

WYNN RESORTS, LIMITED AND WYNN MA, LLC INDEPENDENT COMPLIANCE MONITOR PHASE V REPORT

May 31, 2024

Alejandra Montenegro Almonte

Miller & Chevalier

900 16th Street NW
Black Lives Matter Plaza
Washington, DC 20006
202.626.5800
www.millerchevalier.com

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LIST OF SELECTED TERMS

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| Advisory Council | Diversity and Inclusion Advisory Council. |
| Back of House | Restricted, behind-the-scenes property areas accessible to Company personnel only. |
| Baseline Assessment | Independent Compliance Monitor Baseline Assessment Report submitted on May 8, 2020. |
| CEO | Chief Executive Officer. |
| CFO | Chief Financial Officer. |
| CGCO | Chief Global Compliance Officer. |
| Commission or MGC | Massachusetts Gaming Commission. |
| Company or Wynn | Wynn Resorts, Limited and its affiliates Wynn MA, LLC and Wynn Las Vegas, LLC. |
| Compliance | Compliance Department. |
| COO | Chief Operating Officer. |
| D&I | Diversity and Inclusion. |
| Decision and Order | Massachusetts Gaming Commission’s April 30, 2019 Decision and Order, In the Matter of Wynn MA, LLC. |
| DOJ | Department of Justice. |
| EBH | Encore Boston Harbor and/or Wynn, MA LLC, unless Wynn, MA LLC is specifically noted. |
| EEOC | U.S. Equal Employment Opportunity Commission. |
| ER | Employee Relations Department. |
| ESL | English as a Second Language. |
| EVP | Executive Vice President. |
| GC | General Counsel. |
| HR | Human resources or the Human Resources Department. |
| Human Resources Compliance Program or HRCP | Human resources policies, procedures, and corporate governance structures. |
| IEB | Massachusetts Gaming Commission’s Investigations and Enforcement Bureau. |
| L&D | Learning and Development. |
| Legal | Legal Department. |
| MCAD | Massachusetts Commission Against Discrimination. |
| Monitor | The Independent Compliance Monitor for Wynn MA, LLC, Alejandra Montenegro Almonte of Miller & Chevalier. |
| Monitor Team | Alejandra Montenegro Almonte and other Miller & Chevalier attorneys with responsibility for the Monitorship include Ann K. Sultan, Katherine E. Pappas, Nicole D. Gökçebay, and Alexandra E. Beaulieu. Preston L. Pugh joined another law firm in 2020 but continues to work with the Monitor Team as a consultant on Internal Reporting and Investigation. |

| | |
|----------------------------|--|
| NERC | Nevada Equal Rights Commission. |
| NGC | Nevada Gaming Commission. |
| PAD | Public Area Department. |
| Patrons | An individual who visits a property in the Wynn Resorts family for various entertainment-related activities, including use of facilities or staying as an overnight guest. |
| Phase II Report | Wynn Resorts, Limited and Wynn MA, LLC Independent Compliance Monitor Phase II Report Submitted on January 29, 2021. |
| Phase III Report | Wynn Resorts, Limited and Wynn MA, LLC Independent Compliance Monitor Phase III Report Submitted on April 22, 2022. |
| Phase IV Report | Wynn Resorts, Limited and Wynn MA, LLC Independent Compliance Monitor Phase IV Report Submitted on May 8, 2023. |
| RFR | Request for Response for the Independent Monitor. |
| SPI | Suspension Pending an Investigation. |
| SVP | Senior Vice President. |
| VP | Vice President. |
| WLV | Wynn Las Vegas and Encore Las Vegas. |
| WSI | Wynn Sports Interactive. |
| Wynn Resorts or WRL | Wynn Resorts, Limited. |

I. INTRODUCTION

Alejandra Montenegro Almonte of Miller & Chevalier Chartered, the Independent Compliance Monitor (the “Monitor”)¹ for Wynn MA, LLC (“Wynn MA”) and its parent Wynn Resorts, Limited (“Wynn Resorts” or “WRL”) (collectively, the “Company” or “Wynn”), submits this Phase V Report pursuant to the requirements of the Massachusetts Gaming Commission (the “Commission” or the “MGC”) as set forth in its April 30, 2019 Decision and Order, *In the Matter of Wynn MA, LLC* (the “Decision and Order”) and in the Request for Response for the Independent Monitor (the “RFR”).² The MGC appointed the Monitor for a period of five years as a condition of the Company’s licensing in Massachusetts in connection with the Company’s operation of Encore Boston Harbor (“EBH”).

The Monitor Team is now in the fifth year of the Monitorship. The Company has implemented a human resources (“HR”) compliance program (together, the “Human Resources Compliance Program” or “HRCP” or the “Program”) that satisfies the Monitor’s Recommendations and responds to the risks identified by the MGC and the Monitor Team. Therefore, subject to the MGC’s approval, this Phase V Report represents the final report of the term of the Monitorship.

As in prior assessments,³ this Phase V Report details the steps taken by the Monitor Team to review and evaluate the Company’s HR policies, procedures, and corporate governance structures and summarizes the Monitor Team’s observations and assessment of each component of the HRCP. As before, the primary goal of the Monitor Team is to assess whether the HRCP is designed to prevent, detect, and respond to allegations of actions that threaten the well-being, safety, and welfare of Company employees, as well as actions that violate applicable laws and breach public trust. An integral part of that exercise is an assessment of the Company’s control environment as it relates to matters identified in the Decision and Order. In this Phase V Report, the Monitor Team places specific emphasis on the changes that the Company has enacted since the Monitor’s Baseline Assessment in 2019–2020, in addition to any changes made in the time since the Phase IV Report was submitted on May 8, 2023.

II. EXECUTIVE SUMMARY

As summarized in this Report, the Company has designed and implemented an HRCP that addresses the risks identified in the MGC’s Decision and Order and complies with the Recommendations of the Monitor. Both by implementing the Monitor’s Recommendations and as a result of its own initiative, the Company has established a more formalized and risk-based framework for all components of its HRCP as it relates to sexual harassment and discrimination. In Phase V, the Monitor Team has observed the Company undertake ongoing efforts to embed HRCP components into the day-to-day

¹ Other Miller & Chevalier attorneys with responsibility for the Monitorship include Ann K. Sultan, Katherine E. Pappas, Nicole D. Gökçebay, and Alexandra Beaulieu (collectively, the “Monitor Team”). The Monitor Team receives significant support from paralegals, primarily Alexis C. Zhao and Sara El Hashem, and Miller & Chevalier attorneys Kathryn Cameron Atkinson and Mary Lou Soller act in an advisory capacity for the Monitor Team. Preston L. Pugh, who was previously at Miller & Chevalier, remains in a consultant capacity.

² RFR#MGC-2019-Wynn/COMMBUYS bid# BD-19-1068-1068C-1068L-39534.

³ Wynn Resorts, Limited and Wynn MA, LLC, Independent Compliance Monitor Baseline Assessment Report (May 8, 2020); Wynn Resorts, Limited and Wynn MA, LLC, Independent Compliance Monitor Phase II Report (Jan. 29, 2021); Wynn Resorts, Limited and Wynn MA, LLC, Independent Compliance Monitor Phase III Report (Apr. 22, 2022); Wynn Resorts, Limited and Wynn MA, LLC, Independent Compliance Monitor Phase IV Report (May 8, 2023).

cadence of its operations. Throughout our review, the Monitor Team has seen increasing “buy-in” across the Company for the HRCP, including more recently, for the values and principles that underlie the policies and procedures that define it. Indeed, many interviewees took pride in acknowledging to the Monitor Team the strides that the Company has taken over the last five years and its commitment to continue on its journey.

The Company now has in place appropriate and sustainable processes that are designed specifically to identify HR-related risks, like sexual harassment and discrimination, and bolster the Company’s capabilities to mitigate those risks. A significant indicator of sustainability is the Company’s implementation of cross-functional monitoring and testing efforts designed to help the Company to evaluate the effectiveness of its HRCP, both on a periodic and on-going basis. In this last Phase of our review, the Monitor Team has already seen evidence that those monitoring and testing efforts are working and that the Company has adjusted and enhanced certain components of the HRCP based on those monitoring efforts. This activity is emblematic of a maturing Program and of the Company’s commitment to not only maintain but continuously improve the HRCP through individual components.

In this final Phase V Report, the Monitor Team details the Company’s journey over the term of the Monitorship, highlighting the most critical Program component enhancements as well as those areas that the Monitor Team has seen continue to develop over the last year. A summary of the most notable developments follows here.

Culture of Compliance and Conduct at the Top. Throughout the last five years, the Company has intentionally focused on building and defining its culture to include compliance with the HRCP, to protect employee welfare alongside its brand and guest experience. The Company has messaged this culture throughout its organization, from senior leaders, through middle management, to front-line employees, and has done so via various messaging opportunities—both formal and informal. Leaders have encouraged employees to report any issues and reinforced their messages through actions, including by making themselves visibly accessible and available to employees throughout the Company, participating in events, and walking the floor and Back of House (or the “Heart of House,” as commonly referred to at the Company). Over the last five years, the Company has provided additional training to the Compliance Committee and developed a strategic communications plan designed to promulgate its commitment to the HRCP. Bigger picture, the Company has successfully transitioned from a founder-led organization to one where employees are encouraged to take ownership over their workplace and are empowered to speak up, and managers and supervisors are instructed to take swift action.

Proper Authority, Oversight, and Independence. During the course of the Monitorship, the Company has refined and defined a division of responsibilities over its HRCP so that leaders have proper authority, oversight, and independence to execute their roles. The Company has worked to ensure that the HRCP is led by respected individuals who are empowered to make difficult decisions, resourced effectively, and are experienced and able to oversee the design, implementation, and effectiveness of the Program. Specifically, the Company has further clarified the role of the Compliance Committee and bolstered the Committee with additional training and expertise. At the same time, the Company has elevated HR within WRL, increased HR leadership interaction with the Board, and the HR department has become more empowered in driving and managing the Company’s HRCP. The Company has satisfied the Monitor’s Recommendations over the course of the Monitorship and solidified the authority, oversight, and independence of key gatekeepers for its HRCP in a way that enhances the Program’s sustainability.

Policies and Procedures. The Company has revised pre-existing policies, developed and implemented additional risk-based policies, and created a plan for active and ongoing communication of policies to employees and third parties. The Company also developed mechanisms to periodically review and refresh policies to ensure that they remain relevant, effective, and front of mind for employees. The Monitor considers that the Company's efforts create a sound framework for an HRCP that is responsive to the risks identified by the MGC and in the early Phases of this Monitorship. Importantly, comments heard by the Monitor Team during interviews indicate that the enhancement to the Company's policy framework has been impactful and viewed by employees as superior to that of their prior employers.

Third Party Relationships. The Company has demonstrated a sincere commitment to employee safety and welfare, specifically in relation to sexual harassment and discrimination from Patrons and other third parties. Over the term of the Monitorship, the Company has enhanced specific policies and procedures related to third party risks. It has reinforced its policies by developing trainings and communications campaigns reminding employees and management of the Company's commitment to maintaining a workplace free from harassment and discrimination and empowering employees to speak up against misconduct. Importantly, the Company also strengthened its controls and monitoring mechanisms related to third parties. The Company's efforts have already strengthened employee and management understanding that the Company will not tolerate offending behavior from any Patron, including a VIP or high-value guest. During Phase V, interviewees emphasized examples of the Company barring misbehaving Patrons from the property (or "trespassing" them), without hesitation, even the highest value Patrons for engaging in misconduct. The Company's response and continued attention to third party risks identified by the Monitor Team is commendable and a notable strength of the HRCP.

Training and Guidance. Since the Baseline Assessment, the Company has enhanced its training program across a variety of topics relevant to the HRCP by revising existing trainings, developing function-specific trainings, and leveraging communication channels to reinforce messages from formal trainings. In addition, the Company has taken steps to develop and implement procedures to periodically test and measure the effectiveness of trainings and has incorporated that feedback. In Phase V, the Company demonstrated its commitment to continue to build upon these initiatives, signaling to the Monitor that the HRCP training program as designed during the Monitorship is now an established component of the Company's HRCP that will continue to evolve. The Monitor's view is reinforced by employees who displayed a sense of ownership and pride when discussing their impressions of the Company's training program. Indeed, several employees described the training program as emblematic of the Company's culture and values.

Internal Reporting and Investigation. The Monitor considers that the Company has designed and implemented appropriate reporting and investigating mechanisms and bolstered these efforts by investing in in-house communication campaigns and training programs. The Company has streamlined its phone and web-based reporting channel by designating one hotline for North America that provides anonymous and multilingual reporting options. In addition, the Company has integrated messaging into its annual HRCP Communication Plans to ensure that employees know how to raise issues and understand leadership's commitment to speak up culture. The Company has revised its investigation policies and practices, including to appropriately route complaints and to safeguard the investigative process from perceived or actual conflicts of interest. The Company has trained employees who conduct investigations to ensure consistent application of these policies and practices across the employee base at both EBH and WLW while also finding ways for Employee Relations Department ("ER") staff to proactively communicate expectations to front-line employees before misconduct occurs.

Incentives and Discipline. The Company has progressed its approach to incentives and discipline and demonstrated a sincere commitment to continuing to implement appropriate systems of incentives and discipline beyond the term of the Monitorship. In addition to updating its existing policies to provide additional guidance to promote compliant behavior and to determine appropriate discipline, the Company has piloted its first performance management program among its leadership and found opportunities for ER staff and Company leaders to speak with and educate employees about compliance. Through these efforts, the Company has signaled to the Monitor a commitment to design a performance management program that aligns with the Company’s business and operational objective while at the same time reinforcing the Company’s expectations with regard to leadership and culture.

Risk-Based Review. The Company has developed a process for conducting comprehensive HRCP risk assessments, which Internal Audit has faithfully implemented annually for the last four years, and formalized the Security Department’s physical risk assessment processes to identify and mitigate risks of sexual harassment and discrimination on the EBH and WLV properties. Through conversations with the employees who execute risk assessment procedures, it is clear to the Monitor that these risk assessment processes have become ingrained in the Company’s operations and now form a critical component of the Company’s HRCP effectiveness and sustainability.

Monitoring and Testing. In Phase V, the Monitor Team has observed the Company implement monitoring procedures through all HRCP-facing functions. Internal Audit plays a central role to assess the effectiveness of the overall HRCP and of specific program components. Central to these efforts is the annual HRCP Risk Assessment conducted by Internal Audit as part of its annual reporting, also discussed in Section IV.H., Risk-Based Review, above. The Company has undertaken various other efforts to monitor program components on an ongoing basis. In this way, the Company has demonstrated to the Monitor its commitment to continue to invest in the sustainability and continuous improvement of the HRCP and its components.

Controls Environment. The Company has significantly strengthened its control environment related specifically to the issues and risks identified in the MGC’s Decision and Order: the use of confidentiality clauses, conflicts of interest, and approval of employee settlements. Prior to the Monitorship, the Company had already taken steps to prohibit the use of overly restrictive confidentiality clauses in settlement agreements. During the Monitorship, the Company enhanced its separation and settlement agreements, the review and approval of those agreements, and adopted practices to minimize conflicts of interest arising specifically from the engagement of external counsel. Most recently, the Company has gone beyond the Monitor’s Recommendations and implemented three additional controls related to settlements with employees: creating a template “Settlement Approval” form that requires a summary of the dispute and financial terms for all approvers, adding a third signatory in the approval chain, and expanding the definition of “Material Settlements” that the Compliance Officer should review.

* * * * *

At the outset of this Monitorship, the Monitor Team identified six goals:

- ▶ Ensure that the Company has HR policies, procedures, and corporate governance structures designed to prevent, detect, and respond to violations of sexual harassment and discrimination;
- ▶ Ensure that the HRCP effectively mitigates the risk of sexual harassment and other misconduct that could compromise the welfare, safety, and security of employees;

- ▶ Ensure that the Company maintains a controls environment with respect to the engagement of and payment to third parties;
- ▶ Ensure that the Company has an ethical business culture that:
 - Encourages speaking up and transparency across all levels of the organization;
 - Ensures the uncompromised implementation of the HRCP;
- ▶ Ensure that the HRCP and business culture endure beyond the term of the Monitorship; and
- ▶ Safeguard the public trust.

For the reasons set forth below, the Monitor considers that the Company has achieved each of these goals and is well-positioned not only to sustain the HRCP beyond the term of this Monitorship but to expand it. The Monitor commends the Company for its efforts and cooperation over the last five years.

III. BACKGROUND

A. Procedural History

On September 17, 2014, the MGC awarded the resort-casino license for Eastern Massachusetts (Region A) to Wynn.⁴ On January 26, 2018, the Wall Street Journal published an article⁵ detailing allegations of workplace sexual misconduct and sexual harassment by a senior executive (the Company's then-Chief Executive Officer ("CEO") and Chairman of the Board). Shortly after, the MGC launched an investigation, which was conducted by its Investigations and Enforcement Bureau (the "IEB").

The IEB's investigation culminated in a March 2019 Investigative Report Regarding Ongoing Suitability of Wynn, MA LLC, which the IEB submitted to the MGC on March 15, 2019. Thereafter, the MGC held an adjudicatory hearing and, on April 30, 2019, the MGC entered its Decision and Order confirming the suitability of Wynn MA and its license qualifiers.⁶ The Decision and Order imposed upon the Company a number of conditions, including the appointment of an independent compliance monitor for the Company. In May 2019, the Commission initiated the competitive bidding process to select an independent monitor. The Monitor Team submitted a response to the MGC's RFR in June 2019. After a

⁴ MGC Comm'ns, *VIDEO: MassGaming takes final vote to designate Wynn MA, LLC as the designee for the Region A resort-casino license*, MGC (Sept. 17, 2014), <https://massgaming.com/blog-post/video-massgaming-takes-final-vote-to-designate-wynn-ma-llc-as-the-designee-for-the-region-a-resort-casino-license-new/>.

⁵ Alexandra Berzon, Chris Kirkham, Elizabeth Bernstein & Kate O'Keeffe, *Dozens of People Recount Pattern of Sexual Misconduct by Las Vegas Mogul Steve Wynn*, Wall Street J. (Jan. 27, 2018), <https://www.wsj.com/articles/dozens-of-people-recount-pattern-of-sexual-misconduct-by-las-vegas-mogul-steve-wynn-1516985953>.

⁶ MGC Comm'ns, *MGC Issues Decision and Order Regarding Suitability of Wynn Resorts and Wynn MA, LLC*, MGC (Apr. 30, 2019), <https://massgaming.com/blog-post/mgc-issues-decision-and-order-regarding-suitability-of-wynn-resorts-and-wynn-ma-llc/#:~:text=After%20lengthy%20deliberations%20and%20for,set%20forth%20in%20the%20decision.>

formal interview and hearing, it was appointed by unanimous vote of the Commission on August 15, 2019.⁷

Pursuant to the Decision and Order, the Monitor Team conducted a Baseline Assessment which “include[d], *without limitation*, a full review and evaluation of all policies and organizational changes adopted by the Company, as described by the Company, to the Commission as part of the Adjudicatory Record and the following business practices”:

- (a) Implementation of and compliance with all human resource or “HR” policies that reflect current best practices;
- (b) Use of retractions, mandatory arbitration provisions, gag orders, confidentiality clauses, and non-disparagement provisions of all employees, with particular attention to the use of such measures and their impact on non-executive employees;
- (c) Adequacy of internal reporting and communication channels throughout the Company and their alignment with up-to-date organizational charts and reporting structures; and
- (d) Use of outside counsel and maintenance of and adherence to deconflicting policies and procedures.

Decision and Order at 50–51. The Decision and Order further states that the Monitor shall “recommend to the Company such measures and other changes necessary to correct any deficiencies identified through [the] baseline assessment” and requires the Company to comply with the recommendations, unless otherwise determined by the Commission. *Id.* at 51. The Decision and Order sets out the metrics for the success of the Monitorship as: “the overall wellbeing, safety, and welfare of the employees” and “the importance of compliance and communication with the regulator.” *Id.* at 50.

The Monitor Team submitted its Baseline Assessment to the MGC on May 8, 2020. The Monitor Team continued its testing activities over the next four years and submitted the following additional assessments: the Phase II Report (January 9, 2021), the Phase III Interim Presentation (September 22, 2021), the Phase III Report (April 22, 2022), the Phase IV Interim Status Report (February 6, 2023), and the Phase IV Report (May 8, 2023).

B. Overview of Company Business

Wynn “is a designer, developer, and operator of integrated resorts featuring luxury hotel rooms, high-end retail space, an array of dining and entertainment options, meeting and convention facilities, and gaming.”⁸ The Company operates resorts in Massachusetts, Nevada, and Macau.⁹ Wynn is also

⁷ MGC Commc’ns, *The MGC Announces Appointment of Independent Monitor*, MGC (Aug. 15, 2019), <https://massgaming.com/blog-post/the-mgc-announces-appointment-of-independent-monitor/>.

⁸ Wynn Resorts, Limited, Quarterly Report at 8 (Form 10-Q) (Mar. 31, 2024), <https://wynnresortslimited.gcs-web.com/static-files/378f4862-abab-4baf-9141-04e1c4216348>.

⁹ Wynn operates multiple properties in Macau, including Wynn Macau (opened in 2006), Encore (opened in 2010), and Wynn Palace (opened in 2016). For purposes of this Monitorship, the Monitor Team focuses on Wynn’s

Footnote continued on next page.

expanding in the United Arab Emirates through a project to develop the Wynn Al Marjan, which is expected to open in 2027.¹⁰ Wynn Resorts is the parent company of Wynn MA, LLC, which operates EBH, and is also the parent company of two properties in Las Vegas: Wynn Las Vegas and Encore at Wynn Las Vegas. Wynn trades on the Nasdaq Global Select Market under the ticker “WYNN.”

1. Massachusetts

EBH opened in 2019 and currently occupies 3.1 million total square feet; it includes slot machines, gaming tables, poker tables, over 600 rooms and suites, a spa and salon, dining options and stores, and business and special event facilities. EBH is headed by an executive team consisting of Jenny Holaday (President), John Stanton (Chief Financial Officer (“CFO")), Jacqui Krum (Senior Vice President (“SVP”) and General Counsel (“GC")), and Lori Yeager (Vice President, Human Resources).

2. Las Vegas

Wynn operates in Las Vegas through two physical properties, Wynn Las Vegas and Encore, opened in 2005 and 2008, respectively. The properties occupy approximately 215 acres of land, including 194,000 square feet of casino space, two luxury hotel towers with a total of 4,748 guest accommodations, swimming pools, two full-service spas and salons, dining outlets, nightclubs, beach club, theater, and other amenities. WLV is headed by an executive team consisting of Brian Gullbrants (interim President), Dean Lawrence (SVP and CFO), and Thomas Reich (SVP and GC).

3. Wynn Resorts, Limited

Wynn Resorts, headed by CEO Craig Billings, operates the hotel and gaming operations at EBH and WLV. In 2023, WRL created two new positions: Chief Operating Officer (“COO”) – North America, and Executive Vice President (“EVP”) HR – North America, and elevated Brian Gullbrants and Susie McDaniel, respectively, into the roles. Julie Cameron-Doe (CFO) and Ellen Whittemore (EVP, GC, and Secretary) round out the leadership team as it relates to HRCP.

C. Risk Profile

As the Monitor Team explained at the time of the Baseline Assessment, the Company operates in an industry that presents a high risk for harassment and discrimination. In the Baseline Assessment, the Monitor Team highlighted as particularly relevant to Wynn six of twelve harassment risk factors identified by the Equal Employment Opportunity Commission (“EEOC”):

- ▶ Workplaces that Rely on Customer Service or Client Satisfaction
- ▶ Coarsened Social Discourse Outside the Workplace
- ▶ Workplaces with Significant Power Disparities

operations in North America. In August 2023, Wynn announced its decision to close WynnBET, which is Wynn’s digital sports betting and casino gaming business, in jurisdictions other than New York, Michigan (where it subsequently sold market access rights in February 2024), and Massachusetts (in which it subsequently decided to close in January 2024). Separately, Wynn entered into an equity purchase agreement for the sale of WSI US, LLC, Wynn Interactive’s domestic operating subsidiary (which includes the Company’s gaming license in New York).

¹⁰ Wynn Resorts, Limited, *supra* note 8, at 8.

- ▶ Workplace Cultures that Tolerate or Encourage Alcohol Consumption
- ▶ Cultural and Language Differences in the Workplace
- ▶ Isolated Workplaces

The Company’s ongoing risk profile may be impacted by a variety of factors, including economic and social factors, as well as factors related to the Company’s expansion into new markets. The Company has incorporated consideration of the EEOC’s risk factors into its Annual HRCR Risk Assessment process. The long-term effectiveness of the HRCR rests in large part on the Company continuing to monitor its changing risk profile and calibrating all HRCR components to mitigate changing risks.

D. Summary of Review and Testing Activities

1. *Review and Testing Activities over the Course of the Monitorship*

The Monitor Team has taken a holistic approach to the review, monitoring, and testing of the Company’s HRCR. The Monitor Team’s activities included: (1) review of documents and other materials pertaining to the HRCR; (2) interviews of current and former Company personnel, Board members, and Compliance Committee members; and (3) periodic surveys and focus groups with front line employees, supervisors, and management. These activities are discussed in greater detail below.

Documents and Other Materials Reviewed. The Monitor Team reviewed approximately 1,300 files produced by the Company. Categories of documents reviewed included but were not limited to:

- ▶ The Company’s HRCR-related policies and procedures, including the Code of Business Conduct and Ethics, Company’s Compliance Plan, and other documentation describing the Compliance Committee function and mandate;
- ▶ Information on the Company’s channels for reporting suspected compliance violations and documentation on the Company’s internal investigations of reported issues;
- ▶ HR training materials;
- ▶ Policies, procedures, guidance, templates, and communications governing the use of retractions, mandatory arbitration provisions, gag orders, confidentiality clauses, and non-disparagement provisions; and
- ▶ HRCR Risk Assessment documentation.

In addition, the Monitor Team reviewed training videos and other multi-media produced for employees by the Company. During site visits, the Monitor Team observed signage directed at both employees and Patrons.

Interviews Conducted. Over the course of the Monitorship, the Monitor Team interviewed 128 current and former Company employees onsite and virtually (in some instances multiple times). The Monitor Team interviewed Board and Compliance Committee members, and personnel across the Company, including in functions with HRCR oversight or implementation responsibilities, including Legal Department (“Legal”), Compliance Department (“Compliance”), HR, Internal Audit, Security and Crisis Management, and Diversity and Inclusion (“D&I”).

Focus Groups. The Monitor Team conducted focus groups with over 400 employees from thirteen departments covering all shifts in Boston and Las Vegas. Participating departments included: Stewarding, Food & Beverage, Public Area Department (“PAD”), Table Games, Slots, In-Room Dining, Housekeeping, Horticulture, Security and Surveillance, ER, Valet, Marketing, and Spa and Salon. In conjunction with focus groups, participants completed an anonymous survey to test their perceptions and understanding of the Company’s HRCP.

Observation of Meetings. During the Monitorship, the Monitor Team observed HRCP-focused portions of seven Compliance Committee meetings. In Phase IV, the Monitor Team met with the Board of Directors to provide an update on the Monitorship during Executive Session. Beginning in Phase III, the Monitor Team observed a total of twenty-three cross-functional Case Review meetings conducted at both properties. In addition, during site visits, the Monitor Team observed portions of new hire orientation, other trainings, and management meetings.

Audit Function Testing. In Phase III, the Monitor Team observed eleven interviews conducted by Internal Audit as part of its HRCP Risk Assessment, which focused on testing each element of the Company’s HRCP.

Other Testing Activities. The Monitor Team participated in periodic calls with WRL, EBH, and WLV personnel with HRCP- or Monitorship-related roles to keep apprised of relevant Company and HRCP developments. In addition, in the Baseline Assessment and Phase V, the Monitor lodged fictitious anonymous sexual harassment complaints in multiple languages through the Company’s external reporting channel to test the Company’s response.

2. Phase V Review and Testing Activities

Phase V review and testing activities focused on observing the Company’s operation of the HRCP components enhanced and implemented throughout the prior Phases. Consistent with prior Phases, in Phase V, the Monitor Team reviewed relevant documents, interviewed Company personnel, and engaged in other testing activities as outlined above. Specifically, in this Phase, the Monitor Team reviewed documents produced by the Company and interviewed fifty-three Company employees across functions and seniority levels, onsite and virtually, including three members of the Board of Directors and five of the six members of the Compliance Committee. As noted above, the Monitor Team also attended two Compliance Committee meetings. Moreover, the Monitor Team observed seven ER Case Review meetings and lodged two fictitious anonymous sexual harassment complaints in multiple languages through the Company’s external reporting channel to test the Company’s response. Lastly, the Monitor continued her practice of participating in monthly calls with the WRL GC and EBH GC.

IV. OBSERVATIONS

For each area covered by this review, this Report summarizes (1) key compliance guidance, and (2) the Monitor Team’s assessment.

A. Culture of Compliance and Conduct at the Top

A culture that values and promotes the principles underpinning the HRCP is a key ingredient in the sustainability, further development, and ultimately, long-term success of the Program overall. In the Baseline Assessment, the Monitor Team observed a sincere commitment by many individual Company leaders to protecting employees against harassment and discrimination but noted that while “the Company is overall motivated by the right reasons, . . . the Company’s commitment needs to be more

visible to employees and Patrons.” Baseline Assessment at 12. The Monitor Team issued five Recommendations during the Monitorship related to the Company’s cultural development.

The Company has taken significant steps to define a culture that protects employee welfare alongside its brand and guest experience and message that desired culture from senior leadership, through middle management, to front-line employees. In particular, more recently, the Monitorship Team has observed the Company’s efforts to achieve such a culture take shape in very intentional ways. The Company has leveraged various messaging opportunities to encourage employees to speak up about any issues that concern them, and leaders have reinforced that message through actions, including by making themselves visibly accessible and available to employees throughout the Company. Through these efforts, the Company has transformed its culture away from that of a founder-led organization to one where employees are encouraged not only to speak up but also to feel proprietorship and pride in their workplace and to bring their best selves to work in keeping with the Company’s value of “excellence.”

1. Compliance Guidance

An effective compliance program requires a values-driven culture that permeates the whole of an organization. This requires active commitment and support from the organization’s most senior leaders, as well as from management throughout all levels of the organization. Indeed, the EEOC¹¹ states that “effective harassment prevention efforts, and workplace culture in which harassment is not tolerated, must start with and involve the highest level of management of the company,” and emphasizes that “the importance of leadership cannot be overstated.” EEOC 2016 Report at *preface v.*

Leadership commitment to compliance can be demonstrated through active communication on harassment and discrimination issues, as well as through the following broad categories:

- ▶ “Leadership has allocated sufficient resources for a harassment prevention effort”;
- ▶ “Leadership has allocated sufficient staff time for a harassment prevention effort”; and
- ▶ “Leadership has assessed harassment risk factors and has taken steps to minimize those risks.”

Id. at 79.

The U.S. Department of Justice (“DOJ”) has also issued relevant guidance in its March 2023 guidance document entitled “Evaluation of Corporate Compliance Programs.” According to the DOJ, “[t]he effectiveness of a compliance program requires a high-level commitment by company leadership to implement a culture of compliance from the middle and the top. The company’s top leaders—the board of directors and executives—set the tone for the rest of the company.”¹² When evaluating compliance programs, the DOJ will “examine the extent to which senior management have clearly articulated the company’s ethical standards, conveyed and disseminated them in clear and

¹¹ Chai R. Feldblum & Victoria A. Lipnic, Select Task Force on the Study of Harassment in the Workplace, EEOC at 28 (June 2016),

https://www.eeoc.gov/sites/default/files/migrated_files/eeoc/task_force/harassment/report.pdf (“EEOC 2016 Report”).

¹² U.S. Dep’t of Justice, Criminal Div., *Evaluation of Corporate Compliance Programs* at 9 (Mar. 2023), <https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl>.

unambiguous terms, and demonstrated rigorous adherence by example. . . .” Evaluation of Corporate Compliance Programs at 9; *see also* U.S. Sent’g Guidelines Manual (“U.S.S.G.”) § 8B2.1(b)(2)(A)–(C) (U.S. Sent’g Comm’n 2023) (The company’s “governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight” of it; “[h]igh-level personnel . . . shall ensure that the organization has an effective compliance and ethics program.” (emphasis added)). The DOJ will also examine how middle management, in turn, reinforced those standards and encouraged employees to abide by them. Among the questions that the DOJ will ask are:

- ▶ “What types of information have the board of directors and senior management examined in their exercise of oversight?”
- ▶ “What compliance expertise has been available on the board of directors?”

Evaluation of Corporate Compliance Programs at 10.

In keeping with these compliance expectations, the Decision and Order requires the Monitor to conduct “a full review and evaluation of all policies and organizational changes adopted by the Company,” including significant leadership changes in the positions of the CEO/Chairman of the Board, other Board members, and the GC. Decision and Order at 50. As the Company wrote in its February 12, 2019 submission on suitability,¹³

[t]he . . . changes have not been made solely to separate the Company of the future from the past, but also to ensure that the Company is governed by independent thought leaders, each with a proven and diverse track record, to help in the continued transformation of Wynn Resorts, particularly in regard to its corporate governance.

Encore Report at 10.

Notably, the Decision and Order specifically draws attention to the importance of the Board of Directors and requires the Monitor to “assess the structure and effectiveness of the Compliance Committee (and related Compliance Program and Plan), the Audit Committee, and training programs for new and current members.” Decision and Order at 51.

Nevada statute and case law, as well as case law from other jurisdictions in the United States, requires Directors to exercise a fiduciary duty to their companies. The relevant Nevada statute states: “The fiduciary duties of directors and officers are to exercise their respective powers in good faith and with a view to the interests of the corporation.” Nev. Rev. Stat. § 78.138(1). The Nevada statute includes a presumption that Directors act “in good faith, on an informed basis and with a view to the interests of the corporation.” *Id.* § 78.138(3).

¹³ EBH, *Wynn Resorts and Encore Boston Harbor: Continuous Suitability and Commitment to the Commonwealth* at 10, MGC

(Feb. 12, 2019), <https://massgaming.com/wp-content/uploads/Wynn-Resorts-White-Paper-2.12.19.pdf> (the “Encore Report”).

2. Assessment

The Monitor considers that the Company has taken meaningful steps, including through intentional and focused communication as well as concrete action, to promote a culture of compliance from the top of the organization that is designed to embed the HRCP within the Company and has demonstrated a commitment to sustaining these efforts beyond the term of the Monitorship.

Since the start of this Monitorship, the Company has continued on the path it set for itself just prior to the Monitorship: an intentional path towards transformation away from founder-led governance. The Company's success in this regard is best captured by an employee who said to the Monitor Team: "The difference in the last five years is that it is no longer about one person, it is about the collective. And I think that is the dynamic. Whether it is BG or Betty Boop a year from now, we have shifted from us having a single messenger to us being a company and that is a part of our culture. It's about the collective, and I think that is what has changed."

Along this path, the Monitor Team has observed the Company make significant changes in its senior leadership and Board, including both in the individuals filling certain positions, and in the structure of the positions themselves. For example, the Company has transitioned the WRL CEOs and CFOs, Presidents at WLV and EBH, two Board members, and created the roles of WRL EVP, HR and WRL COO in 2023. Over the five Phases of this Monitorship, the Monitor Team has spoken to all of the individuals occupying these senior roles and heard from them both an understanding of and a commitment to the importance of a strong HRCP.

In the Baseline Assessment, the Monitor Team observed a tension between the Company's desire to ensure employee safety and its messaging on ensuring a premier experience for Patrons. Many employees who spoke with the Monitor Team in the Baseline Assessment phase explained that they perceived the Company's service- and brand-focused message as the paramount value to the exclusion of any HRCP-focused values. However, as discussed throughout this Report, the Company has made a meaningful course-correction through the development and implementation of policies, trainings, and communication initiatives to embed anti-harassment and anti-discrimination messaging into its Core Values and Core Behaviors¹⁴ and promote a culture of HRCP compliance. In conjunction, the Company has been honing both its external and internal messaging regarding its culture. In 2018, prior to the Monitorship, the Company established new Core Values and Core Behaviors and in 2024, the Company launched a revamped Code of Business Conduct and Ethics. Internally, as noted, the Company has engaged in extensive training and messaging campaigns. The Company has also shared its message externally with Patrons to inform them of the Company's behavioral expectations for customers, including by installing signage at locations across properties and noting expectations on multiple pages of its website. For example, the Spa menu now notes:

Code of Conduct

Wynn Resorts requires appropriate and respectful interactions between our guests and employees in our resorts. The Company reserves the right to trespass anyone exhibiting behavior, language, or clothing that, at our

¹⁴ The Company's Core Values are: "Service-Driven"; "Excellence"; "Artistry"; and "Progressive. Core Behaviors are: "Care about everyone and everything"; "Treat everyone with dignity and respect"; "Take personal responsibility for every detail"; "Approach everything we do as if it's a work of art"; "Create unforgettable experiences"; and "Always strive to be better."

discretion, is inconsistent with the Company's behavior standards, which can be found on our website.¹⁵

Leadership effectively echoes these values through interactions with employees and through its actions in response to Patron misconduct, as discussed further below.

a. Corporate Values

As discussed in our Baseline Assessment, in 2018, the Company introduced revised Core Values and Core Behaviors. The Company has used these values and behaviors to message expectations to employees starting during the hiring process and continuing throughout an employee's time with Wynn. In the Baseline Assessment, the Monitor Team expressed concern that employees perceived the Company's paramount Core Value to be "Service-Driven" and that other values—and their own concerns—were secondary. However, in recent years, senior leaders have put particular emphasis on the commitment to protect employees from sexual harassment and discrimination regardless of source and on empowering employees to feel a sense of "proprietaryship" over the Company and embedding with employees a commitment to positive behavior through that very sense of ownership. As CEO Craig Billings put it: "when you can strike the balance so that it's a duty of care rather than 'compliance,' then people feel esteem, and they do great work, even when you're not there."

Importantly, that messaging accompanies significant action, notably from senior leadership. Two examples of where the message is particularly noticeable in Phase V is with regard to the way the Company treats Patrons who misbehave and the way it has handled recent investigations against senior leadership. In this Phase, the Monitor Team observed the Company investigate two incidents involving senior leaders. The Company resourced those investigations appropriately and implemented tailored corrective measures. Furthermore, the Company has made decisions to trespass very wealthy Patrons who misbehaved on property and has shared pertinent examples with employees. It is through these actions that the Company demonstrates the sincerity of its commitment to employee safety from harassment and discrimination of any kind.

Overall, the Company's focus on empowering employees appears to have been heard by employees and has produced a palpable shift in the culture at Wynn. For example, anonymous surveys conducted by the Monitor Team during the Baseline Assessment asked: "Do current [Wynn/Encore/Encore Boston Harbor] senior executives support a culture of compliance, which includes a culture of speaking up against harassment and discrimination?" Only 67% of respondents in Las Vegas and 54% of respondents from EBH indicated "yes." In 2023, the HR team at Wynn undertook similar focus group and survey exercises as had been completed by the Monitor Team. During that exercise, the Wynn HR team asked: "Do you feel our leadership supports the company's culture of 'Speaking Up' against harassment and discrimination?" Las Vegas employees indicated "yes" at a rate of 92% and EBH employees indicated "yes" at a rate of 97%.

In the Baseline Assessment, the Monitor Team likewise asked focus group participants: "Are there current employees or categories of people at [Wynn/Encore/Encore Boston Harbor] (for example: guests, managers, senior executives) who could get away with harassment or discrimination?" At that time, only 34% of respondents at EBH and 59% of respondents in Las Vegas indicated "No." When the HR team asked in 2023 "Do you feel there are any category of people at Wynn (e.g., Guests, Managers or Executives) who could (or do) get away with harassment or discrimination?" In responding, 70% of

¹⁵ *The Spa*, Wynn Las Vegas, https://www.visitwynn.com/documents/spa_at_wynn.pdf (last visited May 13, 2024).

surveyed employees at EBH, and 78% of surveyed employees at WLV indicated “no.” This is a remarkable improvement that further signals the Company’s success in driving culture.

Among the steps that the Company has taken on this issue are to exclude or “trespass” offending guests, including “high rollers,” from its property—and, equally importantly, to message to employees its commitment to doing so. For example, the COO has described situations where the Company has trespassed high spending individuals both at orientations for new hires (which he joins on a regular basis) and during trainings.

The Monitor considers that the Company’s efforts to reinforce its culture and values are taking root and credits the Company’s stated commitment to sustaining these efforts.

b. Board of Directors

The Monitor Team’s focus over the last year with respect to the Board has been two-fold: (1) the onboarding of a new member of the Board; and (2) the engagement of the Board on HRCP matters and its effective oversight with respect to that topic.

i. *Composition and Selection*

In 2020 and 2023, the Wynn Resorts Board onboarded two new members. The Monitor Team was able to interview each of the new members and observe their selection and onboarding process. With the onboarding of the most recent Board member, the Company carried out a robust process. The Company provided the new Board member with the ability to interact with senior leadership at the Company responsible for various aspects of the HRCP program, including from HR (which provided a substantive training session on the Company’s HRCP that included real-time quizzing on some of the Company’s policies), Compliance, Legal, Internal Audit, and the Compliance Committee. The new Board member took it upon himself to attend a meeting of the Compliance Committee to become more familiar with the work of that Committee.

ii. *Governance*

There have been no significant changes in the Board’s governance of HRCP since the Monitor Team’s previous report. As a reminder, the Board in 2022 passed a resolution that memorialized Compliance Committee oversight responsibility with respect to the HRCP, including specific responsibility for reviewing HR Complaints, periodic review of HRCP policies and procedures and “the appropriateness of Company resources to fulfill HRCP responsibilities,” and updating and making recommendations to the full Board “on issues requiring the attention of the full Board.” In February 2023, the Board issued another resolution that clarified that although responsibility to “review and analyze issues as they arise related to the Company’s HRCP” is delegated to the Compliance Committee, the Board retains overall responsibility for the Company’s risk oversight. The February 2023 resolution also codified that an *ex officio* member of the Compliance Committee shall report to the Board on a quarterly basis (a process which had previously been ongoing) and clarified that the referenced delegation does not alter the responsibilities of key HRCP gatekeepers, such as executive management, from having to report issues to the Audit Committee or Board, as appropriate.

As in prior Phases of this Monitorship, in Phase V, the Monitor Team continued to attend meetings of the Compliance Committee. The Monitor Team observed active engagement by and valuable input from the *ex officio* members of the Compliance Committee. The Monitor Team has also

observed the *ex officio* Member's report on Compliance Committee discussions to the Board. Further discussion of the Compliance Committee is contained below in Section IV.A.2.c.

The Monitor Team also observed active Board engagement on the HRCP during presentations to the Board by senior leadership, including an August 2023 update from WRL EVP, HR on the Company's approach to the HRCP. The presentation by the WRL EVP, HR was comprehensive, appropriately detailed for the Board, and led to fruitful discussion. The Monitor Team also observed the Board engage with other senior leadership, specifically the CEO and COO, on HRCP-relevant topics such as the Company's culture and staffing. The Board conducts at least one annual meeting at EBH, enabling Board members to interact more easily with leadership at EBH on a variety of topics.

In individual interviews, Board members continued to express to the Monitor Team their commitment to a robust HRCP at the Company. One Board member also noted to the Monitor a specific appreciation for analysis undertaken by the Company and discussed at the Compliance Committee related to minimizing misconduct and recognizing that the Company should continue to look at trends of issues in order to identify where best to focus its resources.

c. Compliance Committee

Over the course of the Monitorship, and particularly during this Phase, the Monitor Team focused on the Compliance Committee's engagement on and oversight of HRCP issues. The precise role of the Compliance Committee is discussed in Section IV.B., Proper Authority, Oversight, and Independence. This Section focuses on the Monitor Team's observations on the tone and culture set by the Compliance Committee.

i. Composition

Since the appointment of a fourth member to the Compliance Committee in 2021, the composition of the Compliance Committee has not changed. However, during this past year, leadership of the Committee changed from Thomas Peterman to Edward F. Davis III. Both Mr. Peterman and Mr. Davis have served on the Compliance Committee since its inception in 2019. Two *ex officio* members (Philip G. Satre and Patricia Mulroy) remain actively engaged with the Compliance Committee and are joined at Compliance Committee meetings by Winifred (Wendy) Webb, Chair of the Board's Audit Committee.

ii. Governance

The Compliance Committee operates under the Compliance Plan, which was last updated in February 2023. Changes adopted in February include the addition of: (1) review of "Material Settlements" by the Compliance Committee; (2) the GC's consultation with the Compliance Committee regarding the Chief Global Compliance Officer ("CGCO")'s evaluation and bonus or stock award; and (3) an annual meeting between the Compliance Committee and the CEO.

As has been the case since the start of the Monitorship, the Compliance Committee meets at least quarterly to discuss information subject to its review. That information includes HR complaints—both substantiated and unsubstantiated. The Monitor Team has observed the HRCP portions of meetings of the Compliance Committee annually for the last four years and has seen a substantial deepening of the discussion at the Compliance Committee related to HRCP. Compliance Committee members are prepared for and engaged in meetings and have been increasingly asking probative questions of HRCP-facing personnel at the Company. Questions range from those concerned with the

outcomes of individual cases to, more recently, analysis of trends and root causes. In turn, the Monitor Team has observed thoughtful discussions that seek a deeper understanding of those trends and how to address them. Compliance Committee members and *ex officio* members question Company employees about issues in meaningful ways, including with respect to investigations to test whether remediation is consistent and preventative actions that are being taken to prevent recurrences. The Monitor applauds the Compliance Committee.

Over the last year, the Monitor Team has observed the Compliance Committee and the Company make a concerted effort to ensure that the Compliance Committee is familiar with the Company's operations—which will provide the Committee operational context for a more effective oversight of HRCP issues. All members of the Compliance Committee recently attended at least one day of the Company's New Hire Orientation in order to familiarize themselves with the Company's onboarding process and hear first-hand the messages shared with new employees. Compliance Committee members have also engaged with various members of leadership across the Company's North America properties, and in discussions with the CEO and COO as to their views of the Company's culture and HRCP. Importantly, by its initiative, the Company has codified an annual meeting between the CEO and the Compliance Committee. The Monitor considers that this direct interaction between the CEO and the Compliance Committee will provide opportunities that in the long-term will further embed the HRCP into the cadence of the Company's operations: each party is able to share their valuable views with the other, relationships are strengthened, and the Compliance Committee can gain valuable insight into the approach of the CEO, with whom the Committee might not otherwise substantially interact.

d. Senior Leadership

In Phase IV of the Monitorship, the Monitor Team noted that leadership missed certain opportunities to demonstrate their understanding of the broader principles underlying the HRCP policies promulgated by the Company. In this Phase, the Monitor Team has seen evidence that the leadership has internalized those principles. For example, whereas in Phase IV, there appear to have been irregularities in the investigation process in an investigation into allegations raised against a leader, in the past year, when faced with allegations against another leader, the Company promptly engaged external counsel to conduct a thorough investigation of the allegation and the Monitor Team noted no irregularities in the process.

Significantly, multiple senior leaders expressed to the Monitor Team their appreciation for other leaders who are not afraid to express their views. As one individual put it: "You want someone to tell you that they think something is a bad idea. It's our job to speak what we feel and how we truly believe and fight for what we believe when we think it's worth fighting for." This attitude towards dissent is critical in protecting the Company from abuses of power and is a crucial sign of the Company's transition from a founder-led culture.

i. *Communications From and Conduct of Senior Leadership at WRL, WLV, and EBH*

Senior leaders throughout the Company have made a concerted and focused effort to engage in meaningful messaging regarding expected standards of behavior for employees—drawing on the Company's values—including as related specifically to the Company's HRCP. Select examples include:

- ▶ A series of "Conversations with Leaders"—virtual conversations with select WRL, WLV, and EBH senior leaders covering a variety of topics, including culture and values.

- ▶ A values- and behavior-focused “Message from Brian Gullbrants” included in the Company’s WeShift periodical that is circulated each day.
- ▶ Daily WeShift messages also incorporate a “Training Corner,” which often highlights a substantive piece of information from an HRCP policy. Two examples are below:

TRAINING CORNER

How well do you know our Compliance policies? Take the quiz below to find out!

Q. How long should an employee wait to report a complaint of harassment/discrimination?

- A. One day
- B. One week
- C. Don't wait! Report the harassment/discrimination immediately
- D. Wait for the harassment to happen again before reporting it

TRAINING CORNER

Test your knowledge with the compliance quiz below:

Q. If a guest has made sexual advances towards an employee, the employee must continue to serve the guest.

- A. True
- B. False

- ▶ Remarks by senior leaders, including the CGCO and COO at New Hire Orientation.

Messages from the Chair of the Board, CEO, and CGCO in the newly updated Code of Business Conduct and Ethics. The Chair of the Board and CEO wrote a joint statement: “In striving to be the best, therefore, we are defined not just by our commitment to excellence, but also by our commitment to honesty, integrity, and the highest ethical standards. . . . The Code applies to each of us—to the members of our board of directors, to our executives and to each of our employees.” The CGCO wrote: “The conduct of all of us should reflect the Company’s values, demonstrate ethical leadership, and promote a work environment that upholds the Company’s well-earned reputation for integrity, ethics, and trust. We must all be committed to doing the right things, every time, every day” and encouraged individuals to report issues, while reminding readers that the Company will not tolerate retaliation.

The Monitor Team has observed that these values-based communications are backed by actions. For example, senior leaders have recently made decisions to exclude certain high-profile guests from the property because of problematic behavior, a recent allegation into a leader was referred to outside counsel for thorough and independent investigation, and senior leaders continue to make extensive efforts to be present among employees, including through townhall-style meetings run by the EBH President, participation in the aforementioned Conversations with Leaders initiative, participation in “Pop Up” events related to HRCP, and a general approach of circulating among employees on the floor and in Back of House to make themselves available for any concerns. In addition, the Company has specifically invested in Learning and Development (“L&D”) programming for emerging leaders that seeks to train individuals in the skills necessary for successful leadership. One senior executive explained to the Monitor Team that the L&D program was seen as a way to extend Wynn’s culture throughout the growing organization and ensure that employees feel “supported, safe, cared for, and appreciated.”

The Monitor Team has seen evidence suggesting that the messages from senior leaders are being received and internalized by employees. As one employee told the Monitor Team, “Every employee has a responsibility for the HRCP.” This sentiment was echoed by a Department Head who

said, “We are the individuals that are responsible for making it right and at the end of the day we are responsible for everyone’s well-being.”

Importantly, and reflecting a maturing organization, the Company is attuned to the risk that certain communications can become “stale” over time and the need to keep reinventing messaging. The HR department has developed an “HRCP Communications Plan” that focuses on a different policy quarterly and employs a variety of communications methods to distribute the message to employees, including messages from leaders, surveys, articles, links to policies via QR codes and digital displays, in person “pop up” events, printed signs, and WeShift messages.

e. Support for Relevant Functions, Including ER, Compliance, and Legal

During this Phase of the Monitorship, the Monitor Team spoke with employees from all of the Company’s support functions related to HRCP. All functions represented to the Monitor Team that they felt supported and appropriately staffed to carry on the implementation of all aspects of the HRCP. In addition, the Monitor Team understands that the Company has recently made significant investments to support the L&D program run out of the HR department and that the Compensation Committee approved a recent request from the WLV VP, HR for an additional ER Counsel headcount at WLV. The Monitor Team continued to hear statements affirming the Company’s support for HRCP support functions from the highest levels at the Company.

B. Proper Authority, Oversight, and Independence

A division of responsibilities, with proper authority, oversight, and independence over a compliance program is essential to its success. As noted in the Decision and Order, “Wynn Resorts was a founder-led company. In addition to some benefits, there are often complications implicit in that operating model, notably the concentration of power, as there were here. The reticence of those in positions of authority to push back against the founder is one such example.” Decision and Order at 23. It is precisely to mitigate that risk—“reticence of those in positions of authority to push back”—that the Monitor Team closely assessed the role of compliance-facing positions to ensure that the HRCP is led by individuals who command respect and are empowered to make difficult decisions, who are experienced and able to oversee the design, implementation, and effectiveness of the Program, and who are independent (to the extent possible) from business pressures and biases.

1. Compliance Guidance

The EEOC requires that “leadership [] ensure that any team or coalition leading the effort to create a workplace free of harassment is vested with enough power and authority to make such change happen.” EEOC 2016 Report at 34. This requirement aligns with the DOJ’s guidance on the Evaluation of Corporate Compliance Programs, which states that an effective compliance structure requires “those charged with a compliance program’s day-to-day oversight to act with adequate authority and stature.” Evaluation of Corporate Compliance Programs at 10. Specifically, a successful compliance program requires structure and that personnel within the compliance function have:

- ▶ “[S]ufficient seniority within the organization;”
- ▶ “[S]ufficient resources, namely, staff to effectively undertake the requisite auditing, documentation, and analysis;” and
- ▶ “[S]ufficient autonomy from management, such as direct access to the board of directors or the board’s audit committee.”

Id. With respect to compliance officers and department functions, the DOJ asks, among other questions: “How does the compliance function compare with other strategic functions in the company in terms of stature, compensation levels, rank/title, reporting line, resources, and access to key decision-makers?” *Id.* at 11. Likewise important for a company’s compliance program is “the availability of compliance expertise to the board.” *Id.* at 10. Notably, with approximately 16,500 employees in Nevada and Massachusetts, the DOJ would hold the Company’s program to higher standards than programs of smaller companies. As stated in the commentary to U.S.S.G. § 8B2.1 note 2(C), “A large organization generally shall devote more formal operations and greater resources . . . than shall a small organization.” *Id.*

As noted in Section IV.A., Culture of Compliance and Conduct at the Top, the Nevada statute includes the principle that Boards of Directors have a duty to be reasonably informed about the matters on which they are making decisions. In the present case, the Monitor Team is of the view that the Company’s Directors should be reasonably informed regarding the Company’s compliance program, given their responsibility in ensuring that the Company maintains an effective compliance program.

In keeping with these obligations, and in light of the issues identified through the MGC’s investigation, the MGC required the Monitor to “assess the structure and effectiveness of the Compliance Committee (and related Compliance Program and Plan), the Audit Committee, and training programs for new and current members.” Decision and Order at 51.

2. Assessment

The Company’s HRCP continues to be designed and implemented by the HR, Legal, and Compliance Departments and overseen by the Compliance Committee pursuant to the Company’s Compliance Plan, and, ultimately, by the Board of Directors. In this Section, the Monitor Team discusses the effectiveness of each of the aforementioned groups, and the Compliance Plan. Since the Baseline Assessment, the Monitor Team has observed, in particular, a further formalization of the Compliance Committee’s role and greater ownership by the HR department of the Company’s HRCP.

a. Compliance Plan

As noted above in Section IV.A., Culture of Compliance and Conduct at the Top, the Company last updated the Compliance Plan in February 2023. The main framework of the Compliance Plan, unchanged since November 2019, is designed to:

- ▶ Ensure the Company’s compliance with applicable federal, state, local, and gaming laws;
- ▶ Ensure the Company is performing background investigations on employees, directors, vendors, and others;
- ▶ Ensure the Company is performing background investigations for proposed transactions and associations;
- ▶ Protect “against unethical or unlawful behavior by employees”; and
- ▶ “[I]dentify and evaluate situations arising in the course of the business of the Company that may have a negative effect upon the objectives of gaming control.”

As noted in our Baseline Assessment, revisions to the Compliance Plan led by the Company’s GC in 2018 reconstituted the Compliance Committee as a body of independent members and expanded the

Compliance Committee’s remit to include issues related to the HRCP. Most recent revisions to the Compliance Plan further expanded the authority of the Compliance Committee to review “Material Settlements”;¹⁶ formally involved the Compliance Committee in the evaluation and compensation process of the CGCO and provided for an annual meeting between the Compliance Committee and the Company’s CEO.

b. Board of Directors

In the early stages of the Monitorship, the Monitor Team observed that HRCP oversight responsibility was not clearly delineated between the Board of Directors and the Compliance Committee creating an appearance that the Board unofficially delegated its responsibility for HRCP oversight to the Compliance Committee. In subsequent Phases of the Monitorship, the Board of Directors memorialized its expectations for the Compliance Committee’s role in overseeing HRCP matters, officially acknowledged its own responsibilities, and took a more active role in engaging with the EVP, HR, WRL on HRCP.

The Board of Directors adopted resolutions in August 2022 and February 2023 to formally delegate to the Compliance Committee *certain* oversight responsibility for the HRCP and clarified in its February 2023 resolution that this delegation did not supplant the Board’s ultimate responsibility for the Company’s risk. Since the Baseline Assessment, the Monitor Team has had two opportunities to observe the Board engage on HRCP issues: in August 2023 and in February 2024. In August 2023, the Monitor Team observed the WRL EVP HR’s presentation to the Board of Directors on the Company’s HRCP and a discussion between the Board and the CEO and COO regarding the Company’s culture and commitment thereto. Board members engaged actively—through questions and commentary—on key aspects of the Company’s HRCP. Separately, in February 2024, the Monitor Team had the opportunity to observe the *ex officio* member of the Compliance Committee report to the Board on the Compliance Committee’s discussions.

c. Compliance Committee

The role and authority of the Compliance Committee has been refined since the Baseline Assessment. Most notably, the Board’s August 2022 resolution memorialized the Compliance Committee’s oversight responsibility with respect to the HRCP. That resolution noted specific responsibility for the Compliance Committee for review of HR complaints, periodic review of HRCP policies and procedures, and review of “the appropriateness of Company resources to fulfill HRCP responsibilities.” The resolution also stated that the Compliance Committee was responsible for updating and making recommendations to the full Board of Directors “on issues requiring the attention of the full Board.” In response to confusion among some members of the Compliance Committee and the Company’s then-CGCO, the Board issued a new resolution in February 2023 that clarified that although the Board was delegating responsibility to “review and analyze issues as they arise related to the Company’s HRCP,” the Board retained overall responsibility for the Company’s “risk oversight.” The revised resolution also codified that an *ex officio* member of the Compliance Committee was responsible for reporting to the Board on a quarterly basis and clarified that the referenced delegation of authority

¹⁶ Material Settlements include settlements of HR Complaints “to which the Company is either a party to, or responsible for the payments, either directly or indirectly, thereunder,” and “any employment separation agreement that requires a payment to an employee in excess of the Company’s policies and procedures or the employee’s written employment agreement.”

did not alter the responsibilities of key HRCP gatekeepers at the Company, such as executive management, in reporting issues to the Audit Committee or Board.

Together, the Board resolutions help to formalize further the role of the Compliance Committee as part of the Company's HRCP oversight and establish the independent authority of the Compliance Committee.

Membership. The Compliance Committee is comprised of four members.¹⁷ In addition, two Board members join as *ex officio* members of the Compliance Committee and one additional Board member, the Chair of the Company's Audit Committee, attends Committee meetings. Since the Compliance Committee was reconstituted in 2018, Thomas Peterman, Michelle Chatigny, and Edward F. Davis III have been members. In the Baseline Assessment, the Monitor Team noted that two Compliance Committee members had a long-standing relationship with the WRL GC. In light of the former "apparent accumulation of influence and loyalty at the Company by senior leadership," the Monitor Team was sensitive to the risk of an actual or perceived lack of independence. Baseline Assessment at 27. Having observed the members' engagement on various issues that required diligence and independence, the Monitor Team's concerns are alleviated. In 2021, the Board appointed a fourth member, Alison Quirk, to the Compliance Committee in response to the Monitor Team's Recommendation in the Baseline Assessment that the Compliance Committee include a member with significant HR expertise. This addition is particularly important in light of the Commission's observations of HRCP governance and oversight failures in its Decision and Order. Indeed, other members of the Compliance Committee have stated to the Monitor Team their view that having a Compliance Committee member with substantial and substantive HR experience has strengthened their individual and the Committee's effectiveness in HRCP oversight.

In the second quarter of 2023, after approximately five years as Chair of the Compliance Committee, Mr. Peterman stepped down as Chair and Mr. Davis assumed the role. Mr. Peterman remains an active member of the Committee. The Monitor Team understands that Committee members felt it important to rotate leadership of the Committee to someone particularly with a Boston-based background and that there is an intention to rotate the Committee Chair position among people with backgrounds in different geographic regions where the Company has operations.

Overall, the Monitor Team has observed several meetings of the Compliance Committee since 2019 and has seen all members of the Compliance Committee seriously engaged in their oversight roles. Company employees who participate in Compliance Committee meetings have also noted to the Monitor Team their perception of the seriousness with which the Compliance Committee members take their responsibilities and the valuable contribution of the Compliance Committee to the Company's HRCP.

Oversight. Since 2018, the Compliance Committee has been the Company's primary oversight body for the HRCP. The 2022–2023 Board resolutions and 2023 Compliance Plan revisions help to hone the focus and authority of the Compliance Committee to oversee important aspects of the HRCP, without compromising the Board's authority and responsibilities or the Compliance Committee's independence.

¹⁷ The Compliance Plan provides that the Compliance Committee shall be comprised of between three and five members, all of whom shall be independent and appointed by the Board of Directors of the Company.

The Compliance Committee meets on a quarterly basis, with Committee members and *ex officio* members required to attend. The Chair of the Audit Committee also attends. In addition, the following Company employees generally attend at least portions of Compliance Committee meetings: CGCO; WRL GC (who is currently also serving as the Interim CGCO, but attended meetings in her capacity as the GC as well); GCs for EBH, WLV, Wynn Macau, and Wynn Sports Interactive (“WSI”); SVP and Chief Audit Executive; EVP of HR, WRL; VP of HR for WLV; Executive Director-Labor and Employment, EBH; Executive Director – Global Compliance Investigations; VP – Security, Crisis Management, and Investigations; Chief Labor and Employment Counsel, WLV; and Director, ER, WLV.

As noted in the Baseline Assessment, the Compliance Plan requires the Head of HR to provide to the CGCO with information related to HR complaints for consideration by the Compliance Committee. For substantiated claims, the report should have “a narrative of the underlying incident or incidents and the remedial action taken.” For unsubstantiated claims, the report should have “a narrative of the underlying claimed incident or incidents and reason it was not substantiated.” The CGCO then provides this report to the Compliance Committee.¹⁸

During the course of the Monitorship, HR, in conjunction with Legal and Compliance, has prepared such reports for all harassment and discrimination cases and the CGCO has provided them to the Compliance Committee in advance of every meeting. Based on the depth of the discussions observed by the Monitor Team, it is evident that Compliance Committee members review the summaries provided to them in advance and attend Committee meetings prepared to discuss the cases. HR personnel respond to questions raised during the Compliance Committee meeting or in follow-up. In the Baseline Assessment, the Monitor Team expressed concern about the sustainability of the Compliance Committee members reviewing summaries of *every* sexual harassment and discrimination complaint and encouraged the Company to develop more specific criteria to guide which cases management should specifically highlight for the attention of the Compliance Committee and aggregate data into trends for Compliance Committee analysis. During the Monitorship, the Compliance Committee members demonstrated a keen ability and sincere interest in continuing the practice of reviewing every case. One member of the Compliance Committee reflected that the amount of detail provided to the Committee is “pretty exceptional” and noted that they consider the detail valuable. The Compliance Committee’s active involvement in the HRCP sends a positive message to Company personnel (and the Monitor Team) regarding the Compliance Committee’s dedication and the seriousness with which the Company treats claims of sexual harassment and discrimination.

As the Company grows to new jurisdictions and needs to scale the Compliance Committee, the Monitor Team believes that it would be reasonable and appropriate for the Company to continue to evaluate this practice and consider developing the review guidelines contemplated in the Baseline Assessment. The Monitor Team understands that it is the Compliance Committee’s intention to do so.

Over the past couple of years, the Monitor Team has been pleased to see the Company integrate trends analysis into Compliance Committee materials and meetings. The Compliance Committee and Company are continuing to develop various types of trends analysis, in a sign of the maturation of the Committee’s approach to HRCP oversight. The HR department is currently developing a dashboard for the Compliance Committee to provide additional visibility to the Compliance Committee regarding HRCP matters. Compliance Committee members have been consistent in articulating the value that trends analyses hold for their oversight. As one individual put it: “To me, at the beginning, it was

¹⁸ Compliance Plan, section 7.3.

very frustrating to see the numbers and descriptions, but not understand the things that were permitting this or causing that. Our data analysis [now] is better.”

The Compliance Committee has taken additional steps over the last few years to increase its visibility into the Company’s HR compliance risks and trends with a goal of enhancing its oversight capability. Among these steps are:

- ▶ Members of the Compliance Committee, in particular the Compliance Committee Chair, have met with the CGCO in between official Compliance Committee meetings. The Monitor Team understands that various Committee-related topics were discussed at these meetings, and they were also opportunities for the Company to follow up with Compliance Committee members regarding items that had been outstanding from Committee meetings.
- ▶ The Compliance Committee has met with senior leaders of operations at EBH and in Las Vegas with the aim of becoming more familiar with the daily workings of the Company, developing relationships with leaders at the Company, and familiarizing themselves with potential risk areas, particular to each property.
- ▶ Members of the Compliance Committee, by their own accord, have attended portions of the Company’s New Hire Orientation to see, first-hand, the messaging received by employees regarding various compliance-related topics.

The Monitor Team views these initiatives as indicative of the Compliance Committee’s dedication to proper oversight. All members of the Compliance Committee, as well as members of the Board with whom the Monitor Team spoke in this Phase of the Monitorship, credibly assured the Monitor Team that the robust activities of the Compliance Committee would continue past the duration of the Monitorship.

d. Audit Committee

The Audit Committee has various lines of sight into the Company’s HRCP. As noted, the Chair of the Audit Committee regularly attends Compliance Committee meetings, where HRCP investigations, as well as Material Settlements, are reviewed. In addition, Mr. Satre and Ms. Mulroy, who are both *ex officio* members of the Compliance Committee, are also members of the Audit Committee. Finally, the Audit Committee’s standing quarterly agenda includes a discussion with the SVP & Chief Audit Executive regarding HRCP matters, including hotline reports and Internal Audit’s annual HRCP Risk Assessment.

In the Baseline Assessment, the Monitor Team noted that although the Company’s GC and CGCO are both generally invited to participate in Audit Committee meetings, the lead for HR had not been invited to present to the Audit Committee. In light of Internal Audit’s work on the yearly HRCP Risk Assessment and reporting to the Audit Committee on the same, as well as the Chair of the Audit Committee’s attendance at Compliance Committee meetings, the Monitor Team does not view the lack of direct Audit Committee engagement with the WRL EVP, HR as a concern.

e. Human Resources Department

During the term of the Monitorship, the role of HR within the Company’s corporate structure has shifted, and, ultimately, been elevated. In 2018, the Company created and filled the position of SVP of HR – North America, with new responsibility to oversee the HR teams at both EBH and Wynn Las Vegas. In 2021, the VP of HR at EBH was promoted into that role. However, the role was restructured into that of SVP of HR for WLV, reporting to the President of Wynn Las Vegas, despite being designed to

have oversight of both properties. Finally, in January 2023, the Company created the role of EVP of HR for WRL, reporting to the WRL COO. The SVP of HR for WLV was promoted into that role and her position at WLV was backfilled by the then-Executive Director of Human Resources, WLV. In its current formulation, HR has access to the executive team for WRL. HR departments at EBH and WLV are staffed with various HR specialists, reporting to the local Vice President (“VP”) for HR at each property who ultimately report by dotted line to the EVP HR, WRL. Property HR VPs also regularly interact with and have access to property Presidents.

On paper, the responsibilities of the HR department remain unchanged from what the Monitor Team observed in the Baseline Assessment: (1) policies; (2) complaint reporting channels and intake; (3) investigations; and (4) discipline. However, over the course of this Monitorship, the Monitor Team has observed the HR function come into a position of greater ownership over the HRCF—a welcome development. HR has independently developed initiatives to strengthen the HRCF, including Pop Up Events, strengthening trainings, and, most recently, working to develop a dashboard to track trends in cases. These and other initiatives are discussed throughout this Report.

Critically, HR has also become the face of the HRCF to the Board and the Compliance Committee. For example, the EVP HR, WRL presented to the Board regarding the Company’s HRCF in August 2023, providing a comprehensive overview of the various components of the Company’s HRCF. She provided the same presentation to the Compliance Committee in October 2023. The Monitor Team has also observed in HRCF-related discussions at the Compliance Committee, that the HR team has taken the lead in responding to questions on investigations and the HRCF more broadly. The Monitor Team commends the HR department for taking this leading role and executing it well.

f. Legal Department

The senior leadership of Legal has remained steady since the beginning of this Monitorship and has been led by the Company’s GC, EVP, and Secretary, Ellen Whittemore at WRL, Jacqui Krum at EBH, and Thomas Reich at WLV.

The legal departments at EBH and WLV each include an attorney responsible for employment-related matters who serves as the primary day-to-day contact for HR on HRCF investigations and litigation. At the time of the Baseline Assessment, Legal had informally assumed a *de facto* role as the Company’s main advisor on HR issues generally, including HRCF design and implementation. It was the Monitor Team’s expectation that this role would decrease over time as HR’s role increased, and that has been the case. Legal continues to officially oversee all investigations into allegations of sexual harassment or discrimination, with HR personnel working at the direction of counsel and oversees external counsel representing the Company in proceedings of the Massachusetts Commission Against Discrimination (“MCAD”), Nevada Equal Rights Commission (“NERC”), and the EEOC, as well as litigation filed in state or federal court. As it relates to the development and implementation of HRCF policies and program initiatives, however, Legal has stepped back to an advisory role with HR driving HRCF programmatic design and execution, consulting with Legal as needed.

As part of Legal’s oversight of sexual harassment-related complaints, the appropriate attorneys in Legal receive automatic notifications from Wynn’s hotline system when sexual harassment complaints come in. In particular, the WRL GC is notified of all sexual harassment complaints, and each property GC and labor and employment counsel is notified of such complaints that come in related to their

respective properties.¹⁹ Members of Legal, including the WRL GC (currently also serving as interim CGCO), property GCs, EBH Executive Director – Labor & Employment, WLV VP, Chief Labor and Employment Counsel, and WRL Chief Litigation Counsel also regularly attend Compliance Committee meetings.

g. Compliance Department

Since the Baseline Assessment, the Company has had two senior Compliance Officers, with the most recent CGCO departing the Company earlier this year. Currently, the WRL GC is serving as the Interim CGCO while the Company searches for a permanent replacement. The WRL GC has a strong regulatory background and has been involved in aspects of the CGCO's role, including being a regular attendee at Compliance Committee meetings. For purposes of this report, the Monitor Team evaluates the formal role of the CGCO as structured and not how the role was implemented by its prior occupants, understanding that a future hire will necessarily approach responsibilities in his or her own way.

In 2019, with the opening of EBH, the Company elevated the role and stature of the most senior compliance officer, giving it oversight responsibilities for the regulatory compliance of both EBH and Wynn Las Vegas and changing the title of the role to CGCO – North America to reflect the expanded nature of the role. The Company has further boosted the authority and stature of the CGCO role through revisions to the Compliance Plan in 2023, which provides for at least quarterly meetings between the Compliance Officer and the CEO.

As noted in the Baseline Assessment, the Compliance Plan provides that the Compliance Officer shall have day-to-day responsibility over administration of the Compliance Plan and “[t]he Company will make available to the Compliance Officer the resources of the Company and appropriate outside resources to enable the Compliance Officer to administer the Plan.”

The Compliance Plan further provides that the Compliance Committee selects the Compliance Officer, who reports to the Compliance Committee, and, at the discretion of the Company, to the GC “for administrative purposes.” In the Monitor Team’s observations, the CGCO’s reporting to the WRL GC has been more than “for administrative purposes” because the GC had in prior years been the primary decision-maker, as a standard supervisor would be, with respect to the CGCO’s annual review and bonus. In 2023, the Company codified an increased oversight role for the Compliance Committee and the 2023 revisions to the Compliance Plan incorporate the following new language: “[t]he General Counsel will, on an annual basis, review any bonus or stock award to be provided to the Compliance Officer with the Compliance Committee. In addition, the Compliance Committee shall review the Compliance Officer’s annual performance evaluation, as prepared by the General Counsel, and provide consultation to the General Counsel with respect thereto.” It is the Monitor Team’s understanding that in the most recent review period, the Compliance Committee did receive information from the GC as to her estimation of the performance of the CGCO and that members of the Compliance Committee individually provided their feedback to her.

In the Baseline Assessment, the Monitor Team noted that, based on the then-reporting obligations and delineation of responsibilities among HR, Legal, and Compliance with respect to the HRCP, the CGCO might effectively be in a position of passing on HRCP information received from Legal and HR to the Compliance Committee without personal responsibility. However, based on interviews and observations of Compliance Committee meetings, the Monitor Team observed in the last couple of

¹⁹ The system is designed to exclude any individual named in a complaint.

years that the CGCO had taken ownership of managing Compliance Committee meetings, met with the Committee Chair and other members in between formal meetings, preparing for the meetings, and assisted with follow up. The Monitor Team previously remarked that there was an opportunity for the CGCO to more actively participate in the HRCP process, specifically with an eye towards evaluating the programmatic aspects of the HRCP from a compliance perspective. This continues to be the case and the Monitor Team encourages the Company to make this an aspect of the responsibilities of the next CGCO.

h. Security Department

The Security Department oversees physical security at Company properties and assists with HRCP-related investigations when an allegation or incident concerns physical security. In addition, Security facilitates trespassing of misbehaving individuals from the premises, in accordance with the Escalated Guest Resolution Guidelines, discussed further in Section IV.D., Third Party Relationships. As noted in the Baseline Assessment, Security is particularly key to the Company's response to harassment and discrimination in the evenings and on weekends, when representatives of Legal and HR are not scheduled to be on property. The Security Department works closely with HR and Legal as needed for investigations.

i. HRCP Leadership Access to and Relationship with the Compliance Committee, Audit Committee, and Board

Since the Baseline Assessment, HRCP leadership, in particular the EVP of HR, and the CGCO have had increasing access to and relationships with the Compliance Committee, Audit Committee, and the Board. The GC has had consistent, and appropriate, access that predates the Baseline Assessment. Access of key HRCP management to senior Company leadership is essential both for the independence of Company personnel in these roles and for the Company's effective oversight of the HRCP program.

EVP of HR. The EVP of HR attends and actively participates in quarterly Compliance Committee meetings. During Phase V, the EVP of HR has also had the opportunity to provide the Board and Compliance Committee with overarching briefings on the Company's HRCP, including initiatives, objectives, and trends. The presentation was comprehensive and provided the Board and Compliance Committee, which are mostly otherwise concerned with allegations and investigations, with greater insight into the various components of the HRCP.

CGCO. In accordance with the Compliance Plan, the CGCO has reported to the Compliance Committee on a quarterly basis. Significantly, the CGCO also met periodically with the Chair of the Compliance Committee between meetings to discuss Compliance matters. Similarly, the CGCO had access to the Board through the *ex officio* members of the Compliance Committee, and the Audit Committee Chair, attending the quarterly Compliance Committee meetings. The Monitor Team understands that the CGCO also met periodically with the Chair of the Board and had calls with the Chair of the Audit Committee.

General Counsel. Throughout the Monitorship, the GC has had consistent and appropriate access to and participation in the Compliance Committee, Audit Committee, and Board meetings (all of which she regularly attends). Overall, members of HRCP leadership have appropriate access to the Company's Compliance Committee, Audit Committee, and Board.

j. Proper Resources

Over the course of the Monitorship, the Monitor Team has spoken with Legal, HR, Compliance, Security, and Internal Audit regarding their HRCP resourcing to assess whether those functions have adequate staffing and budgetary resources; and whether the teams in each department have the proper experience and expertise to carry out their mandates in support of the Company's HRCP.

As the Monitor Team has noted in prior reports, the Company has experienced significant turnover in HRCP-related roles from senior management to front-line employees. The CGCO role is currently vacant (with the WRL GC filling the role on an interim basis). Over the course of the Monitorship, there has been particular turnover in the HR department at EBH. The Monitor Team is pleased to see that the foundation of the HR function at EBH today has been strengthened by hiring staff with key relevant experience, including the VP of HR, who has led the department with great skill since joining in December 2022.

The Company reviews staffing levels in all departments on an ongoing basis and reviewed staffing from a programmatic HRCP perspective in 2021. The Monitor Team encourages the Company to continue to periodically evaluate staffing from a programmatic perspective to ensure not just that each department is functioning on a day-to-day level, but that the various components of the HRCP company-wide are appropriately resourced and considered.

k. Overall Accountability for HRCP Matters

The Company has made tremendous strides in defining the roles and responsibilities of the various functions involved in steering the Company's HRCP, specifically HR, Legal, and Compliance, and the roles and responsibilities of the supervisory bodies at the Company, including the Compliance Committee, Audit Committee, and the Board. At the same time, it has worked to ensure that these functions work together, exchanging information and coordinating on initiatives.

At the outset of the Monitorship, the Monitor Team noted that the delineation of responsibility for the Company's HRCP was not always clear—the proverbial “too many cooks in the kitchen,” especially in the absence of an executive chef. Over the last few years, the Company's HRCP has evolved to the point where the EVP of HR, a new position created in 2023, serves as the executive chef in charge of the Company's HRCP, relying on other functions, including Legal and Compliance. The functions gather on an as-needed basis, as well as in an HRCP Monthly Meeting to, among other things, discuss trends across the properties and review the Compliance Plan to ensure consistency and execution.

For its part, the Board has delineated responsibility among itself, the Compliance Committee, and the Audit Committee, with the Compliance Committee having first-line oversight of the Company's HRCP, the Audit Committee reviewing HRCP through Internal Audit and directly from the CGCO, and the Board having ultimate responsibility.

C. Policies and Procedures

Policies and procedures lay the foundation for a corporate compliance program. Prior to the Monitorship, the Company had already made several policy and organizational changes to the HRCP, including changes to the Company's Preventing Harassment and Discrimination policy, Codes of Conduct, Personal Relationships and Potential Conflicts of Interest policy (“Personal Relationships policy”), Personal Presentation policy, and Employee Patronization policy. In the Baseline Assessment, the Monitor Team made Recommendations for additional enhancements to the Company's policy

environment. Since the Baseline Assessment, the Company has not only satisfied all twenty Recommendations, but through its ownership and initiative, has also demonstrated a commitment to ensuring that policies are sustained and do not grow stale.

1. Compliance Guidance

A well-designed compliance program includes policies and procedures that establish ethical and behavioral norms within a company to mitigate compliance risk. Policies and procedures provide employees with an understanding of workplace expectations and ensure that an organization is compliant with federal, state, local, and company requirements. The EEOC 2016 Report states:

Policies, reporting procedures, investigations, and corrective actions are essential components of the holistic effort that employers must engage in to prevent harassment. . . . An organization needs a stated policy against harassment that sets forth the behaviors that will not be accepted in the workplace and the procedures to follow in reporting and responding to harassment. . . . [E]mployers should adopt a robust anti-harassment policy, regularly train each employee on its contents, and vigorously follow and enforce the policy.

EEOC 2016 Report at 37–38. The EEOC 2016 Report suggests that anti-harassment policies should be easy for all to understand and be available in all languages used in the workplace. Generally, the content of an anti-harassment policy should include: (1) a clear explanation of prohibited conduct, including examples; (2) a description of a complaint process with multiple avenues to report misconduct; (3) assurances that there will be no retaliation against employees for reporting misconduct or cooperating in an investigation; (4) assurances that complaints will be treated confidentially to the extent possible; (5) a description of a clear impartial investigations process; and (6) assurances that the employer will quickly respond to behavior that may lead to harassment and will take immediate action where harassment occurs. *Id.* at 38. The EEOC emphasizes that an anti-harassment policy “should make clear that harassment on the basis of any protected characteristic will not be tolerated.” *Id.*

The MCAD similarly requires:

[(i)] a statement that sexual harassment in the workplace is unlawful; [(ii)] a statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment, or for cooperating in an investigation of a complaint for sexual harassment; [(iii)] a description and examples of sexual harassment[;] [(iv)] a statement of the potential consequences for employees who are found to have committed sexual harassment; [(v)] a description of the process for filing internal complaints about sexual harassment and the work addresses and telephone numbers of the person or persons to whom complaints should be made; and [(vi)] the identity of the appropriate state and federal employment discrimination enforcement agencies instructions as to how to contact such agencies.²⁰

²⁰ Mass. Gen. Laws ch. 151B, § 3A; *Guidelines on 151B: Sexual Harassment in the Workplace* at 8, MCAD (Sept. 1, 2017), <https://www.mass.gov/files/documents/2017/09/06/2112%20Guideline%20Sexual%20Harassment.pdf> (“Guidelines on 151B”); see also *Model Sexual Harassment Policy*, MCAD (Sept. 16, 2017),

Footnote continued on next page.

The MCAD strongly encourages employers to supplement their sexual harassment policies with equivalent policies covering harassment more broadly. The MCAD also suggests that, like the sexual harassment policy, general harassment policies should provide examples of prohibited behavior and generally parallel the structure of the company's sexual harassment policy. Model Sexual Harassment Policy at 3.

Other federal compliance experts also emphasize the importance of policies and procedures to a compliance program. For example, according to the DOJ, "Any well-designed compliance program entails policies and procedures that give both content and effect to ethical norms and that address and aim to reduce risks." Evaluation of Corporate Compliance Programs at 3. In evaluating a company's compliance program, the DOJ examines whether the company communicates its commitment to full compliance in its code of conduct and whether its policies and procedures incorporate a culture of compliance into its day-to-day operations. To that end, the DOJ evaluates a company's process for designing policies and procedures; the comprehensiveness of the procedures in dealing with the types of risks the business faces, including changes to the legal and regulatory landscape; the accessibility of the procedures to employees and relevant third parties; integration of the policies and procedures throughout the company; and training of gatekeepers.

The Decision and Order charged the Monitor Team to evaluate the Company's policy changes, by considering the:

- ▶ "Implementation of and compliance with all human resource or 'HR' policies that reflect current best practices;"
- ▶ "Use of outside counsel and maintenance of and adherence to de-conflicting policies and procedures;" and
- ▶ "[T]he effectiveness of the Company's policies, practices and programs under the purview of the independent monitor."

Decision and Order at 50–51.

2. Assessment

In the Baseline Assessment, the Monitor Team identified areas for improvement of the Company's HRCP policy landscape, including: (1) enhancements to specific HRCP policies; (2) strengthening of the Company's policy creation, review, and integration processes; (3) the development of additional HRCP policies; and (4) the implementation of protocols to effectively communicate its policies and procedures. Based on these observations, the Monitor Team issued twenty Recommendations across the first four Phases of review.

The Company has satisfied the Monitor Team's Recommendations. The Company has made structural and substantive changes to existing policies, developed and implemented additional policies based on its risk profile, and strengthened the promulgation, accessibility, and communication of policies. In addition, the Company has developed mechanisms to periodically review and refresh policies to ensure that they remain relevant, effective, and front of mind for employees.

<https://www.mass.gov/files/documents/2017/09/06/2112%20Model%20Sexual%20Harassment%20Policy.pdf>
("Model Sexual Harassment Policy").

The Company's efforts have not gone unnoticed by employees. Indeed, during the Monitor Team's Phase V testing activities, several employees with professional experience at other gaming and hospitality companies favorably distinguished Wynn's HRCF policy landscape. Moreover, over the five Phases of review, the Monitor Team has observed greater awareness of and appreciation by employees and management of core HRCF policies. The Monitor Team commends the Company for these efforts and views the Company's HRCF policy landscape as a positive reflection of its culture and commitment to the HRCF.

a. Design of Policies

Since the Baseline Assessment, the Company has enhanced the following HRCF policies: (1) Preventing Harassment and Discrimination; (2) Code of Business Conduct and Ethics ("Code" or "the Code of Conduct"); (3) Code of Personal Conduct; (4) Personal Relationships; (5) Personal Presentation; (6) Employee Patronization; (7) Company Policy Review; (8) Job Accommodations Requests; (9) Investigations; and (10) Progressive Discipline/Performance.

The Company also developed and implemented the following new HRCF-relevant policies and strategy documents: (1) Employee Interaction with Guests and Third Parties; (2) Use of Spa and Salon Services; (3) Diversity, Inclusion and Equity Statement and Policy; (4) Anti-Human Trafficking and (5) Human Rights Statement and Policy. Below, the Monitor Team highlights revisions to key HRCF policies. Enhancements made to the Company's Employee Interaction with Guests and Third Parties Policy, Investigations Policy, and Progressive Discipline/Performance Policy are discussed in Sections IV.D., Third Party Relationships, IV.F., Internal Reporting and Investigations, and IV.G., Incentives and Discipline

i. *Preventing Harassment and Discrimination Policy*

The Company's Preventing Harassment and Discrimination Policy is one of the bedrocks of the HRCF. In the Baseline Assessment, the Monitor Team recommended that the Company make substantive revisions to the Policy to align it with MCAD and EEOC guidance and to more directly address the risks identified by the MGC in its Decision and Order. Over the course of Phases II and III, the Company revised the Policy, in line with the Monitor Team's Recommendations, namely by explicitly stating that the Policy applies to management and senior executives; expanding the definition of "Protected Characteristic" consistent with MCAD guidance; including additional relevant examples of sexual harassment and harassment and discrimination based on other protected characteristics; instructing employees regarding the ability to submit anonymous complaints; including additional information on reporting channels; and adding a cross-reference to the Company's Social Media Policy. The latter enhancement was intended to help employees understand that certain conduct outside the workplace may constitute sexual harassment and violate Company policy.

The Preventing Harassment and Discrimination Policy is a comprehensive and instructive document that sets forth the Company's "commitment to creating a workplace free from harassment and discrimination." It provides a clear explanation of prohibited conduct and includes examples to help employees "know [harassment] when [they] see it." The policy plainly articulates the consequences of engaging in misconduct, defines and prohibits retaliation, and outlines the Company's internal reporting and investigations process. It also helpfully cross-references other policies that address harassment and discrimination, such as the Employee Interaction with Guests and Other Third Parties. By doing this, the Company ensures that employees have access to all policies that may be applicable to their conduct. Consistent with regulatory guidance, the Company has continued to re-evaluate enhancements to the

Policy, most recently in September 2023, by updating the Policy to “reflect the current positions held by individuals in the company to whom employees may report claims of harassment, discrimination, and retaliation.” That change, even if technical or administrative, demonstrates to the Monitor that the Company remains vigilant of operational changes that may impact the HRCP, specifically, in this case, an employee’s ability to report concerns. This is a simple example of the HRCP being embedded with the day-to-day cadence of the business.

ii. Code of Business Conduct and Ethics

As noted above, prior to the Baseline Assessment, the Company had a Code in place. In the Baseline Assessment, the Monitor Team observed that the Code appropriately communicated the Company’s expectations that employees uphold the highest standards for honesty and ethical conduct and included guidance to help drive such behavior—including guidance on conflicts of interest, personal relationships, and harassment and discrimination. Since the Baseline Assessment, the Company revised the Code in line with the Monitor Team’s Recommendations to (1) explicitly emphasize throughout the document that no person is above the Code, and covered persons should report incidents regardless of who is involved and (2) include a personal relationship as a potential conflict of interest.

Most recently, the Company finalized its redesign of the Code to encourage employee engagement and awareness, including by improving visual design and readability. The enhanced Code, which was ratified by the Company’s Audit Committee in August 2022, embodies the Company’s value of artistry while providing a roadmap for compliance by officers, members of the Board of Directors and Compliance Committees, employees, and “certain vendors, tenants, consultants, and joint venture partners” who work on behalf of the Company. The revised Code utilizes fonts, colors, and text boxes to help orient readers and drive focus to key provisions. In addition, the revised Code is organized by principle-based sections specific to the Company’s values, such as “treating everyone with dignity and respect” and integrity in and outside of the workplace. Notably, the Code contains two introductory messages from the Company’s CEO, Chair of the Board of Directors, and the now former CGCO that emphasize the Company’s commitment to compliance and a workplace defined by honesty, integrity, and excellence in a way that is emblematic of the Company’s culture and core values. The revised Code is commensurate with the overall maturity of the Program. Importantly, these changes directly address concerns underlying the MGC’s Decision and Order in a manner that is direct and accessible to all employees. The Monitor Team encourages the Company to periodically re-evaluate the Code against emerging business and jurisdictional risks, particularly as the Company grows into new regions.

iii. Personal Relationships Policy

Prior to the Monitorship, the Company already had in place a Personal Relationship Policy that discouraged personal relationships between employees and explained the implications of personal relationships between managers and subordinates. In the Baseline Assessment, the Monitor Team noted that the existing Policy did not address the nuances of personal relationships, such as coercion, abuse of authority, harassment, conflict of interest, unfair treatment, and favoritism in the workplace, some of which were at the root of the issues underlying the MGC’s Decision and Order. Since the Baseline Assessment, the Company has made several enhancements to the Personal Relationships Policy, including enhancements that address the specific risks identified by the MGC.

During Phase III, the Company revised the Personal Relationship Policy to include a straightforward statement that addresses the risks that personal relationships pose to the Company and highlights the importance of proper governance surrounding these relationships. Importantly, the

revised Policy also discusses consent and the heightened power dynamics that may exist in relationships between supervisors and subordinates, including that subordinates “may not believe they have a choice as to whether to maintain such a relationship.” The revised Policy also addresses head on the issue of consent, instructing that consent is fluid and can be revoked by either party at any time. These revisions address core themes highlighted by the MGC’s Decision and Order. In addition, the Company amended the scope of the Policy to include third parties.

The Personal Relationship Policy is accompanied by a process that requires employees who enter into a personal relationship to report that relationship “to their manager within seven working days of the change in relationship or employment status.” Reports are entered on a Personal Relationship Affirmation Form, available on the Wire. Front-line employee disclosures are subject to review and approval by the applicable department head after which they are submitted to HR for review and approval. Relationships involving employees at the level of director and above require approval by Legal and relationships involving SVPs and above require additional approval by the CGCO. In this vein, since September 2023, the Company has applied a higher standard of review to relationships with employees in gatekeeper functions, specifically HR, Legal, Compliance, Surveillance, Finance, and Security, “because of the sensitivity of their positions.” This enhancement reflects that the Company has internalized the importance of ensuring appropriate governance across all areas of the Company and of ensuring that its HRCP policies and procedures reflect a risk-based approach. Both signal to the Monitor an intentional maturation of the HRCP and a deepening understanding of the principles underlying the HRCP.

iv. Job Accommodations Request Policy

At the time of the Baseline Assessment, the Company did not have a stand-alone policy covering accommodations pertaining to disability, religion, or pregnancy. Although the Company included disability (or perceived disability) as a protected ground in the Preventing Harassment and Discrimination Policy, it did not list pregnancy or a condition related to pregnancy (such as lactation) as a protected characteristic or provide adequate guidance with respect to religious accommodations. Accordingly, the Monitor Team recommended that the Company develop and issue policies on disability accommodations, religious accommodations, and pregnancy discrimination, harassment, and accommodation. In Phase III, the Company developed a Job Accommodations Request Policy.

The Job Accommodations Request Policy provides a comprehensive framework for medical, religious, and pregnancy, including pregnancy-related, accommodations. At the outset, the Policy states Wynn’s commitment to “providing reasonable accommodations to employees” experiencing “limiting physical or mental impairments, . . . pregnant employees, or employees with pregnancy-related conditions, that may not qualify as disabled,” and “employees with sincerely held religious beliefs and practices.” The introduction also includes a statement of adherence to federal and applicable state laws, including Massachusetts laws pertaining to “Equal Opportunities for Employment.” The Policy is organized by accommodation type, with each section containing a summary of the generally applicable rules and the Company’s procedures for requesting an accommodation as well as ER’s review process for evaluating such requests.

Notably, the Policy also articulates the responsibility of managers/supervisors to “immediately notify” ER upon receiving a request and clarifies that an “employee does not have to mention the ADA or use any ‘trigger’ words like ‘reasonable accommodation’ to initiate the process” but rather only has to provide sufficient information to alert the Company that there is a need for a “modification or adjustment” due to medical, pregnancy, or religious reasons. In September 2023, the Company updated

the Policy to “provide employees with detailed procedures for requesting medical, religious, or pregnancy-related work accommodations.” The Policy is a thorough and instructive guide that clearly outlines the Company’s accommodation evaluation process and explains how employees can request accommodations.

v. *Other HRCP Policies*

As noted above, since the Baseline Assessment, the Company has also revised other HRCP policies, specifically the Code of Personal Conduct, Employee Patronization, and Personal Presentation Policy. The Monitor Team credits the Company for its efforts and encourages the Company to continue to socialize updates to these policies. To that end, the Company’s HRCP Communications Plan is discussed in greater detail below.

Since the Baseline Assessment, the Company has also developed two additional HRCP policies and strategy documents that address its risk profile, specifically the D&I Strategy and Anti-Human Trafficking Policy.

(a) *Diversity and Inclusion Strategy*

In 2022, the Company onboarded an SVP, D&I for Wynn North America to develop and lead the implementation of a D&I program. Over the course of 2022 and 2023, the Company developed and implemented a three-year D&I strategy informed by its employee base and cultural profile. The Strategy is organized into three pillars: workplace, marketplace, and community. The Company formed a D&I Advisory Council (“Advisory Council”) that consists of ten employees at the level of at least VP across both properties, as well as other strategic representatives, including from L&D. The Advisory Council meets monthly and provides “departmental perspective[s] regarding activation and engagement of D&I initiatives” and supports “in stewarding diversity messaging throughout their respective organizations.”

Each of the Strategy’s three pillars is grounded by goals and specific action items. For example, goals under the Workplace pillar include becoming an “Employer of Choice for diverse candidates and to identify and recruit diverse candidates” and the creation of a “pipeline of diverse, high-potential internal employees” to develop into leaders.

The Strategy is a thoughtful framework that formalizes the Company’s commitment to D&I in the workplace, marketplace, and community. Though the strategy does not directly relate to matters of sexual harassment and discrimination, it is relevant to the Monitor Team’s review as it reflects an overall commitment to D&I that directly impacts culture and promotes tolerance, respect, and dignity of all employees.

(b) *Anti-Human Trafficking Policy*

In 2021, the Company developed and implemented a policy to address human trafficking risks in the gaming and hospitality industry. The Anti-Human Trafficking Policy reflects the Company’s “commitment to acting ethically and with integrity in all of [the Company’s] business relationships and implementing and enforcing effective systems and controls” to mitigate the risk of human trafficking across the Company. Like the D&I Strategy, the Company’s efforts against human trafficking do not fit squarely within our review. However, the Monitor Team includes this initiative here as it reflects a commitment to employee and Patron safety and helps reinforce values central to the issues with the Monitorship’s scope.

b. Accessibility, Promulgation, and Integration of HRCP Policies

In the Baseline Assessment, the Monitor Team observed that policies and procedures were accessible to employees in English via the Company's online web portal, *The Wire*. At the time, many focus group participants told the Monitor Team that they did not review the policies on *The Wire* in full, but instead clicked through the policies to acknowledge receipt. The Monitor Team observed in the Baseline Assessment that, although *The Wire* served well as a central repository for personnel policies and procedures, it should only be one component of a larger and more proactive dissemination strategy for policies and procedures, particularly core HRCP policies. The Monitor Team also observed a significant number of employees for whom English is a second language and many of whom have limited English proficiency. Indeed, many employees who participated in focus groups during Phase III indicated that they could not fully understand policies and related trainings. The Monitor Team recommended that the Company adopt a comprehensive communications strategy to disseminate core HRCP policies and evaluate the employee base at EBH and WLV to identify policies and trainings that may warrant translation into languages other than English.

Since the Baseline Assessment, the Company has taken meaningful steps to make policies more accessible and to more effectively communicate core policy changes, as discussed further in this Section.

i. Accessibility of HRCP Policies

HRCP policies continue to be accessible to employees on *The Wire*. Print versions of policies are also available to employees via their department managers. The Company's Employee Engagement function utilizes QR codes containing links to underlying policies in printed signage in Back of House, which has amplified the platforms through which employees can access policies. These channels have been embedded into the Company's HRCP Communication Plan (discussed in greater detail below), which helps to reinforce core themes from policies.

New employees must acknowledge that they have reviewed Company policies, including policies central to the prevention of harassment and discrimination, at onboarding. For active employees, when the Company updates policies or publishes new policies, employees receive alerts to review, and acknowledge that they have reviewed, the policies. Since the Baseline Assessment, the Company has taken an increasingly proactive and engaging approach to notifying employees about updates to policies. For example, in September 2023, the VP, HR, WLV issued a memorandum regarding policy updates and acknowledgement requirements to all employees at WLV. Among other things, that memorandum also provided an overview of updates made to each policy.

In addition, during Phase V, the Company translated the following six HRCP policies into Spanish and Chinese: (1) Preventing Harassment and Discrimination, (2) Personal Relationships, (3) Code of Personal Conduct, (4) Anti-Human Trafficking, (5) Employee Interaction with Guests and Other Third Parties, and (6) Code of Business Conduct and Ethics. The first four of these translated policies were posted to *The Wire* at each property on July 24, 2023 and the Monitor Team understands that, since then, the Employee Interaction with Guests and Other Third Parties and the Code of Business Conduct and Ethics have been uploaded to *The Wire*. In interviews, HR personnel noted that the Company issued communications informing employees of the translations.

The Company also offers eligible employees an English as a Second Language ("ESL") program. The ESL program, available at both WLV and EBH, offers courses at multiple skill levels throughout the year. Upon completion, employees are celebrated through graduations and graduate commemorations. Department managers expressed support for the ESL program and reported observing increased levels

of enrollment at EBH. One interviewee commented that the increase in enrollment represented a change in culture, and a sincere desire by employees to become more integrated in the Company. An interviewee at WLV also spoke favorably about the ESL program and recalled employees from their department who graduated the program. The Company's efforts demonstrate a sincere commitment towards making policies more accessible to employees and are indicative of Wynn's long-term dedication to the professional development of its employees.

ii. Company Policy Communication Strategy

Although the Company's primary communication platform for rolling out policies remains *The Wire*, the Company has taken an intentional and structured approach towards the communication and dissemination of key HRCP policies. Specifically, the Company has designed year-long communication campaigns focused on reinforcing themes from core policies. The communication campaign is formalized in the annual Company's HRCP Communications Plan. For 2023–2024, the Communications Plan consists of quarterly policy spotlights and related communication initiatives, such as WeShift messages from property and senior management highlighting key policy provisions. WeShifts have also incorporated "Training Corners," which include a short quiz on a particular policy.

Core policies are also made available year-round through QR codes placed in frequently visited areas of Back of House, such as napkin holders in the employee café, and other signage. The Company also reinforces HRCP policies through direct messaging from Management, including WRL executive leadership. Senior leaders, including the CEO, the WRL GC, and the Chair of the Board have been featured in short videos speaking to employees about a specific policy and affirming the Company's support of the relevant policy. HR personnel responsible for implementing the Compliance Plan have continued to enhance and refine the content of initiatives to keep policy spotlights fresh and relevant. The Company has also demonstrated a responsiveness to its shifting risk profile in using the Compliance Plan to highlight certain policies during seasons and events that make risks more acute. Examples of the Company's implementation efforts include:

- ▶ In February 2024, and in anticipation of Valentine's Day, EBH spotlighted the Personal Relationship Policy. The Employee Engagement department updated the printed and digital displays from 2023's spotlight to address L&D's observation that the previous signage focused too much on romantic relationships and not others—like-cohabitation—that could pose a conflict of interest.
- ▶ Also in February 2024, WLV spotlighted its Anti-Human Trafficking Policy a few months earlier than scheduled in the Compliance Plan, in light of risks presented by Superbowl weekend, which was held in Las Vegas.
- ▶ WeShifts during the Company's annual compliance training (described in greater detail in Section IV.E., Training and Guidance) in the fourth quarter of 2023 featured a message from the GC of WRL in which she explained that training was a component of "cultivating a culture where every employee feels empowered to speak up against harassment, discrimination, and illegal or unethical behaviors" and instructed employees to complete annual training on core policies, including the Code and Preventing Harassment and Discrimination Policy.
- ▶ During the re-launch of the Code in the Spring of 2023, the Company posted signage reminding employees to review the Code, highlighting the topics covered by the Code,

including how to report violations, and a QR code leading to a video message from the now former CGCO. The Company spotlighted the Code again in August 2023.

- ▶ In May 2023, the Company spotlighted its Preventing Harassment and Discrimination Policy, which included printed and digital signage throughout Back of House, featuring a short video from the CEO which ends with text prompting employees to report “suspected violations” to ER, provides ER’s email address, and reminds employees that they can view the Preventing Harassment and Discrimination Policy on *The Wire*.

As discussed in greater detail in Section IV.E., Training and Guidance, the Company also promulgates HRCP policies through communications promoting its annual training. In December 2023, the Company issued its annual training reminder, which provided instructions on how to access the training on the Company’s training platform WeLearn and included a QR code to a video in which the SVP, GC highlighted the importance of compliance training. To incentivize early completion of training, the Company offered prizes for employees who completed the training early.

iii. Compliance Pop Up Events

As reported in prior Monitorship Phases, the Company initiated Compliance Pop Up Events to showcase and incentivize awareness of core policies in 2021. Events include short quizzes and prizes to attract participation. Senior leadership, including the GC, property Presidents, and others have attended. In Phase III, during the initiative’s inauguration, the Monitor Team found that employees surveyed were generally not aware of the event. However, the Company continued to implement these events on an annual basis and has broadened the scope of policies included in Pop Ups. For example, during the third quarter of 2023, the Company spotlighted the Responsible Gaming Policy and HR hosted a Pop Up Event focused on topics related to problematic gaming. Photos from WLV’s Pop Up show that the event was well attended by employees and leadership. For employees who could not attend in person, quizzes were posted to *The Wire*. Participant data shared with the Monitor Team showed that hundreds of employees participated in the online quiz. Winners were entered into a prize drawing for dining credits.

By continuing to implement and enhance the initiative, including by adding online options, the Company has demonstrated a commitment to making Pop Ups more visible to employees. HR personnel interviewed during Phase V expressed sincere dedication to the Pop Up Events. For example, one interviewee highlighted that the initiative provides a productive platform for ER to engage in positive interactions with employees, facilitates connections to be formed, and gives employees the opportunity to ask questions. Another interviewee shared that employees have appreciated these events and displayed a genuine curiosity towards learning. The Company plans to continue this initiative and per the 2024 HRCP Communications Plan, will host an in-person Pop Up Event in the third quarter of 2024 as part of the Company’s spotlight on the Employee Interactions with Guests and Third Parties Policy.

iv. ER Attendance at Department Pre-shifts

In Phase IV, the Monitor Team reported that ER counselors routinely reinforced policies at departmental pre-shifts following specific incidents. In Phase V, ER counselors have continued to attend department pre-shifts to speak on policy updates, reinforce policy provisions, issue reminders of risks associated with upcoming events, or otherwise check in and build a rapport with employees. Importantly, in Phase V, the Monitor Team has seen examples of ER counselors leveraging pre-shifts to address risks identified through the Company’s monitoring efforts. For example, in the March 2024 Compliance Committee meeting a Compliance Committee member noted an increase in F&B

complaints. In response, the Director, ER, WLV highlighted that the ER counselor responsible for overseeing F&B began participating in pre-shifts with employees in the F&B department to discuss issues underlying the complaints and reinforce the Company's behavioral expectations. Similarly, in anticipation of summer pool operations, ER counselors at WLV have attended pre-shifts to remind employees of the heightened risk of guest misconduct.

Department managers with whom the Monitor Team spoke uniformly reported positive and productive relationships with ER counselors, including regular collaboration with ER on pre-shifts, disciplinary matters, training, and investigations. ER counselors echoed the sentiment, noting that attending pre-shifts allowed them to connect with employees in organic ways. These efforts have contributed towards making ER more visible to the broader employee base and directly respond to the Monitor's observation in the Baseline Assessment that employees did not consistently perceive ER as accessible.

v. *Employee and Middle Management Awareness and Ownership of Policies*

Through the initiatives discussed above, the Company has improved the accessibility, promulgation, and integration of its HRCP policy landscape. The Company's monitoring and testing activities, which the Monitor Team credits, show that the Company's efforts have been impactful. Data from focus groups conducted by the Company in 2023 shows that employees are aware of policies: in response to a question about whether the Company has made employees aware of policies, 100% of the 340 participants answered "yes." Importantly, the Company's 2023 focus group data also indicates that managers are reinforcing HRCP policies: when asked how the Company has made employees aware of policies, 100% of EBH and 70% of employees at WLV identified to pre-shift messaging and related memoranda from management.

The Company's data is commensurate with feedback from employees with whom the Monitor spoke in Phase V. For example, one department manager described that employees will often ask specific questions about policies that have been updated. Other department managers explained having implemented departmental policy reminders, particularly to address departmental issues in real time. Interviews with managers also indicate an increase in their engagement and roles and responsibilities with respect to the implementation of certain policies. For example, one department manager at EBH described his role in the review of Personal Relationship Affirmation Forms, recalling receiving, reviewing forms, and collaborating with HR to identify mitigation measures for potential conflicts of interest affecting his department.

Importantly, statements by multiple interviewees reflect that employees and managers have personally bought into and adopted the Company values and culture. One interviewee stated, "[w]e are compliant because we want to be, not just because we have to be." Another interviewee spoke about Wynn's policy landscape in the context of how the Company encourages community and an "inviting space" where employees feel they can voice their opinions. A newer member of the ER team observed that employees at the Company go above and beyond the implementation of policies by acting as "stewards of policies." In this respect, the new ER member highlighted the level of professionalism at the Company and the sincere accountability with which employees hold themselves. Furthermore, these comments signal a culture of compliance that is defined by more than adherence to policies and has evolved into a culture that has become part of the Company's DNA.

c. Periodic Review and Updates to Policies

Since the Baseline Assessment, the Company has improved its process for the review and approval of policies by enhancing its Policy Review Policy and forming a cross-functional committee to periodically review policies. The Company has also engaged in an annual review of policies through Internal Audit's HRCP Risk Assessment. Through these initiatives, the Company has established additional discipline to the governance of its HRCP policy landscape, thereby ensuring that policies are subject to periodic review and updates. The Monitor Team discusses the Company's enhancements below. The Monitor Team encourages the Company to periodically re-evaluate the Code against emerging business and jurisdictional risks, particularly as the Company grows into new regions.

i. *Company Policy Review*

At the time of the Baseline Assessment, the Company had developed a Policy Review Policy to govern the Company's review and approval of policies. This was an important step in formalizing and creating a foundation for the Program to expand and mature. However, the Company had not established a process to develop new policies or leverage relevant departments to develop and review policies and the Monitor Team recommended specific enhancements to address those omissions. Since the Baseline Assessment, the Company has implemented the Monitor Team's Recommendations. In particular, the Company established a Policy Review Committee, comprised of the CGCO, EVP HR, property GCs, the property VPs of HR, and the property Labor and Employment Counsels, charged with reviewing and revising policies.

The Policy tasks ER with collecting monthly feedback from departments with a focus on "specific departments with the most operational knowledge of the policies to be reviewed." As noted in the Phase III Report, this step enables the Company to leverage department personnel and subject matter experts when developing and reviewing policies. The Company also enhanced the Committee's membership with the addition of the property directors of ER, which allows for additional subject matter expertise on the Committee. Interviews with HR and Legal personnel in Phase V indicate that the Committee has continued to meet monthly, as required by the Policy.

D. Third Party Relationships

Third party relationships—particularly with Patrons—present significant harassment and discrimination risks to Company employees. Over the course of the Monitorship, the Company implemented a number of HRCP enhancements designed to mitigate these third-party risks and establish a strong culture against misconduct. The Company's efforts have significantly improved employees' perceptions of the Company's stance towards offending Patron behavior. The Monitor Team commends the Company for its continued dedication to addressing this significant HRCP-related risk factor. In the Monitor Team's view, the Company has implemented the policies, processes, and practices necessary to ensure the sustainable management of third-party risks.

1. Compliance Guidance

EEOC enforcement guidance has long instructed that employers must provide a harassment-free environment for their employees, "regardless of who the perpetrators of the harassment are"²¹ and encourages employers to take "proactive action" and "to be vigilant about addressing complaints of

²¹ Press Release, EEOC, Charleston Temp Firm and Construction Company Sued by EEOC for Sexual Harassment (Aug. 7, 2009), <https://www.eeoc.gov/eeoc/newsroom/release/archive/8-10-09.html>.

harassment by third parties as well as employees.”²² Expected steps include providing employees the ability to report harassment and discrimination by third parties, *id.*, and ensuring that policies explicitly prohibit harassment by third parties. 29 C.F.R. § 1604.11(e).

In addition, the DOJ guidance instructs companies to take a risk-based approach to managing their third party risks. Evaluation of Corporate Compliance Programs at 7. This means policies and procedures related to third parties should be designed to correspond to the nature and extent of the risks posed by the third parties with whom a company engages. Companies must also identify effective ways to communicate their compliance standards to third parties and to incentivize compliant behavior among their third parties. Thus, the Monitor Team closely evaluated the risk involved in employee interactions with third parties, including Patrons.

2. Assessment

Based on the Monitor Team’s review of documentation and participation in interviews throughout Monitorship, the Monitor considers that the Company has designed and is implementing measures for mitigating harassment and discrimination risks presented by third parties, including Patrons, independent contractors, and law firms, and is committed to maintaining these efforts after the conclusion of the Monitorship.

a. Patrons

In the Baseline Assessment, the Monitor Team identified Patron misconduct as the highest risk factor for sexual harassment and discrimination at Wynn. As noted by the Monitor Team at the time, the risks presented by Patrons pose a unique challenge in the gaming and hospitality industry and may be especially acute for a company that strives for top-level service to Patrons. Indeed, during the Baseline Assessment, some employees shared with the Monitor Team that they felt disempowered to push back on misconduct, particularly from VIPs and other high-value Patrons.

Over the years that followed, the Company significantly strengthened its response to Patron misconduct through the implementation of clearer policies, targeted and enhanced trainings, communications to employees and third parties, and expanded use of safety buttons for certain guest-facing positions. The Company also implemented initiatives designed to drive engagement with employees and assess employee perceptions of the HRCP, including as it relates to the risks presented by Patrons. Now in Phase V, interviewees have more consistently articulated an understanding that the Company does not tolerate inappropriate conduct from Patrons, regardless of the value of their business—a commitment that the Company has demonstrated through its own conduct. One department head at EBH shared, as an example, that the Company has “thrown out” members of the Chairman’s Club, the Company’s highest, by invitation-only, tier of Patron. Other interviewees also emphasized that the Company has explicitly stated there is no tolerance for Patron misconduct and noted that employees know how to report such issues when they occur. The Monitor Team is pleased to see that the Company’s efforts have been impactful and well-received by employees. The Company was able to achieve this essential shift through its continued attention to the issue of Patron misconduct. The Monitor considers the Company’s strict approach to managing offending Patrons to be a defining element of its culture.

²² Press Release, EEOC, American Laser Centers to Pay \$125,000 to Settle Sexual Harassment and Retaliation Suit by EEOC (Oct. 11, 2011), <https://www.eeoc.gov/eeoc/newsroom/release/10-11-11.cfm>.

The Company also developed methods to monitor investigations of guest misconduct and identify trends in the investigations data, including in data shared in quarterly reports to the Compliance Committee, as discussed in Section IV.B., Proper Authority, Oversight, and Independence, and through analysis of iTrack reports generated by Security and Investigations, as referenced in Section IV.H., Risk-Based Review. These monitoring practices help the Company to identify trends in Patron misconduct, evaluate the Company's practices, and take mitigating action through an efficient and more tailored approach.

i. Employee Interaction with Guests and Other Third Parties Policy

Throughout the Monitorship, the Company undertook meaningful efforts to implement guidance for employees on how to manage Patron misconduct. These efforts largely focused on enhancing and rolling out the Company's Employee Interaction with Guests and Other Third Parties Policy. When the Monitorship began, the Company had three different, but similarly named, policies related to employee interactions with third parties, with each policy directed to a different audience.

Through subsequent Phases of review, the Company combined its existing policies into one Employee Interaction with Guests and Other Third Parties Policy and enhanced the policy's provisions to provide clearer guidance to employees, managers, and supervisors on how to mitigate the risks arising from Patron misconduct. The current Employee Interaction with Guests and Other Third Parties Policy makes clear that the Company values the protection of its employees above all else by stating that "Wynn Resorts will not tolerate any guest that harasses or offends our employees, regardless of wealth or status." The policy also directly addresses the perceived tension between guest service and pushing back: "we strive to provide a guest experience unlike any other . . . having a great time whether it's in our casino, visiting one of our dining outlets, visiting our spas or enjoying our nightlife venues, comes with the expectation that our employees are treated respectfully." The policy then provides guidelines for addressing and reporting guest misconduct and outlines management responsibilities for responding to guest misconduct. The section regarding management responsibilities is key to the policy's efficacy because managers are often among the first responders to incidents. Ensuring consistency in how the Company, through management, responds to Patrons who engage in offending behavior is critical to developing and maintaining an environment in which employees feel empowered to speak out against guest misconduct.

The Employee Interaction with Guests and Third Parties is one of the policies that the Company has translated, as discussed in more detail in Section IV.C., Policies and Procedures. The Monitor Team understands the Company has made the translated version of the Policy available to employees at both properties on *The Wire*.

To reinforce the guidance and expectations articulated in the Employee Interaction with Guests and Other Third Parties Policy, the Company developed and implemented a training specific to managers and supervisors. In 2021, the Company rolled out the training at both EBH and WLV to all guest-facing employees. Since that time, the topic of Patron misconduct has been incorporated into the Company's annual compliance training program for all employees. The Company has also continued to provide targeted guidance on offending Patron behavior to managers and supervisors by incorporating this topic into its Performance Management 102 training, which is discussed in more detail in Section IV.E., Training and Guidance. The Performance Management 102 training acknowledges the harassment and discrimination risks presented by Patrons and outlines clear guidance for how managers and supervisors should address misconduct when it occurs. Training programs for managers to learn how to handle Patron misconduct and protect employees are critical to the Company's efforts to mitigate the

harassment and discrimination risks presented by Patrons and equip managers and supervisors to address offending Patron behavior in a consistent and reliable manner.

In Phases IV and V, the Company developed ways to monitor the effectiveness of, and to continually improve upon, its training on the Employee Interaction with Guests and Other Third Parties Policy. In particular, the Company conducted post-training surveys, employee focus groups, and engagement surveys, which are discussed in Section IV.E., Training and Guidance, and Section IV.I., Monitoring and Testing. With respect to these initiatives, HR personnel explained that employee responses to surveys and focus group questions have allowed the Company to identify themes and gaps. HR then uses that information to enhance various trainings, including those related to the Employee Interaction with Guests and Other Third Parties Policy. The Monitor Team is pleased to see the Company utilizing various data sources to improve the effectiveness of its trainings. These efforts are important to ensure that training courses remain relevant and engaging. By continuously evaluating data sources and using that data to revise training content, the Company is positioned to maintain an effective training program that addresses current trends in misconduct risks.

Complementary to the Employee Interaction with Guests and Other Third Parties Policy, the Security Department also has Escalated Guest Resolution Guidelines, which provide guidance on the desired response to various types of Patron misconduct, ranging from “Last and Final” warnings, to area restrictions, to trespassing/eviction. In Phase IV, the Company standardized its Escalated Guest Resolution Guidelines across EBH and WLV, to the extent possible. The current version of the Escalated Guest Resolution Guidelines requires Patrons to be trespassed when they [REDACTED]

[REDACTED] As recommended by the Monitor Team, this trespass guidance is aligned with the provisions of the Employee Interaction with Guests and Other Third Parties Policy, which provides for the removal of Patrons who [REDACTED]

[REDACTED] This guidance is essential to ensuring that the Company’s Security personnel respond to Patron misconduct consistently and in a manner that aligns with the Company’s policy guidance.

As a newer initiative, the Company is coordinating across properties to ensure that individuals who are trespassed at one property are similarly trespassed at the other. For example, if an individual is trespassed for engaging in inappropriate conduct at EBH and then later travels to Las Vegas, that individual would also be blocked from accessing the WLV property. The Monitor Team understands this process was recently implemented in 2024 [REDACTED]. However, the Company is working to find a way to automate this process in the future. This initiative is reflective of the Company’s active monitoring of trespass trends and further mitigates the risk of an offending Patron engaging in repeated misconduct at a Wynn property. The Monitor Team commends the Company for its efforts to identify and mitigate gaps in its HRCP-related procedures.

ii. Spa and Salon Policies

At the start of the Monitorship, the Monitor Team noted that while all employees who interact with guests face certain harassment and discrimination risks, those who work in the Spa and Salon are particularly vulnerable due to the private nature of those spaces. In the Baseline Assessment, the

Monitor Team observed that the Company had developed a version of the Employee Interaction with Guests and Other Third Parties Policy that was specifically applicable to the Spa and Salon. Since that time, however, the Company has both enhanced the overarching Employee Interaction with Guests and Other Third Parties Policy, as noted above, and developed key policies and procedures aimed at addressing concerns specific to the Spa and Salon.

Of particular note are two initiatives the Company designed to help mitigate harassment and discrimination risks in the Spa and Salon and improve the Company's response processes when misconduct is reported. First, the Company has committed to paying Spa personnel their expected gratuity if the personnel would otherwise miss out on a gratuity because they stopped a service for a misbehaving Patron. Because gratuities can form a substantial portion of each Spa employee's compensation, the Company helps encourage Spa employees to report misconduct. One HR interviewee explained that the Company has received "consistent feedback from the [Spa] team that they are all very aware of that [policy]." Second, in Phase V, the Company implemented new procedures that protect Spa and Salon employees from having to interface with a misbehaving Patron after a report is filed. Previously, at EBH, if misconduct was reported after the Patron left the vicinity, the Spa management team would have to contact the Patron. Now, however, as one EBH Spa and Salon interviewee noted, "Security handles it from the beginning." The interviewee explained that this new procedure is "better" and promotes consistency in responses because Security has "the bigger picture." At WLV, if an incident is minor, the Spa management may still advise an offending Patron regarding the Company's behavior standards. For more serious incidents that could result in a trespass, however, the WLV Hotel Manager, Security Department, and Corporate Investigations personnel investigate the situation and contact the Patron in question. The Monitor Team commends the Company for implementing measures targeted at the specific risks faced by Spa and Salon employees. These initiatives evidence the Company's commitment to continuously evaluating and adjusting its HRCP-related processes in response to the specific risks presented by its operations.

iii. Guest Standards of Behavior

While educating employees on the Company's HRCP-related policies and procedures is essential, it is also important to communicate behavioral standards to Patrons. In the Baseline Assessment, the Monitor Team observed that while the Company's senior leadership and middle management were aware of harassment and discrimination risks presented by Patrons, the Company had not yet developed a strategy for addressing the misconduct concerns with guests directly. As a result, the Monitor Team recommended that the Company develop and implement strategies to communicate behavior standards to guests at EBH and WLV. Over the next Phases of review, the Company articulated Patron behavior standards on both the EBH and WLV websites and included additional references to those standards in the terms and conditions of the Wynn Rewards Card, hotel reservation confirmations, nightclub websites, nightclub signage, the Spa and Salon menus, and the Spa and Fitness Center waiver of liability.

The Patron behavior standards broadly prohibit offending conduct, in line with the Company's Employee Interaction with Guests and Other Third Parties Policy. The EBH website includes the "Guest Conduct Policy" on the resort information webpage. The Guest Conduct Policy states that "Wynn Resorts requires appropriate and respectful interactions between our guests and employees in our resorts." The Company further asserts that "inappropriate and disrespectful [behavior] is prohibited." The Company outlines examples of prohibited conduct, including "[u]nruly behavior, threatening or obscene gestures, fighting or violence"; "[d]erogatory and threatening language including offensive remarks about race, ethnicity, gender, religion, disability, age, sexual orientation, national origin,

pregnancy, or other legal protected classifications;” and “[a]ny other inappropriate conduct as determined by Wynn Resorts.” Similar language is included on the WLV website. The Monitor Team is pleased to see the Company undertaking these efforts to communicate with Patrons directly. These communications are an important component of mitigating third-party harassment and discrimination risks.

iv. Safety Buttons

During the Monitorship, the Company implemented the use of safety buttons in the departments determined to be most vulnerable to harassment and discrimination. As of Phase V, the primary departments utilizing safety buttons include [REDACTED]. In Las Vegas, one vendor that provides [REDACTED] has also been issued safety buttons. In addition, stationary safety buttons are maintained in various locations, [REDACTED]. In Phase V, interviewees [REDACTED] confirmed that employees in those departments are required to take safety buttons when they sign in each day. One interviewee also noted that when a safety button is pushed, Security responds promptly. Safety buttons are a crucial aspect to monitoring Patron misconduct and keeping employees safe. The Monitor Team commends the Company for its broad roll-out of safety buttons to the highest-risk employees.

v. Speak Up Campaign

To accompany these efforts, the Company has engaged in a communications campaign designed to socialize reporting channels and encourage employees to report misconduct when it occurs—regardless of whether it is perpetrated by a Patron or otherwise. These communication initiatives have been critical to the Company’s development of a speak up culture. This year, Patron misconduct is scheduled to be highlighted in August 2024. The communications initiative will involve displays in Back of House, pop-up quizzes with accompanying prizes hosted in employee dining areas, and video messages featuring senior leadership. Going forward, these initiatives will continue to support the Company’s ability to identify and mitigate Patron misconduct when it occurs. The Company’s general communications campaign is discussed in greater detail in Section IV.A., Culture of Compliance and Conduct at the Top, and Section IV.F., Internal Reporting and Investigations.

b. Independent Contractors

Independent contractors, including vendors and consultants, interact with Wynn employees across the Company’s operations and have the potential to expose those employees to harassment and discrimination. In the Baseline Assessment, the Monitor Team noted that the Company had already implemented measures for managing the harassment and discrimination risks presented by independent contractors, such as screening mechanisms, written policies, and standard contractual language. Since that time, the Company has maintained those practices and developed monitoring and testing activities to verify that those practices are being executed as planned.

i. Background Standards and Procedures

When the Monitorship began, the Company conducted risk-based background screenings of all vendors, consultants, lobbyists, independent hosts, independent agents, gaming promoters, and key gaming employees the Company intended to engage. The background screenings were conducted in line with the Company’s Compliance Plan and the Background Standards and Procedures, which established a strong risk-based approach to screening. At the time, the Monitor Team noted that these procedures

included consideration of sexual harassment-related information, such as relevant media reports and litigation.

During the Phase II review, the Company implemented updates to the Background Standards and Procedures that satisfied the Monitor Team's Recommendations. The updated Background Standards and Procedures now specifically require a review of "Allegations of Sexual Discrimination and Sexual Harassment" for all third parties subject to background screening that would interact with employees or Patrons. The revised Background Standards and Procedures also require that in conducting a "Public Records Review," the Investigations Division will review "[r]ecords of litigation or charges involving allegations of sexual discrimination and sexual harassment," among other items, if appropriate based on the third party's status. Should the background screening identify accusations of sexual harassment or discrimination, even if those accusations are unable to be substantiated, the Background Standards and Procedures notes that "caution may be indicated when there is a heightened risk that the party to the proposed transaction or relationship will be interfacing with the Company's employees, agents, vendors, and/or guests." Further, when the Monitor Team sampled background screening files during Phase II, the files reviewed evidenced that the Investigations Division appropriately designed its background screenings to identify information relevant to any sexual harassment or discrimination-related issues.

Since Phase II, the Monitor Team has continued to monitor the Company's background screening practices through interviews with key personnel and a review of relevant documentation, including the more recently updated Compliance Plan, which addresses the background screening process. Specifically, the Compliance Plan provides for the "perform[ance] of background investigations with respect to . . . vendors and others providing services to the Company." It also specifies that in the event:

the Compliance Officer, or Investigations Division as authorized, does not approve a relationship or transaction, and the Company, with the approval of the General Counsel, desires to pursue the relationship or transaction, the Compliance Officer shall provide the results of the background investigation to the [Compliance] Committee for its review and recommendation.

This procedure helps to ensure third parties with potentially problematic background screening results are properly considered before an engagement is finalized. During Phase V, one interviewee who is responsible for conducting background screenings confirmed that the Company continues to adhere to this procedure.

Starting in 2020, the Company's Internal Audit function implemented monitoring and testing measures designed to ensure third parties subject to screening are in fact screened as outlined in the Compliance Plan and Background Standards and Procedures. Each year, as part of the annual HRCP Program Assessment, Internal Audit tests a sample of both EBH and WLV vendors to verify that each vendor, if required by the Company's guidance documents, "completed / passed [a] background check" that includes the consideration of "'materially derogatory information,' which may include information on past sexual harassment and discrimination claims." In the 2023 HRCP Program Assessment, out of a sample of twenty-five new vendors that were onboarded in 2023, only one vendor was required to complete a background screening because it exceeded the spend threshold. Internal Audit both confirmed that vendor's background screening was completed as required and that the remaining twenty-four vendors were properly exempted from the process.

By implementing its updated Background Standards and Procedures, the Company has formalized a key control for identifying third parties presenting increased sexual harassment and discrimination risks and ultimately mitigating those risks. The Background Standards and Procedures not only ensure that background screenings take account of sexual harassment and discrimination history, but it also helps guarantee consistency across screenings. Further, Internal Audit's monitoring and testing efforts provide critical insight into whether the established background screening processes continue to be performed as planned. The Monitor Team is pleased to see the Company continuing to execute these background screening procedures and commends the Company for its efforts in this area of the Program.

ii. Third Party Form Agreements

By the time the Monitorship started, the Company had already revised its standard third party agreements to incorporate a requirement that vendors and contractors comply with the Company's Preventing Harassment and Discrimination Policy. Following the Baseline Assessment, the Company also developed a form independent host agreement that now similarly requires the host company "and its principals and employees" to "comply with [the] Company's Preventing Harassment and Discrimination Policy." That agreement further notes that a violation of the Preventing Harassment and Discrimination Policy "may result in the termination of [the] Agreement." In the event the host, or its personnel, is subject to conduct that runs afoul of the policy provisions, the agreement also encourages the host or its personnel to report the incident in line with the Company's reporting procedures. By including these requirements in the standard form agreements, the Company is setting expectations with third parties from the outset of the relationship.

Not only has the Company implemented strong requirements regarding compliance with the Preventing Harassment and Discrimination Policy, but since 2020, the Company has also been monitoring and testing related vendor processes. Similar to the review of vendor background screenings noted above, as part of the HRCP Program Assessment, Internal Audit also reviews a statistical sample of new vendors for their acknowledgement of the Company's Preventing Harassment and Discrimination Policy. For example, in the 2023 review, Internal Audit confirmed that all of the sampled vendors were required to acknowledge the Company's Preventing Harassment and Discrimination Policy.

iii. Law Firms

At the time the Monitorship began, the Company maintained the Legal Department Policy for Avoiding Conflicts of Interest ("Deconflicting Policy"), which was intended to manage the risk of conflicts of interest in situations where external counsel represents both the Company and an individual employee of the Company. However, at the time of the Baseline Assessment, the Deconflicting Policy did not adequately mitigate the risk of employees engaging the Company's outside counsel for personal matters. In particular, the Monitor Team noted that the Deconflicting Policy entirely relied on the external counsel to avoid conflicts of interest and did not make clear that, as a matter of policy, it is generally prohibited for external counsel to represent both the Company and Company personnel in their personal capacity. The Company's then-current Billing Guidelines similarly did not contain any language guarding against conflicts of interest in these situations.

The Monitor Team recommended that the Company revise the Deconflicting Policy to prohibit external counsel from representing its personnel, including executives and Board members unless the representation is explicitly approved by the Company. The Monitor Team also recommended that the Company develop procedures for reviewing requests for individual representations by the Company's

outside counsel and communicating those procedures internally and externally. Finally, the Monitor Team recommended that the Company draft a policy and procedure to govern the Company's engagement of external counsel to ensure that Legal is aware of the substance of all representations and to further minimize the risk of conflicts arising.

The Company has since adopted the Policy for Avoiding Conflicts of Interest with the Retention of Outside Counsel and Settlement Agreements ("Policy for Avoiding Conflicts of Interest") and revised its Billing Guidelines, both of which now include a requirement that the representation of Wynn personnel by external counsel be approved in writing. The Policy for Avoiding Conflicts of Interest, which was adopted in April 2021 and updated as recently as April 2024, acknowledges that "Wynn Resorts retains outside counsel to represent the Company, its affiliates, and/or employees, officers or directors thereof . . ." and "[i]n some instances, that outside counsel may also perform legal services for other affiliates or persons affiliated with Wynn Resorts, which could cause a conflict of interest between clients . . ." To address this potential issue, in line with the Monitor Team's Recommendations, the Policy for Avoiding Conflicts of Interest requires that "[a]ny retention of outside counsel to represent Wynn Resorts or an affiliate, employee, director, or agent thereof, in a Wynn-related matter must be approved in writing by the General Counsel of Wynn Resorts or the affiliate retaining the outside counsel." Updated Billing Guidelines contain similar language.

After adopting the Policy for Avoiding Conflicts of Interest and updating its Billing Guidelines in 2021, the Company provided both documents to outside counsel and the Policy to Wynn executives and Board members. This updated policy guidance and the review structure it puts in place helps minimize the risk of conflicts arising when external counsel dually represents the Company and Wynn personnel. The Monitor Team commends the Company for its efforts to formalize these processes.

E. Training and Guidance

While policies and procedures are a bedrock of a Company's compliance program, as the MGC aptly observed, those policies and procedures are "only meaningful, if [they are] properly implemented and communicated by management." Decision and Order at 28. Even before the start of the Monitorship, the Company devoted considerable resources to its training program, including in a refreshed training program that covered anti-harassment, anti-discrimination, and D&I. During the Baseline Assessment, the Monitor observed the need for additional training to address function-specific responsibilities of individuals tasked with implementing or enforcing key aspects of the HRCP and the need for the Company to monitor and test the effectiveness of its training program. Based on these observations, the Monitor issued fifteen Recommendations across the first four Phases of review.

Since the Baseline Assessment, the Company has satisfied the Monitor's Recommendations and has continued to build upon those Recommendations to enhance and mature its training program. The Company has revised existing trainings, developed function-specific trainings informed by other monitoring and testing activities, and leveraged communication channels, like pre-shifts, compliance Pop Up Events, WeShifts, and policy spotlights to reinforce messages from formal trainings. Notably, management at all levels, including members of senior leadership, routinely communicate themes from trainings and emphasize the importance of the Company's training program. In addition, the Company developed and implemented procedures to periodically test and measure the effectiveness of trainings primarily through annual surveys and on-line quizzes and has incorporated that feedback into applicable trainings.

In Phase V, the Company demonstrated momentum in the implementation of these initiatives, signaling that the training program has matured and is an integral component of the HRCP. Employees with whom the Monitor Team spoke displayed ownership and pride when discussing their impressions of the Company's training program. Several employees described the training program as emblematic of the Company's culture and values. As with other elements of the Company's HRCP, multiple employees noted to the Monitor Team the greater breadth and depth of the Company's trainings and related communication strategies, as compared to other companies at which they had worked.

1. Compliance Guidance

The EEOC's 2016 Report advises that "training is an essential component of an anti-harassment effort" but that "to be effective in stopping harassment, such training cannot stand alone but rather must be part of a holistic effort undertaken by the employer to prevent harassment that includes the elements of leadership and accountability." EEOC 2016 Report at 45. The EEOC outlines the following principles to guide the structure of successful compliance training, providing that trainings should be:

- ▶ Supported at the highest levels;
- ▶ Conducted and reinforced on a regular basis for all employees;
- ▶ Conducted by qualified, live, and interactive trainers; and
- ▶ Routinely evaluated.

Id. at 52–53.

The MCAD mirrors the EEOC's recommendations that employers should implement training programs on sexual harassment for all employees on a regular basis and conduct additional training for supervisory and managerial employees. Guidelines on 151B at 8.

The DOJ similarly highlights the importance of training and guidance to corporate compliance programs. It instructs prosecutors evaluating compliance programs to "assess the steps taken by the company to ensure that policies and procedures have been integrated into the organization, including through periodic training and certification" of personnel. Evaluation of Corporate Compliance Programs at 4. In addition, the DOJ examines whether the company has "relayed information in a manner tailored to the audience's size, sophistication, or subject matter expertise." *Id.* It also evaluates "whether the training adequately covers prior compliance incidents and how the company measures the effectiveness of its training curriculum." *Id.* at 5. The DOJ notes that to determine whether a compliance program is "truly effective," it will look to whether the training is "disseminated to, and understood by, employees in practice." *Id.*

2. Assessment

The Company has grown its training program significantly since the Baseline Assessment. The Company has taken a holistic and tailored approach towards ensuring that general training addresses the specific harassment and discrimination risks faced by EBH and WLV employees and developed training for management and supervisors that incorporates guidance on how to respond to and escalate reports of discrimination and harassment. The Company has also developed a training strategy for ER Counselors comprised of annual and quarterly training initiatives. Finally, the Company's Compliance and HR functions provide harassment and discrimination training to the Board of Directors and the Compliance Committee, including as to Board and Compliance Committee oversight responsibilities.

The Monitor Team evaluated the Company's progress in (1) the design and content of HRCP training targeted to particular employee roles; (2) the implementation of HRCP trainings and ongoing guidance provided; and (3) how it measures the effectiveness of its HRCP trainings.

a. Design and Content of HRCP Training by Employee Population

In addition to the annual compliance training required for all employees, the Company also targets HRCP trainings to the Board of Directors and Compliance Committee and to particular employee populations based on the seniority and function of employees.

i. Board of Directors Training

As noted in prior Phases, the Board receives training on a variety of topics, including anti-harassment and anti-discrimination, the Company's Personal Relationships Policy, management's responsibility to report allegations, and its HRCP oversight responsibilities. In the Baseline Assessment however, the Monitor Team observed that the personal relationships component of the Board's training did not adequately address issues related to consent—an important dynamic underpinning the historical conduct that gave rise to the Monitorship, as highlighted by the Decision and Order. Further to the Monitor's Recommendation, the Company revised the Board's training to include a discussion of issues surrounding consent and how power imbalances can affect consent. In addition, on its own initiative, the Company developed and implemented training specific to the Company's HRCP as it relates to sexual harassment and discrimination, specifically the Company's various reporting channels, its process for investigating claims of harassment or discrimination, and other workplace-related items.

The Company has continued to provide annual training to the Board on anti-harassment and anti-discrimination laws as well as on the HRCP. The Board typically receives training on these and other compliance-related topics at its annual August meeting. In Phase V, the Board invited the EVP, HR, WRL to present to the Board on the Company's HRCP Plan, including programmatic updates on various elements of the Company's HRCP, including policy developments, training, ongoing communication, efficacy review, risk assessments, data analysis, and periodic evaluation of components of the Compliance Plan. The presentation was a thoughtful and substantive compilation of the Company's activities across the HRCP. The training slide, for example, highlighted new or revised initiatives by function, including for managers/supervisors and ER, and outlined the ways in which individual leaders set the tone with respect to training. As an overview of the implementation of the HRCP, the presentation provided the Board with direct visibility into developments across each programmatic hallmark.

The Company has integrated HRCP training for new Board members as a component of their onboarding, as described in greater detail in Section IV.A., Culture of Compliance and Conduct at the Top and Section IV.B., Proper Authority, Oversight, and Independence.

By continuing to strengthen its Board of Directors training program and the Board's visibility into the Company's HRCP and initiatives, the Company has displayed a sincere commitment to ensuring the effectiveness of its governance structures.

ii. Compliance Committee Training

At the time of the Baseline Assessment, the Compliance Committee did not receive formalized training on the Company's anti-harassment and anti-discrimination HRCP processes. Further to the

Monitor’s Recommendation, the Company designed an annual HRCP training for Compliance Committee members, which, importantly, includes guidance on Massachusetts-specific laws.

The Monitor Team has seen evidence that, since Phase II, the Company has continued to provide annual training on these topics to the Compliance Committee. For example, according to a June 2022 memorandum, the WRL Compliance team and property employment counsel provided a three-part training that covered, in relevant part, anti-harassment, anti-discrimination, reporting, and investigation processes. The corresponding training presentation articulated the Company’s commitment to “creating a workplace free of discrimination and harassment,” provided an overview of each of the applicable standards (including Massachusetts-specific standards) with respect to discrimination and harassment, and provided an overview of the Company’s specific reporting and investigation processes. In October 2023, the Compliance Committee also received the presentation provided to the Board of Directors on the Company’s HRCP Plan. The Monitor understands that the Company will continue to provide periodic training to the Compliance Committee, which will be essential to the Committee’s ongoing responsibilities overseeing the HRCP.

iii. Management and Supervisors Training

At the time of the Baseline Assessment, managers and supervisors received anti-harassment and anti-discrimination training that covered the main substantive aspects of discrimination, harassment, and retaliation as part of the Company’s training for all employees. However, the training did not provide tailored guidance regarding supervisor and manager responsibility in responding to reports of harassment and discrimination. The training also did not address reporting requirements under the Company’s Personal Relationships Policy, the use of social media as a potential platform for harassment, the risks of alcohol in the workplace, and the risks of off-duty conduct that has a nexus to the Company.

Since the Baseline Assessment, the Company has developed and implemented a core set of leadership trainings for managers and supervisors that now include clear guidance on management responsibilities related to HRCP processes, including on how to respond to and escalate reports of sexual harassment and discrimination. Discussions with department management in Phase V showed a sincere appreciation and awareness of those responsibilities. Indeed, one interviewee observed that it is management’s responsibility to “make sure that everyone is comfortable” and “make it right” if there is an issue. Interviews with senior management in Phase V show that the Company has also begun to take a more strategic and risk-based approach towards leadership development.

(a) Performance Management 101 and 102

During Phase IV and Phase V, the Company formalized Performance Management 101 and 102—a two-part performance management training for managers and supervisors. Performance Management 101, titled “Performance Management and Coaching Conversations,” covers three topics: the progressive discipline process, related Company policies, and pre-shifts. The first two of these subjects are most relevant to the gaps identified during testing.

First, the training materials reviewed by the Monitor Team comprehensively address each element of the Company’s progressive disciplinary process in the context of a manager’s role in the process. Helpfully, the training provides multiple examples of “common mistakes” with respect to imposing discipline to help managers document and communicate employee performance issues and related discipline. The training also provides guidance on a manager’s role in the Suspension Pending an Investigation process (“SPI”), including on the types of offenses that may warrant SPI, ER’s role in leading investigations regarding “sensitive issues with high liability” such as harassment and

discrimination, and a manager's role in the investigative process with respect to non-sensitive issues. The Performance Management 101 training materials reviewed are clear, appropriately detailed, and include several illustrative examples to reinforce understanding and retention of content. The Monitor Team understands that the Company recently made the training mandatory for all managers.

Second, Performance Management 102—"Managing an Addressing Employee Behavior"—outlines a manager's responsibility for helping to "create a courteous and respectful workplace environment that is free from harassment and discrimination." Delivered online by the VP, HR, WLV, Performance Management 102 is a concise nine-minute training that addresses the "key requirements of supervisors and managers when reporting harassment and discrimination," the intake and escalation process for employee complaints, personal relationships and reporting obligations, the appropriate use of social media, dealing with intoxicated Patrons, and the potential implications of an employee's off-duty conduct. In doing so, Performance Management 102 addresses the specific topics outlined by the Monitor in the Baseline Assessment.

The training is engaging and mixes vignettes with instructor-led content. The training includes examples of conduct the Company does not tolerate and provides an overview of the specific role of managers to report harassment and discrimination. The training advises that not only must supervisors "report any harassment that they observe or know of, even if no one has come forward with a complaint" to ER, "without exception, even if the complaining individual asks for it not to be reported or if the individual does not work in [that manager's] department" but also that failing to report allegations of harassment and discrimination could subject supervisors to discipline themselves. The training then outlines the intake and escalation process for employee complaints that do not relate to harassment and discrimination, which managers and supervisors are required to resolve.

The training also provides a summary of the Company's Personal Relationship Policy, including prohibitions on certain relationships and an employee's reporting obligations if they enter such a relationship. The training also explicitly tasks supervisors and above with "notifying their employee that they must complete and submit the Restricted Relationship form to their divisional VP for review and approval."

The last three sections of the training provide guidance on the use of social media, dealing with intoxicated guests, and off-duty conduct. Importantly, the training connects the use of social media to the Company's Preventing Harassment and Discrimination Policy by cautioning that "[p]osting discriminatory or harassing comments on social media accounts directed at [Wynn] employees, customers or other third parties" constitutes a violation of the Policy. The training instructs managers who become aware of inappropriate posts to report the conduct to ER. Next, the training breaks out to a bar scene scenario in which a group of male patrons harass a female cocktail server. The training aptly acknowledges prevalent risks in the hospitality industry and instructs managers to be "observant while in guest-facing areas," check in with an employee if they observe inappropriate behavior from a guest, speak to the guest to address their behavior, and "immediately contact Security if warranted." The training concludes by guiding managers on the potential implication of off-duty conduct by clarifying that the Company's Preventing Harassment and Discrimination policy is "applicable to employee behavior even while off-duty or off-property, while engaging with other Wynn employees" and instructing managers that they, too, are "responsible for conducting themselves appropriately." The training concludes by reminding managers of their reporting obligations.

By providing tailored guidance regarding the heightened responsibilities of supervisors and managers to report and escalate complaints of harassment and discrimination, Performance Management 102 addresses the heart of the Monitor’s observations in the Baseline Assessment.

Managers with whom the Monitor Team spoke displayed an appreciation and understanding of their heightened responsibilities as managers and noted a close collaboration with ER on issues related to sexual harassment and discrimination. Interviews conducted by the Monitor Team during Phase V signaled a solid awareness and understanding of the topics covered by Performance Management 102.

(b) Leading at Wynn

Since 2022, the COO, North America has provided the foundational Leading at Wynn training to new managers across the North America properties. Leading at Wynn is centered on the Company’s culture and values and covers the various elements of successful leadership at Wynn, including a clear statement on the Company’s expectations that its leaders will live by Wynn’s culture, proclaiming that “[o]ur culture is the foundation on which everything else is built.” The training emphasizes the importance of leaders building trust with their employees and articulates the various skills that make a successful leader at Wynn. The training includes scenarios to help reinforce messaging, is interactive and includes an accompanying worksheet and a post-training assessment to help test the training’s effectiveness.

As noted in Section IV.A., Culture of Compliance and Conduct at the Top, the COO, North America is a long-tenured, visible leader who is positively regarded by the employee base at WLV and EBH. As in prior Phases of review, the COO has consistently displayed his commitment to driving the Company’s culture, including as to the issues under the Monitor’s purview. Leading at Wynn is emblematic of that commitment and helps to nurture and develop a leader’s soft skills and emotional intelligence with a keen focus on building and sustaining culture. The training has been impactful for leaders with whom the Monitor spoke. For example, one interviewee recounted that one of her direct reports “raved about [the training],” commenting that it provided new leaders with a “good understanding” of Wynn’s approach. The Monitor has been pleased with the Company’s commitment to the development and maturation of its leadership training, specifically most recently its increased focus on strengthening manager and supervisor training. In the Monitor’s view, this training is fundamental to addressing the MGC’s concerns regarding the need to clarify the role of managers and supervisors in responding to allegations of sexual harassment and discrimination. Moreover, the investment in inculcating Wynn values in culture through its manager and supervisors, is foundational for the sustainability of the HRCP.

(c) Diversity and Inclusion

In the Baseline Assessment, the Monitor Team observed that the Company had in place D&I training for managers and supervisors, and to a lesser extent, for front-line employees.

In Phase V, the Company launched a refreshed D&I training from an external provider for managers and above on the Company’s online training platform, *We Learn*. The training opens with a statement that Wynn is “committed to creating a diverse and inclusive culture and environment in which all people are valued and welcomed.” The training includes specific examples of how managers can help facilitate inclusion and reduce bias, and through realistic scenarios, prompts managers to consider potential solutions. The training directly responds to the Monitor’s observations in the Baseline Assessment with respect to implicit bias and transgender and gender fluid identities.

The Monitor Team understands that, further to Wynn's D&I Strategy, the Company has also implemented diversity toolkits to help "equip managers with the tools and resources necessary for them to steward D&I to their respective teams." Each Toolkit includes D&I articles, videos, and presentations that are accessible to managers on *We Learn* and refreshed by the D&I team monthly. These materials provide another opportunity for managers to reinforce D&I principles to their reports and drive core D&I messaging into the organization. The Company's efforts have been impactful: multiple managers highlighted D&I as an important component of the Company's training strategy and recalled receiving such training.

iv. Employee Relations Training

In the Baseline Assessment, the Monitor observed that although ER received the Company's Preventing Harassment and Discrimination training, it did not receive function-specific training on other areas of HR compliance over which it has responsibility, or specialized training for certain core HRCP-related functions, such as conducting investigations. The Monitor recommended that the Company develop a training plan for ER that includes annual trainings on all HR subject matters and policies and procedures for which they are responsible.

The Company implemented that Recommendation and now has in place a training plan that provides for quarterly trainings across various HR subject matters, including investigations, ADA, FMLA, and Collective Bargaining Agreements. In addition to compliance training, new ER team members receive onboarding training on the Company's Investigations Policy. The Company's Investigation Policy and training are described in greater detail in Section IV.F., Internal Reporting and Investigations.

These training initiatives are a cross-functional and collaborative effort between HR and Legal and leaders in both functions demonstrate a commitment to continuing such periodic training initiatives. For example, EBH's employment counsel described upcoming trainings on litigation-related processes relevant to HR, specifically depositions and arbitrations. WLV's ER Director previewed upcoming training on the use of pronouns and a joint training on investigations with the Company's Corporate Investigations function. WLV's employment counsel favorably recalled collaborating with EBH's employment counsel to deliver ADA and FMLA training. ER personnel interviewed, including new team members, confirmed having received investigations training and trainings on other HR topics.

v. Front-Line Employees Training

Prior to the Monitorship, front-line employees already received training on sexual harassment and discrimination. However, feedback from focus groups signaled the need for additional training on specific elements of the Company's Preventing Harassment and Discrimination Policy such as retaliation and the Company's anonymous hotline, as well as the need for trainings that highlighted harassment and discrimination risks particular to specific functions. Moreover, the Monitor received mixed feedback regarding consistent implementation of D&I training. Thus, the Monitor recommended that the Company develop (1) short, tailored trainings that address gaps in knowledge in position-specific realities and (2) additional D&I training as part of its formal training program.

The Company responded to those Recommendations by enhancing existing trainings, developing additional trainings based on its risk profile, and incorporating participation from senior leadership to introduce or in some cases deliver trainings. Indeed, the Company's training program for frontline employees is central to its two-day onboarding program for new employees and occurs annually thereafter. Below the Monitor Team describes the Company's current training program for

front-line employees and in Section IV.E.2.a.vi the Monitor Team discusses function-specific training initiatives.

(a) Annual Compliance Training

The Company has continued to provide annual anti-harassment and anti-discrimination training to front-line employees and has incorporated D&I training as a component of that training. The Monitor Team has observed and reported on anti-harassment and anti-discrimination and D&I training in prior Phases and has found it to be comprehensive and responsive to the Monitor's observations. Annual compliance training materials provided to the Monitor are comprehensive and instructive. They are appropriately tailored to employees and are structured in a way to promote employee engagement.

The anti-harassment and anti-discrimination training defines discrimination and harassment, addresses quid pro quo and hostile work environment claims, and intertwines examples throughout to help illustrate key points. The training instructs employees on bystander intervention and how to make reports, including through the Company's reporting hotline or through managers, HR or other Company personnel. Moreover, the training encourages employees to speak up, emphasizes that retaliation will not be tolerated and specifically addresses how to make reports of inappropriate guest behavior—a topic that caused some unease among employees in focus groups in the Baseline Assessment. The training also instructs on the Company's Personal Relationships Policy, including on an employee's obligation to report certain relationships to their manager and submit a Personal Relationship Affirmation Form to ER.

More recently, the Company has continued to enhance the training based on its workplace realities. In Phase V, personnel from Legal and HR responsible for designing the training explained how they updated the training to cover discrete topics.

Other Company policies addressed in annual compliance training include the Code, ADA, Code of Personal Conduct, and Employee Interaction with Guests and Third Parties. Each module starts by providing an overview of the subject matter and links applicable policy. Modules include illustrative and relatable examples to help drive understanding of how the policy should impact behavior. Each module also includes knowledge checks focused on key areas of the relevant policy. Employees must successfully complete each knowledge check before proceeding to the next module.

Finally, as described in Section IV.C., Policies and Procedures, in Phase V, the Company added an introductory video from the CEO to supplement compliance training and set the tone from the top that the Company will not tolerate harassment or discrimination from anyone, including guests and patrons. Compliance training also features an introductory video from the former CGCO. These communications help to reinforce the importance of training to employees and serve as a reminder of the Company's expectations with respect to compliance.

(b) Diversity & Inclusion Training

The Company has developed an extensive D&I curriculum with online and in-person training for frontline employees. The D&I Strategy's goal with respect to D&I training of frontline employees is "[t]o create a learning module where employees can increase their awareness of diversity & inclusion in the workplace." In furtherance of that goal, the D&I function offers training on the following topics to front-line employees: unconscious bias, the value of D&I, gender diversity, cultural awareness, workplace sensitivity, multigenerational awareness, and respect in the workplace. These topics are relevant to Wynn's workplace and responsive to the Monitor's observations, particularly the topic of gender

diversity. The Monitor also understands that the SVP, Diversity & Inclusion provides in-person D&I training on these topics as part of WLV's employee onboarding sessions and that her training has been recorded and is played for employees at EBH during onboarding.

The D&I training program has matured since the Baseline Assessment, comprising one component of a broader D&I Strategy. The Monitor encourages the Company to continue to build upon its training program and strategy as the diversity of its employee pool evolves, particularly as it expands into other jurisdictions.

vi. Function-Specific Training

As noted above, feedback from employee focus groups conducted during the Baseline Assessment demonstrated an appetite for position-focused harassment trainings. Accordingly, and consistent with regulatory expectations that trainings be targeted and "tailored to the audience's size, sophistication, or subject matter expertise," Evaluation of Corporate Compliance Programs at 4, the Monitor recommended that the Company provide tailored trainings to front-line employees that address gaps in knowledge and position-specific realities. Since the Baseline Assessment, the Company has developed several function-specific trainings, which the Monitor has reported on in prior Phases. These include tailored trainings for certain guest-facing employees on interactions with guests, training for Security personnel on investigations of harassment and discrimination issues, and anti-human trafficking training addressing human trafficking risks associated with the gaming and hospitality industry.

Since Phase IV, the Company has continued to assess its operations against compliance risk factors to develop additional function-specific trainings based on data from other monitoring and testing initiatives, including employee focus groups and trends in investigations. In doing so, the Company has shown how data from other elements of the HRCP have informed training opportunities. Below, the Monitor Team discusses the Company's function-specific training initiatives.

- ▶ *Targeted training for guest-facing employees.* As reported in Phase III, the Company developed an online training on the Employee Interaction with Guests and Other Third Parties Policy, specifically covering management responsibilities, employee guidelines, and reporting channels and responsibilities. The training was targeted for employees in positions that required regular interaction with guests, including Cage, Slots, Table Games, Concierge, Housekeeping, PAD, Salon, Spa, and Food & Beverage.
- ▶ *Security Academy.* In Phase IV, the Company revised its training for Security personnel to include specific guidance on harassment and discrimination issues, given their role in responding to such incidents in real-time. Specifically, day six of Security's seven-day training program includes three training modules regarding harassment, discrimination, and sexual assault prevention and covers, among other topics, how to identify potential predators, how to prevent harassment and discrimination, and reporting mechanisms.
- ▶ *Safety button training.* Testing activities during Phase V indicate that the Company conducts quarterly trainings on the use of safety buttons for high-risk employee groups that have close and often isolated interactions with guests [REDACTED]. The Monitor understands that training is provided by department management and ER counselors as part of pre-shifts and aims to remind employees to use their safety buttons when needed.

- ▶ *Seasonal training on risks presented by night and day club activities.* WLV's CI function has collaborated with Legal and HR to provide annual training during pre-shifts on harassment, discrimination, and drug-related risks presented by patrons of the Company's night and day club operations. The training is provided to employees in guest-facing positions with responsibilities over club areas, [REDACTED]
- ▶ *Targeted trainings informed by department-specific trends.* The ER function across both Las Vegas and EBH has provided targeted trainings during departmental pre-shifts to address recurring departmental issues. [REDACTED] Moreover, interviews in Phase V indicate EBH's ER function has begun to conduct targeted trainings to address discrete department-specific trends identified through investigations.
- ▶ *Anti-human trafficking training.* In light of industry-specific risks associated with the gaming and hospitality industry, the Company also provides targeted training on its Anti-Human Trafficking Policy. The training provides a summary of human trafficking, breaks down common tactics used by traffickers, and lists common red flags and other indicators of trafficking. The training also instructs employees on what they should do if they should suspect that someone is a victim of human trafficking and in this respect, emphasizes the sensitivity with which employees should handle such situations. Consistent with other HRCP trainings, the training video features cameos from senior leadership (e.g., SVP, Security and Crisis Management and Response, and VP, GC, EBH) to reinforce the importance of the subject matter. In Phase V, the Company partnered with a third-party provider to provide additional awareness training in anticipation of the Superbowl and F1.

These initiatives directly respond to the Monitor's observations: they demonstrate the Company's ability to identify function-specific risks and develop tailored trainings. The Monitor encourages the Company to continue to evaluate and enhance its training program based on data collected from other components of the HRCP.

b. Implementation of Training and Ongoing Guidance

Over the course of the Monitorship, the Company has adopted an intentional approach towards the implementation of its HRCP training program, which includes efforts to regularly reinforce key training messages and provide ongoing guidance to employees outside of annual compliance training. The Sections below discuss these efforts.

i. Implementation of Training

As reported in prior Phases, the Company provides online and in-person training covering the topics discussed above. Online training is available to employees on *We Learn*. Employees can access training assignments on *We Learn* via kiosks and laptops in Back of House, loaned iPads, and department offices. As described above, annual compliance training, which includes training on anti-harassment, anti-discrimination, speak up, anti-retaliation, personal relationships and conflicts of interest, D&I, and employee interactions with guests and third parties, is conducted online. New employees receive in-person training sessions as part of New Hire Orientation on these topics.

The Company also engages in communication campaigns to spread awareness of training requirements and reinforce the importance of timely training completion. The Company has formalized these initiatives in its HRCP Communications Plan for 2023 and 2024. As discussed in greater detail in Section IV.C., Policies and Procedures, the Compliance Plan includes quarterly policy spotlights to promulgate policies and lessons from training. Annual compliance training occurs in the fourth quarter of each year and is supplemented by communication initiatives, such as printed and digital displays containing QR codes with links to training modules, leadership messages from the COO and current WLV President and EBH's President, and policy reminders via WeShift messages from the EVP, HR, WRL and other executives. For example, a WeShift from November 2023 featured a message from the WRL GC reminding employees to complete the required annual training. In her message, the GC noted her responsibility to “[cultivate] a culture where every employee feels empowered to speak up against harassment [and] discrimination,” and highlighted every employee’s “right to speak up” regardless of their position. In addition, as noted in Section IV.C., Policies and Procedures, the Company has engaged in efforts to incentivize (early) completion of training, including by offering cash prizes for employees who completed mandatory compliance training early.

Consistent with prior Phases of this Monitorship, the Company continues to track compliance with mandatory training requirements. For example, department management noted reminding employees to complete training and that ER monitors compliance with training requirements. Moreover, HR personnel acknowledged the mandatory nature of compliance training while also acknowledging the risk of training becoming a “check the box” exercise. For that reason, HR undertakes ongoing efforts to reinforce lessons from trainings throughout the year.

ii. Ongoing Guidance

In the Baseline Assessment, feedback from employee focus groups across both properties consistently indicated an absence of messaging surrounding harassment and discrimination issues apart from the training itself. Specifically, 53% of employees surveyed at WLV and 28% of employees surveyed at EBH indicated that managers “rarely” (i.e., less than once per month or not since the last training) talked to them about the Company’s policy on anti-harassment and anti-discrimination. However, the Monitor identified two ways the Company could reinforce messaging on harassment and discrimination based on existing practices already engrained in the Company’s structure: through pre-shifts and through messaging from senior leadership.

Since the Baseline Assessment, the Company has taken a dynamic and multi-faceted approach towards reinforcing training at a regular cadence outside of annual compliance training. As described in greater detail in Section IV.C., Policies and Procedures, the Company uses a variety of communication channels, including WeShifts, pre-shifts, Compliance Pop Up Events, policy spotlights, signage, and QR codes to regularly reinforce messaging on harassment and discrimination and other HRCP compliance topics, including personal relationships and conflicts of interest, employee interactions with guests and third parties, and speak up culture. As noted above, these initiatives are formalized in the Company’s HRCP Communications Plan, which features quarterly policy spotlights organized by theme that are supplemented by other communications. Importantly, executive and property leadership have also been visible carriers of HRCP messaging and are often featured in the Company’s quarterly policy and training spotlights. For example:

- ▶ In August 2023, the Company spotlighted the newly enhanced Code of Business Conduct & Ethics and featured WeShifts containing the CEO’s cover letter. The Communications Plan

shows that the Company included printed and digital displays of the Code as part of the Code's roll-out.

- ▶ As noted in Section IV.C., Policies and Procedures, the Company spotlighted the Personal Relationship Policy and Anti-Human Trafficking Policy in February 2024, which featured a WeShift from the EVP, HR, WLV on personal relationships and a video from the Chair of the Board of Directors, discussing the Company's commitment to helping to end human trafficking. The spotlight on personal relationships focused on employees' reporting requirements while the spotlight on human trafficking emphasized that such activity "[c]an [h]appen [a]nywhere." The Communications Plan indicates the Company distributed the video to all employees with email addresses, provided links for employees in the form of QR codes, aired it in Back of House facilities, and played it as part of orientation for new employees.
- ▶ In August, the Company will spotlight the Employee Interactions with Guests and Third Parties Policy and training focusing on whether employees "know how to handle and report [guests] exhibiting inappropriate behavior." The spotlight will feature videos from property presidents focused on "addressing and reporting inappropriate [g]uest [b]ehavior" which will be displayed in Back of House. In addition, the Communications Plan provides that the Company will host an in-person Compliance Pop Up Event in employee dining rooms. Participating employees will be entered to win a free dinner. In addition, certain department leaders interviewed indicated that they have filmed their own videos speaking up and reporting misconduct by guests.

Efforts to reinforce lessons from trainings have been shared across management levels. Indeed, interviews in Phase V demonstrated that managers are regularly communicating on harassment and discrimination issues via pre-shifts and other departmental touchpoints. For example, certain department leaders explained using pre-shifts to communicate policy changes or reinforce policy requirements. Others hold monthly one-on-ones with employees to solicit feedback and address departmental issues. Guest-facing department leads also recounted reminding employees to speak up and report guest misconduct regardless of whether the guest is a high-roller or VIP. Moreover, the SVP, Security and Crisis Management described periodically reminding his direct reports to keep harassment and discrimination issues front of mind to frontline security personnel and including educational components in pre-shifts on discrete issues such as disparate treatment, how to deal with unruly guests, and how to report issues. Furthermore, as described in greater detail in Section IV.C., Policies and Procedures, ER personnel periodically attend departmental pre-shifts to communicate on policies and trainings.

Importantly, department management consistently described the Company's "layers of reinforcement" approach towards communications on HRCP policies and trainings, often citing to the Company's communication initiatives, particularly from senior leadership, as illustrative of the Company's culture. This feedback is consistent with the data from the Company's 2023 employee focus groups, which shows that employees are aware of the Company's efforts to bring awareness to policies. As noted in Section IV.C., Policies and Procedures, 100% of 340 participants indicated that the Company has made them aware of HRCP policies. In addition, 100% of employees at WLV and 70% of employees at EBH cited to pre-shifts and related communications as avenues in which employees have been informed of policies. This datapoint reflects a significant increase in employee perceptions of the Company's efforts to bring awareness to policies from data collected by the Monitor in the Baseline Assessment, signaling that the Company's multi-faceted approach to reinforcing policies and trainings

has been impactful. Furthermore, as described by one interviewee, the Company's training program is "constantly embedded throughout the year."

c. Effectiveness of Training

At the time of the Baseline Assessment, the Company was not formally testing the effectiveness of its training, which is an important consideration for the DOJ in its Evaluation of Corporate Compliance Programs Guidance. Therefore, the Monitor recommended that the Company develop procedures to periodically test and measure the effectiveness of trainings and incorporate feedback into future trainings.

Since then, the Company has developed initiatives to test the effectiveness of trainings by (1) developing a plan to periodically conduct surveys to identify new training opportunities, (2) conducting surveys to understand the effectiveness of training as part of its 2023 and 2024 HRCP Calendar and (3) adding knowledge checks to its anti-harassment and anti-discrimination training.

For example, the Company has also broadened the use of knowledge checks and substantively improved the depth of its post-assessment quizzes. Specifically, as described above, the Company has added knowledge checks at the end of each module of its annual compliance training and in manager and supervisor-specific training. The Monitor reviewed these assessments and considers that the questions are thoughtfully designed to comprehensively test training curriculum. For example, the anti-harassment and anti-discrimination module includes questions requiring employees to identify examples of harassment and demonstrate an understanding of the Company's expectations with respect to reporting guest misconduct. The personal relationships and conflicts of interest module similarly requires employees to understand their reporting obligations. The Company similarly includes quizzes during New Hire Orientation. Furthermore, interviewees in Phase V consistently observed that these assessments are meaningfully implemented so that employees must answer a minimum number of questions correctly to successfully continue to the next module or be redirected to the applicable lecture. One department manager noted that the quizzes meant that employees "have to pay attention" during the training. Another noted that the training promotes active engagement from employees by requiring that text boxes and other features be opened before moving on to the next segment.

As a newer initiative, L&D personnel with whom the Monitor Team spoke indicated that the Company has also added surveys at the end of trainings to solicit feedback about content and the pace of the training. L&D personnel described looking for recurring themes that could be used to enhance trainings in their review of employee feedback. In addition, as discussed in greater detail in Section IV.I., Monitoring and Testing, the Company implemented engagement surveys and focus groups in 2023 and plans to repeat this exercise in 2024. Discussions with HR personnel involved in the design and implementation of this initiative indicate that data collected through surveys and focus groups were used to drive enhancements to trainings. For example, one interviewee recounted revising the Employee Interactions with Guests and Third Parties training videos to include additional scenarios in response to employee feedback. Furthermore, as described in greater detail with respect to function-specific training, data from investigations has also led to targeted training.

These efforts are meaningful steps in the right direction towards implementing procedures to systematically test the effectiveness of training. The Monitor encourages the Company to continue to develop these mechanisms by maturing its use of existing data sources and drawing on additional data collection systems as it goes forward.

F. Internal Reporting and Investigation

Since the Baseline Assessment, the Monitor Team has been focused on the Company's policies and practices in receiving and investigating complaints of workplace misconduct. The MGC's Decision and Order pointed to "substantial evidence that the Company neglected to follow its own corporate policies on a number of occasions." Decision and Order at 46. Leading up to the Baseline Assessment, the Company had already updated its investigation protocols and worked to enhance related procedures. While acknowledging those strides, at the conclusion of the Baseline Assessment, the Monitor Team observed opportunities for the Company to enhance the effectiveness of its investigations protocols and procedures and made eight Recommendations. Since the Baseline Assessment, the Monitor Team made nine additional Recommendations. Over the last several years, the Company has not only revised its policies and practices to address the Recommendations but has also put in the hard work to communicate key changes to employees, train investigators, and ensure consistent application of these policies and practices across the employee base at both EBH and WLV.

1. Compliance Guidance

Compliance authorities—including the EEOC, the MCAD, and the DOJ—provide concordant guidance on the elements of an effective reporting and investigative process. The EEOC advises that an effective reporting system for allegations of harassment is "among the most critical elements of a holistic anti-harassment effort," EEOC 2016 Report at 40, and outlines the following elements that contribute to an effective reporting system:

- ▶ A reporting system that allows the organization to provide a timely response to the concern followed by an investigation;
- ▶ A supportive environment where employees feel safe to report and believe they will not be retaliated against for making reports;
- ▶ Well-trained investigators;
- ▶ Investigators who document all steps taken and prepare a written report; and
- ▶ A commitment to maintaining the confidentiality of all people involved, including the charged party(s) and witnesses.

Id. at 42. The MCAD also emphasizes the importance of timeliness, anti-retaliation messaging, documentation, and confidentiality for an effective reporting and investigative system. Guidelines on 151B at 9–16.

The DOJ endorses similar principles. The DOJ advises that a hallmark of a "well-designed compliance program is the existence of an efficient and trusted mechanism by which employees can anonymously or confidentially report allegations." Evaluation of Corporate Compliance Programs at 5. The DOJ will "assess whether the company's complaint-handling process includes proactive measures to create a workplace atmosphere without fear of retaliation, appropriate processes for the submission of complaints, and processes to protect whistleblowers." *Id.* at 6. The MCAD similarly emphasizes the importance of these measures. The DOJ will also evaluate a company's processes for "routing of complaints to proper personnel, timely completion of thorough investigations, and appropriate follow-up and discipline." *Id.*

Bearing these guidelines in mind, as the MGC's Decision and Order requires, the Monitor Team evaluated the Company's policies and organizational changes, including:

- ▶ "Implementation of and compliance with all human resource or 'HR' policies that reflect current best practices;"
- ▶ "Adequacy of internal reporting and communication channels throughout the Company and their alignment with up-to-date organizational charts and reporting structures;" and
- ▶ "Use of retractions, mandatory arbitration provisions, gag orders, confidentiality clauses, and non-disparagement provisions of all employees, with particular attention to the use of such measures and their impact on non-executive employees."

Decision and Order at 50–51.

2. *Assessment*

Based on interviews conducted and documentation reviewed during Phase V, the Monitor is satisfied that the Company has designed and implemented appropriate reporting and investigating mechanisms and has demonstrated a commitment to sustaining its efforts beyond the term of the Monitorship.

a. Internal Reporting and Communication Channels

Since the Baseline Assessment, the Company made two key changes to its approach to internal reporting: first, it appropriately streamlined the reporting channel structure; and second, it invested in internal communication campaigns to encourage employees to speak up whenever they see harassing or discriminating conduct. These important efforts have strengthened the Company's internal reporting structure and mitigated recurrence of the risks identified in the MGC's Decision and Order.

i. *Streamlining of Reporting Channels*

At the time of the Baseline Assessment, the Company had three telephonic and web-based reporting channels, each designated for separate and distinct types of reporting. The Company also encouraged employees to speak up to HR, their managers, and other leadership. As the Monitor Team observed in the Baseline Assessment, the use of multiple reporting channels created a risk of user confusion regarding which channel to use and of failure to adequately track and follow up on reports.

The Monitor Team supported the Company's move to a more streamlined reporting channel structure. Today, the Company has one hotline for North America that allows for anonymous reporting. The hotline website can be accessed in English, Spanish, or Chinese and individuals who call the hotline may report in languages other than English. The Company further has in-house capabilities to discuss allegations with reporters in languages other than English and has a translation service for situations when in-house translation is not possible. During this Phase of review, the Monitor Team submitted test reports in Spanish and Mandarin through the hotline. During testing, the Monitor Team experienced certain interpretation issues with the hotline and reported them to the Company. The Company responded with appropriate concern, conducted additional testing, and indicated that it would be providing feedback to the hotline operator. Importantly, both the Code and the Preventing Harassment and Discrimination Policy provide contact information for specific members of corporate and property-level leadership, as well as the web address and phone number for the reporting hotline. Employees are also encouraged to report allegations to supervisors or directly to ER.

The Company has also revised its policies to make clear that these reporting channels can be used not only by employees but also by third parties and, importantly, not only to bring forward allegations against co-workers but also against management, executives, and third parties. As the Preventing Harassment and Discrimination Policy explicitly spells out, employees, as well as guests, contractors, and other third parties can report harassment and discrimination. The policy emphasizes that “harassment or discrimination by guests, vendors, or other third parties will not be tolerated, and employees are encouraged to report such incidents” Since the Baseline Assessment, the Company has also launched the Employee Interaction with Guests and Other Third Parties Policy, which further drives home that the Company will not tolerate harassment or discrimination, regardless of the alleged perpetrator’s or reporter’s identity.

ii. Communications Regarding Speak Up Culture

The Company has not only enhanced its written guidance regarding reporting channels but has also improved how and through whom it speaks to employees regarding the importance of speaking up. The Company has created new trainings and initiatives, such as compliance Pop Up Events, and has leveraged existing programs to communicate the importance of speaking up.

First, the Company implemented updates to its trainings. Since the Baseline Assessment, the Company has incorporated updates to its reporting channel structure into existing trainings attended by all employees, such as the New Hire Orientation and mandatory annual trainings. Further, as the Monitor Team noted in the Baseline Assessment, misbehavior by patrons is a key risk factor for harassment and discrimination. The Company has responded to that risk by launching the Interacting with Guests and Third Parties training, which is targeted at those employees who have the greatest exposure to guests and other third parties, as discussed in Section IV.E., Training and Guidance.

Second, the Company launched communications campaigns that stressed the importance of speaking up and that included statements from leadership at both the property and corporate level. See also Section IV.A., Culture of Compliance and Conduct at the Top. In addition to creating print and digital displays that can be viewed throughout Back of House and in employee dining areas, over the last few years, the Company has also produced videos where senior leaders emphasize their support for Wynn’s speak up culture. During Phase V, the Company produced a video where department VPs in Las Vegas jointly messaged about the importance of speaking up. Including messages from both senior leaders and department leaders addresses not only the Monitor Team’s Baseline Recommendation that property leadership visibly support speak up culture but also the need for managers and supervisors to understand the importance of embracing and promoting that culture. Such communications campaigns help to demonstrate that the Company is taking ownership to grow these campaigns to meet the needs of its employees.

Third, the Company invested in multiple ways to make its ER counselors available and visible to front-line employees. At the time of the Baseline Assessment, employees raised concerns to the Monitor Team through focus groups and surveys regarding the availability of ER personnel, particularly to employees who work overnight. The Company has since updated the signage around the ER windows at both properties to highlight the available reporting channels, including the hotline, through which employees may submit their concerns outside of the ER window’s hours. Crucially, the Company has also found opportunities for front-line employees to meet the ER counselors before issues arise. Counselors have attended and presented at hundreds of pre-shifts across both properties. Counselors have also attended compliance Pop Up Events where employees have the opportunity to win prizes for answering questions about key policies.

Fourth, the Company has incorporated reminders on the importance of speaking up and the available reporting channels into WeShifts, whether through direct messages from senior management or by providing relevant contact information for the Company's reporting channel. *See Section IV.E., Training and Guidance.*

Fifth, the Company continues to make all of its policies available on The Wire and to obtain employee acknowledgements of policy updates through that online interface. During the last Phase, the Company made certain core policies available for review on The Wire in Spanish and Chinese. This improvement goes toward the concerns regarding the accessibility of the policies that the Monitor Team heard directly from employees during focus groups. *See Section IV.E., Training and Guidance.*

The Company plans to conduct engagement surveys and focus groups going forward and should continue to use these initiatives to gather data regarding the effectiveness of its reporting channels and its communications regarding the importance of speaking up.

All of these communication initiatives demonstrate the Company's commitment and ability to enhance its program by responding to issues identified through monitoring, including from employee feedback. The Monitor Team understands that the Company will continue these practices going forward.

b. Investigation Policy and Practice

At the time of the Baseline Assessment, the Company's Investigation Policy provided only a high-level overview for how the Company should conduct investigations. The Company also followed property-specific investigation checklists that were inconsistent with one another and lacked detail. As the Monitor Team observed at the time, these checklists "lack[ed] detail and [did] not provide adequate guidance to ensure a comprehensive and consistent review of each complaint, which risk[ed] undermining the uniformity of approach in investigations leading to inconsistent results, both within and between properties." Baseline Assessment at 83. Since then, the Company has launched an updated Investigations Policy that not only memorializes pre-existing investigative practices at the Company and addresses the Monitor Team's specific Recommendations stemming from the Baseline Assessment, as discussed in further detail below, but that also serves as a helpful resource to the ER counselors responsible for investigations on a day-to-day basis. Interviews conducted during the last Phase of review confirmed that both counselors and their supervisors and managers keep the policy ready in their offices to address questions on procedure. In addition, both properties in North America have now implemented a single investigation checklist that is intended to ensure that investigations are compliant with the policy.

i. Report Intake and Routing

The Investigations Policy in place at the time of the Baseline Assessment was silent as to the intake and routing of complaints. As the Monitor Team explained, "it is critical that the Company define and formalize clear intake and routing procedures to avoid inefficiency, the risk of delayed responses, and mishandling of issues due to a complaint being routed to personnel lacking relevant experience or with a potential interest or conflict in the matter being investigated. This approach also risks creating a diffusion of responsibility" - one of the concerns highlighted by the facts underpinning the MGC's Decision and Order. Baseline Assessment at 80. By contrast, the revised policy outlines a detailed process to be followed, starting from when a report is received, to the assignment of a case lead, avoiding conflicts of interest, and routing complaints against senior leaders.

The Investigations Policy acknowledges that reporters may raise compliance concerns to Company personnel, including supervisors, ER, Wynn in-house counsel, or other executives and individuals named in the Code and Preventing Harassment and Discrimination Policy, or through the hotline. The Policy then sets out complaint intake steps to be followed depending on the complaint recipient. The Company has also worked with the vendor operating its hotline to ensure that complaints against individuals who would normally receive copies of complaints from the hotline do not get routed to those same individuals. Over the course of the Monitorship, there have been a handful of instances where complaints to the hotline have been improperly routed but the Company has remediated the issues that led to improper sharing of complaints, including by communicating conflict of interest rules to the vendor. During Phase V, one of the Monitor Team's test reports made through the hotline was improperly sent to the complaint's alleged wrongdoer due to the hotline operator misspelling the alleged wrongdoer's name. Although the reporting channel did not execute properly, another employee on the recipient list realized the oversight and quickly manually changed access settings to restrict the named individual from viewing the complaint. The Company responded to the issue with appropriate concern and the Monitor Team understands that the Company is working to mitigate the risk of this issue recurring directly with the vendor. Outside of the test report, the Monitor Team did not observe improper routing of complaints and, notably, in connection with two investigations into senior leaders, observed appropriate, independent investigations.

The Investigations Policy goes on to set out objective criteria for the assignment of a case lead, including by providing a list of the types of allegations each department is responsible for investigating, from ER to Security, Global Compliance, Internal Audit/Finance, and Information Security, and providing a process to address potential conflicts of interest. The Company has updated this guidance since it was initially launched, and the Monitor Team expects that the Company will continue to update it if further questions arise regarding the assigned investigating department. These routing processes are critical to ensuring the appropriate department takes responsibility and conducts an effective and prompt investigation.

The Policy further requires bi-weekly reporting on allegations of sexual harassment, sexual assault, or other sexual misconduct to the WRL GC, each property GC, and outside employment counsel, and quarterly reporting of all discrimination or harassment complaints to the Compliance Committee. As noted in Section IV.I., Monitoring and Testing and in the Baseline Assessment, the Monitor Team expressed concerns that this practice was unduly burdensome and overly focused on individual cases rather than property- and Company-wide trends. The Monitor Team has observed changes to the formats and content of these reports, including sharing more data with the Compliance Committee to address requests from that body regarding investigation trends. Based on interviews conducted during Phase V, including with senior corporate leadership, the Monitor Team expects that the Company will continue to evaluate the effectiveness and content of these reports.

Finally, and critically, when allegations are made against Wynn Resorts Executive Officers, the Policy requires notification to the Chair of the Board, Chair of the Audit Committee, the Compliance Committee, and the WRL GC, who in turn must engage outside counsel. If the complaint is against the WRL GC or CGCO, the Policy sets out a process to avoid that conflict of interest and requires the engagement of outside counsel. These changes address concerns identified by the Monitor Team in prior Phases of review.

All of these intake and routing procedures have significantly enhanced the effectiveness of the policy by ensuring that investigations are conducted appropriately and without influence or the perception of influence from alleged wrongdoers.

ii. Investigation Process

At the time of the Baseline Assessment, the Investigation Policy and related checklists lacked adequate guidance to ensure a comprehensive and consistent review of each complaint. In particular, the Monitor Team observed that the Investigations Policy lacked substantive guidance on investigative steps. The updated Investigations Policy, and the related trainings attended by investigators, have addressed these concerns.

The Policy now provides detailed guidelines to investigators, starting by setting out a reasonable time frame for case completion. The Policy then walks through key investigations steps, from interviewing the complainant, witnesses, and the respondent to identifying and maintaining relevant documentation. While the Monitor Team previously raised concerns regarding overreliance on surveillance and a lack of willingness to make credibility determinations, the policy explicitly discusses the importance of assessing the credibility of individuals and any documentary evidence. Moreover, the Monitor Team's observation of case review meetings and review of case files supports the conclusion that investigators are following these steps and appropriately weighing the evidence, whether documentary or otherwise, rather than failing to substantiate claims because of a discomfort with making credibility determinations.

During Phase V, the Company further revised the policy to allow deviations from the investigation guidelines "under the guidance of the Wynn Resorts' General Counsel." The Monitor Team understands that this change will provide investigators with appropriate flexibility to deal with cases that may appropriately require departures from the prescribed guidance. For example, cases may understandably close outside of the recommended timeline due to the number and availability of witnesses. This revision acknowledges the realities of conducting investigations while still bringing discipline to the process in requiring guidance from in-house counsel.

The policy further advises investigators that they must determine whether allegations have been substantiated and, importantly, if a policy has been violated. The policy sets out the standard for substantiation as "whether the case lead reasonably and in good faith, based on the guidelines set forth herein, believes that the respondent engaged in the conduct and it was a violation of company policy." At the time of the Baseline Assessment, the investigation files reviewed did not clearly tie conclusions to relevant policies, which can lead to confusion regarding appropriate remediation. Today, the files follow the process set out in the policy.

iii. Case Closure

At the time of the Baseline Assessment, employees expressed to the Monitor Team their frustration with a lack of transparency at the end of an investigation. The Investigation Policy now provides guidance and templates regarding communications to the complainant and the respondent, with the content of those communications differing depending on whether the allegations are substantiated. Moreover, the Monitor Team interviewed employees, including senior personnel, in Boston and Las Vegas who were involved as reporters and respondents in investigations and both reported satisfaction and comfort with how the Company recently conducted and closed out the investigations.

During Phase V, the Company revised the policy to allow for a "[c]losure memo, or other documented resolution, such as an email or record of conversation, to the complainant and respondent, unless either is a third party." The Monitor Team understands that this change would allow investigators to close out investigations without using the template closure forms in circumstances where those

standard communications may not be necessary or appropriate and a documented conversation would meet the closure needs. The policy also requires follow-up with the complainant no sooner than 60 days following case closure. Although complainants and respondents may both hope to learn further information during and after an investigation, these policy revisions meet the need for appropriate transparency, weighed against the need to maintain confidentiality during the course of an investigation.

iv. Training

The Company has continued to increase its focus on developing the investigation skills of its personnel. In February 2022, the Company developed and rolled out training for investigators based on the updated Investigations Policy. The Company has continued to provide this training to new Relations counselors who have been onboarded since that time. In addition, ER counselors at both properties have attended investigations trainings conducted by third parties.

The standing case review meetings also provide an opportunity for informal training and continuous improvement. The Monitor Team has observed case review meetings conducted by the Las Vegas and Boston teams monthly, since 2022. These meetings provide opportunities for counselors to ask questions of their supervisors and in-house counsel while investigations are ongoing and to receive in-the-moment feedback on the process.

The Monitor Team learned during Phase V that Security and Legal in Las Vegas have been holding meetings to talk through the legal aspect of investigation circumstances that Security might face and to provide an opportunity for Security to ask questions of the property counsel. These meetings, like case reviews, provide an opportunity to address potential issues in the moment and address questions from the employees who are responsible for implementing the investigation process.

c. Use of Retractions, Mandatory Arbitration Provisions, and Gag Orders

At the time of the Baseline Assessment, the Company had already implemented changes to its settlement, separation, and arbitration agreement templates and related policies, as discussed in Section IV.J., Controls Environment. First, the Company's Permitted Disclosures Policy provides that employment agreements, or employment-related confidentiality or non-disparagement agreements, do not prohibit employees from, among other things, filing charges or complaints with federal, state, or local government agencies or participating in any actions or investigations conducted by those agencies. The current separation and release templates likewise state that they do "not limit any party's right to file an administrative charge or participate in an investigative proceeding of any federal, state or local government agency tasked with enforcing employment-related laws, . . . but does operate as a waiver of any personal recovery if related to the claims released herein." Second, EBH's standard arbitration agreement allows employees to opt out of arbitration, explaining that arbitration is not a mandatory condition of employment.

The current settlement agreement template includes confidentiality and anti-disparagement clauses. Notably, if the claim being settled is for sexual harassment, discrimination on the basis of sex or retaliation on the basis of sex, the template strikes the requirement to keep "any of the matters raised by this Agreement" confidential and instead requires only that "this Agreement" be kept confidential. Similarly, "if the settlement is for a civil or administrative action involving a claim of sexual harassment, discrimination on the basis of sex or retaliation on the basis of sex," then "Nothing in this Agreement is intended to prohibit (Employee/Plaintiff/Charging Party) from disclosing any of the underlying factual allegations of the (Lawsuit/Charge) with any person."

G. Incentives and Discipline

Since the Baseline Assessment, the Company has made significant strides in its efforts to incentivize HRCP-compliant behavior and to take appropriate enforcement and disciplinary action when misconduct occurs. At the time of the Baseline Assessment, the Monitor Team observed a historic absence of performance management processes for managers and senior leaders and structures that would promote compliant behavior for front-line employees. The Monitor Team further identified gaps in disciplinary procedures and guidance. To that end, the Company issued a total of four Recommendations throughout the course of the Monitorship. Today, the Company has piloted its first performance management program among its leadership, found creative opportunities for ER staff and Company leaders to speak with and educate employees about compliance, and enhanced existing programs and policies to ensure consistent discipline.

1. Compliance Guidance

The Decision and Order tasks the Monitor Team with reviewing and evaluating all policies and organizational changes adopted by the Company and reporting “on the effectiveness of the Company’s policies, practices and programs.” Decision and Order at 50–51. Programs designed to incentivize compliance with the HRCP and empower the Company to take appropriate enforcement disciplinary actions help ensure the integrity and effectiveness of the HRCP. Indeed, in assessing the suitability of a licensee, the Commission looks to an applicant’s character, which is conceived to be “the sum of total of an individual’s attributes, the thread of intention, good or bad, that weaves its way through the experiences of a lifetime.” *Id.* at 15. To this end, the Commission will “judge a [person’s] character by evaluating his words and deeds as they appear from the testimony and from all of the evidence in the record” focusing “particularly on those attributes of trustworthiness, honesty, integrity and candor.” *Id.*

Thus, an effective HRCP must contain appropriate incentive and disciplinary systems and structures so that companies can adequately assess their employees’ compliance with the companies’ standards, as well as federal and state laws, that govern employee behavior. Among those standards are laws barring sexual harassment and discrimination based on an individual’s status as a member of a protected class.

The EEOC 1999 Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors states:

an employer should make clear that it will undertake immediate and appropriate corrective action, including discipline, whenever it determines that harassment has occurred in violation of the employer’s policy [D]isciplinary measures should be proportional to the seriousness of the offense. If the harassment was minor, such as a small number of “off-color” remarks by an individual with no prior history of similar misconduct, then counseling and an oral warning might be all that is necessary. On the other hand, if the harassment was severe or persistent, then suspension or discharge may be appropriate.

EEOC 1999 Guidance.

The EEOC 2016 Report provides additional guidance, and states:

An employer that has an effective anti-harassment program, including an effective and safe reporting system, a thorough workplace investigation system, and proportionate corrective actions, communicates to employees by those measures that the employer takes harassment seriously. This in turn means that more employees will be likely to complain if they experience harassment or report harassment they observe, such that the employer may deal with such incidents more effectively. This creates a positive cycle that can ultimately reduce the amount of harassment that occurs in a workplace.

EEOC 2016 Report at 34 (emphasis added). The 2016 Report also states:

Employers should ensure that where harassment is found to have occurred, discipline is prompt and proportionate to the severity of the infraction. In addition, employers should ensure that where harassment is found to have occurred, discipline is consistent, and does not give (or create the appearance of) undue favor to any particular employee.

Id. at 37. The Report goes on to state: “[w]ith regard to individuals who engage in harassment, accountability means being held responsible for those actions,” “[w]ith regard to mid-level managers and front-line supervisors, accountability means that such individuals are held responsible for monitoring and stopping harassment by those they supervise and manage,” and “[a]ccountability also includes reward systems.” *Id.* at 34–35.

The MCAD Sexual Harassment Guidelines adds “if the employer concludes that sexual harassment has occurred, the employer must take prompt and appropriate remedial action designed to end the offending conduct and prevent future harassing conduct.” Guidelines on 151B at 12.

The DOJ has issued relevant guidance as well, emphasizing the role that incentives and discipline play in an organization’s compliance program. For example, the DOJ encourages its prosecutors to assess:

- ▶ Whether a company has “clear consequence management procedures . . . in place” that it enforces “consistently across the organization, and ensures that the procedures are commensurate with the violations.” Evaluation of Corporate Compliance Programs at 12.
- ▶ “[T]he extent to which the company’s communications convey to its employees that unethical conduct will not be tolerated and will bring swift consequences, regardless of the position or title of the employee who engages in the conduct. See U.S.S.G. § 8B2.1(b)(5)(C).” *Id.*

When evaluating a company’s incentives system specifically, prosecutors are guided to ask:

- ▶ “Has the company considered the impact of its financial rewards and other incentives on compliance?”
- ▶ “How does the company incentivize compliance and ethical behavior?”
- ▶ “Have there been specific examples of actions taken (e.g., promotions or awards denied, compensation recouped or deferred compensation cancelled) as a result of compliance and ethics considerations?”

- ▶ “Who determines the compensation, including bonuses, as well as discipline and promotion of compliance personnel?”

Id. at 13–14, 17.

2. *Assessment*

Based on interviews conducted and documentation reviewed since the Baseline Assessment, the Monitor Team considers that the Company’s approach to incentives and discipline has progressed, and that the Company has demonstrated a sincere commitment to continuing to implement appropriate systems of incentives and discipline beyond the term of the Monitorship.

a. *Incentives*

The Company’s approach to incentivizing compliance has significantly matured since the Baseline Assessment. The Company has not only piloted new programs and enhanced existing policies but has also looked for ways to introduce compliance incentives into employee interactions. These efforts demonstrate how the HRCP has become embedded in Company culture.

i. *Performance Management Program*

At the time of the Baseline Assessment, the Company planned to introduce a performance management system and to develop a compensation philosophy that would address, among other things, HRCP-relevant behavior. As the Monitor Team has emphasized in the past, the DOJ has highlighted the use of “positive incentives” to drive compliance, such as “promotions, rewards, and bonuses for improving and developing a compliance program or demonstrating ethical leadership,” and has noted that some companies have even “made compliance a significant metric for management bonuses” and/or have “made working on compliance a means of career advancement.” Evaluation of Corporate Compliance Programs at 13. A formal performance management program provides one mechanism for a Company to document compliance metrics.

Although the Company’s efforts to launch a formal evaluation program were slowed during the pandemic, during Phase IV, the Company piloted a performance management process for high-level management. Eligible employees were evaluated on five goals, including the ability to exhibit the Company’s culture and values and “behavioral performance,” which included collaboration and leadership (other goals were financial performance, financial influence, and employee engagement). On each goal, employees were rated on a 1-3 scale and managers were then given the opportunity to provide narrative feedback on strengths and accomplishments, and areas needing improvement.

During Phase V, the Company also tested a 360-degree review process in which twenty-three employees across North American properties were reviewed. Interviewees expressed to the Monitor Team that they found the 360-degree reviews generally helpful. The Company has solicited feedback from employees regarding both of these evaluation pilots and has committed to continuing to do so in the future to assist the Company in evaluating the initiatives’ effectiveness as performance management tools. The Monitor Team understands that the Company is committed to continuing to assess these programs and whether and how they can be leveraged to incentivize HRCP-compliant behavior.

ii. *Surveys and Focus Groups*

During the Baseline Assessment period, the Company emphasized its participation in the Great Places to Work survey as a tool to evaluate the health of its HRCP. At the time, the Monitor Team

warned against overreliance on the survey, which was not designed to detect discrimination, harassment, and other HRCP issues and did not include metrics to evaluate issues such as the effectiveness of trainings, employee understanding of what constitutes discrimination and harassment, and retaliation concerns.

In the intervening years, the Company has developed and distributed engagement surveys and conducted focus groups. These efforts have yielded more reliable indicators than Great Places to Work for evaluating not only the effectiveness of the HRCP but also management's commitment to incentivize compliance and a speak up culture. Executive leadership has taken an active role in evaluating these results and in communicating with senior management when results fall below expectations. The Company has demonstrated its commitment to compliance by not only investing the time and resources necessary to develop and conduct the surveys and focus groups but, importantly, also by using the results to communicate expectations back to management.

iii. Employee Recognition

First, the Company continues to recognize employees through the Company's monthly team member recognition program known as STARS. At the time of the Baseline Assessment, recognition was driven by outstanding service to Patrons and did not explicitly value compliance and ethical behavior among colleagues, although programs that reward excellent customer service are well-suited to reward HRCP-compliant behavior. The Company subsequently amended the Employee Recognition Program Policy, which governs STARS, to state that the program is "about recognizing those who consistently show up with a great attitude, work ethic and demonstrate excellence in their role, including but not limited to extraordinary guest service and teamwork and consistency excelling in the standards of behavior associated with our compliance policies."

Second, the Company's *In the Moment* Program encourages employees to "share a story about a time you or your coworker displayed [Wynn's] core values," with entrants offered the chance to win prizes including \$1,000, a stay at Wynn, or a trip to Disneyland. The program also allows leaders to reward employees with a raffle card if they are seen going above and beyond in client service, with raffle card drawings occurring during quarterly Pop Up Events and *In the Moment* program celebrations.

As the Monitor Team has emphasized in the past, the Company should continue to look for ways to reward employees who exemplify the Company's commitments under its Preventing Harassment and Discrimination Policy, including those who contribute "to creating a respectful, courteous work environment free of unlawful harassment or discrimination by any employee, volunteer, vendor, contractor, consultant, agent, guest, customer, or visitor." For example, an employee who ensures guests are treated with respect or an employee who steps in to de-escalate a situation between peers could and should be recognized by the Company.

iv. Employee Relations

At both EBH and WLV, Human Resources, and particularly ER, has embraced its role as an ambassador of the HRCP within the Company. As one member of the ER team said, they are not only expected to know the policies, but also to be "stewards" of the policies. This stewardship is clear in the efforts ER has made to get in front of employees and have positive interactions before a problem arises.

For example, HR has continued to hold compliance Pop Up Events, providing an opportunity for employees to win prizes for participating in events that highlight key HRCP policies. These events provide an opportunity for employees to not only meet key ER personnel but also members of senior

management. These events also allow the Company to showcase both the Company's policies and its general commitment to compliance at all levels within the Company.

In addition, ER counselors have increased the number of pre-shifts that they attend, appearing at hundreds of pre-shifts over the last year. The Monitor Team understands that when attending pre-shifts, ER counselors actively participate, taking the opportunity to highlight key policies and to set expectations for appropriate behavior. In case review meetings, the Monitor Team has observed how counselors apply lessons learned from investigations to pre-shifts and other communications with the department.

b. Discipline

At the time of the Baseline Assessment, the Monitor Team observed that existing policies and procedures, namely the Code of Business Conduct and Ethics, Preventing Harassment and Discrimination Policy, and Progressive Discipline and Performance Policy, could be enhanced to increase their effectiveness in ensuring appropriate enforcement and disciplinary action. Since the Baseline Assessment, all three of these key policies have been revised and relaunched in line with the Monitor Team's Recommendations, as described in Section IV.C., Policies and Procedures. Further, improvements to the Company's internal investigation process have created a strong foundation for ER to apply these policies and make disciplinary recommendations to management.

Changes to the Progressive Discipline and Performance Policy are of particular import to this hallmark. Interviews conducted during the Baseline Assessment demonstrated confusion "as to whether and what disciplinary decisions are actually made by department managers or by HR (including to the exclusion of manager input)." Baseline Assessment at 98. Further, investigative files demonstrated a largely bifurcated approach to discipline leading to either discipline or reinstatement with "little to no middle ground resolutions" involving training or coaching. *Id.* The Progressive Discipline and Performance Policy now addresses these opportunities for enhancement. First, the policy now makes explicit that ER provides "guidance to the departments to ensure consistency in discipline across the company" but that it is department managers and supervisors who "are responsible for ensuring that discipline is imposed impartially and consistently," with the department VP as the final decisionmaker in most cases. Progressive Discipline Policy at 4. The policy also places the responsibility for discipline involving employees at the department VP level or above with the property president, WRL CEO, or the Board. *Id.* Second, the policy now enumerates the range of appropriate discipline available to address misconduct, including two levels of written warnings (the lowest level, issued on a Counseling Notice form, and another that is referred to as a "last and final warning"), to suspension, to termination. *Id.* at 1-4.

During this Phase of review, the Monitor Team spoke with members of management and with the ER team, observed case review meetings conducted at EBH and WLV, and reviewed investigation case files. These monitoring activities highlighted that not only have the policies been amended but the prior confusion leading to the recommended changes has dissipated. The ER teams at both properties regularly recommend a range of discipline and do not hesitate to recommend termination when warranted. The teams also make an effort to ensure consistency in discipline across cases by discussing case and disciplinary action together, considering the outcome of similar prior cases into account, and conducting case review meetings with in-house counsel. And in turn, management is in regular conversation with ER to discuss and implement disciplinary recommendations.

H. Risk-Based Review

Risk assessments are an essential component of an effective compliance program. Following the Baseline Assessment, the Company developed, formalized, and consistently deployed risk assessment procedures designed to identify risks of sexual harassment and discrimination in the Company's operations. These processes are crucial to the Company's ongoing efforts to continue maintaining an effective and appropriately tailored HRCP.

1. Compliance Guidance

The EEOC's 2016 Task Force on the Study of Harassment in the Work Place advises that "[t]he first step for creating a holistic harassment prevention program is for the leadership of an organization to establish a culture of respect in which harassment is not tolerated," EEOC 2016 Report at 79, and suggests that one key step leadership must take "to effectuate and convey a sense of urgency and commitment" to preventing harassment is to assess harassment risk factors and to take steps to minimize those risks. *Id.* at 33. The EEOC 2016 Report provides a preliminary "roadmap" of the types of organizational factors or conditions that employers should assess to determine where within their organization harassment may be more likely to occur. Those factors include, but are not limited to:

- ▶ Workplaces where some employees do not conform to workplace norms;
- ▶ Cultural and language differences in the workplace;
- ▶ Young workers;
- ▶ Workplaces with "high value" employees;
- ▶ Workplaces with significant power disparities;
- ▶ Workplaces that rely on customer service or client satisfaction;
- ▶ Isolated workplaces; and
- ▶ Workplaces that tolerate or encourage alcohol consumption.

The EEOC 2016 Report advises, in addition, that "employers need to maintain 'situational awareness'" of the organizational conditions that exist in their specific workplace. *Id.* at 30.

Like the EEOC, the DOJ emphasizes that risk assessments must be the "starting point" for evaluating "whether a company has a well-designed compliance program . . . to understand the company's business from a commercial perspective, how the company has identified, assessed, and defined its risk profile, and the degree to which the program devotes appropriate scrutiny and resources to the spectrum of risks." Evaluation of Corporate Compliance Programs at 2. According to the DOJ, compliance programs should be "appropriately 'designed to detect [and prevent] the particular types of misconduct most likely to occur in a particular corporation's line of business'" *Id.* Specific factors that companies should consider include "the location of its operations, the industry sector, . . . potential clients and business partners, . . . [and] use of third parties" *Id.* In addition to conducting risk assessments, DOJ urges companies to tailor their compliance programs based on the risk assessment results and ensure "its criteria are 'periodically updated.'" *Id.* at 3.

2. Assessment

The Monitor considers that the Company has designed and implemented appropriate risk-based review procedures and has demonstrated a commitment to continuing its risk-based review efforts after the conclusion of the Monitorship.

During the Monitorship, the Company developed and implemented Internal Audit risk assessment procedures designed to identify HRCP-related risks in its operations and formalized existing physical security risk assessment processes intended to diagnose and mitigate risks of physical harm. This marks a notable shift from the time of the Baseline Assessment when the Monitor Team observed that the Company was not conducting formal HR risk assessments and did not have any processes in place to do so. In the intervening years, the Company has rolled out a comprehensive Internal Audit risk assessment process, which the Company has successfully conducted annually for the last four years, with additional enhancements layered into the risk assessment over time. In addition, the Security Department, which conducts its own physical risk assessments on an as-needed basis and reviews reporting data for trends on a monthly basis, has also added formality to its process by documenting the procedures for such assessments in the Event Safety & Planning Checklist for Wynn Events policy guidance. The Monitor Team commends the Company for its efforts in this space. These enhancements are critical components of a sustainable and effective HRCP. By establishing and formalizing these processes, the Company is poised to timely identify and address changes in its risk profile on an ongoing basis.

a. Internal Audit Risk Assessments

Since the Baseline Assessment, Internal Audit has adopted and repeatedly executed an HRCP risk assessment process designed to identify areas of risk in the Company's operations as well as year-over-year changes and trends in the results. The risk assessment process is undertaken at the direction of the Company's Audit Committee and Compliance Committee and is specifically "conducted to determine whether the policies and procedures Management has implemented provide an effective environment for the Company's [HRCP]." HRCP 2023 Risk Assessment at 1. The risk assessment process is based on a regulatory foundation that includes Title VII of the Civil Rights Act of 1964, guidance from the EEOC and DOJ, and regulations in Nevada and Massachusetts, as well as other states in which WSI operates. *Id.* at 1–3.

Internal Audit's HRCP Risk Assessment process involves both qualitative and quantitative components along with a bottom-up analysis of the particular risk profile for employee groups as it relates to sexual harassment and discrimination. During the risk assessment process, the Internal Audit team reviews HRCP-related desktop data (including on internal misconduct cases, settlements, and claims against the Company) and program developments and enhancements, observes certain HRCP-related meetings and events, including quarterly Compliance and Audit Committee meetings, and conducts walkthrough interviews with personnel with HRCP-related responsibilities. Ultimately, the HRCP Risk Assessment identifies changes to the Company's risk environment, including changes in the risks presented for specific groups of employees, and based on that information, risk ranks the Company's now-341 employee groups into "High," "Medium," and "Low" risk categories. The risk assessment results incorporate a trends analysis reflecting changes in risk ranking as compared to prior years.

The Monitor Team understands that the employee groups that receive a “High”-risk rating then become a focus for risk mitigation initiatives moving forward. Internal Audit presents the final result of each annual risk assessment to both the Compliance and Audit Committees.

In September 2023, Internal Audit completed its fourth annual HRCP Risk Assessment. Based on interviews, the Monitor Team understands that the Company will continue conducting its annual HRCP Risk Assessment and that the risk assessment remains in the Company’s audit plan. Through discussions with Internal Audit personnel, the Monitor Team is pleased to have observed that the HRCP Risk Assessment appears to now be embedded as not only a key component of the Company’s HRCP, but critically a fixture of Internal Audit’s annual testing activities. Interviewees expressed their support for the risk assessment process to the Monitor Team. This will be a crucial resource to the Company as the Company independently strives to continuously improve its HRCP.

b. Physical Security Risk Assessments

The Company’s Security Department is responsible for conducting risk assessments on which the Company’s physical security plans are primarily based. In the Baseline Assessment, the Monitor Team observed that while the Company’s Security Department was experienced in conducting such physical risk assessments, the procedures were not formally documented. The Monitor Team therefore recommended that the Company document the Security Department’s risk assessment procedures for identifying conditions that could expose employees to physical harm, including sexual assault. During the course of the Monitorship, the Security Department formalized its physical security risk assessment procedures and continued to carry out the assessments on a periodic basis.

As noted in prior reports, the physical security risk assessment procedures involve a physical inspection of both EBH and WLV properties, with a focus on new venues, and an analysis of trends arising from security incident reports logged in the Company’s security incident management tool, iTrack. During Phase V, Security Department leadership continued to emphasize the Company’s commitment to conducting physical risk assessments and implementing measures to mitigate the risks identified. The Security Department at EBH was able to share with the Monitor Team specific examples of actions taken in order to mitigate observed risks, and how learnings are shared among the properties. Given the sensitivity of physical security processes, the Monitor Team will not discuss those examples here. However, the Monitor considers that the examples provided reflect a keen understanding by the Security Department of where and how harassment and discrimination risks may present themselves and a sincere commitment to address those risks through focused training of Security personnel and investment in physical security measures designed to ensure employee and Patron safety. The Monitor Team commends the Company for its efforts to identify and mitigate potential threats.

I. Monitoring and Testing

At the start of the Monitorship, Wynn Resorts had systems in place for monitoring and testing regulatory compliance as required by its Compliance Plan but had not extended monitoring or testing efforts to HR procedures more broadly. Over the last four-and-a-half years, however, the Company has developed and implemented various monitoring procedures to assess the effectiveness of the overall HRCP and of specific program components. Central to these efforts is the annual HRCP Risk Assessment conducted by Internal Audit as part of its annual reporting, also discussed in Section IV.H., Risk-Based Review, above. The Company has undertaken various other efforts to monitor program components on an ongoing basis.

1. Compliance Guidance

In its 2016 Report, the EEOC states that “an organization must have *effective policies and procedures* and must conduct *effective trainings* on those policies and procedures.” EEOC 2016 Report at 33. Stressing the importance of monitoring and testing, EEOC add that “[s]uch systems must be periodically tested to ensure that they are effective.” *Id.* While the EEOC does not prescribe specific monitoring activities, the 2016 provides recommendations of what companies can do. For example, the EEOC recommends that companies conduct climate surveys “to assess the extent to which harassment is a problem in their organization,” *id.* at 37, and that they “periodically ‘test’ their reporting system to determine how well the system is working,” *id.* at 43, and to test the effectiveness of training. *Id.* at 33.

Similarly, DOJ Guidance highlights that “[o]ne hallmark of an effective compliance program is its capacity to improve and evolve.” Evaluation of Corporate Compliance Programs at 15. In evaluating compliance programs, the DOJ asks “whether the company has engaged in meaningful efforts to review its compliance program and ensure that it is not stale.” *Id.* Specifically, the DOJ considers whether a company has taken “reasonable steps” to ensure that its compliance policies and procedures are followed, “including monitoring and auditing” and periodically evaluating “the effectiveness of the organization’s program.” *Id.*

In its updated 2023 DOJ Guidance, the identifies four elements of effective monitoring: Internal Audit, Control Testing, Evolving Updates, and Culture of Compliance, and identifies specific questions that it asks when evaluating corporate compliance programs under these elements. For instance, the DOJ asks the process for determining where and how internal audit undertakes an audit and what the rationale is behind the process. *Id.* It also asks whether audit relevant findings and remediation are reported to management and the board on a regular basis and how management and the board have followed up. *Id.* at 15–16. In addition to monitoring, the DOJ expects companies to “review and adapt its compliance program based upon lessons learned” and to measure its culture of compliance based on “input from all levels” of the organization. *Id.* at 16.

2. Assessment

Based on interviews conducted and documentation reviewed during Phase V, the Monitor considers that the Company has designed and implemented appropriate monitoring and testing procedures and has demonstrated a commitment to sustaining its efforts beyond the term of the Monitorship.

Significantly building upon its pre-Monitorship efforts, today the Company operates cross-functional and layered monitoring processes that allow for both on-going and periodic assessment of the Company’s HRCP risk profile and of the effectiveness of the HRCP to address those risks. Internal Audit conducts an annual HRCP Risk Assessment and Program Assessment that tests all components of the HRCP. The Security Department has included HRCP risks into its own periodic physical security assessments. On an on-going basis, Legal, ER, and Security carry out various department-specific monitoring exercises, including by holding cross-functional meetings to review and discuss open investigations and cases. Together, these efforts have improved the Company’s ability to conduct more in-depth and nuanced analyses of risks, trends, and other information critical to evaluating whether the HRCP functions as intended.

a. Periodic Monitoring

During the course of the Monitorship, the Company has developed and implemented periodic and ongoing monitoring procedures that have significantly enhanced the Company's ability to evaluate formally the effectiveness of its HRCP generally and program components specifically. These procedures include: annual Internal Audit HRCP Risk Assessments, Security Department monitoring process, quarterly HRCP reports to the Compliance Committee, and biennial employee surveys and focus groups. The resources and time dedicated to these procedures reflect a sincere commitment by the Company to the continuing enhancement and maturing of the HRCP.

i. Annual Monitoring by Internal Audit

At the time of the Baseline Assessment, Internal Audit monitored only certain aspects of the Company's HRCP: InTouch Hotline Administration; staff training; payroll; procedures for updating, codifying, and disseminating the HR policies; and review of Company communications. Baseline Assessment at 106–07. At the time, Internal Audit sought to confirm that “what [the Company says] is happening is really happening,” but did not assess whether the HRCP effectively mitigated harassment and discrimination risks. *Id.* at 107. That is no longer the case.

Internal Audit has enhanced and matured its monitoring and testing procedures into a comprehensive HRCP Program Assessment that encompasses all components of the HRCP tested by the Monitor Team.²³ Rather than just confirm what is “really happening,” the Internal Audit process now seeks “to determine whether the policies and procedures Management has implemented provide an effective environment of the Company's [HRCP].” HRCP 2023 Risk Assessment at 1. To that end, Internal Audit evaluates the current design of the HRCP against applicable regulatory guidance,²⁴ including guidance from the EEOC and DOJ relied upon by the Monitor Team in its reports.

The assessment process carried out by Internal Audit is comprehensive, risk-based, and in line with audit procedures commonly used by companies to monitor and test key internal controls. The Wynn Resorts Internal Audit process begins with a review of the Company's policy framework, focusing on “how the Company addresses various environment risks” and how those policies are “reviewed and amended or supplemented with new policies and as part of a continuous Company process.” HRCP 2023 Risk Assessment at 5. Internal Audit also relies on steps taken by the Company itself to evaluate the effectiveness of the HRCP. For example, the HRCP 2023 Risk Assessment notes that the Company has instituted various self-assessment procedures to monitor and assess the effectiveness of the Program on an on-going basis. *Id.* at 6. Those self-assessment procedures have been incorporated into the HRCP methodologies employed by Internal Audit. During the HRCP testing, Internal Audit also holds meetings with key Company stakeholders to confirm its understanding of the implementation of applicable policies and to verify risk factors. *Id.* at 17. Internal Audit also participates in “monthly and quarterly

²³ (1) Culture of Compliance and Conduct at the Top; (2) Authority, Oversight, and Independence; (3) Policies and Procedures; (4) Third Party Relationships; (5) Training and Guidance; (6) Internal Reporting and Investigation; (7) Incentives and Discipline; (8) Risk Based Reviews; (9) Monitoring and Testing; and (10) Controls Environment.

²⁴ Title VII of the Civil Rights Act of 1964; U.S. Equal Employment Opportunity Commission: June 2016—Select Force on the Study of Harassment in the Workplace; U.S. Department of Justice: June 2020—Evaluation of Corporate Compliance Programs (Updated March 2023); Nevada Gaming Commission (“NGC”) Regulations 5.250; MCAD; and various state laws applicable to Wynn Sports Interactive (NJ, CO, MI, VA, IN, TN, AZ, NY, LA, W. VA).

compliance, financial, and other operations meetings” and observes “general corporate ‘culture’ or ‘tone at the top’ on a variety of subjects, which includes certain HR topics.” *Id.*

In Phase V, in addition to reviewing the HRCP 2023 Risk Assessment report, the Monitor Team also reviewed Internal Audit workpapers, which gave the Monitor Team visibility into the breadth and scope of the Internal Audit review. The reviewed papers reflect an audit trail designed to test compliance with all components of the HRCP. Given the importance of monitoring procedures, the Monitor Team summarizes key observations below:

- ▶ **Policies and Procedures:** Internal Audit workpapers identify all HRCP policies in place at EBH and WLV and reflect Internal Audit testing to ensure that all effective policies appeared on the EBH and WLV wires.²⁵ The HRCP 2023 Risk Assessment identified three policies included in the WLV Wire that were not included in the EBH Wire and recommended correction. The three policies identified were Employee Patronization, Personal Safety, and Safety Button. All three policies have been reviewed and tailored to EBH’s ways of working and added to the EBH Wire.
- ▶ **Training and Guidance:** Internal Audit workpapers reflect a comprehensive review of all formal training and communication activities undertaken by the Company at each business unit (EBH, WLV, WRL, and WDD). Each activity (e.g., Employee Communication, Annual Training) is identified by a control reference identifier and identifies the control testing activity that Internal Audit carries out. The HRCP 2023 Risk Assessment contains training completion rates by property and by department, as of the date of the report and evidence of communications sent to Directors and above reminding them that, “As previously communicated, any team members who did not complete their annual compliance trainings by [the deadline] are to be placed on ‘suspension’ . . . pending completion of their training.” The HRCP 2023 Risk Assessment also summarizes all planned HRCP communications and evidence identified that the communication was implemented as planned. Finally, the HRCP 2023 Risk Assessment reflects confirmation by Internal Audit samples files of new hires at both properties to ensure that they have completed all New Hire Orientation training related to the HRCP as well as received and acknowledged HRCP policies, such as the Code of Business Conduct and Ethics and the Preventing Harassment and Discrimination Policy.
- ▶ **Third Party Relationships:** Wynn has implemented three key controls to mitigate harassment and discrimination risks posed by third parties, including Patrons: (1) issuing safety buttons to guest-facing employees in high-risk positions; (2) enhancing vendor onboarding by including “material derogatory information” in EBH and WLV vendor background checks;²⁶ and (3) ensuring that all vendors receive the Company’s Preventing Harassment and Discrimination Policy. Internal Audit tested each of these controls at both properties and identified no gaps in 2023.
- ▶ **Monitoring and Testing:** As noted above, during Phase V, the Company implemented self-assessment procedures that allow it to monitor and assess the HRCP on an ongoing basis. Internal Audit identified thirteen separate monitoring controls implemented by management across EBH and WLV in addition to the Risk Assessment and Program

²⁵ Per interviews and the 2023 Risk Assessment, the WLV wire includes WRL.

²⁶ [REDACTED]

assessments conducted by Internal Audit. The Monitor Team will discuss those controls separately below but summarizes them here for completeness: (1) EBH compliance training completion reporting; (2) WLV compliance training completion reporting; (3) monthly policy review meetings and updates; (4) EBH employee focus groups; (5) WLV employee focus groups; (6) EBH annual employee communication plan execution; (7) WLV annual employee communication plan execution; (8) EBH ER SH&SA Investigation Case File Checklist; (9) WLV ER SH&SA Investigation Case File Checklist; (10) EBH settlement approval form; (11) WLV settlement approval form; (12) WRL Compliance Committee – Quarterly Reporting; and (13) WRL Audit Committee – Quarterly Reporting.

- ▶ Internal Reporting and Investigations: Internal Audit’s Program Assessment tests critical aspects of the Company’s Internal Reporting and Investigations policy and procedures. Through a sampling of files, Internal Audit conducts the following tests:
 - Anonymous Complaints (Test 1): Internal Audit tests the intake and handling of anonymous complaints, including confirming that the case lead informs a complainant (if possible) that the Company will keep their identity from being determined, but that it might become apparent in the course of the investigation and that full confidentiality may not be assured.
 - Wynn Resorts Executive Officers (Test 2): Internal Audit tests compliance with all sections of the Company’s Board and Management Communications Policy, which requires implementation of specific procedures when the Company receives a complaint against a Wynn Resorts’ Executive “that might jeopardize the reputation of the company, including but not limited to allegations of sexual, financial or other misconduct.”
 - Case File Records (Test 3): Internal Audit tests that each investigation file contains the required documentation. Notably, the results of this test in 2023 resulted in immediate modification of how the Company manages case closures. As noted in Section IV.F., Internal Reporting and Investigation, the Monitor Team has reviewed the modified procedures and considers the new procedure to be appropriate and better suited for the Company’s operations.
 - Investigation Guidelines (Test 4): Under Test 4, Internal Audit tests the timeframe within which investigations are conducted and whether case leads follow up with the complainant following investigation closure. In the Baseline Assessment, the Monitor Team reported that while the Company strived for timely response to complaints, investigations generally took longer than the Company preferred. Focus group feedback at the time, reflected frustration from employees, which, if left unaddressed, could have impacted employee trust in the investigation process. The Monitor Team, therefore, considers Test 4 to be an important monitoring tool to help the Company continue to evaluate its efforts and progress on ensuring timely responses to employee complaints. At the same time, as noted in Section IV.F., Internal Reporting and Investigation, the Monitor Team notes that the Investigations Policy has been amended to allow deviations from the policy under the guidance of the WRL GC. The Monitor Team understands from interviews that in some cases, the timeframes set out in the Investigations Policy may be unreasonable. The Monitor Team observes that requiring

consultation with in-house counsel on this point provides a good check on this amendment.

- Notice of Reportable Claims (Test 5): The Company’s investigation procedures require reporting to Security of all claims of sexual harassment and sexual misconduct by third parties on the premises. That report triggers immediate logging of the incident in iTrack and ensures that Legal, ER, and property level Executives receive the report within 48 hours of the Complaint. Internal Audit tests compliance with those reporting requirements and tests the accuracy of the classification of reports.
- Independent Investigation (Test 6): To be effective, an investigation must be independent. To that end, the Company’s investigation procedures require that the Lead Investigator be independent from the Charged Party or the Charged Party’s Department. Internal Audit reviews case files to ensure compliance with this requirement. Given the events leading up to the Monitorship, as well as observations made by the Monitor Team in our Phase IV Report, testing for independence in investigations must be considered a critical control for Internal Audit.

Overall, the Monitor considers that the monitoring and testing conducted by Internal Audit is appropriately designed to test the effectiveness of the HRCP and of its component parts and is essential to ensuring the sustainability of the HRCP itself. Importantly, based on interviews and careful review of the HRCP Internal Audit plan and workpapers, the Monitor is confident that this critical element of the HRCP is fully embedded in the Company’s processes. Moreover, through interviews with the Monitor Team, Board members, Compliance Committee members, and Executive Leadership have all expressed strong support for the Internal Audit process and an appreciation for the value of the information provided by the HRCP Risk Assessment and HRCP Program Assessment. Indeed, the Internal Audit lead told the Monitor that “Management has always been behind internal audit” and reported full cooperation across the Company on requests related to the HRCP Risk Assessment.

ii. Periodic Monitoring by ER

There is no more direct way to monitor and test the effectiveness of the HRCP than through the feedback of the employees who it is designed to protect. At the start of the Monitorship, the Monitor Team conducted surveys and focus groups at EBH and WLV designed to gauge employee understanding and perceptions of the various components of the HRCP. Since then, ER has continued those efforts by holding seventeen employee focus groups at EBH and twelve at WLV to assess employee perception of Culture of Compliance, policies and procedures, internal reporting, and Wynn’s overall response to issues of harassment and discrimination.

As reported in our Phase IV report, the Company conducted focus groups in May 2022 and again in May 2023. The Monitor Team reviewed the focus group plans, questions, memorandum to Company leaders, and the results of the focus groups. The Monitor considers that the design and implementation of the surveys and focus groups are appropriately scoped to obtain employee feedback on the HRCP components most relevant to the Company’s assessment of the effectiveness of the employee-facing elements of the HRCP, including commitment by the organization to respond to issues of sexual harassment and discrimination.

In addition to obtaining employee feedback from focus groups, in exit interview questionnaires the Company asks exiting employees their level of agreement (from strongly disagree to strongly agree) with the following statements:

- ▶ If I had questions or concerns, I felt comfortable speaking with my immediate supervisor
- ▶ If I had questions or concerns, I felt comfortable speaking with upper management
- ▶ If I had questions or concerns, I felt comfortable speaking with my Human Resources
- ▶ If believed I was being harassed or discriminated against, I was knowledgeable of the process for reporting those concerns
- ▶ Employee problems and complaints were resolved fairly and promptly

The Monitor Team reviewed responses from twenty exiting employees (ten from EBH and ten from WLV). Of all responses, only one employee registered disagreement (in response to the question regarding fair and prompt resolution of complaints). The enhancement to the exit interviews will serve as an important monitoring tool and reflect the Company’s creativity in leveraging existing processes to enhance the HRCP.

b. Ongoing Monitoring

In addition to the periodic monitoring and testing conducted by Internal Audit and Security, other areas of the Company have developed and implemented their own monitoring procedures. Those efforts indicate increasing maturity of the HRCP as well as ownership and accountability by areas of the Company responsible for driving the success of the HRCP.

i. Employee Relations

As the primary owners of the HRCP, ER plays a critical role in the long-term success of the HRCP, not only through continued implementation of the Program components, but also through the continued monitoring and enhancement of those components. At the time of the Baseline Assessment, ER monitoring efforts focused primarily on review of sexual harassment and discrimination complaints to ensure immediate reporting to Legal and external counsel and on monitoring the completion of the Company’s annual trainings. ER also periodically conducted culture surveys through *Great Places to Work*. Since the Baseline Assessment, ER has deepened its monitoring efforts of those areas and broadened its monitoring efforts to cover other components of the HRCP.

(a) Monitoring of Sexual Harassment and Discrimination Allegations

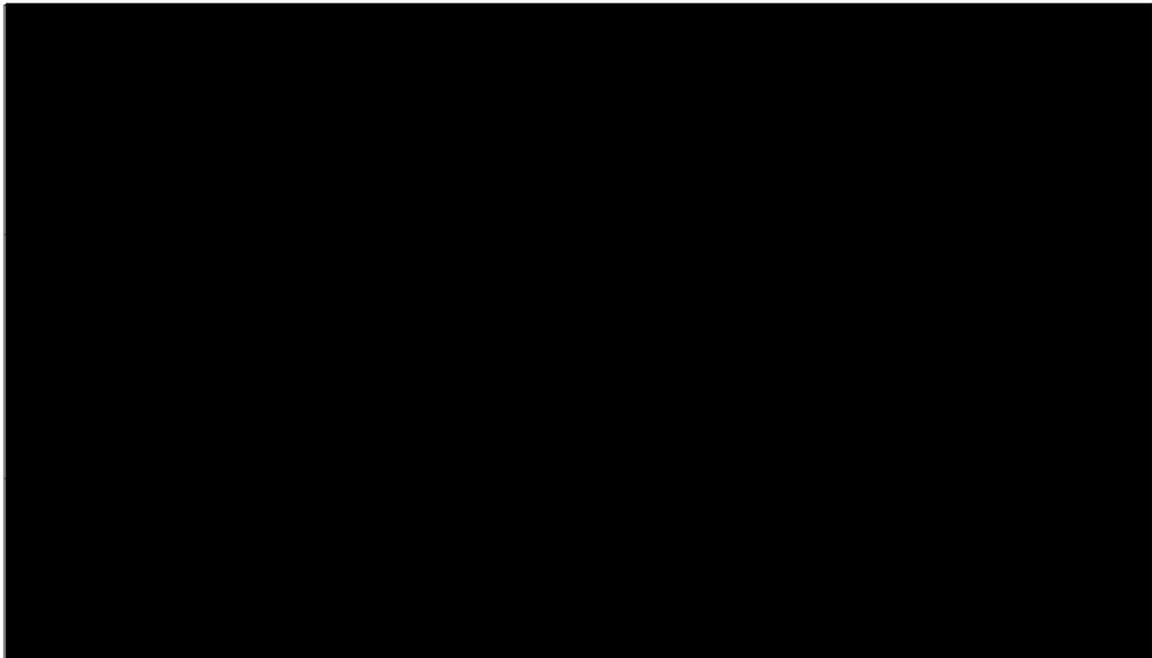
Since the Baseline Assessment, ER has significantly enhanced its monitoring of sexual harassment and discrimination allegations, supplementing its practice of submitting weekly reports of all sexual harassment allegations for review by the GC with the aggregation of data that allows for analysis of trends across a variety of categories.

In the Baseline Assessment, the Monitor Team commended the Company for the attention it provided to sexual harassment allegations but questioned “whether the burden placed on HR by the weekly reports jeopardizes the sustainability of this monitoring exercise.” Baseline Assessment at 104. The Monitor Team recommended that the Company consider streamlining the escalation of sexual harassment claims to the GC and focus on developing “a monitoring protocol that will facilitate identification of data and trends.” Baseline Assessment at 105.

Since the Baseline Assessment and as discussed above in Section IV.F., Internal Reporting and Investigation, ER continues its practice of submitting bi-weekly reports to the WRL GC, in addition to the

quarterly reports submitted to the Compliance Committee. Indeed, under the Investigations Policy, allegations of sexual harassment, sexual assault, or other misconduct must be reported on a bi-weekly basis to not only the WRL GC but also to the relevant property GC, and outside employment counsel. Through interviews and ongoing observation of the reporting practice, the Monitor Team’s concerns as expressed in the Baseline Assessment have been alleviated. ER has refined its reporting process and interviews conducted with management and the Compliance Committee indicate that the Company continues to consider these reporting obligations in a way that demonstrates a risk-based approach.

ER has developed a monitoring protocol consistent with the Monitor Team’s expectations and Baseline Recommendations—namely, monitoring that facilitates identification of Company- and property-wide data and trends and allows the Company to look beyond individual cases to trends and patterns that could signal programmatic issues that warrant review and remediation. ER now includes those trends reports in its quarterly submissions to the Compliance Committee. For example, the report submitted to the Compliance Committee for the First Quarter of 2024 includes data showing the number of cases reported at EBH related to Sexual Assault, Sexual Harassment, Sexual Misconduct, and Harassment/Discrimination/Retaliation over three quarters:



Similar data was provided for reports in the same categories at WLV:



As noted in Section IV.B., Proper Authority, Oversight, and Independence, the use of this data has enhanced Compliance Committee discussions by allowing members of the Compliance Committee to better understand trends, and, by extension, the Company's evolving risk profile.

Most recently, ER developed and will soon roll out an HRCF-focused compliance dashboard for the Company and the Compliance Committee to monitor its risk profile across various areas, such as internal reports by division and by quarter, employment and labor claims filed with Federal and State agencies, and employee turnover. Based on interviews, the Monitor Team understands that the primary goal of the compliance dashboard will be to further enhance the data available to the Compliance Committee. However, this tool can also serve to provide the HR and ER teams and operations real-time access to key indicators of HRCF risks. The Monitor Team was able to observe the EVP HR WRL's presentation to the Compliance Committee regarding the dashboard and the resulting robust discussion that took place at the Committee regarding the data captured in, and the presentation of, the dashboard. The Monitor Team commends the Company, in particular the HR department, for its diligent effort to design the compliance dashboard. In the Monitor's view, the development of this dashboard not only reflects a significant development in the maturity of the HRCF, but also indicates a sincere commitment to sustainability and continuous improvement of the HRCF.

(b) **Monitoring Training Participation and Training Effectiveness**

Companies often struggle to ensure that training remains relevant and effective to employees and to ensure compliance with training expectations. Since before the Monitorship began, Wynn had processes in place to ensure compliance with mandatory trainings. The Company has continued those efforts through today. Reinforcing its commitment to an effective training program, the Company has implemented processes to monitor and test the effectiveness of its training program. Those efforts are

discussed in detail in Section IV.E., Training and Guidance, but for completeness, the Monitor Team highlights key examples here. For instance, the Company has incorporated knowledge quizzes at the end of certain online trainings designed to test employee understanding of core aspects of HRCP policies and procedures. Through its compliance Pop Up Events, the Company not only incentivizes learning; it also uses those interactions to test how well employees know specific policies. As a next step in the ongoing enhancement of its training program, the Company can identify ways to track the results from knowledge quizzes to develop messaging targeting aspects of policies with which employees may be less familiar.

ii. Corporate Security

Corporate Security has and continues to play a central role in the Company's ability to respond to sexual harassment and discrimination risks, but also in monitoring trends relevant to the overall assessment of the HRCP.

In past reports, the Monitor Team has discussed the iTrack system used by the Security Department to monitor security incidents, including incidents related to sexual harassment, assault, other sexual misconduct, as well as discrimination. Since the Baseline Assessment, the Security Department has implemented important enhancements to iTrack, all of which are designed to streamline monitoring efforts. As reported in prior reports, the Security Department has worked hard to update how it classifies incidents of sexual harassment, assault, and other sexual misconduct to ensure greater uniformity and classification and handling of sexual harassment, assault, and other sexual misconduct. This change, though perhaps simple, has and will have a meaningful impact on the Company's ability to monitor and respond to trends across both properties.

Most recently, the Security Department implemented an upgrade to its iTrack system. Based on interviews, the Monitor Team understands the system is now web-based and allows for more robust, user-defined data tracking that allows the Company to run reports based on Wynn-specific data fields. Despite these enhancements, the Security Department continues to look for additional monitoring functionalities such as dashboards that allow for real-time and automated statistical reporting.

Finally, from interviews, the Monitor Team learned that the Security Department holds weekly operations meetings at WLV that are attended by the Director of ER. Those meetings provide Security investigators the opportunity to discuss ongoing cases and allow for cross-functional discussions between Security and ER. In addition, Security holds periodic meetings that include the WRL GC and "every attorney on property" to "talk about things that touch [the Legal and Security] worlds." The Director of ER also attends those meetings. The Monitor considers this a strong practice that will not only enable cross-functional knowledge sharing, but also cross-functional monitoring of incidents and cases reported at WLV. While EBH is not currently holding cross-functional meetings with the same level of formality, interviews with ER, Legal, and Corporate Security at EBH reflect a high level of interaction and collaboration on cases and incidents related to sexual harassment and misconduct as well as discrimination. In addition, at EBH, Security communicates with Legal and HR daily about pending cases as they arise in real time. Legal subsequently reviews security reports and sends reports involving employees to HR for follow up.

Successful design and implementation of monitoring and testing processes is a hallmark of a maturing compliance program. For that reason, it has been a focus of the Monitor Team in recent years. The Monitor considers that the monitoring and testing systems currently in place at the Company are

appropriately designed not only to promote the sustainability of the HRCP as well as its continued evolution.

J. Controls Environment

The Monitor Team assessed the Company's controls environment as it relates to risks identified in the MGC's Decision and Order, specifically with respect to the use of confidentiality clauses, conflicts of interest, and approval of employee settlements. At the time of the Baseline Assessment, the Company had taken steps to prohibit the use of overly restrictive confidentiality clauses in settlement agreements, including provisions that would restrict a claimant from discussing factual allegations underlying claims of sexual harassment or sexual offenses. The Monitor Team observed opportunities for the Company to enhance its separation and settlement agreements and the review and approval of those agreements and made specific recommendations to address those opportunities. Those improvements play a critical role in mitigating the risks identified in the MGC's Decision and Order as it relates to the prior use of overly restrictive confidentiality provisions or gag orders, as discussed in Section IV.F., Internal Reporting and Investigations.

Similarly, the Company adopted practices to avoid conflicts of interest arising from the engagement of external counsel. The Monitor Team also observed opportunities for strengthening the procedures governing the engagement of external counsel and made recommendations in that regard. The Company promptly and successfully implemented the Recommendations made in the Baseline Assessment and subsequent reports. Those changes are designed to mitigate the risk that Wynn Executives or other personnel engage the Company's external counsel to advise on personal matters.

Recently, the Company made three additional enhancements to its control environment as it relates to settlements with employees. The Monitor Team reviews those updates below and commends the Company for the initiative demonstrated through its independent design and implementation of those controls.

1. Compliance Guidance

MGC regulations require Wynn Resorts to maintain a controls environment governed by the Massachusetts Uniform Standards of Accounting Procedures and Internal Controls, 205 Mass. Code Regs. 138 ("Code 205").

Those controls, first and foremost, ensure financial and accounting integrity of the licensee. However, viewed more broadly and as reviewed by the Monitor Team, they create a foundation for a corporate governance structure designed to safeguard the adherence to the licensee's policies and procedures and the execution of transactions in accordance with management authority.

2. Assessment

As noted above, in earlier Phases of the Monitorship, the Company implemented important controls governing the initiation, review, and approval of Settlement and Separation Agreements, as well as the retention of outside counsel. Some of the key enhancements include: (1) updating all template Settlement and Separation Agreements to ensure that employees are not barred from bringing claims of sexual harassment or sexual offenses and from discussing factual allegations underlying those claims; (2) requiring any settlement of a Wynn-related matter involving allegations of sexual assault, harassment, or discrimination to be approved in writing by the WRL GC as well as the President of WRL or the Company affiliate entering into the settlement; and (3) requiring the retention of outside counsel

by individual executives to be approved in writing by the WRL GC or relevant affiliate GC. As noted above, these controls directly respond to risks identified in the MGC's Decision and Order, specifically the risk of a Company executive hiring the Company's external counsel to represent them in their personal capacity.

During Phase V, the Monitor Team learned that the Company implemented three additional controls that further mitigate the risks identified by the MGC and demonstrate to the Monitor Team that the Company takes seriously and thinks independently about its controls environment: (1) a "Settlement Approval" form; (2) the addition of a third signatory to the settlement approval process; and (3) the expansion of the definition of Material Settlement.

Although the Company already required dual approval of all settlements related to sexual harassment and discrimination, those approvals were typically obtained via email correspondence that included an overview of the underlying matter and settlement terms. Today, the Company has implemented the use of a template "Settlement Approval" form that requires a summary of the dispute and the financial terms of an agreement in a more uniform manner, as well as adding a third signatory. Based on interviews and document review, the Monitor Team has confirmed that the Settlement Approval accompanies every settlement of an employment-related dispute. The Monitor Team reviewed several examples of completed forms and was pleased with the level of detail the forms contained. Importantly, the forms reviewed by the Monitor Team included a detailed explanation of the basis for the recommended settlement value of the claim. The forms reviewed all included settlement of claims of sexual harassment. Each form reviewed contained three signatures: (1) the legal counsel seeking approval; (2) the WRL GC; and (3) WRL CFO following an attestation that "[t]he following have reviewed this cover sheet and approve settlement under the financial terms described above."

In addition, the Company's Compliance Plan requires that the "General Counsel and the general counsel of each Affiliate shall provide a quarterly report to the Compliance Officer summarizing all Material Settlements made by the Company in the prior quarter" and that the CGCO provide Material Settlement information to the Compliance Committee on a quarterly basis. Recently, the Company expanded the definition of Material Settlements to include:

any (i) settlement of any Material Litigation or Human Resource Complaint to which the Company is either a party to, or responsible for the payments, either directly or indirectly, thereunder, and (ii) any employment separation agreement that requires a payment to an employee in excess of the Company's policies and procedures or the employee's written employment agreement.

When discussing this change with the Monitor Team, one interviewee confirmed that if "we're going above or settling something with an employee who doesn't have a contract, that is all part of the material" that goes to the Compliance Committee. The interviewee added, "you asked us to think about gaps. To me, one of the gaps is, the Monitor Team could be paying employees \$1M to go away, and it's not reported."

The Monitor considers these three enhancements to be critical controls over employment-related settlement agreements as well as an indication that the Company is internalizing the principles underlying the HRCP, specifically the importance of instituting practices for self-governance. Notably, these procedures create auditable processes for ongoing monitoring by Internal Audit, thereby further

embedding the procedures into the Company's controls environment and supporting their sustainability.

V. CONCLUSION

The Decision and Order instructs the Monitor to evaluate and report to the Commission "on the effectiveness of the Company's policies, practices and programs," Decision and Order at 51, related to the Company's HRCP, as well as the structure and effectiveness of the Company's governing bodies, including the Board of Directors, the Compliance Committee, and the Audit Committee. *Id.* Under the Decision and Order, the MGC charged the Monitor with making recommendations to the Company as necessary "to correct any deficiencies identified through [the] baseline assessment" and "such additional recommendations to the Company that the [M]onitor deems appropriate on an ongoing basis over the course of its engagement." *Id.*

The Monitor evaluated the Company's HRCP and issued a total of 103 Recommendations, as well as formal and informal observations, designed to enhance the Company's HRCP and to mitigate the risk that issues identified by the MGC would recur.

As reported above, the Company has satisfied the Monitor's Recommendations and implemented an HRCP framework considered by the Monitor to be necessary to correct the deficiencies identified in the MGC's Decision and Order, the Baseline Assessment, and subsequent Phases. Importantly, the Company through its leadership has demonstrated to the Monitor a sincere commitment to maintain its HRCP and to continue to promote the values and principles that underlie it. Indeed, the Monitor has already seen evidence of the Company looking beyond the Recommendations and, through its own initiative, identifying opportunities to build up and strengthen the firm foundation laid during the Monitorship.