**IN THE SUPREME COURT OF THE STATE OF NEVADA**

KAZUO OKADA,

Petitioner-Defendant,

vs.

EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for Clark County; THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

WYNN RESORTS, LIMITED, a Nevada corporation,

Real Party in Interest,

Case Number:

District Court Case Number: A-12-656710-B



**PETITION FOR WRIT OF PROHIBITION OR MANDAMUS**

**RELIEF IS REQUESTED ON OR BEFORE JULY 10, 2015**

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## RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons or entities as described in Nev. R. App. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioner-Defendant Kazuo Okada is an individual.

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## I. INTRODUCTION AND RELIEF SOUGHT

This petition is necessitated by the district court's erroneous denial of Petitioner-Defendant Kazuo Okada's Motion for Protective Order – an error that cannot be corrected by post-judgment appeal. Mr. Okada, a resident of Hong Kong, sought relief from a Notice of Deposition served by Plaintiff Wynn Resorts, Limited that purports to require Mr. Okada to appear for a 10-day deposition in Las Vegas beginning on July 20. APP0115-117. The district court's denial of the motion was not based on controlling authority or a careful balancing of the relevant facts within the framework set by the law; rather, it was based on the district court's application of two manifestly improper legal principles.

*First*, as to the location of the deposition, the district court stated that "[i]t's presumed the defendant will appear for deposition in the state of Nevada" and that "I have not been convinced to depart from my general rule, [which] is that the defendant shows up and for a corporation one 30(b)(6) shows up in the state of Nevada." APP0351; APP0361. But the district court's "general rule" is not the law – in fact, it is directly contrary to the law. Although this Court has never addressed the question, case law from across the country uniformly holds that the deposition of a foreign defendant is presumed to be located near the defendant's

residence because defendants, unlike plaintiffs, do not choose the forum of the action. The Nevada Civil Practice Manual endorses this presumption as well.

*Second*, as to the length of the deposition, the district court rejected out of hand NRCP 30(d)(1), which plainly provides that depositions are presumptively limited to one day of seven hours. Instead, the district court stated that the "one day rule hasn't applied in my court since it passed. I've suspended it in every case." APP0349. The district court's disregard for the applicable rules caused it to acquiesce in Plaintiff's demand for a 10-day deposition, which appears to be unprecedented in any reported judicial opinion. But the district court is not free to reject the Rules of Civil Procedure adopted by this Court simply because it does not agree with them. A proper application of the principle embodied in Rule 30(d)(1) that deposition time should be minimized rather than maximized would have led the district court to order that the deposition proceed for far less than 10 days.

The district court's legal rulings were not only clearly erroneous, they require extraordinary relief via a writ of prohibition or mandamus because they cannot be corrected by post-judgment appeal. Without issuance of a writ, Mr. Okada will be required to attend the 10-day deposition in Las Vegas beginning on July 20. At that point, the harm from the district court's misapplication of the governing legal principles will be complete and incurable. The only possible

means of correcting the district court's legal errors is by immediate issuance of a writ by this Court.

Writ relief is also necessary because the district court's application of the wrong rule regarding deposition location, and its outright refusal to apply the rule promulgated by this Court regarding deposition length, are egregious. This Court should clarify the proper rules in order to promote judicial economy and sound administration in future cases, particularly given the frequency with which trial courts in this State are faced with disputes involving foreign parties.

Accordingly, Mr. Okada respectfully requests that this Court issue a writ of prohibition or mandamus, vacate the district court's erroneous denial of his Motion for Protective Order, and instruct the district court to resolve that Motion based on the correct legal standards.

## II. ISSUES PRESENTED

1. Whether the district court erred by applying a presumption that a foreign defendant must appear for his deposition in Nevada.

2. Whether the district court erred by refusing to apply NRCP 30(d)(1) or to require the party seeking a 10-day deposition to justify its extraordinary request.

## III. STATEMENT OF UNDISPUTED FACTS

### A. The Underlying Litigation

Plaintiff Wynn Resorts, Limited ("WRL") initiated this action by filing a complaint naming as defendants Petitioner Kazuo Okada and two affiliated companies, Universal Entertainment Corporation ("UEC") and Aruze USA, Inc. ("Aruze") on February 19, 2012. APP0001. In its now-operative pleading, WRL alleges that Mr. Okada breached his fiduciary duties as a Director of WRL through purportedly improper conduct in Asia. APP0018-21. WRL claims that UEC and Aruze aided and abetted the alleged breach of fiduciary duty, and it seeks judicial ratification for WRL's extraordinary forced "redemption" of Aruze's nearly $3 billion of WRL stock in return for a far less valuable promissory note. APP0021-24.

Pursuant to NRCP 13(a), the Defendants were then required to assert all related claims they held against WRL as counterclaims. Aruze and UEC have done so, but Mr. Okada himself has not asserted any counterclaims. APP0027. As a result, WRL is a Plaintiff and Counter-defendant, Aruze and UEC are Defendants and Counter-claimants, and Mr. Okada is only a Defendant.

The parties are currently engaged in discovery, which is scheduled to continue through August 1, 2016. APP0111. Trial is scheduled for early 2017.

APP0111-112. No depositions have been taken as of yet, although many are expected to take place over the next year, including depositions in Asia.

### B. The Parties

Mr. Okada is 72 years old, a citizen of Japan, and a resident of Hong Kong. APP0127. Mr. Okada travels each month to Tokyo to conduct business for Aruze and UEC. APP0127. He very rarely travels to the continental United States. APP0133.

Mr. Okada is the founder and Chairman of the Board of UEC, which is headquartered in Tokyo. APP0127. Neither UEC nor any of its subsidiaries currently have operations in the United States, although Mr. Okada does have other business interests in the United States. APP0127.

Aruze is one of UEC's subsidiaries, incorporated in Nevada but with its principal place of business in Tokyo. APP0228. Mr. Okada is its President, Secretary, Treasurer, and a Director. APP0004. Aruze is a financial holding company whose only purpose is to hold securities in WRL. APP0127. Since 2010, it has had no other operations, either in the United States or otherwise. APP0127. Mr. Okada conducts Aruze's business during his frequent trips to Tokyo, where Aruze's only other Director, Tomohiro Okada, lives and works. APP0127.

WRL is a Nevada corporation with its principal place of business in Las Vegas. APP0003. Its primary operations are to own and operate casinos in Las Vegas and Macau. APP0003.

### C. The Notice of Deposition and Mr. Okada's Motion for Protective Order

On April 14, 2015, WRL unilaterally served a Notice of Deposition on Mr. Okada. APP0115-117. The Notice purports to require Mr. Okada to appear for deposition in Las Vegas for 10 business days, from July 20-31, 2015. APP0115-117.

On May 14, 2015, Mr. Okada filed a Motion for Protective Order (the "Motion"), challenging both the location and the 10-day length specified in the Notice of Deposition. APP0118-187. Regarding location, the Motion noted the absence of controlling authority from this Court and argued that the district court should follow federal case law, which uniformly presumes that defendants will be deposed near their residence or place of business. APP0129-130. Mr. Okada also argued that there was no basis to rebut that presumption and that the factors relevant to rebutting the presumption actually reinforced that the deposition should take place near his residence in Asia. APP0131-134. As to length, Mr. Okada was willing to agree that his deposition should last for more than one day due primarily to the need for interpretation because Mr. Okada does not speak English. APP0138. However, in light of NRCP 30(d)(1) and a complete absence of case

law ordering a witness to appear for more than a few days, Mr. Okada argued that three days was a sufficient amount of time. APP0135-138.

On May 29, 2015, WRL filed its Opposition to Mr. Okada's Motion. APP0197-225. As to location, WRL did not argue that Nevada courts apply a rule or presumption that defendants will be deposed in the forum state (nor could it, given the absence of any supporting authority). APP0201. Instead, WRL acknowledged that numerous courts around the country have applied a presumption in the opposite direction – that defendants should ordinarily be deposed where they live – and attempted to minimize the presumption and distinguish the cases applying it. APP0201-202. As to length, WRL cited no case in which a court ordered a deposition for anywhere near the length of time it was demanding of Mr. Okada. APP0210-213. In fact, it cited only one case ordering more than the three days that Mr. Okada had offered, and that case only ordered five-and-a-half days of deposition time because there were surprise document productions on the eve of the deposition. APP0211. Elaine Wynn also filed an opposition to Mr. Okada's Motion on May 29, 2015, largely mirroring the arguments in WRL's brief. APP0188-196.

On June 4, 2015, the district court held a hearing on the Motion (as well as several other pending motions). APP0284-371. The district court denied the Motion in its entirety, stating its reasoning on the record from the bench.

APP0348-369. On June 23, 2015, the district court entered a formal written order denying the Motion, which expressly incorporated the reasoning the Court had stated on the record during the hearing. APP0372-374. This Petition followed three days later.

## IV. STATEMENT OF REASONS THE WRIT SHOULD ISSUE

### A. The Order Presents Important Questions of First Impression That Can Only be Answered by Writ Review

A writ of prohibition is the proper "remedy for the prevention of improper discovery." *Wardleigh v. Second Judicial Dist. Court*, 111 Nev. 345, 350, 891 P.2d 1180, 1183 (1995). Alternatively, a writ of mandamus "may be issued to compel the district court to vacate or modify a discovery order." *Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. Adv. Op. 15, 252 P.3d 676, 678-79 (2011). In either case, "extraordinary relief is a proper remedy to prevent improper discovery." *Schlatter v. Eighth Judicial Dist. Court*, 93 Nev. 189, 193, 561 P.2d 1342, 1344 (1977).[1]

This Court has discretion to grant a writ to enable it to review a discovery order when the petitioner has "no plain, speedy and adequate remedy at law other

[1] Granting the writ will not adversely affect the discovery or trial schedules. No other depositions have yet been taken or even scheduled, and the discovery period continues for more than a year after the date of this petition. APP0111. Trial is not scheduled until 2017. APP0111-112. Therefore, the parties will have plenty of time to schedule Mr. Okada's deposition based on the guidance the Court provides in response to this Petition.

than to petition this court." *Wardleigh*, 111 Nev. at 350, 891 P.2d at 1183. The Court has granted writ relief where "the challenged discovery order is one that is likely to cause irreparable harm" because "a later appeal would not effectively remedy" the harm. *Club Vista Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. Adv. Op. 21, 276 P.3d 246, 249 (2012). The Court has also granted writ relief to address discovery orders where "the issues are novel and important to Nevada jurisprudence, and those issues might avoid appellate review were [the Court] not to consider them now." *Rock Bay, LLC v. Eighth Judicial Dist. Court*, 129 Nev. Adv. Op. 21, 298 P.3d 441, 445 (2013). Both situations are present here.

*1. The Writ Should Issue to Prevent Irreparable Harm to Mr. Okada*

The district court's order would cause Mr. Okada irreparable harm because a post-judgment appeal cannot correct the errors or undo the burden that would be imposed on him if he is required to travel from Hong Kong to Las Vegas for a 10-day deposition. Once he appears for the deposition, the harm will be complete and incurable.[2]

[2] As Mr. Okada noted to the district court, the realities of international travel and jet lag mean that the district court's order will require him to travel half-way around the world, to a country where he does not speak the language, for approximately three weeks. APP0241. No subsequent appeal will be able to restore those three weeks of his life or remedy the disruption to his business necessarily caused by his absence.

Accordingly, the Court should grant writ relief to prevent Mr. Okada from suffering harm that a proper application of the law would avoid. *See, e.g.*, *Vanguard Piping v. Eighth Judicial Dist. Ct.*, 129 Nev. Adv. Op. 63, 309 P.3d 1017, 1019-20 (2013) ("[T]his court typically will not exercise its discretion to review a pretrial discovery order unless the order could result in irreparable prejudice, such as when the order is a blanket discovery order or an order requiring disclosure of privileged information."); *Aspen Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. Adv. Op. 57, 289 P.3d 201, 204 (2012) (considering writ petition where the district court's allegedly improper denial of a stay forced witness to either forego his Fifth Amendment privilege or his opportunity to defend the lawsuit, which could not be remedied by an appeal); *Club Vista*, 128 Nev. Adv. Op. 21, 276 P.3d at 249 ("If, as Club Vista asserts, the discovery permitted by the district court's order is inappropriate, a later appeal would not effectively remedy any improper disclosure of information.").

*2. The Writ Should Issue Because It Presents Novel and Important Issues That Can Only be Addressed by Writ Review*

The district court's order also presents novel and important issues that can only be addressed by writ review. The issues are novel because this Court has never addressed the proper rule for determining whether a foreign defendant must travel to Nevada for deposition, nor has it addressed the application of NRCP

30(d)(1) and whether the rule creates a presumption in favor of shorter rather than longer depositions.

These issues are important because the district court's holding threatens to subject foreign defendants in all cases to significant burdens far in excess of what is required in other jurisdictions. Moreover, it is important that this Court clarify for the district courts that they are not free to disregard those Rules of Civil Procedure with which they disagree. *See Mays v. Eighth Judicial Dist. Court*, 105 Nev. 60, 61, 768 P.2d 877, 878 (1989) (granting writ relief where the district court improperly "waived" the requirements of then-new Rule 16.1).

Finally, as described above, the issues can only be addressed via writ review because, once Mr. Okada's deposition takes place in Nevada for 10 days, the harm will be complete and incurable. The same will be true of any similar orders entered in other cases – in every case, the harm will be irreversibly inflicted before a direct appeal can be taken. This is an issue likely to recur, particularly given the increasing frequency of disputes involving foreign investors in the gaming industry.

Accordingly, the writ should issue to allow the Court to clarify the appropriate rules and presumptions regarding the location of depositions involving foreign defendants, and regarding the length of depositions. *See Rock Bay*, 129 Nev. Adv. Op. 21, 298 P.3d at 445 (granting writ review where "the writ is

necessary to prevent improper post-judgment disclosure of private information, the issues are novel and important to Nevada jurisprudence, and those issues might avoid appellate review were we not to consider them now"); *Las Vegas Sands Corp. v. Eighth Judicial Dist. Court*, 130 Nev. Adv. Op. 61, 331 P.3d 876, 878 (2014) ("[I]n certain cases, consideration of a writ petition raising a discovery issue may be appropriate if an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction.") (quoting *Aspen Fin. Servs.*, 128 Nev. Adv. Op. 57, 289 P.3d at 878).

### B. The District Court Erred by Applying Its Own Self-Created "General Rule" that Foreign Defendants Must Appear for Deposition in Nevada

The district court held that depositions of defendants in Nevada cases are presumptively to be held in Nevada. It explained as follows:

> THE COURT: . . . Where do you get this presumption? Because it's not how it is in Nevada State Court. It's presumed the defendant will appear for deposition in the state of Nevada, and if the defendant in a civil case doesn't come for trial, that's okay, but they've got to show up for deposition in Nevada.
>
> . . .
>
> THE COURT: . . . I have not been convinced to depart from my general rule, is that the defendant shows up and for a corporation one 30(b)(6) shows up in the state of Nevada.

APP0351; APP0361.

The district court cited no case law or other authority in support of its "general rule" because there is no such support. Rather, the district court invented

a rule which it claimed applies throughout the Nevada State courts, but that actually does not exist, was not advocated for by Plaintiff WRL, and is flatly contrary to the rule reflected in uniform federal case law.[3] Therefore, the district court's ruling constitutes an abuse of discretion. *See Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993, 860 P.2d 720, 723 (1993) ("[W]here a district court exercises its discretion in clear disregard of the guiding legal principles, this action may constitute an abuse of discretion.") (citing *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 559, 562-63, 598 P.2d 1147, 1149 (1979)).[4]

Federal cases presume that a defendant (unlike a plaintiff, who chose the forum) will be deposed near his or her residence. *See, e.g.*, 7 MOORE'S FEDERAL

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[3] Where, as in this case, there is no controlling Nevada authority, federal case law is "strong persuasive authority because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." *Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990).

[4] The district court also erroneously characterized Mr. Okada as a plaintiff because he brought a separate lawsuit in the same court against WRL. APP0353-355. That lawsuit, in which Mr. Okada sought access to WRL's books and records while he was a Director of WRL (a position he has not held for more than two years), was a separate action involving an entirely different subject matter than the present lawsuit. While the district court indicated at one point an intention to "coordinate" the two cases, the books and records action has not been actively litigated since late 2012. APP0128. Moreover, Mr. Okada has already submitted to a deposition for purposes of the books and records case. APP0137. In any event, coordination is simply a vehicle for efficient case management; it cannot be used as a tool to deprive a party of substantive rights. *Cf. Johnson v. Manhattan Railway Co.*, 289 U.S. 479, 496-97 (1933) ("[C]onsolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.").

PRACTICE § 30.20[1][b][ii] (Matthew Bender 3d ed. 2014); *O'Sullivan v. Rivera*, 229 F.R.D. 187, 189 (D. N.M. 2004) (applying the presumption that a defendant's deposition take place at a location in the vicinity in which the deponent resides); *Fausto v. Credigy Serv. Corp.*, 251 F.R.D. 427, 429 (N.D. Cal. 2008) ("[T]here is a general presumption that the deposition of a defendant should be conducted in the district of his residence.") (quoting *Doe v. Karadzic,* 1997 WL 45515, at *3 (S.D.N.Y. Feb. 4, 1997)); *Petersen v. Petersen*, 2014 WL 6774293, at *2 (E.D. La. Dec. 2, 2014) ("[D]efendants are generally not required to demonstrate any particular hardship in order to have a court order their deposition take place where they work or live.").[5]

Other states that have adopted rules of procedure based on the federal rules have also utilized the same presumption that a defendant should be deposed near

[5] Okada may also be deemed a corporate representative witness under Rule 30(b)(1). Such witnesses are generally deposed at the corporation's principal place of business, which in this case is Tokyo. *See, e.g.*, *Thomas v. Int'l Bus. Machines*, 48 F.3d 478, 483 (10th Cir. 1995) ("the normal procedure [is] that the 'deposition of a corporation by its agents and officers should ordinarily be taken at its principal place of business.'" (quoting 8A Charles Alan Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 2112 at 81 (1994)); *Motion Games v. Nintendo Co.*, 2014 WL 5306961, at *2 (E.D. Tex. Oct. 16, 2014) ("It is well settled that '[t]he deposition of a corporation by its agents and officers should ordinarily be taken at its principal place of business,' especially when . . . the corporation is a defendant.") (quoting *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979)). Either Hong Kong or Tokyo would be acceptable locations for Okada's deposition. (As Mr. Okada noted in his Motion, his prior counsel erroneously pled that Aruze's principal place of business was in Nevada; Aruze intends to correct that error in an amended pleading. APP0131-132.

his or her residence. *See, e.g.*, *Ciunci, Inc. v. Logan*, 652 A.2d 961, 962 (R.I. 1995); *Global Van Lines, Inc. v. Daniel Moving & Storage, Inc.*, 283 S.E.2d 56, 57 (Ga. 1981). The Nevada Civil Practice Manual recognizes the presumption as well:

> As a general rule, barring a court order to the contrary (for reasons of demonstrated hardship of one of the parties, etc.), depositions . . . of a defendant (and in the case of a corporate defendant, the corporation's employees and other representatives) must be taken at the defendant's place of residence or princip[al] place of business.

*Id.* § 16.06[2] (LexisNexis 5th ed. 2014) (citing 7 MOORE'S FEDERAL PRACTICE § 30.20[1][b][ii] (Matthew Bender 3d ed. 2014)).

The presumption that a defendant should be deposed near his or her residence is based on the fact that the defendant does not choose the forum; it is forced upon him or her. *See Farquhar v. Shelden*, 116 F.R.D. 70, 72 (E.D. Mich. 1987) ("[I]t is the plaintiffs who bring the lawsuit and who exercise the first choice as to the forum. The defendants, on the other hand, are not before the court by choice. Thus, courts have held that plaintiffs normally cannot complain if they are required to take discovery at great distances from the forum."); *Culver v. Wilson*, 2015 WL 1737779, at * 3 (W.D. Ky. Apr. 16, 2015) ("The rationale behind this rule is that plaintiff chose the forum voluntarily, but the defendant is an

involuntary participant in the litigation.").[6] This follows the general rule that, "in the absence of special circumstances, a party seeking discovery must go where the desired witnesses are normally located." *Id.*

Moreover, when the defendant is foreign rather than simply located in another state, the presumption is "even stronger" that he or she should not be compelled to travel to the United States. *In re Outsidewall Tire Litig.,* 267 F.R.D. 466, 471 (E.D. Va. 2010) ("[I]nsofar as a foreign defendant may be more inconvenienced by having to travel to the United States than a defendant who merely resides in another state or in another judicial district, the presumption that the deposition should occur at a foreign defendant's place of residence may be even stronger."); *Farquhar*, 116 F.R.D. at 72-73 (requiring deposition of Dutch defendant to take place in Netherlands). As the United States Supreme Court has instructed, "American courts, in supervising pretrial proceedings, should exercise special vigilance to protect foreign litigants from the danger that . . . unduly

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[6] The fact that UEC and Aruze have asserted counterclaims does not change the analysis regarding deposition location. This is because the counterclaims were compulsory pursuant to NRCP 13(a), which means that the counter-claimants still did not choose the forum. *See Zuckert v. Berkliff Corp.*, 96 F.R.D. 161, 162 (N.D. Ill. 1982) ( "If a counterclaim is compulsory, a defendant remains entitled to protection from deposition anywhere but his or her residence or business location."); *Global Van Lines, Inc.*, 283 S.E.2d 56, 57 (noting that filing of a counterclaim by a defendant arising out of the same transaction as was at issue in the complaint does not alter the presumption that a defendant is deposed at his place of residence or principal place of business).

burdensome[] discovery may place them in a disadvantageous position." *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for S. Dist. of Iowa*, 482 U.S. 522, 546 (1987).

In this case, the facts do not come close to overcoming the presumption. Mr. Okada is an elderly Japanese citizen who resides in Hong Kong. Mr. Okada's deposition is the first of many involving Asian witnesses, where much of the allegedly improper conduct took place. The parties all have counsel outside of Nevada, and WRL's lawyers regularly travel to Asia as part of their obligations in this case. APP0296. In contrast, Mr. Okada seldom travels to the United States, much less Nevada. And any significant discovery disputes, which are unlikely to occur, could easily be resolved by the district court remotely, as the court itself acknowledged at argument. APP0355; APP0361.

Moreover, by applying its "general rule" that defendants should be deposed in Nevada, which it stated is the rule throughout the Nevada State courts, the district court ignored the tremendous burden that its order will impose on Mr. Okada. He will be forced to travel to Las Vegas, thousands of miles from his home, family, and business, and surrounded by a language he does not speak, for three weeks. The burden and disruption to Mr. Okada's life cannot be overstated and should not be ignored.

### C. The District Court Erred by Refusing to Apply Rule 30(d)(1) and Not Requiring WRL to Justify Its Demand for a 10-Day Deposition

The district court committed a separate clear legal error by refusing to consider the one-day rule of NRCP 30(d)(1) in reaching the unreasonable and unprecedented determination that Mr. Okada's deposition should last for 10 business days. Instead of applying Rule 30(d)(1), the district court has adopted its own contrary rule, which the district court indicated applies in all cases before it.

The rule in Nevada is that depositions are presumptively limited to one day of seven hours. *See* Nev. R. Civ. P. 30(d)(1). The purpose of the presumptive limit, as expressed by members of this Court, is to "alleviate unduly prolonged depositions." Petition to Amend Nevada Rules of Civil Procedure 26, 30, 34, ADKT 487 (Nev. Mar. 1, 2013). This same purpose was behind adoption of the identical federal rule. *See id.* (citing Fed. R. Civ. P. 30 advisory committee notes, 2000 Amend.).

The district court, however, rejects and refuses to apply Rule 30(d)(1). At the hearing on Mr. Okada's Motion for Protective Order, the district court stated the following at the beginning of the argument:

> THE COURT: *One day rule hasn't applied in my court since it passed.* I've suspended it in every case. . . . There has yet to be a single case I have where one day works. . . . . You should have heard my comments when they were considering the amendment. It's like, can I just suspend all your [Nevada Supreme Court's] new rules.

APP0349 (emphasis added). The district court later denied Mr. Okada's Motion without further explanation and stated that the deposition would proceed for 10 days. APP0367.

The district court's application of its own rule was not only contrary to Rule 30(d)(1), it also disregarded clear precedents on the identical federal rule, which establish that (i) exceptions to the one day limit should be rare and (ii) the burden is on the party seeking additional time to justify its request.[7] *See Cohan v. Provident Life & Accident Ins. Co.*, 2014 WL 4231238, *2 (D. Nev. Aug. 26, 2014) (holding, under the identical federal rule, that "[a]nalysis begins with the presumption that extensions to the seven-hour limit are the exception, not the rule"); *Roberson v. Bair*, 242 F.R.D. 130, 138 (D.D.C. 2007) (holding that the one day rule "was carefully chosen and extensions of that limit should be the exception, not the rule"). WRL did not dispute the applicability of these presumptions. APP0210-213. Nevertheless, the district court ignored them.

The district court's rejection of the governing rule and the related presumptions established in the case law led it to issue an order fundamentally

[7] There are no reported decisions applying the one day rule in NRCP 30(d)(1). Accordingly, federal decisions interpreting the identical language in Fed. R. Civ. P. 30(d)(1) are "strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." *Las Vegas Novelty, Inc.*, 106 Nev. at 119, 787 P.2d at 776. Indeed, as noted in the text, NRCP 30(d)(1) was explicitly modeled on its federal counterpart.

inconsistent with American jurisprudence. We are aware of no reported cases from any federal or state court ordering a deposition to last anywhere near 10 days, and WRL did not cite any such authority. APP0210-213. Indeed, WRL cited only one case ordering a deposition to last more than the three days Mr. Okada proposed – and that lone case is easily distinguishable because it involved the production of key documents on the eve of the deposition. APP0211. *See Boston Scientific Corp. v. Cordis Corp.*, 2004 WL 1945643, *1-2 (N.D. Cal. Sept. 1, 2004). In other words, the district court's order that Mr. Okada must submit to a 10-day deposition was without either explanation or reported precedent.

Moreover, the district court's order cannot be justified as an exercise of discretion. Ten days is excessively long for a deposition, even one that will require interpretation.[8] Lawyers have an obligation to proceed efficiently and prioritize the areas that matter most. Thus, courts have held that the one day limit "encourages efficiency; it has been said that a writer's best friends are a deadline and a page

[8] Courts generally increase the time for depositions requiring interpretation by a factor of two or less. *See Balu v. Costa Crociere S.P.A.*, 2011 WL 3359681, *2 (S.D. Fla. Aug. 3, 2011) (permitting 10 hours of deposition time); *Marlborough Holdings Group, Ltd. v. Pliske Marine, Inc.*, 2010 WL 4614704, at *1 (S.D. Fla. 2010) (permitting two days of deposition time); *Gen. Elec. Co. v. SonoSite, Inc.*, 2008 WL 4062098, *2 (W.D. Wis. 2008) (10 hours); *Womack v. Nissan N. Am., Inc.*, 2007 WL 5160790, at *3 (E.D. Tex. 2007) (two days). Below, WRL attempted to distinguish these cases based on their subject matter, APP0211, but the subject matter should not affect how much additional time is required to account for the need for interpretation.

limitation. The same may be said of lawyers conducting depositions." *Roberson*, 242 F.R.D. at 138. "In every deposition, choices have to be made about the subject matter to be covered. The 7-hour rule necessitates, especially in complex cases, that almost all depositions will be under-inclusive. The examiner, therefore, must be selective and carefully decide how to apportion her time." *In re Sulfuric Acid Antitrust Litig.*, 230 F.R.D. 527, 532 (N.D. Ill. 2005). Allowing opposing counsel to depose Mr. Okada for 10 days cannot be reconciled with the obligations set forth in these cases, particularly when the district court did not provide any factual analysis for its decision.

Although this Court need not decide how long the deposition should be, Mr. Okada notes that the arguments offered below by WRL in support of its demand for 10 days do not withstand scrutiny. WRL argued that extra time was needed "due to the number of parties who will question Defendant Okada and also the interpretation issues." APP0187. But it is abundantly clear that WRL's counsel will do the vast majority of the questioning – counsel for the two separately represented parties will question Mr. Okada about only one independent issue. APP0238. The need for interpretation may warrant doubling the amount of time, but that does not explain why the deposition should take five days before taking interpretation into account. WRL's true intentions became clear at the hearing, when its counsel responded to the cases cited above regarding a lawyer's

obligation to be selective about the topics she will cover by stating that "I'm not sure I've ever read any court, any authority, any treatise, any Nevada practice manual that says it is incumbent upon counsel to leave questions on the table because of the convenience of the witness." APP0358. WRL's counsel here revealed that the true purpose is to obtain judicial sanction for an unlimited and inefficient deposition that would serve only to abuse Mr. Okada, contrary to prevailing legal principles in Nevada and throughout the country.

## V. CONCLUSION

For the foregoing reasons, Petitioner Kazuo Okada respectfully requests that this Court grant a writ of prohibition or mandamus, vacate the district court's erroneous denial of Mr. Okada's Motion for Protective Order, and instruct the district court to resolve that Motion based on the correct legal standards. Moreover, because Mr. Okada would have to depart from Asia well in advance of the first day of the deposition (scheduled for July 20) to allow sufficient time for travel, recovery, and preparation, Mr. Okada respectfully requests that this Court grant the relief sought (or stay the deposition pending disposition of this Petition) no later than July 10, 2015.[9]

[9] Concurrently with the filing of this Petition, and in accordance with Nev. R. App. P. 8(a), Mr. Okada is moving the district court for a stay of its Order denying his Motion for Protective Order. Should the district court deny that motion, Mr. Okada will file a motion to stay with this Court.

DATED this 26th day of June 2015.

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## CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **PETITION FOR WRIT OF PROHIBITION TO PROTECT AGAINST UNDULY BURDENSOME DEPOSITION**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 26th day of June 2015.

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## VERIFICATION

I, Robert J. Cassity, declare:

1. I am an attorney with Holland & Hart LLP, counsel of record for Petitioner-Defendant Kazuo Okada.

2. I verify that I have read the foregoing **PETITION FOR WRIT OF PROHIBITION OR MANDAMUS;** that the same is true to my own knowledge, except for matters therein stated on information and belief, and as to those matters, I believe them to be true.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of June 2015, in Clark County, Nevada.

Robert J. Cassity, Esq.

## CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that I am an employee of Holland & Hart; that, in accordance therewith and on the 26th day of June 2015, I caused a copy of the **PETITION FOR WRIT OF PROHIBITION OR MANDAMUS**, to be delivered, in a sealed envelope, on the date and to the addressee(s) shown below (as indicated below):

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