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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOHN V. FERRIS and JOANN M. FERRIS,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

WYNN RESORTS LIMITED, et al.,

Defendants.

Case No. 2:18-CV-00479-CDS-BNW

**DECLARATION OF MURIELLE J.
STEVEN WALSH IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
MOTION FOR ATTORNEYS' FEES,
LITIGATION EXPENSES, AND
COMPENSATORY AWARDS TO
PLAINTIFFS**

{00640062;8 }

1 I, Murielle J. Steven Walsh, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746,
2 that the following is true and correct:

3 1. I am a partner at Pomerantz LLP (“Pomerantz”), Lead Counsel for the Class,¹ and
4 I am admitted *pro hac vice* in this action. I have overseen Pomerantz’s prosecution of this Action
5 and have personal knowledge of the facts asserted herein.

6 2. I submit this Declaration in support of: (1) Class Representatives’ Motion for Final
7 Approval of Class Action Settlement; and (2) Lead Counsel’s Motion for Attorneys’ Fees,
8 Litigation Expenses, and Compensatory Awards to Plaintiffs.

9 **I. PRELIMINARY STATEMENT**

10 3. After nearly seven years of tirelessly prosecuting this Action, Plaintiffs and
11 Plaintiffs’ Counsel achieved the Settlement, resolving all claims in this Action for a cash payment
12 of \$70,000,000. As detailed herein, the proposed Settlement represents an excellent result and is
13 in the best interest of Class Members.

14 4. Plaintiffs and Plaintiffs’ Counsel were fully aware of the strengths and weaknesses
15 of the claims and defenses in this Action at the time when the Parties reached the proposed
16 Settlement because by that time they had, *inter alia*:

17 (a) Conducted a thorough investigation of potential claims against Defendants,
18 including by reviewing the Company’s filings with the U.S. Securities and Exchange Commission
19 (“SEC”), analyst reports, press releases, regulatory complaints and reports, and other publicly
20 available information;

21 (b) Drafted a detailed Amended Complaint and briefed a motion to dismiss that
22 complaint;

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26 ¹ Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the
27 Stipulation and Agreement of Settlement dated September 16, 2024 (the “Stipulation”) (ECF No.
28 422-2).

1 (c) Drafted a detailed Second Amended Complaint asserting claims for
2 violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as well as SEC Rule
3 10b-5 promulgated thereunder;

4 (d) Successfully defeated, in large part, Defendants' motions to dismiss the
5 Second Amended Complaint;

6 (e) Achieved certification of the Class, defeating Defendants' attempts to
7 significantly narrow the scope of the certified Class;

8 (f) In connection with Plaintiffs' Motion for Class Certification, took the
9 deposition of Defendants' expert on class certification issues and defended two depositions of
10 Plaintiffs' expert on class certification issues;

11 (g) Engaged in extensive discovery, including obtaining and reviewing
12 thousands of documents from Defendants and various third-parties;

13 (h) Consulted with experts related to damages and loss causation;

14 (i) Exchanged written discovery with Defendants;

15 (j) Drafted an extensive motion to compel Defendants to produce documents,
16 successfully obtained an order compelling Defendants to produce additional discovery, and, after
17 Defendants refused to comply with the Order, successfully obtained a second order clarifying the
18 scope of the prior discovery order;

19 (k) Analyzed thousands of privilege assertions claimed by the Company and
20 researched and drafted a motion challenging the majority of those privilege assertions and seeking
21 to compel production of the underlying documents;

22 (l) Successfully blocked Defendants' efforts to prematurely move for summary
23 judgment without having produced all the relevant evidence; and

24 (m) Participated in extensive settlement negotiations, including multiple formal
25 in-person mediation sessions with a private mediator, Gregory P. Lindstrom, before which the
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1 Parties exchanged briefs summarizing their respective positions on the strengths and weaknesses
2 of the claims and defenses in this Action.

3 5. Plaintiffs' Counsel believe that the Settlement is fair and reasonable and represents
4 a favorable outcome for Class Members, and that its approval would be in their best interest. As
5 detailed below, the Settlement is a substantial recovery for Class Members that balances the risks
6 of establishing Defendants' liability in the Action, and the possibility that continuing through trial
7 and appeal could result in a smaller recovery or no recovery at all.

8 6. In addition to seeking final approval of the proposed Settlement, Plaintiffs also seek
9 final approval of the proposed Plan of Allocation that has been preliminarily approved and
10 communicated to Class Members. The Plan of Allocation provides that Authorized Claimants will
11 receive a *pro rata* share of the Net Settlement Fund according to their purchases, shares, and
12 holdings of Wynn Resorts Securities.

13 7. Plaintiffs' Counsel skillfully advocated for the Class for over six years, operating
14 on a fully contingent basis and advancing the costs of all Litigation Expenses. Thus, Plaintiffs'
15 Counsel, alone, shouldered the financial risk of an unfavorable result. For their considerable efforts
16 in prosecuting this Action and negotiating the Settlement, Lead Counsel is requesting attorneys'
17 fees in the amount of 33 1/3 % of the Settlement Fund, together with interest accrued thereon while
18 in the Escrow Account. This fee request is consistent with retainer agreements negotiated with,
19 and approved by, Plaintiffs. As detailed in Lead Counsel's Motion for Attorneys' Fees, Litigation
20 Expenses, and Compensatory Awards to Plaintiffs and Memorandum of Points and Authorities in
21 Support (the "Fee Brief"), it also is within the range of fees awarded in this Circuit. Thus, it is fair
22 and reasonable, especially when considered in light of the results achieved, the years that
23 Plaintiffs' Counsel devoted to this litigation and the resources expended, and the important public
24 policy advanced by securities litigation actions such as this.

1 8. Lead Counsel is also seeking reimbursement of Litigation Expenses incurred by
2 Plaintiffs' Counsel in connection with the prosecution of this Action, which collectively total
3 \$1,104,277.42.

4 9. In support of the request for attorneys' fees and reimbursement of Litigation
5 Expenses, I submit the Declaration of Murielle J. Steven Walsh of Pomerantz LLP ("Pomerantz
6 Fee Decl.") as Exhibit 1, the Declaration of Phillip Kim of the Rosen Law Firm ("Rosen Fee
7 Decl.") as Exhibit 2, and the Declaration of Andrew R. Muehlbauer (the "Muehlbauer Fee Decl.")
8 as Exhibit 3.

9 10. In addition, Lead Counsel is requesting that the Court approve compensatory
10 awards to Plaintiffs in the amount of \$30,000 for Mr. Ferris, \$30,000 for Mrs. Ferris, and \$20,000
11 for Mr. Larsen. These awards are intended to compensate Plaintiffs for their time and expenses
12 directly related to their representation of the Class, as authorized by the PSLRA, 15 U.S.C. § 78u-
13 4(a)(4).

14 **II. PROCEDURAL HISTORY**

15 11. Plaintiffs John V. Ferris and JoAnn M. Ferris commenced this Action in the
16 Southern District of New York on February 20, 2018. ECF No. 1. On March 13, 2018, the Action
17 was transferred to the District of Nevada. ECF No. 14. Mr. and Mrs. Ferris were appointed lead
18 plaintiffs ("Lead Plaintiffs") on December 4, 2018. ECF No. 45. In that same order, Pomerantz
19 was appointed lead counsel and Muehlbauer Law Office, Ltd. was appointed liaison counsel. *Id.*

20 12. Lead Plaintiffs filed an amended Complaint on March 1, 2019 (ECF No. 52), which
21 the Court dismissed with leave to amend on May 27, 2020 (ECF No. 119).

22 13. Lead Plaintiffs filed the operative complaint, the Second Amended Complaint (the
23 "Complaint"), on July 1, 2020. ECF. No. 122. It asserts claims for violations of Sections 10(b) and
24 20(a) of the Securities Exchange Act of 1934, as well as Securities and Exchange Commission
25 Rule 10b-5 promulgated thereunder, against current Defendants Wynn Resorts, Ltd. ("Wynn" or
26 the "Company"), Kimmarie Sinatra, Stephen A. Wynn, Stephen Cootey, and Matthew Maddox, as

1 well as several former defendants consisting of former and current officers and directors of the
2 Company (“Former Defendants”). *Id.* The Complaint asserted that these parties made material
3 misrepresentations about: (1) their compliance with applicable laws and the Company’s Code of
4 Conduct; (2) allegations of sexual misconduct against Mr. Wynn dating back as early as 2005,
5 which were made in Elaine Wynn’s Answer and Crossclaim filed March 28, 2016 in the *Okada*
6 litigation and in the *Wall Street Journal* Article titled “Dozens of People Recount Pattern of Sexual
7 Misconduct by Las Vegas Mogul Steve Wynn” (the “WSJ Article”). *Id.*

8 14. On August 14, 2020, Defendants moved to dismiss the Complaint, arguing, among
9 other things, that Defendants and Former Defendants’ statements regarding their compliance with
10 applicable laws and the Company’s Code of Conduct were inactionable, and that Lead Plaintiffs
11 failed to allege falsity with respect to the alleged misstatements regarding the allegations of sexual
12 misconduct against Mr. Wynn. ECF No. 128 at 12; ECF Nos. 138-39. Plaintiffs filed an opposition
13 to that motion on September 21, 2020, to which Defendants replied on October 16, 2020. ECF
14 Nos. 146, 155-57. On July 28, 2021, the Court entered an order granting in part and denying in
15 part the motion to dismiss. ECF No. 171. Specifically, the Court upheld the claims against the
16 Company, Sinatra, Mr. Wynn, Cootey, and Maddox related to the alleged misrepresentations about
17 allegations of sexual misconduct against Mr. Wynn. *Id.* at 41. Thereafter, Defendants answered
18 the Complaint. ECF Nos. 176-79.

19 15. The Parties submitted competing proposed discovery plans and scheduling orders,
20 and the Court ordered that discovery would occur in two phases, with phase one limited to issues
21 related to class certification. ECF Nos. 188, 189, & 198.

22 16. However, the parties failed to reach agreement on the scope of discovery during
23 phase one and Lead Plaintiffs filed a motion to compel, seeking the Court’s intervention. ECF No.
24 209. The Court resolved the Parties’ dispute, ruling from the bench on January 25, 2022. ECF No.
25 221.

1 17. Defendants also filed a motion to compel, seeking unredacted brokerage account
2 records from Lead Plaintiffs. ECF No. 227. The Court ultimately granted Defendants' request on
3 June 28, 2022. ECF No. 238.

4 18. Thereafter, on July 13, 2022, Lead Plaintiffs moved to recuse the then-assigned
5 Magistrate Judge on the basis that she previously represented the Company in an action that arose
6 from the same controversy relevant to this Action. ECF No. 239. Defendants opposed the motion
7 on July 26, 2022. ECF Nos. 242-45. The Court granted the motion on October 27, 2022. ECF No.
8 260.

9 19. On October 28, 2022, Magistrate Judge Brenda Weksler was assigned to the case.
10 ECF No. 261.

11 20. Meanwhile, on July 18, 2022, Plaintiffs moved to certify a Class consisting of all
12 individuals and entities that purchased or otherwise acquired Wynn Resorts securities between
13 March 28, 2016 and February 12, 2018, inclusive, and who were damaged thereby. ECF No. 241
14 at 2. Plaintiffs also requested that the Court appoint Plaintiffs as Class Representatives and
15 Pomerantz as Class Counsel and Muehlbauer Law as Local/Liaison Counsel. *Id.* at 1. Defendants
16 filed an opposition on October 18, 2022. ECF Nos. 251, 256-58. Plaintiffs filed a reply on
17 December 20, 2022. ECF No. 269. Defendants Maddox and Wynn Resorts then filed a motion
18 seeking to depose Plaintiffs' expert witness and seeking leave to file a Sur-Reply, which the Court
19 granted on January 13, 2023. ECF Nos. 272, 278. They then filed their Sur-Reply on February 17,
20 2023. ECF No. 279.

21 21. On March 1, 2023, the Court granted Plaintiffs' motion to certify the Class. ECF
22 No. 283. The Court upheld two sets of corrective disclosures: (1) the January 26 WSJ Article, and
23 (2) the February 12, 2018 news that the Nevada Gaming Control Board had opened an online
24 portal for people to submit confidential statements regarding any publicly announced
25 investigation, including against Mr. Wynn, and that two women had filed reports with the Las
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1 Vegas Metropolitan Police Department, alleging that Mr. Wynn had sexually assaulted them. ECF
2 No. 283 at 21-22.

3 22. Defendants petitioned the Ninth Circuit for permission to appeal under Fed. R. Civ.
4 P. 23(f) (ECF No. 284), which Plaintiffs opposed. Defendants' petition was denied.

5 23. After the Court entered the Class certification order, phase two discovery, which
6 focused on merits issues, began. In addition to seeking discovery from Defendants, Plaintiffs
7 subpoenaed the Massachusetts Gaming Commission and the Nevada Gaming Control Board, as
8 well as various other third parties, including analysts and potential fact witnesses.

9 24. From the outset, the Parties had significant disputes about the appropriate scope of
10 discovery, including the relevant time period, custodians, certain requests for production, and
11 appropriate search terms. Further, Defendants demanded that Plaintiffs agree to a fact stipulation
12 in lieu of certain relevant discovery. While the parties continued to meet and confer about those
13 issues, the Company began collecting and producing documents in line with their narrower
14 interpretation of the scope of discovery, using search terms to which Plaintiffs had not agreed. As
15 early as September 29, 2023, Plaintiffs indicated to Defendants that they would be moving to
16 compel on these issues but expressed their hope to reach agreement without having to involve the
17 Court. On October 19 and 20, 2023, Defendants requested that Plaintiffs delay filing their motion
18 to compel so that the parties could continue meeting and conferring about an appropriate solution.

19 25. While these significant discovery disputes were still outstanding, Defendants
20 Maddox and the Company then filed a motion for partial summary judgment on November 14,
21 2024, which the other Defendants joined. ECF Nos. 314, 324-26. The motion for partial summary
22 judgment requested that the Court dismiss Plaintiffs' claims related to the February 12, 2018
23 corrective disclosures for failure to prove falsity and loss causation. ECF No. 314 at 1.

24 26. Shortly thereafter, on November 21, 2023, Plaintiffs filed their motion to compel,
25 seeking an order compelling Defendants to, *inter alia*, apply Plaintiffs' broader search terms,
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1 produce discovery dating back to 2005 and through December 31, 2019, and produce documents
2 from twenty-six additional custodians. ECF Nos. 327, 327-2.

3 27. On December 5, 2023, Plaintiffs then opposed Defendants' motion for partial
4 summary judgment both on the merits and on the grounds that summary judgment was premature
5 pursuant to Fed. R. Civ. P. 56(d) because Plaintiffs needed additional discovery. ECF No. 335.
6 Defendants filed their reply on December 19, 2024. ECF No. 343.

7 28. Meanwhile, on December 5, 2023, Defendants filed their opposition to Plaintiffs'
8 motion to compel, but nevertheless agreed to drop their objections to twelve of the twenty-six
9 disputed custodians, leaving fourteen custodians still in dispute. ECF No. 328 at 20. Concurrently
10 therewith, Defendants also moved for a protective order, asking the Court to deny the relief that
11 Plaintiffs requested in their motion to compel, compel Plaintiffs to agree to fact stipulations, and
12 protect the identities of Mr. Wynn's accusers from discovery. ECF No. 329.

13 29. Plaintiffs submitted a reply in support of their motion to compel on December 12,
14 2023 and an opposition to Defendants' motion for protective order on December 22, 2023. ECF
15 Nos. 341, 352. Defendants submitted a reply in support of their motion for protective order on
16 January 5, 2024. ECF No. 354.

17 30. While those motions were pending, Plaintiffs filed an additional motion to compel
18 on May 22, 2024 related to the Company's privilege log, which asked the Court to order the
19 Company to produce certain documents improperly withheld as privileged, or provide them to the
20 Court for *in camera* review, and to supplement their privilege log to cure the deficiencies identified
21 in the motion. ECF No. 366.

22 31. On May 24, 2024, the Magistrate Judge granted in large part Plaintiffs' motion to
23 compel related to Defendants' collection and production of documents, ruling that i) the relevant
24 time period generally spanned from January 1, 2005 through June 30, 2018; ii) Defendants were
25 obligated to produce discovery for the fourteen custodians that remained in dispute (identifying
26 relevant periods for each custodian); iii) the parties were required to meet and confer about

1 mutually agreeable search strings; iv) Plaintiffs were not obligated to stipulate to facts;
2 v) Defendants were required to supplement all prior productions based on the Order; and vi) Mr.
3 Wynn's alleged victims' identities were relevant to the claims against him. ECF No. 373. The
4 Magistrate Judge also ordered Defendants to prioritize discovery that Plaintiffs asserted was
5 necessary for the purposes of defending against the motion for partial summary judgment. *Id.*

6 32. On May 29, 2024, the Court denied Defendants' motion for partial summary
7 judgment and granted Plaintiffs' request for relief under Fed. R. Civ. P. 56(d). ECF No. 375. The
8 Court ruled that Defendants could not resubmit their motion for partial summary judgment until
9 thirty days after compliance with the Magistrate Judge's May 24, 2024 order compelling additional
10 discovery, as well as any order related to Plaintiffs' pending motion to compel concerning the
11 Company's privilege log.

12 33. Nevertheless, the Parties' discovery disputes continued. The Magistrate Judge held
13 a hearing on June 3, 2024 to discuss Plaintiffs' motion to compel related to the privilege log. ECF
14 No. 377. During the hearing, the parties discussed the potential appointment of a special master to
15 preside over the privilege log motion. *Id.* The Parties also flagged their disagreement about how
16 to interpret the Court's May 24, 2024 order compelling additional discovery. *Id.* The Court ordered
17 the parties to meet and confer about the appointment of a special master, ordered Defendants to
18 submit a supplemental privilege log addressing issues flagged in Plaintiffs' privilege log motion
19 so that Plaintiffs could submit a new motion based on the revised log, and ordered Plaintiffs to
20 submit a motion for clarification related to the Parties' disputes on how to interpret the May 24,
21 2024 order. *Id.*

22 34. Defendants filed objections to the May 24, 2024 Order on June 7, 2024, which
23 Plaintiffs opposed on June 21, 2024. ECF Nos. 379, 386. Meanwhile, Plaintiffs filed their motion
24 for clarification of the May 24, 2024 Order on June 14, 2024, and Defendants responded on June
25 21, 2024. ECF Nos. 382, 387. The Court provided clarification by order dated July 8, 2024. ECF
26 No. 400.

1 35. On June 21, 2024, the Court appointed the Honorable Jay Young (ret.) as Special
2 Master to resolve all discovery disputes between the Parties related to the Company's privilege
3 log. ECF No. 390.

4 36. However, before Plaintiffs submitted a revised motion to compel related to the
5 Company's revised privilege log, the Parties agreed to the Settlement.

6 **III. NEGOTIATIONS LEADING UP TO THE SETTLEMENT**

7 37. On September 18, 2023, the Parties engaged in an all-day, in person mediation
8 session before Gregory P. Lindstrom. Before the mediation session, the Parties exchanged briefs
9 summarizing their respective positions on the strengths and weaknesses of the claims and defenses
10 in the Action. That mediation was not successful in reaching a settlement.

11 38. Nevertheless, the Parties remained in contact with the mediator via email and
12 telephone and kept open the possibility of continuing settlement negotiations.

13 39. On August 14, 2024, the Parties engaged in an additional all-day, in-person
14 mediation session before Gregory P. Lindstrom. During that mediation session, the Parties reached
15 an agreement in principle to settle, which they memorialized in a Short Form Agreement on August
16 22, 2024.

17 40. The Parties then negotiated the specific terms of the Settlement, executing the
18 Stipulation and Agreement of Settlement on September 16, 2024.

19 41. On that same day, Plaintiffs moved for preliminary approval of the Settlement,
20 which the Court granted on October 15, 2024. ECF Nos. 422 & 432.

21 42. Pursuant to the Stipulation, Defendants transferred \$70,000,000 to the Escrow
22 Account established for the purposes of administering the Settlement.

23 **IV. PLAINTIFFS FACED RISKS IN CONTINUING LITIGATION**

24 43. As demonstrated above, the Parties reached a Settlement at an advanced stage in
25 this litigation. The case was first commenced in 2018, and before the Settlement, the Parties had
26 briefed motions to dismiss, a motion for class certification, a motion for partial summary judgment,

1 and various discovery motions. Defendants produced thousands of documents, and the Parties
2 exchanged written discovery. Plaintiffs also obtained documents from Nevada and Massachusetts
3 gaming regulators who conducted investigations of the alleged underlying misconduct giving rise
4 to Plaintiffs' securities law claims, as well as documents from third-party analysts who tracked
5 and evaluated Wynn Resorts securities. The Parties also exchanged briefs in advance of mediation
6 that detailed their respective positions on the strengths and weaknesses of the claims and defenses
7 in this Action. Thus, Plaintiffs and Plaintiffs' Counsel were well informed and well positioned to
8 evaluate the risks and advantages of Settlement over continuing litigation.

9 44. While Plaintiffs and Plaintiffs' Counsel are confident in the merits of Plaintiffs'
10 claims, the issues in this case remained hotly contested up until the Settlement was reached. The
11 Settlement provides certain, immediate recovery, whereas continuing litigation would have had
12 inherent risks, including the risk of a diminished recovery or no recovery at all.

13 45. In particular, as discussed above, Defendants attempted to eliminate Plaintiffs'
14 claims related to the February 12, 2018 corrective disclosures in their motion for partial summary
15 judgment. If successful, they would have significantly reduced the maximum possible recoverable
16 damages. Plaintiffs' damages expert estimates that the total maximum recoverable damages,
17 assuming Plaintiffs fully prevailed and the Court accepted their damages theory, would be
18 approximately \$926.7 million and if Defendants were successful at eliminating the claims related
19 to the February 12, 2018 corrective disclosures, the maximum recoverable damages would have
20 been reduced to \$158 million. Defendants would have had another opportunity to raise their
21 arguments had the Parties not reached the Settlement.

22 46. In addition, while Plaintiffs were successful in obtaining an order from the Court
23 compelling Defendants to produce broader discovery than they originally agreed to produce,
24 Plaintiffs faced the possibility that such relief might be scaled back because Defendants' filed
25 objections to the Magistrate Judge's May 24, 2024 order compelling additional discovery (*see* ECF
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1 No. 379), and the Court had not yet ruled on their objections when the Parties reached the
2 Settlement.

3 47. Further, shortly before the Settlement was reached, the Parties had begun litigating
4 Plaintiffs' challenges to the Company's privilege log. After Plaintiffs filed their first motion to
5 compel related to the Company's privilege log, the Court appointed a Special Master, and the
6 Company produced a revised privilege log that addressed some of the issues Plaintiffs flagged in
7 their initial motion. Nevertheless, several issues remained, and Plaintiffs still intended to challenge
8 a significant number of entries. The order appointing the Special Master required the Parties to
9 split the costs of the Special Master, and Plaintiffs faced the risk of costly litigation of this issue
10 with no guarantee that it would result in an order compelling Defendants to produce the documents
11 that Plaintiffs argued were being improperly withheld or for which Defendants failed to
12 substantiate the claimed privilege(s). The Parties reached the Settlement before Plaintiffs filed
13 their motion to compel related to the revised privilege log.

14 48. The Parties also had not yet begun expert discovery, which would have required
15 the exchange of expert reports and depositions of the experts. This would have potentially
16 culminated in *Daubert* motions seeking to exclude the opinions of some or all experts. Thus,
17 Plaintiffs faced that the risk of having their expert's opinion excluded.

18 49. Even if Plaintiffs prevailed on liability for any of their claims and the jury awarded
19 damages, Defendants would likely appeal the verdict and award. The appeals process would likely
20 span several years, during which Class Members would receive nothing. In addition, an appeal
21 would carry the risk of reversal, in which case Class Members would receive no recovery despite
22 having prevailed at trial.

23 50. Thus, Plaintiffs and Plaintiffs' Counsel believe that the immediate, certain recovery
24 achieved by the Settlement compares favorably to what could be achieved, while avoiding the
25 substantial risks that the Class would face from continued litigation. With maximum damages
26 estimated as ranging between \$158 million and \$926.7 million depending on which corrective

1 disclosures survive, the \$70,000,000 Settlement represents a recovery of 7.6% to 44% of the
2 estimated maximum damages. As explained in the accompanying motion for final approval of the
3 Settlement, both of those scenarios are above the average recovery in securities class actions of a
4 similar size, and within the range of settlements approved by Courts within the Ninth Circuit.

5 **V. PLAINTIFFS’ COMPLIANCE WITH THE PRELIMINARY APPROVAL ORDER**

6 51. Pursuant to the Court’s Preliminary Approval Order, ECF No. 432, Lead Counsel,
7 through the approved Claims Administrator JND Legal Administration (“JND”), implemented a
8 comprehensive notice program whereby, beginning on October 31, 2024, JND mailed a copy of
9 the Settlement Notice and Proof of Claim and Release Form (“Claim Form”) (collectively, the
10 “Settlement Notice Packet”) to all persons and entities identified as potential Class Members in
11 connection with the mailing of the Notice of Pendency of Class Action (the “Class Notice”) in
12 November 2023, as well as to all nominees included in JND’s database of banks, brokers, and
13 other nominees. *See* Declaration of Luiggy Segura (“Segura Decl.”), attached hereto as Exhibit 4.
14 JND also posted the Settlement Notice for nominees on the Depository Trust Company Legal
15 Notice System. *Id.* ¶ 6. Finally, JND called top brokers and nominees from the JND broker
16 database and mailed reminder postcards to all the entities in the JND broker database who had not
17 responded to the mailing. *Id.* ¶ 7. As of December 20, 2024, JND, has sent the Settlement Notice
18 Packet to over 50,000 Class potential Class Members and their nominees, and has sent over
19 194,000 Settlement Notice Packets to nominees who requested copies for mailing themselves. *Id.*
20 ¶ 4.

21 52. On November 6, 2024, the Summary Notice was also published on *PR Newswire*.
22 *Id.* ¶ 11 & Ex. B.

23 53. On October 30, 2024, the Settlement Notice Packet, as well as copies of the
24 Stipulation, Order, and other relevant documents, were posted to the Settlement Website, which
25 was previously created for this Action in connection with the Class Notice Mailing. *Id.* ¶ 13.
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1 54. The Settlement Notice describes, among other things: (i) the rights of Class
2 Members under the Settlement; (ii) the nature and history of the litigation; (iii) the risks of
3 continued litigation; (iv) the arms' length negotiations leading to the Settlement; (v) the proposed
4 Settlement, including the Settlement amount; (vi) the process for filing a claim; (vii) the proposed
5 Plan of Allocation; (viii) the fees and maximum expenses to be sought by Lead Counsel; (ix) the
6 claims that will be released under the Settlement; (x) contact information for the Claims
7 Administrator and Lead Counsel; (xi) the Settlement hearing date, time, and location; and (xii) the
8 process for objecting.

9 55. As set forth in the Preliminary Approval Order, the deadline for Class Members to
10 object to any aspect of the Settlement, Plan of Allocation, or request for attorneys' fees or
11 Litigation Expenses is January 6, 2025. While that date has not yet passed, not a single Class
12 Member has lodged any objection so far. Should any objection be subsequently received, Plaintiffs
13 will address it in their reply papers.

14 **VI. THE PLAN OF ALLOCATION**

15 56. Lead Counsel developed the Plan of Allocation after careful consideration and
16 consultation with Plaintiffs' damages and loss causation expert, Dr. Zachary Nye.

17 57. The Plan of Allocation was designed to equitably distribute the Net Settlement
18 Fund to Class Members. *See* Plan of Allocation (Segura Decl. Ex. A at 16-20), ¶ 1. The Plan of
19 Allocation distributes the Net Settlement Fund among Authorized Claimants on a *pro rata* basis
20 based on "Recognized Loss" formulas tied to liability and damages. The calculation of the
21 Recognized Loss will depend on several factors, including whether the claimant purchased shares
22 of Wynn Resorts common stock during the Class Period, when the shares of Wynn Resorts
23 common stock were purchased or otherwise acquired during the Class Period, and in what
24 amounts, and whether such stock was sold, and if sold, when it was sold, and for what amounts.
25 Each Class Member that suffered damages and properly submits a valid proof of Claim will receive
26 a *pro rata* share of the Net Settlement Fund, subject to the \$10 minimum payment threshold.

1 58. Distributions of the Net Settlement Fund will be made to Authorized Claimants
2 after all claims have been processed and the Court has granted final approval of the Settlement.
3 Plan of Allocation ¶ 19.

4 59. Claims processing like the method proposed here is standard in securities class
5 action settlements and has long been found to be effective and necessary. The Plan of Allocation
6 does not provide any preferential treatment to Plaintiffs or any other Class Members. Thus, the
7 proposed Plan of Allocation is fair, reasonable, and adequate and should be approved.

8 60. If any funds remain in the Net Settlement Fund at least six months after the initial
9 distribution, the funds will be distributed by: (1) first, paying any amounts mistakenly omitted
10 from the initial disbursement; (2) second, paying any additional settlement administration fees,
11 costs, and expenses, including any additional expenses incurred by Plaintiffs' Counsel as may be
12 approved by the Court; and (3) third, if it is economically feasible, to make a second distribution
13 to Authorized Claimants who cashed checks from, or otherwise effectively received by direct
14 payment transfer, an initial distribution and who would receive at least \$10, after payment of the
15 estimated costs, expenses, or fees to be incurred in administering the Net Settlement Fund and in
16 making this second distribution. *Id.*

17 **VII. LEAD COUNSEL'S REQUEST FOR ATTORNEYS' FEES IS FAIR AND**
18 **REASONABLE**

19 61. Lead Counsel is requesting that the Court award Plaintiffs' Counsel attorneys' fees
20 in the amount of 33 ⅓ % of the Settlement Fund, together with interest accrued thereon while in
21 the Escrow Account. As explained in the Fee Brief, awarding counsel a percentage of the fund is
22 the prevailing method in cases such as this involving a cash common fund. As discussed below
23 and more fully in the Fee Brief, each of the factors that Courts within the Ninth Circuit consider
24 in determining whether the requested fee is reasonable supports the assertion that Lead Counsel's
25 request is fair and reasonable.

26 62. *First*, the favorable result that Plaintiffs' Counsel achieved, a \$70,000,000 cash
27 settlement, supports Lead Counsel's fee request. As explained above and in the Fee Brief, this

1 represents roughly 7.6% to 44% of the estimated maximum damages, which is above the average
2 recovery in securities class actions of a similar size, and within the range of settlements approved
3 by Courts within the Ninth Circuit.

4 63. *Second*, as detailed above, there were substantial risks in continuing litigation,
5 including the possibility of a reduced recovery or no recovery at all. Plaintiffs' Counsel's efforts
6 to achieve the Settlement, which provides the Class with certain, immediate recovery, while
7 avoiding the risks of continuing litigation, further supports the requested fees.

8 64. *Third*, the request is supported by the quality of Plaintiffs' Counsel's work.
9 Plaintiffs' Counsel are highly experienced and skilled securities litigation practitioners, with long
10 and successful track records. *See* Ex. A to the Pomerantz Decl., Ex. A to the Rosen Decl., and Ex.
11 A to the Muehlbauer Decl. Plaintiffs' Counsel zealously advocated on behalf of the Class while
12 faced with legal opposition from multiple prominent national and global law firms, overcoming
13 critical hurdles in this Action. The record is replete with examples of the high quality of Plaintiffs'
14 Counsel's work. Further, Courts around the country have recognized Lead Counsel's experience
15 and competence, including this Court in granting the motion for Class certification.

16 65. *Fourth*, the request is warranted because Plaintiffs' Counsel undertook this Action
17 on a wholly contingent basis and advanced the cost of all Litigation Expenses. Over the course of
18 the litigation, Plaintiffs' Counsel devoted significant time and resources, 16,326.57 hours for a
19 total lodestar of \$11,780,820.20, and have incurred \$1,104,277.42 in out-of-pocket expenses. Lead
20 Counsel shouldered the financial burden of a complex, expensive, and lengthy litigation, bearing
21 the considerable risk of nonpayment.

22 66. *Fifth*, the request is consistent with awards made in similar cases. Attached hereto
23 as Exhibit 5 is a list of Ninth Circuit cases where the Court awarded attorneys' fees amounting to
24 33% of the settlement or higher in complex, contingent litigation.

25 67. *Sixth* the request is supported by the lack of objections from Class Members. The
26 Settlement Notice informed Class Members that Lead Counsel would apply to the Court for an

1 award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 33 ⅓ % of the
 2 Settlement Fund, including any interest thereon. *See* Segura Decl. Ex. A at 2, ¶ 5. The Settlement
 3 Notice also advised Class Members that they could object to the fee request and explained the
 4 procedure for doing so. *See* Segura Decl. Ex. A ¶¶ 56-62. While the deadline to object is not until
 5 January 6, 2025, to date, not a single objection has been received. Segura Decl. ¶ 14.

6 68. *Seventh*, the lodestar cross-check supports the requested fees. Plaintiffs' Counsels'
 7 current rates range from \$850 - \$1325 for partners, \$350 - \$700 for associates, and \$335 - \$375
 8 for paralegals. *See* Exs. 1-3. These rates are consistent with comparable Plaintiffs firms who
 9 perform similar work, as well as defense firms that handle complex litigation. *See* Exhibit 6
 10 (compilation of law firm billing rates in various cases nationwide). Plaintiffs' Counsel have
 11 expended roughly 16,326.57 hours litigating this Action and will spend additional time preparing
 12 Plaintiffs' reply in support of final approval, preparing for and attending the final approval hearing,
 13 directing the claims administration process, and filing a motion for final distribution, for which
 14 Plaintiffs' Counsel will not seek further compensation. The cumulative time expended by
 15 Plaintiffs' Counsel, multiplied by their currently hourly rates, results in a lodestar of
 16 \$11,780,820.20, of which \$8,517,200.20 is attributable to Lead Counsel, \$2,276,175 is attributable
 17 to the Rosen Law Firm ("Rosen"), and \$987,445 is attributable to Muehlbauer Law Office, Ltd
 18 ("Muehlbauer"). This amounts to a lodestar multiplier of approximately 1.98, which, as discussed
 19 in the Fee Brief, is consistent with the range that Courts within this Circuit have found reasonable.

20 **VIII. LEAD COUNSEL'S REQUEST FOR REIMBURSEMENT OF LITIGATION**
 21 **EXPENSES SHOULD BE APPROVED**

22 69. Lead Counsel's request for reimbursement of \$1,104,277.42 in Litigation Expenses
 23 (\$1,049,515.86 of which were incurred by Lead Counsel, \$51,520.81 of which were incurred by
 24 Rosen, and \$3,240.75 were incurred by Muehlbauer) is fair and reasonable. *See* Pomerantz Fee
 25 Decl. ¶ 10; Rosen Fee Decl. ¶ 10; Muehlbauer Fee Decl. ¶ 6.

26 70. The majority of Plaintiffs' Counsel's Litigation Expenses relate to fees charged by
 27 consulting and testifying experts that provided services directly benefitting Class Members,

1 including providing reports, preparing for and sitting for two depositions, responding to
2 Defendants' expert reports and consulting on other matters, including, damages and loss causation.
3 These services were necessary to advance the interests of Class Members and are of the type
4 regularly charged to clients who pay on an hourly basis.

5 71. The remaining Litigation Expenses were also necessarily incurred and are of the
6 type routinely charged to clients billed by the hour. They include, among other things, filing fees,
7 electronic discovery database charges, online legal research, photocopying, travel, and postage
8 expenses.

9 72. Further, the Settlement Notice informed Class Members that Lead Counsel would
10 apply for reimbursement of Litigation Expenses paid or incurred in connection with the institution,
11 prosecution, and resolution of the claims against the Defendants, in an amount not to exceed \$1.6
12 million, including any interest earned thereon. *See Segura Decl.*, Ex. A at 2-3, ¶ 5. To date, there
13 have been no objections.

14 **IX. THE REQUESTED AWARDS TO PLAINTIFFS ARE FAIR AND REASONABLE**

15 73. Plaintiffs' Counsel also request that the Court award Mr. Ferris \$30,000, Mrs. Ferris
16 \$30,000, and Mr. Larsen \$20,000 for their representation of the Class. As detailed in the
17 Declaration of John V. Ferris, JoAnn M. Ferris, and Jeffrey Larsen, attached hereto as Exhibits 7,
18 8, and 9, respectively, Plaintiffs dedicated their personal time and effort to prosecuting the Action.

19 74. The Settlement Notice stated that Lead Counsel would request an award not to
20 exceed \$100,000 to reimburse Plaintiffs for their reasonable costs and expenses incurred directly
21 related to the representation of the Class. To date, there have been no objections to that request.
22 Given the significant amount of time that Plaintiffs have devoted to this Action, the requested
23 awards are reasonable.

24 **X. THE CLASS' REACTION SUPPORTS LEAD COUNSEL'S REQUESTED**
25 **ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND**
26 **COMPENSATORY AWARDS TO PLAINTIFFS**

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2024, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court’s electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court’s CM/ECF System.

/s/ Murielle J. Steven Walsh
Murielle J. Steven Walsh