IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.

WYNN RESORTS, LIMITED,

Petitioner,

v.

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

Respondent,

and

KAZUO OKADA; UNIVERSAL ENTERTAINMENT CORP. AND ARUZE USA, INC.,

Real Parties in Interest.

PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS

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RULE 26.1 DISCLOSURE

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

Petitioner Wynn Resorts, Limited is a publicly-traded Nevada corporation, headquartered in Las Vegas, Nevada.

DATED this 7th day of August, 2017.

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ROUTING STATEMENT

The Nevada Supreme Court should retain this writ proceeding because it stems from a case "originating in Business Court." NRAP 17(a)(10); NRAP 17(e).

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I. OVERVIEW AND RELIEF SOUGHT

Petitioner Wynn Resorts, Limited ("Wynn Resorts" or the "Company") requests a Writ of Prohibition or, Alternatively, Mandamus challenging the District Court's latest privilege-busting order, another predicated upon Defendants' contention that they "are entitled to go behind the curtain" of a board of directors' business judgment. (App. Vol. II, APP_0446.) With its present order, the District Court says that Wynn Resorts' claims of accountant/client privilege must yield under NRS 49.205(4), an exception to the privilege for communications that are "relevant to an issue" as to a public report by the accountants, such as arises when claims are made for purported inaccurate financial reporting.

But there is no claim or such issue here. Rather, the latest Order is simply another in a long line of efforts by Defendants Kazuo Okada ("Okada"), Universal Entertainment Corp. ("Universal") and Aruze USA, Inc. ("Aruze") (collectively the "Okada Parties") to circumvent the Business Judgment Rule and the Board of Directors' decision to redeem and value shares as expressly authorized by the Company's Articles of Incorporation. This Court's decision last week in *Wynn Resorts, Ltd. v. Eighth Judicial District Court*, 133 Nev. Adv. Op. 52, ___ P.3d ___ (2017) noted the limitations upon discovery in a business judgment matter, precisely because the courts are not permitted to interfere with or second guess the decisions which the stockholders have empowered their directors to make.

As the District Court did with its ordered production of privileged communications in the Brownstein Hyatt documents and Freeh documents – two of the matters address in this Court's recent decision – the Order overruling Wynn Resorts' claims of accountant/client privilege turns on the contention that the Okada Parties are permitted wide latitude to challenge the merits of the Board's decision, including challenging its purported wisdom or overall fairness to the Okada Parties. But as this Court has now made clear, the law does not countenance such end runs of the Board's judgment.

The Okada Parties' claims in this action do not involve any allegations about public reporting of Wynn Resorts' finances. Nor could they, particularly since the accountant/client communications that they seek occurred after this litigation commenced. Instead, as before, the Okada Parties simply contend that they are entitled to discovery into the merits and wisdom of the Board's decision and that any privileges relating thereto must yield.

The District Court's ordered production of the Company's communications with its accountants should be set aside. This is simply another back-door challenge to the Board's business judgment under its Articles of Incorporation. Because those communications would remain protected but for the District Court's Order, writ relief is appropriate.

II. ISSUE PRESENTED

Does the exception to the accountant/client privilege in NRS 49.205(4) apply when no claim is brought concerning the accuracy or substance of any public financial report, but is instead discovery sought to challenge the underlying merits of the Board's business judgment?

III. FACTS RELEVANT TO UNDERSTANDING THIS PETITION

A. Wynn Resorts Redeems an Unsuitable Stockholder.

Much of the factual background of this case, and the basis for this writ, is already set forth in this Court's recent decision of *Wynn Resorts*, 133 Nev. Adv. Op. 52. As this Court notes there, this litigation concerns the decision by the Wynn Resorts' Board of Directors to redeem shares associated with the Okada Parties under the Company's Articles of Incorporation due to regulatory concerns.

As the Articles expressly provide, the Board may redeem the shares associated with any stockholder, or that stockholder's affiliates, that the Board in its discretion considers to be unsuitable. (Art. VII at § 2(a), App. Vol II, APP_0344.) But the Board's judgment under the Articles does not end with an unsuitability assessment.

Rather, the stockholders, through the Articles, then charge the Board with the authority to determine and set the "Redemption Price" to be paid. (Art. VII at § 1(j), App. Vol. II, APP_0343.) Under the Articles, unless a gaming regulator mandates a particular payment, the price should be that "amount determined by the board of

directors to be the fair value of the Securities to be redeemed." (*Id*.) The Article's only limitation on the Board's determination of the value is that the Board is expressly prohibited from paying the redeemed stockholder any type of premium. (*Id*.) Thus, the Redemption Price cannot be above "the closing sales price per share of shares on the principle national securities exchange on which such shares are then listed . . . ." (*Id*.)

It is expressly within the Board's discretion to determine not only the Redemption Price, but also how that price is remitted, including whether "in cash, by promissory note, or both, as the board of directors determines." (*Id*.) If the Board elects to issue a promissory note, the Articles provide that the note:

> shall contain such terms and conditions as the Board of Directors determines necessary or advisable, including without limitation, subordination provisions, to comply with any law or regulation applicable to the Corporation or any Affiliate of the Corporation, or to prevent a default under, breach of, event of default under, or any acceleration of any loan, promissory note, mortgage, indenture, line of credit, or other debt or financing agreement of the Corporation or any Affiliate of the Corporation.

(*Id*.) Moreover, if the Board chooses a promissory note, "the principal amount of the promissory note together with any unpaid interest shall be due and payable no later than the tenth anniversary of delivery of the note and interest on the unpaid principal thereof shall be payable annually in arrears at the rate of two percent (2%) per annum." (*Id*.)

Wynn Resorts' stockholders placed these matters exclusively within the prerogative of the Board of Directors. As Article VII, Section 7 specifies, the "Board of Directors shall have the exclusive authority and power to administer Article VI and to exercise all rights and powers specifically granted to the Board of Directors or the Corporation as may be necessary or advisable in the administration of Article VII." (Art. VII at § 7, App. Vol. II, APP_0345.) They further admonish that all actions taken pursuant to Article VII "which are done or made by the board of directors in good faith shall be final, conclusive, and binding on the Corporation and all other Persons." (*Id*.)

B. The Board Determines to Pay the Redemption Price by the Agreed-To Promissory Note Procedure.

At its meeting where it determined to redeem the shares associated with the Okada Parties, the Board of Directors also determined the means of payment. In exercising its judgment, [redacted] (App. Vol. I, APP_0161.) This results in a redemption price of $1,936,442,631.36. Based upon [redacted] Board determined to pay the redemption by way of a

10-year promissory note with 2% interest ("Redemption Note"), again as provided by the Articles.

Of course, as a publicly-traded company, Wynn Resorts must, from time to time, make public disclosures about its ongoing financial obligations, which necessarily includes the 10-year Redemption Note. For those disclosures, the Company obviously has had communications with its public accountants, which is presently Ernst & Young. (App. Vol. II, APP_0353.) Also, Wynn Resorts had additional communications with the accounting firm of PricewaterhouseCoopers, [redacted]. (App. Vol. II., APP_0307.)

C. The Okada Parties seek all Communications with Ernst & Young and PricewaterhouseCoopers.

As they have throughout this case – which led to this Court's recent decision concerning the permissible scope of discovery under the Business Judgment Rule – the Okada Parties have claimed sweeping discovery on every aspect of the Board's actions. Consistent with their longstanding claim that the Business Judgment Rule did not apply to the Board's decision, they sought discovery from Ernst & Young and PricewaterhouseCoopers, despite making no claim relating to the Company's public reporting of its outstanding financial obligations. Instead, the Okada Parties claimed – just as they have claimed with all discovery – that they are allowed to

challenge the Board's redemption decision and analysis through the discovery process.

In an effort to justify their discovery of communications between Wynn Resorts and its accountants, the Okada Parties even resorted to re-characterizing the "fair value" terms of the Articles of Incorporation. For this discovery, the Okada Parties claim that they are entitled to client/accountant communication because it may go to the "fair value" of the Redemption Note itself, as opposed to the stock. Of course, there is no such thing as the "fair value" of the Note itself. The Articles provide that the Board's "fair value" analysis concerns the Redemption Price, not the terms of a note. (Art. VII at § 1(j), App. Vol II, APP_0343.) Indeed, many of the Note's principal terms – like the rate of interest – are expressly established by the Articles themselves. *Id.* The post-redemption financial reporting of the Redemption Note is not at issue in this litigation, a fact underscored by the Okada Parties' need to rewrite the terms of the Articles of Incorporation.

Ernst & Young serves as the independent registered public accounting firm for Wynn Resorts, while Wynn Resorts retained PricewaterhouseCoopers [redacted] (App. Vol. II, APP_0353.) The Okada Parties issued a subpoena to Ernst & Young sweepingly seeking:

1. ALL DOCUMENTS from January 1, 2012 to present RELATED TO the ***fair value of the REDEMPTION NOTE***, whether for the purpose of analysis, audit, review, tax or otherwise, and including but not limited to COMMUNICATIONS, notes, work papers and drafts.

2. ALL DOCUMENTS from January 1, 2010 to present referenced, considered, reviewed or relied upon regarding FAS 157 in relation to WYNN RESORTS, whether for the purpose of analysis, audit, review, tax or otherwise, and including but not limited to COMMUNICATIONS, notes, work papers and drafts. Please note that this request is not limited to DOCUMENTS RELATED TO the REDEMPTION NOTE.

3. ALL DOCUMENTS from January 1, 2011 to present RELATED TO YOUR analyses of MATERIALITY for purposes of WYNN RESORTS' financial statements, including but not limited to COMMUNICATIONS notes, work papers and drafts created in connection with such analyses.

4. ALL DOCUMENTS reflecting YOUR policies, procedures, guidance, and training RELATED TO FAS 157, in effect at any time from January 1, 2012 through the present. Please note that this request does not seek documents specific to any particular client.

(App. Vol. II, APP_0363 (emphasis added).) Similarly, the Okada Parties issued a subpoena to PricewaterhouseCoopers seeking "ALL DOCUMENTS from January 1, 2012 to the present RELATED TO ***the fair value of the REDEMPTION NOTE***, whether for the purpose of analysis, audit, review, tax or otherwise, and including but not limited to COMMUNICATIONS, notes, work papers and drafts." (App. Vol. II, APP_0377 (emphasis added).) As their client and the privilege holder, Wynn Resorts objected to this improper discovery, and asserted its claims

of accountant/client privilege by way of detailed privilege logs.[1] (*See* App. Vol. II, APP_0384-10.)

D. The District Court Overrules, in part, the Company's Claims of Privilege.

The Okada Parties filed a motion to compel asking the District Court to "overrule Wynn Resorts' claim of the accountant/client privilege and order Wynn Resorts to produce all of the documents on the Privilege Log." (App. Vol. I, APP_0139.) Due to various discovery stays, Wynn Resorts' claims of privilege did not reach the District Court until the Okada Parties filed their motion on May 4, 2017.

The Okada Parties' motion raised four arguments in seeking the Company's communications with its accountants. First, they asserted that the advice given by Ernst & Young and PricewaterhouseCoopers was in furtherance of public filings, and therefore the communications fell within the exception of NRS 49.205(4). Second, because the Okada Parties asserted a cause of action for breach of fiduciary duty, not against the Company but against the Directors, the accountant/client privilege supposedly does not apply under NRS 49.205(6). Third, the Okada Parties

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[1] Because the District Court had long accepted the Okada Parties' argument that the Business Judgment Rule did not apply to the Board of Directors – but served only as a limitation of personal liability for individual directors – Wynn Resorts had to produce any non-privileged documents despite its contention that they were irrelevant. This Court's recent reversal of the District Court's view about the Business Judgment Rule only confirms that irrelevancy.

asserted that the accountant/client privilege was waived because Wynn Resorts discussed the valuation of the Redemption Note by Ernst & Young and PricewaterhouseCoopers. Finally, the Okada Parties argue that the privilege applies only to the communications between the accountant and the client, not the documents exchange.

At the hearing on their motion, the Okada Parties again relied upon their claim to broad discovery on the theory that "we are entitled to go behind the curtain" of the Board's business judgment. (App. Vol. II, APP_0446.) And with that, the Okada Parties claim that they had satisfied "exceptions to the accountant/client privilege" and were entitled to "compel production." *Id*.

The District Court then granted the Motion to Compel, in part, directing that "Wynn Resorts shall produce all documents on the *Wynn Parties' Privilege Log for Documents Produced by PricewaterhouseCoopers, LLP Pursuant to Subpoena Duces Tecum* and on the *Wynn Parties' Privilege Log for Documents Produced by Ernst & Young, LLP Pursuant to Subpoena Duces Tecum* (collectively, the 'Privilege Logs') which relate to the value of the Redemption Price Promissory Note (the 'Note') for Wynn Resorts' public reporting issues." (App. Vol. II, APP_0459-60.)

Respectfully, the District Court's Order misapplies the prerequisite for this statutory exemption – communications "relevant to an issue" concerning a public

report – when there is no public reporting issues giving rise to the Okada Parties' claims, particularly now in light of this Court's reversal of the District Court's misapplication of the Business Judgment Rule. Wynn Resorts is entitled to review the latest order infringing on its privileges, another resting on the claimed entitlement "to get behind the curtain" that has underpinned virtually of the Okada Parties' discovery. (App. Vol. II, APP_0446.)

IV. REASONS WHY THE WRIT SHOULD ISSUE

A. Compelled Production of Accountant/Client Privileged Communications Warrants Extraordinary Writ Relief.

Where, as here, a court order requires the disclosure of "assertedly privileged information," a party has "no plain, speedy and adequate remedy at law" other than by seeking writ relief because absent such relief the information "would irretrievably lose its confidential and privileged quality." *Wardleigh v. Second Jud. Dist. Ct.*, 111 Nev. 345, 350-51, 891 P.2d 1180, 1183-84 (1995). Indeed, a party who must comply with such an order without first having the opportunity for writ review faces an impossible dilemma – it must choose between the irreparable prejudice suffered by revealing privileged information or, by refusing to comply, "the imposition of such drastic remedies as dismissal with prejudice or other similar sanctions." *Id.* Because the stakes and possible consequences of noncompliance are so high, relief by writ petition is the appropriate vehicle to challenge an ordered disclosure of privileged information.

Furthermore, this Court holds that writ relief is appropriate to address important questions of state law that would benefit from a definitive ruling by the state's highest court. *Wynn Resorts*, 133 Nev. Adv. Op. 52; *MountainView Hosp. v. Nev. Dist. Ct.*, 128 Nev. Adv. Op. 17, 273 P.3d 861, 864 (2012) ("In addition, consideration of extraordinary writ relief is often justified 'where an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction.'") (quoting *Mineral County v. State, Dep't of Conserv.*, 117 Nev. 235, 243, 20 P.3d 800, 805 (2001)). Because the District Court's order raises important issues regarding the scope of and exceptions to the accountant/client privilege, the District Court's Order warrants review and a definitive ruling from this Court.

B. The Standard of Review Favors Writ Relief, as the Issue is One of Law.

This Petition arises from the District Court's interpretation and application of the accountant/client privilege as set forth in NRS 49.190 and the exceptions to it in NRS 49.205. "Statutory interpretation and application is a question of law subject to [the Supreme Court's] de novo review, even when arising in a writ proceeding." *Las Vegas Sands*, 319 P.3d at 621. Courts will apply the statute's plain language when the statutory meaning is clear; "[b]ut when a statute is susceptible to more than one reasonable interpretation, it is ambiguous," and courts will "resolve that ambiguity by looking to legislative history and 'construing the statute in a manner

that conforms to reason and public policy.'" *Id.* (quoting *Great Basin Water Network* v. *State Eng'r*, 126 Nev. 187, 234 P.3d 912, 918 (2010)). Considering that the District Court's ruling raises an issue of statutory interpretation as to the scope of the exception to the accountant/client privilege, it is one of law that is appropriately addressed by writ review.

C. The Accountant/Client Privilege Protects Communications with Ernst & Young and PricewaterhouseCoopers.

Under Nevada law, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party . . . . if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." NRCP 26(b)(1). Similar to protections extended to communications between attorneys and their clients, Nevada law extends protections to communications between a client (or their representatives) and their accountant (or representative) which are "[m]ade for the purpose of facilitating the rendition of professional accounting services to the client, by the client or the client's accountant to an accountant representing another in a matter of common interest." NRS 49.185; *see also McNair v. Eighth Jud. Dist. Ct.*, 110 Nev. 1285, 885 P.2d 576 (1994).

Although narrower than the attorney/client privilege, the accountant/client privilege serves the same purpose: to facilitate an atmosphere of open

communications between the client and the accountant by providing an atmosphere of open communication between the client and the accountant by providing protection for those confidential communications. *Id*.; *Neuster v. Dist. Ct. For City & Cnty. of Denver*, 675 P.2d 1, 5 (Colo. 1984). As this Court has observed "privileges relating to confidential communications, such as those between attorney and client, . . . shield the confidentiality of communications within special relations that are not designated or intended to assist the fact-finding process or to uphold its integrity." *Diaz v. Eighth Jud. Dist. Ct.*, 116 Nev. 88, 98, 993 P.2d 50, 57 (2000).

"The party asserting the privilege has the burden of making a prima facie showing that the privilege protects the information that the party intends to withhold." *Diamond State Ins. Co. v. Rebel Oil Co.*, 157F.R.D. 697, 698 (D. Nev. 1994) (quoting *In re Grand Jury Investigation*, 974 F.2d 1068, 1070 (9th Cir. 1992)). "This demonstration is generally accomplished by the submission of a privilege log." *Id*. Once the initiation burden has been satisfied, the party seeking the privileged information must "demonstrate a sufficiently compelling need to overcome the privilege." *In re Stratosphere Corp. Sec. Litig.*, 183 F.R.D. 684, 685 (D. Nev. 1999); *see also Cook v. Taser Int'l, Inc.*, No. 2:04-CV-01325-PMPGWF, 2006 WL 1520243, at *2 (D. Nev. May 26, 2006) ("[O]nce a satisfactory showing of privilege has been made, the burden of overcoming the assertion of privilege shifts to the party seeking disclosure to demonstrate that the privilege does not apply or has been waived.").

Wynn Resorts made its prima facie showing that the communications were privileged through its privilege logs for Ernst & Young and PricewaterhouseCoopers on April 25, 2016. To claim an exception to privilege, the Okada Parties bear the burden of establishing all prerequisites for the exception to apply. *See Pfizer Inc. v. Lord*, 456 F.2d 545, 549 (8th Cir. 1972) ("Under present law, a party seeking to overcome a claim of [] privilege by invoking the improper purpose exception has the burden of producing sufficient evidence to sustain a finding that the challenged communications" fall into the exception); *accord In re Pub. Def. Serv.*, 831 A.2d 890, 903 (D.C. 2003) ("A presumptively valid [attorney/client] privilege having been asserted, the burden was on [the government, as] the party seeking to overcome the privilege, to demonstrate the applicability of the [crime-fraud] exception.").

1. There is no basis for the NRS 49.205(4) exception to privilege to apply here.

Once again accepting the Okada Parties contention that they are "entitled to go behind the curtain" as to the Board's judgment regarding the redemption – a decision exclusively vested with the Board by the stockholders through the Articles of Incorporation – the District Court overruled Wynn Resorts' claim of privilege, ruling that the exception to privilege in NRS 49.205(4) applies here. But that statute creates an "exception" for the accountant/client privilege that is plainly not applicable here:

> As to any communication ***relevant to an issue*** concerning the examination, audit or report of any financial statements, books, records or accounts which the accountant may be engaged to make or requested by a prospective client to discuss for the purpose of making a public report.

(emphasis added).

Here, there is no dispute that the issues in this case arise out of the redemption and not the financial reporting of the resulting financial obligation. Indeed, the District Court's Order in no way addresses how this exception applies in this case – a business judgment case that does not raise, let alone concern, the veracity of any public report by any accountants on the Company's behalf. Once again, discovery has been authorized to challenge the Board's redemption decision and therefore claims of privilege are out the window. Respectfully, this is the same approach – going behind the curtain of the Board's decision – which necessitated this Court's most recent writ.

The purpose of the exception in NRS 49.205(4) is to preclude a client from claiming a privilege when the veracity of a public financial statement is disputed in some pertinent fashion. *Volvo Constr. Equip. Rents, Inc. v. NRL Rentals,* LLC, 2011 WL 3651266, at *2-3 (D. Nev., Aug. 18, 2011). The Legislature codified the exemptions to the accountant/client privilege in 1971 by Senate Bill 12 ("S.B. 12"). Looking to the legislative history of S.B. 12, representatives of the National Society for Certified Public Accountants, the Nevada National Society of Certified Public Accountants, and the Nevada Society of CPA testified in support of the

accountant/client privilege, framing it as similar to the attorney/client privilege. Moreover, these representatives also testified that there needed to be an exemption specifically for what is known as the attest function. (App. Vol. I, APP_0029-40.)

Mr. Bill O'Mara, of the National Society for Certified Public Accountants, provided the proposed language that was adopted as NRS 49.125-205. Mr. O'Mara stated that:

> "[t]his modification is due to the fact that there is no exception to the privilege for the attest function. The attest function is that function which gives the accountant the right to examine records, books of accounts, things of this sort, and make a public disclosure **as to the correctness of these books of accounts and examinations**. . . . There are two functions of the accountant. Those functions in which he has a confidential relationship with his client and those functions in which he does not have a confidential relationship with his client but purports to give information to the public upon which the public can rely. It is a complete, independent examination."

(*Id.* at APP_0033 (emphasis added).) As the legislative history shows, the exception was created so that clients could not claim communications relating to an accountant's attest function were privileged. (*Id.*). "The attest function is the issuance of an independent opinion regarding a client's financial stability based on an audit or review of a client's financial statement." *Fane v. Edenfield*, 90-3943, 1991 WL 205244 (11th Cir. 1991), *aff'd*, 113 S. Ct. 1792 (1993). The exception to the accountant/client privilege under NRS 49.205(4) relates to whether the specific types of public statements were accurate.

Respectfully, here, the District Court's Order provides no explanation for how the exception created by NRS 49.205(4) can be invoked in this case. The

Okada Parties have brought no claim based upon any public report involving the Company's accountants nor have they brought any claims based upon the veracity of the Company's public reporting as to its finances. Instead, the Okada Parties have merely continued with their erroneous assault, insisting that the Business Judgment Rule did not apply to the Board of Directors and its decisions, and thus entitled to go behind the curtain of the Board's decision.

The District Court's misapplication is highlighted by the Company's communications with PricewaterhouseCoopers. Specifically, PricewaterhouseCoopers is not the Company's public auditor. As [redacted] App. Vol. II. APP_0307.) These are not the types of communications that would be exempted from the privilege even if the exception in NRS 49.205(4) were otherwise implicated here, which it is not.

V. CONCLUSION

Once again, the District Court's Order – one asserting an exception to privilege – rests upon its misapplication of what is "at issue" in a business judgment case. The exception in NRS 49.205(4) is not properly invoked here, as there is no claim as to the veracity of any of Wynn Resorts' financial reporting. Instead, as before, the

Okada Parties simply contend that they are entitled to any discovery so as to debate the merits and wisdom of the Board's decision. Wynn Resorts' claims of privilege should not be disregarded based upon that continuing error of law. Wynn Resorts is entitled to protection for its attorney/accountant communications.

DATED this 7th day of August, 2017.

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VERIFICATION

I, Todd L. Bice, declare as follows:

1. I am one of the attorneys for Wynn Resorts, Limited, the Petitioner.

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

3. I, as legal counsel, am verifying the petition because the question presented is a legal issue as to the proper scope of a discovery order under this Court's precedence which is a matter for legal counsel.

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

This declaration is execution on 7th day of August, 2017 in Las Vegas, Nevada.

By: Todd L. Bice
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office Word 2013 in size 14 font in double-spaced Times New Roman. I further certify that I have read this brief and that it complies with NRAP 21(d).

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

DATED this 7th day of August, 2017.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 7th day of August, 2017, I electronically filed and served a true and correct copy of the above and foregoing **PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS** properly addressed to the following:

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Respondent

/s/ Kimberly Peets
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