegations concerning Mr. Wynn were not investigated.

. . . .

f. The Wynn Company's past failures to enforce its policies and procedures have led to multiple instances where allegations of sexual harassment by Mr. Wynn were not appropriately addressed by the Wynn Company.

g. The Wynn Company's past failures to appropriately address allegations of sexual harassment by Mr. Wynn resulted in negative articles published in widely disseminated media publications, including, but not limited to, the Wall Street Journal.

h. Through these actions and failures, the Wynn Company violated NRS 463.170(8) and/or Nevada Gaming Commission Regulations 5.010 and/or 5.011.

50. Mr. Wynn, as the former Chairman of the Board of Directors and Chief Executive Officer of Wynn Resorts, is ultimately responsible for the failures alleged in the Wynn Company Complaint.

E. Massachusetts Gaming Commission Report and Proceedings

51. The Investigations and Enforcement Bureau (IEB) of the Massachusetts Gaming Commission (MGC) also conducted investigation into the ongoing suitability of Wynn MA, LLC, and its qualifiers after the January 26, 2018, WSJ article regarding the allegations of sexual harassment against Mr. Wynn.

52. The report prepared by the IEB contained a written statement provided by Mr. Wynn to the special committee set up by the Wynn Company.

53. In the written statement, Mr. Wynn admits to having "multiple consensual relationships during his tenure at Wynn Resorts . . . ." (IEB report dated 3/15/2019, pp. 162-63.) Mr. Wynn further admits that while employed by the Wynn Company he was aware that the Wynn Company had a "code of conduct and related policies," but states that he was not familiar with the details of those policies. (*Id.*)

54. In addition, during his testimony before the MGC, Matthew Maddox, the CEO of Wynn Company, testified as to the conduct of Mr. Wynn "that there were many victims [of Mr. Wynn], and those victims felt powerless...." (Adjudicatory Hearing Transcript Dated April 2, 2019, 28:6-7).

. . . .

55. In its Decision and Order, the MGC stated that it was "troubled by the systemic failures and pervasive culture of non-disclosure presented in the IEB report and adjudicatory hearing." (MGC Decision and Order, p. 49.) The MGC found that the "corporate culture of the founder-led organization led to disparate treatment of [Mr. Wynn] in ways that left the most vulnerable at grave risk." (*Id.*)

56. The MGC fined Wynn Resorts $35 million and an additional fine of $500 thousand against Matthew Maddox, the then CEO of Wynn Resorts.

RELEVANT LAW

57. Because "[t]he gaming industry is vitally important to the economy of the State and the general welfare of the inhabitants, . . . [p]ublic confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments . . . ." NRS 463.0129(1)(a)-(c).

58. For that reason, the legislature has granted the Gaming Commission "full and absolute power and authority to limit, condition, restrict, revoke or suspend any . . . finding of suitability . . . or fine any person . . . found suitable . . . for any cause deemed reasonable by the Commission." NRS 463.1405.

59. A finding of suitability—just like a license—may be denied, revoked, suspended, limited, conditioned, or restricted "upon the same grounds as [the Commission] may take such action with respect to licenses, licensees and licensing. . . ." Nev. Gaming Comm'n Reg. 3.080.

60. Further, each licensee or person found suitable bears the continuing obligation to continue to meet the standards and qualifications that were required to obtain the license or finding of suitability. NRS 463.170 and Nev. Gaming Comm'n Reg. 5.040.

61. To support the Gaming Commission's disciplinary decisions, the Gaming Control Board is authorized to observe the conduct of licensees and persons found suitable in order to ensure that the gaming operations or registered holding company are not being . . . .

operated in an unsuitable manner or by an unqualified or unsuitable person. NRS 463.1405(1) and Nev. Gaming Comm'n Reg. 5.040.

62. In support of that authority to observe, both the Gaming Control Board and the Gaming Commission have "full power and authority to issue subpoenas and compel the attendance of witnesses at any place within this state. . . ." NRS 463.140(5).

63. A person must not receive—or maintain—a license or finding of suitability unless the Commission is satisfied that the applicant is a (1) "person of good character, honesty and integrity;" (2) "whose prior activities, . . . reputation, habits and associations do not pose a threat to the public interest of this State;" and (3) is in "all other respects qualified to be licensed or found suitable consistently with the declared policy of the State." NRS 463.170(2).

64. The failure to continue to meet such standards and qualifications constitutes grounds for disciplinary action, including revocation. NRS 463.170(8).

65. Gaming Commission Regulation 5.010(1) explains that "all establishments wherein gaming is conducted in this state be operated in a manner suitable to protect the public health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada." It goes on to say in subsection 2 that "willful or persistent use or toleration of methods of operation deemed unsuitable will constitute grounds for license revocation or other disciplinary action."

66. The Gaming Control Board for numerous reasons can bring discipline.

67. Most notably, Gaming Commission Regulation 5.011 explains that discipline may be based on any activity (1) "that is inimical to the public health, safety, morals, good order and general welfare of the people of the State of Nevada," or (2) "that would reflect or tend to reflect discredit upon the State of Nevada or the gaming industry."

68. Regulation 5.011 goes on to provide a non-exhaustive list of grounds for discipline, including:

> 1. Failure to exercise discretion and sound judgment to prevent incidents which might reflect on the repute of the State of

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

69. Additionally, all licensees and persons found suitable have a duty to cooperate with investigations and provide testimony. Nev. Gaming Comm'n Reg. 5.070.

70. In that regard, any licensee or person found suitable is required to appear to testify before the Gaming Control Board when summoned on any matter the Gaming Control Board deems relevant. *Id.*

71. That hearing may be conducted by one or more members of the Gaming Control Board or a hearing examiner appointed by the Gaming Control Board. NRS 463.110(4) and Nev. Gaming Comm'n Regs. 2.060(2) and 5.070.

72. Importantly, "[f]ailure to so appear and testify fully at the time and place designated, unless excused, shall constitute grounds for the revocation or suspension of any license held by the person summoned, his or her principal or employer." *Id.*

73. Finally, violation of any provision of the Nevada Gaming Control Act or its regulations "shall be deemed contrary to the public health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada and grounds for suspension or revocation of a license." Nev. Gaming Comm'n Reg. 5.030.

COUNT ONE
VIOLATION OF NRS 463.170 and/or
GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

74. The Gaming Control Board realleges and incorporates the above paragraphs.

75. Nevada Revised Statute 463.170(2)(a) requires, inter alia, that Mr. Wynn be a person of good character.

76. Nevada Revised Statute 463.170(2)(b) requires, inter alia, that Mr. Wynn's activities, reputation, and habits do not pose a threat to the public interest of this State.

77. Mr. Wynn's conduct violated NRS 463.170(2)(a)-(b):

a. The Gaming Control Board's investigation found evidence of multiple instances of sexual conduct by Mr. Wynn involving subordinate employees. By engaging in this conduct, whether consensual or not, Mr. Wynn disregarded Wynn Company's policies and procedures. The Gaming Control Board's investigative findings are consistent with the Wynn Company's recitals in its settlement with the Nevada Gaming Commission, the Massachusetts Gaming Commissions' investigation, and Mr. Wynn's statement to investigators with the Massachusetts Gaming Commission.

b. Mr. Wynn's conduct was not consistent with good character and poses a threat to the public interest of the State of Nevada, as is evident by Matthew Maddox's testimony where he described subordinate employees whom Mr. Wynn had allegedly had interaction of a sexual nature with as "victims."

c. Mr. Wynn's description of his sexual encounters with subordinate employees as "consensual" in apparent ignorance that he held significant power and control over them is inimical to the public interest of the State, which requires that subordinate employees be free from unwelcome sexual conduct in the workplace.

d. Mr. Wynn serially disregarded his company's policies and procedures regarding personal relationships with subordinate Wynn Company employees. By doing so, Mr. Wynn exposed Wynn Company to potential legal liability and put the reputation of the gaming industry and the State of Nevada at risk.

78. This behavior is unacceptable within the Nevada gaming industry, and serves to disqualify Mr. Wynn from being suitable to hold the position of CEO, or any other position under the jurisdiction of the Nevada Gaming Commission.

79. For these reasons, Mr. Wynn failed to comply with NRS 463.170(2)(a), which requires that he be a person of good character. Mr. Wynn has also failed to comply with NRS 463.170(2)(b), which requires that his prior activities, reputation, and habits do not pose a threat to the public interest of this State.

. . . .

80. Mr. Wynn's conduct and/or his failure to follow the Wynn Company policies and procedures further constitutes a violation of Gaming Commission Regulations 5.010, 5.011, 5.011(1), 5.011(8), and/or 5.011(10).

81. Each separate incident alleged against Mr. Wynn constitutes a separate violation of the Gaming Control Act and its regulations.

82. Mr. Wynn's failure to comply with NRS 463.170(8) and/or Gaming Commission Regulations 5.010, 5.011, 5.011(1), 5.011(8), and/or 5.011(10) constitutes grounds for disciplinary action against Mr. Wynn under NRS 463.1405(4), 463.170(8), and 463.641, and Gaming Commissions Regulations 3.080, 5.010(2), and 5.030.

COUNT TWO
VIOLATION OF NRS 463.170 and/or
GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

83. The Gaming Control Board realleges and incorporates the above paragraphs.

84. Mr. Wynn engaged in sexual conduct with one or more Wynn Company employees while he served as Chairman of the Board and CEO of Wynn Resorts.

85. As the Wynn Company admitted in the 2019 Settlement Stipulation, in engaging in such conduct, Mr. Wynn failed to comply with the Wynn Company policies that he maintain a professional work environment and/or failed to comply with the spirit of the Wynn Company policies that discouraged intimate relationships between himself and employees.

86. As the Wynn Company further admitted in the 2019 Settlement Stipulation, regardless of whether Mr. Wynn's conduct expressly violated any policies or laws, such conduct is inappropriate and unsuitable given the position Mr. Wynn held as Chairman and CEO, and given the inherent disparity in power between himself and employees with whom he has had sexual relations.

87. Mr. Wynn's conduct and failures resulted in negative reporting in widely disseminated media outlets.

. . . .

. . . .

88. Mr. Wynn's actions and failure to follow the Wynn Company policies and procedures as described above constitutes a violation of NRS 463.170(8) and/or Gaming Commission Regulations 5.010, 5.011, 5.011(1), and/or 5.011(10).

89. Specifically, the conduct violates NRS 463.170(2)(a), which requires that an applicant be a person of good character.

90. The conduct also violates NRS 463.170(2)(b), which requires that an applicant's prior activities, reputation, and habits do not pose a threat to the public interest of this State.

91. The conduct is an unsuitable method of operation under Gaming Commission Regulation 5.011(1) because Mr. Wynn failed to exercise discretion and sound judgment to prevent incidents, which might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry.

92. The conduct is also an unsuitable method of operation under Gaming Commission Regulation 5.011(10) because Mr. Wynn (1) failed to conduct gaming operations in accordance with proper standards of custom, decorum, and decency; and (2) engaged in conduct in a gaming establishment which reflects or tends to reflect on the repute of the State of Nevada and act as a detriment to the gaming industry.

93. Each separate incident alleged against Mr. Wynn constitutes a separate violation of the Gaming Control Act and its regulations.

94. Mr. Wynn's failure to comply with NRS 463.170(8) and/or Gaming Commission Regulations 5.010, 5.011, 5.011(1), and/or 5.011(10) constitutes an unsuitable method of operation and is grounds for disciplinary action against Mr. Wynn under NRS 463.1405(4), 463.170(8), and 463.641, and Gaming Commissions Regulations 3.080, 5.010(2), and 5.030.

COUNT THREE
VIOLATION OF NRS 463.170 and/or
GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

95. The Gaming Control Board realleges and incorporates the above paragraphs.

. . . .

96. In 2005, an employee in the Wynn LV Salon (Manicurist[1]), alleged to various individuals at the Wynn LV that she had been sexually assaulted by Mr. Wynn and that she became pregnant as a result.

97. When faced with the Manicurist's allegations, Mr. Wynn did not report the allegations to the Wynn Company's human resources department. Instead, he elected to address the allegations through a private, confidential settlement with the Manicurist in which she and her husband were paid $7.5 million through a separate legal entity funded personally by Mr. Wynn (2005 Settlement).

98. The 2005 Settlement contained requirements that the Manicurist (1) retract her allegation; (2) agree not to file any claim, charge, and/or complaint concerning the allegation; and (3) agree to confidentiality and nondisclosure of both the existence of and facts surrounding the 2005 Settlement.

99. Mr. Wynn ensured the secrecy of the 2005 Settlement through not only its terms, but also by using a personal attorney and by creating a separate legal entity to serve as the named party to the Settlement in place of Mr. Wynn.

100. Indeed, as the Wynn Company admitted in the 2019 Settlement Stipulation, the Wynn Company did not conduct a timely investigation into the Manicurist's allegations or into Mr. Wynn's admitted sexual relationship with a subordinate.

101. These allegations and/or Mr. Wynn's conduct to cover them up resulted in negative reporting in widely disseminated media outlets and thus reflected and/or tended to reflect discredit upon the State of Nevada and/or the gaming industry.

102. Mr. Wynn's conduct and/or his failure to follow the Wynn Company policies and procedures as described above constitute a violation of NRS 463.170(8) and/or Gaming Commission Regulations 5.010, 5.011, 5.011(1), 5.011(8), and/or 5.011(10).

103. Specifically, the conduct violates NRS 463.170(2)(a), which requires that an applicant be a person of good character.

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[1] In order to protect the identities of the victims of and witnesses to unwelcome sexual conduct by Mr. Wynn, the various employees are given descriptive pseudonyms based on their jobs.

104. The conduct also violates NRS 463.170(2)(b), which requires that an applicant's prior activities, reputation, and habits do not pose a threat to the public interest of this State.

105. The conduct is an unsuitable method of operation under Gaming Commission Regulation 5.011(1) because Mr. Wynn failed to exercise discretion and sound judgment to prevent incidents, which might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry.

106. The conduct is also an unsuitable method of operation under Gaming Commission Regulation 5.011(10) because Mr. Wynn (1) failed to conduct gaming operations in accordance with proper standards of custom, decorum, and decency; and (2) engaged in conduct in a gaming establishment which reflects or tends to reflect on the repute of the State of Nevada and act as a detriment to the gaming industry.

107. Each separate incident alleged against Mr. Wynn constitutes a separate violation of the Gaming Control Act and its regulations.

108. Mr. Wynn's failure to comply with NRS 463.170(8) and/or Gaming Commission Regulations 5.010, 5.011, 5.011(1), 5.011(8), and/or 5.011(10) constitutes an unsuitable method of operation and is grounds for disciplinary action against Mr. Wynn under NRS 463.1405(4), 463.170(8), and 463.641, and Gaming Commissions Regulations 3.080, 5.010(2), and 5.030.

COUNT FOUR
VIOLATION OF NRS 463.170 and/or
GAMING COMMISSION REGULATIONS 5.010 and/or 5.011

109. The Gaming Control Board realleges and incorporates the above paragraphs.

110. In 2006, a cocktail server at Wynn LV (Cocktail Server) alleged that Mr. Wynn sexually assaulted her.

111. When faced with the Cocktail Server's allegations, Mr. Wynn elected to resolve the matter through private negotiations with the Cocktail Server and her parents, which resulted in a $975,000 settlement entered into on December 6, 2006 (2006 Settlement).

112. To assist in the resolution of the Cocktail Server's allegations, Mr. Wynn involved a personal attorney who at some point instructed the Chief Human Resources Officer for Wynn LV that HR and/or ER were not to investigate the matter.

113. The 2006 Settlement contained requirements that the Cocktail Server (1) state only that "No claim was pursued because there was nothing to pursue" if asked about her claims; (2) agree not to file any claim, charge, and/or complaint concerning the allegations; and (3) agree to confidentiality and nondisclosure of both the existence of and facts surrounding the 2006 Settlement.

114. Mr. Wynn ensured the secrecy of the 2006 Settlement through not only its terms, but also by using a personal attorney.

115. Indeed, as the Wynn Company admitted in the 2019 Settlement Stipulation, the Wynn Company failed to initiate an ER investigation into the Cocktail Server's allegations of unwelcome sexual conduct in violation of the Wynn Company's policies and procedures.

116. These allegations and/or Mr. Wynn's conduct to cover them up resulted in negative reporting in widely disseminated media outlets and thus reflected and/or tended to reflect discredit upon the State of Nevada and/or the gaming industry.

117. Mr. Wynn's conduct and/or his failure to follow the Wynn Company policies and procedures as described above constitute a violation of NRS 463.170(8) and/or Gaming Commission Regulations 5.010, 5.011, 5.011(1), 5.011(8), and/or 5.011(10).

118. Specifically, the conduct violates NRS 463.170(2)(a), which requires that an applicant be a person of good character.

119. The conduct also violates NRS 463.170(2)(b), which requires that an applicant's prior activities, reputation, and habits do not pose a threat to the public interest of this State.

120. The conduct is an unsuitable method of operation under Gaming Commission Regulation 5.011(1) because Mr. Wynn failed to exercise discretion and sound judgment to . . . .

prevent incidents, which might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry.

121. The conduct is also an unsuitable method of operation under Gaming Commission Regulation 5.011(10) because Mr. Wynn (1) failed to conduct gaming operations in accordance with proper standards of custom, decorum, and decency; and (2) engaged in conduct in a gaming establishment which reflects or tends to reflect on the repute of the State of Nevada and act as a detriment to the gaming industry.

122. Each separate incident alleged against Mr. Wynn constitutes a separate violation of the Gaming Control Act and its regulations.

123. Mr. Wynn's failure to comply with NRS 463.170(8) and/or Gaming Commission Regulations 5.010, 5.011, 5.011(1), 5.011(8), and/or 5.011(10) constitutes an unsuitable method of operation and is grounds for disciplinary action against Mr. Wynn under NRS 463.1405(4), 463.170(8), and 463.641, and Gaming Commissions Regulations 3.080, 5.010(2), and 5.030.

COUNT FIVE
VIOLATION OF NRS 463.170 and/or
GAMING COMMISSION REGULATIONS 5.010, 5.011, and/or 5.070

124. The Gaming Control Board realleges and incorporates the above paragraphs.

125. The Gaming Control Board has a duty to investigate and observe the conduct of licensees and persons found suitable in order to ensure that gaming licenses and Findings of Suitability are not held by unqualified or unsuitable persons or persons whose operations are conducted in an unsuitable manner. NRS 463.1405(1) and Gaming Commission Regulation 5.040.

126. The Gaming Control Board has a duty to investigate and observe the conduct of licensees, persons found suitable, and other persons having a material involvement directly or indirectly with a licensed gaming operation to ensure that unqualified or unsuitable persons have no direct or indirect material involvement with a licensed gaming operation. NRS 463.1405(1).

. . . .

127. The Gaming Control Board has a statutory duty to make appropriate investigations to determine whether there has been a violation of the Nevada Gaming Control Act or any regulations adopted thereunder. NRS 463.310.

128. The Gaming Control Board had a duty to investigate the allegations of unwelcome sexual conduct by Mr. Wynn as reported in the WSJ Article, including by seeking testimony from Mr. Wynn through an Investigative Hearing.

129. Pursuant to NRS 463.140(5), the Gaming Control Board issued a written Order to Appear requiring Mr. Wynn to appear at the Gaming Control Board's offices on Friday, September 7, 2018 at 11:00 a.m., to provide testimony under oath.

130. That Order to Appear was hand delivered to Mr. Wynn's attorney during a meeting with Gaming Control Board Staff on August 30, 2018.

131. The Order to Appear notified Mr. Wynn that pursuant to Gaming Commission Regulation 5.070, his failure to appear and testify at the Investigative Hearing was grounds for the revocation or suspension of any Findings of Suitability that he held.

132. During the August 30, 2018, meeting between Gaming Control Board Staff and Mr. Wynn's counsel, Gaming Control Board staff emphasized that Mr. Wynn's Findings of Suitability remained in effect.

133. Gaming Control Board Staff also informed Mr. Wynn's counsel in that meeting that Mr. Wynn's submission of written answers to Gaming Control Board questions in lieu of the Investigative Hearing was not an acceptable option, and the Investigative Hearing would proceed as scheduled to obtain testimony from Mr. Wynn.

134. On Wednesday, September 5, 2018, counsel for Mr. Wynn sent a letter to the Gaming Control Board claiming that Mr. Wynn was no longer a "bona-fide licensee" and "remains willing to consider any and all written inquiries which will assist [the Gaming Control Board] in [its] investigation. . ." The letter further stated that because Mr. Wynn had retained counsel with the intent to pursue defamation litigation related to the claims of Mr. Wynn's unwelcome sexual conduct, Mr. Wynn "cannot be reasonably expected to . . . .

waive any of his privileges except at the appropriate time and in the appropriate judicial forum."

135. The September 5, 2018, letter did not request Mr. Wynn's excusal from having to appear and testify at the Investigative Hearing scheduled for September 7, 2018.

136. Mr. Wynn failed to appear and testify on September 7, 2018, for the Gaming Control Board's Investigative Hearing.

137. Mr. Wynn's failure to attend and participate in the Investigative Hearing hindered the Gaming Control Board's ability to perform its duty to conduct the necessary investigation into allegations concerning Mr. Wynn's unwelcome sexual conduct.

138. By failing to appear and participate in the scheduled investigative hearing, Mr. Wynn deprived the Gaming Control Board of material information and testimony required to conduct a thorough and complete investigation into the serious allegations at issue.

139. Through his conduct described herein, Mr. Wynn failed to maintain the standards and qualifications of a finding of suitability. His conduct demonstrated that he is not a person of good character, honesty, and/or integrity. His conduct further establishes that he poses a threat to the public interest of the State of Nevada and that his holding of the Findings of Suitability issued to him is no longer consistent with the declared policy of the State of Nevada.

140. Mr. Wynn's failure to appear and testify at the Gaming Control Board's offices on September 7, 2018, in accordance with the Gaming Control Board's statutory and regulatory duty to investigate a matter of this magnitude, or otherwise be excused from the same, constitutes a violation Gaming Commission Regulation 5.070, which provides that the failure to appear and testify at an investigative hearing shall constitute grounds for the revocation or suspension of any license held by the person summoned.

141. Mr. Wynn's failure to comply with Gaming Commission Regulation 5.070 is an unsuitable method of operation. He should be disciplined under NRS 463.1405(4), 463.170(8), and 463.641, and Gaming Commissions Regulations 3.080, 5.010(2), and 5.030.

PRAYER FOR RELIEF

Pursuant to NRS 463.310 and Gaming Commission Regulations 5.010 and 5.030, and based upon these allegations, which constitute reasonable cause for disciplinary action against Mr. Wynn, the Gaming Control Board prays for the relief as follows:

1. That the Gaming Commission serve a copy of this Complaint on Mr. Wynn pursuant to NRS 463.312(2);

2. That the Gaming Commission fine Mr. Wynn a monetary sum pursuant to the parameters defined at NRS 463.310(4) for each separate violation of the provisions of the Nevada Gaming Control Act or the Regulations of the Gaming Commission;

3. That the Gaming Commission revoke Mr. Wynn's Findings of Suitability pursuant to the parameters defined in NRS 463.310(4); and

4. For such other and further relief as the Gaming Commission may deem just and proper.

DATED this 14th day of October, 2019.

NEVADA GAMING CONTROL BOARD

SANDRA MORGAN, Chairwoman

TERRY JOHNSON, Member

PHILIP KATSAROS, Member

Submitted by:

AARON D. FORD
Attorney General

Kyle George (NV Bar No. 13489)
First Assistant Attorney General
Steve Shevorski (NV Bar No. 8256)
Chief Litigation Counsel
Craig Newby (NV Bar No. 8591)
Deputy Solicitor General
Michael P. Somps (NV Bar No. 6507)
Senior Deputy Attorney General
Edward L. Magaw (NV Bar No. 9111)
Senior Deputy Attorney General

CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (1216)
djc@cwlawlv.com
J. COLBY WILLIAMS, ESQ. (5549)
jcw@cwlawlv.com
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

Attorneys for Respondent
Stephen A. Wynn

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

STATE OF NEVADA

BEFORE THE NEVADA GAMING COMMISSION

NEVADA GAMING CONTROL BOARD, Complainant, vs. STEPHEN ALAN WYNN, In his capacity as having been found suitable as Chief Executive Officer, Chairman of the Board, and shareholder and controlling shareholder of Wynn Resorts, Ltd.; Respondent.	CASE NO.: NGC 19-03 **RECEIPT OF COPY OF MOTION TO DISMISS COMPLAINT BASED ON LACK OF SUBJECT MATTER JURISDICTION**

Receipt of Respondent Stephen Alan Wynn's **"Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction"** is hereby acknowledged this 14th day of November, 2019.

AARON D. FORD
ATTORNEY GENERAL

Steven Shevorski/MP
STEVEN G. SHEVORSKI
Chief Litigation Counsel
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

Attorneys for Complainant
Nevada Gaming Control Board

NGC 19-03

RECEIVED/FILED
NOV 27 2019
NEVADA GAMING COMMISSION
LAS VEGAS, NEVADA

STATE OF NEVADA

BEFORE THE NEVADA GAMING COMMISSION

NEVADA GAMING CONTROL BOARD, Complainant, vs. STEPHEN ALAN WYNN, In his capacity as having been found suitable as Chief Executive Officer, Chairman of the Board, and shareholder and controlling shareholder of Wynn Resorts, Ltd.; Respondent.	**NEVADA GAMING CONTROL BOARD'S OPPOSITION TO STEPHEN ALAN WYNN'S MOTION TO DISMISS BASED ON LACK OF SUBJECT MATTER JURISDICTION**

The State of Nevada, on relation of its Nevada Gaming Control Board ("Board"), by and through its counsel, oppose Stephen Alan Wynn's Motion to Dismiss ("Motion") for lack of subject matter jurisdiction.

I. Introduction

Stephen Alan Wynn ("Wynn") can no longer avoid scrutiny for his actions. Wynn in his Motion touts his "45+ year tenure as a gaming licensee" without the Board having ever brought disciplinary action against him. Br. at 4. Far from being blameless, Wynn thwarted discovery and investigation of his conduct through non-disclosure agreements and personal funds. Wynn cannot avoid the Nevada Gaming Commission's ("Commission" or "NGC") disciplinary power through his latest legal machination. This Commission has subject matter jurisdiction.

Wynn's Motion is procedurally flawed. In a misguided effort to shift the burden of persuasion from Wynn to the Board, Wynn mistakenly styles his Motion as a motion to dismiss for lack of subject matter jurisdiction. Wynn's Motion, properly considered, is a merits argument. Wynn challenges the applicability of disciplinary statutes and

regulations to him after he severed ties with Wynn Resorts. To accept Wynn's erroneous premise would allow persons such as Wynn to frustrate this Commission's subject matter jurisdiction by severing employment ties prior to revocation proceedings. The absurd result that would flow from such an interpretation evidences the vacuity of this argument.

Even if Wynn's Motion was procedurally proper (it is not), this Commission has subject matter jurisdiction. **First**, this Commission has subject matter jurisdiction to interpret Nevada Revised Statutes ("NRS") Chapter 463 ("Gaming Control Act") and decide whether its provisions apply to Wynn (they do). **Second**, Wynn concedes this Commission would have subject matter jurisdiction to confirm a stipulation barring him from Nevada's gaming industry. Br. 23:10-12. Wynn never explains why, if this Commission has subject matter jurisdiction to confirm a stipulation, this Commission would purportedly lack subject matter jurisdiction to revoke his suitability. **Third**, Wynn's arguments render this Commission's power to revoke a finding of suitability and its penalties a nullity. Persons such as Wynn could avoid the penalties of revocation, e.g. NRS 463.645, by jettisoning their current role with a licensee at any time of their choosing.

II. Legal Standards

Wynn filed a motion to dismiss for lack of subject matter jurisdiction. There are two types of this jurisdictional attack. First, a facial attack where the absence of subject matter jurisdiction is clear from a complaint's allegation. *Rosequist v. Int'l Ass'n of Firefighters Local 1908*, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002), overruled on other grounds by *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 573 n.22, 170 P.3d 989, 995 n.22 (2007). Second, a "factual attack" where the tribunal takes evidence because the defendant disputes the truth of the jurisdictional facts. *Morrison v. Beach City, LLC*, 116 Nev. 34, 36-37, 991 P.2d 982, 983 (2000).

III. Background

A. Legal background

Because Wynn attacks this Commission's legal power over him, it is necessary to review the broad power Nevada's legislature delegated to the Commission over gaming and

those persons related to Nevada's gaming industry. The following sections of NRS Chapter 463 are relevant to this Commission's review.

Nevada's legislature described the vital role that gaming plays in our State's economy and to the welfare of its citizens. NRS §463.0129(1)(a). The legislature correctly recognized that the gaming industry's continued growth in our state is dependent on public confidence in licensed gaming. NRS §463.0129(1)(b). Public confidence is achieved through "strict regulation" of, inter alia, persons "related to the operation of licensed gaming establishments...." NRS §463.0129(1)(c). All places where gaming is conducted are to be "assisted to protect the public health, safety, morals, good order and general welfare of the inhabitants of the State...." NRS §463.0129(1)(e).

Keeping faith with the sovereign importance of gaming's role in our State, Nevada's legislature created this Commission and the Board. NRS §463.022, 030. The Commission and the Board are to administer the provisions of the Nevada Gaming Control Act to protect the public interest consistent with Nevada policy. NRS §463.140(1). The Board has "full and absolute power" to recommend to the Commission that a finding of suitability be revoked. NRS §463.1405(3). This Commission "has full and absolute power and authority" to revoke a finding of suitability. NRS §463.1405(4).

The legislature's definition of suitability has no nexus to the person's temporal connection to a particular licensee. Nevada Revised Statute 463.170(4) explains, "[a]n application to receive a license or be found suitable constitutes a request for a determination of the applicant's general character, integrity, and ability to participate or engage in, or be associated with gaming...." NRS §463.170(4). Because suitability concerns not only the "ability" to work in gaming, but also whether a person is of sufficient "character" to "be associated with gaming," the Commission and the Board are tasked with continuing to observe the conduct of all licensees and persons having material direct or indirect involvement with a licensed gaming operation. NRS §463.1405(1).

That suitability is broader than a person's connection to a current licensee is patent from the language of NRS 463.645. That section, *inter alia*, prohibits gaming licensees,

after receiving written notice from the Commission, from paying or employing persons whose suitability has been revoked. NRS §463.645(1)-(3). These sections can be enforced by the Board. NRS §463.645(2).

There is no language in the Gaming Control Act that even hints that the Board's investigatory and disciplinary powers are dependent on a person's current nexus with a gaming licensee. The Board is empowered to investigate whether there has been "any violation of this chapter...or the regulations adopted thereunder." NRS 463.310(1)(a). The Board may then institute an action to recommend that the Commission discipline the person by revoking their suitability or issuing a fine. NRS §463.310(2(a)-(b). A "respondent" to the Board's complaint means "any licensee," but it also includes "other person[s]." NRS §463.0187.

The Act does allow for the "surrender" of a gaming license, but spells out mandatory procedures for the effective surrender of that license. A surrender is not effective until this Commission accepts it. NRS §463.270(8). Even after surrender of a license, the former licensee remains liable for penalties, fines, fees, taxes, or interest due. *Id.*

B. Factual background

1. Parties

The Board is an administrative agency created by Chapter 463 of the NRS. Compl. at ¶8. Wynn is the former Chief Executive Officer, Chairman, and controlling shareholder of Wynn Resorts. *Id.* at ¶9. The Commission had issued findings of suitability regarding Wynn. *Id.* at ¶¶9 and 16. The Board through its complaint recommends that this Commission revoke Wynn's findings of suitability and issue an appropriate fine against him. *Id.* at pg. 23.

2. Wynn's factual background statement is irrelevant

Wynn in his Motion confuses and conflates two different types of motions. Wynn submits a statement of facts (Br. 4-12), but then makes exclusively legal arguments (Br. 14-24) about whether Nevada's legislature gave this Commission express or implied power to entertain the Board's disciplinary action against him. Mr. Campbell in his declaration

does nothing to challenge the subject matter jurisdiction of this Commission on a factual basis. Accordingly, Wynn's Motion is a facial challenge.

A reviewing tribunal views a facial attack the same way it reviews a motion to dismiss for failure to state a claim. *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). In Nevada, dismissing a complaint is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). While Wynn is correct that the Board bears the burden of demonstrating subject matter jurisdiction, this Commission must review Wynn's Motion under the *Buzz Stew* standard.

3. Wynn repeatedly violated Wynn Resorts' policy

Wynn Resorts mandated that all managers comport themselves professionally. Compl. at ¶25. To that end, romantic relationships between supervisors and subordinate employees were strongly discouraged. *Id.* at ¶24. Wynn Resorts' sexual harassment policy prohibited harassment, whether such conduct was intentional or unintentional. *Id.* at ¶17. Wynn never bothered with the details of these policies. *Id.* at ¶53.

In disregard of these policies and the obvious power disparity between himself and subordinate employees, Wynn had multiple sexual encounters with subordinate employees. Wynn has conceded that he had "'multiple consensual relationships during his tenure at Wynn Resorts..." *Id.* at ¶53 (quoting Wynn's written statement to the Investigations and Enforcement Bureau of the Massachusetts Gaming Commission). Matthew Maddox, the CEO of Wynn Company, views Wynn's behavior differently by saying, "there were many victims, and those victims felt powerless..." *Id.* at ¶54 (quoting Adjudicatory Hearing Transcript Dated April 2, 2019, 28:6-7).

4. Wynn thwarted Wynn Resorts and Board's discovery of his behavior through payment of significant sums and non-disclosure agreements

Wynn Resorts' policy was to investigate allegations of harassment in the workplace. *Id.* at ¶22-23. Wynn Resorts was to obtain statements from affected parties, preserve

evidence, determine the potential for risk occurrence, protect the employees affected, complete an investigation, and determine the allegation's merits. *Id.* Repeatedly, Wynn interrupted this process to prevent discovery of the merits of serious allegations.

Wynn frustrated anyone's ability to discover the merits of the allegations against him. A Wynn Resorts manicurist made serious allegations that Wynn engaged in unwelcome sexual conduct toward her. *Id.* at ¶96. Wynn privately settled her dispute for $7.5 million and mandated that the manicurist sign a confidentiality and non-disclosure agreement. *Id.* at ¶97. A Wynn Resorts cocktail server made serious allegations of harassment against him. *Id.* at ¶110. Wynn scotched discovery of the merits of these allegations by privately paying $975,000 and requiring the cocktail server to sign a confidentiality and non-disclosure agreement. *Id.* at ¶¶111-13. Other Wynn Resorts employees have made serious allegations of unwelcome sexual conduct by Wynn, as is evidenced by multiple demand letters sent by their attorneys. *Id.* at ¶41. Again, Wynn resolved these disputes through confidentiality agreements with non-disclosure clauses. *Id.* at ¶42.

5. Wynn impeded the Board's investigation of these serious allegations by refusing to appear and testify

The Board went straight to the source, Wynn, to investigate these serious allegations and the ensuing payments of over $8 million (amounts stated are only those known that are of public record). *Id.* at ¶43. The Board sent Wynn a notice to appear at an investigative hearing to address the allegations. *Id.* Rather, than comply with the Board's investigation, Wynn sought to dictate the terms of his participation to serve his own personal interests. This is patent from reviewing Mr. Campbell's letter of September 5, 2018. *See* Br., Campbell Declaration, Ex. 8. Wynn's refusal to participate in the investigative hearing was a violation of NGC Regulation 5.070, which made his participation compulsory.

Rather than appear and give testimony, Wynn offered to respond to written inquiries. *Id.* at Ex. 8, pg. 2. Wynn's rationale was inimical to the public interest because it was devoted to his self-interest:

> Despite this indisputable state of affairs [Wynn's alleged claim he is "no longer a bona-fide licensee"], Mr. Wynn desires to cooperate with Nevada regulators in any reasonable manner which does not compromise his ongoing efforts to vindicate his good name.

Id. Wynn never explains in his counsel's letter why Wynn's goal to vindicate a personal goal trumps the Board's legal duty to investigate matters affecting its statutory duties. *See* NRS §463.110(4).

IV. Legal Argument

A. Wynn's Motion is procedurally improper

Wynn styles his Motion as one challenging subject matter jurisdiction. Wynn is wrong. Wynn argues that the statute permitting the Board to recommend to this Commission that findings of suitability be revoked no longer applies to him since he jettisoned his interest in Wynn Resorts. Br. 2:9-13. Properly considered, Wynn is making a merits argument.

Subject matter jurisdiction refers to a tribunal's power to decide an issue. *Union Pacific R. Co. v. Locomotive Engineers*, 558 U.S. 67, 81 (2009). Whether a court lacks subject matter jurisdiction "can be raised by the parties at any time, or sua sponte by a court of review, and cannot be conferred by the parties." *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990). In other words, a reviewing tribunal when considering subject matter jurisdiction must review the text of the relevant provisions. *Landreth v. Malik*, 127 Nev. 175, 179-80, 251 P.3d 163, 166 (2011).

None of the legislative and regulatory sections cited by Wynn relate to the jurisdictional power of this Commission in the disciplinary context. Wynn obfuscates the jurisdictional question in his Motion by relying on the definition of suitability, as it relates to the qualifications a person must demonstrate in their application for a determination of a finding of suitability. Br. at 17-19 (citing NRS 463.1405(1) and Nev. Gaming Comm'n. Reg. §4.030). The important point that Wynn ignores is that nothing in NRS 463.1405(1) mandates that the Board stop its investigation immediately when the subject of its investigation ceases employment with the gaming licensee, let alone forfeit its power to

discipline for conduct that occurred during the time that person had a connection with the gaming licensee.

This Commission should construe NRS 463.1405(1) in harmony with NRS 463.310(2) to avoid absurd results. *Nevada Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999). The Nevada legislature's relevant provision that authorizes the Board to bring the current complaint reads as follows:

> 2. If, after any investigation the Board is satisfied that:
>
> (a) A license, registration, finding of suitability, preliminary finding of suitability, pari-mutuel license or prior approval by the Commission of any transaction for which the approval was required or permitted under the provisions of this chapter or chapter 462, 464 or 466 of NRS should be limited, conditioned, suspended or revoked; or
>
> (b) A person or entity which is licensed, registered, found suitable or found preliminarily suitable pursuant to this chapter or chapter 464 of NRS or which previously obtained approval for any act or transaction for which Commission approval was required or permitted under the provisions of this chapter or chapter 464 of NRS should be fined, the Board shall initiate a hearing before the Commission by filing a complaint with the Commission in accordance with NRS 463.312 and transmit therewith a summary of evidence in its possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the Board.

NRS §463.310(2)(a)-(b).

Like section 1405(1), nothing in this statute even hints that a person's current relationship with a gaming licensee is a jurisdictional prerequisite for a disciplinary proceeding. The statute does not use the word "jurisdiction." The statute also permits the Board to conduct an investigation, but does not limit that investigation to a specified length of time. The statute also does not hamstring the investigation by limiting it to employment status, which the Board would have no way of knowing absent the subject or his employer's act of self-reporting.

That Wynn's argument is a disguised merits argument is further shown by examining the nature of the argument he is making in light of edifying case law. Wynn wants to add the words "current employee, manager, or director's," to the phrase "finding

of suitability" in NRS 463.310(2)(a) to create a subject matter jurisdiction problem that does not exist. The statute contains no such limitation. Wynn argues a current connection to the gaming licensee upon which he applied for a suitability determination must be established to make the Gaming Control Act's disciplinary statutes applicable to him. Whether the Gaming Control Act applies to him now that he severed that connection with Wynn Resorts is a merits question. *Argaugh v. Y&H Corp.*, 546 U.S. 500, 511 (2006) (quoting 2 J. Moore et al., Moore's Federal Practice § 12.30[1], p. 12–36.1 (3d ed.2005)). ("Subject matter jurisdiction in federal-question cases is sometimes erroneously conflated with a plaintiff's need and ability to prove the defendant bound by the federal law asserted as the predicate for relief—a merits-related determination.")

Wynn, in fact, has conceded in his brief that this Commission has subject matter jurisdiction by referencing settlement discussions and the proposed stipulation. A tribunal can look to the parties' settlement discussions to determine its own subject matter jurisdiction. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002). Wynn writes in his Motion that "the parties could have entered a stipulation or contract to that effect without the taxpayer expense associated with this disciplinary proceeding. Such an agreement would be enforceable under Nevada law." Br. 23:11-13. Wynn fails to explain how this Commission would have subject matter jurisdiction to approve such a stipulation if the legal theory he presses in his current Motion is correct (it is not).

B. This Commission has subject matter jurisdiction

That this Commission has subject matter jurisdiction is the only logical interpretation of the Gaming Control Act. Nevada Revised Statute 463.0129(1)(a) emphasizes that the gaming industry is vitally important and that persons must be strictly regulated. While Wynn in his brief emphasizes his commercial importance to the State (Br. 4:9-18), Wynn ignores that the legislature also mandated that this Commission be concerned with the "general welfare of [our state's] inhabitants." NRS 463.0129(1)(a).

Wynn disregarded his own company's policies regarding harassment, personal relationships with subordinates, and investigation protocol relating to such incidents.

Wynn has paid over $8 million in settlement payment in matters where subordinate employees have made serious allegations of improper workplace conduct involving unwelcome sexual conduct. Wynn has disregarded his obligation to cooperate with the Board's investigation by refusing to provide testimony at an investigative hearing in deference to his personal interests in private litigation. Wynn asks this Commission to disregard these allegations, which must be taken as true for purposes of the Motion, on the wildly incorrect premise that this Commission lacks subject matter jurisdiction because he severed his relationship with Wynn Resorts. *See Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

An administrative agency only has those powers delegated to it by the legislature, *Andrews v. Nevada State Bd. of Cosmetology*, 86 Nev. 207, 208, 467 P.2d 96 (1970). However, it is equally true that Nevada's Supreme Court has interpreted subject matter jurisdiction to include agency power by implication to guard against an illogical restriction that would unnaturally prohibit the agency from ordering compliance with authority conferred by the legislature. *CCSD v. Clark Cty. Classroom Teachers Ass'n*, 115 Nev. 98, 103, 977 P.2d 1008, 1011 (1999).

This Commission has subject matter jurisdiction. The legislature empowered the Board to investigate violations of the Gaming Control Act. NRS §463.310(1)(a). The legislature demanded that the Board observe the conduct of persons who have received a finding of suitability. NRS §463.1405(1). The legislature granted the Board "full and absolute power" to recommend a revocation of a finding of suitability. NRS §463.1405(3). The legislature granted this Commission "full and absolute power" to revoke a finding of suitability. NRS §463.1405(4). These provisions give this Commission the power to discipline persons such as Wynn for conduct that occurred while they were a person found suitable to have a connection with a gaming licensee.

No section of the Gaming Control Act or its implementing regulations is to the contrary. Wynn's citation to various sections of the Gaming Control Act and its regulations to argue that suitability only exists while that person is involved with a licensee is not

persuasive. Wynn never explains how the legislature's express delegations of power to investigate, review, and then recommend discipline could logically function if a person such as Wynn could unilaterally eviscerate the Board's power to review his conduct and recommend discipline to this Commission by severing ties with a licensee. *See e.g. Cross v. Co. State Bd. of Dental Examiners*, 552 P.2d 38, 41 (Colo. Ct. App. 1976) (dentist could not divest disciplinary board of subject matter jurisdiction by surrendering his license).

Wynn seems to argue that he can unilaterally cut-off this Commission's subject matter jurisdiction by leaving Wynn Resorts, but no section of the Gaming Control Act supports his premise. Indeed, an analogous provision is to the contrary – a licensee's surrender of his license is only effective when the Commission accepts it. NRS 463.270(8).

Wynn cannot plausibly argue that the Board asserts "lifetime" jurisdiction over him. It is not. Even accepting Wynn's absurd premise, the timeliness of processing a particular issue is not a concern of subject matter jurisdiction. Arguments about timeliness have nothing to do with subject matter jurisdiction, unless the legislature makes it so. *Zipes v. Trans World Airlines, Inc.,* 455 U.S. 385, 393 (1982). If Wynn truly believes that the Board waited too long to bring its complaint for disciplinary action, then he can assert legal or equitable defenses. Nev. Gaming Comm'n. Reg. 7.150(1).

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V. Conclusion

Wynn's Motion lacks procedural and substantive merit. This Commission should deny Wynn's Motion in its entirety.

DATED this 27th day of November, 2019.

Submitted by:

AARON D. FORD
Attorney General

By: _____
Kyle George (NV Bar No. 13489)
First Assistant Attorney General
Steve Shevorski (NV Bar No. 8256)
Chief Litigation Counsel
Craig Newby (NV Bar No. 8591)
Deputy Solicitor General
Michael P. Somps (NV Bar No. 6507)
Senior Deputy Attorney General
Edward L. Magaw (NV Bar No. 9111)
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on November 27, 2019, I served the foregoing document by e-mailing and sending via United States Mail, first-class postage pre-paid, a true and correct copy thereof, addressed to the following:

Donald J. Campbell, Esq.
J. Colby Williams, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
djc@cwlawlv.com
jcw@cwlawlv.com
Attorneys for Respondent Stephen A. Wynn

/s/ Victoria Campbell
An employee of the office of the Nevada
Attorney General

CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (1216)
djc@cwlawlv.com
J. COLBY WILLIAMS, ESQ. (5549)
jcw@cwlawlv.com
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

Attorneys for Respondent
Stephen A. Wynn

STATE OF NEVADA

BEFORE THE NEVADA GAMING COMMISSION

NEVADA GAMING CONTROL BOARD, Complainant, vs. STEPHEN ALAN WYNN, In his capacity as having been found suitable as Chief Executive Officer, Chairman of the Board, and shareholder and controlling shareholder of Wynn Resorts, Ltd.; Respondent.	CASE NO.: NGC 19-03 **RECEIPT OF COPY OF REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT BASED ON LACK OF SUBJECT MATTER JURISDICTION**

Receipt of Respondent Stephen Alan Wynn's **"Reply In Support of Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction"** is hereby acknowledged this 9th day of December, 2019.

AARON D. FORD
ATTORNEY GENERAL

STEVEN G. SHEVORSKI
Chief Litigation Counsel
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

Attorneys for Complainant
Nevada Gaming Control Board

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (1216)
djc@cwlawlv.com
J. COLBY WILLIAMS, ESQ. (5549)
jcw@cwlawlv.com
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

Attorneys for Respondent
Stephen A. Wynn

RECEIVED/FILED
DEC 09 2019
NEVADA GAMING COMMISSION
LAS VEGAS, NEVADA

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone 702 382 5222 • Fax: 702 382 0540
www.campbellandwilliams.com

STATE OF NEVADA

BEFORE THE NEVADA GAMING COMMISSION

NEVADA GAMING CONTROL BOARD, Complainant, vs. STEPHEN ALAN WYNN, In his capacity as having been found suitable as Chief Executive Officer, Chairman of the Board, and shareholder and controlling shareholder of Wynn Resorts, Ltd.; Respondent.	CASE NO.: NGC 19-03 **REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT BASED ON LACK OF SUBJECT MATTER JURISDICTION**

POINTS AND AUTHORITIES

I. INTRODUCTION

The NGCB's Opposition to Mr. Wynn's Motion to Dismiss is most notable for what it fails to say. The NGCB never addressed Mr. Wynn's argument that the statutes and regulations governing Nevada's gaming industry nowhere authorize—either expressly or impliedly—the use of an "administrative hold" to expand the NGCB's disciplinary jurisdiction to persons no longer involved with licensed gaming operations. The significance of this omission cannot be overstated. The NGCB premised its jurisdiction in this action on the following allegation: "the Gaming Control Board placed an administrative hold on Mr. Wynn's Findings of Suitability and retains

jurisdiction over him for purposes that include disciplinary proceedings." Comp. ¶ 9. That's it. By failing to say a single word defending the sole basis upon which it claims to have jurisdiction over Mr. Wynn—the nonexistent "administrative hold"—the NGCB should be deemed to concede the merit of Mr. Wynn's Motion for this reason alone. This is not the NGCB's only failing.

The NGCB likewise ducked Mr. Wynn's argument that the statutes upon which the NGCB relies (and the related regulations) are all phrased in the present tense and, thus, do not extend disciplinary power over those who no longer have any involvement in Nevada's gaming industry. For example, the NGCB contends that NRS 463.1405 is one of the statutes that empowers it to bring this action, *see, e.g.,* Opp'n at 10:17-25, yet it avoids any analysis of the statute's express language. The NGCB instead expands the legislature's actual delegated power by adding the word "received" to assert what it wishes the statute said: "[t]he legislature demanded that the Board observe the conduct of persons who have ***received*** a finding of suitability. NRS 463.1405(1)." Opp'n at 10:18-20 (emphasis added). But the plain language of NRS 463.1405(1) expressly limits the NGCB's continuing observational powers to "licensees and other persons ***having*** a ***material involvement*** directly or indirectly with a licensed gaming operation or registered holding company." (emphases added). The NGCB never grapples with the legislature's use of the present tense term "having." Similarly, the regulations deem a person to have "material involvement" with a corporate licensee if he "***is*** a controlling person or key employee" or "***exercises*** significant influence upon the management or affairs of the corporation." *See* Nev. Gaming Comm'n Reg. 16.400 (emphases added). The NGCB never addressed these present tense terms either.

As Mr. Wynn's Motion established, grammar and tense matter, particularly in a penal setting where potential revocations and fines are at stake. The Nevada Supreme Court and the Nevada Legislature likewise agree that verb tense is significant when construing statutes. *See, e.g., Bielar v. Washoe Health Sys., Inc.,* 129 Nev. 459, 467, 306 P.3d 360, 365-66 (2013); NRS 0.030(1)(b). Employing those principles here, the NGCB and the Commission are empowered to

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

oversee those having an ongoing material involvement with a licensed gaming operation. That power does not extend to those who have received approvals but no longer have any such material involvement. To extend the legislature's delegation of power to encompass anyone who has ever "received" a finding of suitability would give the NGCB power to seek revocations forever, even after death, if alleged unsuitable conduct is later "uncovered." The legislature wisely limited its delegation to persons who have material involvement with a licensed gaming operation; the NGCB cannot expand its own authority beyond this express delegation.[1]

Ignoring the plain language of NRS 463.1405 and Regulation 16.400, the NGCB also argues that NRS 463.310 authorizes it to bring disciplinary actions without regard for whether a person has an existing relationship with a gaming licensee. While the NGCB correctly suggests that NRS 463.1405 should be harmonized with NRS 463.310, it then proceeds to focus only on the latter statute. But NRS 463.310 cannot independently expand the Commission's and the NGCB's jurisdiction beyond the express "Powers and Duties" set forth in NRS 463.120 – NRS 463.1445. It is, instead, an enforcement mechanism that enables the Commission and the NGCB to effectuate certain powers and duties authorized by the legislature in the aforementioned statutes, including NRS 463.1405. In other words, before the NGCB can pursue (and the Commission can impose) discipline against a person pursuant to the procedures set forth in NRS 463.310, that person must first fall within the substantive parameters of the statutes that define the agencies' powers. Mr. Wynn undisputedly does not. To the extent there is any ambiguity about the NGCB's power (or lack thereof), it must be resolved against the administrative agency.

[1] This does not mean that the NGCB and the Commission lack any authority over alleged violations of gaming laws or regulations after an alleged violator has left the industry. The licensee and its existing management remain responsible under the subject statutes such that the NGCB and the Commission can pursue discipline (including revocation) against their respective licenses and findings of suitability. This is precisely why the disciplinary proceeding against Wynn Resorts was within agencies' jurisdiction, and netted the State of Nevada a $20 million fine.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

The NGCB raises a few other scattered arguments. All are unavailing, and will be addressed in detail below.

II. FACTUAL BACKGROUND

Though the NGCB contends that Mr. Wynn's factual background is irrelevant, which is wrong for reasons addressed below in Point III.A.2, it does not contest a single fact in Mr. Wynn's Motion or his counsel's supporting declaration. *See* Opp'n 4:24-5:2. For its part, the NGCB repeats selective factual allegations from its Complaint. *See id.* at 5:10-7:6. Because most of the allegations go to the ultimate question of whether sufficient grounds exist to impose discipline, they have no bearing on the threshold question of the NGCB's and Commission's subject matter jurisdiction. *See* Stip. and Order dated Nov. 14, 2019 (agreeing to address jurisdictional issue before proceeding to a substantive hearing).

III. ARGUMENT

A. Governing Standards.

The NGCB appears to agree the jurisdictional question presented herein should be determined in accordance with the Nevada Rules of Civil Procedure and pertinent case law. *See* Opp'n at 5:3-9 (citing legal authorities addressing motion to dismiss standards under the NRCP). The NGCB further agrees that it bears the burden of establishing subject matter jurisdiction. *See id*. The parties differ, however, over the applicable dismissal standard.

1. The Parties' Competing Dismissal Standards.

The NGCB contends that Mr. Wynn has mounted a "facial attack" on the Commission's jurisdiction because he makes exclusively legal arguments regarding the NGCB's and Commission's express and implied powers. *See* Opp'n at 4:25-5:9. This means, according to the NGCB, that Mr. Wynn must satisfy the standard applicable to dismissal motions brought under NRCP 12(b)(6) for failure to state a claim (*i.e.*, "it appears beyond a doubt that [the plaintiff] could prove no set of facts which, if true, would entitle [the plaintiff] to relief."). *See id.* (citing *Buzz*

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008)). Even if this standard applies, and it does not, Mr. Wynn easily satisfies it because the NGCB has not alleged (and cannot prove) any set of facts showing that Mr. Wynn has an ongoing material involvement in the operations of Wynn Resorts or any other gaming licensee.

Regardless, Mr. Wynn has actually filed a "speaking motion" under NRCP 12(b)(1), which permits the Commission to "take evidence on the claim that the complaint does not fall within the subject matter jurisdiction requirements of the [NGCB and the Commission]." *Morrison v. Beach City LLC*, 116 Nev. 34, 36-37, 991 P.2d 982, 983 (2000); *see also* Mot. at 13:22-14:11. In the face of such a motion, "[j]urisdiction must be shown affirmatively, and that showing is not made by drawing from the pleadings inferences favorable to the party asserting it." *Cornwell v. Credit Suisse Grp.*, 666 F. Supp. 2d 381, 386 (S.D.N.Y. 2009). The NGCB must instead support its factual allegations with competent proof under the same evidentiary standard that governs in the summary judgment context. *See Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) ("The plaintiff bears the burden of proving by a preponderance of the evidence that each of the requirements for subject-matter jurisdiction has been met.") (citations omitted). It has not done so.

2. Mr. Wynn's Evidence is Relevant to Show that the Statutes Relied Upon by the NGCB Do Not Empower It to Proceed Against Him.

While it is certainly true that Mr. Wynn makes the legal argument that the statutes relied upon by the NGCB do not expressly or impliedly empower it to pursue (or the Commission to impose) discipline against him, that does not mean his factual recitation is "irrelevant." *See* Opp'n at 4:24. Mr. Wynn's legal argument is necessarily premised on certain facts established in his Motion—facts which are uncontested in the NGCB's Opposition. *See Stern v. Connecticut Med. Examining Bd.*, 545 A.2d 1080, 1085 (Conn. 1988) ("certain jurisdictional facts are essential to establish the statutory jurisdiction of tribunals of limited authority.").

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
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Phone: 702.382.5222 ● Fax: 702.382.0540
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On the issue of whether Mr. Wynn falls within the express powers delegated to the NGCB and Commission in NRS 463.1405, the critical question is whether he continues to have "a material involvement directly or indirectly with a licensed gaming operation or registered holding company." NRS 463.1405(1); *see also* Nev. Gaming Comm'n Reg. 16.400 (defining "material involvement"). While the NGCB's Complaint admits that Mr. Wynn resigned his positions with Wynn Resorts and sold his stock in the Company, *see* Comp. ¶ 9, it goes no further. Mr. Wynn filled in the blanks by presenting undisputed evidence demonstrating his complete departure from the gaming industry, including that the NGCB removed him from Wynn Resorts' gaming license in his capacity as an officer and director in February 2018, that the NGCB removed him from Wynn Resorts' gaming license in his capacity as a stockholder in March 2018, and that Mass Gaming found Mr. Wynn to be a non-qualifier by early May 2018 with no more ability to control or direct the affairs of the Company. *See* Mot. at 6:9-8:20.

On the issue of whether the NGCB and the Commission have implied powers to pursue and impose discipline against Mr. Wynn once he no longer had any involvement with Nevada's gaming industry, Mr. Wynn presented undisputed evidence that all goals sought through the present disciplinary proceedings, with the arguable exception of fines,[2] have already been achieved. *See* Mot. at 21:18-24:2. Such evidence included Mr. Wynn's resignation as an officer and director of Wynn Resorts nearly two years ago, his execution of a Separation Agreement for which he received no remuneration, and his sale of all voting securities in the Company. *See id.* 6:9-7:19. The foregoing evidence establishes that Mr. Wynn's involvement with Wynn Resorts for which

[2] Since the time Mr. Wynn filed his Motion on November 14, 2019, it was announced that he agreed to pay Wynn Resorts twenty million dollars ($20,000,000) as part of a global settlement to resolve the shareholder derivative cases pending against the Company. *See* https://www.reviewjournal.com/business/casinos-gaming/wynn-resorts-reaches-41m-settlement-on-shareholder-lawsuits-1902337/ (last visited Dec. 4, 2019); *see also* Notice of Settlement in Eighth Judicial Dist. Case No. A-18-769630-B (filed Nov. 27, 2019). The Commission can take judicial notice that this amount equals the fine Wynn Resorts paid to resolve NGCB's complaint against it. *See* Mot. at 10:9-11:2.

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ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 ● Fax: 702.382.0540
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he was previously found suitable indisputably ended years ago. Accordingly, the overarching policy goal of protecting the public welfare has already been satisfied as Mr. Wynn departed the industry and would not be able to return without undergoing a new suitability review. *See id.* at 22:4-15.

B. The NGCB's Failure To Address, Let Alone Justify, Its "Administrative Hold" Is A Concession That Mr. Wynn's Motion Is Meritorious.

Mr. Wynn's position is that his Findings of Suitability ended once he was no longer an officer, director or controlling shareholder of Wynn Resorts. *See* Mot. at 19:14-15. This is entirely consistent with Regulation 4.030(10), which provides that Findings of Suitability are not transferable when the nature of the person's involvement with the licensee changes from that for which he or she was originally found suitable. Though the NGCB acknowledges Mr. Wynn is no longer an officer, director, or shareholder of Wynn Resorts, it nonetheless alleges it "placed an administrative hold on Mr. Wynn's Findings of Suitability and[,]" thus, "retains jurisdiction over him for purposes that include disciplinary proceedings." Comp. ¶ 9; *see also* Mot., Ex. 2 (NGCB Location Details) at 7. This is the only basis upon which the NGCB contends it has jurisdiction over Mr. Wynn. *See generally* Comp.

Mr. Wynn repeatedly argued that the concept of a so-called "administrative hold" is nowhere referenced in the statutes and regulations governing Nevada gaming, meaning it is not an express power delegated from the legislature to the NGCB. *See* Mot. at 2:18-24; 12:8-17; 20:26-28 and 21:24-28. Mr. Wynn additionally argued that the existence of an "administrative hold" is not an implied power (*i.e.*, "essential" to the NGCB's ability to carry out its express powers) because the relevant statutes do not contemplate any power to observe, investigate and discipline persons who no longer have any involvement with licensed gaming operations. *Id.* at 20:26-28; 21:18-24:2. Mr. Wynn lastly argued that the NGCB never gave him any written notice it had purportedly placed his Findings of Suitability on "administrative hold." *Id.* at 12:14-17.

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700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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The NGCB's response to Mr. Wynn's arguments was total silence. It said nary a word about "administrative holds" or the express or implied powers that purportedly authorize them. That is likely because the NGCB recognizes no such power exists under the well settled principles that apply to statutory construction in the context of administrative agencies. *See LePage v. Dep't of Health*, 18 P.3d 1177, 1180 (Wyo. 2001) ("Reasonable doubt of the existence of [an agency] power must be resolved against the exercise thereof" as "[a] doubtful power does not exist."); *In re Procedure & Format for Filing Tariffs Under the Mich. Telecom. Act*, 534 N.W.2d 194, 198 (Mich. App. 1995) ("A statute that grants power to an administrative agency must be strictly construed and the administrative authority drawn from such statute must be granted plainly, because doubtful power does not exist."); *see also* Mot. at 14:17-15:7 (same).

Moreover, no matter the tribunal, it is a universal principle that a party's failure to respond to its adversary's arguments is a concession those arguments are meritorious. *See Benjamin v. Frias Transportation Mgmt. Sys., Inc.*, 433 P.3d 1257, 2019 WL 442396, at *1 (Nev. Jan. 31, 2019) ("when a party fails to set forth specific arguments as to why a motion to dismiss should not be granted, EDCR 2.20(e) gives the district court the discretion ***to dismiss the complaint based solely on that failure***.") (emphasis added).[3] The NGCB—which bears the burden of proof on this issue—has come forward with literally nothing to dispute Mr. Wynn's argument that the NGCB's deployment of an "administrative hold" is an unauthorized assumption of power that exceeds its jurisdiction. The NGCB's silence should be deemed as acquiescence on this point, and Mr. Wynn's Motion should be granted.

[3] *See also Polk v. State*, 126 Nev. 180, 186, 233 P.3d 357, 361 (2010) (State's failure to address argument repeatedly raised throughout appeal was deemed confession of error on the issue pursuant to NRAP 31(d)); *Ruhlman v. Rudolfsky*, 2:14-cv-00879-RFB-NJK, 2017 WL 9771835, at *1 (D. Nev. Feb. 8, 2017) (plaintiff's failure to oppose argument in any fashion was deemed acquiescence in its merit under Local Rule 7-2(d)).

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

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ATTORNEYS AT LAW
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Phone: 702.382.5222 ● Fax: 702.382.0540
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C. The NGCB's Powers To Observe And Pursue Discipline Under NRS 463.1405 Are Absolutely Dependent Upon A Person's Current Nexus With A Gaming Licensee.

The NGCB contends that two statutes empower the Commission to discipline Mr. Wynn: NRS 463.1405 and NRS 463.310. *See* Opp'n at 10:17-25. Neither statute authorizes this disciplinary proceeding. We begin with NRS 463.1405, which is found in the section of NRS Chapter 463 titled "Powers and Duties of the Board and Commission."

Mr. Wynn previously demonstrated that NRS 463.1405(1) utilizes the present tense when identifying the categories of persons/entities over which the NGCB retains continuing observational powers. *See* Mot. at 16:17-18:13; *see also* NRS 463.1405(1) ("The Board . . . shall continue to observe the conduct of all licensees and other persons ***having*** a ***material involvement*** directly or indirectly with a licensed gaming operation or registered holding company to ensure that licenses are not issued or held by, nor ***is*** there any ***material involvement*** directly or indirectly with a licensed gaming operation or registered holding company by unqualified, disqualified or unsuitable persons . . . .") (emphases added); Nev. Comm'n Regulation 16.400 (defining "material involvement" in present tense terms). Mr. Wynn specifically cited recent legal authority explaining that the term "having" is a present participle that means "presently and continuously . . . not something in the past that has ended." *See id.* (quoting *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019)); *see also Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) ("use of the present participle [ ] denotes an ongoing process.").

The NGCB again failed to address this argument or engage in any interpretation of the actual language used in the statute. The NGCB merely pronounced that "nothing in this statute even hints that a person's current relationship with a gaming licensee is a jurisdictional prerequisite for a disciplinary proceeding." *See* Opp'n at 8:19-21 (referring both to NRS 463.1405(1) and NRS 463.310(2)); *see also, id.* at 4:4-6 (same). Respectfully, such a statement could only be made by one who has not read NRS 463.1405(1), or one who has chosen to ignore the statute's plain

language. Both scenarios are troubling as statutes authorizing administrative agency powers must be strictly construed. *See* Point III.B, *supra*. More specifically, the Nevada Supreme Court has repeatedly instructed that "verb tense is significant in construing statutes." *Bielar*, 129 Nev. at 467, 306 P.3d at 365-66 (citing *United States v. Wilson*, 503 U.S. 329, 333, 112 S.Ct. 1351, 1354 (1992)); *see also Hager v. State*, 135 Nev. Adv. Op. 34, 447 P.3d 1063, 1071 (2019) ("The use of the present tense—criminalizing firearm possession by a person 'who *is* an unlawful user'—was not idle.") (quotations omitted) (emphasis in original); *In re Discipline of Agwara*, 2016 WL 4005655, at *1 (Nev. July 22, 2016) (interpreting language of attorney discipline rule).

Agwara is instructive as it similarly dealt with a disciplinary matter in another highly regulated area, the legal profession. 2016 WL 4005655, at *1. The State Bar alleged that Agwara posed a substantial threat of serious harm to the public based on his alleged failure to safe-keep client and third-party funds. *Id.* Agwara opposed the petition, arguing that he did not pose a substantial threat, that many of the alleged accounting issues were from two years prior and, thus, there was no showing that the public was in current need of protection. *Id.* The relevant disciplinary rule allowed the Supreme Court to suspend or condition the attorney's practice where the attorney "appears to be ***posing*** a substantial threat of serious harm to the public." *Id.* (quoting SCR 102(4)(c)) (emphasis added).

The Court aptly instructed: "[w]e interpret ***the present tense*** used in the language of the rule to require a showing that the attorney ***poses a current*** threat of harm." *Id.* (emphasis added). Because Agwara's accounts contained sufficient funds, there was no showing he had mishandled client funds, and the charges were from two years prior (in 2014), the Supreme Court found there was insufficient evidence that "Agwara ***currently poses*** a substantial threat of serious harm to the public." *Id.* (emphasis added). The teaching from *Agwara* and the other authorities cited herein is that where a statute, rule or regulation uses a present participle to denote a condition, like

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 ● Fax: 702.382.0540
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"***having*** a material involvement" in NRS 463.1045(1) or "***posing*** a substantial threat" in SCR 102(4)(c), it requires that condition to be current and ongoing, not something in the past.

The Nevada Legislature declared the same intent when it set out certain definitions and rules of construction in the Preliminary Chapter of the Nevada Revised Statutes. NRS 0.030 provides, in part, "[e]xcept as otherwise expressly provided in a particular statute or required by the context . . . [t]he present tense includes the future tense." NRS 0.030(1). This statute is patterned after 1 U.S.C. § 1, which is known as "The Dictionary Act," and similarly provides that "words used in the present tense include the future as well as the present." The Ninth Circuit has noted that "Congress did *not* say that its usage of the present tense applies to past actions, an omission that, given the precision of The Dictionary Act in this regard, could not have been an oversight." *United States v. Jackson*, 480 F.3d 1014, 1019 (9th Cir. 2007) (emphasis in original). Other courts agree, *see, e.g.*, *Carr v. United States*, 560 U.S. 438, 448, 130 S.Ct. 2229, 2236 (2010) ("the present tense generally does not include the past."); *Sherley v. Sebelius*, 644 F.3d 388, 394 (D.C. Cir. 2011) ("The use of the present tense in a statute strongly suggests it does not extend to past actions.") (both interpreting 1 U.S.C. § 1), as would the Nevada Supreme Court.[4]

To summarize, the Nevada Legislature used a present participle and other present tense terms when limiting the NGCB's continuing observational powers to existing licensees or persons "having a material involvement" with licensees. The Commission's own regulations also use the present tense repeatedly when defining "material involvement." The Nevada Supreme Court, the Nevada Legislature and courts around the country, including the United States Supreme Court, all

[4] "When the Legislature adopts a statute substantially similar to a federal statute, a presumption arises that the legislature knew and intended to adopt the construction placed on the federal statute by federal courts." *Int'l Game Tech., Inc. v. Second Judicial Dist. Ct.*, 122 Nev. 132, 153, 127 P.3d 1088, 1103 (2006); *In re Parental Rights as to S.M.M.D.*, 128 Nev. 14, 26 n.9, 272 P.3d 126, 134 n.9 (2012) ("when the Legislature patterns a statute after a federal statute we presume it intended the same construction and operation") (citing *Int'l Game Tech.*).

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recognize verb tense is important when interpreting statutes. This is especially true in the present setting, which requires strict construction of statutes granting powers to administrative agencies. When these principles are applied to interpret NRS 463.1405 and Regulation 16.400, it is clear they do not empower the NGCB to bring this action against Mr. Wynn. The NGCB cannot escape this result by ignoring the language used in one of the principal statutes it is relying upon.

D. NRS 463.310 Is An Enforcement Mechanism, Not A Grant Of Expanded Jurisdiction.

NRS 463.310 is the other statute that authorizes the present disciplinary action according to the NGCB. *See* Opp'n at 8:3-25; 10:17-25. The NGCB argues that this statute empowers it to bring disciplinary actions regardless of the length of time that has passed, the subject's relationship with a gaming licensee, or the subject's employment status. *Id.* at 8:19-25. The NGCB goes so far as to proclaim that "the statute does not use the word 'jurisdiction,'" *see id.*, as if that actually helps its cause. Just the opposite is true.

The NGCB's analysis starts off with the noble intention of harmonizing NRS 463.1405(1) with NRS 463.310, but its effort quickly goes awry. *See* Opp'n at 8:3-5 (citing *Nevada Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999)). That is because it never discusses the interplay between the two statutes other than to say that neither "hints that a person's current relationship with a gaming licensee is a jurisdictional prerequisite for a disciplinary proceeding." *Id.* That statement is wrong as applied to NRS 463.1405(1) for the reasons already set forth. *See* Point III.C, *supra*. The statement is doubly wrong as applied to NRS 463.310 because this statute is an enforcement mechanism that is wholly dependent upon the scope of powers authorized in NRS 463.1405(1). Contrary to the NGCB's suggestion, it is not an independent grant of jurisdictional power. *See* Opp'n at 21-22.

To harmonize the statutes properly, one must begin with NRS 463.1405. As explained above, this statute is contained in the section of NRS Chapter 463 titled "Powers and Duties of the Board and the Commission." NRS 463.1405(1) grants the NGCB powers (i) to investigate those

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seeking to enter the gaming industry (*i.e.*, "applicants"), and (ii) to continue to observe those already involved in the industry (*i.e.*, "all licensees and other persons having a material involvement directly or indirectly with a licensed gaming operation or registered holding company[.]"). The powers are designed "to ensure" there is no "material involvement directly or indirectly with a licensed gaming operation or registered holding company by unqualified, disqualified or unsuitable persons . . . ." *Id.* If such problematic individuals are identified, the Board has the power to recommend, and the Commission has the power to order, a variety of safeguards, including revocations and fines. *See* NRS 463.1405(3) and (4).

That said, the NGCB's powers to observe, identify, and potentially recommend removal of unsuitable persons or the imposition of fines do not specify the procedures for how this is to be accomplished. The legislature enacted NRS 463.310 in 1955 as the enforcement statute for any Gaming Control Act violations. It is not a "jurisdictional" statute. When NRS 463.1405 was enacted in 1981 and amended in 2003, it established jurisdiction over those having material involvement with licensees, and any alleged violations are handled under the disciplinary procedures in NRS 463.310. Notably, NRS 463.310 is not found in the section of NRS Chapter 463 that defines the "Powers and Duties of the Board and Commission." It is instead located in a different section of the chapter titled "Disciplinary Actions." That does not mean, of course, that the NGCB can pursue a disciplinary action against any person it chooses. Before the NGCB can pursue (and the Commission can impose) discipline against a person pursuant to the procedures set forth in NRS 463.310, that person must first fall within the substantive parameters of the statutes (*e.g.*, NRS 463.1405) that define the agencies' powers. For reasons explained elsewhere, Mr. Wynn does not fall within the scope of those statutes.

The Commission has recognized this limitation on its disciplinary jurisdiction, at least impliedly. Outside the disciplinary context and outside the context of Mr. Wynn's former roles with Wynn Resorts, the Commission has adopted multiple regulations that ostensibly permit it and

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Phone: 702.382.5222 ● Fax: 702.382.0540
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the NGCB to retain jurisdiction over a person or entity when seeking (or being called forward for) a suitability determination even when that person or entity is no longer affiliated with a licensee. Regulation 5.232, for instance, provides as follows in the context of Hosting Centers:

> 1. The Commission may, upon recommendation of the Board, require a person or entity owning, operating or having a significant involvement with a hosting center to file an application for finding of suitability to be associated with licensed gaming[.]
>
> ***
>
> 6. The Commission ***retains jurisdiction*** to determine the suitability of a person or entity described in paragraph 1 ***regardless of whether or not that person or entity has severed any relationship with a registered hosting center or gaming licensee***.

Nev. Gaming Comm'n Reg. 5.232(1) and (6). No similar language exists in the relevant statutes and regulations that would permit the NGCB and Commission to retain jurisdiction over a person who no longer has any material involvement with a gaming licensee for purposes of pursuing and imposing discipline.[5]

The absence of such language in the disciplinary context is significant. "[W]hen the legislature has employed a term or phrase in one place and excluded it in another, it should not be implied where excluded." *See, e.g.*, *Coast Hotels and Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001). This principle of statutory interpretation,

[5] Other examples abound. *See, e.g.*, Reg. 14.0215(6) ("The Commission ***retains jurisdiction*** to determine the suitability of an independent contractor ***regardless of whether or not the independent contractor has any active agreements with licensed manufacturers or is otherwise no longer functioning as an independent contractor***.") (emphases added); Reg. 14.305(9) (Manufacturers/Distributors) ("The Commission ***retains jurisdiction*** to determine the suitability of any party described in subsections 1 or 2 ***regardless of whether or not that party has severed any relationship with a gaming licensee or registered manufacturer or distributor of associated equipment***.") (emphases added); Reg. 25.030 ("The Commission ***retains jurisdiction*** to determine the suitability of an independent agent ***even if the licensee terminates its relationship with the independent agent or the independent agent is otherwise no longer functioning as an independent agent***.") (emphases added). Mr. Wynn cites these regulations only to demonstrate that the Commission has employed express language to retain its jurisdiction in certain situations, but has not used (and is not permitted to use) similar language anywhere in the disciplinary context. He takes no position on the validity of the cited regulations. *See* 73 C.J.S. *Public Admin. Law and Proc.* § 148 (June 2019 Update) ("If agency rule purports to expand the authority the legislature gave to the agency, the rule does not fall within the scope of the agency's express authority.").

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which is based on the maxim '*expressio unius est exclusio alterius*' ("the expression of one thing is the exclusion of another"), deems such omissions to be intentional. *See Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. 484, 488, 327 P.3d 518, 521 (2014). It makes sense, then, that NRS 463.310 "does not use the word 'jurisdiction'" as that is not its purpose. The statute instead enables the NGCB and the Commission to effectuate certain powers delegated to the agencies by the legislature; it is not an expansion of their jurisdiction.[6]

E. The NGCB's Remaining Arguments Are Also Meritless.

The NGCB makes several other half-hearted arguments throughout its Opposition. None are persuasive.

NRS 463.270(8). The NGCB briefly mentions NRS 463.270(8) in support of its contention that Mr. Wynn should not be able to "unilaterally cut-off the Commission's subject matter jurisdiction by leaving Wynn Resorts[.]" Opp'n at 11:7-10. The NGCB finds support in this statute because it provides that: "[t]he voluntary surrender of a license by a licensee does not become effective until accepted in the manner provided in the regulations of the Commission." *See id.* at 4:12-15. Once more, the NGCB's argument undermines its own cause.

The regulations make clear that "Gaming Licenses" are distinct from "Findings of Suitability." *Compare* Nev. Gaming Comm'n Reg. 4.030(1) (classifying "Gaming Licenses") with 4.030(10) (classifying "Findings of Suitability"). The legislature's enactment of NRS 463.270(8) shows that it knows how to condition the voluntary surrender of a "Gaming License" or other approvals when that is its intent. That it declined to enact any similar "acceptance

[6] Again, any ambiguities on this point must be resolved against the agencies. *See* Point III.B, *supra*. Additionally, because NRS 463.310 is a penal statute in that it imposes potential revocations and fines, that is yet another reason why it must be strictly construed. *See State v. Wheeler*, 23 Nev. 143, 44 P. 430, 432 (1896) ("While the parts of a penal statute which subject to punishment or penalty are, from their odious nature, to be construed strictly, those which exempt from penal consequences will, because of their opposite character, receive a liberal interpretation.").

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requirement" in order to surrender "Findings of Suitability" is telling. Returning to the principle of "*expressio unius est exclusio alterius*" discussed above, this omission must be deemed to be intentional. *See Thomas, supra*. Nor can such an "acceptance requirement" for Gaming Licenses be implied or imported to Findings of Suitability by way of "analogy." *See Coast Hotels, supra*.

Mr. Wynn never attempted to "surrender" any Gaming License as he was not a "licensee" under NRS 4.030(1). He had instead been found suitable in his capacity as an officer, director, and shareholder of Wynn Resorts. When he left those positions nearly two years ago, the nature of his involvement with the Company obviously changed, and his Findings of Suitability ended consistent with the intent of Regulation 4.030(10) ("If the nature of the involvement changes from that for which the applicant is found suitable, the applicant may be required to submit to a determination by the Commission of his or her suitability in the new capacity."). In short, there was nothing for Mr. Wynn to "surrender," just as there is nothing for the NGCB and the Commission to "revoke."

Settlement Discussions. The NGCB contends that Mr. Wynn has already acknowledged the Commission's subject matter jurisdiction by virtue of the settlement discussions between his counsel and the NGCB. *See* Opp'n 9:11-19. Nonsense. As an initial matter, Mr. Wynn has always maintained his position that the Commission lacked jurisdiction over him despite his willingness to engage in settlement discussions with the NGCB for the salutary purpose of trying to resolve this action. *See* Mot. at 9:13-24 and 11:15-12:3. The NGCB's opposition does not contest this fact.

In any event, Mr. Wynn's willingness to consider a stipulation whereby he would agree not to return to Nevada's gaming industry is hardly an acknowledgement the Commission has jurisdiction to impose discipline against him in the present setting. If the parties entered into such a settlement agreement, and Mr. Wynn breached the same by applying to re-enter the gaming industry in some capacity, then the Commission would naturally have jurisdiction to enforce the

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settlement agreement consistent with its "full and absolute power and authority to deny" an application from someone seeking to enter (or re-enter) the industry. *See* NRS 463.1405(4). Because this hypothetical situation never came to pass, the NGCB's argument is purely academic.

Colorado case law. The NGCB cites a lone case from Colorado for the proposition that a dentist could not divest a disciplinary board of jurisdiction by surrendering his license in the middle of disciplinary proceedings. *See* Opp'n at 11:4-6 (citing *Cross v. Co. State Bd. of Dental Examiners*, 552 P.2d 38, 41 (Colo. Ct. App. 1976)). *Cross* is distinguishable on a number of grounds. First, this matter is controlled by Nevada's statutory and regulatory scheme governing legalized gaming whereas *Cross* was controlled by Colorado's altogether different statutory scheme governing the dental profession. Next, *Cross* attempted to surrender his license after the Board of Dental Examiners had issued him a specification of charges and set a disciplinary hearing date. *See id.* at 39-41 (dentist was not entitled to surrender his license as of right "during the pendency of disciplinary proceedings[.]"). In contrast, Mr. Wynn's Findings of Suitability ended nearly two years prior to NGCB's Complaint being filed. Finally, despite Cross's attempted surrender of his "license certificate," this did not extinguish his actual license, and he remained licensed to practice dentistry until his name was removed from the "record book." *Id.* at 41. Here, the NGCB's own records confirm that Mr. Wynn was completely removed from Wynn Resorts' license no later than March 2018. *See* Mot., Ex. 2 at 7. Any purported similarities between the *Cross* case and this matter are nothing more than a mirage.

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ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
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IV. CONCLUSION

Based on the foregoing, Mr. Wynn respectfully submits that the NGCB's Complaint must be dismissed in its entirety.

DATED this 9th day of December, 2019.

CAMPBELL & WILLIAMS

By _____

DONALD J. CAMPBELL, ESQ. (1216)
J. COLBY WILLIAMS, ESQ. (5549)
700 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Respondent
Stephen A. Wynn

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

CERTIFICATE OF SERVICE

I certify that I am an employee of Campbell & Williams and that I did, on the 9th day of December, 2019, serve the foregoing **Reply in Support of Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction** by e-mailing and sending via United States Mail, first class postage pre-paid, a copy thereof to the following attorneys of record for Complainant:

AARON D. FORD
Attorney General

Kyle George, First Assistant Attorney General
Steven G. Shevorski, Chief Litigation Counsel
Craig Newby, Deputy Solicitor General
Michael P. Somps, Senior Deputy Attorney General
Edward L. Magaw, Senior Deputy Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

By: _____
An employee of Campbell & Williams

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
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Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

Case No. 19-03

STATE OF NEVADA

BEFORE THE NEVADA GAMING COMMISSION

NEVADA GAMING CONTROL BOARD Complainant, vs. STEPHEN ALAN WYNN	)	**NOTICE OF MEETING**

YOU ARE HEREBY NOTIFIED that the Nevada Gaming Commission has scheduled the above-captioned matter on December 19, 2019, in Hearing room 2450, 555 East Washington Avenue, Las Vegas, NV, 89101, on or about the hour of 11:30 A.M.

DATED this 12th day of December, 2019.

NEVADA GAMING COMMISSION

Dawn Michel, on behalf of M. Bell

Marie Bell, Executive Secretary
P.O. Box 8003
Carson City, Nevada 89702-8003
(775) 684-7750

NEVADA GAMING COMMISSION
1919 COLLEGE PARKWAY
CARSON CITY, NV 89702
(775) 684-7750

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

I hereby certify that I am employed by the Nevada Gaming Control Board as an Administrative Assistant to Marie Bell, the Executive Secretary of the Nevada Gaming Commission and the Nevada Gaming Control Board, and that on the date shown below I deposited for mailing at Carson City, Nevada, a true copy of the attached **NOTICE OF MEETING** addressed to:

CAMPBELL & WILLIAMS
C/O DONALD J CAMPBELL ESQ
700 S SEVENTH ST
LAS VEGAS NV 89101

Certified Mail No. 7018 0680 0000 3350 5341

DATED this December 12th, 2019.

D Michel

Dawn Michel, Administrative Assistant

NEVADA GAMING COMMISSION
1919 COLLEGE PARKWAY
CARSON CITY, NV 89702
(775) 684-7750

1 BEFORE THE NEVADA GAMING COMMISSION
2 * * * * *
3
4
5 HEARING
6 Motion to Dismiss Complaint Based on Lack of
7 Subject Matter Jurisdiction.
8
9 NEVADA GAMING CONTROL BOARD
10 vs.
11 STEPHEN ALAN WYNN
12 Case No. 19-03
13 December 19, 2019
14
15
16 NEVADA GAMING CONTROL BOARD OFFICES
CONFERENCE ROOM 2450
17 555 EAST WASHINGTON AVENUE
LAS VEGAS, NEVADA
18 VIA VIDEOCONFERENCE TO:
19
20 NEVADA GAMING CONTROL BOARD OFFICES
CONFERENCE ROOM 100
21 1919 COLLEGE PARKWAY
CARSON CITY, NEVADA
22
23 Reported by: Heidi K. Konsten, RPR, CCR
24 Nevada CCR No. 845 - NCRA RPR No. 816435
LIT JOB NO. 437108
25

1 A P P E A R A N C E S

2

3 COMMISSION MEMBERS PRESENT

4

5 TONY ALAMO, M.D., CHAIRMAN
DEBORAH FUETSCH
6 ROSA SOLIS-RAINEY
JOHN T. MORAN, JR.
7 STEVEN COHEN

8

9

10 BOARD MEMBERS PRESENT

11

12 SANDRA DOUGLASS MORGAN, CHAIRWOMAN
TERRY JOHNSON
13 PHIL KATSAROS

14

15 EXECUTIVE SECRETARY

16 MARIE BELL

17

18 DEPUTY ATTORNEY GENERAL

19

20 DARLENE S. CARUSO, ESQ.

21

22 * * * * * *

23

24

25

1 LAS VEGAS, NEVADA
2 Thursday, December 19, 2019
3 * * * * *
4
5 EXECUTIVE SECRETARY BELL: Next for your
6 consideration is the motion to dismiss a complaint
7 based on lack of subject matter jurisdiction filed
8 by respondent in the matter of Nevada Gaming
9 Control Board vs. Stephen Alan Wynn,
10 Case No. 19-03.
11 CHAIRMAN ALAMO: Very good. I'm going
12 to go ahead and say a few comments here.
13 We're here today to hear a motion in the
14 matter of the Nevada Gaming Control Board vs.
15 Stephen A. Wynn. Wynn has filed a motion to
16 dismiss alleging that this Commission does not
17 have jurisdiction to hear this case. This is our
18 only task today, to determine if the Commission
19 has the authority to hear this case on the merits.
20 In other words, do the acts complained
21 of and the individual named in the complaint fall
22 within the Commission's jurisdiction? That's all
23 this is today. Nothing more.
24 Both parties have filed briefs in this
25 matter. We have copies in advance. Let me look

1 around to make sure we all -- I have them.
2 Everybody is nodding.
3 Commissioner Moran, you have seen the
4 briefs?
5 COMMISSIONER MORAN: Yes, I have.
6 CHAIRMAN ALAMO: And we have all read
7 them, and they're all nodding in the affirmative.
8 And at this time, I would like to set
9 the scaffolding of what will transpire here in
10 terms of the scheduled pathway. Both parties
11 should have received from counsel, Chief Caruso,
12 in e-mail form what I'm about to say in terms of
13 how we're going to do this. If not everyone did,
14 I'm going to state it here right now.
15 The time allowed for the arguments on
16 each side will be 15 minutes for each side. You
17 don't have to use all of the time, and I will give
18 some latitude of content to come off the briefs if
19 it gives more clarity to the argument.
20 I was going to be the timekeeper, but I
21 think it kind of inhibits me, and I want to
22 really, really hone in and focus on the arguments
23 presented. So I've asked Madam Secretary to be
24 the timekeeper. And, again, 15 minutes on both
25 sides. At five minutes left, just go ahead and

1 raise your hand and interrupt and say "five
2 minutes," and just let them finish.
3 I believe is Mr. Campbell is here. Yes,
4 he's nodding. He will go first, and then the
5 Board counsel, and I -- I apologize, Steve
6 Shevorski --
7 MR. SHEVORSKI: Shevorski.
8 CHAIRMAN ALAMO: Shevorski. Thank you,
9 sir.
10 MR. SHEVORSKI: It was tough in
11 kindergarten.
12 CHAIRMAN ALAMO: That's funny.
13 Shevorski.
14 So what will happen is one side will
15 speak, the other side will speak. They'll be
16 allowed a five-minute rebuttal. And then if I
17 think necessary, because of the rebuttal content,
18 then the other side will have a five-minute
19 rebuttal to the rebuttal. Right?
20 So after concluding, the Commission will
21 have the opportunity to ask questions. I ask of
22 the Commission to please ask the questions of
23 either party, just questions. And I expect the
24 parties to answer just the questions.
25 If it appears that the Commission,

1 myself included, that we need more time to digest
2 or more information, I could order more briefs,
3 and this can be continued to another day, if the
4 questions become a little too cumbersome and we
5 think it's a little too detailed or entangled.
6 After the conclusion of the questions,
7 we will stop, and then we'll turn it to the
8 Commission for deliberation, discussion. Or, if
9 the Commission so desires, at that point when
10 they're called upon, can speak in terms of their
11 beliefs and where they tilt regarding the
12 situation.
13 Everybody else will be out of it. No
14 new information, no arguments, nothing. It will
15 be just between us.
16 So I'm hoping that this gets decided
17 here today. But I have Chairman latitude and
18 prerogative that if I feel our conversations are
19 going in a direction that won't let us finish
20 today, that we will continue this for another day.
21 But I'm hoping and I'm going to try real hard to
22 get this decided today.
23 So at this point, I would like counsel
24 for Mr. Wynn, Mr. Campbell, to approach. I'm
25 going to turn to Madam Secretary, and I -- I

1 always forget this, and I apologize. There is a
2 disclosure.
3 Commissioner Solis-Rainey.
4 COMMISSIONER SOLIS-RAINEY: Thank you,
5 Mr. Chairman. With respect to this item, I just
6 wanted to make the disclosure that I am a partner
7 in Morris Law Group, and I and my firm were
8 involved in representing Universal and Aruze
9 entities in appeals related to litigation against
10 the Wynn that concluded in early 2018.
11 My firm is also currently representing a
12 former shareholder of the Wynn in a shareholder
13 derivative action, in which I'm not involved in.
14 That matter is not material to the firm.
15 MR. CAMPBELL: Who might that be?
16 COMMISSIONER SOLIS-RAINEY: I'm not
17 involved with it. I literally ran the conflict.
18 I believe his first name was Jerome, but I don't
19 have his last name in mind. Again, I'm not
20 involved with it. I ran a conflict just to
21 double-check.
22 I have no pecuniary interest in this
23 item before us, and I don't believe the
24 independence or judgment of a reasonable person in
25 my situation would be materially affected by this

1 prior relationship. I intend to participate in
2 deliberation and voting in this matter.
3 And I would ask Deputy Chief Caruso if
4 that's an adequate disclosure under NRS 281A.
5 MS. CARUSO: It is, Commissioner.
6 CHAIRMAN ALAMO: Very good. Any other
7 disclosures or recusals?
8 Hearing none, let me ask of counsel,
9 Mr. Campbell, I see an easel, so I -- I assume
10 we're going to use that.
11 MR. CAMPBELL: We are.
12 CHAIRMAN ALAMO: Okay. Very good. And
13 you did receive from my counsel the scaffolding
14 and the scheduled pathway of what today was going
15 to be?
16 MR. CAMPBELL: Yes, Chairman Alamo. I
17 originally intended to go about four hours, so
18 I've cut that down considerably.
19 CHAIRMAN ALAMO: Then I'm glad I'm the
20 Chairman.
21 MR. CAMPBELL: As Commissioner Moran can
22 tell you, we're paid by the word, so ...
23 CHAIRMAN ALAMO: Very good, sir. Okay.
24 I just want to make sure we're all aware.
25 Sir, the podium is yours. Madam

1 Secretary, go ahead.
2 MR. CAMPBELL: Thank you very much.
3 Mr. Chairman, distinguished members of
4 the Commission, good morning. My name is Donald
5 Jude Campbell. I am the senior partner of
6 Campbell & Williams that's located at 700 South
7 7th Street, Las Vegas, Nevada.
8 Also with me here today is Mr. Colby
9 Williams, who is our senior appellant lawyer. And
10 together, we represent the interest of the
11 respondent in this matter, Stephen Alan Wynn.
12 The issue presented here today is not
13 simply unusual, but, indeed, is one of first
14 impression. It is this: Has the Nevada
15 legislature, expressly or impliedly, authorized
16 Nevada gaming regulators to discipline an
17 individual who is undisputed no longer has an
18 involvement with a Nevada gaming licensee and who
19 further posses no threats to the -- or poses no
20 threat to the gaming industry?
21 Our position is a respectful but an
22 emphatic no. The presentation of this rather
23 extraordinary case is one that we believe merits a
24 brief discussion of some critical dates and some
25 events.

1 Following a publication of an article in
2 the Wall Street Journal on January 26 of 2018
3 alleging that Mr. Wynn had engaged in sexual
4 improprieties with employees of the Wynn
5 Las Vegas, Wynn Resorts Limited publicly announced
6 that Mr. Wynn would resign his position as
7 chairman of the board and chief executive officer
8 of Wynn Resorts Limited effective February 6,
9 2018.
10 Just one week later, a formalized
11 written agreement memorializing the resignation
12 was executed by Mr. Wynn and the company. It
13 included a provision whereby Mr. Wynn voluntarily
14 relinquished his absolute entitlement to over
15 $300 million in severance benefit packages.
16 Thereafter, on February 23rd of 2018, Wynn Resorts
17 Limited formally removed Mr. Wynn as an officer
18 and director from the Wynn Las Vegas gaming
19 license.
20 Upon his resignation, Mr. Wynn
21 determined that he would divest his entire stock
22 ownership in the company, and accordingly he
23 managed an orderly sale of approximately 8 million
24 shares of Wynn Resorts Limited that took place on
25 March the 21st and March the 22nd of 2018.

1 This sale was approved and acknowledged
2 by both the company and the United States
3 Securities & Exchange Commission in numerous
4 public filings. And although he was entitled to
5 vote his block of 8 million shares at the annual
6 shareholders meeting, which was held on May the
7 16th of that year, he did not elect to do so.
8 Accordingly, Wynn Resorts Limited formally removed
9 him, also, as a shareholder as of March 28th,
10 2018.
11 And although he was actually entitled to
12 retain his home up until June of 2018 -- the home
13 was located on the grounds of Wynn Las Vegas.
14 Both he and his wife, Andrea, departed their
15 residence in mid April of 2018.
16 As a result Mr. Wynn's resignation as an
17 officer and director of Wynn Resorts Limited, the
18 Massachusetts Gaming Commission conducted a
19 hearing on April 27, 2018. It determined that he
20 could no longer exercise control or provide
21 direction to Wynn Resorts, quote, "as a matter of
22 law," end quote. Finding further that because he
23 no longer held any financial interest in the
24 company, he likewise could, quote, "no longer
25 exercise control or provide direction in the

1 capacity of a shareholder either," end quote.
2 Thus, in less than 90 days, Mr. Wynn not
3 only ended all personal involvement and financial
4 interest in Wynn Resorts Limited, but also ended
5 nearly a 50-year career in Nevada gaming.
6 But today, nearly two years later, the
7 Nevada Gaming Control Board has formally filed a
8 complaint seeking to revoke Mr. Wynn's long-ago
9 established suitability in connection with his
10 operation and ownership of Wynn Resorts Limited
11 that he is no longer in any way associated with.
12 This the Board cannot do.
13 Under the Andrews decision of our Nevada
14 Supreme Court, quote, "Administrative agencies
15 cannot enlarge their own jurisdiction, nor is
16 subject matter jurisdiction" -- which is at issue
17 here -- "conferred upon an agency by consent or
18 failure to raise the agency's lack of
19 jurisdiction. The authority of the agencies must
20 be clear."
21 Our Supreme Court has also said in the
22 Morrison decision case that the burden of proving
23 the jurisdictional requirement is not on the
24 respondent; that is, it's not on Mr. Wynn. The
25 burden is on the Board, not Mr. Wynn.

1 We respectfully contend that the Board
2 has utterly failed to carry that very important
3 burden. Simply put, the Nevada legislature has
4 neither expressly nor impliedly authorized the
5 Commission and the Board to do what is advanced in
6 the complaint.
7 As you will see, I'm turning pages that
8 we had to cut out.
9 The Nevada Gaming Control Board has said
10 this in their brief. They have said that under
11 463.14051, the legislature demanded that the Board
12 observe the conduct of persons who have received a
13 finding of suitability. Past tense. That's
14 wrong. That's dead wrong. This is the plain
15 language.
16 "The Board shall continue to observe the
17 conduct of those who are seeking to enter the
18 gaming industry." All right. "Shall continue to
19 observe all licensees and other persons having a
20 material involvement" -- having, present tense --
21 "a material involvement directly or indirectly
22 with a licensed gaming operation or registered
23 holding company to ensure that licenses are not
24 issued or held by, nor is" -- present tense --
25 "there any material involvement directly or

1 indirectly with a licensed gaming operation or
2 registered holding company by unqualified,
3 disqualified, or unsuitable persons or persons
4 whose operations are conducted in an unsuitable
5 manner or in unsuitable or prohibited places or
6 locations."
7 We also point out to the court -- or,
8 excuse me, to the Commission that under Commission
9 Regulation 167.400, "material involvement" means
10 someone who is -- present tense -- a controlling
11 individual, a key employee, or an individual who
12 otherwise exercises significant involvement in the
13 affairs of the licensee.
14 Here again, Mr. Wynn voluntarily
15 relinquished that role nearly two years ago.
16 Accordingly, Mr. Wynn has no present continuous
17 involvement -- material, direct, indirect or
18 otherwise -- which would bring him within the
19 purview of the statutes and regulations.
20 With respect to Regulation 4.030,
21 "Classifications of licenses and other Commission
22 actions for which applications must be made," the
23 Board relies upon Section 10. It expressly states
24 that it seeks to revoke Mr. Wynn's finding of
25 suitability, even though he is not in any way

1 connected with a licensee. The Board offers no
2 reference to any authority that gives them that
3 power.
4 That is likely because 4.03010 expressly
5 limits the Board's jurisdiction. Please consider
6 the exact words, "Findings of suitability. The
7 Nevada Gaming Control Act and regulations
8 thereunder require or permit the Commission to
9 require that certain persons directly or
10 indirectly involved" -- present tense -- "with
11 licensee be found suitable to hold a gaming
12 license so as long that involvement continues" --
13 present tense.
14 "A finding of suitability relates only
15 to the specified involvement for which it was
16 made." Here, at the Wynn. "If the nature of the
17 involvement changes from that which the applicant
18 is found suitable" -- which it has, indeed,
19 changed. He's gone -- "from that which the
20 applicant was found suitable, the applicant may be
21 required to submit a determination by the
22 Commission of his or her suitability in the new
23 capacity."
24 We have told the attorney general in
25 private discussions that, in fact, Mr. Wynn has no

1 intention -- repeat, no intention to reenter
2 gaming in Nevada or anywhere else in the world.
3 None. He is no longer involved and has no
4 intention to be involved.
5 EXECUTIVE SECRETARY BELL: Five minutes.
6 MR. CAMPBELL: To be blunt, there's
7 nothing for the Commission to revoke. Mr. Wynn is
8 no longer an officer or a director, and he has no
9 continuing involvement. Apparently recognizing
10 the infirmity of their claims of jurisdiction, the
11 Board now argues that Chapter 463 impliedly grants
12 such powers. But this, too, is unavailing.
13 While administrative agencies may,
14 indeed, possess certain implied powers, our
15 supreme court has expressly held in Henderson vs.
16 Kilgore that any such implied power must be
17 essential to carry out the agency's express
18 duties.
19 And point of fact, what the Board's --
20 the Board seeks to do here is to create a new
21 category of persons, those who have once received
22 prior approval but have since ended all
23 involvement with the gaming licensee as subject to
24 a limitless retention of any jurisdiction to
25 punish.

1 And because the Board cannot point to a
2 single statement of public policy in this regard,
3 nor a single statute, nor a regulation, it simply
4 makes up a new procedural vehicle which it has
5 styled an administrative hold. Nowhere, I repeat
6 nowhere is an administrative hold expressed
7 anywhere in the enabling legislation, regulations,
8 expressed public policy, or legislative history.
9 It is, in a word, a canard, adopted by
10 the Board out of a seemingly desperate attempt to
11 claim jurisdiction when, in fact, no such
12 jurisdiction exists. This is why the Board, in
13 its opposition to the motion to dismiss, never
14 wants to defend or legitimize its exercise of this
15 mystical administrative hold.
16 And as for the Board, this is a serious
17 failing. Because under the law, where an
18 administrative agency does not expressly detail
19 the use of the procedural vehicle by which it
20 exercises and points to it in the law, there is a
21 presumption that the power so exercised doesn't
22 exist.
23 In fact, the so-called administrative
24 hold is the only basis cited in the complaint by
25 the Gaming Control Board. So, members of the

1 Commission, in wrapping up, I'd ask you to ask of
2 the attorney general when he's up here the
3 following questions: What are the established
4 protocols for the institution of such a,
5 quote/unquote, administrative hold?
6 Two, who is it that decides to initiate
7 such an administrative hold? How, when, and by
8 what means must a subject of such administrative
9 hold be given formal notice of its deposition?
10 And, parenthetically, Mr. Wynn did not receive any
11 such notice, either written or by digital
12 communications or carrier pigeon. He got no
13 notice of this at all.
14 May such an administrative hold be
15 challenged? If so, how do you challenge it? By
16 what terms does such an administrative hold
17 expire? Does it ever expire? Or is it some sort
18 of administrative zombie which never dies and can
19 come back and haunt anyone who is no longer deemed
20 suitable in connection with a gaming licensee,
21 despite his exit from the industry itself?
22 And how about this one: Has an
23 administrative hold ever been used before to
24 resurrect suitability issues on someone who has
25 completely left the industry in order to

1 posthumously revoke that suitability? I look
2 forward to the attorney general's answers to your
3 questions in that regard.
4 CHAIRMAN ALAMO: Thank you,
5 Mr. Campbell.
6 MR. CAMPBELL: Thank you.
7 CHAIRMAN ALAMO: Go ahead,
8 Mr. Shevorski.
9 MR. SHEVORSKI: Mr. Chairman, thank you.
10 CHAIRMAN ALAMO: Let me see how my timer
11 is doing. Zeroed out?
12 EXECUTIVE SECRETARY BELL: Yes, good.
13 CHAIRMAN ALAMO: Do you need time to
14 prepare?
15 MR. SHEVORSKI: No, Mr. Chairman.
16 CHAIRMAN ALAMO: Okay. Go ahead. Madam
17 Secretary, let's start.
18 MR. SHEVORSKI: Mr. Chairman,
19 distinguished members of the Commission, Madam
20 Secretary, my name is Steven Shevorski. I'm with
21 the office of the attorney general. I have never
22 appeared in front of you. It's a pleasure to meet
23 you all, and I appreciate the time and dedication
24 I know you all have put into preparing for this
25 hearing.

1 And may it please the Commission, I
2 respectfully submit that this Commission does have
3 jurisdiction. I respectfully submit that this
4 Commission should deny the motion, and that
5 Mr. Wynn, like others before him or others that
6 may come after him, come before this Commission
7 and be judged whether his suitability finding
8 should be revoked.
9 I would first like to start out -- I
10 know this may be a little unusual for you. You
11 may not have these types of -- it's almost like a
12 Ninth Circuit argument where we have different
13 members of a panel. I know we have lawyers on the
14 Board, financial professionals, a doctor. This is
15 something that is meet and greet to Mr. Campbell
16 and I, but maybe something different for you.
17 When we're talking about subject matter
18 jurisdiction, we're talking about power. We are
19 talking about power over an issue.
20 In this instance, we're talking about
21 power over an issue that is something that you do
22 every day, which is interpret Chapter 463 and
23 apply it. Something you do every day. My friend,
24 Mr. Campbell, asserts you do not have that power.
25 We believe that you do.

1 And I want to point out at the very
2 beginning the dangerous proposition that his
3 client is proposing here. His client is
4 proposing -- and you can read it on page two of
5 his brief, lines 9 through 13. His client is
6 proposing that he has the power. You do not. He
7 has the power.
8 The Gaming Control Board could file a
9 complaint against a person who has an active
10 association with a licensee. Evidence could be
11 taken. You could begin deliberation. And the
12 moment he jettisons that relationship, your power
13 is cut off.
14 That is what he is proposing, a bright
15 line to say that the person once found suitable,
16 they have the power over your jurisdiction. They
17 can cut it off whenever they choose to get around
18 the power that justly belongs with this
19 Commission. That is the dangerous proposition,
20 and I urge you to reject it.
21 This Commission's power could not be
22 more broad. Could not be more broad. Gaming in
23 Nevada is different. Through your good
24 stewardship, Nevada is the gold standard. And the
25 legislature knew it, expressed it in clear terms

1 to make sure that it is always the case.
2 The terms are found in 0129 where it
3 talks about the public policy of the state. And I
4 put it to you, because my friend, Mr. Campbell,
5 brings this up. He talks about persons related to
6 the gaming operation. Well, how could you do
7 strict observation if that person knows that they
8 can escape your purview by jettisoning their
9 relationship, and serendipitously after that,
10 simply enter into a consulting agreement or
11 something of the kind with a NDA that you would
12 never know about?
13 Out of your purview. They hold the
14 power. I submit that that is not what the
15 legislature intended from their express terms.
16 You have expansive power. Section 1405, Part 4,
17 could not be more broad. It expressly states that
18 you have full and absolute power and authority to
19 revoke a finding of suitability.
20 And I want to pause there for a second,
21 because it's important to look at the language, as
22 my friend, Mr. Campbell, notes. That is language
23 that is looking back at the past. The gerund
24 "finding," that's in the past tense. You're
25 looking backwards.

1 Now, in Subpart 1, there's observation
2 of conduct that while the gaming -- that while the
3 person is found suitable is associated with the
4 gaming licensee, but those provisions have to work
5 together. What would be the point of observing
6 that conduct if that person could not be held
7 accountable? At least to appear.
8 I submit to you the purpose of that
9 section in looking back is express authority from
10 the legislature to have the very hearing that we
11 propose here. Full and absolute power and
12 authority, that is what the legislature said. It
13 could not be more broad.
14 But the legislature went further in
15 granting you power. The legislature said in
16 Section 143 that you have to exercise any proper
17 power and authority necessary to perform the
18 duties assigned to it by the legislature and is
19 not limited to the enumeration of powers in this
20 chapter.
21 Is it -- that is why gaming is
22 different. Gaming is different. You are the
23 experts on Chapter 463. You are the experts on
24 gaming. The legislature did not want you tied
25 down. It gave you power even beyond those

1 enumerated in the chapter. That is why this is
2 different.
3 And I would like to take a moment about
4 what kind of -- you may not be used to these -- I
5 know some of the lawyers may be on subject matter
6 jurisdiction. Mr. Campbell is quite correct,
7 that's what Morrison said. It is our burden, but
8 it's an easy burden in this type of challenge, and
9 let me explain why.
10 This is not a so-called speaking motion
11 that Mr. Campbell has brought. He has not brought
12 a motion where my client has a -- the burden to
13 come forward with evidence. And you heard exactly
14 why in my friends Mr. Campbell's opening
15 statement. Time and again he said the legislature
16 did not grant you this power.
17 That is a legal challenge. There is no
18 dispute on the jurisdiction. I'm not arguing
19 before this Commission that somehow Mr. Wynn is
20 secretly connected to Wynn Resorts. There is
21 agreement. If you look at Paragraph 30 of
22 Mr. Campbell's declaration, he notes that in
23 paragraph nine of the complaint -- and then even
24 outside of that, if you look at paragraph two of
25 the complaint -- we all agree that Mr. Wynn has

1 jettisoned his relationship with Wynn Resorts.
2 We are arguing about the legal issue.
3 The legal issue. Under Chapter 463, do you have
4 the power to sit in judgment and determine whether
5 or not a finding of suitability should be revoked?
6 In 1405, Subpart 4, I suggest to you that you have
7 full and absolute power and authority to do so and
8 ought to use it.
9 In Mr. Campbell's brief on behalf of his
10 client, Mr. Wynn, he talks about how courts ought
11 to tell you -- they tell you to strictly construe
12 your authority. That is not the law in Nevada.
13 That is not the law in Nevada. And I encourage
14 you to look at the CCSD vs. Teacher Association
15 case.
16 In those -- in that case, which is a
17 published decision -- and I don't want to get into
18 the legal weeds of it, but it's made clear that
19 you have not only express power from the
20 legislature, but you have the implied power to do
21 what is necessary to carry out those duties.
22 The legislature charges you, in Chapter
23 463, to have strict regulation over persons
24 associated with gaming. Strict -- now, my friend,
25 Mr. Campbell, says that that's only persons --

1 that's in the -- who are actively associated. I
2 submit to you that that is wrong. Because in
3 order for you to have strict regulation, they have
4 to know that they are not the ones who have power
5 over this -- over this jurisdictional question,
6 but rather you do.
7 Because how can you have strict
8 observance of their conduct if they know they can
9 evade your scrutiny at any time by jettisoning
10 that relationship and simply entering into a
11 contract that you may never know about? You may
12 never know about.
13 Finally, these types of arguments,
14 generally speaking, are not hard arguments. Our
15 burden --
16 EXECUTIVE SECRETARY BELL: Five minutes.
17 MR. SHEVORSKI: -- is only to say, is
18 there any doubt that we could establish that if
19 there's -- if there's some doubt that we could
20 establish in our case that you have jurisdiction,
21 that's not enough. This is the Buzz Stew standard
22 which essentially says if there's any doubt that
23 the complaint survives, its survives.
24 This is not federal court. This is not
25 where we have to meet some probability standard.

1 If there's any doubt that this complaint survives,
2 it survives. This is not a heavy burden. I
3 submit that we have more than met its burden.
4 I submit that you have express
5 authority -- under Section 1405, Subpart 4, that
6 the Gaming Control Board had express authority to
7 bring this complaint under Section 310. I
8 respectfully ask you to exercise subject matter
9 jurisdiction, deny the -- Mr. Wynn's motion, and
10 let's get to the proceeding. Thank you very much.
11 CHAIRMAN ALAMO: Thank you,
12 Mr. Shevorski.
13 Mr. Campbell, step up, please. I knew
14 you were going to rebut.
15 MR. CAMPBELL: Rebuttal, absolutely.
16 CHAIRMAN ALAMO: Very good.
17 Before you begin, we'll reset the timer.
18 Five minutes. I'll give you plenty of time to
19 organize your thoughts.
20 MR. CAMPBELL: So he cited 143 to the
21 Commission. We just pulled up 143 here. I'd will
22 like to read it. The reason I don't have it
23 readily apparent, because it wasn't cited in the
24 brief. So having just read it, here is what it
25 says.

1 "The Commission may exercise any proper
2 power and authority necessary to perform the
3 duties assigned to it by the legislature and is
4 not limited to an enunciation of power in this
5 chapter."
6 However, his citation in tandem to that
7 is with the Clark County School District decision.
8 In the Clark County School District decision, this
9 is what it was. They had the absolute right
10 entitlement to conduct hearings and call witnesses
11 to testify. But they did not have specifically
12 enumerated -- even though they had the right to
13 have hearings, have witnesses -- the right to
14 subpoena.
15 And the Supreme Court says that's
16 implied. If you have the right to hold a hearing
17 and you have the right to call witnesses at the
18 Clark County School District hearings, then you
19 have the right to subpoena. But this is what the
20 court said. I actually made a copy of the Clark
21 County School District case. Here is what the
22 court said in allowing that:
23 "We are mindful that this Court may not
24 confer an administrative agency a power in excess
25 of that authorized by the legislature." The

1 legislature has never specifically authorized you
2 to retain jurisdiction over people -- over persons
3 indefinitely on some mystical administrative hold.
4 Never.
5 Now, I will tell you, on some occasions
6 you have retained that jurisdiction. And I
7 suspect it is also improper, but nevertheless you
8 have retained it in other situations. You have
9 retained it with respect to hosting centers.
10 You've retained it with licensees, particularly of
11 the corporate brand on surrender and maintenance
12 of records.
13 Okay. You have also maintained it with
14 respect to individuals who leave slots
15 manufacturing positions, but you have never
16 retained it for suitability. And the -- it was
17 never authorized that you have such retention of
18 jurisdiction for suitability.
19 The fact that you have seen fit --
20 whether it's proper or not is a different story.
21 But the fact of the matter is that you have seen
22 fit to retain such jurisdiction elsewhere, but you
23 have never done it here, under the law is
24 indicative of the fact that you, in fact, did not
25 effect a retention of such jurisdiction or you

1 would have done so.
2 There was -- it's called expressio unius
3 est exclusio alterius. As a product of a Jesuit
4 education, it basically means the expression of
5 one thing is to the exclusion of another. You
6 didn't retain it.
7 And why didn't you retain it? Is that
8 really some oversight of yours? Did someone screw
9 up along the way? No. You didn't do anything
10 wrong. You didn't do anything wrong at all. The
11 legislature didn't give you the powers.
12 Now, could you have such powers? I
13 believe you probably could have such powers if the
14 legislature gave them to you. But the legislature
15 did not give them to you.
16 And here is something else. It was
17 mentioned with respect to the legal profession, in
18 the medical profession. Those are highly
19 regulated, and I suggest that the legal profession
20 is extremely well-regulated and highly regulated,
21 very, very much like the gaming industry.
22 And we just had a case that was decided
23 just a couple of years ago. It was in 2016, and
24 it deals with a lawyer. And that lawyer, named
25 Agwara, was an attorney who apparently had issues

1 involving the accounting of client funds. And he
2 wasn't involved in embezzlement, just bad record
3 keeping.
4 And some two years after the resolution
5 of those lack of accounting controls charged by
6 the state bar as posing a substantial threat of
7 serious harm to the public, they wanted to suspend
8 him.
9 EXECUTIVE SECRETARY BELL: Thirty
10 seconds.
11 MR. CAMPBELL: I'm sorry?
12 CHAIRMAN ALAMO: Thirty seconds.
13 MR. CAMPBELL: Agwara opposed the
14 position in arguing that he did not pose a present
15 substantial threat. It was in the past. The
16 Board agreed. The Board said -- excuse me. The
17 Supreme Court said "Ceasing upon the clear and
18 unambiguous language -- the clear and unambiguous
19 language that any substantial threat of harm to
20 the public had to be a present threat."
21 It's virtually identical. He wasn't
22 posing any present threat, and that's required
23 here. Right here. Licensed --
24 CHAIRMAN ALAMO: Thank you,
25 Mr. Campbell. Thank you. Thank you very much.

1 Let me turn now to Mr. Shevorski. Would
2 you like to rebut the rebuttal? I'll give you
3 that latitude.
4 MR. SHEVORSKI: No, Mr. Chairman.
5 CHAIRMAN ALAMO: Very good. Okay.
6 So now we go to the next phase here, and
7 I'm going to back away and turn to my fellow
8 Commissioners. And I would stress that this is
9 the phase where if you have any questions of
10 either party -- just questions. And I also ask of
11 the parties to answer just those questions.
12 I'm going to turn to see if any
13 Commissioners have any questions of any parties.
14 I personally do not.
15 COMMISSIONER COHEN: I do not.
16 CHAIRMAN ALAMO: Commissioner Moran?
17 No.
18 COMMISSIONER FUETSCH: No.
19 CHAIRMAN ALAMO: Okay. So I'll close
20 that part. So I think now is the proper time
21 to -- we're now going to take this away from all
22 of you and take it to us for deliberations and
23 discussions or maybe just to kind of give your
24 tilt on where you lie here.
25 I'm going to go ahead and -- I'm going

1 to start my thoughts.
2 I think it's important that I, again,
3 reiterate what we're doing here today. Because,
4 frankly, there's a lot of misinformation. I think
5 some of the press has gotten things confused, and
6 just some of the industry has gotten things
7 confused as to what is transpiring here today.
8 This meeting is not to discuss or decide
9 on the facts. This meeting is not to listen to
10 witnesses or to judge whether what the Board is
11 alleging in the complaint is true. This meeting
12 is not to discuss the merits of this case or any
13 other allegations associated or otherwise. This
14 meeting is not to judge whether discipline should
15 be taken.
16 We are here to decide whether the law
17 gives us jurisdiction over this case going
18 forward. The arguments on both sides are
19 compelling. And I will tell you, both clients had
20 very good lawyers here today. And it was an honor
21 to be on this side of the podium to listen to it.
22 But I've been here before, 12 years of
23 my tenure. I have had this issue before. Three
24 similar situations popped in my mind. They stick
25 out because they were questions of the

1 Commission's power and jurisdiction. It was --
2 they were so contentious, actually, that our
3 governor had to enact -- which had not been done
4 in two decades, on three different occasions, the
5 Gaming Policy Committee.
6 At those three times, with lots of
7 testimony and discussion, people on all sides, I
8 always had to settle back and go, well, what is --
9 what was the legislative intent? What was the
10 goal of our founding forefathers who created the
11 Gaming Control Act in 1959, and then subsequently
12 kept adding and -- adding to it?
13 Some of us are old enough to remember
14 what the '60s and '70s were like here. And if you
15 don't, you have read the books and you have
16 watched the movies. And I will tell you that what
17 it did, those laws that are on the books today,
18 created an environment that took gaming from not
19 in our backyard, to frankly go ahead and put it in
20 our backyard, put it in our house, and globalize
21 it.
22 Those powers and authorities granted to
23 the Commission by those legislatures ring clear in
24 my ear. And I always, at that time and will do
25 here today again, for the record, quote the two

1 statutes that I've quoted before. It was quoted
2 here today. NRS 463.1405, Subsection 4, "The
3 Commission has full and absolute power and
4 authority to limit, condition, restrict, revoke,
5 or suspend any license."
6 NRS 463.143, Mr. Campbell brought it
7 out, read it off his iPad. "The Commission may
8 exercise any proper power and authority necessary
9 to perform the duties assigned to it by the
10 legislature."
11 I believe this Commission has a duty to
12 listen to this case, determine whether discipline
13 is warranted for the good of Nevada, its citizens
14 in the gaming industry. This Commission has full
15 and absolute power and authority to discipline
16 persons who have been found suitable.
17 I think I made myself very clear. So at
18 the end of the day, does this Commission have
19 jurisdiction? The answer is yes.
20 So that being said, now I'm going to
21 stop and back away, and I'm going to see if
22 anybody here agrees or wants to change my mind.
23 So who would like to talk, deliberate,
24 discuss, or give your opinion of where we sit
25 right now?

1 Commissioner Cohen, going to your mic.
2 COMMISSIONER COHEN: Thank you,
3 Mr. Chairman.
4 My comments are based on the moving
5 papers and the arguments that were set forth in
6 this hearing this morning. The question, as Chair
7 Alamo specifically stated, is does this Commission
8 have the authority? Are we empowered to hear the
9 ultimate complaint in this matter?
10 I agree with Chairman Alamo. There is
11 evidence in the motion practice before us that the
12 Gaming Control Board did absolutely nothing in
13 this matter to in any way release Mr. Wynn from
14 its jurisdiction. The Commission has done
15 absolutely nothing to release Mr. Wynn from its
16 jurisdiction.
17 I concur with Chairman Alamo that NRS
18 463.140, Sub 5, provides the Board with authority
19 to compel the attendance of witnesses. And
20 inherent in that power is the ability for the
21 Commission to enforce such orders.
22 It is undisputed in the record before us
23 that Mr. Wynn failed to appear in person pursuant
24 to an order of the Gaming Control Board in the
25 investigation of this matter. In order for this

1 Board -- and let me restate that.
2 In order for this Commission, in my
3 opinion, to follow the legal arguments of
4 Mr. Campbell on behalf of Mr. Wynn, it would
5 result in an absurd conclusion that bad actors,
6 whether individuals or licensees, could
7 unilaterally, in large, restrict or obviate this
8 Commission's authority pursuant to the legislative
9 intent, the express powers of the legislature, to
10 escape potential liability, potential consequences
11 for bad acts. I do not in any way, shape, or form
12 concur with that.
13 Additional NRS statutes I believe are
14 controlling, if not dispositive, we have NRS 463,
15 NRS 463.1405, Sub 4, and NRS 463.140, Sub 5.
16 Without, you know, wasting the -- you know, the
17 time of this, you know, Commission, I won't read
18 into the record, because it's there for all to
19 see. The statutes I believe are clear on their
20 face.
21 And I support the chairman and I will
22 support a motion, if it is so made, that there is
23 jurisdiction in this matter, and the motion to
24 dismiss should be denied in its entirety.
25 CHAIRMAN ALAMO: Thank you, Commissioner

1 Cohen.
2 Anybody else would like to go next or --
3 okay. Go ahead.
4 COMMISSIONER FUETSCH: Thank you,
5 Chairman Alamo. And I, too, sit here in agreement
6 with my fellow Commissioners. I have reviewed all
7 of the information and appreciate the time and the
8 effort and the documentation before us today.
9 But, again, I have to go back -- and we're doing a
10 lot of quoting of law here.
11 NRS 463.1405, Subsection 4, that
12 provides us with the authority for the Commission
13 to hear the merits of the case initiated by the
14 Board's complaint. The statute gives the
15 Commission the full and absolute power to revoke
16 any findings of suitability with no limits as to
17 time or association.
18 So, once again, I am in agreement with
19 my other two Commissioners and feel as though, at
20 this point in time, we will deny the motion and
21 move forward with this potential hearing.
22 CHAIRMAN ALAMO: Thank you, Commissioner
23 Fuetsch.
24 Commissioner Moran.
25 COMMISSIONER MORAN: Yes. Very briefly,

1 now that I have heard my fellow Commissioners and
2 the presentation, you know, first of all, the
3 attorneys in this case are awesome. I mean, I
4 have known Mr. Campbell a long time. I know the
5 attorney who is before us today, and -- and from
6 the -- and I have read the briefs.
7 I look at it, and I'm a lot more simpler
8 than some of the briefs get down to. And I say
9 simple, because for me, I've probably been the
10 longest serving member of the Commission in the
11 history of the state. And I've seen a lot, like
12 my Chairman has said. We have had all kinds of
13 things thrown our way over the years.
14 But one thing that has always rang true
15 is that this Commission is given huge tasks of
16 regulating the No. 1 industry in the state. And
17 to do that, the legislature has given us power to
18 do certain things and to make sure that the
19 industry goes forward in a healthy fashion and
20 that the public are treated right.
21 And in doing that, I believe that we
22 have established a real clear public policy here
23 that gives us huge powers by the legislature to do
24 those things that are right to protect the public
25 and protect the industry.

1 And when you look at public policy here,
2 I don't believe, in looking at the briefs and
3 looking at the law, that the public policy would
4 ever support this Commission's powers to protect
5 the public in the industry would be, in fact,
6 reduced or negated simply because somebody in the
7 process, who may or may not have committed alleged
8 acts in their employment and in a licensee's
9 establishment, now decided to divest themselves
10 and walk away, leaving whatever is left to the
11 Commission.
12 And I don't believe that the powers set
13 forth for the Commission in NRS 463.1405.4 are
14 diminished or taken away because somebody wants to
15 throw in their hand at the end of the day and say
16 they're going to walk away from it and not come
17 back.
18 I myself think that the public policy is
19 that this Commission has the ability and the
20 authority by regulation, by law, and in the
21 interest of public policy and the state of Nevada
22 and the people that live here and the people that
23 are employed in the industry, we have that power
24 to look at acts and conduct that is alleged, no
25 matter who leaves and at what point.

1 Having said that, and I've heard the
2 comments of my fellow Commissioners. I believe
3 that we have the authority to look into this. I
4 think it's in the interest of the public for this
5 to have sunlight on it. I'm very troubled, as my
6 fellow colleagues said, by the proposition that
7 the person involved in this, in fact, didn't avail
8 themselves to the right of the investigative
9 process, apparently after notice.
10 And I think that based on all of those
11 reasons, I would never want to saddle future
12 Commissioners or future Board members by
13 supporting a finding that says that even though
14 acts are committed during the time that a licensee
15 or a person in the suitability position are done,
16 that we don't then have the power because they
17 have walked away and simply just said "I'm not
18 involved anymore."
19 I don't think that would be the right
20 thing for future Commissions, to handcuff them in
21 that fashion. And basically that's the reason why
22 if a motion was made to deny the motion to dismiss
23 that's in front of us today, I would support that.
24 CHAIRMAN ALAMO: Thank you.
25 Any further comment? Commissioner