

**In the Supreme Court of Nevada**

ELAINE P. WYNN, an individual,  
Petitioner,

*vs.*

THE EIGHTH JUDICIAL DISTRICT COURT  
of the State of Nevada, in and for the  
County of Clark, and THE HONORABLE  
ELIZABETH GONZALEZ, District Judge,  
Respondent,

and

WYNN RESORTS, LIMITED, a Nevada  
Corporation,

Real Party in Interest.

Electronically Filed  
Oct 20 2016 03:31 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**MOTION TO EXTEND DISTRICT COURT'S  
STAY PENDING WRIT PETITION**

***and***

**RULE 27(e) EMERGENCY MOTION FOR  
INTERIM EXTENSION OF STAY  
*(Action Required by October 21, 2016)***

The district court originally entered a stay of petitioner Elaine P. Wynn's deposition and an evidentiary hearing on the whistleblower issues presented in this writ petition. On the final day of that stay, however, the district court declined to extend it. That denial, and its timing, necessitate two requests: First, under NRAP 8(a)(2)(A)(ii), peti-

tioner Elaine P. Wynn asks this Court to extend the district court's stay through the course of these writ proceedings. An extension of the stay is appropriate under the NRAP 8(c) factors, particularly as denying the stay would defeat the object of this petition.

Second, because the denial of an extension comes on final day of the stay, Ms. Wynn requests under NRAP 27(e) a temporary, interim stay pending consideration of the full stay motion.

### **BACKGROUND**

As set out in the petition, petitioner Elaine P. Wynn requested a protective order to protect her from discovery about her whistleblower activities under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the Sarbanes-Oxley Act of 2002. While the district court denied the relief, it granted a stay of her deposition and of an evidentiary hearing through October 20, 2016 to allow Ms. Wynn to petition this Court for relief. (Ex. A, Order Regarding Elaine P. Wynn's Motion for Protective Order.)

Ms. Wynn asked the district court to extend that stay pending this Court's consideration of the petition (Ex. B, Motion to Extend Stay), but on the expiration date of the stay, the district court orally denied any

extension without stating a reason, adding that Ms. Wynn would have to seek any further stay in “Carson City.”

**MOTION TO EXTEND DISTRICT COURT’S  
STAY PENDING WRIT PETITION**

Extending the stay is the only way to preserve appellate review of the issue in the writ petition and to prevent an irreversible disclosure of privileged whistleblower communications.

This Court has recognized that writ relief may be “necessary to prevent discovery that would cause privileged information to irretrievably lose its confidential nature and thereby render a later appeal ineffective.” *Aspen Fin. Services v. Eighth Judicial Dist. Court*, 128 Nev., Adv. Op. 57, 289 P.3d 201, 204 (2012). Consequently, when a district court overrules a claim of privilege or work-product protection, that order is often stayed pending resolution of a writ petition challenging that order. *Mitchell v. Eighth Judicial Dist. Court*, 131 Nev., Adv. Op. 21, 359 P.3d 1096, 1099 n.2 (2015), *reh'g denied* (July 23, 2015); *Coyote Springs Inv., LLC v. Eighth Judicial Dist. Court*, 131 Nev., Adv. Op. 18, 347 P.3d 267, 270 (2015); *L.V. Dev. Assocs. v. Eighth Judicial Dist. Court*, 130 Nev., Adv. Op. 37, 325 P.3d 1259, 1262 (2014); *Las Vegas Sands v. Eighth Judicial Dist. Court*, 130 Nev. Adv., Op. 13, 319 P.3d

618, 620 (2014). And the district court itself recognized the need for a stay, at least initially. As all of the NRAP 8(c) factors continue to favor a stay, the extension of the district court’s stay through this Court’s resolution of the writ petition is warranted.

**1. *Denying a Stay would Defeat the Object of the Petition to Determine the Propriety of Disclosure***

The first factor is whether denial of a stay defeats the object of the appeal or writ petition. This factor has “added significance,” such that a stay is “generally warranted” when this factor is present. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252, 89 P.3d 36, 39 (2004) (citing NRAP 8(c)(1)). For example, there was “no[] serious[] dispute” that the object of an interlocutory appeal of an order excluding a confession would be defeated if the trial went forward and the defendant were acquitted, so a stay was necessary. *State v. Robles-Nieves*, 129 Nev. Adv. Op. 55, 306 P.3d 399 (2013).

Here, the entire point of the petition is to *stop* the disclosure of protected whistleblower communications, which only a stay will do. If, because a stay is denied, the protected communications are disclosed, the petition asserting their protected status would become purely academic. No ruling in petitioner’s favor would undo the disclosure.

## **2. *Denying a Stay would Force Disclosure of Protected Communications, Causing Irreparable Harm***

Similarly, denying a stay of the disclosure order would cause petitioner serious and irreparable harm. *See* NRAP 8(c)(2). Federal whistleblower protections prohibit “any action to impede an individual from communicating directly with the [SEC] staff about a possible securities law violation.” 17 CFR § 240.21F-17; *see also* Pet. at 53 & n.25 (identifying federal regulations protecting “confidential, anonymous submissions”). And as the petition explains, that prohibition extends to actions that discourage internal reporting because individuals “cannot report wrongdoing to the [SEC] until after they have reported the wrongdoing to their employer.” *Berman v. Neo@Ogilvy LLC*, 801 F.3d 145, 151-52 (2d Cir. 2015); *cf. also* *Lawson v. FMR LLC*, \_\_\_ U.S. \_\_\_, 134 S. Ct. 1158, 1162 (2014) (explaining that Sarbanes-Oxley and Dodd-Frank aimed to dismantle the “corporate code of silence” that discouraged and sought to “quiet” whistleblowers “from reporting fraudulent behavior not only to the proper authorities, such as the FBI and the SEC, but *even internally*” (emphasis added)). Federal law thus protects Ms. Wynn from revealing her sources and her confidential communications with Wynn Resorts’ auditors, Ernst & Young. The disclosure of those

sources and communications, and the muzzle such a disclosure would place on future reports of securities violations, are irretrievable.

This situation is even more serious than in *Mikohn Gaming*, where this Court ordered a stay of an order denying arbitration even though the only harm threatened was increased litigation costs and delay. *Cf. Mikohn Gaming*, 120 Nev. at 253, 89 P.3d at 39.

**3. *A Stay of the Disclosure Order will Not Harm the Real Party in Interest***

By contrast, a stay of the disclosure order will cause no harm to real party in interest Wynn Resorts. *See* NRAP 8(c)(3). If Wynn Resorts is truly entitled to that information, the company will get it upon denial of the writ. There has been no suggestion that the identity of Ms. Wynn's sources or the content of her whistleblower communications are time-sensitive or that a delayed disclosure will cause harm.

**4. *The Petition has Substantial Merit***

In these circumstances, where a writ petition is the only way to prevent disclosure, only a showing that the petition is frivolous will defeat a stay. *See Mikohn Gaming*, 120 Nev. at 253, 89 P.3d at 40 (citing NRAP 8(c)(4)). It is enough that the appeal presents a "substantial case

on the merits when a serious legal question is involved.” *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)); accord *Simon Prop. Grp., Inc. v. Taubman Centers, Inc.*, 262 F. Supp. 2d 794, 798 (E.D. Mich. 2003). For example, in one case the D.C. Circuit hazarded the “tentative conclusion” that the appellant would not succeed, but given the difficulty of the legal issues, the “balance of the equities” favored granting a stay. *Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 844-45 (D.C. Cir. 1977). And this Court granted a stay of arbitration even where “the merits [were] unclear.” *Mikohn Gaming*, 120 Nev. at 254, 89 P.3d at 40.

Here, petitioner has shown that the district court’s rulings are likely to be reversed. First, the district court’s decision on Dodd-Frank strays from the majority of courts interpreting the statute. The SEC, the very agency charged with regulating Dodd-Frank protections, itself supports Ms. Wynn’s position, but the district court failed to give the SEC interpretation any deference. More specifically, while the district court held that Dodd-Frank only protects communications directly to the SEC, the majority of federal courts and the SEC itself reject that in-

terpretation. *Berman v. Neo@Ogilvy LLC*, 801 F.3d 145, 151-52 (2d Cir. 2015); *Wadler v. Bio-Rad Labs., Inc.*, 141 F. Supp. 3d 1005, 1024 (N.D. Cal. 2015); *Somers v. Digital Realty Trust, Inc.*, 119 F. Supp. 3d 1088, 1108 (N.D. Cal. 2015); *Connolly v. Remkes*, No. 5:14-CV-01344-LHK, 2014 WL 5473144, at \*6 (N.D. Cal. Oct. 28, 2014); 76 Fed. Reg. 34300, 34325 (June 13, 2011); Proposed Rules for Implementing the Whistleblower 32 Provisions of Section 21F of the Securities Exchange Act of 1934 (“Proposing Release”), 75 Fed. Reg. 70488, 70488 (Nov. 17, 2010); *see also* 5 App. 1046.

Thus, at the very least, this case presents a “serious legal question.” *Fritz Hansen A/S*, 116 Nev. at 659, 6 P.3d at 987. It would be ruinous to whistleblower protections if no stay is granted and Ms. Wynn does not even have the opportunity for this Court to resolve the critical questions presented.

Second, while the district court held that Ms. Wynn was not an “employee” protected under Sarbanes-Oxley (2 App. 362:7–10; Ex. A, Order Regarding Elaine P. Wynn’s Motion for Protective Order, at 1), federal authority extends whistleblower protections to individuals, like Ms. Wynn, who as directors perform managerial or supervisory tasks



for the company. *See De Jesús v. LTT Card Servs., Inc.*, 474 F.3d 16, 24 (1st Cir. 2007); *Smith v. Castaways Family Diner*, 453 F.3d 971, 985-86 (7th Cir. 2006); *Trainor v. Apollo Metal Specialties, Inc.*, 318 F.3d 976, 986-87 (10th Cir. 2002); *EEOC v. First Catholic Slovak Ladies Ass’n*, 694 F.2d 1068, 1070 (6th Cir. 1982). *See generally Clackamas Gastroenterology Assocs. P.C. v. Wells*, 538 U.S. 440 (2003). The district court’s rejection of employee status gave no weight to Ms. Wynn’s testimony about her role in day-to-day operations and assistance with minutiae that only an employee would confront. At the very least, a party is entitled to discovery on the issue of employment status. *See Foresta v. Centerlight Capital Mgmt., LLC*, 379 F. App’x 44, 45 (2d Cir. 2010).

Regardless of whether this Court ultimately adopts these authorities, the issue is important enough to extend the protections of the district court’s stay while this Court decides.

**RULE 27(e) EMERGENCY MOTION FOR  
INTERIM EXTENSION OF STAY**

Because the protections from disclosing Ms. Wynn’s whistleblower communications expire on October 20, 2016, an interim extension of the lower court’s stay order is needed to avoid serious and imminent harm.

This motion is properly brought under NRAP 27(e). Petitioner re-

requested and was denied an extension of the stay pending resolution of the writ petition, as NRAP 8(a) and NRAP 27(e)(4) require. Petitioner raised in that motion the grounds asserted here. *See* NRAP 27(e)(4). Without an extension from this Court, petitioner will have to disclose the communications, making both the stay and the underlying petition moot. NRAP 27(e) is thus the appropriate vehicle for this Court to enter a stay in time to avoid disclosure.

### CONCLUSION

To avoid an irreversible disclosure and to allow this Court to interpret the whistleblower protections in Dodd-Frank and Sarbanes-Oxley, this Court should grant the extension.

Dated this 20th day of October, 2016.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Daniel F. Polsenberg

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*\*Admitted Pro Hac Vice*

*Attorneys for Petitioner*

## **NRAP 27(E) CERTIFICATE**

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### **B. Nature of emergency**

On September 20, 2016, the district court orally rejected petitioner's claim of federal privileges under Dodd-Frank and Sarbanes-Oxley,

holding that petitioner could be deposed and have to reveal confidential whistleblower communications and the sources for the information in those communications. (2 App. 362:7–13. *See also* Ex. A, Order Regarding Elaine P. Wynn’s Motion for Protective Order.) The district court, however, agreed to vacate Ms. Wynn’s deposition and stay its ruling through October 20. (Ex. A.)

Petitioner filed a petition for extraordinary relief from that order on October 5, which was docketed the next day.

On October 20, the district court orally denied petitioner’s motion to extend a stay, which had been in place through that date to protect petitioner from being deposed and having to reveal confidential whistleblower communications and the sources for the information in those communications.

Without an immediate extension of the stay from this Court, petitioner will be required, under threat of contempt, to disclose the protected communications without appellate review of that order.

### **C. Notice and service**

Today, I, Daniel Polsenberg, personally called the offices of Pisanelli Bice, notifying them of this motion for stay. Upon filing, I will e-

mail copies of the motion for stay and this certificate to each of the listed attorneys for real party in interest.

Dated this 20th day of October, 2016.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Daniel F. Polsenberg  
DANIEL F. POLSENBERG (SBN 2376)  
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*Attorneys for Petitioner  
Elaine P. Wynn*

**CERTIFICATE OF SERVICE**

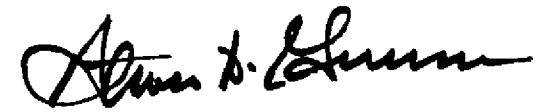
I certify that on October 20, 2016, I submitted the foregoing motions for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

James J. Pisanelli, Esq.	Honorable Elizabeth Gonzalez
Todd L. Bice, Esq.	Department 11
Debra L. Spinelli, Esq.	Eighth Judicial District Court
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/s/ Gabriela Mercado  
An Employee of Lewis Roca Rothgerber Christie LLP

**EXHIBIT A**

**EXHIBIT A**



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Attorneys for Counterdefendant/Counterclaimant/Crossclaimant

ELAINE P. WYNN

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada  
Corporation,

Plaintiffs,

vs.

KAZUO OKADA, an individual; ARUZE  
USA, INC., a Nevada corporation,  
UNIVERSAL ENTERTAINMENT  
CORPORATION, a Japanese corporation,

Defendants.

AND ALL RELATED CLAIMS.

CASE NO. A-12-656710-B  
Dept. No.: XI

**ORDER REGARDING ELAINE P.  
WYNN'S MOTION FOR PROTECTIVE  
ORDER REGARDING WYNN RESORTS'  
VIOLATIONS OF THE DODD-FRANK  
AND SARBANES-OXLEY ACT ON  
ORDER SHORTENING TIME, OR IN  
THE ALTERNATIVE MOTION FOR  
STAY OF DISCOVERY PENDING  
RESOLUTION OF THE MOTION  
AND/OR WRIT PETITION IF THE  
MOTION IS DENIED**



1 Counterdefendant/Counterclaimant/Crossclaimant Elaine P. Wynn's Motion for Protective  
2 Order Regarding Wynn Resorts' Violations of the Dodd-Frank and Sarbanes-Oxley Act on Order  
3 Shortening Time (the "Motion for Protective Order"), or in the Alternative Motion for Stay of  
4 Discovery Pending Resolution of the Motion and/or Writ Petition if the Motion is Denied, filed on  
5 August 9, 2016 (the "Alternative Motion for Stay") (collectively, the "Motion"), came before this  
6 Court for hearing on September 20, 2016. Michael T. Zeller, Esq. of Quinn Emanuel Urquhart &  
7 Sullivan, LLP, William R. Urga, Esq. and David Malley, Esq. of Jolley Urga Woodbury & Little  
8 and Dan Polsenberg, Esq. of Lewis Roca Rothgerber Christie LLP, appeared on behalf of  
9 Counterdefendant/Counterclaimant/Cross-claimant Elaine P. Wynn ("Ms. Wynn"). Donald J.  
10 Campbell, Esq. and Colby Williams, Esq. of Campbell & Williams appeared on behalf of  
11 Counterdefendant/Cross-defendant Stephen A. Wynn. James J. Pisanelli, Esq., Todd L. Bice, Esq.  
12 and Debra L. Spinelli, Esq. of Pisanelli Bice PLLC appeared on behalf of  
13 Plaintiff/Counterdefendant Wynn Resorts, Limited ("WRL") and Counterdefendants Linda Chen,  
14 Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V.  
15 Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman (collectively, with WRL, the  
16 "Wynn Parties"). J. Stephen Peek, Esq. and Robert Cassity, Esq. of Holland & Hart, LLP  
17 appeared on behalf of Defendant Kazuo Okada and Defendants/Counterclaimants/Counter-  
18 defendants Aruze USA, Inc. and Universal Entertainment Corp.

19 The Court having reviewed and considered the Motion and the Opposition filed thereto,  
20 the Supplemental Opposition and the Supplemental Reply, as well as the arguments of counsel  
21 presented at the hearing, and good cause appearing therefore,

22 THE COURT HEREBY FINDS as follows:

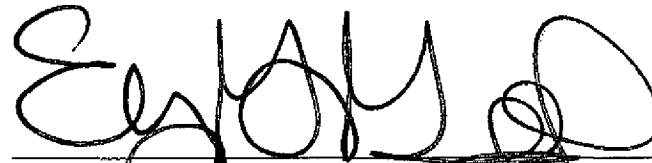
- 23 1. Elaine Wynn is not an employee. Therefore, there is no potential retaliation and no  
24 protection under the Sarbanes-Oxley Act of 2002.
- 25 2. Ms. Wynn is not providing information to agencies that would fall within the Dodd-  
26 Frank Wall Street Reform and Consumer Protection Act ("DFA"). Therefore, there is  
27 no protection for her under the DFA at this time.

28

1 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion  
2 for Protective Order Regarding Wynn Resorts' Violations of the Dodd-Frank and Sarbanes-Oxley  
3 Act on Order Shortening Time, or in the Alternative Motion for Stay of Discovery Pending  
4 Resolution of the Motion and/or Writ Petition if the Motion is Denied, is DENIED as to the  
5 Motion for Protective Order, and GRANTED as to the Alternative Motion for Stay as follows:

- 6 1. The continued deposition of Ms. Wynn scheduled for September 22 or 23, 2016 is  
7 vacated;
- 8 2. The stay granted hereby shall continue until and including October 20, 2016. The  
9 evidentiary hearing scheduled for September 29 and 30, 2016 is vacated, to be re-set  
10 following expiration of the stay granted hereby; and
- 11 3. A status check is scheduled for October 20, 2016 at 8:30 a.m.

12  
13 DATED this 6th day of October, 2016.

14  
15 

16 THE HONORABLE ELIZABETH GONZALEZ  
17 DISTRICT COURT JUDGE

18 Respectfully submitted by:

19 PISANELLI BICE PLLC

HOLLAND & HART LLP

20  
21 By: 

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27 and

28 Robert L. Shapiro, Esq.  
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and

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12  
13 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

14  
15  
16 THE HONORABLE ELIZABETH GONZALEZ  
DISTRICT COURT JUDGE

17 Respectfully submitted by:

18 PISANELLI BICE PLLC

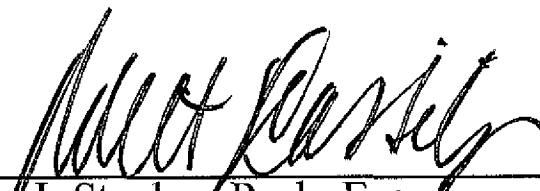
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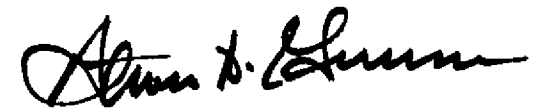
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**EXHIBIT B**

**EXHIBIT B**



CLERK OF THE COURT

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25 Attorneys for Counterdefendant/Counterclaimant/Cross-claimant

26 ELAINE P. WYNN

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

27 WYNN RESORTS, LIMITED, a Nevada  
28 corporation,

Plaintiff,

vs.

29 KAZUO OKADA, an individual, ARUZE  
30 USA, Inc., a Nevada corporation,  
31 UNIVERSAL ENTERTAINMENT  
32 CORPORATION, a Japanese corporation,

Defendant.

33 AND ALL RELATED CLAIMS

CASE NO. A-12-656710-B

Dept. No.: XI

**ELAINE P. WYNN'S MOTION TO  
EXTEND STAY PENDING PETITION  
FOR WRIT OF PROHIBITION OR  
MANDAMUS ON ORDER SHORTENING  
TIME**

Date:

Time:

**ELECTRONIC FILING CASE**



1 extension of the stay, Ms. Wynn's privileges and protections under federal law will be  
2 compromised and the purpose of her writ petition will be defeated. Ms. Wynn respectfully  
3 requests that this motion be granted and that the stay be extended until the Nevada Supreme Court  
4 takes dispositive action regarding Ms. Wynn's writ petition. Ms. Wynn further requests that the  
5 Court grant the order shortening time and set the hearing on the present motion for October 20,  
6 2016.

7 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing  
8 is true and correct.

9 Executed on October 18, 2016, at Los Angeles, California.

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Ian S. Shelton



1 ORDER SHORTENING TIME

2 GOOD CAUSE APPEARING, it is hereby ordered that the foregoing ELAINE P. WYNN'S  
3 MOTION TO EXTEND STAY PENDING PETITION FOR WRIT OF PROHIBITION OR  
4 MANDAMUS ON ORDER SHORTENING TIME shall be heard on shortened time on the 20<sup>th</sup>  
5 day of October 2016, at the hour of 8:30 a.m. in Department XI.

6 DATED this 19<sup>th</sup> day of October 2016.

7   
8 DISTRICT COURT JUDGE

9  
10 Submitted by:

11 JOLLEY URGAL WOODBURY & LITTLE

12  
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19 Attorneys for Counterdefendant/

Counterclaimant/Crossclaimant

20 ELAINE P. WYNN

1 Elaine Wynn seeks an extension of this Court's stay of its September 20, 27 and 29, 2016  
2 orders,<sup>1</sup> which denied Ms. Wynn's claims for privilege or protection under Dodd-Frank and  
3 Sarbanes-Oxley, denied Ms. Wynn's motion for leave to take discovery from Wynn Resorts  
4 regarding those issues, and granted Wynn Resorts' and the Okada Parties' motions requiring  
5 service of Ms. Wynn's deposition transcript and all Dodd-Frank and Sarbanes-Oxley briefing on  
6 the Okada Parties. This Court granted a stay of these orders until and including October 20.  
7 Although Ms. Wynn promptly filed her writ petition on October 6, the Nevada Supreme Court has  
8 not yet ordered an answer to the petition or otherwise issued any substantive orders related to it.  
9 Wynn Resorts also has taken affirmative actions that have caused delay in the Nevada Supreme  
10 Court's disposition of Ms. Wynn's writ petition, including by seeking and obtaining an extension  
11 of time until October 31 to file an opposition to Ms. Wynn's motion to file under seal portions of  
12 her appendix. As this Court knows, Ms. Wynn's writ petition concerns Ms. Wynn's claimed  
13 privileges and protections under federal whistleblower laws. Because the object of the writ  
14 petition would be defeated if the stay does not continue under the Nevada Supreme Court  
15 addresses the petition, Ms. Wynn respectfully requests that her motion be granted and that the stay  
16 be extended until the Nevada Supreme Court takes dispositive action regarding Ms. Wynn's writ  
17 petition.

18 This motion is made and based on Nevada Rule of Appellate Procedure 8(a), EDCR 2.26,  
19 the attached Memorandum of Points and Authorities, the pleadings and papers on file herein, and  
20 any argument this Court allows at any hearing on this matter.

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27 <sup>1</sup> The Court's oral rulings at the September 20, 27 and 29 hearings were memorialized in  
28 written orders dated October 6, 10 and 12.

1 Dated: October 18, 2016

JOLLEY URGAL WOODBURY & LITTLE

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9 Counterclaimant/Cross-claimant

ELAINE P. WYNN

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Statement of Facts**

3 **The Court's Dodd-Frank And Sarbanes-Oxley Rulings And Stay Orders.** At hearings  
4 on September 20, 27 and 29, 2016, the Court denied Ms. Wynn's claims for privilege or protection  
5 under Dodd-Frank and Sarbanes-Oxley, denied Ms. Wynn's motion for leave to take discovery  
6 from Wynn Resorts regarding those issues, and granted Wynn Resorts' and the Okada Parties'  
7 motions requiring service of Ms. Wynn's deposition transcript and all Dodd-Frank and Sarbanes-  
8 Oxley briefing on the Okada Parties. This Court granted a stay of all these orders until October  
9 20. The Court's rulings and stay orders were memorialized in written orders dated October 6, 10,  
10 and 12, 2016.

11 **Ms. Wynn Promptly Files Her Writ Petition.** Ms. Wynn promptly filed her writ petition  
12 with the Nevada Supreme Court on October 6. Ms. Wynn also filed a motion to seal portions of  
13 the appendix to her petition, which seeks to protect the substance of her protected whistleblower  
14 communications and related information. Although the petition itself was filed publicly, it did not  
15 disclose the substance of those protected communications. Instead, the petition generically  
16 referenced "Ms. Wynn's reporting of Wynn Resorts Limited's potential violations of federal  
17 securities laws to Ernst & Young" without describing the substance of those reports (Pet. at ii).  
18 Wynn Resorts has obtained an extension of time until October 31 to oppose Ms. Wynn's motion to  
19 seal. As of the date of filing this motion, the Nevada Supreme Court has not yet ordered an  
20 answer to Ms. Wynn's petition or otherwise issued any substantive orders related to it.

21 **Wynn Resorts' Takes Actions That Delay The Disposition Of Ms. Wynn's Writ**  
22 **Petition.** Wynn Resorts has taken affirmative actions that have caused delay in the Nevada  
23 Supreme Court's disposition of Ms. Wynn's writ petition, including by seeking and obtaining an  
24 extension of time until October 31 to file an opposition to Ms. Wynn's motion to file portions of  
25 her appendix under seal. It is anticipated that the Supreme Court may not order an answer or issue  
26 a dispositive ruling until these types of threshold issues are briefed and resolved. Based on an  
27 opposition date of October 31, Ms. Wynn's reply in support of her sealing motion will be due on  
28 November 7.

Argument

The Nevada Supreme Court has recognized on several occasions that an order requiring disclosure of privileged information “is likely to cause irreparable harm” if review is not available until after final judgment. *Club Vista Fin. Servs. v. District Court*, 128 Nev. Adv. Op. 21, 276 P.3d 246, 249 (2012) (en banc). In such cases, a writ of prohibition is the appropriate avenue for relief because if “the discovery permitted by the district court’s order is inappropriate, a later appeal would not effectively remedy any improper disclosure of information.” *Id.* at 249.<sup>2</sup> The Supreme Court recently confirmed that a “statutory privilege” provided by federal law must be recognized and enforced by the courts of this state. *Johnson v. Wells Fargo Bank, NA*, 132 Nev. Adv. Op. 70, \_\_\_ P.3d \_\_\_ (Sep. 29, 2016) (addressing the scope of the Suspicious Activity Report (“SAR”) discovery privilege under the Bank Secrecy Act, 31 U.S.C. § 5311 *et seq.*).

Ms. Wynn’s petition raises issues of law necessary to vindicate Ms. Wynn’s federal privileges and protections, including whether Ms. Wynn’s communications with Wynn Resorts’ auditors, Ernst & Young, are protected under Dodd-Frank, and whether she is a protected person under Sarbanes-Oxley. Furthermore, the Court’s rulings on these legal questions are matters of significant importance for all Nevadans. Mandamus relief is appropriate “where an important issue of law requires clarification,” particularly where, as here, that important issue is part and parcel of a privilege dispute.<sup>3</sup> *Redeker v. District Court*, 122 Nev. 164, 167, 127 P.3d 520, 522 (2006). There is no doubt that the legal issues presented here meet that standard.

A party must first move in the district court for a stay of an order before seeking a stay from the Nevada Supreme Court pending resolution of a writ petition. NRAP 8(a)(1); *see also Hansen v. Eighth Jud. Dist. Court ex rel. County of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986

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<sup>2</sup> *See also Wardleigh v. District Court*, 111 Nev. 345, 350–51, 891 P.2d 1180, 1183–84 (1995) (per curiam) (“If improper discovery were allowed, the assertedly privileged information would irretrievably lose its confidential and privileged quality and petitioners would have no effective remedy, even by a later appeal.”); NRS 34.330 (extraordinary writ is appropriate where “there is not a plain, speedy and adequate remedy in the ordinary course of law.”).

<sup>3</sup> *See Savage v. District Court*, 125 Nev. 9, 16, 200 P.3d 77, 81 (2009 (en banc) (granting petition where it “raised important questions of law that require clarification and because public policy interests militate in favor of resolving these questions”).

1 (2000). When considering a stay, courts weigh a number of factors: (1) whether the object of the  
2 writ petition will be defeated if the stay is denied; (2) whether petitioner will suffer irreparable  
3 injury if the stay is denied; (3) whether the real party in interest will suffer irreparable harm if a  
4 stay is granted; and (4) whether petitioner is likely to prevail on the merits of the writ petition.  
5 NRAP 8(c).

6 Although no one factor is given greater weight than the others, a *prima facie* showing that  
7 the object of a writ petition would be defeated in the absence of a stay is usually sufficient ground  
8 to grant a stay. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251-53, 89 P.3d 36, 38-39  
9 (2004). When this factor favors a stay, the party opposing the stay must make a “strong showing”  
10 that appellate relief is “unattainable.” *Id.*, 120 Nev. at 253, 89 P.3d at 41. In other words, when  
11 “the first stay factor weighs heavily in favor of a stay, the final factor will counterbalance the first  
12 factor only when the appeal appears to be frivolous or the stay sought purely for dilatory  
13 purposes.” *State v. Robles-Nieves*, 129 Nev. Adv. Op. 55, 306 P.3d 399, 406 (2013).

14 That is the case here. Granting Wynn Resorts an unrestricted license to discover and  
15 impede protected communications would defeat the purpose of Ms. Wynn’s writ petition. In such  
16 a case, a stay should issue unless Wynn Resorts can show her appeal would be “frivolous” or  
17 “dilatory.” *Robles-Nieves*, 306 P.3d at 406. The remaining Rule 8 factors—examining the  
18 balance of harm between the parties and likelihood of success on the merits—also weigh in favor  
19 of a stay. Ms. Wynn has shown a substantial likelihood of success on the merits that Wynn  
20 Resorts’ discovery demands are prohibited by federal law. Furthermore, Wynn Resorts will not be  
21 harmed in any way by the stay, while Ms. Wynn’s federal whistleblower rights and privileges will  
22 be irreparably damaged if the stay is not extended pending further action on Ms. Wynn’s petition.

23 In the event this Court denies the Ms. Wynn’s for extension of the stay until the Nevada  
24 Supreme Court takes dispositive action regarding Ms. Wynn’s writ petition, Ms. Wynn requests an  
25 interim 30-day extension of the stay so Ms. Wynn can seek further relief from the Nevada  
26 Supreme Court.

1 Conclusion

2 Ms. Wynn respectfully requests that her motion be granted and that the stay be extended  
3 until the Nevada Supreme Court takes dispositive action regarding Ms. Wynn's writ petition.  
4

5 Dated: October 18, 2016

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21 ELAINE P. WYNN  
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 18th day of October, 2016, I caused the foregoing ELAINE P.  
3 WYNN'S MOTION TO EXTEND STAY PENDING PETITION FOR WRIT OF PROHIBITION  
4 OR MANDAMUS ON ORDER SHORTENING TIME to be served as follows:

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