

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 68310

KAZUO OKADA,
Petitioner,

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v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR CLARK COUNTY OF CLARK; HONORABLE
ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

WYNN RESORTS, LIMITED,
Real Party in Interest.

**ANSWER TO PETITION FOR WRIT OF PROHIBITION
OR MANDAMUS**

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that Justices of this Court may evaluate possible disqualification or recusal.

PISANELLI BICE PLLC, WACHTELL, LIPTON, ROSEN & KATZ and GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO, LLP are the only law firms whose partners or associates have or are expected to appear for Real Party in Interest Wynn Resorts, Limited.

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1 **I. INTRODUCTION**

2 Petitioner Kazuo Okada ("Okada") – an individual granted the *privilege* of a
3 Nevada gaming license – readily takes advantage of the benefits Nevada affords when
4 it is in his interest to do so. He also, however, tries to shirk any associated obligations
5 when called upon as a litigant in a Nevada court. Notwithstanding his extensive ties
6 to Nevada, his instant petition for a writ of mandamus asks this High Court to expend
7 its time and resources to adjudicate his locale of choice for and duration of his
8 deposition. Okada's requests for relief – asserted individually *and* as the sole officer
9 of a Nevada-based entity – is not supported by the law and is otherwise not worthy
10 of this Court's time nor the benefits of its extraordinary powers.

11 **II. COUNTERSTATEMENT OF ISSUES PRESENTED**

12 Okada's Petition seeks review of the District Court's Order denying Okada's
13 motion for protective order regarding the location and length of his deposition.
14 Because extraordinary writs are not available to review discovery orders, except in
15 two limited circumstances not present here, the following threshold issue is
16 presented:

- 17 1. Is intervention by extraordinary writ justified to review a discovery
18 order setting the location and length of a deposition in a large and
19 complex business court case?

20 If this Court finds that Nevada precedent affords such a review, then the
21 following two issues are presented:

- 22 2. Does the District Court have the discretion to order the deposition of a
23 non-resident to occur in Nevada?
- 24 3. Does the District Court have the discretion to grant additional time than
25 that stated in NRCP 30(d)(1) to fairly examine a deponent?
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1 **III. STATEMENT OF FACTS**

2 **A. The Main Action and Okada's Preemptive Strike.**

3 Wynn Resorts, Limited ("Wynn Resorts" or the "Company") commenced the
4 underlying action on February 19, 2012, against Okada and two of his affiliate
5 entities, one a Nevada corporation, Aruze USA, Inc. ("Aruze USA"), and its parent
6 company, Universal Entertainment Corp. ("Universal") (the "Main Action"). (Vol. I
7 SA0139-41.) On February 18, 2012, after (1) three independent investigations
8 commenced by the Company's Compliance Committee, chaired by former Governor
9 Robert J. Miller; (2) a written and oral report by former federal judge and Director of
10 the FBI, Louis J. Freeh; (3) advice of two expert gaming counsel; and (4) lengthy
11 discussion among themselves, the Wynn Resorts Board of Directors, pursuant to
12 Wynn Resorts' Articles of Incorporation, determined that the Okada Parties were
13 "Unsuitable Persons" whose continued affiliation with the Company was "likely to
14 jeopardize" Wynn Resorts' existing and potential gaming licenses. (APP0007-16.)
15 At that same meeting, also pursuant to the Company's Articles of Incorporation, the
16 Wynn Resorts Board redeemed Aruze USA's shares and issued a promissory note.
17 (APP0016.)

18 Prior to the February 18, 2012 Board determination and redemption, Okada
19 was well aware of the Wynn Resorts Board's concerns about his activities in the
20 Philippines and had been for some time. (APP0054 ¶¶ 103-04, APP0055-59.)¹
21 Okada was approached by the Board and by management, and he simply refused to
22 be candid or forthright about his or his affiliates' activities in the Philippines.
23 (APP0008 ¶ 25, APP0009 ¶¶ 28-29, APP0010 ¶ 34, APP0011 ¶¶ 36-37, APP0012
24 ¶¶ 40-41, APP0013 ¶¶ 42-44, APP0015 ¶ 49.) Knowing that the Compliance
25

26 ¹ This reference to allegations in the Okada Parties' Fourth Amended
27 Counterclaim are for the limited purpose of demonstrating that Okada and his lawyers
28 were in communication with Wynn Resorts well before the February 18, 2012 Board
meeting. They are not cited here for the truth of the substance of the communications
or the Okada Parties' spin on those meetings or the discussion during those meetings.

1 Committee could not accept his silence and was obligated to pursue, and was, in fact,
2 pursuing an investigation related to Okada's probity and any potential threat to the
3 Company's license, Okada went on the offensive.

4 In November 2011, after the Compliance Committee retained Director Freeh,
5 Okada demanded access to Wynn Resorts' (and its predecessor's) books and records.
6 (APP0058 ¶¶ 118-120; Vol. I SA0001-21.) Following back and forth exchanges
7 between counsel, on January 11, 2012, when he was still a Wynn Resorts director,
8 Okada commenced a writ proceeding in the Eighth Judicial District Court seeking an
9 order of mandamus compelling the Wynn Resorts Board to provide him access to
10 books and records, claiming an entitlement to those records as a director ("Books and
11 Records Proceeding"). (Vol. I SA0001-21.) Okada, as an individual, was the sole
12 petitioner in the Books and Records Proceeding, which was randomly assigned to
13 Department XI, and presided over by the Honorable Elizabeth Gonzalez. (*Id.*)

14 Wynn Resorts challenged Okada's right to the books and records because,
15 among other things, (1) the applicable NRS applies to stockholders only; not
16 directors; and (2) even the NRS that applies to stockholders did not apply to Okada's
17 (or, depending on the day, Aruze's) circumstances. (Vol. I SA0022-40.) Pursuant to
18 the District Court's February 10, 2012 directive, Okada's request was brought to the
19 attention of the Wynn Resorts Board, which authorized the production of 898 pages
20 of documents to Okada in response to some, though not all, of his requests; the
21 Wynn Resorts Board further determined that the Company would maintain its
22 privilege, and asked for clarification/narrowing of other broad requests. (Vol. I-II
23 SA0240-41, Vol. II SA0244-46, Vol. II SA0263-72, SA0274-78, SA0280,
24 SA0282-83.) Okada did not narrow the requests and, when it reconvened on March 8,
25 2012, the District Court effectively upheld the Board's reasonableness judgment.
26 (Vol. III SA0588, SA0611-12.) The District Court also informed Okada that he
27 could attempt to narrow the requests and resubmit his petition. (Vol. III SA0611-12.)
28

1 The proceeding was statistically closed on April 3, 2012, when Okada did nothing.
2 (Vol. III SA0615.)

3 **B. The Coordination of the Two Actions, and Okada's Desire to Avoid**
4 **Nevada Jurisdiction.**

5 In the interim, Director Freeh continued his investigation. Okada finally made
6 himself available for a long-requested interview by Director Freeh. In February 2012,
7 Freeh finalized and presented his report to the Board, the Board considered the facts
8 and information before it, and made its resolutions. (APP0007-16; Vol. I SA0149-52;
9 SA0160-207; Vol. II SA0240.) And, on February 19, 2012, Wynn Resorts
10 commenced the Main Action. (Vol. 1 SA0139-142.)

11 Despite taking individual advantage of his position as a director of a Nevada
12 company when he demanded the extraordinary relief via the Books and Records
13 Proceeding, Okada opted to play games in the Main Action. He refused to authorize
14 his counsel to accept service of the summons and complaint for him individually.
15 (Vol. IV SA0828, SA0842-43, SA0846-47 (arguing Wynn Resorts needed to go
16 through the Hague Convention); *see also* Vol. III SA0485 ¶ 5 (Okada not yet served),
17 SA0488 ¶ 22 (Okada consenting to the removal by his companies); SA0496 n.3.)
18 Instead, in the Main Action, Okada hid behind his companies (which he controls,
19 directly or indirectly), both of which took affirmative and aggressive action by
20 asserting 20 counterclaims, removing (improperly) to federal court, and seeking an
21 (unsuccessful) injunction. (Vol. II SA0368-482; Vol. IV SA0805-06, SA0856-59;
22 SA1131-33.)

23 While his "companies" fought in the Main Action (including fighting hard to
24 avoid service of Okada), Okada filed an amended writ petition in the Books and
25 Records Proceeding, claiming he needed additional books and records to assist him
26 in his defense (something he subsequently denied). (Vol. III SA0629-55.) His
27 amended petition discussed Director Freeh's report and the Board's determination.
28 (Vol. III SA0631-32.) Okada caused the Books and Records Proceeding to be

1 reopened, as it appeared to be an avenue for him to conduct discovery while avoiding
2 service in the Main Action. That was until Wynn Resorts took action to end this
3 improper conduct.

4 Specifically, Wynn Resorts sought leave to conduct a limited deposition of
5 Okada regarding the true purpose in the Books and Records Proceeding, which Okada
6 vehemently opposed. (Vol. IV SA0762-804; SA0807-023.) Following briefing, the
7 District Court ordered the coordination of discovery in the Main Action and the
8 Books and Records Proceeding, and allowed Wynn Resorts a limited deposition of
9 Okada to explore his purpose/motive in seeking the books and records. (Vol. IV
10 SA0830-51; SA0860-65.) Okada was required to appear in Nevada, the forum he
11 chose as a petitioner, for his deposition.² (Vol. IV SA0860-65.) Given that Okada
12 was no longer able to avoid appearing in the state from which he had benefitted
13 handsomely, Okada's counsel changed course, and accepted service of the summons
14 and complaint in the Main Action on Okada's behalf the day before his deposition in
15 the Books and Records Proceeding.

16 Following the limited deposition (discussed in more detail below), the
17 District Court granted a narrowed version of Okada's first amended books and records
18 petition. (Vol. IV SA01134-40.) Wynn Resorts spent great time, effort, and expense
19 to provide books and records to the dissident then-director. (Vol. V SA1141-86.)
20 Okada subsequently demanded additional records, a request the District Court
21 denied, and Okada represented that he would review the provided records and would
22 return to the District Court on the issue. (Vol. V SA1187, SA1203-04.) To this day,
23
24

25 ² Okada's counsel asked if the District Court would allow the deposition to
26 proceed in Hong Kong, each party to bear their own costs, and the District Court
27 refused. Okada's counsel at the time also asked if the District Court would allow the
28 deposition to go forward outside of the United States if Okada paid everyone's fees
and expenses, and, demonstrating reasonableness and the fact that the decision
depended on specific facts and circumstances, the District Court said she would
consider it. (Vol. IV SA0850-51.)

1 Okada's Books and Records Proceeding remains an open and active matter, and
2 remains coordinated with this action. (Vol. V SA1402-10.)

3 **C. The Initial Limited Deposition of Kazuo Okada in the Books and**
4 **Records Proceeding.**

5 Well-known to the District Court (though not experienced by Okada's most
6 recent lawyers) is the debacle that was the *limited* deposition of Okada on
7 September 18, 2012. Because that proceeding and the Main Action were coordinated
8 for discovery purposes, the District Court stated that Wynn Resorts would not be
9 permitted to duplicate questions when the primary deposition inevitably took place.
10 (Vol. IV SA0864.)

11 Wynn Resorts followed the Nevada court protocol and retained the services of
12 a court-approved interpreter. No less than 17 people (not including the court reporter
13 and videographer), attended the deposition and, while one would anticipate a
14 vigorous defense of a central witness in a case of this magnitude, the contentiousness
15 of the parties, the Nevada rules guiding deposition objections, and multiple objections
16 based upon translation issues, all contributed to what can only be described as a
17 challenging and uncommonly slow process. (*See generally* Vol. VI SA0952-1105;
18 Vol. VI SA1130.)

19 The parties had their respective check interpreters, and Okada's team
20 challenged nearly every other question or answer, both on and off the record,
21 resulting in internal team discussions, debates between parties, debates between
22 interpreters, input from the witness, and input from Japanese-speaking attorneys on
23 Okada's side. (*E.g.*, Vol. VI SA0965-68 (before change in interpreters); Vol. VI
24 SA0981-82, SA0988-998 (after changing interpreters).) The deposition went from
25 10:00 a.m. to 6:53 p.m., with multiple breaks,³ including lunch, and much colloquy,

26 _____
27 ³ For instance, about twenty questions were posed during the first hour of the
28 deposition, and most of them were introductory about whether Okada spoke or read
English. (Vol. VI SA0960-68.)

1 both on and off the record related to translation issues, check interpreters, and
2 objections. (Vol. VI SA0953, SA1103.) Adding to the slow pace of the deposition,
3 Okada paused for periods prior to answering. (*E.g.*, Vol. VI SA1193.)⁴ The
4 deposition was of a narrow and limited purpose, related only to Okada's purpose in
5 seeking the books and records as asserted in his filings in that proceeding, and it *still*
6 went to 6:53 p.m. with a comparatively low number of questions asked and answered,
7 and many, many questions left unanswered.

8 That deposition has been discussed at great length between and among counsel
9 for all of the parties in this case. Indeed, rather than "unilaterally" setting Okada's
10 deposition out-of-the-blue as the Okada Petition recites, Wynn Resorts engaged
11 Okada's counsel in discussions about the deposition for over *a four-month period*
12 prior to serving the notice. (*See, e.g.*, Vol. V SA1290, 1302 (discussing Okada's
13 counsel hosting all counsel for a meet and confer on discovery topics, including the
14 location and duration of Okada's deposition)]; SA1313, 1337-38; SA1341, 1346-47.)
15 Among other things, counsel cordially discussed the length, location, and dates for
16 the deposition. (*Id.*) Wynn Resorts repeatedly followed up with Okada, but the
17 request was pushed aside. (*See, e.g.*, Vol. V SA1341, 1346-47.) When Wynn Resorts
18 proffered June dates, Okada indicated that July would be better, but then went silent
19 on the issue. While all parties anticipated motion practice related to the deposition,
20 to move the deposition forward – which Wynn Resorts wanted to do but the
21 Okada Parties did not, preferring instead to a de facto sequencing of discovery –

22 _____
23 ⁴ While the written deposition transcript is enlightening in and of itself, the
24 considerably slow pace of a Japanese language deposition can be most easily seen by
25 watching an excerpt of the video from the deposition. For instance, the video excerpt
26 at 15:41-15:50, starts the third tape of the video. It does not include any introductory
27 questions, but rather was a colloquy intended to go into a substantive issue raised in
28 Okada's writ petition. The excerpt shows the length of time needed for interpreting
questions from English to Japanese and the answers from Japanese to English. The
excerpt shows the colloquy among the primary interpreter and the check interpreters
(which under the new stipulated protocol would happen between the two primary
interpreters). This clip also demonstrates the difficulty in following up to ensure a
deponent answers the question asked, despite that the non-answer may not come for
many minutes after the question was posed.

1 Wynn Resorts finally served the deposition notice on April 14, 2015. (APP0115-117;
2 *see also* Vol. V SA1341, 1346-47.) The notice set the deposition for dates over
3 three-months in advance giving Okada more than sufficient time. (APP0115-117.)
4 Okada sat on his hands for a month, and then finally filed a motion for protective
5 order, asking for a hearing on shortened time to resolve a time constraint that he
6 created through inaction. (*Compare* APP0115-117, *with* APP0118-87.) This evasive
7 conduct continued even *after* the District Court's Order, with Okada's counsel
8 refusing, on multiple occasions, to respond to Wynn Resorts' inquiries regarding
9 whether Okada intended to appear on the noticed dates or whether different dates
10 needed to be scheduled to accommodate him. (Vol. V SA1378, SA1382,
11 SA1384-88.) Okada opted for coy rather than courtesy and, instead of responding,
12 simply filed the instant petition. Without a motion to stay pending before it, this
13 Court *sua sponte* entered a stay, temporarily relieving Okada of his deposition while
14 all other discovery continues.

15 **D. Kazuo Okada is *the* Central Figure in this Action – Claims and**
16 **Counterclaims.**

17 Without a doubt, Okada is *the* central figure in these coordinated cases. These
18 cases arise out of the Wynn Resorts Board's investigation into Okada's activities
19 related to his Philippines gaming license that put Wynn Resorts' gaming licenses,
20 both existing and potential, in jeopardy. It was Okada's actions and inactions, his
21 words and then his silence, that prompted the Compliance Committee to investigate
22 the Philippines and his related activities. Okada and his counsel were frequently
23 approached about the concerns and, whether insulted or not about the steps that a
24 Nevada corporation and gaming licensee must take, he refused to answer or provide
25 the requested information. Ultimately the Board took action as it relates to Okada's
26 activities – individually and through the "cover" of his entities. And his defenses,
27 which correlate with his "companies'" affirmative counterclaims, all depend upon
28 Okada's activities, thoughts, actions, beliefs, and orders. Okada is *the* central figure.

1 Okada's connections to Nevada – and how those connections relate to, and are,
2 in fact, what this case is about – are at the very essence of the District Court's Order
3 that Okada's deposition should occur in Las Vegas, Nevada:

- 4 • Okada is a former director of Wynn Resorts, a Nevada corporation,
5 operating resort casinos in Las Vegas, Nevada. (APP0031 ¶ 15;
6 APP0003-4 ¶ 5.)
- 7 • Okada is the sole petitioner in a coordinated action seeking
8 extraordinary relief from the Nevada courts (*i.e.*, the Books and
9 Records Proceeding). (Vol. I SA0001-21; Vol. III SA0629-55;
10 Vol. V SA1402-10.)
- 11 • Okada is a Nevada gaming licensee through Aruze Gaming
12 America, Inc., a Nevada corporation, based in Las Vegas Nevada,
13 wholly owned by Universal, and the holder of a Nevada
14 manufacturing/equipment license. Aruze even has a picture of its
15 Las Vegas home base on its website, and its timeline boasts about its
16 connection to Nevada. (*See* <http://go.aruzegaming.com/about-us/>)
- 17 • Okada is the Director and Chairman of the Board of
18 Defendant/Counter-claimant Universal, a Japanese corporation that
19 does business in Nevada, and is registered with the Nevada Gaming
20 Commission. (APP0031 ¶ 14.)
- 21 • Okada previously was found suitable by the Nevada Gaming
22 Commission as a stockholder and as a controlling stockholder of
23 Universal. (Vol. I SA0004 ¶ 7; Vol. III SA0630 ¶ 5.)
- 24 • Okada is a Director, President, Secretary, and Treasurer of
25 Defendant/Counter-claimant Aruze USA, Inc. (Vol. I SA0004 ¶ 7),
26 a Nevada corporation with its principal place of business in
27 Las Vegas, Nevada.

28

1 • While Aruze technically owned the Wynn Resorts' shares that the
2 Board redeemed and cancelled, Okada admits in his filings that
3 "Aruze USA is solely a financial holding company"
4 (APP0127:14-15), and that the redemption was of "stock held by
5 Kazuo Okada through Aruze USA . . ." (Vol. VI SA1354:5-6.)

6 ○ While Aruze asserted 20 counterclaims, Okada stated in a
7 verified pleading that "*Mr. Okada caused Aruze USA, Inc. . . .*
8 *a Nevada company he indirectly controls, to invest . . . in*
9 *[Valvino Lamore].*" (Vol. I SA0004 ¶ 3 (emphasis added).)

10 Okada recently represented that Aruze USA's principal place of business is not
11 in Las Vegas, but rather Tokyo, Japan. This "recent" disclosure was mentioned for
12 the first time rather unremarkably in Okada's motion for a protective order related to
13 his deposition. Okada represented in a footnote that the Okada Parties intended to
14 amend their counterclaim to state the correct principal place of business. They have
15 yet to do so, but it bears noting all of the times that the Okada Parties represented, in
16 just *pleadings*, that Las Vegas was Aruze USA's principal place of business . . . until
17 it was a bad fact for them:

- 18 • The Okada Parties' original Counterclaim (Vol. II SA0379 ¶ 12);
- 19 • The Okada Parties' First Amended Counterclaim (Vol. III SA0666 ¶ 12);
- 20 • The Okada Parties' Second Amended Counterclaim (Vol. IV SA0876
21 ¶ 11);
- 22 • The Okada Parties' Third Amended Counterclaim (Vol. V SA1210 ¶ 13);
- 23 and
- 24 • The Okada Parties' Fourth Amended (and operative) Counterclaim
25 (APP0031 ¶ 13 ("Counterclaimant Aruze USA is a company organized and
26 existing under the laws of the State of Nevada Aruze USA has its
27 principal place of business in Las Vegas, Nevada.")).

28

1 What is clear is that Okada does not want to come to Nevada anymore.
2 Purportedly now a resident of Hong Kong, he would rather travel back to Japan (like
3 Nevada, a place he also does not live) for his deposition. Of course, in Japan, the
4 rules for depositions related to foreign cases are stringent. They can only be taken at
5 one of two venues, which must be booked months in advance, and can only hold up
6 to 15 people. (APP0209; *see also id.* at n.10 (citing the steps for depositions in Japan
7 for the Embassy of the United States in Tokyo Japan at
8 <http://japan.usembassy.gov/e/acs/tacs-7116.html>) The rules result in a much shorter
9 day, with a mandatory start time (8:30 a.m.), mandatory lunch (1:00 – 2:00 p.m.), and
10 a mandatory early end time (4:00 p.m.). (*Id.*) No electronic equipment can be
11 brought into the rooms, which means no laptops or cell phones. (*Id.*) And no
12 documents or personal possessions can remain in the room over breaks much less
13 overnight. While Okada understandably may desire that such limitations apply when
14 his deposition is being taken, he is simultaneously seeking to take advantage of the
15 Nevada courts for the purported vindication of his rights on related matters. Okada
16 undoubtedly recognizes that the liberal rules of discovery in the United States and
17 Nevada allow for a candid exploration of the basis for an adversary's position via
18 deposition.

19 **E. Okada Challenges the District Court's Order.**

20 The District Court knew all of the above facts and history, which were
21 necessarily a part of its determination and Order, when ordering that Okada's
22 deposition shall proceed as duly and properly noticed, in Las Vegas, Nevada, and for
23 up to ten (10) days. The facts and history constitute more than sufficient good cause
24 supporting the District Court's discretion to expand the 7-hour default rule in this
25 instance. Even if these factors were not expressly stated in the District Court's Order,
26 they constitute a sufficient basis for the District Court's Order such that writ relief is
27 not appropriate here.

28

1 Yet, Okada goes a step farther: He asks the Court to create a "presumption"
2 for all future cases that non-resident defendants like himself, who do business in and
3 take great advantage of Nevada's business climate, laws, and legal system, are
4 nonetheless entitled to special dispensation. Specifically, Okada advocates for a
5 bright line rule that depositions of non-resident defendants must be held where he or
6 she resides (even though Okada advocated for his deposition to occur in Japan, not
7 Hong Kong). He also asks this Court to limit the broad discretion of district courts
8 in determining the circumstances when the default 7-hour rule must be extended and
9 by how much – without any knowledge or familiarity with the facts of any case. In
10 business court cases, this causes greater problems. Business court judges often
11 preside over large and complex cases. They hear all matters in their cases, including
12 substantive and discovery-related issues. For this reason, among others, they are
13 better positioned than most to exercise the broad discretion afforded to district courts
14 to manage and rule on discovery-related issues.

15 Here, the District Court did not abuse that discretion, and it did not act
16 arbitrarily or capriciously. It is well-known that more complex cases generally
17 require time beyond the recently-enacted seven hour/one day rule; and the
18 District Court candidly stated as much on the record. These time limits are frequently
19 extended by the federal courts in complex cases as well, and, rather than be obtuse
20 and removed from reality, parties often agree to extended time in instances just like
21 this because counsel understand the realities of their own cases.

22 Okada, however, does not want to come to Nevada. He does not want to have
23 to answer under oath the questions he refused to answer when his fellow Board
24 members inquired. And he does not want to have to answer the many questions raised
25 by his lengthy answer and counterclaim. Instead, Okada hopes to hide out in
26 Hong Kong or Japan, or a more preferential jurisdiction, to avoid or otherwise limit
27 this discovery into these subjects while continuing to reap the benefits of this state
28 and its system when he so chooses.

1 Okada invites this Court to issue extraordinary relief to dictate decisions on the
2 location and duration of depositions of central witnesses in large and complex cases,
3 despite a lack of intimate knowledge of the facts, the history, the parties, and/or the
4 witness. Accepting Okada's invitation shall render extraordinary relief ordinary.
5 Those who feel aggrieved by the district court's handling of discovery will be
6 encouraged to seek writ relief at every opportunity. The overall effect will be further
7 delays, continuances, exorbitant increases in the costs of litigation, and frustrations
8 with the judicial system in general.

9 Accordingly, the District Court's Order regarding the location and length of
10 Okada's deposition based upon its extensive involvement with the actual facts and
11 circumstances of this case is hardly the makings of extraordinary writ relief. This
12 Petition should be denied, and denied promptly so as to deny Okada the benefits of
13 the delay he procured.⁵

14 **IV. REASONS WHY THE WRIT SHOULD NOT ISSUE**

15 **A. Extraordinary Writ Relief is Unwarranted.**

16 Both writs of mandamus and writs of prohibition are *extraordinary* remedies.
17 The burden is on Okada to demonstrate that extraordinary writ relief is warranted.
18 *Pan v. Eighth Jud. Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). No such
19 demonstration has been made here. Instead, Okada is merely displeased with the
20 District Court's handling of discovery and invites this Court to take away the
21 District Court's broad discretion in discovery to issue a ruling that Okada would
22 prefer. Because of the harm such petitions can cause, it is it is with good reason that
23 “writ relief is *rarely* available with respect to discovery orders” *Valley Health*

24 _____
25 ⁵ Wynn Resorts also notes its objection to the entry of a stay of Okada's
26 deposition despite the fact that the writ petition requested no such relief, and Okada's
27 motion for stay was then pending before the District Court. The interference with
28 timely discovery through such a process rewards the noncompliant party. They can
buy time to stave off their own discovery obligations but continue to enlist the
discovery process for their own benefit. That is yet another problem created by
entertaining writ relief over the location and duration of depositions.

1 *Sys., LLC v. Eighth Jud. Dist. Court*, 127 Nev. Adv. Op. 15, 252 P.3d 676, 677 (2011)
2 (emphasis added).⁶

3 Only when there is no adequate remedy at law will a writ of mandamus issue
4 “to compel the performance of an act that the law requires. . . or to control an arbitrary
5 or capricious exercise of discretion.” *Aspen Fin. Servs., Inc. v. Eighth Jud. Dist.*
6 *Court*, 128 Nev. Adv. Op. 5, 289 P.3d 201, 204 (2012) (quoting *Int’l Game Tech. v.*
7 *Second Jud. Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008)). Similarly,
8 and also when there is no adequate legal remedy, a writ of prohibition is available “to
9 stop a district court from carrying on its judicial functions when it is acting outside
10 its jurisdiction.” *Aspen*, 289 P.3d at 204 (quoting *Sonia F. v. Eighth Jud. Dist. Court*,
11 125 Nev. 495, 498, 215 P.3d 705, 707 (2009)).

12 The Court's precedent is clear that extraordinary writs are generally not
13 available to review discovery orders. *Clark Cnty. Liquor & Gaming Licensing Bd. v.*
14 *Clark*, 102 Nev. 654, 659, 730 P.2d 443, 447 (1986). The Court has carved out two
15 limited exceptions to this general rule "where disclosure would cause irreparable
16 injury." *Id.* These two exceptions exist when: (1) the trial court issues a blanket
17 discovery order without regard to relevance, and (2) when a discovery order requires
18 the disclosure of privileged information. *Id.*; *Hetter v. Eighth Jud. Dist. Court*, 110
19 Nev. 513, 515, 874 P.2d 762, 763 (1994).⁷

20
21 ⁶ The late Justice Mowbray's sentiment echoed four decades ago never rang as
22 true. *See Maheu v. Eighth Jud. Dist. Court*, 88 Nev. 26, 51, 493 P.2d 709, 725 (1972)
23 (Mowbray, J. Dissenting) ("I can foresee, by the pronouncement made by the court
24 today, the filing of unlimited petitions for extraordinary relief from litigants who feel
aggrieved by the management of their cases, which petitions will result in further
continuances and frustrations in the already painful delay in the disposition of
litigation.").

25 ⁷ An example of a discovery order appropriate for writ review is the
26 District Court's blanket discovery order entered on June 24, 2015, which is the subject
27 of Wynn Resorts' Petition for Writ of Prohibition or, Alternatively, Mandamus filed
28 with this Court on July 20, 2015, Case No. 68439. When considering and granting
Wynn Resorts' motion to stay that blanket discovery order, the District Court noted,
"[A]s the judge handling the case who typically has broad discretion in framing
discovery in a case," that "the issue of Mr. Okada's deposition is a much weaker

1 The discovery Order at issue involves neither. Okada's appeal to some general
2 irreparable harm associated with foreign travel and jet lag, is plainly insufficient.⁸
3 Unlike a blanket discovery order or a discovery order requiring the disclosure of
4 privileged information, here the discovery issue – a deposition of a foreign defendant
5 in Nevada in excess of the 7 hour default rule – is not impermissible. It is
6 undisputable that Wynn Resorts is entitled to Okada's deposition. Moreover, and even
7 under the law Okada proffers, a district court can certainly require a non-resident
8 defendant to appear in the forum where litigation is pending for a deposition. Thus,
9 Okada's Petition is based upon nothing more than his disagreement with the
10 District Court's reasonable determination that the circumstances here warrant a
11 certain location and length for his deposition. Such a complaint is plainly insufficient
12 for the issuance of an extraordinary writ.

13 Nor can it be suggested that the location and duration of a corporate officer's
14 deposition – who wants to travel to Japan so as to enlist its restrictive sovereignty
15 over depositions - constitutes “an important issue of law needs clarification and
16 _____
17 argument than [Wynn Resorts'] issue [*i.e.*, the blanket discovery order].” (Vol. V
SA1390, SA1395.)

18 ⁸ Okada did travel frequently to Nevada when he was a Wynn Resorts director,
19 the very position that is the subject of Okada's writ petition in the Books and Records
20 proceeding, the subject of Wynn Resorts' claims, and the subject of the Okada Parties'
21 affirmative defenses and affirmative counterclaims. Similarly, Okada travels to the
22 United States when it is in his interest to do so. For instance, Okada as recently as
23 March 2015 travelled to Mississippi when the gaming regulators there required his
24 physical appearance for the renewal of his gaming license in that jurisdiction.
25 (APP0206 n.7.)

26 Indeed, Okada and his companies do business and have done business all over
27 the world. Travel on a private jet to a country where a language other than Japanese
28 is spoken is hardly irreparable harm. This is particularly true in the case of Las Vegas,
a city Okada has frequented with and without a company entourage and various
international guests since at least 2002. (APP0206).

Finally, since Okada admitted that he travels back to Japan from his
Hong Kong residence only once a month to do the business of Universal and Aruze,
(APP0124:14), ten days in Las Vegas should not interfere much with such a work
schedule; especially in this age of international business with which Okada and his
companies are clearly familiar.

1 public policy is served by this court's invocation of its original jurisdiction.” *Diaz v.*
2 *Eighth Jud. Dist. Court*, 116 Nev. 88, 93, 993 P.2d 50, 54 (2000).⁹ One such instance
3 is when a writ petition offers this Court “a unique opportunity to define the precise
4 parameters of [a] privilege” conferred by a statute that this court has never
5 interpreted. *Ashokan v. State, Dep't of Ins.*, 109 Nev. 662, 667, 856 P.2d 244, 247
6 (1993).

7 Since 2000, the Court has only entertained writs under this standard three
8 times. *See, e.g., Aspen Fin. Servs., Inc. v. Eighth Jud. Dist. Court*, 129
9 Nev. Adv. Op. 93, 313 P.3d 875, 878 (2013) (electing to entertain the merits of a
10 petition involving parameters of Nevada's new shield statute); *State v. Eighth Jud.*
11 *Dist. Court (Armstrong)*, 127 Nev. Adv. Op. 84, 267 P.3d 777, 780 (2011) (electing
12 to entertain the merits of a petition involving the admissibility of retrograde
13 extrapolation evidence to estimate a defendant's blood alcohol level at a point in time
14 based on a blood sample taken at a later point in time); *Dayside Inc. v. First Jud. Dist.*
15 *Court*, 119 Nev. 404, 405, 75 P.3d 384, 385 (2003) (electing to entertain the merits
16 of a petition to determine whether a contractual lien waiver provision violated public
17 policy).¹⁰

18 Apparently believing the location and length of a deposition should be afforded
19 similar respect (or at least feigning that he believes so to delay his deposition further),
20 Okada requests this Court to entertain his Petition because it "presents novel and
21 important issues." (Pet., 10-12). Hardly. There is nothing important nor novel about
22 the location and length of his deposition that warrants the attention of the State's
23

24 ⁹ Okada's citation and reliance upon *Rock Bay, LLC. Eighth Jud. Dist. Court*,
25 129 Nev. Adv. Op. 21, 298 P.3d 441(2013), is legally misplaced. In *Rock Bay*, the
26 Court found that a writ of prohibition was appropriate to prevent "improper
27 *post-judgment* disclosure of private information." *Id.* at 445. Thus, *Rock Bay's*
28 reasoning that post-judgment discovery issues might avoid appellate review does not
apply to pretrial discovery issues present here which are appealable upon a final
judgment.

¹⁰ Overruled on other grounds by *Lehrer McGovern Bovis, Inc. v. Bullock*
Insulation, Inc., 124 Nev. 1102, 197 P.3d 1032 (2008).

1 highest court. It has, and always should be, within the district court's discretion to
2 set the location and length of a deposition when the parties disagree upon the same.
3 Okada's Petition does not afford the Court with "a unique opportunity" to define the
4 parameters of a privilege conferred by a statute nor is public policy served by the
5 Court entertaining the merits of Okada's petition. In fact, public policy is disserved
6 by the Court entertaining such routine discovery orders as it will only cause further
7 delays and continuances for civil litigants.

8 **B. The District Court Properly Determined that Okada's Deposition**
9 **Should Take Place in Las Vegas Rather than Tokyo.**

10 Misconstruing the lower court's record, Okada insists the District Court denied
11 his motion for a protective order based upon a rule created out of thin air. However,
12 the District Court acknowledged that "I might order you to go to Tokyo under certain
13 circumstances, but this probably isn't one of them." (APP0361). Thus, contrary to
14 Okada's assertion, the District Court did not simply apply some *per se* rule. Rather,
15 the District Court exercised its discretion based upon the circumstances of the case,
16 of which the District Court was well informed and aware. Such discretion cannot be
17 disturbed on writ review unless the District Court clearly abused its discretion.
18 *Club Vista Fin. Servs. v. Dist. Court*, 128 Nev. Adv. Op. 21, 276 P.3d 246, 249
19 (2012). And it did not do so here.

20 Wynn Resorts may unilaterally choose the location to conduct Okada's
21 deposition subject to the Court granting a protective order pursuant to NRCP 26(c).
22 *See* NRCP 30(a)(1); *McGee v. Hanger Prosthetics & Orthotics, Inc.*,
23 No. 2:12-cv-00535-PMP-VCF, 2013 WL 1701098, at *5 (D. Nev. Apr. 18, 2013)
24 (citations omitted); *see also Cadent Ltd. v. 3M Unitek Corp.*, 232 F.R.D. 625, 628
25 (C.D. Cal. 2005).¹¹ Rule 26(c) provides that a protective order should only be granted

26 _____
27 ¹¹ Federal court interpretations of analogous Federal Rules of Civil Procedure are
28 persuasive authority, but not binding. *Greene v. Eighth Jud. Dist. Court*, 115 Nev.
391, 393, 990 P.2d 184, 185 (1999).

1 when the moving party establishes "good cause" for the order and "justice requires
2 [a protective order] to protect a party or person from annoyance, embarrassment,
3 oppression or undue burden or expense," including an order "that the discovery may
4 be had only on specified terms and conditions, including a designation of the time or
5 place." See NRCP 26(c)(2).

6 Okada fails to even mention that he has the burden under NRCP 26(c) to show
7 good cause for the issuance of a protective order requiring the deposition to be held
8 in Tokyo instead of Las Vegas where it was noticed. *Cadent*, 232 F.R.D. at 629
9 (citing cases). This failure, in and of itself, is a critical defect to Okada's position.
10 Okada never submitted an affidavit or declaration in the District Court to support his
11 naked assertions of undue burden. See *de Dalmady v. Price Waterhouse & Co.*, 62
12 F.R.D. 157 (D.P.R. 1973) (It was not sufficient that attorneys seeking protective order
13 make naked assertions with respect to financial and hardship conditions faced by
14 deponent; well prepared and complete affidavits were necessary to corroborate and
15 give substance to attorneys' assertions.).¹²

16 Rather, Okada hides behind a so-called "presumption" from various federal
17 courts. In so doing, Okada over-states the "uniformity" of the deference federal
18 courts afford this purported presumption. Although some federal courts have loosely
19 referred to a "presumption" that a non-resident defendant's deposition be held where
20 he or she resides, in reality, this so-called "presumption" is often treated by courts as
21 a general rule *when relevant factors do not favor one side* over the other. See *New*
22
23

24 ¹² Okada's attempt to draw sympathy by mentioning his age to the Court is also
25 insufficient to prove any "hardship" or "undue burden." See, e.g., *Grotian,*
26 *Helfferich, Schulz, Th. Steinweg Nachf. v. Steinway & Sons*, 54 F.R.D. 280
27 (S.D. N.Y. 1971) (finding that the mere fact that executive officer was 72 years of
28 age was not sufficient to prove "hardship" such as might warrant taking of the
deposition of such officer in Germany, where there was no firsthand evidence that
officer was in such poor health that he could not travel to New York by plane and
where no affidavits had been submitted specifying the nature of his illness or
infirmity).

1 *Medium Techs. LLC v. Barco N V.*, 242 F.R.D. 460, 466 (N.D. Ill. 2007) (internal
2 quotation marks and citations omitted).

3 In *New Medium*, after canvassing the landscape of federal case law on this
4 issue, the court recognized that federal courts "have treated the 'presumption' with
5 varying degrees of deference." *Id.* at 466. And, some courts, including the
6 Ninth Circuit, have given substantial discretion to district courts to specify the place
7 of any deposition. *Id.* (citing *Hyde & Drath v. Baker*, 24 F.3d 1162, 1166 (9th Cir.
8 1994)). Thus, the court noted that this "discretion has led a number of courts to
9 characterize the presumption as merely a kind of general rule that facilitates
10 determination when other relevant factors do not favor one side over the other." *Id.*
11 (internal quotation marks and citations omitted). But of course, as the court noted,
12 "***this is not a presumption at all. . . it is the antithesis of a presumption.***" *Id.*
13 (emphasis added).

14 Accordingly, if there is disagreement among the parties as to location, "the
15 task of deciding the proper location falls on the court." *S.E.C. v. Banc de Binary*,
16 No. 2:13 CV 993 RCJ VCF, 2014 WL 1030862, at *3 (D. Nev. Mar. 14, 2014). The
17 determination of deposition locale is ultimately an exercise well within the vast
18 discretion a district court has in supervising discovery. *New Medium Techs.*, 242
19 F.R.D. at 462. Thus, "there are numerous cases in which courts have ordered
20 depositions of foreign defendants taken in the United States, rather than at the
21 defendant's principal place of business." *In re Vitamin Antitrust Litig.*, No. MISC.
22 NO. 99-197 TFH, MDL NO. 1285, 2001 WL 35814436, at *3 (D.D.C. Sept. 11,
23 2001); *see also McKesson Corp. v. Islamic Republic of Iran*, 185 F.R.D. 70 (D.D.C.
24 1999); *Fin. Gen. Bankshares, Inc. v. Lance*, 80 F.R.D. 22, 23 (D.D.C. 1978); *Custom*
25 *Form Mfg., Inc. v. Omron Corp.*, 196 F.R.D. 333, 336-37 (N.D. Ind. 2000);
26 *New Medium Techs.*, 242 F.R.D. at 460 (requiring corporate deponent to travel from
27 Japan to Chicago).

28

1 Notwithstanding this jurisprudence, Okada nonsensically argues that "the facts
2 do not come close to overcoming the presumption." (Pet., 17, ¶ 2). But importantly,
3 Okada fails to indicate what facts a district court may consider in making this
4 determination. This, of course, is the inherent problem with Okada's position. Even
5 under his so-called presumption, the District Court has the broad discretion to set the
6 location of the deposition.

7 Rather than create new law, *i.e.*, Okada's desired presumption, the law of this
8 Court dictates that the determination as to the location of a deposition is ultimately in
9 the District Court's discretionary power. If the Court is inclined to set forth factors to
10 guide the district courts in making this determination, other courts have already paved
11 the way and provided a vast array of non-exhaustive factors. Not one factor is
12 dispositive, of course, since the district courts across jurisdictions are afforded the
13 broad discretion to consider each case on its own facts as well as the equities of each
14 particular situation.

15 Courts within the Ninth Circuit apply the five-factor test noted in *Cadent*. *See*
16 *Banc de Binary*, 2014 WL 1030862, at *3. The *Cadent* factors include: (1) the
17 location of counsel for the parties in the forum district; (2) the number of corporate
18 representatives a party is seeking to depose; (3) the likelihood of significant discovery
19 disputes arising which would necessitate-resolution by the forum court; (4) whether
20 the persons sought to be deposed often engage in travel for business purposes; and
21 (5) the equities with regard to the nature of the claim and the parties' relationship.
22 *See Cadent*, 232 F.R.D. at 629. But, of course, these are not the only factors a court
23 may consider. *See Banc de Binary*, 2014 WL 1030862, at *3. When considering
24 where to locate the deposition of a defendant residing overseas, courts additionally
25 consider: (6) its ability to supervise depositions and resolve discovery disputes and
26 (7) whether the deposition abroad would promote the goals of Rule 1 – "to secure the
27 just, speedy, and inexpensive determination of every action and proceeding." *Id.*

28

1 Even a cursory application of the facts here to these factors dictates that Okada's
2 deposition should proceed forward in Las Vegas, Nevada.

3 Wynn Resorts noticed the deposition of Okada only. The location of other
4 witnesses who may be deposed in this case is not before the Court for review. Okada's
5 co-lead counsel is located in Las Vegas and all parties have lead counsel in
6 Las Vegas. Instead of exploiting the efficiencies gained from the location of counsel
7 in Nevada, Okada insists that all counsel from eight different law firms, client
8 representatives, interpreters, a court reporter, and a videographer travel to Japan,
9 rather than having one person – Okada – travel to Las Vegas. This proposal defies
10 common sense. *See Paleteria La Michoacana, Inc. v. Productos Lacteos Tocumbo*
11 *S.A. de C.V.*, 292 F.R.D. 19, 22 (D.D.C. 2013) (location of all lead counsel in
12 California weighed the factor in favor of holding the deposition in California); *see*
13 *Foley v. Loeb*, No. 06-53S, 2007 WL 132003, at *1 (D.R.I. Jan. 16, 2007) (the second
14 factor did not weigh in favor of the defendant where there was only one deponent at
15 issue).

16 Okada's deposition in the Books and Records Proceeding provides a historical
17 predictor of what the parties and the District Court largely can expect during Okada's
18 noticed (but stayed) deposition. Discovery has demonstrated that this matter is highly
19 contested, with Okada claiming discovery *from him* into his conduct in the
20 Philippines post-redemption is off limits.¹³ Thus, the strong likelihood of disputes
21 during Okada's deposition weigh in favor of conducting his examination in this
22 forum, and in this time zone, to allow the deposition to proceed fairly and
23 expeditiously. *See El Camino Res. Ltd. v. Huntington Nat'l Bank*, No. 1:07-CV-598,
24 2008 WL 2557596, at *5 (W.D. Mich. June 20, 2008) (the potential for discovery

25 _____
26 ¹³ Of course, while Okada does not want to produce in this action
27 post-redemption discovery related to his misconduct in the Philippines, he moved the
28 District Court and was granted discovery from Wynn Resorts regarding their
post-redemption investigations into Okada's misconduct in the Philippines. It's
apparently not an issue for Okada to take inconsistent positions in the same action
when it behooves him.

1 disputes weighed in favor of conducting the deposition in the forum state where
2 discovery was contentious and the court was faced with two other discovery motions
3 set for hearing).

4 In addition, the District Court's ability to promptly resolve any dispute would
5 only be further hindered if the deposition is conducted in Japan, and would cause
6 further delay and additional expense. Courts recognize the adverse impact on the
7 court's supervisory role when depositions are conducted in Japan. *See New Medium*
8 *Techs. LLC*, 242 F.R.D. at 467 ("[C]onducting depositions in Japan, over a dozen
9 time zones away and on the other side of the International Dateline, would severely
10 compromise – to put it mildly – the court's ability to intervene should problems
11 arise."); *see also Custom Form Mfg.*, 196 F.R.D. at 336-37 (noting that a United
12 States court's authority to resolve discovery disputes that might arise during
13 depositions in Japan is compromised both by distance and issues of foreign judicial
14 sovereignty); *see also Delphi Auto. Sys. LLC v. Shinwa Int'l Holdings LTD*,
15 No. 1:07-cv-0811-SEB-JMS, 2008 WL 2906765, at *2 (S.D. Ind. July 23, 2008)
16 ("The most significant factor in making the determination as to where the depositions
17 at issue should take place is the ability of the Court to intervene should a dispute
18 arise.").

19 Okada cannot run from this forum, and should not be permitted to do so at his
20 whim. After obtaining the benefits from incorporation, and from obtaining ownership
21 in Wynn Resorts, a Nevada corporation, Okada cannot seek to avoid the imposition
22 of the related costs, including sitting for a deposition within this forum. *See S.E.C.*
23 *v. Banc de Binary*, No. 2:13-CV-993-RCJ-VCF, 2014 WL 1030862, at *7 (D. Nev.
24 Mar. 14, 2014) (defendant may not benefit from "its status as a foreign corporation
25 after it has exploited its appearance as an American company"). Indeed, Okada has
26 routinely travelled to Nevada. Okada's actions and travel within this forum weigh in
27 favor of Wynn Resorts. *See Maggard v. Essar Global Ltd.*, No. 2:12-CV-00031,
28 2013 WL 6158403, at *4 (W.D. Va. Nov. 25, 2013) objections overruled,

1 No. 2:12-CV-00031, 2013 WL 6571940 (W.D. Va. Dec. 13, 2013) (the travel of the
2 foreign deponents weighed in favor of conducting the deposition in New York where
3 the Amended Complaint alleged that the deponents travelled to New York).

4 In addition to Okada's strong connections to Nevada, Okada engaged in a
5 corrupt course of conduct breaching his fiduciary duties to Wynn Resorts and
6 jeopardizing Wynn Resorts' existing and prospective Nevada gaming licenses.
7 Permitting Okada to now benefit from his alleged status as a non-resident defendant
8 after his strong ties to and many advantages reaped from Nevada would be
9 inequitable.

10 It is peculiar that even though Okada is purportedly a resident of Hong Kong,
11 he strongly advocates that his deposition should occur in Tokyo, where he travels
12 once a month to do business. (APP0124:14.) But, given the significant difficulties
13 involved in taking a deposition in Japan, the reason for Okada's request becomes
14 clear. *See, e.g., Dean Foods Co. v. Eastman Chem. Co.*, No. C 00 4379 WHO, 2001
15 U.S. Dist. LEXIS 25447, at *23–24 (N.D.Cal. Aug. 13, 2001) (noting "[t]he burden
16 of procedures required to conduct a deposition in Japan are daunting"); *In re Vitamin*
17 *Antitrust Litig.*, 2001 WL 35814436, at *6 (finding the steps required for taking
18 depositions in Japan to be a burden and given the number of attorneys expected to
19 attend the depositions, the size and availability of conference rooms, the court ordered
20 the depositions of the Japanese defendants' 30(b)(6) witnesses and managing agents
21 in Washington, D.C., rather than Japan). Moreover, as pointed out to the
22 District Court, from a practical standpoint, the parties would be unable to take
23 Okada's deposition in Tokyo or Osaka as the conference rooms in the United States
24 consulate in either location would not accommodate the expected number of people
25 who would attend his deposition. Thus, Okada's request is nothing more than a thinly-
26 veiled disguise to prevent a just, speedy, and inexpensive (or most efficient)
27 determination of this action.

28

1 Wynn Resorts presented these factors to the District Court. Rather than admit
2 his Petition is based on nothing more than his displeasure with the District Court's
3 discretionary decision, Okada argues that the District Court applied some made up
4 rule, and cast aside the Nevada Rules of Civil Procedure without regard for the facts
5 of this case. This argument is a falsehood Okada created to delay his deposition in
6 this case. In any event, even if the Court finds that the District Court relied on the
7 wrong reasoning, the result was correct and should not be disturbed. *See, e.g.,*
8 *Attorney Gen. v. Bd. of Regents*, 114 Nev. 388, 403, 956 P.2d 770, 780 (1998); *Hotel*
9 *Riviera, Inc. v. Torres*, 97 Nev. 399, 403, 632 P.2d 1155, 1158 (1981).

10 **C. The District Court Did Not Abuse Its Discretion in Ordering a**
11 **Ten Day Deposition.**

12 With regard to the length of his deposition, it is unclear what action Okada is
13 actually requesting from this Court. Okada knows he cannot ask this Court to set the
14 length of his deposition because that would require this Court to supplant the District
15 Court's discretion with its own without an intimate knowledge of the facts, the
16 procedural history, the parties, or their counsel. Yet, Okada seems to argue that ten
17 days of a deposition is too long for him. In other words, Okada is asking for a bright
18 line discovery rule that no other court has made and is altogether unworkable.

19 Okada demands the District Court's decision be vacated because the reasons
20 for setting the length of his deposition "do not withstand scrutiny."¹⁴ (Pet., 21).
21 However, the Rules of Civil Procedure expressly permit the District Court to grant

22 _____
23 ¹⁴ Okada makes much ado that he is "aware of no reported cases from any federal
24 or state court ordering a deposition to last anywhere near 10 days." (Pet., 20). Okada
25 does not cite any case law for the proposition that the District Court was required to
26 find another case permitting the same length nor do the Rules of Civil Procedure state
27 this requirement. It is likely that Okada is unaware of another similar case because of
28 the extraordinary facts presented here or because normally counsel simply agree to
the reasonable request. *See Braxton v. U.P.S., Inc.*, 806 F. Supp. 537, 538 (E.D. Pa.
1992) (noting that Plaintiff underwent a ten-day deposition); *In re Rothstein*
Rosenfeldt Adler, P.A., No. 11-61338-CIV, 2012 WL 949787, at *1 (S.D. Fla.
Mar. 20, 2012) (noting the court ordered a second ten-day deposition of the central
figure in the case).

1 additional time to fairly examine a deponent upon good cause and courts routinely
2 find good cause where an interpreter is needed and the examination involves multiple
3 parties.

4 Okada is correct that generally, "*unless otherwise authorized by the court* or
5 stipulated by the parties, a deposition is limited to one day of seven hours."
6 NRCPC 30(d)(1) (emphasis added). For Okada, the analysis ends here. But, the very
7 next sentence in Rule 30(d)(1) provides, "The court . . . *must* allow additional time
8 consistent with Rule 26(b)(2) if needed to fairly examine the deponent."
9 NRCPC 30(d)(1) (emphasis added). Thus, upon good cause, courts routinely grant
10 additional time to examine a deponent. *See, e.g., USF Ins. Co. v. Smith's Food &*
11 *Drug Centers, Inc.*, No. 2:10-CV-01513-RLH, 2012 WL 1106939, at *3 (D. Nev.
12 Apr. 2, 2012); *Cohan v. Provident Life & Accident Ins. Co.*,
13 No. 2:13-CV-00975-LDG, 2014 WL 4231238, at *2 (D. Nev. Aug. 26, 2014).

14 Ultimately, a district court's good cause determination is "fact specific."
15 *Carmody v. Vill. of Rockville Ctr.*, No. CV05-4907(SJF)(ETB), 2007 WL 2177064,
16 at *2 (E.D.N.Y. July 27, 2007). Good cause is certainly established based upon a
17 deponent's need to utilize the services of an interpreter, as well as the need of multiple
18 parties to be provided adequate time to question a witness. *See* Advisory Comm.
19 Notes to 2000 Amendments to Fed. R. Civ. P. 30. It is not uncommon for depositions
20 involving the use of interpreters and translators to be significantly extended.¹⁵ *See*
21 *Boston Scientific Corp. v. Cordis Corp.*, No. 03-CV-5669 JW (RS), 2004
22 WL 1945643, at *3 (N.D. Cal. Sept. 1, 2004); *see also In re Republic of Ecuador*,
23 No. C-10-80225 MISC CRB, 2011 WL 736868, at *5 (N.D. Cal. Feb. 22, 2011).
24 Moreover, courts have granted additional time for depositions involving examination
25

26
27 ¹⁵ Okada's proposal that depositions requiring an interpreter are only increased
28 by a factor of two or less finds no support in law. The cases Okada relies upon do not
espouse any bright-line rule. Rather, the cases only prove that the inquiry is
fact-intensive.

1 of a deponent by multiple parties. *See Schmidt v. Levi Strauss & Co.*, No. C04-01026
2 (RMW)(HRL), 2006 WL 2192054 (N.D. Cal. 2006).

3 Contrary to Okada's assertion, the District Court's decision was not a capricious
4 act; rather, it was based upon the multiple parties who intend to examine Okada, the
5 scope of the deposition given the claims and many allegations in the answer and
6 counterclaim (most of which are about Okada's acts, thoughts, beliefs, and
7 arguments), and the practical reality of complicated depositions that involve
8 interpreters and translations.

9 Okada's concerns regarding duplication of questions amongst counsel and
10 claims of harassment are baseless. Each party has a different interest in examining
11 Okada, and each party is entitled to examine Okada related to those interests, claims,
12 and defenses. The ordering of a ten-day deposition was designed to permit an inquiry
13 into all of the relevant allegations, and to compensate for the undoubtedly complex
14 translation issues that will arise, just as they arose in the limited deposition in the
15 Books and Records proceeding. In any event, Okada's "concerns" are insufficient to
16 warrant the vacating of the District Court's order. Rather, the Rules of Civil
17 Procedure provide a mechanism that addresses Okada's concerns. Specifically, at any
18 time during his deposition, Okada may move to terminate if it is being conducted in
19 bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses him.
20 *See* NRCP 30(d)(3). Clearly, this approach is better practice than vacating the District
21 Court's order based upon Okada's speculative and baseless concerns.

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V. CONCLUSION

For all the reasons stated above, Petitioner's request for a writ of prohibition or mandamus should be immediately rejected.

DATED this 21st day of July, 2015.

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1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that this brief complies with the formatting requirements of
3 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
4 requirements of NRAP 32(a)(6) because this brief has been prepared in a
5 proportionally spaced typeface using Office Word 2007 in size 14 font in
6 double-spaced Times New Roman.

7 I further certify that I have read this brief and that it complies with the page or
8 type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief
9 exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of
10 14 points or more and 10,556 words.

11 Finally, I hereby certify that to the best of my knowledge, information and
12 belief, it is not frivolous or interposed for any improper purpose. I further certify that
13 this brief complies with all applicable Nevada Rules of Appellate Procedure, in
14 particular NRAP 28(e)(1), which requires that every assertion in this brief regarding
15 matters in the record to be supported by appropriate references to the record on
16 appeal. I understand that I may be subject to sanctions in the event that the
17 accompanying brief is not in conformity with the requirements of the Nevada Rules
18 of Appellate Procedure.

19 DATED this 21st day of July, 2015.

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