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Electronically Filed  
Mar 19 2021 12:07 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

12 IN THE SUPREME COURT OF THE STATE OF NEVADA

13 MOTI PARTNERS, LLC, *et al.*

14 Petitioners,

15 vs.

16 EIGHTH JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA, IN AND FOR THE  
17 COUNTY OF CLARK, and THE  
HONORABLE TIMOTHY C. WILLIAMS,  
DISTRICT JUDGE,

18 Respondents,

19 and

20 DESERT PALACE, INC., *et al.*,

Real Parties in Interest.

Supreme Court No. 82448

District Court No. A-17-751759-B  
Consolidated with A-17-760537-B

**PETITIONERS' REPLY IN  
SUPPORT OF THEIR MOTION  
FOR A PARTIAL STAY OF  
DISTRICT COURT  
PROCEEDINGS**

## I. INTRODUCTION

Caesars' Response misses the mark. The merits of the parties' claims and defenses are immaterial to the Writ Petition, and to this Motion, and Caesars' belief that Petitioners are seeking to delay resolution of this matter (for some unidentified benefit) is nonsensical.<sup>1</sup> An analysis of the NRAP 8(c) factors and this Court's prior decisions demonstrate that a stay is warranted while this Court considers an important issue of first impression.

## II. ARGUMENT

### A. The Object of the Writ Petition May be Defeated if a Stay is Not Entered.

Caesars contends that the object of the Writ Petition will not be defeated in the absence of a stay because Petitioners have the opportunity for a retrial following an appeal. (Resp. at 5-6.) Caesars ignores that the outcome of dispositive motions and trial could defeat the object of the Writ Petition.

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<sup>1</sup> Petitioners are entitled to substantial damages based on Caesars' wrongful withholding of net profits for various restaurants that were conceptualized by Petitioners. Needless to say, Petitioners would like to recoup those profits as soon as reasonably practical. At the same time, they want to avoid piecemeal litigation and believe that the district court erred when it struck their Amended Counterclaims. In reality, ***any delay of the litigation is a cost that will be borne by Petitioners.*** In the interim, Caesars continues to operate the restaurants while keeping Petitioners' share of the net profits. Moreover, that Petitioners have sought prior stays on other grounds is immaterial; none of their prior requests was sought for a dilatory purpose, as Caesars contends.

1 As explained in the Motion, if Petitioners prevail at trial, they would be  
2 forced to decide whether to pursue their Amended Counterclaims (the object of  
3 the Writ Petition) on appeal while, at the same time, risking a potential retrial  
4 on the claims that they—at that point—had prevailed on. Further, other  
5 rulings, findings, or verdicts could impede the practical ability of Petitioners to  
6 pursue their Amended Counterclaims. As result, the object of the Writ Petition  
7 may be defeated in the absence of a stay.

8 **B. Petitioners Will Suffer Serious Harm in the Absence of a Stay.**

9 Caesars contends that Petitioners will not suffer serious harm because, in  
10 the end, they are complaining over added fees associated with a second trial.  
11 (Resp. at 6.) Caesars blurs Nevada case law to make this argument.

12 In *Fritz Hansen A/S v. Eighth Jud. Dist. Ct.*, this Court held that  
13 “litigation expenses, while potentially substantial, are neither irreparable nor  
14 serious.” *Id.*, 116 Nev. 650, 658, 6 P.3d 982, 986-87 (2000). Here, the serious  
15 harm faced by Petitioners is not simply added litigation expenses—it is the  
16 inability to seek certain damages at trial. In brief, the district court has  
17 precluded the TPOV Parties and the MOTI Parties from being able to present  
18 claims at trial and, further, has barred the LLTQ/FERG Parties from seeking  
19 damages for two restaurants from which they have been denied a share of the  
20 net profits. Such harm is serious and warrants the imposition of a stay.

1           **C.     Caesars Will Suffer Little to No Harm if a Stay is Entered.**

2           Caesars contends that it will suffer harm upon entry of a stay because  
3 witnesses may become unavailable, memories may fade, and documents may  
4 be lost or destroyed. (Resp. at 7.) Setting aside that these issues impact  
5 Caesars and Petitioners equally, this argument fails.

6           The cases relied upon by Caesars are inapposite. This Court’s decision  
7 in *Aspen Financial Services v. Eighth Jud. Dist. Ct.* concerned a district court’s  
8 denial of a motion to stay based on the petitioner’s request to avoid discovery  
9 as an “accommodation of his ... Fifth Amendment privilege against self-  
10 incrimination.” *Id.*, 128 Nev. 635, 640, 289 P.3d 201, 204-05 (2012). The  
11 U.S. Supreme Court’s decision in *Clinton v. Jones* involved a similar request  
12 from then-President Clinton to stay a civil matter until after he left office. *Id.*,  
13 520 U.S. 681, 707-08 (1997).

14           Here, Petitioners are not seeking to avoid discovery with a stay. To the  
15 contrary, they seek a stay of non-discovery proceedings in the district court.<sup>2</sup>

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16  
17 <sup>2</sup> Even if *Aspen Financial Services* were applicable to this Motion, it would  
18 support the relief requested. There, this Court recognized the need for  
19 “complex litigation [to] proceed in an efficient manner.” *Id.* at 646, 289 P.3d  
20 at 208-09 (quotation marks and citation omitted). A stay would achieve that  
goal because it would allow this Court to decide, before dispositive motions  
are decided or a trial occurs, whether Petitioners were wrongly deprived of the  
right to file their Amended Counterclaims in response to Caesars’ First  
Amended Complaint.

1 More importantly, as this Court has held, a mere delay in litigation is  
2 insufficient to warrant denial of a stay. *See Mikohn Gaming Corp. v. McCrea*,  
3 120 Nev. 248, 253, 89 P.3d 36, 39 (2004). Thus, a stay is warranted.

4 **D. Petitioners are Likely to Prevail on the Merits.**

5 Caesars contends that Petitioners are not likely to prevail on the merits  
6 because this Court will disregard federal authority—which this Court has held  
7 is “strong persuasive authority”<sup>3</sup>—on a novel question of Nevada law  
8 concerning an interpretation of the Nevada Rules of Civil Procedure. (Resp. at  
9 7-10.) Caesars’ argument is unconvincing for two main reasons.

10 First, Caesars contends that this Court will adopt the district court’s  
11 NRCP 16 approach to the issue presented by the Writ Petition—an approach  
12 that the district court created *sua sponte*. (Resp. at 7-8.) As explained in the  
13 Writ Petition, the district court’s reliance on NRCP 16 and *Nutton v. Sunset*  
14 *Station, Inc.*, 131 Nev. 279, 357 P.3d 966 (2015) was, respectfully, misplaced.  
15 (Writ. Pet. at 30-32.) Indeed, numerous federal courts have rejected arguments  
16 advocating for a Rule 16 approach. (*Id.* at 27-28, 31-32.) Moreover, *Nutton*  
17 did not address the issue presented by the Writ Petition, *i.e.*, the assertion of  
18  
19

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20 <sup>3</sup> *Exec. Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

1 amended counterclaims as a matter of right in response to an amended  
2 complaint. *See id.*, 131 Nev. at 285-86, 357 P.3d at 971.

3 Second, Caesars contends that even if this Court were to adopt the  
4 moderate approach, the district court already found that the Amended  
5 Counterclaims were not permissible under the moderate approach. (Resp. at 8-  
6 10.) However, as explained in the Writ Petition, the district court conflated the  
7 narrow approach with the moderate approach. (Writ. Pet. at 32-34.)  
8 Accordingly, the district court's analysis of the moderate approach is,  
9 respectfully, erroneous, which justifies this Court's intervention.

10 In sum, Petitioners are likely to prevail on the merits, warranting a stay.

### 11 III. CONCLUSION

12 For the reasons set forth in the Motion and above, this Court should  
13 enter an order staying all non-discovery proceedings in the district court  
14 pending a ruling on the Writ Petition.

15 DATED this 19<sup>th</sup> day of March, 2021.

16 BAILEY ❖ KENNEDY

17 By: /s/ John R. Bailey

18 JOHN R. BAILEY

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 19<sup>th</sup> day of March, 2021, service of the foregoing was made by electronic service through Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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