James J. Pisanelli, Esq., Bar No. 4027 1 JJP@pisanellibice.com Debra L. Spinelli, Esq., Bar No. 9695 2 DLS@pisanellibice.com Jarrod L. Rickard, Esq., Bar No. 10203 3 JLR@pisanellibice.com PISANELLI BICE PLLC 4 3883 Howard Hughes Parkway, Suite 800 Las Vegas, Nevada 89169 5 Telephone: 702.214.2100 Facsimile: 702.214.2100 6 Attorneys for Defendants Wynn Las Vegas, LLC 7 dba Wynn Las Vegas and Wynn Resorts, Ltd. 8 UNITED STATES DISTRICT COURT 9 **DISTRICT OF NEVADA** 10 KANIE KASTROLL, on her own behalf CASE NO. 2:09-cv-02034-LDG-LRL 11 and on behalf of all others similarly situated. 12 Plaintiff, ANSWER 13 v. 14 WYNN RESORTS, LTD., a Nevada 15 corporation d/b/a WYNN LAS VEGAS, 16 Defendant. 17 18 19 Defendant Wynn Las Vegas, LLC dba Wynn Las Vegas, erroneously named in this action as Wynn Resorts, Ltd. (hereinafter "Wynn" or "Wynn Las Vegas"), hereby responds to the 20 21 Complaint filed by Plaintiff Kanie Kastroll ("Plaintiff") as follows: 22 NATURE OF ACTION 1. 23 Paragraph 1 of Plaintiff's Complaint alleges facts proper for an expert opinion. 24 Therefore, Wynn is currently without sufficient knowledge or information to form a belief as to 25 26 27 To the extent Plaintiff intentionally named Wynn Resorts, Ltd., this Answer is filed on its behalf as well. 28

the truth or falsity of the allegations contained in Paragraph 1 of Plaintiff's Complaint and therefore denies the same.

- 2. In answering Paragraph 2 of Plaintiff's Complaint, Wynn is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations regarding other Las Vegas casinos, and therefore denies the same, and denies any and all remaining allegations therein.
  - 3. Wynn denies the allegations in Paragraph 3 of Plaintiff's Complaint.

### EFFECTS OF SECOND-HAND SMOKE

- 4. Paragraph 4 of Plaintiff's Complaint alleges facts proper for an expert opinion. Therefore, Wynn is currently without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 4 of Plaintiff's Complaint and therefore denies the same.
- 5. Paragraph 5 of Plaintiff's Complaint alleges facts proper for an expert opinion. Therefore, Wynn is currently without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 5 of Plaintiff's Complaint and therefore denies the same.
- 6. Paragraph 6 of Plaintiff's Complaint alleges facts proper for an expert opinion. Therefore, Wynn is currently without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of Plaintiff's Complaint and therefore denies the same.
- 7. Paragraph 7 of Plaintiff's Complaint alleges facts proper for an expert opinion. Therefore, Wynn is currently without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 7 of Plaintiff's Complaint and therefore denies the same.

### **PARTIES**

8. Wynn is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 8 of Plaintiff's Complaint and therefore denies the same.

Wynn Resorts, Ltd. is a corporation created and operating under the laws of the State of Nevada, and denies any and all remaining allegations therein.

JURISDICTION AND VENUE

10. Wynn denies the allegations in Paragraph 10 of Plaintiff's Complaint.

Wynn denies the allegations in Paragraph 11 of Plaintiff's Complaint.

Paragraph 12 of Plaintiff's Complaint calls for a legal conclusion, to which no

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### **GENERAL ALLEGATIONS**

admission or denial is required. To the extent a response is required, Wynn denies the same.

In answering Paragraph 9 of Plaintiff's Complaint, Wynn admits that

- 13. Wynn admits the allegations in Paragraph 13 of Plaintiff's Complaint.
- 14. Wynn admits the allegations in Paragraph 14 of Plaintiff's Complaint.
- 15. Wynn admits the allegations in Paragraph 15 of Plaintiff's Complaint.
- 16. Wynn admits the allegations in Paragraph 16 of Plaintiff's Complaint.
- 17. In answering Paragraph 17 of Plaintiff's Complaint, Wynn admits that employees in the gaming area generally work eight hour shifts, but denies any and all remaining allegations therein.
- 18. In answering Paragraph 18 of Plaintiff's Complaint, Wynn admits that its dealers in the gaming area are not authorized to designate tables as "smoke free." Dealers are required to forward any patron request for a non-smoking table to a Casino Service Team Lead who may, under certain conditions, designate a table as non-smoking. Wynn denies any and all remaining allegations of Paragraph 18.
- 19. In answering Paragraph 19 of Plaintiff's Complaint, Wynn admits that its employees are instructed not to direct guests regarding their smoking or ashtrays or to fan their hands at a guest's tobacco smoke. However, should a guest purposefully direct smoke toward a dealer, the dealer may communicate such action to a Casino Service Team Lead who is then authorized to ask the guest to redirect their smoke. Wynn denies any and all remaining allegations of Paragraph 19.

- 20. In answering Paragraph 20 of Plaintiff's Complaint, Wynn admits that it requests that dealers not protest smoking by guests if they are in a smoking area of the casino. Additionally, Wynn may counsel dealers who express that the habits or actions of a guest are in any way negative to them. However, should a dealer witness or experience behavior by a guest that is counter to the policies and ethics of Wynn, such behavior should be immediately brought to the attention of a Casino Service Team Lead or Casino Manager who will then take appropriate action toward the guest. Wynn denies any and all remaining allegations of Paragraph 20.
- 21. In answering Paragraph 21 of Plaintiff's Complaint, Wynn admits that it will bring cigars or cigarettes to a guest depending on their level of play but only at that guest's request. Wynn also admits that it provides ashtrays within the gaming area and matchbooks with Wynn's logo emblazoned on the cover. Wynn denies any and all remaining allegations of Paragraph 21.
  - 22. Wynn denies the allegations in Paragraph 22 of Plaintiff's Complaint.
  - 23. Wynn denies the allegations in Paragraph 23 of Plaintiff's Complaint.
  - 24. Wynn denies the allegations in Paragraph 24 of Plaintiff's Complaint.
- 25. In answering Paragraph 25 of Plaintiff's Complaint, Wynn admits that it permits outside parties to make anti-smoking information available to its employees in the office containing Wynn's benefits department. Wynn denies any and all remaining allegations of Paragraph 25.
  - 26. Wynn denies the allegations in Paragraph 26 of Plaintiff's Complaint.

# ALLEGATIONS AS TO NAMED PLAINTIFF

- 27. Wynn admits the allegations in Paragraph 27 of Plaintiff's Complaint.
- 28. Wynn admits the allegations in Paragraph 28 of Plaintiff's Complaint.
- 29. Wynn denies the allegations in Paragraph 29 of Plaintiff's Complaint.
- 30. In response to Paragraph 30 of Plaintiff's Complaint, Wynn repeats its answers to Paragraphs 13 through 26 of Plaintiff's Complaint as though fully set forth herein.

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1	31.	Wynn is without sufficient knowledge or information to form a belief as to the
2	truth or falsity	of the allegations contained in Paragraph 31 of Plaintiff's Complaint and therefore
3	denies the sam	e.
4	32.	Wynn is without sufficient knowledge or information to form a belief as to the
5	truth or falsity	of the allegations contained in Paragraph 32 of Plaintiff's Complaint and therefore
6	denies the sam	e.
7		CLASS CERTIFICATION ALLEGATIONS
8	33.	Wynn is without sufficient knowledge or information to form a belief as to the
9	truth or falsity	of the allegations contained in Paragraph 33 of Plaintiff's Complaint and therefore

- denies the same.
  - 34. Wynn denies the allegations in Paragraph 34 of Plaintiff's Complaint.
  - 35. Wynn denies the allegations in Paragraph 35 of Plaintiff's Complaint.
  - 36. Wynn denies the allegations in Paragraph 36 of Plaintiff's Complaint.
  - 37. Wynn denies the allegations in Paragraph 37 of Plaintiff's Complaint.
  - 38. Wynn denies the allegations in Paragraph 38 of Plaintiff's Complaint.

# **COUNT I**

# FAILURE TO PROVIDE A SAFE WORKPLACE

# (By Plaintiff individually and on behalf of the Class)

- 39. Wynn repeats its answers to Paragraphs 1 through 38 of Plaintiff's Complaint as though fully set forth herein.
- 40. Paragraph 40 of Plaintiff's Complaint calls for a legal conclusion, to which no admission or denial is required. To the extent a response is required, Wynn denies the same.
  - 41. Wynn denies the allegations in Paragraph 41 of Plaintiff's Complaint.
  - 42. Wynn denies the allegations in Paragraph 42 of Plaintiff's Complaint.
  - 43. Wynn denies the allegations in Paragraph 43 of Plaintiff's Complaint.

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# **COUNT II**

## BREACH OF STATUTORY DUTY TO PROVIDE A SAFE WORKPLACE

(N.R.S. 618.375)

# (By Plaintiff individually and on behalf of the Class)

- 44. Wynn repeats its answers to Paragraphs 1 through 43 of Plaintiff's Complaint as though fully set forth herein.
- 45. Paragraph 45 of Plaintiff's Complaint calls for a legal conclusion, to which no admission or denial is required. To the extent a response is required, Wynn denies the same.
- 46. Paragraph 46 of Plaintiff's Complaint merely recites the language of N.R.S. 618.375 with the omission of "or her" in the phrase "to his or her employees" in N.R.S. 618.375(1). Thus, no admission or denial is required.
  - 47. Wynn denies the allegations in Paragraph 47 of Plaintiff's Complaint.
  - 48. Wynn denies the allegations in Paragraph 48 of Plaintiff's Complaint.
  - 49. Wynn denies the allegations in Paragraph 49 of Plaintiff's Complaint.

# AFFIRMATIVE DEFENSES

- 1. Plaintiff fails to state a claim upon which relief can be granted.
- 2. This Court lacks subject matter jurisdiction over Plaintiff's claims.
- 3. Past and future Wynn employees lack standing to assert claims against Wynn in this Court.
  - 4. Plaintiff cannot meet the class certification requirements.
  - 5. Plaintiff's allegations concern conduct specifically permitted under Nevada law.
  - 6. Plaintiff has failed to allege a duty under Nevada law.
  - 7. Plaintiff has assumed the risk.
  - 8. Plaintiff's claims are barred by the doctrine of estoppel.
  - 9. Plaintiff's claims are barred by the doctrine of waiver and release.
- 10. Plaintiff's claims against Wynn are barred in whole or in part by Plaintiff's failure to take reasonable steps to mitigate, reduce, or diminish the damages allegedly sustained. Any recovery is accordingly barred or diminished.

11. Plaintiff's claims are barred by unclean hands.

Wynn reserves the right to (a) rely upon such other affirmative defenses as may be supported by the facts to be determined through full and complete discovery, and (b) voluntarily withdraw any affirmative defense.

WHEREFORE, having fully answered Plaintiff's Complaint, Wynn respectfully demands judgment in its favor as follows:

- 1. That Plaintiff's Complaint against be dismissed with prejudice, with Plaintiff taking nothing thereby;
  - 2. That Wynn be awarded its costs incurred herein;
  - 3. That Wynn be awarded its reasonable attorneys' fees incurred herein; and
- 4. That Wynn be awarded such other and further relief as the Court deems just and proper.

DATED this 8th day of October, 2010.

### PISANELLI BICE PLLC

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