

IN THE COURT OF APPEALS FOR THE STATE OF NEVADA

VENETIAN CASINO RESORT, LLC;)
LAS VEGAS SANDS, LLC,)

Appellants,

v.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA; THE HONORABLE
KATHLEEN DELANEY,

Respondents,

JOYE SEKERA,

Real Party in Interest)

Court of Appeals Case No.:

79689-COA

District Court Case No.:

A788379

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JOYCE SEKERA'S OPPOSITION TO APPELLANTS' EMERGENCY

MOTION FOR STAY UNDER NRAP 27(e)

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Attorneys for Real Party in Interest Joyce Sekera

Real Party in Interest, JOYCE SEKERA. ("Ms. Sekera"), by and through her attorneys, The Galliher Law Firm, hereby submits the following Opposition to Appellants' Emergency Motion Under NRAP 27(e). This Opposition is based upon and supported by the following memorandum of points and authorities, the pleadings and papers on file, the exhibits attached hereto, and any argument that the Court may allow at the time of hearing.

DATED this 8th of October, 2019

THE GALLIHER LAW FIRM



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MEMORANDUM AND POINTS OF AUTHORITIES

I. FACTUAL BACKGROUND

This is a case arises out of a slip and fall in the Venetian Casino at 12:30 p.m on November 4, 2016. (VEN005.) Ms. Sekera was walking past the Grand Lux Café Restrooms in the Venetian when she slipped and fell on water on the slick marble floor. (*Id.*) Appellants however, contend “Plaintiff’s fall had nothing to do with a foreign substance being on the floor.” (VEN061:27-28.) On the way down Ms. Sekera struck her skull and left elbow on the pillar and her left hip on the ground. Over the last three years Ms. Sekera treated for her injuries with low back injections, medial branch blocks and two rounds of radio frequency ablations. (APP122-24.) In June, Ms. Sekera’s doctor recommended a fusion back surgery which Ms. Sekera will undergo in the near future. (APP125-26.)

During discovery Ms. Sekera’s requested Appellants produce incident reports from the three years prior to the Ms. Sekera’s fall to present. (VEN040.) In response, Appellants produced 64 redacted incident reports. (VEN056:2-057:2.) These reports redacted phonebook information (name, address and phone) plus dates of birth. (APP127-39.) The redacted incident reports contain spaces for social security numbers and drivers’ licenses, however, Appellants did not redact this information because they do not collect it. (APP127-39.) Guests completing forms also did not fill in this information. (VEN007, APP127, APP128, APP136.)

Ms. Sekera asked Appellants to provide unredacted incident reports so she could identify witnesses to rebut the comparative negligence claim that Ms. Sekera should have seen liquid on the floor before she fell. (VEN057:3-14.) Appellants refused to produce the unredacted reports and filed for a protective order. (*Id.*)

The Discovery Commissioner recommended (“April 4, 2019 DCRR”) granting the Motion for a Protective Order and ordering the unredacted incident reports be withheld. (VEN203.) Ms. Sekera objected to the April 4, 2019 DCRR because she needed the contact information for potential witnesses in her case and because Appellants’ fear of collaborative discovery is not sufficient grounds for a protective order. (APP161:18-27.) The District Court overruled the April 4, 2019 DCRR because there was no legal basis for the protective order. (APP193.)

II. LEGAL ARGUMENT

A. Legal Standard for NRAP 8 Emergency Motion

A party may move for a stay of an order “pending appeal or resolution of a petition to the Supreme Court or Court of Appeals for an extraordinary writ [.]”

NRAP 8(a)(1)(A). In deciding whether to issue a stay the Court must consider the following factors:

- (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether

appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

NRAP 8(c). Appellants have the burden to show the factors in favor of a stay. *Aspen Fin. Servs. v. Dist. Ct.*, 128 Nev. 635, 642, 289 P.3d 201, 206 (2012).

In relation to discovery appeals, the Supreme Court held “Absent a clear abuse of discretion, we will not disturb a district court's decision regarding discovery.” *In re Adoption of a Minor Child*, 118 Nev. 962, 968, 60 P.3d 485, 489 (2002) (citing *Diversified Capital v. City N. Las Vegas*, 95 Nev. 15, 23, 590 P.2d 146, 151 (1979)). Thus, to receive a stay, Appellants must show the District Court abused its discretion when it denied Appellants’ Motion for a Protective Order.

B. Appellants Are Not Likely to Prevail on the Merits in the Writ

1. Appellants Fear of Collaborative Sharing of Information is Not Grounds for a Protective Order

Although not explicitly argued by Appellants, the language of the Writ makes clear the largest, if not sole motivation behind this protective order was to prevent the collaborative sharing of information. (See Writ at e, 1, 2, 3, 8, 9, 13, 14, 15, 17, 18, 22, 28 (complaining of collaborative discovery.)) Courts nationwide however uniformly agree that a concern of the risk of public disclosure or collaborative sharing of information does not constitute good cause for a protective order. See, e.g. *Olympic Refining Co. v. Carter*, 332 F.2d 260 (9th Cir. 1964); see also *De La Torre v. Swift Transp. Co.*, No. 2:13-CV-1786 GEB, 2014 WL

3695798, at *3 (E.D. Cal. July 21, 2014).¹ “The risk—or in this case, the certainty—that the party receiving the discovery will share it with others does not alone constitute good cause for a protective order.” *Wauchop*, 138 F.R.D. at 546.

Rule 1 the Federal and Nevada Rules of Civil Procedure require they “be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.” *See* FRCP 1; *see also* NRCP 1. Collaborative discovery fosters the goals of Rule 1 by eliminating the time and expense involved in re-discovery.² “It is particularly appropriate that this principle be applied in... cases in which individual plaintiffs must litigate against large, corporate defendants.” *Baker*, 132 F.R.D. at 126

“Maintaining a suitably high cost of litigation for future adversaries is not a proper

¹ *See also* *Wauchop v. Domino's Pizza*, 138 F.R.D. 539, 546 (N.D. Ind. 1991); *Ericson v. Ford Motor*, 107 F.R.D. 92, 94 (E.D. Ark. 1985); *Baker v. Liggett Group*, 132 F.R.D. 123, 125 (D.Mass 1990); *Garcia v. Peeples*, 734 S.W. 2d 343, 347-348 (Tex. 1987); *Earl v. Gulf & Western Mf.*, 366 N.W.2d 160, 165 (Wis. App. 1985); *Nestle Foods v. Aetna Casualty & Surety*, 129 F.R.D. 483, 484 (D. N.J. 1990); *Farnum v. G.D. Searle & Co.*, 339 N.W.2d 384, 390 (Iowa 1983); *Am. Tel. and Tel. Co. v. Grady*, 594 F.2d 594 (7th Cir. 1979); *Johnson Foils v. Huyck*, 61 F.R.D. 405 (N.D.N.Y.1973); *Williams v. Johnson and Johnson*, 50 F.R.D. 31 (S.D.N.Y. 1970); *Parsons v. Gen. Motors*, 85 F.R.D. 724, 726 (N.D. Ga. 1980); *Deford v. Schmid Prod. Co.*, 120 F.R.D. 648, 654 (D. Md. 1987);

² *Williams*, 50 F.R.D. at 32; *Wauchop*, 138 F.R.D. at 546; *Wilk v. Am. Med. Ass'n*, 635 F.2d 1295, 1299 (7th Cir.1980); *Grady*, 594 F.2d at 597; *Phillips Petroleum v. Pickens*, 105 F.R.D. 545, 551 (N.D.Tex.1985); *Carter-Wallace v. Hartz Mountain Indus.*, 92 F.R.D. 67, 70 (S.D.N.Y.1981); *Parsons*, 85 F.R.D. at 726; *Garcia*, 734 S.W.2d at 347; *Ward v. Ford Motor*, 93 F.R.D. 579, 580 (D.Colo.1982); *Baker*, 132 F.R.D. at 126; *Patterson v. Ford Motor*, 85 F.R.D. 152, 154 (W.D.Tex.1980).

purpose under Rules 1 or 26.” *Wauchop*, 138 F.R.D. at 547; *see also Cipollone v. Liggett Grp., Inc.*, 113 F.R.D. 86, 87 (D.N.J. 1986).

A protective order in this case violates Rule 1 by increasing the time and expense of litigation by forcing plaintiffs to re-discover information. This is especially true here because Appellants are large corporations with teams of skilled lawyers who zealously argue on their behalf. Though there is nothing wrong with this, it increases the costs for individual plaintiffs to bring their claims.

More important than decreasing the costs of litigation “[s]hared discovery is an effective means to insure full and fair disclosure.” *Garcia v. Peebles*, 734 S.W.2d 343, 347 (Tex. 1987). “Parties subject to a number of suits concerning the same subject matter are forced to be consistent in their responses by the knowledge that their opponents can compare those responses.” *Garcia*, 734 S.W.2d at 347; *Buehler v. Whalen*, 70 Ill. 2d 51, 65, 374 N.E.2d 460, 466 (1977). The improper conduct the *Garcia* and *Buehler* courts guarded against is evident here: Appellants refused to fully disclose documents in four pending lawsuits and violated a court order in *Smith v. Venetian*. Appellants’ failure to secure a protective order before disclosing incident reports is the only reason these four plaintiffs discovered Appellants violations. A protective order in this case could only serve the improper purpose of giving Appellants peace of mind future plaintiffs will not catch their discovery violations. This is not a legitimatize purpose for a protective order.

Because the District Court properly determined Appellants could not receive a protective order to prevent Ms. Sekera from sharing discovery, Appellants are unlikely to prevail on the merits on this argument and a stay is thus improper.

2. Appellants Apply the Incorrect Legal Standard for Review of a Motion for a Protective Order

Because Appellants filed this Writ on a motion for protective order, Appellants must show District Court abused its discretion when it determined Appellants did not show good cause for a protective order and therefore denied Appellants request for the same. *See* NRCP 26(c) (“for good cause shown” the Court may “make any order which justice requires to protect a party...”); *see also Beckman Indus., Inc., v. Int’l. Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (to meet the burden of persuasion, “the party seeking the protective order must show good cause by demonstrating a particular need for the protection sought”).

Section VII.A.1. of Appellants’ Writ asks this Court to analyze the wrong legal standard, *to wit*, that the District Court abused its discretion because Ms. Sekera did not meet her burden of proof under NRCP 26(b)(1) to establish the need for the unredacted incident reports. (Wirt at 20.) Ms. Sekera’s proof of discoverability of the incident reports under NRCP 26(b)(1) is not at issue in this Writ because it is not part of the burden of proof for a protective order. Because Appellants’ Writ asks the Court to analyze the wrong standard in reviewing a

motion for a protective order, which the Appellate Court will not do, Appellants are unlikely to prevail on the merits on this argument and a stay is thus improper.

3. The Information in the Incident Reports Is Not Protectable

The incident reports produced by Appellants in this case contain information that is only slightly more revealing or invasive than information contained in a phonebook – phonebook information (name, address, phone) plus date of birth. Appellants agree they only redacted “names, addresses, phone numbers and dates of birth.” (Writ at 12.) Although the CR-1 and Acknowledgement of First Aid Assistance forms leave space for social security and drivers’ licenses’ numbers, Appellants do not collect this information. It is clear Appellants also instruct their guests not to fill out the social security # line on the accident reports because the written responses place “N/A” or “-----” on the social security # line.

This phonebook plus date of birth information contained in Appellants’ incident reports is not protectable under NRCP 26(b). There is no Nevada case law which supports the contention that this information can be protected. (See Writ at 22-27.) Appellants also cannot establish a protectable interest over this information (names, addresses and phone numbers) because it is public and published in the phonebook. See, e.g. *Khalilpour v. CELLCO P'ship*, 2010 WL 1267749, at *2, 2010 U.S. Dist. LEXIS 43885, at *6–*7 (N.D.Cal.2010); *Busse v. Motorola, Inc.*, 351 Ill. App. 3d 67, 72, 813 N.E.2d 1013, 1018 (2004); *Keel v. Quality Med. Sys.*,

Inc., 515 So. 2d 337 (Fla. Dist. Ct. App. 1987); *Brignola v. Home Properties, L.P.*, No. CIV.A. 10-3884, 2013 WL 1795336, at *12 (E.D. Pa. Apr. 26, 2013).

The Writ cites a myriad of California cases, which at first glance appear to support Appellants' position. However, upon closer examination these cases are rogue or do not support Appellants' arguments. For example, the *Izzo* court did not grant a protective order on privacy interests as Appellants claim. *Izzo v. Wal-Mart Stores, Inc.*, No. 215CV01142JADNJK, 2016 WL 409694, at *4 (D. Nev. Feb. 2, 2016); *see also* Writ at 23-24. Rather, the *Izzo* court determined the defendant "provided a particularized showing of undue burden" i.e. "hundreds of hours of personnel time" and that plaintiff's request was "overbroad, unduly burdensome, and not relevant to the claims she asserts." *Id.*

Similarly, the unreported *Rowland v. Paris Las Vegas* case, that ordered a protective order on information phonebook information (name, address and phone number) appears to be a rogue decision resulting from the parties' embarrassing lack of briefing. *See* Joint Motion to Compel, *Rowland v. Paris Las Vegas*, No. 13CV2630-GPC DHB, 2015 WL 4742502 (S.D. Cal. Aug. 11, 2015) (APP368-73); *see also* Writ at 24-25. The parties in *Rowland* submitted a 5-page joint motion to compel on 23 discovery requests summarizing the requests and objections but failed to cite any legal authority, rules or statutes. (APP368-73.)

More importantly, the federal and state California cases which Appellants so eagerly urge the Court to follow support Ms. Sekera position because they hold a plaintiff's need to identify potential witnesses outweighs any privacy concerns a defendant may have about disclosing those witnesses' information. *See, e.g. Henderson v. JPMorgan Chase*, No. CV113428PSGPLAX, 2012 WL 12888829 (C.D. Cal. July 31, 2012); *Tierno v. Rite Aid*, 2008 WL 3287035 (N.D. Cal. July 31, 2008); *McArdle v. AT&T*, No. C 09-1117 CW (MEJ), 2010 WL 1532334 (N.D. Cal. Apr. 16, 2010); *Pioneer Elecs. (USA) v. Superior Court*, 40 Cal. 4th 360, 371, 150 P.3d 198, 205 (2007). The California Court of Appeals even held it was an abuse of discretion to require an opt-in notification system to secure the consent of identified potential witnesses before their contact information could be disclosed to the plaintiff. *Puerto v. Superior Court*, 158 Cal. App. 4th 1242, 1256, 70 Cal. Rptr. 3d 701, 712 (2008). Ms. Sekera sought the contact information of the parties in the incident reports because they are potential witnesses in her case to combat Appellants comparative fault defense. The California courts, which Appellants urge the Court to follow, support Ms. Sekera's position she is entitled to the contact information for these potential witnesses. Because Appellants have provided no case law that states they can withhold contact information for potential witnesses, they are unlikely to prevail on their Writ and a stay is thus improper.

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4. Appellants Have No Potential Liability under NRS 603A

Appellants' allege dissemination of their guests' private information is the equivalent to a data breach which will exposed to claims under NRS 603A. (Writ at 27.) Based upon the legislative history and the statute itself, there are three major reasons NRS 603A does not apply to the circumstances of this case.

First, NRS 603A was created to address large scale identity theft by criminals. (APP376.) Neither Ms. Sekera nor her counsel are identity thieves, and thus applying this statute under these circumstances would be contrary to the purposes of the statute's creation.

Second, providing unredacted incident reports is not within the meaning of "breach of the security of system data" defined by NRS 603A.020 as "unauthorized acquisition of computerized data that materially compromises the security, confidentiality or integrity of personal information maintained by the data collector." A Court order by definition authorizes conduct and has been understood to authorize conduct for nearly a century.³ Thus, even if the information in the incident reports came within the reach of NRS 603A, disclosure of the incident reports in compliance with the Court's July 31, 2019 Order would be "authorized" acquisition. Because providing Ms. Sekera with the unredacted incident reports is

³ See, e.g. *In re Troyer's Estate*, 48 Nev. 72, 227 P. 1008, 1008 (1924) ("authorized by court order"); *Club Vista Fin. Servs. v. Dist. Ct.*, 128 Nev. 224, 228, 276 P.3d 246, 248 (2012) ("the district court's order authorizing...").

authorized conduct, it does not constitute a “breach of the security of system data” under NRS 603A.020 and therefore cannot subject Appellants to liability for a “breach of the security of system data.”

Third, the incident reports do not contain “personal information” as defined by NRS 603A.040. NRS 603A.040(1) defines “personal information” as a first and last name in combination with a: (a) social security number, (b) driver’s license number, (c) account, credit or debit card number with the pin or access code, (d) a health insurance or medical ID number, (e) a username with a passcode. NRS 603A cannot apply to Appellants unless the incident reports contain one of these categories of information. Appellants’ incident reports are devoid of any account numbers, credit/debit card numbers, medical ID numbers and usernames and passwords. Although the redacted incident reports leave spaces for social security and drivers’ license numbers, Appellants apparently do not collect this information and thus never redacted these lines. Because Appellants do not collect the information necessary to come within the purview of NRS 603A, Appellants are unlikely to prevail on the merits on this argument and a stay is therefore improper.

5. Appellants’ Privacy Policy Can’t Subject Them to Liability

Finally, Appellants are unlikely to succeed on the Writ because their Privacy Policy cannot subject them to liability. Appellants’ drafted their Privacy Policy to absolve them of liability related to personal information: your “provision of

information to us is at your own risk.” (VEN493.) As individuals provide their information at their “own risk” Appellants cannot be liable to them under this policy.

The Privacy Policy also lacks basic contract elements. *See May v. Anderson*, 119 P.3d 1254, 1257, 121 Nev. 668, 672 (2005). There was no offer or acceptance because this online only Privacy Policy was not offered to individuals before their information was collected. There was no meeting of the minds because the individuals did not know of the Privacy Policy when Appellants collected their information. Finally, the individuals did not provide return consideration for Appellants’ promise to protect their information. *See Pink v. Busch*, 100 Nev. 684, 691 P.2d 456 (1984). This analysis is consistent with decisions nationwide holding these privacy policies unenforceable against the companies who issue them.⁴

Finally, the Privacy Policy states Appellants may use the information “to comply with applicable laws and regulations” and may share the information to third-parties when Appellants are “required to respond to legal requests.” (VEN490-91.) The Privacy Policy permits Appellants to share the information collected to comply with laws and respond to legal requests. Ms. Sekera’s request

⁴ *See, e.g. In re Google Privacy Policy Litig.*, 58 F. Supp. 3d 968, 986 (N.D. Cal. 2014); *In re Pharmatrak Privacy Litig.*, 329 F.3d 9, 19-20 (1st Cir. 2003); *In re Jetblue Airways Privacy Litig.*, 379 F. Supp. 2d 299 (E.D.N.Y. 2005); *Johnson v. Nat’l Beef Packing*, 220 Kan. 52, 551 P.2d 779 (1976); *In re Am. Airlines Privacy Litig.*, 370 F. Supp. 2d 552 (N.D. Tex. 2005); *In re Northwest Airlines Privacy Litig.*, No. Civ.04-126(PAM/JSM), 2004 WL 1278459 (D. Minn. June 6, 2004).

for production is a “legal request.” Additionally, once the Court signed the Court’s July 31, 2019 directing disclosure, Appellants’ failure to comply constituted contempt. *See* NRS 22.010(3). Thus, providing the unredacted incident reports would be “complying with applicable laws.” As Appellants Privacy Policy (1) absolves them of liability, (2) does not meet contract formation requirements, and (3) excludes privacy to comply with court orders Appellants’ are unlikely to prevail on this argument and a stay is therefore improper.

C. The District Court Properly Denied Appellants’ Motion for Reconsideration

Under established practice, a litigant may not re-argue matters considered in the court’s initial opinion or raise new legal points for the first time on rehearing. *In Re Ross*, 99 Nev. 657, 668 P.2d 1089, 1091 (1983). The failure to make arguments in the first instance constitutes waiver. *Chowdry v. NLVH, Inc.*, 111 Nev. 560, 893 P.2d 385 (1995).

Appellants Motion merely made arguments which Appellants could have presented in their original motion. All the cases cited by Appellants in support of their Motion predated their initial Motion for a Protective Order and these arguments were therefore waived. More significantly, Appellants previously argued many of the cases cited in their Motion for Reconsideration in their Motion for a Protective Order and Response to Ms. Sekera’s Objection to the April 4, 2019 DCRR. Appellants also included a pre-dated Privacy Policy “last updated: May

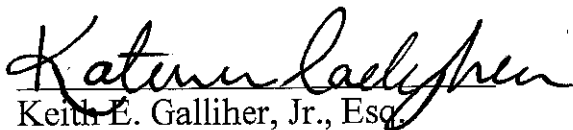
2018” a year before Appellants filed their Motion for a Protective Order. (VEN486.) Nevada law is clear: “points or contentions not raised, or passed over in silence on the original hearing, cannot be maintained or considered” on rehearing. *Chowdhry*, 111 Nev. at 562, 893 P.2d at 387. Appellants’ choice to not include these arguments is not a valid reason for reconsideration. Appellants’ are not likely to prevail on their argument the District Court’s erred when it declined to consider their Motion for Reconsideration because the Motion impermissibly re-argued the same cases and points and raised new arguments which could have been raised in the initial motion, and as such a stay is improper.

III. CONCLUSION

Based on the foregoing, Ms. Sekera respectfully requests that the Court deny Appellants Motion for a Stay.

DATED this 8th day of October, 2019

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CERTIFICATE OF SERVICE

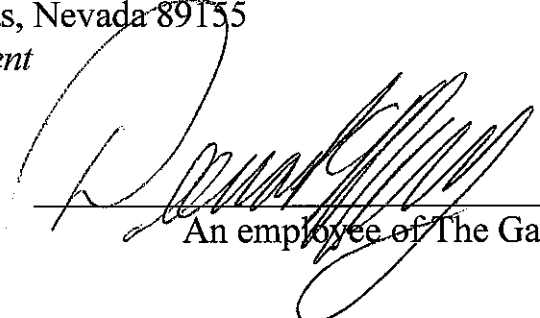
I hereby certify that I am an employee of The Galliher Law Firm and that on the 8 day of October, 2019, pursuant to N.E.F.C.R. 8, I electronically filed and served a true and correct copy of the above and foregoing **JOYCE SEKERA'S OPPOSITION TO APPELLANTS' EMERGENCY MOTION FOR STAY UNDER NRAP 27(e)** as follows:

[X] by the Court's CM/ECF system which will send notification to the following;
and

[] by US mail at Las Vegas, Nevada, postage prepaid thereon, addressed to the following:

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Respondent



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IN THE APPELLATE COURT OF THE STATE OF NEVADA

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APPENDIX TO JOYCE SEKERA'S RESPONDING BRIEF

Volume 1 of 2

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JOYCE SEKERA, by and through her counsel of record, THE GALLIHER
LAW FIRM, hereby submits her Appendix in compliance with Nevada Rule of
Appellate Procedure 30.

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The Appendix shall be contained in 2 separate volumes in accordance with NRAP 30(c)(2) (2013, each volume containing no more than 250 pages.

DATED this 8th day of October, 2019

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of THE GALLIHER LAW FIRM attorneys for
Joyce Sekera, and that on the 8 day of October, 2019, I served true and correct copy of the
foregoing **APPENDIX TO JOYCE SEKERA'S RESPONDING BRIEF**
Volume 1 of 2, by delivering the same via U.S. Mail addressed to the following:

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EXHIBIT 1



May 17, 2019

Mr. Michael A. Royal
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Re: *Sekera v. VENETIAN CASINO RESORT*

Dear Mr. Royal:

1. At your request, I am writing this summary of my opinions in the above-referenced matter. My opinions are based on a reasonable degree of engineering and biomechanical certainty and founded on my professional education and on my academic and consulting experience in the fields of injury biomechanics, anatomy, and orthopaedics. I reserve the right to amend or supplement these opinions should additional information become available.

Qualifications

2. I am currently Emeritus Professor in the College of Health and Human Sciences at Oregon State University in Corvallis, Oregon. I am also President of Hayes+Associates, Inc., 2390 NW Kings Blvd., Corvallis, OR, 97330.

3. I graduated with a B.S. in Mechanical Engineering in 1964 and then an M.S. in Mechanical Engineering (Design) in 1966 from Stanford University. As an undergraduate and graduate student at Stanford University I took courses in engineering mechanics, dynamics and design and thus I am familiar with the fundamental engineering principles that are used in the reconstruction and simulation of falls and their associated injuries. I received a Ph.D. in Theoretical and Applied Mechanics (Biomedical Engineering) in 1970 from Northwestern University, where my course of study involved both medical and engineering courses, the latter again including advanced training in engineering dynamics and kinematics, and the former in anatomy, physiology and biomechanics. I then completed two post-doctoral fellowships, the first at the Laboratory for Experimental Surgery in Davos, Switzerland in 1970, and the second at the Department of Orthopaedics at the Karolinska Institute in Stockholm, Sweden in 1971.

4. From 1971 to 1976, I was Assistant Professor of Mechanical Engineering and Surgery (Orthopaedics) at Stanford University. From 1976 to 1979, I was Associate Professor of Orthopaedics and Bioengineering at the University of Pennsylvania. In 1979, I was named Director of the Orthopaedic Biomechanics Laboratory at Harvard's Beth Israel Hospital and Associate Professor of Orthopaedic Surgery at Harvard Medical School and at the Harvard-MIT Division of Health Sciences and Technology. I was named Full Professor in 1985 and then the first incumbent of the Maurice E. Mueller Professorship of Biomechanics at Harvard Medical School in 1988, a position I held until 1998, when I joined the faculty at Oregon State University. I served as Vice Provost for Research at Oregon State from May 1998 through June 2001, when I resigned that administrative position in order to focus more fully on Hayes+Associates, Inc.

5. I have more than 50 years of teaching, research, and consulting experience in fields ranging across mechanical engineering, experimental mechanics, accident reconstruction, occupant dynamics, injury biomechanics, human functional anatomy, and clinical orthopaedics. I have taught undergraduate, graduate, and post-graduate students in both engineering and medical school settings. I have lectured on the subject of falls and injury biomechanics in a wide variety of post-graduate courses for engineers, medical students and residents, clinical orthopaedists, forensic scientists and accident reconstructionists. At Stanford, I taught courses in engineering mechanics, experimental mechanics and biomechanics, often using examples related to injury reconstruction and injury biomechanics. From 1985 to 1998 I was one of the three Course Directors of Human Functional Anatomy at Harvard Medical School. In this role, I was responsible for lectures, prosection demonstrations, and laboratory dissections, primarily related to the functional anatomy of the musculoskeletal system. I routinely made use of radiographs, MRI's, and CT's in the course of my teaching.

6. I have served as Principal or Co-Principal Investigator on over 60 research grants from federal, foundation or industrial sources, all of them involving the biomechanics of the musculoskeletal system. Most of these grants have directly involved injury biomechanics. I was funded continuously from 1990 - 2007 by the National Institutes of Health for a research program entitled Fall Biomechanics and Hip Fracture Risk. This research produced validated mathematical models for the dynamics of human falls and their associated injuries. Our research results have appeared in the peer-reviewed literature and are widely cited by scientists and experts in the field. I have authored or co-authored more than 200 peer-reviewed publications, over 60 chapters, and two books, one of which went through two editions. I was the founding editor of the Journal of Orthopaedic Research and served as its Co-Editor-in-Chief from 1983 to 1995. The Journal is now the preeminent research journal in orthopaedics.

7. Although I am not a licensed physician and do not treat patients, I have had considerable experience in clinical orthopaedics. As Vice Chairman for Research in the Department of Orthopaedic Surgery at Beth Israel Deaconess Medical Center, I attended x-ray rounds, often on a daily basis, offering advice to residents and house staff on the mechanisms and treatment of musculoskeletal injuries. I served as Acting Chairman of the Department from 1992-1993 while the Department searched for a new Chief. I routinely qualify in both state and federal court to testify, to a reasonable degree of engineering and biomechanical certainty, on injury biomechanics, routinely making use of and interpreting medical histories, radiographs and anatomy as the basis for my opinions.

8. A copy of my *curriculum vitae* is attached as Exhibit 1.

Case Materials

9. I reviewed the following materials in connection with my work in the case: Complaint (3/19/18); Venetian Reports: Venetian Security Report (11/4/16); Venetian Case MO Report (11/4/16); Venetian Person Profile Report (11/4/16); Venetian Security Narrative Report (11/4/16); and Venetian Accident Scene Check (11/4/16); Photographs: Scene Photos; and Security Scene Photos; Surveillance Video; Letter Regarding Wage Loss (Undated); Medical Records; Thomas A. Jennings, CXL, Report (12/28/18) - Plaintiff Expert; Plaintiff's Opposition to Defendants' Motion for Protective Order (2/13/19), with Exhibits; Joyce P. Sekera, deposition (3/14/19); Additional Medical Records; First Amended Complaint (April 2019); Joseph Larson, deposition (10/11/18); and Radiology: Centennial Hills Hospital: 11/4/16, L-Spine Left Elbow. Desert Institute of Spine Care: 10/5/17, C-Spine, L-Spine. Desert Radiologists: 7/31/18, CT L-Spine, L-Spine, C-Spine, Scoliosis Study; 8/22/18, L-Spine; 3/18/15, Chest; 11/4/16, L-Spine, Left Elbow. Las Vegas Radiology: 11/14/16, C-Spine, T-Spine, Shoulder; 11/30/16,

Hip/Pelvis, SI Joint. Steinberg Diagnostic: 12/16/16, MRI Brain; 12/21/16, MRI C-Spine, MRI L-Spine; 4/27/18, MRI Right Knee.

Medical Synopsis (DOI: 11/4/16)

10. 11/04/16, at 1257; Acknowledgement of First Aid Assistance & Advice to Seek Medical Care [1st Responder]; Venetian/Palazzo EMT: Subjective: Female fell backwards onto base of pillar. Negative loss of consciousness. Negative weak/dizzy. Left elbow positive tenderness. Lumbar spine guarded post [illegible]. Left axillary pain/soreness. Left flank/[illegible] back pain. Limited range of motion due to pain. Positive video [from The Venetian Surveillance]. Left foot slipped. [Bottom part of page is illegible]. 11/04/16, at 1533; Emergency Department Note; Rachel Taylor, APRN: History Source: Patient. Arrival Mode: Private vehicle. History of Present Illness: The patient presents following fall. The onset was just prior to arrival. The fall was described as slipped. Location: Left upper extremity. The character of symptoms is pain, swelling, and tingling. The patient's dominant hand is the right hand. A 60-year-old female status post fall at work. Patient was walking and slipped backwards. Patient did not hit her head. No loss of consciousness. Patient complains of left elbow pain and left lower back pain. Patient denies any dizziness or shortness of breath. Patient does complain of some paresthesias to her left hand. Patient able to ambulate without difficulty. Examination: Height: 5'6"; Weight: 189 pounds; BMI: 30.67 kg/m². General: Alert, no acute distress. Musculoskeletal: Not normal range of motion, Proximal upper extremity: Left, elbow, tenderness. Impression: 1) Back strain; 2) Left elbow pain; and 3) Slip and fall. Condition: Improved. 11/04/16, at 1635; Radiology Report; Kaveh Kardooni, DO: Lumbar Spine. Comparison: None. Impression: Degenerative disc disease most conspicuously at L2/3 where there is endplate osteophyte formation and some endplate sclerosis. There is slight increased density at the disc space of uncertain etiology possibly related to some calcification. Further assessment with CT or MRI scan can be obtained as clinically warranted. 11/04/16, at 1635; Radiology Report; Rick Yeh, MD: Left Elbow. Findings: There are no soft tissue abnormalities. Impression: No evidence of acute fracture or dislocation.

11. 11/08/16; Progress Note; Jordan B. Webber, DC: Ms. Sekera had a slip and fall injury dated 11/4/16. She stated that she was at work inside the Venetian Hotel. She stated that she was walking on the marble floor when both of her feet slid out from under her and she fell to the ground, landing on her back and left elbow. She reported that her neck was thrust back when she fell. She stated that she cannot recall a loss of consciousness but recalls the first thing she can remember after her fall was people standing over her and feeling dazed. Ms. Sekera reported that she was evaluated by a paramedic at the scene of her fall and given a sling for her left shoulder. She reported making an incident report and was asked if she wanted an ambulance to take her to the hospital. She stated that she declined the ambulance and drove herself to Centennial Hills Hospital where she had x-rays, was given medication and a new shoulder sling. Ms. Sekera cannot recall having prior slip and fall injuries or motor vehicle accidents. The patient stated that she was pain free prior to the above-mentioned slip and fall. She reports that she has not returned to her work at this time due to her pain and she is unable to perform her job duties. Subjective: The patient rated the intensity of her pain/symptoms as an 8 on a scale of zero to 10, with zero being complete absence of symptoms and 10 being very severe or unbearable. She also reported memory problems and reported that she will go into a room and completely forget what she is doing there. The back of her head is sore and achy. Assessment: 1) Strain of muscle, fascia, and tendon at neck level; 2) Sprain of ligaments of thoracic spine; 3) Muscle spasms of back; 4) Sprain of ligaments of lumbar spine; 5) Strain of muscles, fascia, and tendon of lower back; 6)

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Post-traumatic headache; 7) Concussion, with loss of consciousness of 30 minutes or less; 8) Post-concussional syndrome; 9) Sprain of sacroiliac joint; 10) Strain of muscle/tendon of the rotator cuff of left shoulder; and 11) Radiculopathy, lumbar region. Causation: Based on my 11/8/16, physical examination of Ms. Sekera, my discussion with the patient regarding how the accident happened, patient's medical history, and the mechanics of her body during the collision [sic], it is my opinion, to a reasonable degree of medical probability, the bodily injury sustained by the patient, as recorded in this report, was caused by the slip and fall dated 11/4/16.

12. 11/11/16; Progress Note; Jordan B. Webber, DC: Subjective: This patient presents with the following problems: 1) Headache, with associated blurred vision, memory problems, and balance problems. She stated she is having difficulty sleeping due to her pains; 2) Cervicalgia. The patient rated the intensity of her pain/symptoms as a 7/10, with associated numbness and tingling down both arms to her fingers; 3) Low back pain. The patient rated the intensity of her pain/symptoms as 8/10; 4) Pain in left shoulder. The patient rated the intensity of the pain as 8/10; 5) Pain in left elbow. The patient rated the intensity of the pain as 8/10; and 6) Pain in thoracic spine. The patient rated the intensity of the pain as 7/10. 11/14/16, at 1657; Radiology Report; James D. Balodimas, MD: Left Shoulder. Indication: Left shoulder pain. Conclusion: No evidence of acute skeletal pathology to the left shoulder. There are mild degenerative changes at the acromioclavicular articulation. 11/14/16, at 1663; Radiology Report; James D. Balodimas, MD: C-Spine, with flex extension. Comparison: None. Conclusion: No evidence of acute fracture. On the neutral, lateral projection, there is reversal of the normal lordotic curvature, could be due to spasm. 11/14/16, at 1706; Radiology Report; James D. Balodimas, MD: T-Spine. Findings: No measurable degree of scoliosis. No paraspinal soft tissue mass. Multilevel vertebral body endplate changes and osteophyte formation. Conclusion: No evidence of acute skeletal pathology to the thoracic spine.

13. 11/21/16, at 1015; Progress Note; Michelle Hyla, DO: Chief Complaint: Injuries from slip and fall. Initial Examination: 1) Headache; 2) Trouble sleeping; 3) Anxiety; 4) Cervical pain; 5) Thoracic pain; 6) Lumbar pain; 7) Abdominal pain; 8) Right shoulder pain; 9) Left shoulder pain; 10) Left shoulder joint pain; 11) Right upper arm pain; 12) Left upper arm pain; 13) Left elbow pain; 14) Left forearm pain; 15) Right hip pain; 16) Left hip pain; 17) Left hip joint pain; 18) Right thigh pain; 19) Left thigh pain; 20) Right knee pain; 21) Left knee pain; 22) Right knee joint pain; 23) Left knee joint pain; 24) Right lower leg pain; 25) Left lower leg pain; 26) Right calf pain; and 27) Left calf pain. Most Severe Area(s) of Pain: Lumbar pain, Cervical pain, and Left Shoulder pain. Accident Information: Contact: Both feet went out from under her, slipped on liquid. Landed on marble floor, on left elbow and back, does not know if she hit head. Concussion Symptoms: Present. Hit Head: Yes. Loss of Consciousness: Yes. Appearance: In obvious pain. Skin: Bruises, left elbow. Assessment: 1) Fall on same level from slipping, tripping, and stumbling without subsequent striking against object, initial encounter; 2) Sprain of ligaments of cervical spine; 3) Sprain of ligaments of thoracic spine; 4) Sprain of ligaments of lumbar spine; 5) Strain of muscle, fascia of tendon of lower back 6) Pain in right upper arm; 7) Pain in left upper arm; 8) Pain in left elbow; 9) Unspecified sprain on left elbow; 10) Pain in left forearm; 11) Pain in right hip; 12) Pain in left hip; 13) Pain in right thigh; 14) Pain in left thigh; 15) Pain in right knee; 16) Pain in left knee; 17) Pain in right lower leg; 18) Pain in left lower leg; 19) Post-traumatic headache; and 20) Attention and concentration deficit. Causation: It is my opinion that Joyce P. Sekera's symptoms for which she is being seen today are directly related to the accident described by the patient. 11/21/16; Progress Note; Jordan B. Webber, DC: She stated that her pain has been increased over the weekend and cannot recall doing anything to increase her pain. She reported that she remembered having an episode of low back pain approximately 5-8 years ago and went to the hospital and was subsequently released without further episode or treatment. 11/23/16; Progress Note; Jordan B. Webber, DC: Ms. Sekera stated that she feels that she is improving with treatment in my office. 11/30/16; Radiology Report; Elizabeth L. Huck, DO: Left Hip. Indication: Left hip pain. Findings (Bones): There is mild

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osteophyte formation at each acetabulofemoral joint. There is a soft tissue calcification or prior avulsion fracture adjacent to the right acetabulum. Findings (Soft Tissues): No visible soft tissue swelling. Conclusion: Mild arthropathy of each hip. 11/30/16; Radiology Report; Elizabeth L. Huck, DO: SI Joints. Indications: Left sacroiliac joint pain. Findings (Bones): There is mild sclerosis at the sacroiliac joint. Findings (Soft Tissues): No visible soft tissue swelling. Conclusion: Mild arthropathy of each sacroiliac joint.

14. 12/16/16; Radiology Report; [Unknown Provider]: MRI Brain. Clinical History: Headaches, dizziness. Impression: Brain normal for age. 12/16/16; Radiology Report; [Unknown Provider]: Magnetic Resonance Angiogram Brain. Impression: No significant abnormality identified. 12/21/16; Radiology Report; Sara Kym, MD: MRI C-Spine, without contrast. Clinical History: Neck pain and bilateral arm numbness, pain, weakness. Impression: Mild multilevel degeneration. Mild neuroforaminal stenosis at C5/6. No spinal canal stenosis throughout. Mild dextrocurvature. Straightening of the cervical lordosis, which may be seen with muscle spasm. 12/21/16; Radiology Report; Saul Ruben, MD: MRI L-Spine, without contrast. Impression: Multilevel lumbar degenerative disc disease, with disc bulges extending from L1/2 through L5/S1. Annular fissuring at L4/5. No canal stenosis or neural foraminal narrowing at any level. There is note made of facet and ligamentous flavum hypertrophy at multiple levels.

15. 01/09/17; Pain Consultation; Katherine D. Travnicsek, MD: 60-year-old female here today with complaints of neck, low back, and bilateral knee pain that started after a slip and fall backwards at work. She was walking and slipped on a liquid that was on the floor. She says she can't remember the whole event as she hit her head and was dazed. She denies history of prior injuries or chronic pain of these areas. Diagnoses: 1) Neck pain; 2) Mid cervical discopathy; 3) Cervical facet joint arthropathy/spondylosis; 4) Low back pain; 5) Lumbar discopathy; 6) Lumbosacral discopathy; 7) Lumbar facet joint arthropathy/spondylosis; 8) Lumbosacral facet joint arthropathy/spondylosis; 9) Muscle spasm; and 10) History of slip and fall. Discussion: Neck pain, I suspect facet and disc mediated pain. MRI report indicates disc protrusions at C5/6 and C6/7 levels and bilateral facet hypertrophy. Low back pain, I suspect facet and disc mediated pain. MRI lumbar spine report indicates an L4 annular fissure and bilateral facet hypertrophy at various levels. 02/07/17; Neurology Note; Russell J. Shah, MD: Present Complaint: She is noting problems with her memory and forgetfulness. She is noting the headaches and neck pain, as well as the low back pain are improved, and she is not improving in her memory. This is the biggest issue. The dizziness and nausea are significantly better now. Impression from 11/4/16, Trauma: 1) Post traumatic brain syndrome; 2) Cervical strain/headaches; 3) Migraines secondary insomnia due to #1 and 2; 4) Secondary insomnia due to # 1, 2 and 5; 5) Lumbar strain; and 6) Carpal tunnel syndrome. 10/05/17; Progress Note; Andrew M. Cash, MD: History of Present Illness: The patient was walking through The Venetian Hotel when she slipped on a liquid that was spilled on the floor. She reports that both legs flew up in front of her and she landed on her back. Immediately after the fall she felt pain in her left elbow, neck, and back. She complains of numbness, tingling, weakness, and pain in her upper and lower extremities. Assessment: Facet syndrome. Causation: In my opinion, the patient's symptoms which we are evaluating are directly related to the above-mentioned accident. This opinion is based on patient's history, physical exam, diagnostic studies, and medical records provided.

16. 02/07/19; History and Physical Report; William D. Smith, MD: This 61-year-old woman was a salesperson at a ticket booth. She slipped on a wet floor, striking her head and had loss of consciousness. The date of injury occurred in 2016. She was sent to my office for a surgical consultation. Comments: The CT scan is really quite interesting. It does show a rotatory subluxation at L5/S1 of approximately ten degrees. There are significant facet changes including what appears to be a poorly healed fracture on the superior articular facet. There is moderate foraminal stenosis at this level. She does also have bilateral signs of SI joint dysfunction.

Analysis

17. It is my understanding that on November 4, 2016, Ms. Sekera (Age: 60; Ht: 5'6"; Wt: 189 lbs.; BMI: 30.7) was working for Brand Vegas in the Venetian Casino in Las Vegas, NV. At about 12:30pm, she left her kiosk to use the restroom and get some lunch. She was carrying a coffee. As she walked toward the restroom, she alleges that *"her foot came into contact with a liquid substance on the floor causing her to slip and fall"* (Complaint, 3/19/18). As a result of the fall, Ms. Sekera is alleging injuries to her low back, SI joint, head and neck. On the other hand, defendants argue that the condition of the floor alleged by Ms. Sekera, if it existed at all, was open and obvious, that Ms. Sekera failed to mitigate damages, and that the injuries she alleged were from a pre-existing condition.

18. Given the facts of the case, the questions to be addressed to a reasonable degree of biomechanical and engineering certainty are: 1) Fall Reconstruction: Based on a scientifically reliable fall reconstruction, what were the biomechanics of Ms. Sekera's fall?; 2) Fall Initiation: Among the multiple factors known to influence the risk of falling, what factor or factors played a role in the initiation of Ms. Sekera's fall?; and 3) Injury Causation Biomechanics: Based on a formal and scientifically reliable injury causation analysis, did the fall that Ms. Sekera sustained on November 4, 2016, cause the acute injuries to the low back, SI joint, head and neck that she is alleging?

Methods

Fall Biomechanics

19. A fall can be described as including four, potentially overlapping phases: 1) Initiation; 2) Descent; 3) Impact; and 4) Post-impact, during which the faller comes to rest (28). Given our scientific understanding of the physics and biomechanics of falls, the position of rest and the injuries sustained can be viewed as signatures to the fall (41). A fall reconstruction can be used reliably to determine what initiated the fall and whether the fall caused the claimed injuries, as long as that reconstruction is grounded in the laws of physics and comports with the facts of the case. Given our scientific understanding of the physics and biomechanics of falls, the position of rest and the injuries sustained can be viewed as signatures to the fall(41). The first step in analyzing slip/fall incidents involves describing the sequence of events in terms of the four phases of a fall.

Fall Initiation

20. With respect to fall initiation, risk factors for falling are typically grouped into extrinsic and intrinsic factors. Extrinsic factors include the slip resistance of the walking surface, the presence of obstacles or trip hazards, inadequate lighting, choice of footwear (including, in particular, high heels or severely worn or damaged shoes). Intrinsic factors (i.e. inherent to the individual) include age, gait abnormalities, decreased proprioception, slowed reaction times, limb weakness, and impaired vision. Gait patterns (including changes in direction, turning or the use of avoidance maneuvers) and gait speed are also intrinsic risk factors that are critically associated with falls (31) as are the use of drugs and alcohol. Among intrinsic risk factors, the importance of perception and cognition of hazards as well as general attentiveness is known to be important in the prevention of fall incidents (5). In many instances, fallers report not having noticed a fall hazard prior to the incident because the fall hazard was obstructed from view or because the faller was distracted or simply not paying attention to a potential hazard that was clearly recognized by others. Given the range and variety of both extrinsic and intrinsic risk factors for falling, it is clearly a mistake to assume *a priori* that the sole, or even the dominant, risk factor for falling is the interface between the shoe and the walkway surface. In summary, the causes of pedestrian fall incidents are multi-factorial, reflecting that fall safety assessment is a highly complex subject, in which

the likelihood of a slip and fall is a function of a variety of elements including the walking surface (types, materials and finishes), environmental conditions, and the characteristics of individual users (including choice of footwear and attentiveness).

21. Slips are due to loss of traction between footwear and a walking surface. One fundamental factor determining the slip potential of a given footwear/surface combination is the relationship between required friction and the friction available at the interface. Quoting Redfern et al. (2001): "*The force interactions between the shoe and floor are probably the most critical biomechanical parameters in slips and falls. If the shear [horizontal] forces generated during a particular step exceed the frictional capabilities of the shoe/floor interface, then a slip is inevitable*"(40). Four factors affect the traction between footwear and a walking surface: 1) The surface (e.g. concrete, grass, tile); 2) Contaminants on the walkway (i.e. liquid, dirt, sand); 3) Footwear (e.g. heels, flats, sneakers, flip-flops; and 4) Gait dynamics (e.g. how a person walks). The probability of a slip rises when either the friction available from the surface decreases or the required friction increases, due to either an increase in shear (horizontal) force or a decrease in normal (vertical) force. For example, when walking on level ground, as a person takes a step, the forward motion of the foot is stopped due to friction between the sole of the shoe and the ground. This friction is quantified by calculating the ratio of the force required to stop the forward motion of the foot/shoe and the vertical weight applied by the person's body weight. This force ratio, or "*Required Friction*", for level walking has been reported to be 0.23(11). "*Available Coefficient of Friction*" is the friction measured between the foot/shoe and the surface. When discussing available friction of a surface with respect to human gait, the proper terminology is "*Slip Resistance*". If the Required Friction during normal walking is greater than the available friction, or slip resistance, a slip is likely. Thus, if the slip resistance of a walkway is 0.30 and the known average required friction is 0.23, the foot is unlikely to slip. If the measured slip resistance is less than the Required Friction, a slip is more likely (but certainly not inevitable, depending on a variety of other factors briefly summarized above).

22. "Slip Resistance" is defined by the National Floor and Safety Institute (NFSI) as, "The property of a floor or walkway surface that acts in sufficient opposition to those forces and movements exerted by a pedestrian under all normal conditions of human ambulation."(1) Slip resistance is similar to "Friction", which is defined as, "Resistance to the relative motion of two solid objects in contact." The BOT-3000E has been widely used to characterize the frictional characteristics of walking surfaces because of its ease of use and reduction of operator manipulation of results. The BOT-3000E operates by dragging a test foot sensor along the floor under its own power at a constant speed to measure the dynamic coefficient of friction (DCOF).

23. On December 20, 2018, I inspected the floor where Ms. Sekera's fall occurred. Based on the surveillance video, three locations near the pillar where Ms. Sekera fell was selected for testing, in keeping with the ANSI A326 standard, using the BOT-3000. Dynamic coefficient of friction (DCOF) of a wet surface was measured using a rubber sensor, following the American National Standard Test Method for Measuring Dynamic Coefficient of Friction of Hard Surface Flooring Materials, ANSI A326.3 (4). The standard requires three test locations in four directions at each location, for a total of 12 repeated measurements (4). On December 21, 2018, I also inspected the shoes Ms. Sekera was wearing at the time of her fall.

24. The Introduction to the ANSI A326.3 Standard advises as to the limitations of the use of coefficient of friction measurements to predict the likelihood a person will or will not slip on a hard surface flooring material. The Introduction notes that the Standard is an evaluation of a hard surface flooring material "*under known conditions using a standardized sensor material prepared according to a specific protocol. As such, it can provide a useful comparison of surfaces, but does not predict the likelihood a person will or will not slip on a hard surface flooring material.*" (4). In keeping with what we have noted above, A326.3 indicates that there are many factors that affect the possibility of a slip

occurring on a surface including *"the material of the shoe sole and the degree of its wear; the presence and nature of surface contaminants; the speed and length of stride at the time of the slip; the physical and mental condition of the individual at the time of a slip; whether the floor is flat or inclined; how the hard surface flooring material is used and maintained; and the [coefficient of friction] COF of the material..."*. *"Because many variables affect the risk of a slip occurring, the COF shall not be the only factor determining the appropriateness of a hard surface flooring material for a particular application."* (4). Finally, the Standard further notes that, *"While specifying products with higher COF for use under contaminated conditions can be considered, higher COF can lead to maintenance/cleanliness issues and hard to remove contaminants and films, which can cause hazardous and unfavorable conditions. In addition to maintenance issues, a surface with a COF can create a difficult walking condition for that subset of the elderly and disabled who slide their feet on the floor. For them, smooth and dry flooring is needed..."*(4).

Injury Causation

25. To evaluate whether there is a scientifically reliable biomechanical mechanism for injury, we determined the loading state (mechanism and magnitude) on the low back from the fall using the fundamental laws of physics (16,27). To assess the likelihood of injury, we define a Factor of Risk (Φ) (28) as the ratio of the predicted load to the injury tolerance limit for each region. When this ratio exceeds 1.0, injury is more likely than not (i.e. 51% probable).

26. The facts of the case were compared to the scientific criteria necessary to establish injury causation in that there is: 1) A reliable biomechanical mechanism; 2) Objective evidence of injury; 3) Temporal consistency; and 4) No more likely explanations for the alleged injuries. An opinion as to whether an event causes one or more injuries is grounded first in what is meant by causation. To conclude that an injury was caused by an event, it is necessary to meet established criteria for both general and specific (individual) causation. General causation addresses whether there is a scientifically established cause-and-effect relationship between exposure and outcome (i.e. does a mechanism and tolerance limit for injury exist). Criteria for general causation have been established by Bradford-Hill(30) and others(10). These include an appropriate temporal sequence, i.e., that the health effect follows exposure, the specificity with which a risk factor is linked to a health outcome, the reversibility of the effect, the biological plausibility of the cause-effect relationships, the strength of the association between cause and effect, the consistency with which such cause-effect relationships are observed across multiple studies, and the slope of the dose-response gradient. The available literature (biomechanical and epidemiological) must be evaluated according to these criteria in order to establish an evidence-based conclusion of cause-and-effect between an alleged exposure (e.g. slip/fall incident) and an injury (e.g. lumbar disc herniation). Specific (individual) causation addresses whether a certain event produced the particular injury in question. Establishing general causation according to the above criteria is implicitly required in order to establish specific causation. However, to determine whether a specific event produced a certain injury in an individual there are also additional considerations. Approaches to specific causation have been developed by organizations such as the National Institute for Occupational Safety and Health (NIOSH), the American Medical Association (AMA), the National Academy of Sciences and others(15,23,29,32), for the evaluation of medical conditions, using the following steps. First, there must be objective evidence of acute injury. There must also be a consistent temporal relationship between the exposure and the injury or medical condition. The next step is to evaluate the specific circumstances of the event in question, with the focus on comparing the specific levels of exposure (as determined by a reconstruction based on engineering principles and the laws of physics) to those required to cause bodily damage. In other words, for a certain event, it must be determined whether the event produced sufficient loading to cause the injury (i.e. a scientifically reliable biomechanical mechanism). The final step is to consider modifying factors and alternative causes of the injury or condition(29).

Results

Fall Reconstruction

27. With respect to the fall reconstruction, Ms. Sekera described her fall during her deposition. Her medical records also provide some descriptions about the phases of her fall. With respect to fall initiation, the Venetian/Palazzo EMT report indicates her *"left foot slipped"* (1st Responder, Venetian/Palazzo EMT, 11/4/16). A Progress Note from Jordan Webber, DC indicates *"she was walking on the marble floor when both of her feet slid out from under her"* (Progress Note, Jordan B. Webber, DC, 11/8/16). Ms. Sekera believes she slipped on liquid, testifying that *"I remember my pants being wet"* (Sekera deposition, 20:17). However, she never actually saw a foreign substance on the floor (Sekera deposition, 21:18). At the time of the fall, Ms. Sekera *"leave your kiosk, you take the elevator, you've got a cup of coffee, and you're planning to use the restroom and then you're going to lunch"* (Sekera deposition, 88:16). As she approached she did not notice anything unusual. She indicated *"my eyes were up here looking at the people trying not to hit somebody."* (Sekera deposition, 89:23). With respect to the descent phase, Ms. Sekera testified, *"the one thing I can remember, is my feet in front of me as I went down hard."* (Sekera deposition, 89:19). The EMT report indicates she *"fell backwards onto the base of the pillar"* (1st Responder, Venetian/Palazzo EMT, 11/4/16). Regarding the impact phase, Ms. Sekera testified, *"I just remember landing hard. Whether it was my back, my butt, I don't know. I just remember going backwards. I was dazed."* (Sekera deposition, 90:17). She did recall striking her left elbow *"hard on the marble"* (Sekera deposition, 91:4). She thought she also struck her left shoulder. She further testified *"I kind of just remember bouncing"* when asked if she remembered striking her left hip. (Sekera deposition, 91:21). Her medical record indicates, *"she fell to the ground, landing on her back and left elbow. She reported that her neck was thrust back when she fell"* (Progress Note, Jordan B. Webber, DC, 11/8/16). With respect to the post-impact phase, Ms. Sekera testified that she felt immediate pain in her left elbow, neck and head. Her whole left side. (Sekera deposition 92:16). After the fall, she recalled the EMT trying to help her and him *"walking me upstairs and fixing my arm so that I could drive to the hospital."* (Sekera deposition, 94:8). She asserted that the liquid on her pants was on the back left side, and also on the back of her shirt (Sekera deposition, 94:14).

28. The incident was recorded by a surveillance camera positioned in the Venetian Hotel and Casino. The surveillance camera images were captured at a rate of 30 frames per second. To conduct the analysis, the video was stepped through one frame at a time, both forward and backward, such that the relative motions of Ms. Sekera and other hotel patrons could be observed and characterized. Despite some limitations due to sampling rate and the number of individuals in the scene, the camera captured key moments and details from which to reconstruct Ms. Sekera's fall. Below are a series of stop-action frames from the surveillance video depicting Ms. Sekera's fall (Surveillus Networks Player (V5.8.1.0); video file: Cam 308 (1206-1236 hrs).evf):

A

12:36:49 Ms. Sekera has entered the frame. She is carrying her purse on her left arm and a coffee cup in her left hand. She is looking toward her right.

**B**

12:36:50 Ms. Sekera's right foot is planted on the ground. She has begun turning her head toward the left.

**C**

12:36:50 Ms. Sekera's left heel is just striking the ground. She is starting a turn toward her left around the pillar.



D

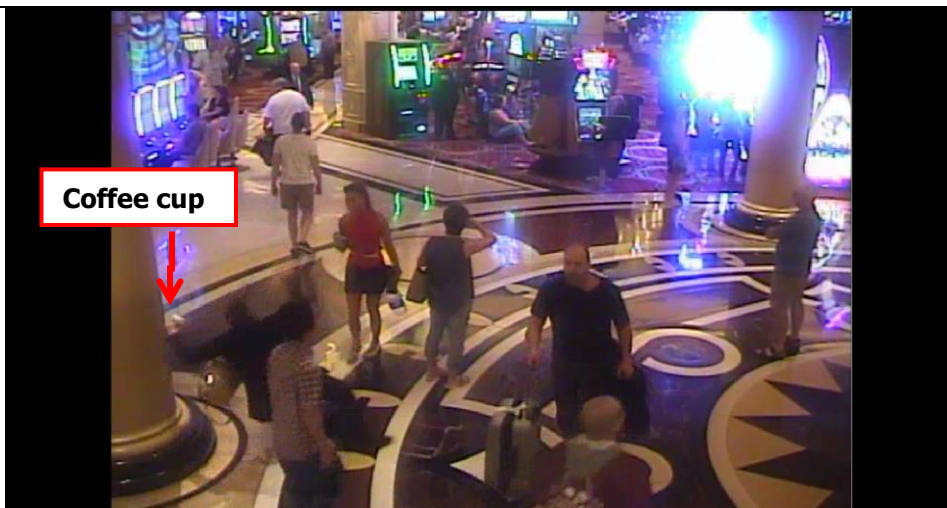
12:36:50 Ms. Sekera's left foot is moving toward the midline of her body. She is beginning to lean toward her left.

**E**

12:36:50 Ms. Sekera's CG is outside her base of support and she is beginning to fall forward and toward her left as her legs move toward her right.

**F**

12:36:50 Ms. Sekera continues to fall toward her left side.



G

12:36:51 Ms. Sekera strikes her buttocks on the ground and her left elbow on the pillar

**H**

12:36:51 Ms. Sekera rotates toward her back and her head comes in contact with the base of the pillar

**I**

12:36:54 Ms. Sekera is beginning to sit up after the fall. Some nearby patrons are stopping to help her.



29. The surveillance video shows that Ms. Sekera is walking through the lobby at the same time as many other people. In particular, one person is seen walking through the almost exactly the same area only 6 seconds prior to Ms. Sekera's fall and did not slip or fall. As Ms. Sekera is walking, she is carrying her purse on her left arm near her elbow and is also carrying a coffee in her left hand (Frame A). As she is walking, she begins to turn toward her left around the pillar, and in the direction of the restroom. She testified, *"I walked out [of the elevator], focusing on the people because it's very crowded there a lot of times...My eyes were up here looking at the people trying not to hit somebody"* (Sekera deposition, 89:22). As she begins to turn her body, her left foot moves inward toward the midline of her body (Frame D). There is a woman wearing pink in the surveillance video who is walking almost directly at Ms. Sekera prior to her fall, looking at her phone. As she approached this area, Ms. Sekera did not notice anything unusual about the floor. Ms. Sekera testified, *"I don't remember exactly what was on the floor...I know it was liquid because my pants felt wet."* (Sekera deposition, 90:23). However, when asked if he observed a spill, Mr. Larson, the first responder, said he did not see any wet areas (Larson deposition, 48:25). Moreover, as described above, Ms. Sekera's coffee was in her left hand. To the extent that there was any liquid on the floor, it is also likely that the source of the liquid she noted as on her pants and the back of her shirt (Sekera deposition, 95:4) was due to the coffee cup she was carrying in her left hand and dropped after her fall had been initiated.

Fall Initiation

30. With respect to fall initiation, as described above, the surveillance video shows that as Ms. Sekera was walking through the lobby, she was making a turning maneuver around the pillar in the direction of the restroom. In addition, she was wearing very worn shoes that were well beyond their safe life (Fig. 3). The sole of the left shoe was worn more along the lateral compared to the medial edge of the heel (Fig. 4). Both left and right shoes were excessively worn on their lateral compared to medial heel edges, typically the consequence of valgus degenerative changes to the knees bilaterally. Such lower extremity degenerative changes are known, intrinsic (person-centered) risk factors for falling. During normal walking on level surfaces, the required friction is conventionally taken as about 0.23 (11).



Figure 3: Photographs of Ms. Sekera's shoes, taken by Wilson C. "Toby" Hayes on December 21, 2018. (LEFT) The top of the shoes shows the left medial side near the arch is worn and bowed outward. At the heel, the insole is wrinkled and no longer lies flat in some areas. (RIGHT) The sole of the shoe is very worn, with little tread remaining. Parts of the sole are cracked or missing completely.



Figure 4: Photographs of Ms. Sekera's shoes, taken by Wilson C. "Toby" Hayes on December 21, 2018. When the insoles are removed, the inner aspect of the sole is seen to be worn through on both shoes. The lateral aspect of both heels on her shoes were also extremely worn. The upper right image shows the left heel, while the lower right image shows the right heel.

31. As just noted, one of the important risk factors for falling relates to the shoes being worn, particularly if worn, ill-fitting or in some way defective. On Ms. Sekera's left shoe, the thickness of the medial edge of the sole was 0.85 inches, while the lateral edge of the sole was 0.35 inches (Fig. 4). Wearing highly worn shoes increases the energy cost and reduces lower leg stability during walking compared to shoes without wear (42). Fall risk has been shown to also increase for shoes with a smaller "critical tipping angle", such as high heel shoes (44). Moreover, soft soled shoes, such as those Ms. Sekera was wearing, require a larger coefficient of friction than hard soled shoes(46). In falls in older people, inadequate footwear was found to be a major contributing factor (34). Shoes with little to no tread, like the highly worn shoes Ms. Sekera was wearing, also result in reduced coefficients of friction compared to shoes with deeper tread (33). Gronqvist reported that "footwear must be discarded before the tread pattern is worn-out" (21). Thus, as a matter of general causation, Ms. Sekera's shoes were worn well beyond their safe life and, more likely than not, increased the risk of her falling. Moreover, and specific to Ms. Sekera's fall, the wedge-shaped heels of her excessively worn shoes resulted, as a matter of fundamental physics, in both an inwardly directed force with each step and a reduction in the opposing frictional force, due simply to the angle of the wedging. These effects were likely exacerbated by Ms.

Sekera's slight turn to the left around the column. Taken together, and given the extreme wedging of her shoes, these reductions in frictional resistance were likely on the order of 50% or about the same as hypothetically adding liquid on a hard floor. Given the lack of credible evidence that there was a liquid on the floor at the time and location of Ms. Sekera's fall and, the inwardly directed translation of her left foot seen on the surveillance video (Frame D) indicates that Ms. Sekera's fall was initiated, not by a forward slip of the foot as would be typical of a slip initiated by a foreign substance on the floor, but instead by an inward translation of her left foot, caused by the extreme wear (to the point of wedging and loss of tread) of her shoes.

32. With respect to the role of slip resistance in the initiation of Ms. Sekera's fall, as noted above, the BOT-3000E (BOT) (Regan Scientific Instruments, Southlake, TX, USA) is supported by both national and international standards and widely-used worldwide. While the English XL Variable Incidence Tribometer (XL) (Excel Tribometers, LLC, Chesapeake, VA, USA) is no longer supported by such standards, it continues to be used in the United States. Moreover, the XL is often used as a basis for expert opinions in litigation on the causation of slips and falls. Until recently, given the differences in methodologies, there has not been a scientifically reliable way to compare the two techniques. Recently, Bevill and Baker (2017) used both tribometers (BOT and XL) to take slip resistance. Measurements with the XL were taken using a Neolite test foot with distilled water. Given that operator variability has been known to influence slip resistance measurements with the English XL, the XL instrument was equipped with an automated sequencer that reduced operator involvement. For conditions consistent with field use of the two tribometers (SBR foot with surfactant solution for the BOT-3000E and Neolite foot with distilled water for the English XL), there was a strong and highly significant linear correlation between the two methods:

$$\text{BOT} = 1.469 * \text{XL} - 0.014 \quad (\text{Equation 1})$$

These findings provide a framework to better understand the wet DCOF thresholds provided in ANSI/NFSI B101.3 and ANSI 326.3. While the BOT-3000E is the only commercially available tribometer that complies with the requirements of the ANSI Dynamic Coefficient of Friction (DCOF) standards, the results from these experiments provide a relationship by which "equivalent" threshold values can be calculated knowing results for either the BOT or the XL. Doing so results in equivalent XL slip index values of 0.30 and 0.21 corresponding to the "high" and "acceptable" threshold BOT values for DCOF from ANSI/NFSI B101.3 or ANSI 326.3.

33. While the above equivalent threshold values are considerably lower than the recommended threshold of 0.50, or the ADA recommended value of 0.60, insight into the converted "high" threshold for the XL (slip resistance = 0.30, corresponding to the BOT "high" threshold of 0.42) can be provided when this value is interpreted in the context of required COF and slip risk. For example, a number of force plate studies have shown mean values of required COF in the range of 0.2 to 0.3 for attentive subjects walking over level surfaces (7,11,13,25,39). Therefore, a slip index of 0.3 and above provides sufficient frictional force for most people during normal, attentive walking over level surfaces (11,39). Bevill and Baker further noted that, *"Additional insight into the slip risk associated with such a threshold value can be gleaned from the logistic regression model proposed by Burnfield and Powers, which supplied an equation to predict the probability of slipping as a function of the available COF (aCOF) of a flooring surface (as measured by an XL tribometer). Application of their logistic regression model ... indicates that a surface with a slip index value of 0.30 would have an approximate probability of slipping of 8%."*(6). Related to the slip resistance at the scene in the area where Ms. Sekera fell, the Dynamic Coefficient of Friction (DCOF) values measured with the BOT-3000 under wet conditions with 0.05% surfactant solution averaged 0.24 ± 0.07 over the twelve measurements.

34. Opposing expert, Thomas A. Jennings, made measurements using an English XL tribometer of the marble floor at the Venetian under both wet and dry conditions. According to Mr. Jennings' testing, the average slip resistance of the floor near where Ms. Sekera fell under dry conditions was 0.70. Thus, according to his own results, the marble floor at the Venetian exceeded all recommended values (that he cites as "national standards") when dry. Under wet conditions, the slip resistance he measured was 0.33. As described above, a number of force plate studies have shown mean values of required COF in the range of 0.2 to 0.3 for attentive subjects walking over level surfaces (7,11,13,25,39). Therefore, a slip index of 0.3 and above, lower than that found during Mr. Jennings' study, provides sufficient frictional force for most people during normal, attentive walking over level surfaces (11,39). Based on Burnfield and Powers correlation, this is equivalent to a probability of slipping, when walking normally, straight ahead and presumably attentively with unworn shoes, of about 8% (12).

35. Mr. Jennings opined that *"the marble flooring in the are of plaintiff's slip and fall incident was [sic] tested well below the accepted national standard of 0.50 for a safe and slip resistant walking surface when contaminated with liquids."* (Thomas A. Jennings, CXLT, Report, 12/28/18) There are, of course, no "accepted national standards" or requirements for safe and slip resistant walking surfaces. Instead, there are several *recommendations* and suggestions for coefficients of friction specific to walkways and accessible routes: a) "Section 1910.22 General Requirements" of "OSHA 29 CFR Part 1910 Walking and Working Surfaces; Personal Protective Equipment (Fall Protection Systems)"(38) states, "A reasonable measure of slip-resistance is static coefficient of friction (COF). A COF of 0.5... is recommended as a guide to achieve proper slip-resistance. A COF of 0.5 is not intended to be an absolute standard value."; b) ANSI A1264.2-2001(2), a "Provision of Slip Resistance on Walking/Working Surfaces" written and published by the American National Standards Institute (ANSI), suggests, "...a slip resistance guideline of 0.5 for walking surfaces in the workplace under dry or wet conditions..."; and c) Section A4.5.1 General of ADA Accessibility Guidelines (ADAAG)(3) states, "A research project sponsored by the Architectural and Transportation Barriers Compliance Board (Access Board) conducted tests with persons with disabilities and concluded that a higher coefficient of friction was needed by such persons. A static coefficient of friction of 0.6 is recommended for accessible routes...". One issue with these recommendations, however, is that the method for coefficient of friction in these recommendations is not specified.

36. With respect to what initiated Ms. Sekera's fall, and noting that: 1) Ms. Sekera was wearing highly worn shoes, which not only reduced the available friction at her heel, but also resulted in a lateral force that caused her foot to slip from her left to her right; 2) the lack of evidence from the surveillance video that Ms. Sekera's foot actually slipped forward (as would be typical of a liquid-related fall) and 3) there is no credible evidence that there was liquid on the floor at the time and location of Ms. Sekera's fall, I conclude, on a more likely than not basis, that her fall was initiated by the defective condition of her shoes and not by a liquid on the floor

Injury Causation

37. Ms. Sekera's fall at the Venetian Casino & Resort occurred on November 4, 2016. According to the complaint, she is asserting acute injuries to her low back and SI joint, head and neck. Notably, there is no objective evidence at any point in time of any acute injury at any of these sites. Rather, all are characterized as chronic degenerative conditions. In particular, on the date of the fall, November 4, 2016, Ms. Sekera was diagnosed as having degenerative disc disease, predominantly at L2/3 (Radiology Report, Kaveh Kardooni, DO, 11/4/16). On December 21, 2016, she was diagnosed as having multilevel degeneration and mild neuroforaminal stenosis at C5/6, and multilevel lumbar

degenerative disc disease with disc bulges extending from L 1/2 through L5/S1 (Radiology Report, Sara Kym, MD; Saul Ruben, MD, 12/21/16).

38. In rare instances, vertebral disc bulges and herniations can be caused when discs are subjected to a combination of compression and flexion sufficient to exceed the tolerances of the tissue. However, in the vast majority of cases, disc bulges and even frank herniations are the consequence of chronic, repetitive loading over time and the resultant accumulation of damage to the end plates and discs. Given her diagnosis as degenerative conditions of the spine, this is almost certainly the case with Ms. Sekera. However, to explore the Plaintiff's assertion that she sustained an acute injury related to this fall, the compressive loading in Ms. Sekera's lumbar spine from impact can be determined using the Impulse-Momentum principle ($F = mv/\Delta t$). The L5/S1 compressive impact force was approximately 279 lbs as a result of Ms. Sekera's fall onto her left hip and buttocks (Fig. 5). Compared to the compression tolerance of Ms. Sekera's lumbar spine based on her age and gender (750 ± 201 lbs (20)), the Factor of Risk for lumbar disc injury associated with her fall is 0.4. Thus, the forces associated with Ms. Sekera's fall at the Venetian Hotel and Casino on November 4, 2016 were only about 40% of the more likely than not level of force necessary to initiate disc damage and thus not sufficient to cause her alleged lumbar spine injuries. With respect to the lumbar facet joints, about 20% of the resultant compressive force on the lumbar functional spinal unit is transmitted through the facet joint (24). Therefore, Ms. Sekera's lumbar facet joint sustained approximately 60 lbs at the time of the fall.

39. A comparable approach can be used with the asserted injuries to the sacroiliac joint. The pelvis is composed of three bones (two paired ilia and the sacrum) and three joints (two SI joints and the pubic symphysis), and is stabilized by several ligaments and muscles. The wedge-shaped anatomy of the sacrum fits tightly into matching concavities in the two ilia. The function of the SI joints is to contribute to the transmission of forces from the spine to the lower extremities and vice versa, distributing the ground reaction forces that occur during walking and running(26). While SI joint dysfunction is possible from a hard fall onto the buttocks(43), previous researchers have shown the "downward shear strength" (35) of both SI joints is 1092 ± 185 lbs (22). However, exceeding the shear strength of the SI joint resulted in fractures in the sacrum close to the sacroiliac joint, first on one side then the other. There are no reports of acute sacral fracture in Ms. Sekera's medical or radiographic records and thus, SI joint acute injury can be ruled out in Ms. Sekera's case. Moreover, the direction of the shear forces across the sacroiliac joint are approximately the same as those in compression across the lumbar discs at the time of Ms. Sekera's fall. The shear force at the SI joint at the time of Ms. Sekera's fall was approximately 355 lbs. The Factor of Risk for SI joint injury is 0.65. The forces associated with Ms. Sekera's fall were not sufficient to cause her alleged sacroiliac joint injuries.

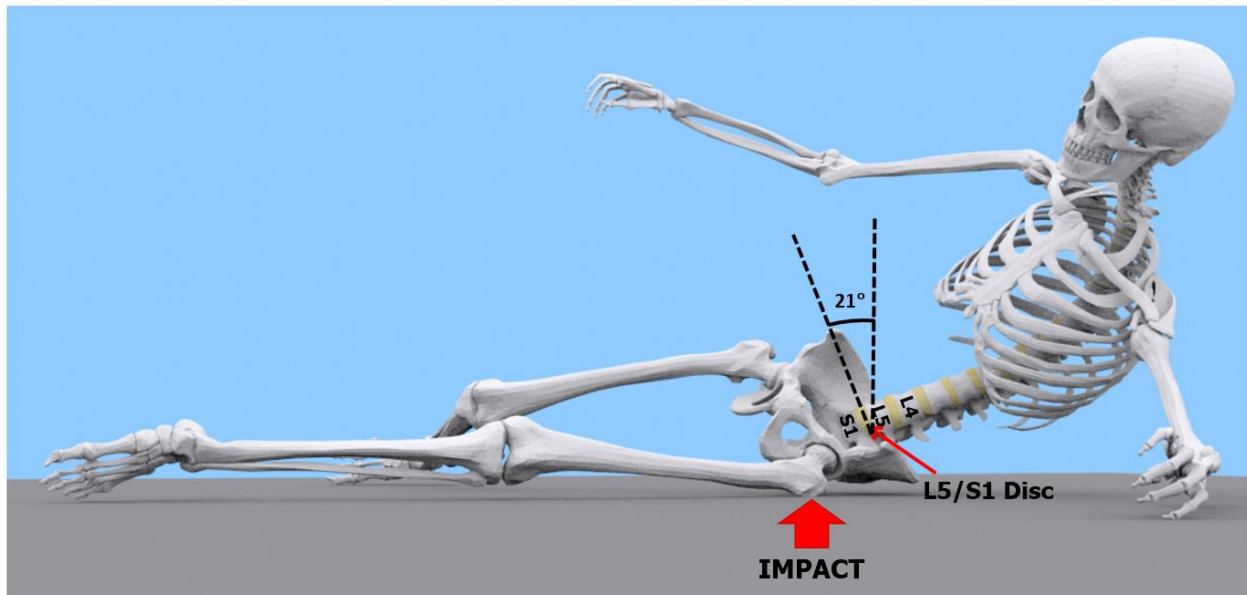


Figure 5: Illustration demonstrating the orientation of Ms. Sekera's body after she impacted the ground with her left hip. The diagram is illustrative and not meant to be exact. Moreover, it does not represent the nearly simultaneous impact of Ms. Sekera's left elbow on the pillar. Such an impact configuration would orient the AP (front-to-back) diameter of Ms. Sekera's L5/S1 disc approximately 21° from vertical.

40. With respect to her head and neck, after landing on her left hip, Ms. Sekera rotated rearward, and her head contacted the base of the pillar. The Head Injury Criterion (HIC) was developed and is mandated by the Federal Government(36), and takes both the magnitude and duration of head acceleration into account. MTBI thresholds have been determined to be between 85 and 233 g's, or a HIC score of 600 (19). Assuming Ms. Sekera rotated rearward after striking her hip on the ground, her head fell approximately 1 foot before contacting the pillar. The impact of Ms. Sekera's head on the pillar led to a peak head acceleration of about 73 g and a HIC score of 75, below injury thresholds for mild traumatic brain injury. Assuming Ms. Sekera struck the pillar with her the back of her head at an angle that was approximately 25 degrees from perpendicular to her neck, the neck compression force was approximately 103 lbs. Neck injury (e.g. disc herniation) tolerance limit for a 65 y/o female in compression is 380 lbs (37). The Factor of Risk for neck injury is 0.27. Therefore, the forces associated with Ms. Sekera's fall on November 4, 2016 were not sufficient to cause her alleged head and neck injuries.

41. The evidence in this case thus fails to meet the first criterion (a reliable biomechanical mechanism) necessary to establish injury causation. As described above, according to our biomechanical analysis, the subject fall incident did not generate forces sufficient to cause Ms. Sekera's alleged low back, SI joint, head or neck injuries. The second criterion (objective evidence of injury) is also not satisfied. There is no objective evidence of any acute injuries following the November 4, 2016, incident. On the date of the fall, radiographs of her lumbar spine indicated, "*Degenerative disc disease most conspicuously at L2/3 where there is endplate osteophyte formation and some endplate sclerosis. There is slight increased density at the disc space of uncertain etiology possibly related to some calcification.*" (Radiology Report, Kaveh Kardooni, DO, 11/4/16). Radiographs of her left elbow indicated "*no soft tissue abnormalities*" (Radiology Report, Rick Yeh, MD, 11/4/16). On November 14, 2016, radiographs of her left shoulder indicated, "*No evidence of acute skeletal pathology to the left shoulder. There are mild*

degenerative changes at the acromioclavicular articulation." (Radiology Report, James Balodimas, MD, 11/14/16). Radiographs of her cervical spine were read as, *"No evidence of acute fracture. On the neutral, lateral projection, there is reversal of the normal lordotic curvature, could be due to spasm."* (Radiology Report, James Balodimas, MD, 11/14/16). Radiographs of her thoracic spine were read as, *"No evidence of acute skeletal pathology to the thoracic spine."* (Radiology Report, James Balodimas, MD, 11/14/16). On December 16, 2016, an MRI of her brain indicated no abnormalities. On December 21, 2016, an MRI of her cervical spine was read as *"Mild multilevel degeneration. Mild neuroforaminal stenosis at C5/6. No spinal canal stenosis throughout. Mild dextrocurvature. Straightening of the cervical lordosis, which may be seen with muscle spasm."* (Radiology Report, Sara Kym, MD, 12/21/16). On the same date, an MRI of her lumbar spine indicated, *"Multilevel lumbar degenerative disc disease, with disc bulges extending from L1/2 through L5/S1. Annular fissuring at L4/5. No canal stenosis or neural foraminal narrowing at any level. There is note made of facet and ligamentous flavum hypertrophy at multiple levels."* (Radiology Report, Saul Ruben, MD, 12/21/16). These radiographic reports indicate many instances of degenerative conditions, which take many months to years to develop, and thus pre-dated the fall in question. The presence of herniations or disc bulges on radiology is not an indication that they occurred acutely(17). Research has shown that for people over 40 years old, that are asymptomatic, 9% have abnormalities (e.g. disc herniation) present in their cervical spines(9). Similarly, for people between 60 and 80 years old, that are asymptomatic, 36% have at least one herniated lumbar disc (most often at L4/5 or L5/S1) and 79% have at least one bulging lumbar disc, without ever having low back pain, sciatica, or neurogenic claudication(8).

42. The evidence in this case also fails the third criterion (temporal consistency). The subject incident occurred on November 4, 2016. In February 2019, 39 months after the fall, Ms. Sekera went to a surgical consultation. At that time her physician reported, *"The CT scan is really quite interesting. It does show a rotatory subluxation at L5/S1 of approximately ten degrees. There are significant facet changes including what appears to be a poorly healed fracture on the superior articular facet. There is moderate foraminal stenosis at this level. She does also have bilateral signs of SI joint dysfunction."* (History and Physical Report, William Smith, MD, 2/7/19). This progress note was over three years after the fall and was the first mention of issues Ms. Sekera had with SI joint dysfunction or lumbar subluxation. With respect to the fourth criterion (alternative explanations), the forces experienced by Ms. Sekera's low back as a result of the incident were within the range of those generated during her everyday activities. It is well known that large spinal compressive forces are generated during everyday activities. Using a well validated three-dimensional model (The University of Michigan Three-Dimensional Static-Strength Prediction Program, V6.0.0, Ann Arbor, Michigan, 48109)(45) of lumbar spinal loading, spinal compression forces were estimated for Ms. Sekera during a simple forward bend to 45° and 90°. This posture, commonly experienced while engaging in many activities of daily living (e.g., lifting, tying shoes, picking up objects), generates low back loading of approximately 429 lbs and 509 lbs, respectively. Normal everyday walking generates lumbar compressive forces on the order of 2½ times body weight (14), or for Ms. Sekera, 473 lbs. With respect to the neck, hopping up and down generates, on average, 48 lbs of neck compression (47). "Plopping" down in a chair produces as much as 108 lbs of neck compression (18). Thus, the loads experienced by Ms. Sekera as a result of the fall at the Venetian were not only well below injury tolerance limits, but also well below the force levels generated during her normal everyday activities. When forces from an event that is alleged to have caused an injury are below or within the range of those experienced in everyday life, it is unlikely that injury can be caused by that event.

Opinions

43. Based on my review of this case, and on my background, education and training in the fields of falls and injury biomechanics, anatomy, and orthopaedics, I conclude to a reasonable degree of engineering and biomechanical certainty, that: 1) Based on a scientifically reliable fall reconstruction, Ms. Sekera fell forward and toward her left during her fall. She first landed on her buttocks (absorbing energy) and then struck her left elbow on the pillar. She then rotated toward her back and the back of her head contacted the pillar; 2) Ms. Sekera's fall was initiated by factors related to her extensively worn and damaged shoes which not only reduced the available friction between shoe sole and floor, but also imposed a lateral force that caused her left foot to translate to her right. There is no scientifically reliable evidence that a liquid substance was on the floor where Ms. Sekera's fall initiated. Given the video surveillance evidence that Ms. Sekera's fall was initiated by a sideways translation and not a forward slip of her left foot (as would be expected with a liquid-related fall), a slip on wet flooring was not the proximate cause of her fall; and 3) Based on a formal and scientifically reliable injury causation analysis, the fall that Ms. Sekera sustained on November 4, 2016 was not the cause of the alleged acute injuries to her low back, SI joint, head or neck, nor would the fall have exacerbated any pre-existing conditions related to these regions.

44. Please note that I reserve the right to supplement this report should additional information become available to me. Thank you for the opportunity to review this case. Please let me know if I can provide any further information.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Wilson C. Hayes". The signature is fluid and cursive, with the first name "Wilson" and last name "Hayes" clearly legible.

Wilson C. "Toby" Hayes, Ph.D.
Hayes+Associates, Inc.

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EXHIBIT 2

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

Case No. A-18-772761-C
Dept: 25

VENETIAN CASINO RESORT, LLC,
d/b/a THE VENETIAN LAS VEGAS,
a Nevada Limited Liability
Company; LAS VEGAS SANDS, LLC
d/b/a THE VENETIAN LAS VEGAS,
a Nevada Limited Liability
Company; YET UNKNOWN EMPLOYEE;
DOES I through X, inclusive,

Defendants.

DEPOSITION OF GARY SHULMAN

Taken at the Galliher Law Firm
1850 East Sahara Avenue, Suite 107
Las Vegas, Nevada 89104

On Wednesday, April 17, 2019
At 3:15 p.m.

Reported By: PAULINE C. MAY
CCR 286, RPR

1 APPEARANCES:

2 For the Plaintiff: KEITH E. GALLIHER, JR., ESQ.
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 Suite 107
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 (702) 735-0049

5
 6 For the Defendants: MICHAEL A. ROYAL, ESQ.
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15 I N D E X

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25 -oOo-

1 GARY SHULMAN,
2 having been first duly sworn to tell the truth, the
3 whole truth and nothing but the truth, was examined
4 and testified as follows:
5
6 EXAMINATION
7 BY MR. GALLIHER:
8 Q Would you state your name, please.
9 A Gary Shulman.
10 Q And your address.
11 A 10263 Jamapa Drive, Las Vegas, Nevada 89178.
12 Q Gary, have you ever had your deposition
13 taken before?
14 A No.
15 Q You understand today that you are under
16 oath?
17 A Yes.
18 Q And the oath you've taken carries with it
19 the same solemnity as if you were testifying in court
20 before a judge and a jury.
21 A Yes.
22 Q Do you understand that?
23 A Yes.
24 Q It also carries with it the penalties of
25 perjury. Do you understand that?

1 A Yes.
2 Q A little general background first. How long
3 have you lived in Las Vegas?
4 A Just about 13 years. In May, it will be 13
5 years.
6 Q Where did you come from?
7 A At the time I was living in California for
8 90 days. I was living in Marietta near Temecula where
9 I worked for a casino called the Pechanga that was
10 there. And before that, I was in a casino in Arizona,
11 in Scottsdale, Arizona, for approximately three years.
12 Q And when you came to Las Vegas, was there a
13 reason why you relocated to Las Vegas?
14 A Yeah. I wanted to be -- you know, my
15 family, I have a brother and lot of cousins here. I
16 also wasn't real happy in California, and I knew the
17 Venetian at the time was considered a premier property
18 to work in and so that's why I came here. But it was
19 mostly to be with family.
20 Q When we talk about family, are you married?
21 A Yes.
22 Q What's your wife's name?
23 A Ellen.
24 Q Any children?
25 A She has a daughter; yes.

1 Q Now, when you relocated to Las Vegas to go
2 to work at the Venetian, is that the reason you came
3 to town, apart from family, to go to work at the
4 Venetian?
5 A Yes.
6 Q And when you started at the Venetian, what
7 was your position?
8 A Table games supervisor.
9 Q Tell me what a table games supervisor does.
10 A We basically circulate among certain
11 sections and different sections of table game areas,
12 being a host to the guests, and also trying to
13 supervise the dealers, try and catch mistakes.
14 But basically, you know, some people play on
15 credit, so I would process paperwork for someone who
16 has a credit line and wants to take money out right at
17 the table. And, like I said, be a host, you know, get
18 the waitress if they need a cocktail, a cigarette
19 girl, ashtrays. Just basically a host to the guests.
20 Q Now, did there come a time when you were
21 employed at the Venetian that your job title changed
22 in any way?
23 A No.
24 Q So would it be fair to state, then, for the
25 entire 13 years you were employed at the Venetian, you

1 were a table games supervisor?
2 A That's correct. A little less than 13
3 years, but...
4 Q A little less than 13 years?
5 A Yes.
6 Q How far did you go in school?
7 A Excuse me?
8 Q How far did you go in school?
9 A I have a bachelor's degree from Colorado
10 State University.
11 Q In what discipline?
12 A Business administration.
13 MR. GALLIHER: Off the record.
14 (Discussion off the record.)
15 BY MR. GALLIHER:
16 Q All right. I'm here today to talk to you
17 about a fall which occurred at the Venetian Hotel and
18 Casino on November 4, 2016. And before I get into the
19 fall, you were subpoenaed to today's deposition; is
20 that right?
21 A That's correct.
22 Q Now, in response to that subpoena, did you
23 contact my office?
24 A Yes, I did.
25 Q And did you and I have a conversation about

1 today's deposition?
 2 A Yes, we did.
 3 Q And did you come by the office and meet with
 4 me about today's deposition last week?
 5 A Yes.
 6 Q And did we discuss your version of what
 7 happened?
 8 A Yes.
 9 Q And did I also show you the video
 10 surveillance?
 11 A Yes.
 12 Q And I showed it to you two or three times;
 13 is that right?
 14 A Yes.
 15 Q All right, so I want to talk to you about
 16 that fall. And you've seen the video surveillance?
 17 A Uh-huh.
 18 Q Did you see yourself in the video
 19 surveillance?
 20 A Yes.
 21 Q Why don't you start with what you remember
 22 about the fall itself on that date.
 23 A I remember getting relieved to take a
 24 30-minute break. We get three 30-minute breaks every
 25 day, traditionally working two hours at a time.

1 As I go on break, I heard a noise and I
 2 looked a little bit to my right and I noticed a lady
 3 down on the marble area near one of the columns very
 4 close to the Grand Lux, in between the Grand Lux Cafe
 5 and the restrooms.
 6 I went over to assist her. I did notice
 7 that the floor was wet. It was some -- it was wet
 8 pretty much near where she fell. I also saw some -- a
 9 little bit of liquid at the base of the column that
 10 she was next to.
 11 I went to get PAD, our public area
 12 department, to come and clean it up. I called for
 13 security, and basically waited for all the
 14 appropriate; people to get there and then I left.
 15 Q When you say you approached the lady on the
 16 floor, did you have any conversations with her?
 17 A I asked her if she was okay and she said
 18 that she hit her elbow, but other than that, she
 19 thinks she was okay.
 20 Q Now, you mentioned that you saw liquid on
 21 the floor. Do you know what it was? Was it clear?
 22 Was it not clear?
 23 A It was pretty much clear. Most of it was on
 24 like a black area of the marble. It was kind of hard
 25 to tell exactly. I mean, could be a number of things.

1 Vodka, water, maybe even coffee. I didn't really look
 2 to see what it was. I was basically concerned for the
 3 guest.
 4 Q And how much liquid, if you can quantify it,
 5 was on the floor when you approached?
 6 A I would say equivalent to half a cup that
 7 you have in your hand right now.
 8 Q So this cup is 16 ounces, so we would say
 9 roughly eight ounces of liquid?
 10 A Yeah. It's hard for me to be exact with
 11 that.
 12 Q Did you see any colored liquid or did it
 13 appear to be clear?
 14 A It just appeared to be clear.
 15 Q So if you were to give us your best estimate
 16 of what you thought you saw on that floor, would it be
 17 water or something else?
 18 A It would be water or something else. I
 19 mean, there's -- yeah, there's different things that
 20 are clear. Someone could have a vodka on the rocks
 21 and spill a little when they walk by. I really didn't
 22 pay much concern, even up until now as to what it was.
 23 Q But what you did know is that the floor was
 24 wet when you approached this lady?
 25 A Yes. Yes.

1 Q And it appeared that there was approximately
 2 eight ounces worth of liquid on that floor?
 3 A I would say if you were -- I mean, I'm kind
 4 of guessing a little bit, but if you were to gather
 5 everything up, it might be eight ounces.
 6 Q Can you give me an idea of the size of the
 7 spill itself?
 8 A The size of the spill, I know on the black
 9 marble it was basically just like a small area like
 10 that. And then there was drops that kind of lead to
 11 the bottom of the column that she was next to.
 12 Q And when you drew your little circle, if I
 13 was to give you a circumference, it looks to me like
 14 your circle is probably three to four inches in
 15 circumference; is that right?
 16 A That's about right. Yeah, it wasn't real
 17 big.
 18 Q And then, apparently, there were sprinkles
 19 or spots of water that led toward the column?
 20 A Yes.
 21 Q Now, how long were you at the scene of the
 22 fall?
 23 A I would say at least 10 minutes.
 24 Q So you spent approximately 10 minutes there.
 25 And as I understand your testimony, did you also

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1 notify security of the fall?
 2 A I believe I called surveillance and they
 3 notified security. I may have called security. This
 4 is two and a half years ago. I think I notified my
 5 manager. Actually, her name was Chris Tonemah, and I
 6 think she called security.
 7 Q But you said something about you notified
 8 the PAD people.
 9 A Yes, I did. Actually went into the bathroom
 10 to get them. It was a lot quicker because there's
 11 always someone in there.
 12 Q When you went into the bathroom, did you
 13 find any PAD people there?
 14 A Yes.
 15 Q Do you remember whether it was a male or
 16 female or both?
 17 A It was just a male.
 18 Q So you found a male there. Did you see a
 19 female PAD employee in that bathroom or anywhere
 20 nearby?
 21 A Not that I recall.
 22 Q Can you give me your best estimate of how
 23 long it took the PAD people to arrive at the scene?
 24 A It was very quickly. After I went into the
 25 bathroom I pointed out to them, I said, you know,

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1 There's a lady down, you know, she slipped on
 2 something that was wet. If you could please clean
 3 that up and also clean up the base of the column where
 4 there's more drops, I don't want anybody else
 5 slipping.
 6 Q Did you have that conversation with the
 7 male?
 8 A Yes. It was an Hispanic male.
 9 Q And to this date, do you know his name?
 10 A No, I don't.
 11 Q Now, how long after you had the conversation
 12 with this male did he arrive at the scene of the fall?
 13 A Just a matter of seconds, really. I went
 14 into the bathroom and waved him out and pointed to the
 15 area, and then told him basically what needed to be
 16 done and went there.
 17 Q And did he bring anything to clean up the
 18 spill?
 19 A Yeah, yeah. He had a mop and a bucket and I
 20 think he put one of them yellow signs there. I can't
 21 remember, but could have been a yellow sign they put
 22 down that say "Wet Floor."
 23 Q And did you observe him actually clean up
 24 the spill?
 25 A Yeah, yeah.

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1 Q So I mean, as you testify here today, was
 2 there any doubt in your mind that there was water or a
 3 clear liquid on the floor as you approached the fall
 4 scene?
 5 A No, there was no doubt in my mind. The
 6 floor was wet.
 7 Q And do you know whether you saw any water or
 8 liquid on the clothing of the woman that fell?
 9 A I don't recall any -- any part. I didn't
 10 really look for that, but, no, I didn't recall seeing
 11 anything wet on her.
 12 Q Sounds like basically what you did is,
 13 you -- did you actually see the fall or did you
 14 approach her after the fall?
 15 A I approached her after the fall.
 16 Q And something drew your attention to the
 17 scene. Was it a noise?
 18 A It was a noise; yeah.
 19 Q And so you apparently zeroed in on the scene
 20 of the fall shortly after it happened?
 21 A That's correct.
 22 Q And then when you saw the lady down, you
 23 then approached her to make sure that she was okay?
 24 A Yeah, and to advise her to stay down until
 25 we can get help to make sure she's okay.

Page 14

1 Q And is that what you did; you advised her to
 2 stay down?
 3 A Yes.
 4 Q Until help arrived?
 5 A Yes.
 6 Q So do you know how long after the fall the
 7 security officer arrived?
 8 A It was a good -- at least 10 minutes, maybe
 9 15.
 10 Q And have you ever experienced or seen falls
 11 before at the Venetian?
 12 A I can't say that I have, no.
 13 Q So did that seem like an unusually long
 14 period of time in your view, or not?
 15 A Usually they come much quicker than that;
 16 yeah.
 17 Q So about 10, 15 minutes later the security
 18 officer arrived. Now, do you remember what color
 19 uniforms they wear?
 20 A Some have a blue shirt with I think black
 21 pants, and then when you get to the next level, the
 22 supervisory level of security, usually a suit and tie
 23 just like I was.
 24 Q And in the video, there's other people shown
 25 wearing suits and ties. Can you tell me who they work

5 (Pages 11 to 14)

1 for?
 2 A I know one worked for I believe the front
 3 desk.
 4 Q And anyone else?
 5 A I think there was one other person there. I
 6 can't remember where, what department that person
 7 worked in.
 8 Q Now, you mentioned that you were employed at
 9 the Venetian for 13 years. And are you currently
 10 employed at the Venetian?
 11 A No, I'm not.
 12 Q And when did you leave the Venetian?
 13 A I was terminated officially on January 23rd
 14 of 2019.
 15 Q And what was the reason for your
 16 termination?
 17 A They said I made a comment that made another
 18 team member feel threatened.
 19 Q And did you make that comment?
 20 A I made the comment, but not -- it was not a
 21 threat in any way.
 22 Q Did you, as a result of being terminated at
 23 the Venetian, file for unemployment?
 24 A Yes, I did.
 25 Q And did you receive unemployment benefits?

1 A I did.
 2 Q Tell me how that happened.
 3 A Well, when you first fill out online that
 4 you are terminated, there is a -- I guess a little bit
 5 of an investigation that the Department of Employment
 6 does. And they came to the conclusion that the
 7 comment I made was nothing more than an isolated
 8 comment that was taken out of context and did not
 9 constitute any misconduct in the workplace.
 10 Q Did you have any problems, like warning
 11 notes and so forth, at the Venetian before this
 12 comment when you were terminated?
 13 A I had a number of problems for about six
 14 months before this incident.
 15 Q When did they start?
 16 A They started around March of 2018.
 17 Q And as you look back on those events, what
 18 is your feeling about the problems that surfaced at
 19 the Venetian regarding you?
 20 A Well, I'm, you know, very disappointed and
 21 very upset at the Venetian. I received what I believe
 22 was some retaliation, intimidation, harassment. I
 23 received three written warnings in a two-week period
 24 for things that nobody ever got any discipline for,
 25 three writeups with potentially only one mistake on my

1 part.
 2 One of the warnings was because I didn't
 3 catch someone else's mistake. Another one was, I
 4 chose to sit down -- I was standing for an hour
 5 waiting in a closed pit with no chips on the table.
 6 We were filling up the tables with chips.
 7 It's a well-known fact over there I have
 8 really bad arthritis in my hip, so I sat down. And
 9 they brought me in and gave me a written warning for
 10 that.
 11 And all three of these written warnings they
 12 chose not to use any progressive discipline, just skip
 13 a couple of steps. And that was very upsetting to me
 14 because I've seen these things happen for 13 years
 15 with nothing more than a slap on the hand usually.
 16 Q So did you have any -- was there any event
 17 which predated what you have described was harassment
 18 and so forth on the part of the Venetian?
 19 A Well, there was a young lady, her name was
 20 Rhonda Salinas, and I received what I believe was
 21 harassment, belittling you in front of other people,
 22 making false allegations that -- that you did things
 23 that you never did.
 24 And it got to the point where, about three
 25 days before I was suspended pending investigation, I

1 went to human resources to file a complaint about her.
 2 And then a couple days later, I made this comment to a
 3 gentleman named Barry Goldberg, who at the time I felt
 4 was a friend of mine, from New Jersey and we were both
 5 Philadelphia fans, and we talked.
 6 And, you know, I said -- I really didn't
 7 volunteer much information. I just said -- he said,
 8 "How are you?"
 9 I said, "Oh, kind of stressful, you know. I
 10 don't like doing things like I did. I had to go
 11 complain about someone."
 12 And he said, joking around, "I hope it
 13 wasn't me."
 14 And I said, "No," I said, "but someone's in
 15 a world of shit."
 16 And I didn't know at the time I was talking
 17 about me.
 18 Q So you are talking about the event that
 19 predated your termination at the Venetian?
 20 A Yeah.
 21 Q Well, I'm going back to -- you talked about
 22 a pattern of harassment and intimidation on the part
 23 of the Venetian for roughly a six-month time frame
 24 before you were terminated.
 25 A Uh-huh.

1 Q Now, in your view, was there anything that
2 you were involved in before that six-month time frame
3 that you believe resulted in harassment and
4 intimidation?

5 A Yeah. There's a supervisor -- or an area
6 supervisor is the next level up. They got rid of the
7 term pit manager, so now it's table game supervisor,
8 area supervisor, and then you have like an assistant
9 casino manager.

10 The casino manager, Mike Connery(phonetic),
11 had brought us in maybe like eight months before all
12 this happened with the lady. Wanted to tell us that
13 we were going to be asked to watch more tables, we
14 were going to be asked to help each other out more.
15 If there's two people in one section, it's not that
16 busy, you see another person in another section that's
17 busier, then why don't you go over there and help.

18 So I found myself in a situation one day
19 where I was in Pit 4 with about I believe seven tables
20 to myself, which is quite a bit in that section. And
21 dealers were making mistakes; customers were upset
22 because I just couldn't service them, get them the
23 waitress, take their players card so they could get
24 rated and get their points for playing.

25 And I voiced my opinion on the way to break

1 to get me?"

2 He said, "Well, let me put it this way.
3 Every little thing you do is being watched, and
4 they're just waiting for you to make a mistake to
5 create a problem for you."

6 Q Well, now you've discussed this claim with
7 me in my office. Have you ever discussed this claim
8 with Mr. Royal? That's the gentleman next to you.

9 A Yeah.

10 No.

11 Q Okay. You've never discussed the claim with
12 him at any time?

13 A No. The last -- I only met with Mike Royal,
14 I believe it was on the 28th of November, 2018.

15 Q Well, so you did meet with Mr. Royal?

16 A I met with him, yeah, at the casino once.

17 Q At the casino?

18 A I thought you said did I meet with him after
19 these things happened.

20 Q No. I want to know if you met with him in
21 connection with the fall event which we're here about
22 today.

23 A Yes. I'm sorry, I did.

24 Q And when was this?

25 A November 28, 2018, I believe.

1 to another supervisor because I saw three other
2 supervisors in a pit, Pit 9, which is our salon, with
3 no players at all. And I made a comment to -- trying
4 to think of his name. I'll come up with his name.
5 I'll come up with it -- Ryan. Ryan Parker.

6 And I told him, "Really disappointed. You
7 know, I got dealers making mistakes. I got customers
8 complaining about service and there's three
9 supervisors in this section doing nothing, and I
10 thought we were supposed to help each other out."

11 And just, he kind of looked at me. He did
12 say, "Well, if you do find yourself needing help, call
13 us. We'll try and get some help." And then I went on
14 my way.

15 Then the next day I went into Pit 4, getting
16 the pit ready. We report at 11:45. One of the area
17 managers, his name is Abraham Ly, spelled L-y, came
18 over to me.

19 He said, "Between me and you, management is
20 really pissed off about that comment you made. Mike
21 Connery, the casino manager, takes that personally,
22 that you're suggesting that he doesn't know how to
23 staff the casino. And if I were you, I would be
24 watching your back. Management is out to get you."

25 I said to him, "What do you mean they're out

1 Q And where was this?

2 A This was in the back area of the salon in
3 one of the private rooms. The rooms aren't numbered,
4 it would probably be Number 1 of 2. I'm not sure, I
5 don't work in that section.

6 Q Can you tell me about the meeting?

7 MR. ROYAL: Hold on a second. I'm going
8 to -- you are getting into attorney-client information
9 related to our discussion with an employee at the
10 time, and I'm going to instruct him not to answer.

11 MR. GALLIHER: Well, he can instruct you,
12 but you can answer if you want to whether he instructs
13 you or not.

14 BY MR. GALLIHER:

15 Q Let me ask this question preliminarily. At
16 the time you met with Mr. Royal in November 2018, had
17 you hired him as your attorney?

18 A No.

19 Q Had you paid him a retainer or any money to
20 represent you in connection with anything?

21 A No.

22 Q Have you asked him to represent you in
23 connection with anything?

24 A No.

25 Q All right, so you met with him and you are

1 claiming attorney-client privilege.

2 Are you -- you are no longer employed at the
3 Venetian; is that right?

4 A That's correct.

5 Q All right. So subject to his objection,
6 which is, of course, made part of the record, I'm
7 going to again ask you the question of: Tell me about
8 the meeting.

9 A Well, basically he asked me, you know, what
10 I remember and what I don't remember.

11 I explained to him a lot of what I already
12 said happened, that I went over, I was heading towards
13 my break, I saw a lady that was down. I went over to
14 her and asked if she was okay. I noticed the floor
15 was wet.

16 At that time he said, "No, it wasn't wet.
17 You didn't see anything wet. You are mistaken."

18 And I said, "Well, I'm pretty sure it was.
19 I mean, that's why I called PAD to clean it up. In 13
20 years I've never called PAD to clean up a dry spot."

21 And he says, "But, no, no, there was nothing
22 wet there."

23 And at that point, I kind of became
24 concerned that I might get in trouble if I keep
25 disagreeing with him. So I just said, "Okay, whatever

1 then there was a couple of minor things.

2 There was one incident approximately three
3 years ago from this coming May where a dealer made a
4 mistake sending the wrong amount of chips to a
5 customer, and I didn't catch it and I got a written
6 warning for that. That was the only thing that I
7 really was aware of.

8 In the very beginning when I was there two
9 or three years, I read my schedule wrong and didn't
10 show up, which is -- casinos really frown on that. So
11 I was given what they call a Career Decision Day where
12 you write down what you did wrong, what you plan on
13 doing to prevent it from happening again, and then you
14 have to take a day off, which could be a paid day off
15 if you have vacation time, or an unpaid day off.

16 Q So sounds at least like the written warnings
17 were kind of few and far between during these initial
18 years up to the time that you met with Mr. Royal.

19 A Oh, yeah.

20 Q Now, after you met with Mr. Royal, how many
21 written warnings did you receive from the Venetian?

22 A I received three that I knew about. Then I
23 found out there was a couple more put in my file
24 without me knowing about it, but they weren't written
25 warnings. One was called a note to file and another

1 you say," and that was it.

2 Q You talked about this pattern of harassment
3 and threats and so forth on the part of the Venetian.

4 Did you have -- was there a pattern of
5 threats and intimidation and so forth on the part of
6 the Venetian before you had this meeting with
7 Mr. Royal?

8 A No.

9 Q And how soon after you had this meeting with
10 Mr. Royal did that start?

11 A I would say 30 to 60 days.

12 Q And did that continue up to the time that
13 you were terminated?

14 A Yes.

15 Q Approximately how many times were you
16 written up by the Venetian?

17 A In the entire 13 years or just like --

18 Q Let's start with the time that -- the time
19 up to the time that you had a meeting with Mr. Royal
20 in November of 2018.

21 A Before I met Mr. Royal?

22 Q Yes. In other words, at the time frame up
23 to the time that you met with Mr. Royal, how many
24 times were you written up by the Venetian?

25 A There was nothing for about three years and

1 one was called a verbal coaching.

2 They said that they are allowed to do that
3 without telling you. I'm not sure why, but I didn't
4 know they were in there until we did this peer review
5 to try to recover my job.

6 So but as far as written warnings, which are
7 much more serious, there was three in a two-week
8 period when I don't think I had three in the whole 13
9 years before that or 12 years before that.

10 Q And that was within the months after you met
11 with Mr. Royal until the time you are terminated?

12 A That's correct.

13 Q You were terminated when?

14 A The official termination date is
15 January 23rd.

16 Q Of 2019?

17 A Yes.

18 Q All right, so you've got a little less than
19 a two-month time frame from the time you met with
20 Mr. Royal in 2018 in November.

21 And during that two-month time frame, how
22 many written warnings did you receive? You said
23 three?

24 A Yes.

25 Q And then you also said two other entries

1 were made in your job file -- I mean your employment
 2 file --
 3 A Yes.
 4 Q -- regarding a verbal coaching.
 5 And what was the other one?
 6 A One was a note to file. I gave a customer,
 7 a player at the table -- if you are not being a rated
 8 player meaning we don't have your name, we don't
 9 really give out thousand-dollar chips or higher.
 10 And a mistake was made and the gentleman
 11 left with chips, but we got him very quickly back.
 12 And he was a rated player, so we found out who we was
 13 and we were able to account for those chips.
 14 I was talked to about it. They said at this
 15 time we're not taking any disciplinary action, you
 16 know. They knew I had some problems at the time and
 17 my father with Alzheimer's in New Jersey and just a
 18 lot of stress from that. So that was basically it.
 19 Q All right. So what I'm getting at is,
 20 during that roughly 60-day time frame between the time
 21 you met with Mr. Royal and the time you were
 22 terminated, would it be fair to state that you
 23 received more written warnings at the time you had
 24 during your 13 years at the Venetian?
 25 A Absolutely.

1 Q And as you look back on that situation, do
 2 you have an opinion regarding why that happened?
 3 A Well, I believe that they were very upset
 4 about me using my privileges under the Family Medical
 5 Leave Act. I was getting lots of flareups with my
 6 neck and my hip and I had to --
 7 I was definitely using it more than I'm
 8 accustomed to. Sometimes I wouldn't be able to come
 9 to work. Sometimes I would have to have procedures
 10 done where they burn away the nerves in my neck and
 11 put steroids into my hip.
 12 Repeat the question.
 13 Q Well, so what I'm trying to determine, your
 14 opinion why it is you started receiving all those
 15 writeups after you met with Mr. Royal.
 16 So are you telling me it had to do with your
 17 health issues?
 18 A Had to do with health issues; yes. I
 19 frequently, maybe once a week, once every two weeks
 20 would have to leave early or not come in at all. And
 21 I know that they were upset because it creates
 22 staffing problems when this happens.
 23 Q Now, you apparently pursued unemployment.
 24 Did you receive it?
 25 A Yes.

1 Q Did you prevail at your initial hearing
 2 before the unemployment board? In other words, did
 3 you win?
 4 A Yeah, we won. They didn't show up.
 5 Q That apparently -- did that have to do with
 6 the initial hearing or the appeal?
 7 A The initial hearing was just a finding from
 8 the Department of Employment that there was no
 9 misconduct.
 10 Q And then did the Venetian appeal that?
 11 A Then the Venetian appealed that.
 12 Q And did you appear at the appeal hearing?
 13 A Yes.
 14 Q Did the Venetian appear?
 15 A They did not appear; no.
 16 Q So what was the result of that appeal
 17 hearing?
 18 A That the appeal was dismissed.
 19 Q And so you ended up receiving your
 20 unemployment despite the fact that the Venetian
 21 contested it?
 22 A Yes.
 23 Q Have you understood all my questions today?
 24 A Yes.
 25 Q Anything you want me to repeat or rephrase

1 for you?
 2 A No.
 3 MR. GALLIHER: All right. Pass the witness.
 4
 5 EXAMINATION
 6 BY MR. ROYAL:
 7 Q Okay. When is the last time you looked at
 8 that video? Was it with Mr. Galliher?
 9 A Yes, about a week ago.
 10 Q Do you remember when I was -- I reached out
 11 to you to try and meet before the deposition?
 12 A Yes, uh-huh.
 13 Q Did you tell Mr. Galliher about that, about
 14 my effort to meet with you?
 15 A I believe so; yeah.
 16 Q And, first of all, why wouldn't you meet
 17 with me, but you would meet with Mr. Galliher?
 18 A Well, I've experienced and also seen other
 19 things, just incredible, what I think are ethic
 20 violations and integrity.
 21 And after what they did to me, I really
 22 didn't feel comfortable being affiliated in any way
 23 from anybody that had anything to do with Venetian.
 24 Q Okay. Is there something in our
 25 communications and our interchange, since the time you

1 first met me, that led you to believe that I was being
2 somehow dishonest with you in any way?
3 A I don't know if I want to use the word
4 "dishonest." You know, I -- I saw the floor was wet
5 and you didn't seem happy about me saying that.
6 Q Okay. I'm having trouble recalling this
7 entire exchange you are talking about.
8 A Okay.
9 Q So let me ask it this way. You asked me --
10 let me get back to that.
11 You asked if -- prior, if you would meet
12 with me, whether or not you would be compensated. Do
13 you remember that?
14 A Yes.
15 Q Do you remember my response to that?
16 A You said to contact Mr. Galliher.
17 Q I don't --
18 A You didn't?
19 Q No, I didn't.
20 A Or that you would check with the opposing
21 counsel.
22 Q Okay. Well, let me -- did you get
23 compensated by Mr. Galliher?
24 A I just have a check I saw to cash for \$26.
25 Q What date did you meet with Mr. Galliher?

1 A It was a week ago today, I believe.
2 Q In this office -- in his office?
3 A Yes.
4 Q And how long was the meeting?
5 A Approximately an hour.
6 Q And other than reviewing the video, did you
7 review anything else?
8 A No.
9 Q Did you look at any photos of the scene; do
10 you remember?
11 A I didn't look at them with Mr. Galliher. I
12 had looked at them when you sent me e-mails with the
13 photos included --
14 Q Okay.
15 A -- as attachments.
16 Q Did you provide Mr. Galliher with anything
17 that I had written to you?
18 A No.
19 Q What else did you tell Mr. Galliher about
20 our meetings, other than what you have already
21 testified to today?
22 A Nothing.
23 Q Did Mr. Galliher indicate to you that
24 Ms. Sekera, his client, was carrying some coffee in
25 her hand at the time she fell?

1 A I don't recall.
2 Q Okay. Do you remember that?
3 A That she had a cup of coffee?
4 Q Right.
5 A No, I don't.
6 Q Okay. So as you sit here today, you don't
7 recall whether or not Ms. Sekera was carrying a
8 beverage at the time she fell?
9 A No. I was not aware of anything, any
10 beverage she was carrying at the time she fell.
11 Q Okay. But you did watch the video; correct?
12 A Uh-huh.
13 Q Yes?
14 A Yes.
15 Q And when you watched the video, did you
16 watch her fall?
17 A Yeah.
18 Q Okay. I'm going to show you the video. I'm
19 going to have you watch the video starting at
20 12:36:46. This is VEN019. I'm just going to have you
21 watch this.
22 A Okay.
23 Q Do you recognize the area -- before I start
24 it, do you recognize the area?
25 A Uh-huh.

1 Q Yes?
2 A Yes.
3 Q And I'm going to point. Do you see
4 yourself? I'm going to point up here to the top left.
5 I believe that's you walking towards the area.
6 A Okay.
7 Q I'm going to start it now.
8 A Okay.
9 Q Here she comes. Okay, do you see that?
10 A Yes.
11 Q Now she's on the ground now, or the floor,
12 at 12:36:54. I stopped it. Now I'm going to go back
13 again and I'm going to stop it at 12:36:49.
14 A Okay.
15 Q Can you see whether or not she's got
16 anything in her left hand?
17 A Yes, it does look like she has a cup of
18 coffee.
19 Q Okay. I'm going to start it. She goes
20 down; okay?
21 A Uh-huh.
22 Q What happens to the coffee? Do you see?
23 A Yep.
24 Q Okay. And someone responds there. There's
25 a woman who responds, she picks up the cup. See that?

1 A Uh-huh.
 2 Q Yes?
 3 A Right now; yes.
 4 Q You just need to say yes or no. That's why
 5 I'm saying that.
 6 A Okay.
 7 Q At 12:36:57 you are approaching?
 8 A Uh-huh.
 9 Q Correct?
 10 A Yes.
 11 Q Okay. I'm going to stop right here at
 12 12:37:01. Do you remember being in that particular
 13 position when you first arrived at the scene, talking
 14 to the -- the plaintiff is on the floor.
 15 A Yes.
 16 Q Do you remember there being a couple of
 17 women standing around?
 18 A Yes.
 19 Q And do you remember seeing this woman who
 20 would be to your right, she's got a cup in her hand?
 21 A I don't remember her there. I mean, I was
 22 pretty much looking at the lady.
 23 Q Okay. The lady on the ground?
 24 A Yeah.
 25 Q Okay. I'm going to start this again. And

1 then there's this gentleman, a larger gentleman in a
 2 suit who comes and stands behind the woman. I stopped
 3 it at 12:37:05. You don't know who that is?
 4 A Which one?
 5 Q This gentleman in the dark suit.
 6 A No, I don't know who that is.
 7 Q Okay. So when you said -- okay. So at
 8 12:37:12 on the video, you actually say something and
 9 then you leave.
 10 Can you tell us what you did at that point?
 11 A I basically -- I don't really recall the
 12 exact words, it's too long ago.
 13 I said, "Okay. Everybody is here that you
 14 need to help you. I hope you feel better," and I
 15 left.
 16 Q Okay. Just like that?
 17 A I believe so; yeah.
 18 Q Okay. Where was -- where was the liquid
 19 that you saw on the floor? Because at that point, the
 20 time I just stopped it, you were just standing barely
 21 in front of the woman on the ground -- on the floor.
 22 Where was the spill?
 23 A I saw the spill. It's kind of in between
 24 where the lady and this gentleman is.
 25 Q Okay.

1 MR. GALLIHER: When you say "this
 2 gentleman," talking about the large fellow in the
 3 foreground?
 4 MR. ROYAL: This gentleman here?
 5 THE WITNESS: Uh-huh.
 6 MR. ROYAL: You need to say yes or no.
 7 THE WITNESS: Yes.
 8 BY MR. ROYAL:
 9 Q Okay. Did you see anything in front of
 10 where she's -- the woman is on the floor when you
 11 approached?
 12 A Yeah, I saw the floor was wet.
 13 Q Okay. What part of the floor was wet? If I
 14 show you a photo -- let's say if I show you a photo --
 15 here's one, VEN0140 -- do you recognize the area
 16 that's depicted?
 17 A Yes.
 18 Q Okay. And so if I show this particular
 19 photo, are you able to point to the area where there
 20 was water or something on the floor?
 21 A Yeah. I saw it in this black area right
 22 here, and then there was a couple drops that were at
 23 the base of the column.
 24 Q Okay. I'm going to ask you to mark what you
 25 just pointed to on VEN040. I want you to circle where

1 you say there was something on the floor.
 2 A Okay.
 3 Q Okay. Can you make that darker, please?
 4 A Do you want to make a circle?
 5 Q No, I just want you to darken your circle.
 6 A This spot?
 7 Q Yes.
 8 Now, is that the only area where you saw
 9 anything on the floor? Was there anywhere else?
 10 A That's all I saw.
 11 Q Okay. So, in other words, you didn't see
 12 anything, looking at the photo, to the right of that;
 13 is that correct?
 14 A That's correct.
 15 Q I'd like you to just initial down at the
 16 bottom left. Put your initials and today's date of
 17 4/17.
 18 A Okay.
 19 MR. ROYAL: We'll mark that as "A."
 20 MR. GALLIHER: Make it a joint exhibit.
 21 MR. ROYAL: Okay, I'm fine with that. Mark
 22 it as "I."
 23 (Plaintiff's Exhibit 1 marked for
 24 identification.)
 25 /////

1 BY MR. ROYAL:
2 Q All right. Let's look at this next photo,
3 VEN041. Do you recognize what's depicted there?
4 A This looks like the same area.
5 Q Okay. Are you able to, using a pen, also
6 mark this particular photo indicating where you saw
7 something on the floor when you first arrived?
8 A It was somewhere in this black area.
9 Q Make a dark circle.
10 A And, again, with scattered drops and then a
11 little bit of a collection at the base of the column.
12 Q Okay. So go ahead and sign that again. And
13 while you are doing that, for the record, you've made
14 a circle on both of those photos and you've had some
15 dots which you indicate, I assume, to be sort of drops
16 of something.
17 A Yeah, like a splash mark.
18 Q Let's just make that part of Exhibit 1.
19 We'll just include it with Exhibit 1, all right?
20 MR. GALLIHER: Okay.
21 BY MR. ROYAL:
22 Q Okay. So as far as you can recall, after
23 12:37:14, which is depicted on this video, you never
24 returned to the scene; is that correct?
25 A Correct.

1 Q Okay. So you are done at that point?
2 A Yeah.
3 Q So you were there about -- what? -- ten
4 seconds? Sound about right?
5 A Total time?
6 Q Yeah.
7 A No, more like closer to 10 minutes.
8 Q Okay. Well, see how --
9 A Or seven minutes. If it's 12:37 -- what
10 time was that when I was walking away?
11 Q Well, you are walking away at 12:37:14.
12 When you arrived, it's 12:36:55. She's just fallen
13 and you are approaching. See that?
14 A Yes.
15 Q My question was, initially when you first
16 approached I asked, first of all, about, let's -- what
17 was your conversation with her?
18 A "Are you okay?"
19 Q Okay. What did she say?
20 A She said, "I hurt my elbow, but other than
21 that I'm basically okay."
22 Q Okay. Did she say she struck her head?
23 A She didn't say anything about her head.
24 Q Did she tell you that her back hurt?
25 A No.

1 Q Did she tell you that she was wet?
2 A No.
3 Q Did you point out to her or say anything to
4 her about something that you saw on the floor?
5 A No.
6 Q I want you to watch -- we're going from
7 12:37:05 and I'm just going to let it run until you
8 walk away. 12:37:13 you walk away.
9 Okay. So you would agree that's probably in
10 the 10-, 15-second range?
11 A Yeah, but I think I come back.
12 Q Okay. That's my -- I'm asking you what you
13 did at that point.
14 A I thought you're talking about the total
15 time I was at the scene.
16 Q No, I'm just -- I'm sorry, I didn't mean to
17 be confusing. So you left and what did you do at that
18 point?
19 A I contacted my manager, Chris Tonemah.
20 Q And what did Chris Tonemah do?
21 A I believe she notified surveillance or
22 security or both. I may have notified one or the
23 other. I just don't recall.
24 Q Okay. I'm just going to fast-forward until
25 you come back and I want you to just keep watching.

1 Okay. So you arrived back at 12:37:48?
2 A Uh-huh.
3 Q See yourself there?
4 A Uh-huh.
5 Q Yes?
6 A Yes.
7 Q And you are bent over and you are speaking
8 with the plaintiff, the woman on the floor; correct?
9 A Yes.
10 Q Okay. Anything else that you recall about
11 her? Anything she told you at this time as you were
12 talking to her?
13 A Nothing that I can recall.
14 Q Okay. Again, the only thing you recall her
15 saying to you about what she injured was her left
16 elbow?
17 A Yes. She didn't use the word "left," she
18 just said "elbow."
19 Q Okay, it's still running. You are standing
20 there, that other gentleman is standing behind her.
21 What are you waiting for at this point?
22 A I believe I'm waiting for an EMT.
23 Q And just for the record, it's 12:38:45. It
24 zooms in and you are talking with the gentleman in the
25 dark suit, a large gentleman. He's got his back to

1 the camera. I believe his name is Louie Calleros.
 2 Does that refresh your recollection at all?
 3 A No.
 4 Q Not somebody you worked with?
 5 A No.
 6 Q Okay, so I'm going to back up. Okay.
 7 A Uh-huh.
 8 Q Now, at 12:38:47 that's you talking to
 9 Mr. Louie Calleros, or at least who I represented to
 10 be Louie Calleros.
 11 A Okay.
 12 Q All right. That is you; correct?
 13 A Yes.
 14 Q Okay. I want you to watch. I'm going to
 15 start it now. 12:38:47, I want you to watch yourself.
 16 Where are you standing? Okay. All right.
 17 Do you see what you just did? I stopped at
 18 12:38:54. Did you see what you did?
 19 A Yeah, I made some type of gesture.
 20 Q Okay, let me go back again. I want you to
 21 watch where you go. Start at 12:38:48. I want you to
 22 watch your feet. Watch where you go.
 23 Okay. Stop it again at 12:38:53.
 24 Would you agree that you -- you walked
 25 through the area that you have marked where there

1 was -- you said there was water on the floor?
 2 A I don't -- half of that marble is cut out,
 3 so I can't -- I don't recall.
 4 Q Okay. Now, you were pointing back in the
 5 area of the restrooms; correct?
 6 A Yes.
 7 Q And what are you pointing at; do you recall?
 8 I stopped it at 12:38:52. You were pointing back to
 9 the restroom. What are you pointing at?
 10 A I believe I was waving over a PAD person.
 11 They wear black and white -- black and red, I'm sorry.
 12 Q Did you see someone at that point?
 13 A Yes.
 14 Q Looks like you are -- again, you are having
 15 a conversation with who I'll represent is Louie as you
 16 are pointing; right?
 17 That's what it looks like?
 18 A Okay.
 19 Q Does it?
 20 A I don't recall conversing with him, but I
 21 could have.
 22 Q Okay. Now, at 12:38:58, you leave the scene
 23 and we just see Mr. Louie Calleros. And I'll
 24 represent that it looks like you walked towards the
 25 area of the restroom.

1 A Okay.
 2 Q Would you agree with that?
 3 A Yeah.
 4 Q Now, you were on a restroom break; correct?
 5 A I don't remember if it was my normal break
 6 or a restroom break. I'm starting to think that it
 7 was a restroom break because our breaks are typically
 8 on quarter after or quarter of the hour.
 9 And you are saying I approached at 12:37 so
 10 I was probably taking my own restroom break, which
 11 we're allowed to do if we need a break.
 12 Q And when you left the scene -- I stopped it
 13 at 12:39:06 and you are gone. And, in fact, we see a
 14 woman now who has appeared on the scene in the top
 15 right.
 16 Would that be your supervisor?
 17 A Yes.
 18 Q What was her name?
 19 A Chris Tonemah.
 20 Q Okay. So at this particular time you've
 21 gone to the restroom. Did you use the restroom at
 22 that time; do you recall?
 23 A I don't recall.
 24 Q I'm going to allow this to run until you
 25 come back. I've stopped it here at 12:39:21 and I'm

1 just going to let it run a little bit. You return to
 2 the restroom area.
 3 Do you remember having a conversation with
 4 the PAD people or someone else?
 5 A I -- I remember instructing a PAD person to
 6 come over.
 7 Q Okay. Now, at 12:39:35, you are bent over
 8 talking with the woman on the floor. Do you remember
 9 that?
 10 A Yes.
 11 Q I'm sorry. Do you see that?
 12 A Yes.
 13 Q Okay. Now, at 12:39:43, another gentleman
 14 arrives from the left, also in a suit.
 15 Do you know who that is?
 16 A I don't know who it was. I believe I was
 17 told it was a front desk person, a team member.
 18 Q Okay, now I'm going to stop right here.
 19 There's a -- at 12:39:56, there is a gentleman from
 20 PAD who starts mopping. Okay.
 21 Do you see that?
 22 A Yes.
 23 Q At 12:39:58, I want you to see -- look at
 24 where he is standing. Do you see where he's standing?
 25 A Yeah.

1 Q Okay.
 2 A Yes.
 3 Q Is that in the area where you recall seeing
 4 water that you have marked on Exhibit 1 today?
 5 A Yes.
 6 Q Okay. And that's where he is standing,
 7 that's the only area where you saw something on the
 8 floor other than the dots --
 9 A Right.
 10 Q -- from there leading to the column?
 11 A Correct.
 12 Q Okay. Okay. So while this is going on, it
 13 looks like there's -- at 12:40:03, we saw three PAD
 14 people in there.
 15 Do you remember any conversations that you
 16 heard among the PAD personnel?
 17 A No.
 18 Q Do you remember any conversations that you
 19 had with security personnel who later came to the
 20 scene?
 21 A No. I don't remember what was said, if I
 22 had a conversation with them.
 23 Q Did you ever have any conversation with
 24 anyone to determine how this substance got onto the
 25 floor and how long it had been there?

1 A No.
 2 Q In the course of your job as a table games
 3 supervisor, did you have any kind of supervisory
 4 responsibility for people working in the Public Area
 5 Department?
 6 A Could you repeat that?
 7 Q Yeah. Did you ever have any supervisory
 8 responsibility for people who worked in the PAD
 9 department?
 10 A No.
 11 Q And as I understand it, this is the first
 12 time that you responded to an incident like this; is
 13 that correct?
 14 A No. Well, as far as a lady falling, yes, we
 15 had numerous -- I would say almost once a day we have
 16 spills where we need to call PAD.
 17 Q Okay. Okay. These are --
 18 A "We" meaning me and other supervisors who
 19 oversee it, especially when there's glass broken.
 20 Q Sure. And this would be spills in the
 21 gaming table area?
 22 A Yeah. Traditionally right outside the area
 23 where the people are sitting, or usually it's in the
 24 marble walkways that they recently -- well, not
 25 recently, but a few years ago they put in.

1 That's where people seem to either slip or
 2 drop things all the time.
 3 Q Okay. Have you testified about everything
 4 you can recall regarding your conversations with the
 5 woman who was on the floor?
 6 A Yes.
 7 Q Okay. One moment here. Okay. Let me go
 8 back about the timing, then. I want to make sure I
 9 understand your testimony today as it relates to why
 10 you were -- why you were terminated from the Venetian.
 11 Because I feel -- I get a sense from your testimony
 12 that you feel that I'm somehow connected to this.
 13 Am I reading that wrong? Do you feel like
 14 I'm somehow connected to your having been terminated
 15 from the property?
 16 A I don't know at this time.
 17 Q Well, what does -- what do you feel like my
 18 meeting with you had to do with anything associated
 19 with your employment?
 20 A I don't really know how to answer that. It
 21 was just a lot of -- a lot of things that went against
 22 me in the form of discipline, after I met you, that
 23 were just kind of unique to what they usually
 24 discipline people for.
 25 Q Okay. So I want to make sure, because

1 Counsel went through this with you and he established
 2 that I met with you and then within two months you
 3 were terminated.
 4 A No.
 5 Q I mean he said I met with you in November of
 6 2018.
 7 A Right.
 8 Q And you were terminated in January of 2019?
 9 A Right.
 10 Q So within two months of my meeting with you,
 11 everything went south and you don't know what to think
 12 of that; right?
 13 A No, I really don't.
 14 Q Okay. And you are sure about the timing?
 15 A I mean as far as what I think about it, it
 16 seems -- it leaves me feeling suspicious.
 17 Q Okay.
 18 A Okay -- that there is some ulterior motive
 19 to terminate me.
 20 Q Okay. And again, ulterior motives, you
 21 think it has something to do with what you told me in
 22 a meeting about what you saw when you arrived at the
 23 scene?
 24 A It could be.
 25 Q Okay. I've never said anything like that to

1 you; right?
 2 A Say that again.
 3 Q I have never said anything to you that would
 4 give you the impression that your job could be in
 5 jeopardy?
 6 A No.
 7 Q Would it surprise you to learn that you
 8 actually met with me in June of 2018?
 9 A I may have had the date wrong.
 10 Q Well, you would have had it a lot wrong.
 11 A Yeah.
 12 Q That's a lot earlier than November 2018;
 13 isn't it?
 14 A Yeah, it's true. Yeah, it would be.
 15 Q If you met with me in June 2018 and all this
 16 stuff started within six months or so -- I don't
 17 know -- 60 days is what I understood from your earlier
 18 testimony.
 19 A Uh-huh.
 20 Q Does that at all influence your thinking
 21 about this connection you think might occur between
 22 your meeting with me and ultimately being terminated?
 23 A I don't know.
 24 Q Well, did things start going south in July
 25 of 2018?

1 A They started going south in May.
 2 Q Okay. Before you met with me --
 3 A Uh-huh.
 4 Q -- right?
 5 A Yes.
 6 Q Okay. So what was started going south in
 7 May of 2018?
 8 A Well, that's when I received the three
 9 written warnings in a two-week period.
 10 Q I see, okay. So because -- with the timing
 11 that you testified about on direct, I was confused
 12 because I thought you said you got these three
 13 warnings between November of 2018 and January when you
 14 were let go in January of 2019.
 15 Did I understand that incorrectly?
 16 A Say that again.
 17 Q Okay. I understood that your testimony on
 18 direct with Mr. Galliher was that you met with me and
 19 then, within a very short period of time after that,
 20 you got these three written warnings and then a couple
 21 other things were put in your file and then you were
 22 terminated.
 23 A That sounds about right.
 24 Q That's what you testified to?
 25 A Yes.

1 Q You just now testified that everything
 2 started to go south in May of 2018 before you even
 3 knew who I was.
 4 A Uh-huh.
 5 Q Correct?
 6 A Yes.
 7 Q So if I met with you in June of 2018, you
 8 would have already received three warnings by that
 9 time --
 10 A That's correct.
 11 Q -- in 2018?
 12 A Yeah.
 13 Q Okay. And so I'm just -- I'm trying to
 14 figure out this connection that you have made that I
 15 somehow played a role in getting warnings -- you
 16 getting warnings prior to you ever knowing who I was
 17 or ever meeting with me.
 18 A Well, we're still investigating as to the
 19 real reason I was terminated.
 20 I am convinced that the reason they gave me
 21 has nothing to do with me being terminated. Whether
 22 it pertained to me not supporting the Venetian with
 23 the slip-and-fall or whether it was their anger at me
 24 using my FMLA privileges, we're still investigating
 25 that.

1 Q You say "we're investigating," who is
 2 investigating?
 3 A Me and other attorneys.
 4 Q Okay. What attorneys?
 5 A Christian Gabroy. I haven't hired anyone
 6 yet.
 7 Q Tell me then, what have you had attorneys do
 8 for you?
 9 A He represented me at the unemployment
 10 hearing.
 11 Q I see. And so is he going to -- did you
 12 talk -- strike that.
 13 Is he representing you now on some other --
 14 A No.
 15 Q -- thing?
 16 A No.
 17 Q You already got your unemployment; right?
 18 A I'm presently receiving unemployment.
 19 Q Okay. Right. So you are receiving
 20 unemployment, but you still feel like that the
 21 Venetian did something improper, you are
 22 investigating. I assume you are considering filing a
 23 lawsuit against Venetian.
 24 A Absolutely.
 25 Q Okay. And that's something that is still in

1 the works because you are investigating; correct?
 2 A Yes.
 3 Q Okay. At the time you met with me in June
 4 of 2018, you weren't considering suing the Venetian;
 5 right?
 6 A No.
 7 Q That didn't happen until when? When did you
 8 first think: I've got to consider suing the Venetian?
 9 When did that first come to your mind?
 10 A It first came to my mind when I was
 11 suspended pending investigation. It was Tuesday
 12 before Thanksgiving, which I think was November 20th,
 13 and also a couple days before that when they brought
 14 me in and I had recently -- I basically gave them six
 15 months of many, many different incidents of
 16 harassment. And they chose to ignore that and just
 17 talk about this innocent comment I made.
 18 Q Did you ever -- did I ever get linked into
 19 this harassment thing?
 20 A Not that I'm aware of.
 21 Q Okay. In other words, up until today I've
 22 never heard anything about this. So this is -- as I
 23 gather it, you've made some connection prior to the
 24 deposition today that I might have something to do
 25 with you having been fired or terminated; is that

1 correct?
 2 A That's correct.
 3 Q And that's why you wouldn't meet with me;
 4 correct?
 5 A Well, I just felt uncomfortable meeting with
 6 anyone at Venetian at that point.
 7 Q Okay. Because you thought maybe I had
 8 something -- I might have -- I don't know.
 9 A I just knew the reason I got terminated was
 10 not the ones that they are listing on their paperwork.
 11 And so I didn't -- I don't have -- I don't trust
 12 anyone associated with the Venetian.
 13 Q Okay. All right. So it's your testimony
 14 today that when you and I met in June of 2018, that
 15 you told me, "I saw water on the floor as I approached
 16 her," and I said something to the effect of, No, you
 17 didn't, wink, wink.
 18 Correct?
 19 A Correct.
 20 Q So you got the impression from our meeting
 21 that I was intimidating you?
 22 A Yeah, that you didn't want me to be
 23 truthful.
 24 Q Okay. I was -- so your opinion at that time
 25 is I was trying to get you to lie under oath?

1 A Yes.
 2 Q Okay. What's your e-mail address?
 3 A Vegasgary1@gmail.com.
 4 Q Did you ever get an e-mail from me?
 5 A Uh-huh.
 6 Q Yes?
 7 A Yes.
 8 Q Did you feel that I harassed or intimidated
 9 you by e-mail?
 10 A I really can't answer that. I don't think
 11 so.
 12 Q I'm going to show you a document that I'm
 13 going to mark as Exhibit A.
 14 (Defendants' Exhibit A marked for
 15 identification.)
 16 BY MR. ROYAL:
 17 Q Please look at that. Have you seen this
 18 before?
 19 A Yes.
 20 Q Okay. That's your e-mail address; correct?
 21 A Yes.
 22 Q Do you see the date? What's it dated?
 23 A June 29th.
 24 Q 2018?
 25 A 2018, the day after we met.

1 Q Right. And do you recall receiving this
 2 from me?
 3 A Yes.
 4 Q Okay. I would like to -- and when you
 5 reviewed this, by the way, and received this, did you
 6 see something in here that you felt was incorrect?
 7 A I'm going to have to read it again.
 8 Q Okay. That's fine, go ahead.
 9 A The only thing that is incorrect is in the
 10 last part on the first page. I didn't get to the
 11 second page yet.
 12 It says, "I went into the restroom area to
 13 advise PAD personnel to have them come to clean as a
 14 precaution."
 15 I told them I noticed it was wet. I didn't
 16 say anything "as a precaution."
 17 Q Okay, and -- and that's fine. Go to the
 18 next page. Let me know when you are done reading the
 19 next page.
 20 A Again in the second paragraph, very similar
 21 to the first one, or the last paragraph on the first
 22 page, it says I didn't see anything on the floor, but
 23 I did.
 24 Q Okay.
 25 A I don't remember really saying anything

1 about "something other than a dry marble floor may
2 have caused her to fall." I don't recall that.
3 Q Okay. So is it your testimony today that
4 what's depicted here does not reflect what you told me
5 during our meeting of June 28, 2018?
6 Is that your testimony?
7 A Yes.
8 Q And so you read this when you received it;
9 right?
10 A Yes.
11 Q And you can see, like for example on page 2
12 of Exhibit A, Number 6, in parentheses, I wrote,
13 "Note, this is something I inferred, but which I need
14 confirmation." That relates to plaintiff did not
15 state to you that she slipped on any substance.
16 Do you see that?
17 A Yes.
18 Q Okay. That indicates to you that I wanted
19 to follow up with you on that particular point;
20 doesn't it?
21 A Yes.
22 Q Okay. Because I needed confirmation from
23 you?
24 A Uh-huh.
25 Q Now, you received this and you read it and

1 you and I had subsequent communications; correct?
2 A Yes.
3 Q And --
4 A -- by e-mail only I believe.
5 Q Well, we also spoke on the phone. Do you
6 recall?
7 A I don't recall. We could have.
8 Q Okay. And so if something in here that I
9 wrote is incorrect, you would have corrected me;
10 right?
11 Actually, if I said there was nothing
12 with -- my understanding was you said there was
13 nothing on the floor. That would have raised some red
14 flags and you would have said, No, no, that's not what
15 I said. I'm sure there must be some communication
16 from you to me related to that -- right? -- correcting
17 it?
18 A I don't know.
19 Q But you would expect that. Because you are
20 testifying today that what is here on Exhibit A
21 representing that you had told me that you didn't see
22 anything on the floor, that that's completely false.
23 So I assume that you would have written me
24 and corrected me, especially when I asked you for
25 confirmation.

1 A Well, I told you at the time that the floor
2 was wet and so I know it wasn't.
3 So I said I called -- I got the PAD over to
4 clean it up because I thought it was wet. I saw it
5 was wet and you just kept refuting me, basically, "No,
6 you are mistaken. It wasn't wet."
7 Q Up until today during this deposition, after
8 having met with Mr. Galliher on this matter and having
9 gone out and retained or conferred with attorneys
10 about suing the Venetian, have you ever communicated
11 to me that you -- after receiving this e-mail that we
12 marked as Exhibit A, have you ever communicated that
13 the information I put in there was incorrect?
14 A No.
15 Q Okay. So today's the first day that you
16 have decided to tell me that what I put in the e-mail
17 of June 28 -- 29th, 2018, here has something that is
18 incorrect?
19 A I didn't decide to tell you. I was forced
20 to tell you. This is a deposition and I'm under oath.
21 Q Okay. All right, so you didn't correct me
22 previously. Even though you had months to do it and
23 we had other communications, you never corrected me
24 and told me that, what I understood from our initial
25 meeting, is that you saw nothing on the floor, until

1 today; correct?
2 A I told you that day there was something on
3 the floor, and I'm telling you today there was
4 something on the floor that was wet.
5 Q Okay. But in between when we were having
6 discussions and I sent you something in writing
7 saying, This is what I understand, you never corrected
8 me and said, No, that's not true?
9 A That's true; I never corrected you.
10 Q Right, okay.
11 You did read it before today. You did
12 understand that that was my understanding, but you
13 never responded and corrected me until today at your
14 deposition after you met with Mr. Galliher; correct?
15 A That's correct.
16 Q Okay, see if there's anything else here.
17 Do you remember Ms. Sekera apologizing for
18 falling?
19 A No.
20 Q Of course, you don't remember anything about
21 the coffee she was carrying; right?
22 A No.
23 Q You think today's the first time that you
24 noticed, in looking at that surveillance, that she was
25 carrying coffee? Is today the first time you noticed?

1 A Yeah, that's the first time I noticed.
 2 Q So when you're talking about stuff on the
 3 floor, you never made any kind -- you didn't give any
 4 consideration as to whether or not it's something that
 5 could have come from her coffee cup; right?
 6 A Yeah, I didn't relate anything to that
 7 because I didn't see her fall.
 8 Q Okay.
 9 A But by the time I got there, I believe the
 10 cup was on the floor or was in the other lady's hand.
 11 I probably just assumed at the time that that was the
 12 other lady's cup.
 13 No, I -- I didn't see the incident. I just
 14 saw her down on the ground.
 15 Q Okay. You never made a connection between
 16 Ms. Sekera holding a coffee cup in her left hand at
 17 the time she fell and you seeing something on the
 18 floor, like some foreign substance?
 19 A No. I don't know anything about the cup of
 20 coffee. I didn't even know she had one in her hand
 21 because I got there after it left her hand.
 22 Q When you spoke with her, did she say
 23 anything to you about what she thought caused her to
 24 fall?
 25 A She didn't say anything about what caused

1 her to fall.
 2 Q And she never said anything to you about her
 3 clothing being wet?
 4 A No.
 5 Q And the only thing that you saw on the floor
 6 of a foreign substance was in the area you've
 7 indicated on Exhibit 1 on those two photographs;
 8 correct?
 9 A Correct.
 10 Q You don't know how long this -- or strike
 11 that.
 12 What you saw on the floor, you don't know
 13 what it was; correct?
 14 A Correct.
 15 Q You don't know how it got there; correct?
 16 A Correct.
 17 Q You don't know how long it was there?
 18 A Correct.
 19 Q You are not aware of any kind of patrolling
 20 that was being done by the PAD personnel in that area
 21 prior to your arrival; is that correct?
 22 A Correct.
 23 Q We just had a PAD employee, Maria Cruz,
 24 testify just before you today that, just within a
 25 couple of minutes prior to this fall, she had walked

1 through the area and didn't see anything on the floor
 2 where you said you saw something on the floor.
 3 Would that surprise you?
 4 A I don't know if it would surprise me. They
 5 walk by a lot of areas and miss them, so, no, that
 6 doesn't surprise me.
 7 Q Okay. So you would think that if that --
 8 you described it like eight ounces. Maybe it looked
 9 like someone had spilled something on the floor.
 10 A Uh-huh.
 11 Q Right?
 12 A Yeah.
 13 Q So eight ounces of water. Is that right;
 14 eight ounces? So once you spill that, it would splash
 15 pretty good; right? Even more than just three or
 16 four inches?
 17 A Could have. Could have been more. I don't
 18 really know. Once it's on the floor, I don't really
 19 know how to measure it.
 20 Q Right. So you drew this little circle which
 21 I think you said it was three or four inches in
 22 diameter.
 23 A Yes.
 24 Q And some drops leading to the column.
 25 A Yes.

1 Q You would have expected that, had that been
 2 there for four or five minutes, somebody would have --
 3 before the woman got there, somebody would have
 4 stepped in that -- I mean slipped or something; right?
 5 MR. GALLIHER: Objection, calls for
 6 speculation.
 7 You may answer.
 8 THE WITNESS: What?
 9 MR. GALLIHER: I said, "Objection, calls for
 10 speculation." But you may answer it if you can.
 11 THE WITNESS: Repeat that question again.
 12 BY MR. ROYAL:
 13 Q If that water was there or that substance as
 14 you drew it on Exhibit 1 -- if that was there for,
 15 let's say hypothetically, three or four minutes before
 16 this occurred, you would have expected somebody to
 17 step in it at some point?
 18 MR. GALLIHER: Same objection.
 19 You may answer.
 20 THE WITNESS: Yeah. I don't know if I would
 21 expect someone to fall or not.
 22 BY MR. ROYAL:
 23 Q Or slip.
 24 A Yeah, or slip. I can't really speculate on
 25 that.

1 Q You've never seen anyone slip before when
 2 they stepped on some foreign substance on the marble?
 3 A At the Venetian? No.
 4 Q Okay. So this is the first time?
 5 A Most of the time when there's a spill, we
 6 get chairs out there right away and make like a little
 7 circle around it so people don't walk in it.
 8 Q So this kind of event is pretty rare?
 9 A Yes.
 10 Q In fact, it's the only event that you can
 11 recall ever being personally aware of?
 12 A Of a slip-and-fall.
 13 Q Yes.
 14 MR. ROYAL: Okay. Thank you.
 15 THE WITNESS: You're welcome.

FURTHER EXAMINATION

18 BY MR. GALLIHER:
 19 Q Just a couple questions if I may. I'd like
 20 to refer you to page 2 again of the e-mail that Mike
 21 sent you, and the second paragraph and I'm going to
 22 read what he said. He said, "Based on our discussion,
 23 I understand you can affirmatively state the
 24 following."
 25 Then let's go to Number 5. It says, "You

1 Q And would it be fair to state what you see
 2 in that fall, you see the plaintiff's feet go out from
 3 under her when she's holding the coffee cup in her
 4 left hand?
 5 A Yes.
 6 Q And she then falls. And do you notice
 7 whether or not the top comes off the coffee cup?
 8 A In the video?
 9 Q Yes.
 10 A I didn't look for that; no.
 11 Q All right. Now, again you testified in
 12 response to Mike's questions that the slip-and-fall
 13 that you saw this day, that you observed this day, was
 14 a rare event; is that right?
 15 A Yes.
 16 Q And --
 17 A That doesn't mean it doesn't happen. It's
 18 just that, you know, people don't slip -- I work in a
 19 carpeted area and I don't remember seeing any
 20 slip-and-fall.
 21 Q All right. So what you are talking about,
 22 when you talk about "rare event," you don't see
 23 slip-and-falls occurring on the carpeted area?
 24 A Correct.
 25 Q And so if, for example, the Venetian's

1 advised PAD personnel in the restrooms of the
 2 incident, not because you saw anything on the floor,
 3 but because you assumed something other than a dry
 4 marble floor may have caused her to fall."
 5 Is that accurate?
 6 A Not really. I never mentioned the word
 7 "precaution" or -- yeah.
 8 No, I don't know. I told him it was wet and
 9 needs to be cleaned up. That's all I told him.
 10 Q All right, so that's not what I'm reading.
 11 A That's correct, that's a little different.
 12 Q All right, so let's go to Number 7.
 13 Number 7 says, "You did not see any substance on the
 14 floor other than possibly some drops of liquid in
 15 front of where Plaintiff was positioned on the floor,
 16 that likely came from her coffee cup on the way down."
 17 Again, is that an accurate statement?
 18 Something that you said?
 19 A No, that's not accurate because the liquid I
 20 saw was in a -- like behind her. And the spill from
 21 the coffee, if that was her coffee, was in front of
 22 her.
 23 Q You just saw the video surveillance again --
 24 correct -- and you saw the fall?
 25 A Yeah, on the video.

1 entire casino floor were carpeted, would you agree
 2 with me you probably would see less slip-and-falls?
 3 A Oh, definitely.
 4 MR. ROYAL: Objection, form; calls for
 5 speculation.
 6 BY MR. GALLIHER:
 7 Q All right. So your answer is?
 8 A Yes.
 9 Q All right. So and do you know if anybody,
 10 to your knowledge, has ever complained to anyone at
 11 the Venetian about the fact that they persist in
 12 having marble floors as opposed to carpet?
 13 A We've had people complain when -- not just
 14 slips, but when someone actually dropped a glass or
 15 bottle and it shatters and goes all over the place.
 16 And, yeah, I've had people say, you know, "Why do you
 17 have these marble floors? Everything's going to break
 18 and really shatter on these things."
 19 And, well, it makes a more convenient to go
 20 back and forth from one property to the other when
 21 you're hauling luggage and so forth. I think that's
 22 why they put it in.
 23 Q And also for an aesthetic effect?
 24 MR. ROYAL: Objection.
 25 /////

1 BY MR. GALLIHER:
 2 Q These are actually very attractive floors --
 3 are they not -- the marble floors?
 4 A Yes.
 5 MR. GALLIHER: That's all I have.
 6 Make it quick, I got an hour to get to
 7 dinner.
 8 MR. ROYAL: Okay.
 9 We can continue this.
 10 MR. GALLIHER: What more could you ask?
 11 MR. ROYAL: In fact, you know what? I want
 12 to -- I'm going to reserve my right to. What more I
 13 want to ask?
 14 MR. GALLIHER: Well, I don't think there's a
 15 right necessarily.
 16 MR. ROYAL: That's fine. You said you had
 17 to be somewhere.
 18 MR. GALLIHER: I do, I do. I have to be
 19 somewhere in an hour, but I don't necessarily want to
 20 continue on.
 21 MR. ROYAL: I can continue on as long as I
 22 want.
 23 MR. GALLIHER: That's fine. Then, have at
 24 it.
 25 MR. ROYAL: Okay. If you are going to put

1 limitations on me, then --
 2 MR. GALLIHER: No, not at all, but you just
 3 had an hour of questions. I want to know how much
 4 more you have to ask him that you haven't asked him
 5 already.
 6 MR. ROYAL: Okay. Can I?
 7 MR. GALLIHER: Yeah, please.
 8
 9 FURTHER EXAMINATION
 10 BY MR. ROYAL:
 11 Q Just so I'm clear, Counsel asked you, from
 12 Exhibit A, went over these items "6" and "7."
 13 MR. GALLIHER: "5" and "7."
 14 MR. ROYAL: Oh, I'm sorry. Okay. Was it
 15 "5" and "7"?
 16 MR. GALLIHER: Yes.
 17 BY MR. ROYAL:
 18 Q He went over numbers "5" and "7" on page 2
 19 of Exhibit A, which you claim today is completely
 20 untrue.
 21 MR. GALLIHER: Objection.
 22 MR. ROYAL: Correct?
 23 MR. GALLIHER: Objection, misstates
 24 testimony.
 25 You may answer.

1 BY MR. ROYAL:
 2 Q Well, how much of it is true? How much of
 3 Number 5 is true?
 4 A Hardly any of it. Only at the beginning
 5 where it says, I advised PAD personnel in the
 6 restrooms of the incident.
 7 Q Okay. And again, for clarity sake, you
 8 never responded to me, ever, correcting that
 9 particular fact until today at your deposition after
 10 you met with Mr. Galliher; correct?
 11 A Right. And it's possible I never even read
 12 this whole thing if it's a three-page e-mail.
 13 Q Well, but if I have something in writing
 14 from you indicating you did, you would -- I assume
 15 that might refresh your recollection?
 16 A Something in writing that I --
 17 Q Yeah. You responded to me, we communicated
 18 about the e-mail. You responded to this; correct?
 19 A I don't recall.
 20 Q In fact, you asked me if you could have a
 21 copy of the video so you could show it to your wife.
 22 A That, I remember.
 23 Q Okay. And you did that by e-mail; correct?
 24 A Yes.
 25 Q Okay. And your testimony today is you

1 didn't see anything on the floor in front of the
 2 woman. Nothing, no liquid or anything on the floor?
 3 A No.
 4 Q Okay. Is that correct?
 5 A Correct.
 6 Q Okay. All right, thank you.
 7 A You are welcome.
 8
 9 FURTHER EXAMINATION
 10 BY MR. GALLIHER:
 11 Q Gary, you met with me last week and we
 12 discussed this deposition in this case; is that right?
 13 A Yes.
 14 Q At any time during the meeting, did I advise
 15 you to do anything other than tell the truth at
 16 today's deposition?
 17 A No.
 18 MR. GALLIHER: Thank you.
 19 MR. ROYAL: Thank you.
 20 MR. GALLIHER: All right. We're done.
 21 Thank you, Gary.
 22 THE COURT REPORTER: Mr. Royal, did you want
 23 a copy of both of these depositions?
 24 MR. ROYAL: Yes, please.
 25 (The deposition concluded at 4:37 p.m.)

1 REPORTER'S DECLARATION

2 STATE OF NEVADA)

3 COUNTY OF CLARK)

4 I, Pauline C. May, CCR No. 286, declare as
5 follows:

6 That I reported the taking of the deposition of the
7 witness, GARY SHULMAN, commencing on Wednesday,
8 April 17, 2019 at the hour of 3:15 p.m.

9 That prior to being examined, the witness was by me
10 duly sworn to testify to the truth, the whole truth,
11 and nothing but the truth.

12 That I thereafter transcribed said shorthand notes
13 into typewriting and that the typewritten transcript
14 of said deposition is a complete, true and accurate
15 transcription of said shorthand notes taken down at
16 said time, and that a request has not been made to
17 review the transcript.

18 I further declare that I am not a relative or
19 employee of counsel of any party involved in said
20 action, nor a relative or employee of the parties
21 involved in said action, nor a person financially
22 interested in the action.

23 Dated at Las Vegas, Nevada this _____ day of
24 _____, 2019.

25 _____
Pauline C. May, CCR 286, RPR

A	APPEARANCES			
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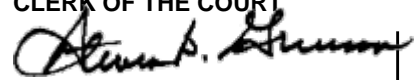
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EXHIBIT 3



OPPM

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VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

Plaintiff,

v.

VENETIAN CASINO RESORT, LLC, d/b/a
THE VENETIAN LAS VEGAS, a Nevada
Limited Liability Company; LAS VEGAS
SANDS, LLC d/b/a THE VENETIAN LAS
VEGAS, a Nevada Limited Liability Company;
YET UNKNOWN EMPLOYEE; DOES I
through X, inclusive,

Defendants.

**OPPOSITION TO PLAINTIFF'S MOTION FOR
LEAVE TO AMEND THE COMPLAINT**

COMES NOW, Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS
SANDS, LLC (collectively referenced herein as *Venetian*), by and through their counsel, ROYAL &
MILES LLP, and hereby file this OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO
AMEND THE COMPLAINT.

///

///

ROYAL & MILES LLP
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1 This Opposition is based on the pleadings and papers on file, the memorandum of points and
2 authorities contained herein, the affidavit of counsel, the attached exhibits and any argument permitted
3 by this Court at the time set for hearing.

4 DATED this 2 day of May, 2019.

5
6 **ROYAL & MILES LLP**

7
8 By _____

Michael A. Royal, Esq.
Nevada Bar No. 4370
1522 W. Warm Springs Rd.
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Attorney for Defendants
VENETIAN CASINO RESORT, LLC and
LAS VEGAS SANDS, LLC

12 **DECLARATION OF MICHAEL A. ROYAL, ESQ.**

13 STATE OF NEVADA)
14) ss.
15 COUNTY OF CLARK)

16 MICHAEL A. ROYAL, ESQ., being first duly sworn, under oath deposes and states:

17 1. I am an attorney duly licensed to practice law in the State of Nevada and I am counsel
18 for Venetian Casino Resort, LLC, and Las Vegas Sands, LLC, in connection with the above-captioned
19 matter. I have personal knowledge of the following facts and if called upon could competently testify
20 to such facts.

21
22 2. This action arises out of an alleged incident involving a floor located within a common
23 area of the Venetian casino on November 4, 2016, when Plaintiff slipped and fell on a dry marble floor.

24 3. The incident report does not provide evidence that there was anything on the floor
25 causing Plaintiff to fall other than the following: "*She [Plaintiff] stated she was walking through the*
26 *area when she slipped in what she believed was water on the floor.*" (See Exhibit A, *Venetian Security*
27 *Narrative Report* (IR 1611V-0680), November 4, 2016, VEN 008-09.)
28

1 4. Plaintiff admits that she never saw any foreign substance on the floor at any time on the
2 date of the subject incident. (See Exhibit B, *Transcript of Joyce Sekera Deposition* at 19, ln 23-25; 20,
3 ln 1-25; 21, ln 1-21.)

4 5. The area where Plaintiff slipped as depicted on the surveillance footage is identified at
5 **12:36:50**. (See Exhibit C, *Surveillance Footage*, VEN 019; see also Exhibit D, marked Venetian
6 security scene photo (VEN 043), for demonstrative purposes.)

7
8 6. Surveillance footage of the subject incident (attached hereto as Exhibit C), reveals the
9 following:

10 a. **12:06:49**. Coverage begins with no spill in the subject area

11 b. **12:14:25**. An African-American female Venetian Public Area Department
12 (PAD) employee (wearing a black uniform with red collar, red on the shoulders, and gold name tag on
13 the front upper left lapel area) walks through area with a garbage bin. By this point, nearly 100 people
14 have walked through the subject area since the footage began at 12:06:49, without the slightest
15 indication of a foreign substance on the floor.

16
17 c. **12:18:50**. A female employee holding a white rag walks right through the
18 subject area without incident. By this point, approximately 150 people have walked through the area
19 since the footage began, without any evidence of a spill or spill related incident.

20
21 d. **12:20:25**. A female Venetian PAD employee (dressed in black/red uniform
22 described in Paragraph 6.b above) with sweeper walks about 20 feet from the area towards bathrooms
23 located just out of view to the left. By this point, approximately 180 people have walked through the
24 area since the footage began, without the slightest hint of a spill or spill related incident.

25 e. **12.25.09**. An African-American male Venetian PAD employee (dressed in
26 black/red uniform described in Paragraph 6.b above) holding a broom/dust pan walks about 10 feet
27 from the area towards bathrooms located just out of view to the left. By this point, approximately 250
28

1 people have walked through the area since the footage began, without any evidence of a spill or spill
2 related incident.

3 f. 12:26:42. A male Venetian security employee (officer) wearing a blue uniform
4 walks past the subject area (from right to left in the footage). By this point, approximately 270 people
5 have walked through the area since the footage began, without the slightest evidence of a spill or spill
6 related incident.
7

8 g. 12:33:38. An African-American female wearing a blue apron believed to be
9 a Venetian tenant employee stops in the slip area to speak with a male briefly, both who whom are
10 depicted standing directly in the subject area where Plaintiff claims there was a foreign substance.
11 Here, once again, there is no evidence of a spill or spill related incident.
12

13 h. 12:33:53. Venetian PAD employee **Maria Cruz** (wearing the uniform
14 described in Paragraph 6.b above) walks through the subject slip area with a dust pan and broom. Ms.
15 Cruz identified herself from this footage during her April 17, 2019 deposition and testified that this
16 depicts her patrolling the area, walking right through the alleged spill area without identifying anything
17 on the floor. By this time, less than three minutes before the subject incident occurred, there had been
18 approximately 330 people walk through the subject area, without the slightest hint of a spill or spill
19 related incident.
20

21 I. 12:33:58. A woman walks right through the subject slip area within five (5)
22 seconds of Ms. Cruz, without the slightest hint of a spill or spill related incident.

23 j. 12:34:01. Two female Venetian PAD employees (dressed as described in
24 Paragraph 6.b above) are seen walking about twenty-five (25) from the subject area as a male looking
25 at his cell phone walks through the subject area, without the slightest hint of a spill or spill related
26 incident.
27
28

1 k. 12:34:20. A group of eight (8) people walk through the subject area without
2 incident. By this time, there remains no evidence of a spill or spill related incident in the preceding
3 nearly twenty-eight (28) minutes, while Venetian has continued to patrol this high traffic area.

4 l. 12:35:47. A woman walks directly over the slip area, followed by four (4) other
5 people, with no evidence of a spill or spill related incident.

6 m. 12:36:07. A minor boy and two adults walk right through the slip and alleged
7 spill area, without the slightest hint of a foreign substance on the floor. They are followed by a woman
8 walking in the same direction, then by a male and female walking through the same area in the opposite
9 direction, also without any hint of a spill or spill related incident.

10 n. 12:36:36. The slip area depicted is completely dry. To this point, there has been
11 no evidence of a spill or spill related incident since 12:06:49, as Venetian employees have continued
12 to patrol the area.

13 o. 12:36:50. Plaintiff slips and falls while carrying a beverage with a lid in her left
14 hand. By the time this incident occurs, approximately 390 people walked through the subject area
15 without the slightest hint of a spill or spill related incident since 12:06:49.

16 p. 12:37:00. Venetian Table Games Supervisor, Gary Shulman (bald male in dark
17 suit, white shirt and tie) arrives at the scene with coworker Venetian Front Desk Clerk, Louie Calleros
18 (large Hispanic male with dark hair and mustache wearing dark suit, white shirt and tie). Mr.
19 Schulman speaks with Plaintiff as she is seated on the floor, as one woman holds Plaintiff's beverage,
20 while Mr. Calleros then stands behind the area where Plaintiff fell and uses his phone.

21 q. 12:38:46. The camera zooms into the subject area as Mr. Shulman walks
22 directly through the Plaintiff's slip area while speaking with Mr. Calleros. Mr. Shulman is then seen
23 departing the area without any evidence of any liquid substance being in the area where he had been

1 standing between Mr. Calleros and Plaintiff or evidence of a foreign substance being tracked across
2 the floor from the bottom of his shoes.

3 r. **12:39:45.** Three Venetian PAD employees (all wearing uniforms as described
4 in Paragraph 6.b above) respond to the scene: Maria Cruz (who arrives holding a broom/dustpan in her
5 left hand, green rag in her left hand, and wearing glasses), David Martinez (who arrives with a mop
6 and bucket) and Milan Graovac (depicted arriving without any cleaning tools, standing next to the
7 column in front of Plaintiff, top left area of footage).

8
9 s. **12:39:55.** Venetian PAD employee Martinez arrives at the slip area with a mop
10 and bucket, stepping directly into the slip area with his right foot, and begins mopping an area two to
11 three feet away, towards the column, while continuing to stand in the slip area. Mr. Martinez does not
12 actually drag the mop across the slip area where he originally stood until **12:41:12.**

13
14 7. Venetian PAD employee Maria Cruz testified on April 17, 2019 that she did not see any
15 evidence of a foreign substance on the floor in the subject area before when she walked through at
16 **12:33:53** or upon her return at **12:39:45**, prior to Mr. Martinez standing in the slip area and running
17 his mop through a different area. There is no dispute that Ms. Cruz walked through the subject area
18 as part of her assigned duties to patrol to identify potential hazards within three (3) minutes of the
19 subject incident.

20
21 8. Venetian PAD employee Milan Graovac testified on April 22, 2019 that he did not see
22 anything on the floor around where Plaintiff is depicted at **12:39:33 - 12:40:03.**

23 9. Venetian Front Desk Clerk Louie Calleros testified on April 22, 2019 that he did not
24 identify a foreign substance on the floor from the time of his arrival at **12:37:00** until leaving the
25 subject area at approximately **12:44:50.**

26 10. Gary Shulman testified on April 17, 2019 that he saw water on the floor as depicted in
27 Exhibit B herein; however, Mr. Shulman (a former Venetian employee who testified that he has
28

1 retained legal counsel to represent him in a potential lawsuit against Venetian for wrongful
2 termination) is then depicted at 12:38:50 of the footage (attached as Exhibit C) standing in the very
3 area he claims to have been covered in water while speaking with coworker Louis Calleros.
4 (See Paragraph 6.q herein above.) Mr. Shulman also testified that in his fourteen (14) years as a
5 Venetian Table Games Supervisor working exclusively in the casino level area, this was the one and
6 only time he had ever witnessed someone slip and fall on Venetian premises. It was also discovered
7 during Mr. Shulman's deposition of April 22, 2019 that he had met privately with Plaintiff's counsel,
8 Keith Galliher, Esq., and, over my objection, revealed discussions he purportedly had with me in my
9 capacity as Venetian legal counsel about his recollection of events which interview occurred in the
10 course of Mr. Shulman's employment, which discussion was deemed protected as attorney/client
11 privilege. (See Exhibit E, *Correspondence from Michael Royal, Esq., to Keith Galliher, Esq.*, dated
12 April 19, 2019. See also Exhibit F, *Correspondence from Keith Galliher, Esq., to Michael Royal, Esq.*,
13 dated April 22, 2019.)
14
15

16 11. I have since received records related to Mr. Shulman's employment pertaining to his
17 job performance, discipline history and termination (which occurred on January 23, 2019 following
18 an in person meeting with his superiors), and confirmed that there is no reference to Mr. Shulman's
19 alleged grievances related to his involvement as a witness in this matter.
20

21 12. Other than Mr. Shulman's tainted testimony, which is clearly contrary to the objective
22 evidence reviewed herein above, Plaintiff has no objective evidence that a foreign substance existed
23 on the floor causing her to fall. She has therefore resorted to a position of an adverse inference based
24 on the fact that Venetian PAD personnel arrived at the scene post incident with cleaning tools, such
25 as a mop and rag, arguing that no such action would have been taking without the existence of a
26 foreign substance on the floor prior to Plaintiff's fall (ignoring the fact that Plaintiff fell with a
27 beverage in her left hand).
28

1 13. On or about August 16, 2018, Plaintiff served Plaintiff's Request for Production of
2 Documents and Materials to Defendant in which Plaintiff requested reports related to slip and falls
3 occurring within three (3) years preceding the subject incident to the present.

4 14. Defendants objected to providing information related to any incident reports following
5 the subject incident of November 4, 2016, and produced a total of sixty-four (64) prior incident reports
6 from November 4, 2013 to November 4, 2016.¹

7
8 15. I had discussions with Mr. Galliher regarding Defendants' desire to keep such
9 information protected pursuant to NRCP 26(c), which was memorialized in correspondence dated
10 December 17, 2018.

11 16. Mr. Galliher refused to execute a stipulation to provide NRCP 26(c) protection of
12 information requested, which included the names, addresses, phone numbers, dates of birth, Social
13 Security information, and HIPAA protected information related to alleged injuries and first responder
14 care provided to involved guests of the Defendants.

15
16 17. Despite Mr. Galliher's refusal to stipulate to an NRCP 26(c) order, I sent him a total
17 of sixty-four (64) incident reports from November 4, 2013 through November 4, 2016 in redacted form
18 to protect the identity of involved persons, which Defendants not only deemed irrelevant (*see* footnote
19 1), but that Defendants insist they have an obligation to protect.

20
21 18. I filed a Motion for Protective Order with the Discovery Commissioner on February 1,
22 2019.

23 19. A hearing on the Motion for Protective Order was held on March 13, 2019, in which
24 Defendants' motion was granted.

25
26
27
28 ¹Even though Defendants maintain Plaintiff slipped on a dry marble floor, as related in the
paragraphs above, they nevertheless produced prior incidents occurring from guests slipping on a
foreign substance on the Venetian casino level common areas for the three preceding years.

1 20. Approximately one week prior to the March 13, 2019 hearing, I discovered that Mr.
2 Galliher had provided copies of all incident reports to counsel outside this litigation, including but not
3 limited to Peter Goldstein, Esq., who is representing the plaintiff in the matter of *Carol Smith v.*
4 *Venetian*, case no. A-17-753362-C. Mr. Goldstein filed documents with the court in his matter on
5 March 12, 2019, one day prior to the court's hearing of the Motion for Protective Order, and attached
6 a copy of all sixty-four (64) prior incidents. This was clearly done with Mr. Galliher's knowledge and
7 blessing, who was very much aware of Venetian's desire to keep those documents protected pursuant
8 to NRCPP 26(c).²

10 21. Mr. Galliher did not move to stay the April 2, 2019 DCRR granting Defendants Motion
11 for Protective Order, and made no effort to comply by taking any remedial action for his premeditated
12 actions which appear to have been designed to circumvent any potential adverse ruling by the Court.

14 22. Plaintiff testified in deposition on March 14, 2019 that she worked for Brand Vegas,
15 LLC, selling show tickets for Strip properties, including Venetian, stationed at a kiosk located in the
16 Grand Canal Shops, which required her daily and continued use of Venetian property and facilities,
17 from December 2015 to November 2016. Plaintiff testified that she worked approximately 50-70 hours
18 a week, with no vacations, during which time she made many hundreds of walks through the incident
19 area without incident. (See Exhibit B at 19-21, 75-79, 109.) Plaintiff further testified that she never
20 saw a foreign substance on the floor of Defendants' property while working thousands of hours,

22
23 ²Defendants refer the court to their Response to Plaintiff's Objection to Discovery
24 Commissioner's Report and Recommendations Dated April 2, 2019, Countermotion to strike Facts and
25 Arguments Not Briefed Before the Discovery Commissioner, Countermotion for Order Directing
26 Plaintiff to Comply With Protective Order by Retrieving All Information Distributed to Persons
27 Outside the Litigation, and Countermotion for Appropriate Sanctions Under NRCPP 37(b)(2), filed
28 April 23, 2019, which incorporated herein. **Exhibit 7 of Plaintiff's motion is a copy of the motion
filed by Mr. Goldstein on February 13, 2019 in the *Smith* litigation based on reports Mr. Galliher
provided to him. Defendants filed a Motion for Protective Order related to the prior incident
reports on February 1, 2019. Mr. Galliher, thus knew full well that the matter of disclosure and
distribution of this information was in controversy, and did nothing to prevent Mr. Goldstein
from filing them in the *Smith* matter before the protection motion could be heard.**

1 constantly walking Venetian floors, that she had never seen a slip and fall and denied that she had ever
2 even heard of someone slipping and falling on Venetian property while logging thousands of hours of
3 time representing Venetian interests in the course and scope of her employment. (*See id.*)

4 23. At the March 13, 2019 hearing before the Discovery Commissioner, Mr. Galliher
5 alleged that Venetian failed to produce four (4) prior incident reports he obtained from Mr. Goldstein
6 in the *Smith* litigation (*supra*). That was the first time Mr. Galliher had raised the issue of a purported
7 discrepancy with records he compared with Mr. Goldstein in the *Smith* litigation.³ At the Discovery
8 Commissioner's direction, I investigated the alleged discrepancy following the March 13, 2019 hearing
9 and send correspondence to Mr. Galliher addressing his alleged concerns. (*See Exhibit G,*
10 *Correspondence from Michael Royal, Esq., to Keith Galliher, Esq., dated March 25, 2019.*)

11 24. Joseph Larson, former Venetian Security Officer who responded to the subject incident,
12 testified that he did not observe any wet areas at the scene. (*See Exhibit H, Transcript of Joseph*
13 *Larson Deposition* (taken 10.11.18) at 48, ln 24-25; 51, ln 1-18.) Mr. Larson also confirmed that
14 Plaintiff did not provide any description of what she believed to have caused her fall. (*Id.* at 54, ln 11-
15 25; 55, ln 1-4.) Mr. Joseph further testified that the only evidence he obtained from his response to
16 the scene of a possible foreign substance was Plaintiff's stated belief that there was water on the floor.
17 (*See id.* at 69, ln 17-25; 70, ln 1-4.) Mr. Larson also denied that Plaintiff ever related to him that her
18 pants were wet as a result of her fall (contrary to Plaintiff's testimony in this matter). (*See id.* at 71,
19 ln 14-20; 82, ln 10-25; 83, ln 1.) Mr. Larson testified that as part of his reporting, he contacted
20 surveillance control regarding coverage of the incident and was advised that there was no evidence of
21 a substance on the floor. (*See id.* at 48, ln 3-18.) In short, Mr. Larson found no evidence of water on
22 the floor from his investigation beyond Plaintiff's stated belief.

23
24
25
26
27 ³Mr. Galliher raised the issue before the Discovery Commissioner during the hearing without
28 complying with EDCR 2.34, and without briefing the matter, leaving the undersigned with little
opportunity to provide a substantive response.

1 25. Mr. Larson also estimated in deposition that of the prior slip and falls to which he
2 responded in his nine (9) years as a Venetian security EMT, he could only think of perhaps "*a handful*
3 *of those*" which falls he said were "*usually related to footwear or somebody not being cautious about*
4 *where they are stepping.*" (See *id.* at 81, ln 19-25; 82, ln 1-9.) Mr. Larson that he took pictures of
5 Plaintiff's shoes to demonstrate their worn nature. (See *id.* at 70, ln 22-25; 71, ln 1-7; *see also* Exhibit
6 I, *Photos of Plaintiff's Shoes* (VEN 037-038).)
7

8 26. Of the sixty-four (64) prior incident reports provided to Plaintiff in this matter by
9 Venetian, none involve a guest slipping on a dry floor, such as the case here.

10 27. In addition to the sixty-four (64) prior incident reports provided to Plaintiff, she now
11 claims on pages 4-5 of the pending Motion for Leave to Amend the Complaint, that Venetian did not
12 provide reports of certain prior incidents which went into litigation. As for each, I offer the following
13 by way of response:
14

15 a. ***Ceja v. Venetian Casino Resort, LLC*** (A-16-737866). I represented Venetian
16 in this action. It was a slip and fall occurring in the Grand Canal Shops, which is not property owned
17 by Defendants. It, therefore, has no relevance to this matter.

18 b. ***Lim v. Venetian Casino Resort, LLC*** (A-15-728316). I am advised that there
19 is no corresponding security report related to this matter, that Venetian was unaware of the claim until
20 the Complaint was filed, and that Venetian was unable to ever confirm the incident location and facts
21 surrounding the occurrence. Defendants cannot state even today when, where and how this alleged
22 incident occurred.
23

24 c. ***Nguyen v. Venetian Casino Resort, LLC*** (A-17-749115-C). This incident
25 occurred at the upper mall level valet area and involved a guest who fainted after presenting a ticket
26 to valet. There was no evidence of a slip of any kind causing the fall. This incident is clearly not
27 remotely similar to the subject incident location or description.
28

1 d. ***Rucker v. Venetian Casino Resort, LLC*** (A-15-729566-C). This incident
2 involves a slip and fall on liquid in the main Venetian hotel lobby area. This incident should have been
3 included by Venetian in its response to the request for prior incident reports. Failure to include it was
4 inadvertent. I did not represent Venetian in this matter and was unaware of it. Defendants will
5 supplement NRCP 34 responses to provide this incident report.
6

7 e. ***Rowan v. Venetian Casino Resort, LLC*** (A-17-751293-C). This incident
8 occurred in the breezeway area of the Venetian after unknown guests jumped into a water fountain then
9 out, spilling large amounts of water onto the floor, leading to guest incident within the following two
10 minutes. This incident should have been included by Venetian in its response to the request for prior
11 incident reports. Failure to include it was inadvertent. I did not represent Venetian in this matter and
12 was unaware of it. Defendants will supplement NRCP 34 responses to provide this incident report.
13

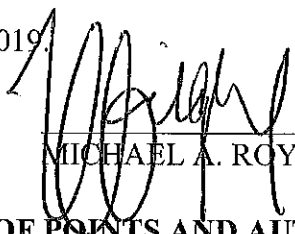
14 28. Venetian has not withheld any of the above matters in some kind of calculated manner
15 to prevent her from being able to establish up to sixty-six (66) prior incident reports.

16 29. I further declare that the exhibits identified herein below are true and correct copies of
17 documents produced in or otherwise related to this matter.

EXHIBIT	TITLE
A	Venetian Security Narrative Report (IR 1611V-0680) (10.04.16) (VEN 008-09)
B	Transcript of Joyce Sekera Deposition (03.14.19) pp. 19-21, 75-79, 109
C	Surveillance Footage of Subject Incident (VEN 019)
D	Marked Venetian security scene photo (VEN 043) for demonstrative purposes
E	Correspondence from Michael Royal to Keith Galliher, Esq., dated 04.19.19
F	Correspondence from Keith Galliher, Esq., to Michael Royal, Esq., dated 04.23.19
G	Correspondence from Michael Royal, Esq., to Keith Galliher, Esq., dated 03.25.19
H	Transcript of Joseph Larson Deposition (10.11.18), pp. 48-55, 69-83

EXHIBIT	TITLE
I	Photos of Plaintiff's Shoes (VEN 037-038)

Executed on 2 day of May, 2019.


MICHAEL A. ROYAL, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF RELEVANT FACTS

This litigation arises from a November 4, 2016 incident occurring when Plaintiff fell in a lobby area of the Venetian while taking a break from her work station where she was employed as a salesperson for Brand Vegas, LLC, working pursuant to an agreement between Venetian and her employer to sell tickets to Venetian events. At around 12:36 pm, as Plaintiff was en route to the women's bathroom located on the Venetian casino level near the Grand Lux Café, while carrying a covered beverage in her left hand, Plaintiff stepped with her left foot, then slipped and fell to the floor. (See Exhibit C at 12:36:50.) Plaintiff testified that she had walked that same path hundreds of previous times without ever seeing evidence of any foreign substance on the floor. (See Exhibit B at 19-21, 75-79, 109.)

The cause of Plaintiff's fall is in dispute, as Venetian denies that there was any foreign substance on the floor at the time the incident occurred. This is very clear from surveillance footage of the incident and related testimony by responders. (See *id.*; see also *Declaration of Michael A. Royal, Esq.* paragraphs 2-12.) Regardless, Venetian produced sixty-four (64) prior incident reports from November 4, 2013 through November 4, 2016 related to incidents occurring in the common area of the Venetian casino level area where the subject incident occurred.

II.

NATURE OF RESPONSE

Plaintiff's motion has no basis in fact or law. It is supported by an unfounded premise, based on the nonsensical mathematical extrapolations of Plaintiff and her counsel, conjuring up out of thin air the representation that Mr. Larson testified that there have been "466-700 falls in the last five years." (See Motion for Leave at 2, ln 21-22.) The other faulty premise of Plaintiff's present motion is that the subject floor was wet. It was not. **Plaintiff admits that the subject floor is safe when dry.**⁴ Plaintiff produced an expert report based on multiple assumptions of fact - the primary one being that the subject floor was wet. Now, based on these presumptions and fabricated stats, Plaintiff moves this Honorable Court to grant leave to add a claim of punitive damages.

Plaintiff's motion should be seen for what it is - a maneuver to try her case before the court without having to present actual evidence. It is an absurd *smoke and mirrors* tactic aimed at diverting the Court from surveying actual facts supported by evidence, and present a mythical sinister plot by Defendants to injure and maim guest.

This is a negligence case. It was plead as a negligence case. Plaintiff now asserts that because she has invented a new mythical number of seventy-three (73) prior incidents (*see Motion to Amend*, Exhibit 1 at 4, ln 2) over a three year period (as opposed to sixty-four (64) previously produced), she now has a basis to assert a claim for punitive damages under NRS 42.005. Out of the many millions of people coming upon Venetian's premises annually (including Plaintiff's personal use of the same flooring area hundreds of time prior to the incident), because floors are not maintained as Plaintiff's expert recommends, Plaintiff is satisfied that she has presented facts sufficient for a punitive damages claim.

⁴Plaintiff's expert report indicates the floor dry tested at .70.

1 **This is a discovery motion cloaked as a motion for leave to amend.** Plaintiff does not want
2 to return to the Discovery Commissioner to present her alleged discovery abuse issues. Why? Because
3 Plaintiff has entirely dishonored, disobeyed and disregarded the Discovery Commissioner's ruling on
4 March 13, 2019, memorialized in the April 2, 2019 DCRR, which ruled that all prior incident reports
5 are to be protected pursuant to NRCP 26(c). Plaintiff and her counsel ignored the ruling, shared all
6 of the protected information with counsel in other matters litigated against Venetian (*see* note 2), and
7 is now using the District Court to bypass the alleged discovery abuses and have it grant leave to amend
8 the Complaint.
9

10 Plaintiff's motion should be denied. She has not met her burden of establishing a reasonable
11 basis for bringing a punitive damages claim. A review of the surveillance footage attached hereto as
12 Exhibit C (and reviewed in Paragraph 6 of the Declaration herein above) not only conclusively
13 demonstrates there was no foreign substance on the floor causing Plaintiff to fall, but that Defendants
14 had multiple employees patrolling the area - even within three (3) minutes of the subject fall. How on
15 earth does that constitute "*conscious disregard*"? Moreover, Plaintiff's entire motion is tainted with
16 the blatant violation of a present court ruling that all prior incident reports produced in this matter are
17 protected pursuant to NRCP 26(c). For that reason alone, the Court should deny this motion and
18 require Plaintiff to file his discovery grievance with the Discovery Commissioner, where he can
19 explain on the record why he felt that abiding by her March 13, 2019 ruling was not required.
20 Plaintiff's entire case is founded upon a house of cards - which is why she must focus on prior
21 incidents. Therefore, by using inflammatory, invented facts and statistics, creating some new strict
22 liability standard of care, Plaintiff hopes to convince the Court to act in a way contrary to the actual
23 evidence. This present motion is just more of the same hyperbole and gross overstatement of
24 unsupported facts by Plaintiff.
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III.

LEGAL ANALYSIS

Rule 15(a), Nevada Rules of Civil Procedure, provides that leave to amend a complaint should "be freely given when justice so requires." Leave to amend, however, "should not be granted if the proposed amendment would be futile." (Halcrow, Inc. v. Eighth Judicial Dist. Court, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013).) A district court exercising its discretion denying a motion for leave to amend is reviewed by higher courts in the state under an *abuse of discretion* standard. (See Holcomb Condo. Homeowners' Ass'n v. Stewart Venture, LLC, 129 Nev. 181, 191, 300 P.3d 124, 130-31 (2013).)

Defendants respectfully submit that Plaintiff's motion should be denied, as she has not even plead facts, much less established any, which would even begin to approach a claim for punitive damages in this simple negligence case.

The instant motion is entirely lacking in any reasonable evidentiary basis. Plaintiff has taken the testimony of one former employee security officer and extrapolated it into numbers of ridiculous proportion to prejudice the Court and get its attention from the actual facts of the incident. The actual verified facts from this litigation (as set forth above) are as follows:

1. Plaintiff was extremely familiar with the Venetian property as a pseudo employee, working on the premises daily, with thousands of hours logged less than a year before the incident, Plaintiff having walked the subject area hundreds of times prior to the subject incident without ever witnessing a slip and fall, seeing a foreign substance on the floor, or even hearing about any such incidents. (See Exhibit B at 19-21, 75-79, 109.) (Plaintiff's own testimony should defeat the instant motion. She has first hand knowledge that the numbers offered here by her counsel are beyond bogus.)

2. Plaintiff never identified a foreign substance on the floor where the incident occurred. (See *id.*) The only evidence of a foreign substance related to responding security by Plaintiff was her

1 stated belief that she slipped on water. (Plaintiff did not report to anyone that any part of her clothing
2 was wet due to the fall, as she later claimed in sworn testimony.)

3 3. Video surveillance of the area within thirty (30) minutes of the incident not only reveals
4 hundreds of people walking through the subject area without the slightest issue, it further reveals that
5 Defendants had multiple PAD employees walking through the area without identifying any substance
6 on the floor. (This includes Maria Cruz, who walked through the area with a broom/dustpan within
7 three minutes of the fall.) (See Exhibit C.)

8
9 4. While Plaintiff will argue that the presence of a mop and bucket brought to the scene
10 post incident is somehow *per se* evidence of a preexisting spill, it does not.

11 Even if Plaintiff could somehow prove that a foreign substance caused her fall, what evidence
12 has she presented that Defendants were not taking reasonable efforts to maintain the floor? All she has
13 offered this Honorable Court are some fabricated numbers surrounding prior incidents (an issue she
14 needs to bring before the Discovery Commissioner), and an expert report which confirms that the
15 subject flooring is safe in the kind of dry condition depicted in the surveillance footage. If the floor
16 is as inherently dangerous as Plaintiff claims, Defendants would have expected to see at least one other
17 person from the video surveillance having difficulty walking through the area. There is no such
18 evidence. (Also, one would think that Plaintiff, in her thousands of hours working to sell tickets to
19 Venetian events while working on and around its property, would have had some personal experience
20 consistent with the picture she is painting for the Court in the pending motion. To the contrary, her
21 own testimony is contrary to the position (based on pure speculation) she now presents.)

22
23 Plaintiff's motion should be denied because she has not presented evidence supporting a claim
24 for punitive damages, and to allow her to so amend would be futile. Plaintiff is merely attempting to
25 try her case now, before the Court, by manufacturing circumstances which did not - and do not - exist.
26
27
28

1 **A. Plaintiff Has Not Pled Facts Supporting Punitive Damages**

2 The Court's authority to preclude a party from adding redundant, frivolous and/or unwarranted
3 portions of a pleading is well established and has been recognized since the beginning of Nevada
4 history. (*See, Sankey v. Noyes*, 1 Nev. 68, 70 (1865).) When considering a motion to amend such
5 as this one, the court, "[t]he issue is not whether a plaintiff will ultimately prevail, but whether he
6 claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the
7 pleadings that a recovery is very remote and unlikely but that is not the test." (*Scheuer v. Rhodes*,
8 416 U.S. 232, 236 (1974).) Leave to amend should not be granted if "it is clear that the
9 complaint could not be saved by an amendment." (*Livid Holdings Ltd. v. Salomon Smith Barney*,
10 *Inc.*, 416 F.3d 940,946 (9th Cir. 2005).)

11
12 Here, Plaintiff's proposed new cause of action for punitive and exemplary damages against the
13 Defendants should be not be granted, as Plaintiff's negligence allegations are insufficient to support
14 a prayer for punitive or exemplary damages against Defendants. On its face, Plaintiff's Complaint
15 alleges only Negligence against Defendants. Even Plaintiff's proposed amended Complaint does not
16 allege a proper legal basis for punitive damages. As is further explained below, Plaintiff cannot pray
17 for an award of punitive damages on claims arising out of negligence, mere recklessness or even gross
18 negligence.
19

20
21 **B. As a Matter of Law, Plaintiff Cannot Plead a Prayer for Punitive Damages on a Negligence Claim**

22 The Nevada Supreme Court has stated that a Plaintiff is not entitled to punitive damages as a
23 matter of right. (*See Dillard Department Stores v. Beckwith*, 115 Nev. 372, 980 P.2d 882 (1999).)
24 Rather, the Plaintiff must offer **substantial evidence** of malice or oppression, express or implied, to
25 support a claim for punitive damages. (*Countrywide Home Loans, Inc. v. Thitchner*, 192 P.3d 243
26 (2008).) Significantly, punitive damages are not awarded to compensate the plaintiff for harm
27 incurred, but to punish the defendant for conduct not meeting the standard. (*See Act Truck and*
28

1 Equipment Rentals, Inc., v. Kahn, 103 Nev. 503, 506, 746 P.2d 132, 134 (1987) (citing New
2 Hampshire Ins. Co. v. Gruhn, 99 Nev. 771, 67 P.2d 941 (1983)).

3 Chapter 42.005(1), Nevada Revised Statutes, requires a plaintiff to prove by **clear and**
4 **convincing evidence** that a defendant has been guilty of oppression, fraud, or malice in order to obtain
5 an award of punitive damages. Pursuant to NRS 42.001(3), malice, express or implied, is defined as
6 "conduct which is **intended to injure a person or despicable conduct which is engaged in with a**
7 **conscious disregard of the rights or safety of others.**" (Emphasis added.) With respect to
8 oppression, NRS 42.001(4) defines it as "**despicable conduct that subjects a person to cruel and**
9 **unjust hardship and conscious disregard of the rights of the person.**" (Emphasis added.) Both
10 definitions use ***conscious disregard*** as a common mental element. NRS 42.001(1) defines ***conscious***
11 ***disregard*** as "*the knowledge of the probable harmful consequences of a wrongful act and a willful and*
12 *deliberate failure to act to avoid those consequences.*" Because the statute's language plainly states
13 that a **defendant is required to have acted with a culpable state of mind**, the Court in Countrywide
14 Home Loans, Inc., supra. determined that NRS 42.001 requires that the defendant's conduct, at a
15 minimum, must exceed mere recklessness or gross negligence. (See Countrywide Home Loans, Inc.,
16 124 Nev. at 743, 192 P.3d at 255.)

17 Defendants are not aware of a single case in which the Nevada Supreme Court has affirmed an
18 award of punitive damages in a simple or even gross negligence case. In applying NRS 42.001, the
19 Nevada Supreme Court has held that a Plaintiff cannot recover punitive damages even when a
20 defendant has acted with unconscionable irresponsibility. (See Maduiké v. Agency Rent-a-Car, 114
21 Nev. 1, 953 P.2d 24 (1998).) In Maduiké, despite the fact that the defendants were aware of a
22 potentially dangerous condition in their rental car and refused to repair or replace the vehicle, the
23 Nevada Supreme Court upheld the trial Court's dismissal of the punitive damages claim. The Supreme
24 Court determined that even unconscionable irresponsibility will not support an award of punitive
25
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1 damages. As the Nevada Supreme Court explained with respect to *conscious disregard* of the rights
2 of others, the Defendant must act "*with a culpable state of mind*" and his conduct "*must exceed*
3 *mere recklessness or gross negligence.*" (Countrywide Home Loans, Inc., 192 P.3d at 255,
4 emphasis added.)

5
6 In the present matter, Plaintiff alleges only negligence against Defendants. Her claim that
7 Defendants have had between sixty-four (64) and seventy-three (73) incidents - none of which are
8 related to the present set of facts - cannot transform a simple negligence case to one for punitive
9 damages.⁵ If that were the case, then every negligence case would include a prayer for punitive
10 damages. A plain reading of Plaintiff's Complaint makes clear that there are no allegations that
11 Defendants' alleged conduct was intentional or malicious.

12
13 Plaintiffs allegations, even in the most favorable light, rise to only simple negligence as to
14 Defendants. Plaintiff's grossly misleading extrapolation from Mr. Larson's testimony (which truly
15 forms the primary basis for the present motion) is insufficient to support a claim for punitive damages.
16 At best, Plaintiff can show from Mr. Larson's testimony that a full-time EMT with Defendants'
17 security department responded to less than one call per month related to some kind of slip and fall on
18 Venetian property. (This is put into better context when considering that millions of people who walk
19 through Venetian property each month.) Further, Plaintiff's expert admits the subject flooring is safe
20 when dry. The objective evidence, frankly, demonstrates that the floor was dry. Even if, for the sake
21 of argument (not remotely conceded by Defendants), there was something wet on the floor, Defendants
22 had employees sweeping through the area, patrolling and monitoring. Such conduct is the very
23 antithesis of *conscious disregard*. In fact, it arguably does not even reach to the level of simple
24 negligence. And where do Plaintiff's shoes play into the analysis? What about her gait, what she was
25
26

27 ⁵Plaintiff's number of *at least* seventy-three (73) prior incident reports is another fabrication.
28 Defendants produced sixty-four (64), and has identified two (2) more per the Declaration herein above,
which will be produced by supplement in redacted form.

1 carrying, why no one else demonstrated any trouble traversing across the subject area of the floor? Her
2 expert apparently will not say.

3 Plaintiff is actually moving for this Honorable Court to adopt a strict liability standard in
4 Nevada in every case where floors wet test below .50 coefficient of friction (*COF*). Plaintiff provides
5 no supporting evidence for this proposition. What industry standard is there which provides that a
6 business owner with a walking surface testing below 0.50 when wet is strictly liable and subject to
7 punitive damages? There is none. Assuming Plaintiff's allegations are true for the purpose of this
8 Motion (without conceding anything), the allegations do not rise to the level of oppression, malice or
9 despicable conduct necessary for an award of punitive damages against Defendants. Plaintiff's
10 Complaint does not plead (and cannot plead) the requisite state of mind or intentional conduct that
11 supports a prayer for punitive damages. Consequently, Plaintiff's proposed *tacked on* vague allegation
12 and prayer for punitive or exemplary damages contained in the last paragraph of the Complaint under
13 Negligence should be denied as a matter of law.
14
15

16 C. **Plaintiff Has Not Properly Plead a Prayer for Punitive Damages Against Defendants as**
17 **Legal Entities**

18 To allege punitive damages against a corporate Defendant, a Plaintiff must plead specific
19 conduct on the part of the manager, directors, or officers of the corporation. There are no such
20 allegations here.

21 NRS 42.007 governs claims for punitive or exemplary damages against an employer for the
22 wrongful acts of its employees. The statute also specifically addresses claims for punitive or
23 exemplary damages against an employer that is a corporation. NRS 42.007 provides, in pertinent part:
24

25 *Except as otherwise provided in subsection 2, in an action for the breach of an*
26 *obligation in which exemplary or punitive damages are sought pursuant to subsection*
27 *1 of NRS 42.005 from an employer for the wrong act of his employee, the employer is*
28 *not liable for the exemplary or punitive damages unless:*

1 (a) *The employer had advance knowledge that the employee was unfit for*
2 *the purposes of the employment and employed him with a conscious disregard for the*
3 *rights or safety of others;*

4 (b) *The employer expressly authorized or ratified the wrongful act of the*
5 *employee for which the damages are awarded; or*

6 (c) *The employer is personally guilty of oppression, fraud or malice,*
7 *express or implied. If the employer is a corporation, the employer is not liable for*
8 *exemplary or punitive damages unless the elements of paragraph (a), (b) or (c) are*
9 *met by an officer, director or managing agent of the corporation who was expressly*
10 *authorized to direct or ratify the employee's conduct on behalf of the corporation.*

11 NRS 42.007 (emphasis added).

12 In Countrywide, *supra*, the Nevada Supreme Court determined that the director or managing
13 agent of a corporation must act with conscious disregard for punitive damages to be appropriate. (*See*
14 Countrywide Home Loans, Inc., 192 P.3d at 254-55, emphasis added.) The Court in Countrywide
15 further stated that the defendant must possess a culpable state of mind, *to wit*: at a minimum, it must
16 exceed mere recklessness or gross negligence. (*See id.*)

17 In the case at hand, Plaintiff did not plead any facts alleging that Defendants' officers, directors,
18 or managing agents acted with the intent to harm Plaintiff. Plaintiff's Complaint does not identify any
19 particular officer, director or managing agent, and does not allege that Defendants' officers, directors,
20 or managing agents acted with culpability beyond mere negligence. On the face of the Complaint, as
21 well as the proposed Amended Complaint, Plaintiff fails to properly plead punitive damages against
22 Defendants, and, therefore, Defendants respectfully request that Plaintiff's motion for leave to add a
23 claim for punitive damages be denied.

24 IV.

25 CONCLUSION

26 Plaintiff has not demonstrated that she should be granted leave to amend the Complaint under
27 NRCp 15(a). Plaintiff cannot recover punitive or exemplary damages arising from a simple negligence
28 claim. Further, under NRS 42.005, Plaintiff cannot recover punitive or exemplary damages from a

1 corporate entity, such as Defendants, absent factual allegations of malice, fraud or oppression by a
2 corporate officer, director or managing agent. None were alleged here and, as a result, the Court
3 should deny Plaintiff's motion for leave to amend the Complaint against Defendants, with prejudice.
4 Moreover, Plaintiff's wild fabricated assertions based on extremely poor math skills, her outright
5 refusal to obey Court orders (as discussed above),⁶ and Plaintiff's transparent attempt to circumvent
6 the Discovery Commissioner by bringing a motion addressing Plaintiff's assertions related to the
7 production of prior incident reports to her should not be even slightly rewarded.

8
9 DATED this 2 day of May, 2019.

10 **ROYAL & MILES LLP**

11
12 By 

13 Michael A. Royal, Esq.

14 Nevada Bar No. 4370

15 1522 W. Warm Springs Rd.

16 Henderson, NV 89014

17 Attorney for Defendants

18 VENETIAN CASINO RESORT, LLC and

19 LAS VEGAS SANDS, LLC

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⁶See note 2.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2 day of May, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT** to be served as follows:

☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

(with exhibits)
to be served via facsimile; and/or

☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

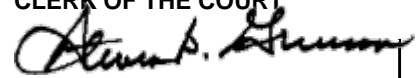
to be hand delivered;

to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
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gramos@galliherlawfirm.com
rray@galliherlawfirm.com

Ashley Schmitt
An employee of ROYAL & MILES LLP

EXHIBIT 4



OPPS

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

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Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

Plaintiff,

v.

VENETIAN CASINO RESORT, LLC, d/b/a
THE VENETIAN LAS VEGAS, a Nevada
Limited Liability Company; LAS VEGAS
SANDS, LLC d/b/a THE VENETIAN LAS
VEGAS, a Nevada Limited Liability Company;
YET UNKNOWN EMPLOYEE; DOES I
through X, inclusive,

Before the Discovery Commissioner

Hearing Date: August 2, 2019

Hearing Time: 9:00 am

Defendants.

**OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL TESTIMONY AND
DOCUMENTS AND COUNTERMOTION FOR PROTECTIVE ORDER AS TO
PLAINTIFF'S REQUEST FOR PRODUCTION OF INCIDENT REPORTS FROM
JANUARY 1, 2000 TO PRESENT, COUNTERMOTION TO COMPEL INFORMATION
AND DOCUMENTS OF PRIOR INCIDENT REPORTS PROVIDED TO PLAINTIFF
EXPERT THOMAS JENNINGS AND IDENTIFIED IN HIS MAY 30, 2019 REBUTTAL
REPORT AND FOR LEAVE TO RETAKE THE JENNINGS DEPOSITION TO ADDRESS
THE 196 PRIOR CLAIMS REFERENCED IN HIS REPORT**

ROYAL & MILES LLP
1522 W Warm Springs Road
Henderson NV 89014
Tel: (702) 471-6777 ♦ Fax: (702) 531-6777

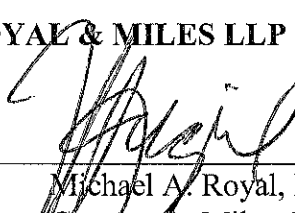
COMES NOW, Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC (collectively referenced herein as *Venetian*), by and through their counsel, ROYAL & MILES LLP, and hereby file this OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL TESTIMONY AND DOCUMENTS AND COUNTERMOTION FOR PROTECTIVE ORDER AS TO PLAINTIFF'S REQUEST FOR PRODUCTION OF INCIDENT REPORTS FROM JANUARY 1, 2000 TO PRESENT, COUNTERMOTION TO COMPEL INFORMATION AND DOCUMENTS OF PRIOR INCIDENT REPORTS PROVIDED TO PLAINTIFF EXPERT THOMAS JENNINGS AND IDENTIFIED IN HIS MAY 30, 2019 REBUTTAL REPORT AND FOR LEAVE TO RETAKE THE JENNINGS DEPOSITION TO ADDRESS THE 196 PRIOR CLAIMS REFERENCED IN HIS REPORT.

This Opposition and Countermotion is based on the pleadings and papers on file, the memorandum of points and authorities contained herein, the affidavit of counsel, the attached exhibits and any argument permitted by this Court at the time set for hearing.

DATED this 12 day of July, 2019.

ROYAL & MILES LLP

By


Michael A. Royal, Esq. (SBN: 4370)
Gregory A. Miles, Esq. (SBN: 4336)
1522 W. Warm Springs Rd.
Henderson, NV 89014
Attorney for Defendants
VENETIAN CASINO RESORT, LLC and
LAS VEGAS SANDS, LLC

DECLARATION OF MICHAEL A. ROYAL, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

MICHAEL A. ROYAL, ESQ., being first duly sworn, under oath deposes and states:

1. I am an attorney duly licensed to practice law in the State of Nevada and I am counsel for Defendants Venetian in connection with the above-captioned matter. I have personal knowledge of the following facts and if called upon could competently testify to such facts.

2. This action arises out of an alleged incident involving a floor located within a common area of the Venetian casino on November 4, 2016, when Plaintiff slipped and fell on a dry marble floor.

3. Plaintiff worked as a kiosk employee for Brand Vegas which required her to come upon the Venetian property daily to park and then walk to her work station in the Grand Canal Shops. Plaintiff has presented testimony in this matter that she worked thousands of hours in and around the Venetian property from December 28, 2015 to November 4, 2016, and walked the subject area hundreds of times without ever seeing a spill on the floor, without ever having come upon a scene where someone had fallen, or even heard of such an event occurring prior to the subject incident. (See Exhibit A, *Transcript of Joyce Sekera Deposition* (taken March 14, 2019) at 86, ln 13-25; 87, ln 1-5; 88, ln 7-14.)

4. The incident report does not provide evidence that there was anything on the floor causing Plaintiff to fall other than the following: "*She [Plaintiff] stated she was walking through the area when she slipped in what she believed was water on the floor.*" (See Exhibit B, *Venetian Security Narrative Report* (IR 1611V-0680), November 4, 2016, VEN 008-09.)

5. Plaintiff admits that she never saw any foreign substance on the floor at any time on the date of the subject incident. (See Exhibit B, *Transcript of Joyce Sekera Deposition* at 19, ln 23-25; 20, ln 1-25; 21, ln 1-21.)

1 6. The area where Plaintiff slipped as depicted on the surveillance footage is identified at
2 **12:36:50.** (See Exhibit C, *Surveillance Footage*, VEN 019; see also Exhibit D, marked Venetian
3 security scene photo (VEN 043), for demonstrative purposes.)

4 6. Surveillance footage of the subject incident (attached hereto as Exhibit C), reveals that
5 there was absolutely nothing on the floor in the thirty (30) minutes preceding the subject incident, as
6 more than 400 people walk through the area from 12:06:49 to the incident of 12:36:50. The video
7 depicts multiple Venetian personnel patrolling the subject area, including former employee porter
8 Maria Cruz, who is seen walking over the subject area at 12:33:53, less than three (3) minutes prior
9 to Plaintiff's fall.
10

11 7. Multiple persons responding to the scene after Plaintiff's fall, including Ms. Cruz,
12 testified that they did not observe any liquid substance on the floor where Plaintiff slipped. (See
13 Exhibit E, *Transcript of Maria Cruz Deposition* (taken 04.17.19) at 33, ln 8-17; 34, ln 20-22; 39, ln
14 21-25; 40, ln 1-9; 41, ln 11-17; 42, ln 10-25. See also Exhibit F, *Transcript of Milan Graovac*
15 *Deposition* (taken 04.22.19) at 15-17, 23-25; 31, ln 14-22; Exhibit G, *Transcript of Louie Calleros*
16 *Deposition* (taken 04.22.19) at 14-15; 18-19, 22, ln 16-20; 24, ln 16-25; 25, ln 1-11; 27, ln 1-19; 29,
17 ln 21-25; 30, ln 1; Exhibit H, *Transcript of Sang Han Deposition* (taken 05.06.19) at 15, ln 6-14; 16,
18 ln 11-25; 17, ln 1-7; 18, ln 25; 19, ln 1-18; 23, ln 6-25; 24, ln 1-2; 25, ln 18-21; Exhibit I, *Transcript*
19 *of Christopher Johnson Deposition* (taken 05.06.19) at 17, ln 6-10; 18, ln 9-23.)
20
21

22 8. A careful review of the post scene surveillance footage further demonstrates the absence
23 of any liquid substance on the floor. (See Exhibit C.)

24 9. In his deposition of July 2, 2019, Plaintiff's expert Thomas Jennings testified that after
25 having been retained by Plaintiff in October 2018 and been provided a copy of the security report,
26 scene photos, and surveillance footage, he was unable to objectively identify any evidence of a foreign
27
28

1 substance on the floor beyond the fact that Plaintiff fell and told security she believed she slipped in
2 water.

3 10. On January 4, 2019, Defendants provided Supplemental Responses to Plaintiff's
4 Requests for Production of Documents and Materials to Defendant related to Plaintiff's request for
5 prior incident reports from November 4, 2013 to present. (See Exhibit J, Response No. 7.) Defendants
6 objected to the vast overreaching scope of Plaintiff's request, which was not limited to any factually
7 similar event in or around the same area prior and subsequently to the subject incident, and was
8 therefore not reasonably calculated to lead to the discovery of admissible evidence. (See *id.*)
9 Nevertheless, Defendants provided Plaintiff with sixty-four (64) prior incident reports in redacted form.
10

11 11. Defendants filed a motion for protective order related to the prior incident reports on
12 February 1, 2019 related to the sixty-four (64) redacted prior incident reports. The Discovery
13 Commissioner agreed that the prior incident reports were to remain in redacted form and that they were
14 not to be shared by Plaintiff. However, while the motion was pending, Plaintiff shared them all with
15 attorneys representing clients in other presently pending cases against Defendants. In fact, the day
16 preceding the March 13, 2019 hearing before the Discovery Commissioner, all sixty-four (64) redacted
17 prior incident reports were filed by Peter Goldstein, Esq., plaintiff's counsel in another case to support
18 a motion against Venetian in the matter of *Carol Smith v. Venetian Casino Resort, LLC*, case no. A-17-
19 753362-C. Plaintiff's counsel did not advise Defendants or the Discovery Commissioner of the
20 disclosure and public filing of the very same documents the Court then determined to be afforded
21 production under NRCP 26(c).
22
23

24 12. At the March 13, 2019 hearing, Mr. Galliher advised the Discovery Commissioner that
25 when comparing Venetian's prior incident reports with those received by Peter Goldstein, Esq., in the
26 *Smith* matter, there were only four (4) additional reports he felt should have been part of the sixty-four
27
28

1 (64) prior incident reports disclosed by Defendants in this matter. (See Exhibit K, *Transcript of*
2 *Hearing Before Discovery Commissioner*, dated 03.13.19, at 7, ln 13-21.)

3 13. On March 25, 2019, I sent correspondence to Mr. Galliher responsive to his
4 representation at the March 13, 2019 hearing related to the alleged four (4) undisclosed prior incident
5 reports. (See Exhibit L.)

6 14. Plaintiff's objection to the DCRR regarding the redacted prior incident reports was
7 heard on May 14, 2019, in which the District Judge reversed the DCRR and ordered production of
8 unredacted reports by Defendants. However, the parties submitted competing proposed orders to the
9 Court and, at present, no order has been filed. Defendants reserve their right to bring this matter again
10 before the District Court as provided for under local rules.

11 15. During a May 28, 2019 hearing regarding Plaintiff's motion for leave to amend the
12 Complaint to add a claim for punitive damages, Plaintiff's counsel represented to the Court that he had
13 evidence that expert David Elliott, PE, had provided deposition testimony about ten (10) years ago in
14 the matter of *Farina v. Desert Palace, Inc.*, case no. A542232, in which he made recommendations
15 to Venetian about its flooring which were ignored. More specifically, Plaintiff's counsel asserted the
16 following:
17
18

19 *And that is the Venetian in the mid-2000s -- 2005, 2006, 2007 -- hired David*
20 *Elliott . . . to evaluate their floors at the Venetian and make recommendations*
21 *concerning how they can make the floors safer. The one thing we've determined so*
22 *far, Mr. Elliott told him that under no circumstances is marble an acceptable surface*
23 *for a floor such as a hotel/casino like the Venetian. He made recommendations*
concerning how they could go from marble to tile and increase the co-efficient of
friction -- slip resistance -- to the .5 industry standard from where it is now.

24 (See Exhibit M, *Reporter's Transcript* of the May 28, 2019 hearing, at 14, ln 10-23, emphasis added.)

25 16. During that May 28, 2019 hearing, Mr. Galliher represented to the Court that the David
26 Elliott deposition testimony from 2009 presented: "*a smoking gun big time.*" (See *id.* at 17, ln 2-3,
27 emphasis added.)
28

1 17. Based on these new allegation represented by Plaintiff at the May 28, 2019 hearing, the
2 Court noted: “I think at the end of the day, with what's been alleged, it would do a disservice to this
3 case if I didn't allow there to be some exploration to see if there's evidence that could support the
4 damages claim.” (See *id.* at 24, 22-25, emphasis added.)

5 18. A transcript of the David Elliott deposition was obtained subsequent to the May 28,
6 2019 hearing. (Exhibit N, *Transcript of David Elliott (taken February 13, 2009)*, in Farina v. Desert
7 Palace, Inc., case no. A542232, attached hereto.)

9 19. Mr. Elliott presented the following testimony in his February 13, 2009 deposition
10 related to the Venetian:

11 Q. Essentially if you don't have carpet down, it's slippery when it's wet,
12 right?

13 A. No, sir. There's other tile that you can use that is very aesthetically
pleasing that will meet that standard.

14 Q. Give me some examples, if you don't mind.

15 A. You can go into the Venetian. I do a lot of work for the Venetian and
consulting and litigation, and their tile is slip resistant when wet, and it looks good.

16 Q. But it's not marble flooring?

17 A. No, it's not marble flooring.

18 Q. Is it tile?

19 A. It's a ceramic tile.

20 (See *id.* at 34, ln 12-25, emphasis added.)

21 20. The February 13, 2009 deposition testimony of David Elliott is not the “*smoking gun*
22 *big time*” Plaintiff’s counsel made it out to be before the Court in the May 28, 2019 hearing. To the
23 contrary, the above-cited deposition testimony of Mr. Elliott confirms that he found the Venetian
flooring to be slip resistant and safe, even exemplary.

24 21. Defendants filed a motion for reconsideration related to the Court’s granting Plaintiff’s
25 motion for leave to add a claim of punitive damages on July 3, 2019, with a hearing set for July 16,
26 2019.

1 22. On June 25, 2019, Mr. Galliher and I had a brief meet and confer outside the courtroom
2 of Department 25 following a hearing related to this matter. During that conference, Mr. Galliher
3 inquired about production of the unredacted reports related to those previously produced. I advised
4 that I was waiting for the Court to sign and file one of the competing proposed orders submitted. Mr.
5 Galliher advised that he would be filing a motion to compel. He further asserted entitlement to
6 subsequent incident reports. However, Mr. Galliher did not make reference to a reported batch of other
7 incidents occurring at the Venetian between November 4, 2013 and November 4, 2016. Our EDCR
8 2.34 conference was limited to the production of unredacted versions of previously produced incident
9 reports and post incident reports.
10

11 23. Subsequent to the above discussion, I received correspondence from Mr. Galliher dated
12 in which he quite vaguely produced a table of information purportedly relating to prior incidents. (See
13 Exhibit O, *Correspondence from Keith Galliher, Esq., to Michael Royal, Esq.*, dated 06.25.19.) Mr.
14 Galliher did not produce any documents supporting the information presented in the chart produced
15 in his June 25, 2019 correspondence, nor did he discuss the issue with me pursuant to EDCR 2.34. The
16 number of events set forth in the table within counsel's June 25, 2019 letter is similar to the number
17 previously identified and produced in this matter, it did not occur to me that the table of incidents was
18 different from those previously disclosed, as I noticed some events which appeared familiar.¹
19

20 24. Defendant previously provided a Rule 34 request of Plaintiff to produce the entire file
21 of all experts she identified in this matter. (See Exhibit P, *Plaintiff, Joyce Sekera's, Responses to*
22 *Defendant Venetian Casino Resort, LLC's First Set of Request for Production of Documents* (served
23 08.27.18), No. 18.)
24
25
26

27 ¹As discussed further herein below, after investing hours to review Plaintiff's accusations, I
28 managed to identify only five (5) events not previously produced by Defendants, only two (2) of which
occurred within the Venetian casino level area of the property.

1 25. As earlier noted, the deposition of Plaintiff expert, Thomas Jennings, was taken on July
2 2, 2019. Prior to the deposition, Mr. Jennings was served with a subpoena duces tecum, which
3 required him to bring the following documents: "*Your entire file pertaining to Joyce Sekera vs.*
4 *Venetian Casino Resort, LLC.* (See Exhibit Q, *Second Subpoena Duces Tecum for Tom Jennings*,
5 served 06.10.19.)

6
7 26. Mr. Jennings had produced a written report dated May 30, 2019, in which he made the
8 following proclamation:

9 *It should also be noted that the Venetian Hotel-Casino has experienced 196 slip and*
10 *fall events between January 1, 2012 to August 5, 2016 with the majority of those*
11 *events occurring on the marble flooring within the same approximate area as*
plaintiff's slip and fall.

12 (See Exhibit R, *Rebuttal Report by Thomas Jennings*, dated May 30, 2019) at 3.)

13 27. At the July 2, 2019 deposition, Mr. Jennings appeared with reportedly his entire file in
14 response to the subpoena; however, he did not produce any documents related to the information
15 related to the 196 slip and fall events referenced in his May 30, 2019 report. When asked about this
16 information, Mr. Jennings responded that it was sent to him via email from Mr. Galliher in May, 2019,
17 prior to drafting his rebuttal report. When asked to produce a copy of the same pursuant to the
18 subpoena duces tecum, Mr. Jennings responded that he was no longer in possession of the information,
19 confirming it was not preserved. I asked Mr. Jennings to describe the information provided to him by
20 Mr. Galliher. He was vague and could not recall details, other than he concluded that the 196 prior
21 incidents occurred not just somewhere on Venetian property, but within the Grand Lux rotunda area
22 where the Plaintiff fell in this matter. Plaintiff's counsel present for the deposition did not commit to
23 producing the missing documents.
24

25
26 28. I sent correspondence to Mr. Galliher on July 2, 2019 following the Jennings deposition
27 demanding production of the prior incident information he produced to Mr. Jennings in or about May
28

1 2019. (See Exhibit S, *Correspondence from Michael Royal, Esq., to Keith Galliher, Esq.*, dated
2 07.02.19.) To date, there has been no response.

3 29. In this matter, Defendants have produced a total of sixty-six (66) identified prior
4 incident reports related to slip and falls in the Venetian casino level area. Defendants did not limit
5 production to just the Grand Lux area where the subject incident occurred. Plaintiff claimed to have
6 identified another sixty-five (65) in the June 25, 2019 correspondence. However, in the pending
7 motion, Plaintiff now only identifies forty-six (46) other incidents, apparently paring the number down
8 by nineteen (19) without any explanation.

10 30. In reviewing the forty-six (46) prior incidents identified by Plaintiff in the pending
11 motion, I have determined that all are among the sixty-six (66) previously produced by Defendants but
12 for only five (5). Thus, the number Plaintiff claims withheld by Defendants is not 196, sixty-five (65)
13 or forty-six (46), but appears to be, at best, five (5).

15 31. In Plaintiff's motion, she has presented a table of alleged *46 Undisclosed Incident*
16 *Reports* in a deceptive manner. For example, item no. 6 on page 5 of the motion was previously
17 produced to Plaintiff. Therefore, Plaintiff has the omitted information for time and the report no. Yet,
18 Plaintiff has presented the motion as though she has only partial information from some source other
19 than Defendants. That is misleading. Plaintiff provided the Court with further omissions on page 6
20 of the pending motion (nos. 10, 13, 14, 17 and 17), page 7 (nos 26, 27, 28, 30, 33, and 34, and page
21 8 (nos 39, 41, and 45).

23 32. I have identified the five (5) reports found in the duplicate prior incidents documented
24 by Plaintiff in the table found within the pending motion, and offer the following by way of response:

25 a. **11/7/13 (Grand Lux Café; Marble slip and fall)** (no event no. provided by Plaintiff);

26 This event involves a patron who claims to have slipped and rolled his ankle two days earlier
27 (November 5, 2013) while walking just outside the Grand Lux Café, without claiming the involvement
28

1 of a liquid substance. No evidence of a foreign substance was ever identified. This incident is
2 arguably not responsive to Plaintiff's request, as it is not factually similar; however, in the spirit of
3 cooperation, Defendants will produce a redacted version of this report pursuant to NRCP 16.1 and
4 NRCP 34.

5 **b. 12/27/13 (WOW Fountain Feature)** (no event number provided by Plaintiff);

6 The WOW Fountain Feature is not located within or anywhere near the Venetian casino area,
7 but is on the Palazzo side of the property. Defendants would not have produced this report from its
8 initial search for like falls occurring on marble flooring within the Venetian casino level of the property
9 and maintain that it is not relevant today.

11 **c. 04/20/15 (Lobby 1 Trip/Fall)** (no event number provided by Plaintiff);

12 Information provided in Plaintiff's summary in the Opposition on page 6, ln 13-15, describes
13 this as a trip and fall on a metal strip. Since the alleged incident does not involve a foreign substance
14 on the floor, nor does it involve a slip, Defendants would not have produced it since it is not at all
15 factually similar.

17 **e. 03/18/16 (5th floor of garage elevator lobby)** 1603V-3584

18 This report was not produced to Plaintiff by Defendants in this action; however, it is already
19 in Plaintiff's possession by way of Peter Goldstein, Esq., in the *Smith vs. Venetian* litigation. It was
20 one of the four reports Mr. Galliher claimed were not provided by Venetian when the parties were
21 before the Discovery Commissioner on March 13, 2019. I addressed this in my March 25, 2019 letter
22 to Mr. Galliher following the March 13, 2019 hearing, advising that it is an event located on an exterior
23 area of the property on a different floor (parking garage), that is not deemed relevant to the subject area
24 of the Grand Lux rotunda. Plaintiff did not object to this explanation, but merely added this event
25 again in the instant motion without advising the Court that it was previously addressed by Defendants.
26
27
28

1 f. 06/11/16 (Venetian front office, puddle of water) 1606V-2353

2 This incident involves a reported slip/fall on water in the front desk area of the Venetian
3 property, which is nowhere near the Grand Lux rotunda area where the subject incident occurred nor
4 does it involve a factually similar circumstance. This is also a case presently litigated against Venetian,
5 identified by Plaintiff in Exhibit 16 of Plaintiff's Motion to Compel Testimony and Documents, where
6 Plaintiff clearly is already in possession of this information. Regardless, in the spirit of cooperation,
7 Defendants will produce a redacted version of this report pursuant to NRCP 16.1 and NRCP 34.
8

9 33. Thus, after wading through the sixty-five (65) reports allegedly *undisclosed* by
10 Defendants in this matter, per the June 25, 2019 correspondence, which was refined to forty-six (46)
11 in this subject motion (without explanation by Plaintiff's counsel), there are actually only five (5) which
12 were not part of the sixty (66) prior incident reports previously produced to Plaintiff by Defendants in
13 this matter. Of those five (5) reports, only two (2) would be potentially factually similar and located
14 within the Venetian casino level area. These two (2) additional reports have now been provided to
15 Plaintiff.
16

17 34. Mr. Galliher has not explained how he obtained information related to the alleged 196
18 prior incident reports of events occurring in the Venetian Grand Lux rotunda area referenced by Mr.
19 Jennings in his May 30, 2019 rebuttal report. Mr. Galliher has not revealed what he produced to Mr.
20 Jennings to support his gold factual assertion, whether information included duplicates of previously
21 identified and produced events, such as what Plaintiff has done on pages 5-8 of the pending motion,
22 how he compiled the information June 25, 2019 and the motion of July 1, 2019, or whether he is
23 presently in possession of all of these incident reports.
24

25 35. If Plaintiff is in possession of 196 prior incident reports she produced to her expert, Mr.
26 Jennings, it is Defendants' contention that they must be provided immediately.
27
28

1 36. Although I was present with Plaintiff's counsel for the Tom Jennings deposition on July
2 2, 2019, there was no discussion about the production of *previously undisclosed* prior incident reports
3 beyond that described above. In other words, Plaintiff's counsel did not advise that he was in
4 possession of information that there were any *previously undisclosed* prior incident reports as set forth
5 in the June 25, 2019 correspondence. Plaintiff filed the pending motion to compel in the hours
6 following the Jennings deposition.
7

8 37. Mr. Jennings testified in his July 2, 2019 deposition that he is also a disclosed expert
9 in the *Smith v. Venetian* litigation, where he tested the marble flooring at a site approximately 100 feet
10 away from the subject incident and came up with vastly different numbers for his coefficient of friction
11 testing. (Mr. Jennings tested the subject fall area dry at .70 COF vs. .90 COF in *Smith*, and Mr.
12 Jennings tested the subject fall area wet at .33 COF vs. .40 COF in *Smith*.) Mr. Jennings acknowledged
13 that different areas of the property can test for coefficient of friction differently based on a number of
14 factors, including cleaning methods to foot traffic, among others.
15

16 38. On May 31, 2019, Plaintiff served Rule 34 requests which include the production of
17 incident reports from January 1, 2000 to the present. (See Exhibit T, *Plaintiff's Sixth Request for*
18 *Production of Documents and Materials to Defendants*, served 05.31.19, Nos. 23-26, 29.)
19

20 39. Exhibit 15 to Plaintiff's motion, identified as *Plaintiff's Notice of Motion and Motion*
21 *for Terminating Sanctions, et al* filed by Peter Goldstein, Esq., on February 13, 2019 in the *Smith*
22 matter, was denied by the District Court in a hearing held on May 7, 2019. Therefore, the relevance
23 of that motion referenced on page 17 of the motion to compel is unclear.

24 40. On July 9, 2019, I attempted to have an EDCR 2.34 conference with Plaintiff's counsel
25 about the issues addressed herein above, and was advised that any such conferences must be held only
26 with Mr. Galliher, who has not responded to my request for the documents he provided to Tom
27 Jennings to support an expert opinion but has not produced to me.
28

1 41. On July 11, 2019, I spoke with Mr. Galliher regarding the 196 prior incident reports
2 provided to Mr. Jennings and the request for production of prior incident reports back to January 1,
3 2000. Mr. Galliher advised that he would be producing the information he provided to Tom Jennings;
4 however, I have not yet received them as of the date of this filing. Mr. Galliher and I also discussed
5 his intent to insist that Venetian produce records related to prior incidents for the preceding twenty (20)
6 years. We disagree that Venetian is obligated to produce records in the broad scope of the production
7 request.

9 42. I have met the requirements of EDCR 2.34 to confer with Plaintiff's counsel about
10 issues surrounding the Tom Jennings deposition and failure to produce copies of the 196 prior incident
11 reports as related in his report of May 30, 2019 and the.

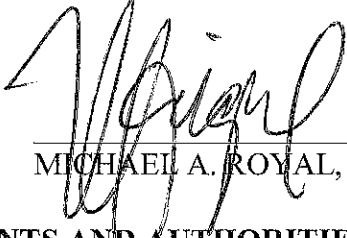
12 43. This opposition and counter motion is not brought in bad faith, or for any improper
13 purpose.

14 44. I declare that true and correct copies of the following exhibits are attached hereto in
15 support of this Opposition.
16

EXHIBIT	TITLE
A	Transcript of Joyce Sekera Deposition (03.14.19) pp. 19-21, 75-79, 109
B	Venetian Security Narrative Report (IR 1611V-0680) (10.04.16) (VEN 008-09)
C	Surveillance Footage of Subject Incident (VEN 019)
D	Marked Venetian security scene photo (VEN 043) for demonstrative purposes
E	Transcript of Maria Cruz Deposition (04.17.19)
F	Transcript of Milan Graovac Deposition (taken 04.22.19)
G	Transcript of Louie Calleros Deposition (taken 04.22.19)
H	Transcript of Sang Han Deposition (taken 05.07.19)
I	Transcript of Christopher Johnson deposition (taken 05.07.19)
J	Supplemental Responses to Plaintiff's Requests for Production of Documents and Materials to Defendant, served 01.04.19
K	Transcript of Hearing Before Discovery Commissioner, dated 03.13.19, select pp

L	Correspondence from Michael Royal, Esq., to Keith Galliher, Esq., dated 03.25.19
M	Reporter's Transcript of May 28, 2019 hearing
N	Transcript of David Elliott (taken February 13, 2009), in <i>Farina v. Desert Palace, Inc.</i> , case no. A542232, selected pages
O	Correspondence from Keith Galliher, Esq., to Michael Royal, Esq., dated 06.25.19
P	Plaintiff, Joyce Sekera's, Responses to Defendant Venetian Casino Resort, LLC's First Set of Request for Production of Documents, served 08.27.18
Q	Second Subpoena Duces Tecum for Tom Jennings, served 06.10.19
R	Expert Rebuttal Report, Thomas Jennings (dated 05.30.19)
S	Correspondence from Michael Royal, Esq., to Keith Galliher, Esq., dated 07.02.19
T	Plaintiff's Sixth Request for Production of Documents and Materials to Defendants, served 05.31.19
U	Complaint, filed 04.12.18
V	First Amended Complaint, filed 06.28.19
W	Discovery Commissioner's Report and Recommendation (filed 07.09.19), <i>Boucher v. Venetian Casino Resort, LLC</i> , Case No. A-18-773651-C

Executed on 12 day of July, 2019.


MICHAEL A. ROYAL, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF RELEVANT FACTS

This litigation arises from a November 4, 2016 incident occurring when Plaintiff fell in a lobby area of the Venetian while taking a break from her work station where she was employed as a salesperson for Brand Vegas, LLC, working pursuant to an agreement between Venetian and her employer to sell tickets to Venetian events. At around 12:37 pm, as Plaintiff was en route to the women's bathroom located on the Venetian casino level near the Grand Lux Café, while carrying a covered beverage in her left hand, Plaintiff stepped with her left foot, then slipped and fell to the floor.

1 (See Exhibit C at 12:36:50.) Plaintiff testified that she had walked that same path hundreds of previous
2 times without ever seeing evidence of any foreign substance on the floor. (See Exhibit B at 19-21, 75-
3 79, 109.)

4 The cause of Plaintiff's fall is in dispute, as Venetian denies that there was any foreign
5 substance on the floor at the time the incident occurred. This is very clear from surveillance footage
6 of the incident and related testimony by responders. (See *id.*; see also *Declaration of Michael A.*
7 *Royal, Esq.* paragraphs 4-9.) Regardless, Venetian produced sixty-six (66) prior incident reports from
8 November 4, 2013 through November 4, 2016 related to incidents occurring in the common area of
9 the Venetian casino level area where the subject incident occurred.
10

11 II.

12 NATURE OF OPPOSITION

13 Defendants contend that the issue surrounding the production of unredacted reports to those
14 produced responsive to Plaintiff's Production Request No. 7 remains an open issue, as there is no order
15 and Defendants are awaiting filing of the order, where competing orders were presented to the District
16 Judge. As for the alleged other four (4), forty-seven (47), sixty-five (65) or 197 prior incident reports
17 allegedly not produced (depending on which numbers Plaintiff chooses to assert on any given day),
18 Defendants only very recently became aware of this alleged issue and there was no meet and confer
19 with Plaintiff pursuant to EDCR 2.34 prior to filing of the instant motion. If Plaintiff already has the
20 information, then it is unclear what Plaintiff expects Defendants to do. Regarding Plaintiff's demand
21 for subsequent incident reports, this is a simple negligence case arising from an alleged temporary
22 transitory condition on the Venetian floor. Plaintiff argues in the motion to compel that this litigation
23 is akin to a products defect claim. It is not. That is simply not the case. In fact, Plaintiff has pled and
24 continues to plead this as a simple negligence case. (See Exhibits T and U.) There is no reasonable
25 basis to allow Plaintiff to obtain other incident reports subsequent to her fall.
26
27
28

1 III.

2 LEGAL ANALYSIS

3 A. Plaintiff Failed to Comply With EDCR 2.34 Regarding Alleged Undisclosed Reports

4 Prior to filing this Motion, Plaintiff failed to comply with her meet-and-confer obligation
5 pursuant to EDCR 2.34, which is sets forth in pertinent part as follows:

6
7 *Discovery motions may not be filed unless an affidavit of moving counsel is attached*
8 *thereto setting forth that after a discovery dispute conference or a good faith effort to*
9 *confer, counsel have been unable to resolve the matter satisfactorily. A conference*
10 *requires either a personal or telephone conference between or among counsel. Moving*
11 *counsel must set forth in the affidavit what attempts to resolve the discovery dispute*
12 *were made, what was resolved and what was not resolved, and the reasons therefor.*
13 *If a personal or telephone conference was not possible, the affidavit shall set forth the*
14 *reasons.²*

15 Similarly, Rule 37 of the Nevada Rules of Civil Procedure mandates as follows:

16
17 *On notice to other parties and all affected persons, a party may move for an order*
18 *compelling disclosure or discovery. The motion must include a certification that the*
19 *movant has in good faith conferred or attempted to confer with the person or party*
20 *failing to make disclosure or discovery in an effort to obtain it without court action.³*

21 Plaintiff's motion lacks any declaration or affidavit whatsoever in compliance with the above-
22 stated rules. Therefore, the motion should not be considered. Plaintiff's counsel did not attempt a
23 *meaningful, good-faith* discussion regarding the alleged undisclosed prior incident reports, and she has
24 not attached an affidavit of any kind to the pending motion. It is therefore defective and the motion
25 should be denied in its entirety. However, if the Court is inclined to consider Plaintiff's motion to
26 compel.

27 B. Unredacted Reports

28 The Discovery Commissioner previously ruled in Defendants' favor on this issue and it was
thereafter presented to the District Court on May 14, 2019. Counsel prepared competing orders for the

²EDCR 2.25(a).

³NRCP 37(a)(1).

1 judge's signature. To date, there has been no order signed. Defendants have rights that do not accrue
2 until after an order is signed and filed by the Court and notice of entry provided. That has not yet
3 occurred.

4 At the time of the May 14, 2019 hearing, Defendants were unaware that the Discovery
5 Commissioner's Report and Recommendation related to redaction of information on prior incident
6 reports was affirmed by Judge Jones in the *Smith* matter on May 7, 2019, based on a ruling by the
7 preceding Discovery Commissioner. Judge Delaney appeared to be of the understanding that the April
8 2, 2019 DCCR related to the protection of prior incident reports in this matter was a novel, isolated,
9 outlier decision; therefore, she granted the objection and ordered that unredacted reports be produced.
10 The rules allow Defendants to bring this new information before the judge. Since this issue remains
11 open, and Defendants have not exhausted their rights, where production of unredacted reports will
12 result in irreparable harm to Defendants as Plaintiff shares the private information of Venetian guests
13 freely with the world (thus far without any specific limitation), Defendants have not yet produced
14 unredacted reports.⁴

17 C. **Other Allegedly "Undisclosed" Prior Incident Reports**

18 1. **Plaintiff's Claim of Four (4) Missing Reports at the March 13, 2019 Hearing is Not**
19 **Properly Before the Court; However, it Was Long Ago Resolved**

20 The Discovery Commissioner will recall that during the March 13, 2019 hearing, Plaintiff's
21 counsel complained that although Defendants provided sixty-four (64) prior incident reports, he
22 compared production provided by Venetian in the *Smith* litigation and identified a total of four (4) prior
23 incident reports Mr. Galliher claimed were not produced by Defendants in this matter. (See Exhibit
24 K at 7, ln 13-21.) That issue was raised by Plaintiff for the first time during the March 13, 2019
25 hearing. There was no EDCR 2.34 Conference and the matter was not briefed. Nevertheless, the
26

27
28 ⁴It is noteworthy that Plaintiff did not serve the First Amended Complaint until after the order
granting her leave to do so was executed and filed with the District Court.

1 Discovery Commissioner responded that parties were to address it and then bring it before her later
2 after an EDCR 2.34 conference if it remained unresolved. (*See id.* at 14-15.) Defendants reviewed
3 the issue of the four (4) alleged missing reports and addressed it in correspondence of March 25, 2019.
4 (*See Exhibit L.*) There has been no further discussion regarding those four (4) reports pursuant to
5 EDCR 2.34 as directed by the Discovery Commissioner. Therefore, this issue is not properly before
6 the Court. If the Court chooses to address it, Defendants explained that three (3) of the four (4) prior
7 incident reports were outside the three (3) years requested by Plaintiff and that one (1) of the reports
8 within the three year time period was an exterior lobby in the parking garage area of the property, not
9 remotely close to the subject Grand Lux rotunda area.

11 2. **The Issue of Sixty-Five (65) Allegedly Undisclosed Reports (June 25, 2019 Letter)**
12 **is Not Properly Before the Court**

13 On June 25, 2019, following a brief EDCR 2.34 Conference held earlier on the same date to
14 address the issue of when unredacted reports would be produced, Plaintiff's counsel sent
15 correspondence addressing the status of unredacted reports. (*See Exhibit O.*) In the same
16 corresponded, Plaintiff presented a table of sixty-five (65) incident reports, which Defendants initially
17 presumed related to the previously produced unredacted reports. Since Plaintiff had never previously
18 advised that she was in possession of an additional sixty-five (65) prior incident reports, Defendants
19 did not readily identify this as a new issue. To date, Plaintiff has not addressed this with Defendants
20 pursuant to EDCR 2.34. Had that occurred, Plaintiff's counsel may have realized that his list of sixty-
21 five (65) prior incident reports was by and large a restatement of information already in Plaintiff's
22 possession. The pending motion does not contain an affidavit affirming any attempt to comply with
23 meet and confer requirements as per local rules and as otherwise required by EDCR 2.34, NRC 37,
24 or otherwise.

25
26
27 As noted above, Defendants have reviewed the list of sixty-five (65) reports and identified only
28 two (2) of which relate to incidents occurring within the Venetian casino area level of the property (and

1 that neither are, frankly, factually similar). Thus, Plaintiff's claim that Defendants did not produce
2 sixty-five (65) prior incident reports in the June 25, 2019 was blatantly false.

3 3. **The Issue of Forty-Six (46) Allegedly Undisclosed Reports (July 2, 2019 Motion)**
4 **is Not Properly Before the Court**

5 Since Plaintiff did not comply with EDCR 2.34 requirements prior to filing the instant motion,
6 Defendants have no idea why she pared down the sixty-five (65) allegedly undisclosed prior incident
7 reports to forty-six (46). However, Defendants believe that Plaintiff's counsel reviewed the list of
8 sixty-five (65) and found nineteen (19) duplicates, which were eliminated prior to filing this motion.
9 Had Plaintiff taken a little more time, she would have discovered that of the forty-six (46) alleged
10 undisclosed reports, there were really only five (5) - and of those five (5), only two (2) of which relate
11 to a slip and fall on a foreign substance within the Venetian casino level area of the property.
12

13 Plaintiff acknowledges that she has been exchanging information with counsel in other ongoing
14 cases against Venetian. This is particularly why an EDCR 2.34 conference would have been helpful
15 here, since counsel for the parties could have discussed this alleged new information and potentially
16 resolved the issues. For example, if Plaintiff's counsel had taken time to actually review the evidence
17 before filing this motion, he would likely have discovered that Defendants have already produced forty-
18 one (41) of the forty-six (46) prior incident reports very carefully set forth and numbered in the pending
19 motion. The parties may have discovered that there were actually only five (5) other events not
20 previously disclosed, then could have had a discussion to review them as set forth in Paragraph thirty-
21 two (32) of the above Declaration. Since Plaintiff was in possession of most of the security reports
22 identified on pages 5-8 of the pending motion, it is unclear why she withheld information in the table
23 thereby presenting the illusion of missing information due to non-production. It is rather rich that
24 Plaintiff has accused Defendants of intentionally withholding information from her in their discovery
25 responses while at the same time Plaintiff is withholding information from the Court.
26
27
28

1 The subject incident occurred in the Grand Lux rotunda of the Venetian, which itself is subject
2 to a lot of pedestrian traffic as it is located at the base on the escalators to and from the parking garage
3 and third floor valet, and is also a main artery between the front desk and the guest tower elevator
4 lobby. In his deposition of July 2, 2019, Plaintiff's expert Tom Jennings acknowledged that issues
5 surrounding coefficient of friction can vary depending on factors which include the amount of foot
6 traffic.⁵

7
8 Recall that Mr. Jennings testified on July 2, 2019 that Plaintiff is in possession of **196 prior**
9 **incident reports** related to incidents occurring solely in the Grand Lux rotunda area where the subject
10 incident occurred. Those reports were produced to Mr. Jennings by Plaintiff but never to Defendants.

11 During the March 13, 2019 hearing, the Discovery Commissioner noted the following after
12 ruling that the reports produced to Plaintiff could remain in redacted form:

13
14 *With that said, if the Plaintiff goes through the reports and identifies incidents that*
15 *occurred in substantially the same location as this incident occurred or have*
16 *substantially similar facts as to the incident at issue -- because The Venetian is a huge*
17 *place, and so it needs to be sufficiently identified to be in the same location or under*
18 *similar facts -- then I'd ask that the two of you have a 2.34 conference about disclosing*
19 *the contact information for those particular incidents because I'm sure that's a much*
20 *more narrow scope than all of them. And if you cannot agree following that 2.34*
21 *conference, then bring it back to the Commissioner's attention and we will have a*
22 *hearing regarding the disclosure of the contact and privacy information with regard*
23 *to those individuals.*

24 (See Exhibit K at 12, ln 12-23, emphasis added.) Plaintiff has made no effort to comply with this
25 instruction. She has not limited her request for prior incident reports to the Grand Lux rotunda or to
26 substantially similar facts. She has just unleashed a shotgun blast of prior incidents, relying on sheer
27 numbers (most of them wholly contrived) to bolster her notice argument - which is especially
28 important to her here, since she actually fell on a dry marble floor.

28 ⁵This was Mr. Jennings' explanation of why his coefficient of friction measurements were so
different in the *Smith v. Venetian* litigation in an area less than 100 feet away.

1 At this point, Defendants need some guidance from the Discovery Commissioner as to what
2 exactly Plaintiff is entitled to. Defendants have produced sixty-six (66) redacted prior incident reports
3 related to falls occurring at the Venetian casino level area from November 4, 2013 - November 4, 2016
4 and has agreed to provide two (2) additional reports as noted above. Plaintiff is now apparently
5 expanding it to the entire property, including different floors, different towers, and obviously different
6 circumstances, when her own expert, Mr. Jennings, testified that Venetian flooring in different areas
7 can test differently based on a variety of circumstances.
8

9 Plaintiff's request for prior incident reports should be limited to the area of the subject incident.
10 If there are, in fact, 196 prior incident reports related to the area of Plaintiff's fall for the four-and-a-
11 half preceding years, as Mr. Jennings has both reported and testified, then Plaintiff has sufficient
12 information upon which to make a notice argument - even to support punitive damages. However,
13 obtaining reports from different areas throughout the property, different floors, different circumstances,
14 etc., is a mere fishing expedition.
15

16 4. **Plaintiff's Motion Oddly Fails to Address the 196 Prior Incident Reports Provided**
17 **to Plaintiff Expert Tom Jennings**

18 In addition to Plaintiff withholding information in readily in her possession to create a false
19 impression the Court, as set forth above, there is another glaring omission in the pending motion; *to*
20 *wit*: Plaintiff claims to already have **196 prior incident reports (from January 1, 2012 to August**
21 **5, 2016) which relate solely to the area of the Grand Lux rotunda.** (See Exhibit R at 3.) Mr.
22 Jennings testified in deposition on July 2, 2019 that he received these reports from Plaintiff's counsel
23 in May 2019. However, Mr. Jennings could not produce any information related to these alleged 196
24 prior incident reports at the deposition in response to a subpoena duces tecum.
25

26 D. **Plaintiff is Not Entitled to Subsequent Incident Reports in a Simple Negligence Case**
27 **Arising From an Alleged Temporary Transitory Condition on an Interior Floor**
28

1 Plaintiff is moving to compel Defendants to produce incident reports from January 1, 2000 to
2 the present. (See Exhibit T, Nos. 23-26, 29.) Plaintiff's counsel has made it clear that every document
3 obtained via discovery (or otherwise) in this litigation goes into a repository and is shared with multiple
4 attorneys/firms presently litigating cases against Venetian. Plaintiff now seeks to attain post incident
5 claim information which is clearly not relevant to show notice and would not be admissible at trial.
6

7 In *Schlatter v. Eighth Judicial Dist. Court*, 93 Nev. 189, 561 P.2d 1342 (1977), the trial court
8 issued a pretrial discovery order permitting blanket discovery of the petitioner's medical records and
9 income tax returns where the plaintiff had brought an action for personal injuries. The Nevada
10 Supreme Court limited the discovery to only those matters addressing issues raised in the complaint,
11 stating that the trial court abused its discretion by allowing *carte blanche* discovery of all information
12 contained in those materials without regard to relevancy. That is exactly what Plaintiff is doing here
13 against Defendants.
14

15 This is a simple negligence action, arising from an alleged slip and fall from a temporary
16 transitory condition. (See Exhibit U, *Complaint* (filed 04.12.18); Exhibit V, *First Amended Complaint*
17 (filed 06.28.19).) Plaintiff has not set forth a claim for product defect, for example; yet, that is the kind
18 of discovery course Plaintiff is following here. As noted above, Defendants dispute the existence of
19 a foreign substance on the floor as the cause of Plaintiff's fall on November 4, 2016.
20

21 Plaintiff's demand for subsequent incident reports is based on a claim for punitive damages
22 which the Court allowed Plaintiff to file in an Amended Complaint during a hearing on May 28, 2019,
23 where Plaintiff's counsel made representations related to the 2009 testimony of David Elliott which
24 were later discovered to be unfounded. A motion for reconsideration has been filed and is set to be
25 heard on July 16, 2019. Even if the punitive damages claim remains, it does not entitle Plaintiff to
26 obtain the kind of discovery she is demanding here to address not only an alleged temporary transitory
27 condition, but one where the clear evidence suggests there was no such condition at all. There is
28

1 simply no basis for punitive damages in a simple negligence case arising from a temporary transitory
2 condition.

3 Subsequent incidents have no value or relevance to establish notice. They will do nothing to
4 establish whether there was a foreign substance on the floor causing Plaintiff's fall and, if so,
5 how/when the substance was introduced to the floor, how long it was there, and the procedures
6 followed by Venetian staff to patrol the subject area.

7
8 Plaintiff has cited cases from multiple other jurisdictions to support her motion to compel
9 subsequent incident reports; however, she has quite notably failed to present any cases from Nevada.
10 Also, none of the cases cited by Plaintiff stand for the proposition that the production of subsequent
11 incident reports is required in a simple negligence action arising from an alleged transitory condition.

12 The leading case cited by Plaintiff, *Hilliard v. A. H Robins Co.*, 148 Cal. App. 3d 374, 196 Cal.
13 Rptr. 117 (Ct. App. 1983), is a product defect case. None of the string of cases cited by Plaintiff
14 thereafter support her assertion that she is entitled to subsequent incident reports in a simple negligence
15 case such as this. (See Plaintiff's Motion to Compel at 15-16 (*Schaffer v. Edward D. Jones & Co.*,
16 1996 SD 94, 552 N.W.2d 801 (1996) (securities fraud); *Roth v. Farner-Bocken Co.*, 667 N.W.2d 651
17 (S.D. 2003) (wrongful termination, discrimination); *Boshears v. Saint Gobain Calmar, Inc.*, 272 S.W.3d
18 215, 226 (Mo. Ct. App. 2008) (negligence action arising from explosion with discovery allowed to
19 address subsequent remedial measures); *Bergeson v. Dilworth*, 959 F.2d 245 (10th Cir. 1992) (relates
20 to the admission of post incident letters written by others related to the subject incident relevant to the
21 subject event); *Smith v. Ingersoll-Rand Co.*, 214 F.3d 1235, 1249 (10th Cir. 2000) (product defect case);
22 *GM Corp. v. Mosely*, 213 Ga. App. 875 (Ga. Ct. App. 1994) (product defect case); *Wolfe v.*
23 *McNeil-PPC Inc.*, 773 F. Supp.2d 561 (E.D. Pa. 2011) (product defect case); *Coale v. Dow Chem. Co.*,
24 701 P.2d 885 (Colo.App. 1985) (product defect case); *Palmer v. A.H Robins Co.*, 684 P.2d 187 (Colo.
25
26
27
28

1 1984) (product defect case); *Hoppe v. G.D. Searle & Co.*, 779 F.Supp. 1413 (S.D.N.Y. 1991) (product
2 defect case).)

3 Defendants cannot find one Nevada case supporting Plaintiff's motion to compel them to
4 produce subsequent incident reports in a simple negligence action such as this one. The expert
5 disclosure deadline has passed and Plaintiff has not identified an expert who will present testimony
6 that the flooring at Venetian is defective - nor has Plaintiff even made that allegation. (See Exhibits
7 U and V.) The Discovery Commissioner recently provided the following in a Discovery
8 Commissioner's Report and Recommendation (filed 07.09.19), in the case of *Boucher v. Venetian*
9 *Casino Resort, LLC*, Case No. A-18-773651-C: ***Subsequent incident reports do not need to be***
10 ***provided, because liquid on a walkway is a transient condition.*** (See Exhibit W.)

11
12 There is no basis to support Plaintiff's motion to compel the production of subsequent incident
13 reports in a slip and fall case from a temporary transitory condition based on negligence.

14
15 **COUNTERMOTION TO COMPEL INFORMATION AND DOCUMENTS OF PRIOR**
16 **INCIDENT REPORTS PROVIDED TO PLAINTIFF EXPERT THOMAS JENNINGS AND**
17 **IDENTIFIED IN HIS MAY 30, 2019 REBUTTAL REPORT AND FOR LEAVE TO**
18 **RETAKE THE JENNINGS DEPOSITION TO ADDRESS THE 196 PRIOR CLAIMS**
19 **REFERENCED IN HIS REPORT**

20 Defendants hereby file this countermotion for NRCP 26(c) protective order as to Plaintiff's
21 demand for incident reports from January 1, 2000 to present as set forth in Plaintiff's Sixth Request
22 for Production of Documents and Materials to Defendants served on May 31, 2019. (See Exhibit T,
23 Nos. 23-26, 29.) Defendants further file this countermotion to compel Plaintiff to produce a copy of
24 all incident reports provided to expert Tom Jennings used to support his factual assertion that there
25 have been 196 prior incidents occurring in the Grand Lux rotunda area of the Venetian property from
26 January 1, 2015 to August 5, 2015. Defendants further move the Court to compel Plaintiff to produce
27 all prior incident reports related to the sixty-five (65) matters identified in her correspondence of June
28

25, 2019, or which are otherwise in Plaintiff's possession beyond those produced by Defendants pursuant to NRCP 16.1 or otherwise in response to an NRCP 34 request.

A. **Defendants Move for Protection Under NRCP 26(c) From Plaintiff's Expansive Discovery of Incident Reports from January 1, 2000 to Present**

Rule 26, Nevada Rules of Civil Procedure, governs the scope of discovery, and provides for protection of both parties and other persons, against annoyance, embarrassment, oppression, or undue burden or expense. More specifically, NRCP 26(b)(1) provides as follows:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Rule 26(c), Nevada Rules of Civil Procedure, reads as follows in pertinent part:

Protective Orders. *Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:*

- (1) that the discovery not be had;*
- (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;*
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;*
- (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;*
- (5) that discovery be conducted with no one present except persons designated by the court;*
- (6) that a deposition after being sealed be opened only by order of the court;*
- (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way;*
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.*

1 The objective of discovery rules is to limit discovery to relevant matters, and to prevent "*fishing*
2 *expeditions*" by restricting litigants to discovery that only implicates matters raised by them in the
3 pleadings. (See FED. R. CIV. P. 26(b), Advisory Committee Note, Amendments to Federal Rules
4 of Civil Procedure, at 388-90). Pursuant to the Nevada Rules of Civil Procedure, the court in which
5 the action is pending may make any order/recommendation which justice requires to protect a party
6 so that certain discovery abuses do not occur. (See NRCP 26). The compulsion of production of
7 irrelevant information is an inherently undue burden. (See *Jimenez v. City of Chicago*, 733 F. Supp.
8 2d 1268, 1273 (W.D. Wash. 2010) (citing, *Compaq Computer Corp. v. Packard Bell Elecs.*, 163
9 F.R.D. 329, 335-336 (N.D. Cal. 1995)).

11 In Plaintiff's Request No. 29, she seeks the following information: *Any and all complaints*
12 *submitted by guests or other individuals regarding the safety of marble floors.* (See Exhibit T, No. 29.)
13 This request is preceded by numerous requests for information dating back to January 1, 2000. (See
14 *id.*, Nos. 23-26.) In other words, Plaintiff is seeking anything and everything related to Venetian
15 flooring dating back twenty (20) years. As such, Plaintiff is seeking a massively expanded amount of
16 information beyond her initial request for prior incident reports from November 4, 2013 *to the present*,
17 which Defendants have produced in redacted form up to and including November 4, 2016.
18 (See Exhibit J at 4-5, Request No. 7.) Defendants have always objected to Plaintiff's demand for
19 subsequent incident reports. (See *id.*) Plaintiff's latest request is overly broad in that it is not
20 sufficiently limited in time, limited to the subject fall area, limited to factually similar facts, etc.
21 Plaintiff simply demands anything and everything.

24 Defendants therefore move this Honorable Court for an order protecting it from Plaintiff's
25 ongoing demands for past and present incident reports. Defendants move for the Court to provide the
26 parties with a scope limited to three (3) years preceding the subject incident to the date of the subject
27 incident, occurring in the Grand Lux rotunda. As noted, Plaintiff's expert claims he has seen 196 such
28

1 reports from January 1, 2012 to August 5, 2016. Plaintiff therefore presumably has all the information
2 regarding prior incident she needs to establish notice.

3 **B. Defendants Move to Compel Production of All Prior Incident Reports Produced by**
4 **Plaintiff to Expert Tom Jennings**

5 Defendants have properly requested that Plaintiff produce a copy of the entire file for any
6 experts retained in this matter. (See Exhibit P at 6, no. 18.) Defendants further requested that Mr.
7 Jennings produce a copy of his entire file at the July 2, 2019 deposition. (See Exhibit Q.) Mr. Jennings
8 confirmed in deposition that he received a copy of information from Plaintiff's counsel identifying the
9 196 prior incident reports set forth in his May 30, 2019 rebuttal. Mr. Jennings further stated that he
10 is no longer in possession of this information. Defendants have demanded that this be provided by
11 Plaintiff. It remains a contested issue. Therefore, Defendants hereby move this Honorable Court for
12 an order compelling Plaintiff to produce all information provided to Mr. Jennings to support his
13 conclusion that there were 196 prior incidents occurring in the Grand Lux rotunda area from January
14 1, 2012 to August, 5 2016.⁶

15
16 Defendants further move for an order to compelling Plaintiff to provide all information
17 supporting her claim that there were sixty-five (65) prior incident reports not previously disclosed by
18 Defendants as set forth in her correspondence of June 25, 2019, which would obviously be in addition
19 to the 196 prior incident reports occurring on ly in the Grand Lux area she provided exclusively to Mr.
20 Jennings as related in his May 30, 2019 report and July 2, 2019 deposition. If Plaintiff is indeed
21 already in possession of 260 other prior incident reports (a combined total of the 196 prior incident
22 reports and those identified in Plaintiff's June 25, 2019 correspondence), then Defendants should not
23 have to go through the expense and effort to produce them a second time.
24
25
26

27 ⁶Mr. Jennings could not confirm whether the prior incident reports were in redacted form,
28 whether names of those involved were included, how he knew they were all within the Grand Lux
rotunda area, etc. This is a very critical fact and inexcusable omission by Mr. Jennings and Plaintiff.

1 If the 196 prior incident reports relied upon by Mr. Jennings and his May 30, 2019 rebuttal
2 report are ultimately produced by Plaintiff, Defendants move for leave under NRCP 30(a)(2)(A)(ii)
3 to retake Mr. Jennings' deposition for the purpose of reviewing this information, which should have
4 been available to Defendants at the July 2, 2019 deposition of Mr. Jennings, and that Plaintiff be
5 responsible for all costs associated with that deposition, to be limited in time to one (1) hour.
6

7 **IV.**

8 **CONCLUSION**

9 Based on the foregoing, Defendants hereby respectfully submit that Plaintiff's Motion to
10 Compel Production of Testimony and Documents must be denied. Defendants further hereby move
11 by way of countermotion for a protective order pursuant to NRCP 26(c) related to Plaintiff's request
12 for documents related to incident reports from opening of the Venetian to date.
13

14 Defendants further move by countermotion for an order directing Plaintiff to produce the 196
15 prior incident reports provided to Tom Jennings, as related in his May 30, 2019 report, and for Plaintiff
16 to provide copies of all prior incident reports in her possession not produced by Defendants.

17 DATED this 12 day of July, 2019.

18 **ROYAL & MILES LLP**

19
20 By 

21 Michael A. Royal, Esq. (SBN: 4370)

22 Gregory A. Miles, Esq. (SBN 4336)

23 1522 W. Warm Springs Rd.

24 Henderson, NV 89014

25 *Attorney for Defendants*

26 *LAS VEGAS SANDS, LLC, and*

27 *VENETIAN CASINO RESORT, LLC*
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12 day of July, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL TESTIMONY AND DOCUMENTS AND COUNTERMOTION FOR PROTECTIVE ORDER AS TO PLAINTIFF'S REQUEST FOR PRODUCTION OF INCIDENT REPORTS FROM JANUARY 1, 2000 TO PRESENT, COUNTERMOTION TO COMPEL INFORMATION AND DOCUMENTS OF PRIOR INCIDENT REPORTS PROVIDED TO PLAINTIFF EXPERT THOMAS JENNINGS AND IDENTIFIED IN HIS MAY 30, 2019 REBUTTAL REPORT AND FOR LEAVE TO RETAKE THE JENNINGS DEPOSITION TO ADDRESS THE 196 PRIOR CLAIMS REFERENCED IN HIS REPORT** to be served as follows:

_____ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

_____ to be served via facsimile; and/or

☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

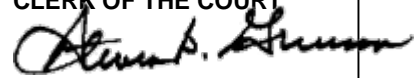
_____ to be hand delivered;

to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
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An employee of ROYAL & MILES LLP

EXHIBIT 5



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15 Attorneys for Plaintiff

11
12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

15 JOYCE SEKERA, an Individual,
16
17 Plaintiff,

CASE NO.: A-18-772761-C
DEPT. NO.: 25

17 v.

18 VENETIAN CASINO RESORT, LLC,
19 d/b/a THE VENETIAN LAS VEGAS, a
20 Nevada Limited Liability Company; LAS
21 VEGAS SANDS, LLC d/b/a THE
22 VENETIAN LAS VEGAS, a Nevada
23 Limited Liability Company; YET
24 UNKNOWN EMPLOYEE; DOES I
25 through X, inclusive,
26
27 Defendants.

**PLAINTIFF'S MOTION FOR LEAVE
TO AMEND THE COMPLAINT**

HEARING REQUESTED

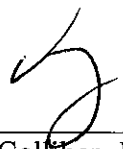
26 Plaintiff, Joyce Sekera, submits her Motion for Leave to Amend Her Complaint (the
27 "Motion") to add a claim for punitive damages. Punitive damages are warranted in this case because
28

1 Venetian consciously disregarded their customers' safety by refusing to fix the known hazard which
2 caused Plaintiff's fall.¹

3 This Motion is based upon the records and pleadings on file herein, the points and authorities
4 attached hereto, and any oral arguments that may be allowed at the hearing of this Motion.

5 DATED this 22nd day of April, 2019

7 THE GALLIHER LAW FIRM

8
9
10 
11 Keith E. Gallher, Jr., Esq.
12 Nevada Bar Number 220
13 1850 E. Sahara Avenue, Ste. 107
14 Las Vegas, Nevada 89104
15 *Attorney for Plaintiff*

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. INTRODUCTION**

18 This is a personal injury case arising out of a slip and fall on the shiny marble floors in the
19 Venetian Casino Resort. On November 4, 2016 Plaintiff sustained serious injuries after she slipped
20 and fell on water on the marble floors of Venetian near the Grand Lux Cafe. During discovery
21 Plaintiff's expert tested the marble floors and determined they were significantly below industry slip
22 resistant standards when wet. Based on the deposition of Venetian's responding EMT/security
23 officer this dangerous condition resulted in 466-700 injury falls in the last five years. Incident
24 reports were taken in all of these cases, however, because Venetian determined the discovery rules
25 and court orders do not apply to them, they only disclosed 64 of these reports. Nonetheless, Plaintiff
26 identified another 4 incident reports disclosed to another slip and fall case, and another 5 incidents
27 from downloading court documents. As discussed below, the Court should grant Plaintiff's Motion

28 ¹ A copy of the proposed Amended Complaint is attached hereto as Exhibit "1."

1 because Venetian consciously disregarded the safety of its customers when it failed to increase the
2 slip resistance of their floors after receiving notice of the hazard from hundreds of customers.

3 **II. FACTUAL BACKGROUND**

4 On November 4, 2016 around 12:30 p.m. Plaintiff Joyce Sekera was walking through
5 Venetian. (*See* Incident Report, attached as Exhibit “3” at 4.) As she passed the Grand Lux Café
6 Restrooms Plaintiff slipped and fell on water on the marble floors. (*Id.*) On the way down Plaintiff
7 struck her left elbow which caused immediate pain and limited her range of motion. (*Id.*) Venetian’s
8 EMT/security officer Joseph Larson (“Mr. Larson”) responded to the fall. (*Id.*) Plaintiff was initially
9 very embarrassed by the fall and did not want to be transported to the hospital. (*Id.*) Mr. Larson put
10 Plaintiff’s left arm in a splint and assisted her to a more private area. (*Id.*) After some discussion Mr.
11 Larson convinced Plaintiff to seek medical attention at Centennial Hills Hospital. (*Id.* at 5.)

12 During discovery Plaintiff requested Venetian produce:

13 True and correct copies of any and all claim forms, legal actions, civil complaints,
14 statements, security reports, computer generated lists, investigative documents or
15 other memoranda which have, as its subject matter, slip and fall causes occurring on
16 marble floors within the subject VENETIAN CASINO RESORT within three years
17 prior to the incident described in Plaintiff’s Complaint [November 4, 2013], to the
18 present [August 15, 2018].

19 (Plaintiff’s Requests for Production, attached as Exhibit “4.”)

20 On October 11, 2018, before receiving Venetian’s answers, Plaintiff took the deposition of
21 Mr. Larson. (Deposition of Joseph Larson, attached as Exhibit “5.”) Mr. Larson testified he had
22 worked at Venetian as an EMT/security officer for nine years. (*Id.* at 20:23-24:1.) Mr. Larson
23 worked eight-hour shifts, five days a week. (*Id.* at 28:12-15.) Mr. Larson testified two or three
24 EMT/security officers work per shift per side (Venetian and Palazzo). (*Id.* at 28:23-35.) During the
25 nine years he worked at Venetian Mr. Larson testified he investigated 100 injury falls on marble
26 floors. (*Id.* at 24:3-27:14.)

Based upon these numbers, Plaintiff estimated she would receive somewhere around 466-700² slip and fall incident reports in response to her request for production. Thus, three months later when Venetian disclosed a mere 64 redacted incident reports, Plaintiff instantly suspected the vast majority were missing. (See e.g. Declaration of Defense Counsel Michael Royal, Esq. in Support of Venetian's Motion for Protective Order, attached as Exhibit "6" at ¶ 17.) To verify Venetian's compliance with the discovery request, the undersigned contacted Mr. Peter Goldstein, Esq., ("Mr. Goldstein") Plaintiff's counsel in another pending premise liability action against Venetian. (See *Carol Smith v. Venetian Casino Resort, LLC*, Case No. A-17-753362-C.) From their discussion, the undersigned and Mr. Goldstein realized Venetian provided them each with reports Venetian did not give the other. (See Plaintiff's Motion for Terminating Sanctions in *Smith v. Venetian*, attached as Exhibit "7.") To determine which reports Venetian failed to provide each Plaintiff, the parties put together a table of all the incident reports disclosed in the two cases. (See Summary of Falls in *Sekera v. Venetian* and *Smith v. Venetian*, attached as Exhibit "8.")³ After comparing the discovery provided, the undersigned and Mr. Goldstein determined Venetian willfully left out four reports in response to Plaintiff's Requests for Production which were disclosed in *Smith v. Venetian*, and willfully left out 35 reports in response to plaintiff's requests for production in *Smith v. Venetian*. (Id.) Additionally, Plaintiff pulled pleadings from five of the 50 or so cases filed against Venetian in the Eighth Judicial District Court in the last five years and discovered none of the incident reports from these slip and falls were disclosed either. (See Complaint and incident report from A-16-

² $100 \times 2 \times 4.2 \times 5/9 = 466$;

$100 \times 3 \times 4.2 \times 5/9 = 700$

Where 100 represents the injury falls Mr. Larson attended to in his 9 years; 2 and 3 represents the number of EMT/security officers on the clock per shift, and 4.2 represents the number of shifts per week (168 hrs per week / 40hr shift), and 5/9 represents 5 of 9 years Mr. Larson worked. (Exhibit "4" at 24:3-27:14 (100 falls); 20:23-24:1 (9 years); 28:23-35 (2-3 EMT/security officers per shift); 28:12-15 (8 hr shifts)).

³ The PDF files of incident reports provided by Venetian in these two pages collectively contain over 1000 pages. Thus, this summary is attached for the Court's convenience. Upon the Court's request Plaintiff can produce the original PDF files.

737866-C; Commissioner’s Decision on Request for Exemption from A-15-728316-C;
Commissioner’s Decision on Request for Exemption from A-15-729566-C; Complaint from A-17-
749115-C; and Complaint from A-17-751293-C, attached collectively as Exhibit “9.”)

On December 4, 2018 Plaintiff’s human factors and safety engineering expert, Thomas Jennings, conducted a formal site inspection and performed a slip resistance test at Venetian where Plaintiff fell. (See Report of Thomas Jennings, attached as Exhibit “10” at 5.) Mr. Jennings’ test revealed the marble floors at Venetian where Plaintiff fell had a wet slip resistance of 0.33. (*Id.* at 5.) The industry standard for wet coefficient of friction is 0.50. (*Id.* at 2.)

III. LEGAL ARGUMENT

A. Standard for a Motion for Leave to Amend

NRCP 15(a) requires leave to amend “be freely given when justice so requires.” NRCP 15(a); *see also Kantor v. Kantor*, 116 Nev. 886, 891, P.3d 825, 828 (2000) (“After a responsive pleading is filed, a party may amend his or her pleading only by leave of court or by written consent of the adverse party, and leave shall be freely given when justice so requires”); *Adamson v. Bowker*, 85 Nev. 115, 121, 450 P.2d 796, 800 (1969) (“Rule 15(a) declares that leave to amend shall be freely given when justice so requires; this mandate is to be heeded”). It is reversible error to deny a motion for leave without a reasonable justification. *Id.* at 120, 450 P.2d at 800.

A party generally must seek leave to amend before the deadline in the scheduling order, unless the movant shows good cause for the untimely filing. *See Nutton v. Sunset Station, Inc.* 131 Nev. Adv. Rep. 34 (Nev. Ct. App. June 11, 2015). Finally, a court should only deny a Motion for Leave to Amend if the opposing party can prove “undue delay, bad faith or dilatory motive on the part of the movant.” *Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105–06, 507 P.2d 138, 139 (1973); *see also Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 970 (Nev. App. 2015); *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962) (“If the underlying

1 facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be
2 afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared
3 reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure
4 to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by
5 virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the
6 rules require, be ‘freely given.’ ”).

7
8 Here, the deadline to amend pleadings is not until May 17, 2019. (*See* Stipulation and Order
9 to Extend Discovery, attached as Exhibit “3” at 2:3-4.) As the deadline to amend pleadings has not
10 passed, the Court must grant Plaintiff’s Motion to amend her Complaint to add punitive damages
11 unless Venetian can prove “undue delay, bad faith or dilatory motive.”

12 **B. Punitive Damages Are Appropriate Because Venetian Consciously Disregarded**
13 **the Known Hazard Which Caused Plaintiff’s Fall**

14 “Punitive damages are designed to punish and deter a defendant’s culpable conduct and act as
15 a means for the community to express outrage and distaste for such conduct.” *Countrywide Home*
16 *Loans, Inc. v. Thitchener*, 124 Nev. 725, 739, 192 P.3d 243 252 (2008); *see also Republic Ins. v.*
17 *Hires*, 107 Nev. 317, 320, 810 P.2d 790, 792 (1991) (“Punitive damages provide a benefit to society
18 by punishing undesirable conduct not punishable by the criminal law”). Punitive damages are a
19 “means of punishing the tortfeasor and deterring the tortfeasor and others from engaging in similar
20 conduct.” *Siggelkow v. Phoenix Ins. Co.*, 109 Nev. 42, 44-45, 846 P.2d 303, 304-05 (1993). “The
21 allowance of punitive damages also provides a benefit to society by punishing undesirable conduct
22 that is not punishable by the criminal law.” *Id.* at 45, 846 P.2d at 305.

23
24 A plaintiff may recover punitive damages when evidence demonstrates the defendant acted
25 with “malice, express or implied.” *Wyeth v. Rowatt*, 126 Nev. Adv. Rep. 44, 244 P.3d 765, 783
26 (2010) *quoting* NRS 42.005(1). “ ‘Malice, express or implied,’ means conduct which is intended to
27
28

1 injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or
2 safety of others.” *Id. quoting* NRS 42.001(3) (emphasis added). “A defendant has a ‘conscious
3 disregard’ of a person’s rights and safety when he or she knows of ‘the probable harmful
4 consequence of a wrongful act and a willful and deliberate failure to act to avoid those
5 consequences.’ ” *Id. quoting* NRS 42.001(1). “In other words, under NRS 42.001(1), to justify
6 punitive damages, the defendant’s conduct must have exceeded ‘mere recklessness or gross
7 negligence.’ ” *Id. quoting Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 742-43, 192
8 P.3d 243, 254-55 (2008).

9
10 In *Maduikie v. Agency Rent-A-Car*, the Nevada Supreme Court held the refusal to repair a
11 known dangerous condition, without more, does not support punitive damages. *Maduikie*, 114 Nev.
12 1, 953, P.2d 24, 26-27 (1998). However; the Court retreated from this approach in *Thitchener* and
13 ruled that the disjunctive “implied malice” prong of the punitive damages statute permits such
14 damages for the conscious disregard of unsafe conditions. *See Thitchener*, 124 Nev. at 739-40 &
15 n.51, 192 P.3d at 253-55 & n.51. The Court defined conscious disregard as the “knowledge of the
16 probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid
17 those consequences.” NRS 42.001(1). In *Thitchener*, the Court allowed punitive damages in a
18 wrongful eviction case, under the implied malice theory, where plaintiffs “presented evidence of
19 multiple ignored warning signs suggesting that Countrywide knew of a potential mix-up, as well as
20 evidence indicating Countrywide continued to proceed with the foreclosure despite knowing of the
21 probable harmful consequences of doing so.” *Thitchener*, 124 Nev. at 744, 192 P.3d at 255.

22
23
24 Other states similarly hold punitive damages are available in cases where the facts show
25 Defendant acted with conscious disregard for the safety of others. For example, in *Nolin v. National*
26 *Convenience Stores* the California Appellate Court upheld a punitive damages award arising out of a
27 a slip and fall incident at a self-serve gas station. *Nolin v. Nat'l Convenience Stores, Inc.*, 95 Cal.
28

1 App. 3d 279, 157 Cal. Rptr. 32 (Ct. App. 1979), In *Nolin*, the gas nozzle, when used, consistently
2 overflowed and spilled gasoline onto the pump and ground. *Id.* at 283, 157 Cal. Rptr. at 34. The
3 manager of a gas station expressed concern about the hazardous condition to the district
4 representative and informed him spilled gasoline caused two customers slip and fall. *Id.* Additional
5 testimony indicated several of the defendant's employees also slipped and fell on spilled gasoline
6 from the same nozzle. *Id.* at 284, 157 Cal. Rptr. at 34. The district representative brushed off
7 manager's concern and failed to remedy the problem. *Id.* Plaintiff then slipped and fell on gasoline
8 spilled from the overflowing nozzle. *Id.* at 282, 157 Cal. Rptr. at 33. At trial the jury awarded
9 plaintiff \$68,101 in compensatory damages and \$50,000 in punitive damages. *Nolin*, 95 Cal. App. 3d
10 at 281, 157 Cal. Rptr. at 33. The court upheld the punitive damages because the defendant "showed
11 a complete lack of concern regarding the harmful potential the probability and likelihood of injury."
12 *Id.* at 288, 157 Cal. Rptr. at 37. *See also Workman v. UA Theatre Circuit, Inc.*, 84 F. Supp. 2d 790,
13 793-94 (S.D. W.Va. 2000)(movie theatre's failure to correct a known hazardous condition – water
14 on floor from leaking roof – where large numbers of the public are business invitees is evidence
15 sufficient to go to trial on punitive damages for defendant's reckless conduct where plaintiff slipped
16 and fell on the water); *Poulter v. Cottrell, Inc.*, 50 F.Supp.3d 953, (N.D. Ill. 2014) (plaintiff who
17 slipped and fell on defendant's equipment could proceed to trial on punitive damages where
18 defendant's actions showed reckless indifference for the safety of others by its inaction in the face of
19 a known danger that was remediable and/or by its cavalier willingness to expose the public to an
20 unreasonable risk of physical injury).

21
22
23
24 Similar to the defendant in *Nolin*, Venetian's conscious disregard of a known hazard also
25 warrants punitive damages. Venetian was aware their marble floors created an unreasonable danger
26 when wet but did nothing to remedy it; the marble floors have a wet slip resistance of 0.33, nearly a
27 third below the industry standard of 0.50. In other words, Venetian's marble floors, when wet are
28

1 nearly 50% more slippery than industry standards. This dangerous condition was not hidden in a
2 corner or difficult to spot; rather, this marble floor is part of a major walkway in the casino directly
3 in front of the restrooms. Venetian could have easily remedied this unsafe condition by applying a
4 slip resistant treatment to their marble floors at a cost of ¢21 to ¢35 per square foot, but they choose
5 not to. (Exhibit "10" at 2.)
6

7 Moreover, Plaintiff's fall was not the first time a patron notified Venetian's management of
8 the unsafe marble floors. Venetian was notified of the problem over and over and over again; their
9 EMT/security officers made a *minimum* 73 incident reports of injury slip and falls on the marble
10 floors in the three years prior to Plaintiff's fall. The Court should note **73 represents a fraction of**
11 **the times customers notified Venetian of the issue.** The EMT/security officer, Mr. Larson testified
12 he investigated 100 injury falls on marble floors in Venetian during the 9 years he worked there. If
13 we do the math and assume Mr. Larson was an average EMT/security officer, there should be
14 somewhere around 840-1260⁴ injury falls on marble floors at Venetian in the last 9 years. Narrowing
15 that down to the scope of Plaintiff's Request for Production (5 years), there should be 466-700⁵ slip
16 and fall incident reports. **In other words, one injury fall occurs on Venetian's marble floors**
17 **every 2.6 – 3.9 days.** However, Because Venetian decided they are the only litigant in the State of
18 Nevada which the discovery rules and court orders do not apply to, Plaintiff could not determine the
19 exact amount of injury falls. Based on Venetian's refusal to disclose all of the incident reports,
20 Plaintiff believes the number of injuries falls on marble floors is closer to 700. In any event, this
21 number is infinitely larger than the two prior slip and falls sufficient to uphold the punitive damages
22 award in *Nolin*.
23
24
25
26

27 ⁴ See *supra*, FN 2.

28 ⁵ See *supra*, FN 2.

1 What happened to Plaintiff is not the result of ordinary negligence, but the result of
2 Venetian's conscious disregard for the safety of Plaintiff and other customers. Customers repeatedly
3 placed Venetian on repeated notice their floors were unreasonably slippery when wet, but Venetian
4 did nothing to correct it. Because Venetian failed to remedy this hazardous condition, Plaintiff fell
5 and sustained serious injuries. Moreover, Venetian's subsequent actions evidence its guilty state of
6 mind. Venetian provided a mere fraction, 15-20%, of the incident reports requested by Plaintiff. It
7 did the same thing in *Smith v. Venetian* and at in doing so violated numerous court orders. After
8 Venetian was caught playing hide-the-ball in both cases, it moved for a protective order on the
9 previously disclosed incident reports. (Defendant's Addendum to Reply To Plaintiff's Opposition to
10 Defendant's Motion for Protective Order, attached as Exhibit "11" at 4:19-23.) There is only one
11 motivation for such deplorable conduct: Venetian intentionally refused to fix a problem that caused
12 numerous injuries and does not want to be held accountable via punitive damages.
13

14
15 Instead coating the marble floors with slip resistant product at a cost of ¢21 to ¢35 per square
16 foot Venetian allowed its guests to get injured year after year. (Exhibit "10" at 2.) Plaintiff's injuries
17 would not have occurred but for Venetian's willful failure to act. 466-700 individuals slipped and
18 fell on the marble floors at Venetian in the last five years, and rather than address this issue,
19 Venetian acts as if nothing is wrong. Apparently, Venetian does not believe a cost of ¢21 to ¢35 per
20 square foot outweighs the benefit of preventing one injury slip and fall every 2.6 – 3.9 days. As
21 such, Venetian's conscious disregard of the inherent danger of their marble floors justifies a claim
22 for punitive damages.
23

24 //

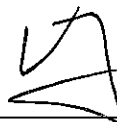
25 //

1 **IV. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests this Court grant her Motion to Amend
3 her Complaint to add punitive damages.

4 DATED this 22nd day of April, 2019

6 THE GALLIHER LAW FIRM

7 

8
9 Keith E. Galliher, Jr., Esq.
10 Nevada Bar Number 220
11 1850 E. Sahara Avenue, Ste. 107
12 Las Vegas, Nevada 89104
13 *Attorney for Plaintiff*

14 THE GALLIHER LAW FIRM
15 1850 E. Sahara Avenue, Suite 107
16 Las Vegas, Nevada 89104
17 702-735-0049 Fax: 702-735-0204
18
19
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT** was served on the 22 day of April, 2019, to the following addressed parties by:

☐ First Class Mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P 5(b)

☒ Facsimile, pursuant to EDCR 7.26 (as amended)

☒ Electronic Mail/Electronic Transmission

☐ Hand Delivered to the addressee(s) indicated

☐ Receipt of Copy on this _____ day of April 2019,

acknowledged by, _____

Michael A. Royal, Esq.
Gregory A. Miles, Esq.
ROYAL & MILES LLP
1522 W. Warm Springs Road
Henderson, Nevada 89014
Attorneys for Defendants



An Employee of THE GALLIHER LAW FIRM

EXHIBIT 6

PAIN INSTITUTE OF NEVADA

7435 W. Azure Drive, Ste 190

Las Vegas, NV 89130

Tel 702-878-8252

Fax 702-878-9096

OFFICE VISIT

Date of Service: July 10, 2019

Patient Name: **Joyce P Sekera**

Patient DOB: 3/22/1956

PAIN COMPLAINTS

Neck

Low back

Mrs Sekera returns for follow up. She saw Dr. Smith yesterday and his notes say she got no relief from the RFA. She tells me this must be an error as she feels about 70% relief in her low back pain. Her memory isn't too good she tells me so can't remember exactly what he told her but that she would need surgery at some point. She has mild pain now, improved range of motion, has less AM pain, and walks longer / farther now.

Activities that aggravate the pain: Sitting and walking for prolonged periods

Activities that relieve the pain: Stretch and exercise

Description of the pain: Ache

Least pain throughout day (0-10): 3/10

Most pain throughout day (0-10): 3/10

Neck stiffness comes/goes and isn't too bothersome. She denies arm symptoms.

Activities that aggravate the pain: Turning to the left

Activities that relieve the pain: Heat

Description of the pain: Dull

Least pain throughout day (0-10): 0/10, no pain.

Most pain throughout day (0-10): 3/10

INTERIM HISTORY

Hospitalizations or ER visits: None

Changes in health: None

Problems with medications: None

Obtaining pain meds from other physicians: Patient denies.

New injuries or MVA's: No

Work Status: Unemployed

Therapy: Pt is not currently receiving physical or chiropractic therapy.

IMAGING/TESTING

MRI brain without contrast: Report dated 12/16/2016

Brain normal for age.

MRI cervical spine without contrast: Report dated 12/21/2016

Mild dextrocurvature with straightening of cervical lordosis.

C3-4: Mild bilateral facet hypertrophy.

C4-5: Mild bilateral facet hypertrophy. Mild left uncovertebral arthropathy.

C5-6: Mild disc protrusion with mild bilateral facet hypertrophy. Bilateral uncovertebral arthropathy with mild left greater than right neural foraminal stenosis.

C6-7: Mild broad disc protrusion AP diameter spinal canal 10 mm.

MRI lumbar spine without contrast: Report dated 12/21/2016

L1-2: Mild disc bulge.

L2-3: Minimal spondylosis and disc bulge.

L3-4: Mild disc bulge with mild facet and ligamentum flavum hypertrophy bilaterally. AP dimension of the spinal canal 11 mm.

L4-5: Left paracentral disc bulge with annular fissuring. Assessment and ligamentum flavum hypertrophy bilaterally. AP dimension spinal canal 11 mm.

L5-S1: Central disc bulge with facet hypertrophy bilaterally. AP dimension spinal canal 10 mm.

X-RAYS cervical spine with Flex/Ext : Report dated 7/31/2018

Cervical spine straightening with mild degenerative disc disease at C5, there is 6 to a lesser degree. C4-C5. Multilevel mild spondylosis. Flexion and extension views demonstrate no ligamentous laxity or instability.

AP and lateral thoracic and lumbar spine with right and left lateral bending: Report dated 7/31/2018

Mild endplate osteophytosis of the mid thoracic and lumbar spine. Equal excursion of right and left lateral bending. No significant scoliosis measured on chronic exam.

X-ray lumbar spine with flexion and extension: Report dated 7/31/2018

Mild degenerative disc disease at L1-L2 mL, 2-3 with multilevel mild spondylosis, most evident at L4-S1. Vascular calcifications noted with slight levoconvex curvature. No evidence of subluxation with flexion extension views.

CT lumbar spine: Without contrast: Report dated 7/31/2018

Mild levoscoliosis of the lumbar spine with anterior osteophyte formation at L1-L3. Moderate facet hypertrophy is seen at right L4-S1 levels and mild facet hypertrophy seen within the remainder of the lumbar spine.

Disc bulges causing mild spinal canal narrowing at L2-L3, L3-L4, and L4-L5 with bilateral lateral recess narrowing at L4-L5.

X-rays lumbar spine: Report dated 8/22/2018

Spurring seen mildly throughout lumbar spine, or focal involving L2-L3. Mild sclerosing of left SI joint.

PROCEDURES

03/09/2017

FJI B L5S1

Post Injection: Complete resolution of usual pain

Sustained: No relief of usual pain.

05/08/2017

MBB B L5S1

Post Injection: Complete Resolution of usual pain.

Sustained: 2 days at 100% relief and pain eventually returned

11/30/2017

RFA B L5S1

Sustained: ROM has improve significantly, 80% resolution of usual pain. Tender ache with right side more than left.

06/20/2019

RFA B L5S1

Sustained: 70% reduction of usual pain with improved ROM again

MEDICAL HISTORY

Diabetes type 2, HbA1C 6.5

Memory impairment from mild TBI

Low back pain

ALLERGIES

No known drug allergies

MEDICATIONS

Metformin 500mg qd

NV & CA PMP REVIEWED 6/5/17-6/5/19 NO MEDS FOUND

SURGICAL HISTORY

No prior surgeries reported.

FAMILY HISTORY

Lung Cancer

SOCIAL HISTORY

Family Status: Single / not married , has children , lives with family

Occupation: Customer service / Unemployed

Habits: The patient smokes rarely. The patient does not drink. The patient denies recreational drug use.

SYSTEMS REVIEW

Constitutional Symptoms: Negative

Visual: Negative

ENT: Negative

Cardiovascular: Negative

Respiratory: Negative

Gastrointestinal: Negative

Genitourinary: Negative

Endocrine: Negative

Musculoskeletal: See HPI

Neurological: Negative

Hematologic: Negative

Integumentary: Negative

Psychological: Negative

VITAL SIGNS

Height: 66.00 Inches

Weight: 205.00 Pounds

Blood Press: 134/78 mmHg

Pulse: 82 BPM

BMI: 33.1

Pain: 03

PHYSICAL EXAMINATION**GENERAL APPEARANCE***Appearance:* Mild discomfort*Transition:* Slight limited*Ambulation:* Patient can ambulate without assistance.*Gait:* Gait is normal**LUMBAR SPINE***Appearance:* Grossly normal. No scars, redness, lesions, swelling or deformities.*Tenderness:* Mild tenderness noted bilateral lower lumbar spine*Trigger Points:* None noted.*Spasm:* Mild spasm is noled in the paravertebral musculature.

Facet Tenderness: Facet joint tenderness is noted.

Spinous Tenderness: Spinous processes are non-tender.

ROM: Full ROM with mild pain on extension only

Straight Leg Raising: Negative at 90 deg bilaterally. Does not produce radicular pain.

PSYCHOLOGICAL EXAMINATION

Orientation: The patient is alert and oriented x3. No sign of impairment.

Mood / Affect: Mood is normal. Full affect.

Thought Process: Intact.

Memory: Intact.

Concentration: Intact.

Suicidal Ideation: None.

DIAGNOSIS

M47.817 LUMBOSACRAL FACET JOINT ARTHROPATHY / SPONDYLOSIS

M51.27 LUMBOSACRAL DISCOPATHY

M62.838 MUSCLE SPASM

PRESCRIPTIONS

None

PLAN

** RETURN: As needed when her pain returns

Katherine D Travnicek MD

Copy to: William Smith MD

Electronically signed by KATHERINE TRAVNICEK Date: 7/10/2019 Time: 11:20:13

EXHIBIT 7

William D. Smith, MD



Street: 3061 S. Maryland
Parkway, Suite 200
City/State/Zip: Las Vegas, NV 89109
Phone: (702) 737-1948
Fax: (702) 737-7195

Patient: Joyce P. Sekera

Patient #: 379090

DOB: 03/22/1956 (63 years)

Date of Encounter: 07/08/2019

History of Present Illness

The patient is a 63 year old female who presents for a follow-up visit. Note for "Follow-up visit": This woman continues to complain of back pain. She had a rhizotomy done I believe a week or two ago. It gave her some temporary improvement, but the pain returned.

Additional reasons for visit:

Transition into care is described as the following:

The patient is transitioning into care and a summary of care was reviewed.

Allergies

No Known Allergies 02/26/2018

No Known Drug Allergies 02/26/2018

Past Medical History

Cervical spondylosis with myelopathy

Other secondary scoliosis, lumbosacral region

Back pain, sacroiliac

Lumbar spondylosis with myelopathy

Family History

Mother: In good health

Father: Deceased

Brother 1: In good health

Sister 1: In good health

Social History

Occupation/Work Status: Retirement (Health Related)

Marital Status: Single

Children: 1.

Living situation: Lives with his mother.

Tobacco use: Current some day smoker; Smokes 1-2 cigarettes a week.

Alcohol Use: No alcohol use

Illicit drug use: Never

HIV risk factors: None

Highest recreation level prior to spine condition; No Response.

Other Problems

Unspecified Diagnosis

Past Surgical

None (02/26/2018)

Diagnostic Studies

Chiropractor
Exercise Therapy
MRI Brain, Brain Stem
MRI, Cervical Spine
MRI, Lumbar Spine
Lumbar Spine X-ray

Vitals

07/08/2019 06:27 AM

Weight: 200 lb Height: 66 in

Body Surface Area: 2 m² Body Mass Index: 32.28 kg/m²

Assessment & Plan

Back pain, sacroiliac 724.6 | M53.3

- Patient Education: Smoking: Ways to Quit: smoking cessation
- **Review of Diagnostic Test**
Comments: Once again, I have reviewed her CT scan. The CT scan not only showed the rotatory scoliosis, but the left L5-S1 facet appears to have a fracture. This certainly is consistent with a work injury.

- How to access health information online
- Instructed / counseled on smoking cessation including modes of cessation. Readiness to quit and motivation assessed.

Lumbar spondylosis with myelopathy 721.42 | M47.16

- Patient Education: Low Back Pain: low back

With this in mind, once again, I do not see how this woman will be able to avoid surgical treatment for this. Rhizotomies in my opinion will give her some temporary relief, but certainly not long-term. Please do not hesitate to call me with questions. I will continue to see this woman as required.

Cc: Farmers W/C (702) 436-1189 (faxed)
Walter M. Kidwell, MD (702) 878-9096
Jeffrey Webb, Dc (702) 457-7083
Katherine Travnick, MD (702) 878-9096
Edson Erkvwater, MD (702) 259-5554
Galliher Law (702) 735-0204



William D. Smith, MD

EXHIBIT 8

Accident Report – Security

Please type or print clearly.

Name: [REDACTED] Age/DOB: [REDACTED]
Home Address: [REDACTED] Social Security #: [REDACTED]
City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]
Home Telephone: [REDACTED] Your Occupation: Teacher
By Whom Employed: Alta Loma School District
Are You a Guest of The Venetian or The Palazzo?: yes Suite #: 11-315
Local Address or Hotel if not a Venetian or Palazzo Guest: [REDACTED]

Please state, in your own words, what you were doing and what happened to cause your accident.

While walking in sneakers my right heel slid on some spilled cider in Main Hallway by a post causing my right foot to slide out from under me - my left knee bent & hit marble floor. The left knee, historically is broken & I had a shot

Date of Accident: 11/24/13 Time of Accident: 1:45pm

Location of Accident (Please be specific): Hallway - main 3rd of the wing

Whom do you consider to blame?: Hotel - ~~not~~ Spilled cider which spilled on the floor

If you consider The Venetian or The Palazzo responsible, please state why: Yes, impossible to see because of the shiny floor until the liquid was encountered.

What, if any, injuries did you sustain?: ② knee - more swollen

What, if any, property damage did you suffer?: no

Number of Guests In Your Party at Time of Accident: 1

Dated this 24th Day of November 2013

Signature of Guest: [REDACTED]

Security Officer: [Signature] TM #: 34137

Guest Checkout Date: _____

if contact-

13110-5588

Acknowledgement of First Aid Assistance & Advice to Seek Medical Care

☒ I (or my guardian) have been informed that only an initial Emergency First Aid treatment and evaluation has been rendered to me by a Venetian or Palazzo Emergency Medical Technician (EMT) who is not a medical doctor and that I (or my guardian) have been advised that I should seek the advice of a physician as soon as possible.

☐ I (or my guardian) refuse treatment by a Venetian or Palazzo Emergency Medical Technician (EMT) and have been advised that I should seek the advice of a physician as soon as possible.

Name (Print): _____

Signature: _____

Address: _____

Date of Birth: _____ Social Security #: _____

Phone: _____

Witness: _____ *Minny daughter*

Witness: _____ *at least 6 other people stopped no names*

Date: *11/29/13* Time: *7:45 pm*

Refused to Sign: _____

Venetian/Palazzo EMT: _____ ID#: *34137*

AGE: *58* Male / Female *C/C: HWT LFT. Kneec.*

Pain -	Hx -	O -
Resp -		P -
BP -	Allergies -	Q -
Eyes -		R -
Lungs -	Meds -	S -
LOC -		T -
Skins -	Last oral intake -	CCFD -
BGL -	Hydration -	MedicWest -
		Transport -

Arrest <input type="checkbox"/> Crime <input type="checkbox"/> Non-Criminal <input checked="" type="checkbox"/>	Venetian Security 3355 LAS VEGAS BLVD., S. LAS VEGAS, NV 89109 CR-1	CASE# 1401V-5339 PAGE 1
OFFENSE(S) PHI - T/M Protected Health Information		
OFFENSE(S) cont'd.		
DATE, TIME AND DAY OF OCCURRENCE 01/26/14 00:28 Sunday TO 01/26/14 01:35 Sunday		DATE AND TIME REPORTED 01/26/14 00:28
LOCATION OF OCCURRENCE 1 Lobby 1		MORE CHARGES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
LOCATION NAME		ESTIMATED LOSS VALUE \$ 0.00
TYPE OF LOCATION		BEAT
SECTOR		MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
PERSONS Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other		
CODE MN	NAME - LAST, FIRST, MIDDLE, SUFFIX 1 OF 1 Klaver, Connie	ADDRESS 1
OCCUPATION	RACE SEX AGE DOB	PHONE 1
DL	STATE SS# INJURIES	ADDRESS 2
ADDRESS 3	PHONE 2	PHONE 3
CODE GU	NAME - LAST, FIRST, MIDDLE, SUFFIX 1 OF 1 [REDACTED]	HOME
OCCUPATION	RACE SEX AGE DOB W F 32 [REDACTED]	CELLULAR [REDACTED]
DL	STATE SS# INJURIES	ADDRESS 2
ADDRESS 3	PHONE 2	PHONE 3
CODE TM	NAME - LAST, FIRST, MIDDLE, SUFFIX 1 OF 1 Barrett, Joe	ADDRESS 1
OCCUPATION Facilities Senior Watch	RACE SEX AGE DOB	PHONE 1
DL	STATE SS# INJURIES	ADDRESS 2
ADDRESS 3	PHONE 2	PHONE 3
CASE SUMMARY / VEHICLE INFORMATION		
SUMMARY Protected Health Information- [REDACTED] of suite 11-115		
VEHICLE USED IN CRIME YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> OF		
LICENSE (NO. AND STATE) YEAR MAKE MODEL BODY TYPE COLOR VIN		
TOW REPORT YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		
GARAGE NAME AND PHONE REGISTERED OWNER R/O ADDRESS		
MORE VEHICLES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
SUSPECT(S)/ ARRESTEE(S) Codes: S = Suspect A = Arrestee D = Detainee SV - Suspect/Victim AV - Arrestee/Victim DV - Detainee/Victim		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1
RACE SEX HT WT HAIR EYE AGE DOB	ADDRESS 2	PHONE 1
OCCUPATION	INJURIES	ADDRESS 3
PHONE 2	PHONE 3	SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>
AKA's	ARRESTEE DISPOSITION	RELEASE LOCATION
ARREST DATE / TIME	DL	STATE
ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING #	WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/>
CITATION #	SS#	CII#
CHARGES		
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1
RACE SEX HT WT HAIR EYE AGE DOB	ADDRESS 2	PHONE 1
OCCUPATION	INJURIES	ADDRESS 3
PHONE 2	PHONE 3	SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>
AKA's	ARRESTEE DISPOSITION	RELEASE LOCATION
ARREST DATE / TIME	DL	STATE
ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING #	WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/>
CITATION #	SS#	CII#
CHARGES		
ADMINISTRATION		
VICTIM DESIRES PROSECUTION YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
FOLLOW-UP YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
COPIES TO: <input type="checkbox"/> PAT. <input type="checkbox"/> DET. <input type="checkbox"/> DA <input type="checkbox"/> COURT <input type="checkbox"/> PROBATION <input type="checkbox"/> VVAP <input type="checkbox"/> OTHER:		
BY OFFICER L. Sivrais 000038582	DATE/TIME 01/26/14 23:57	APPROVED BY Jacob Johnson 000025575
OFFICER	UNIT/SHIFT	ASSIGNED TO
DATE APPROVED 01/27/14		CASE STATUS Closed

Arrest <input type="checkbox"/> Crime <input type="checkbox"/> Non-Criminal <input checked="" type="checkbox"/>	Venetian Security 3355 LAS VEGAS BLVD., S. LAS VEGAS, NV 89109 CR-1	CASE# 1405V-0423 PAGE 1
OFFENSE(S) PHI - T/M Protected Health Information		
OFFENSE(S) cont'd.		
DATE, TIME AND DAY OF OCCURRENCE 05/02/14 16:42 Friday TO 05/02/14 17:07 Friday		DATE AND TIME REPORTED 05/02/14 16:42
LOCATION OF OCCURRENCE 1 Grand Hall, Las Vegas		LOCATION NAME TYPE OF LOCATION BEAT 1 SECTOR
PERSONS Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other		
CODE MN 1 OF 1 NAME - LAST, FIRST, MIDDLE, SUFFIX Arguello, Manny OCCUPATION RACE SEX AGE DOB DL STATE SS# INJURIES	ADDRESS 1 ADDRESS 2 ADDRESS 3 HOME ADDRESS 2 ADDRESS 3	PHONE 1 PHONE 2 PHONE 3 HOME PHONE 2 PHONE 3
CODE GU 1 OF 2 NAME - LAST, FIRST, MIDDLE, SUFFIX OCCUPATION RACE H SEX F AGE 62 DOB DL E05447230 STATE CA SS# INJURIES	ADDRESS 1 ADDRESS 2 ADDRESS 3	PHONE 1 PHONE 2 PHONE 3
CODE GU 2 OF 2 NAME - LAST, FIRST, MIDDLE, SUFFIX OCCUPATION RACE H SEX M AGE 30-35 DOB DL STATE SS# INJURIES	ADDRESS 1 ADDRESS 2 ADDRESS 3	PHONE 1 PHONE 2 PHONE 3
CASE SUMMARY / VEHICLE INFORMATION		
SUMMARY Protected Health Information Registered Guest Suite #30-125		
VEHICLE USED IN CRIME YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> OF LICENSE (NO. AND STATE) YEAR MAKE MODEL BODY TYPE COLOR VIN TOW REPORT YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> GARAGE NAME AND PHONE REGISTERED OWNER R/O ADDRESS		
SUSPECT(S) / ARRESTEE(S) Codes: S = Suspect A = Arrestee D = Detainee SV - Suspect/Victim AV - Arrestee/Victim DV - Detainee/Victim		
CODE OF NAME - LAST, FIRST, MIDDLE, SUFFIX RACE SEX HT WT HAIR EYE AGE DOB OCCUPATION SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/> AKA's DL STATE ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/> BOOKING # WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/> CITATION # SS# CI#	ADDRESS 1 ADDRESS 2 ADDRESS 3 ARRESTEE DISPOSITION RELEASE LOCATION ARREST DATE / TIME	PHONE 1 PHONE 2 PHONE 3
CHARGES		
CODE OF NAME - LAST, FIRST, MIDDLE, SUFFIX RACE SEX HT WT HAIR EYE AGE DOB OCCUPATION SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/> AKA's DL STATE ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/> BOOKING # WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/> CITATION # SS# CI#	ADDRESS 1 ADDRESS 2 ADDRESS 3 ARRESTEE DISPOSITION RELEASE LOCATION ARREST DATE / TIME	PHONE 1 PHONE 2 PHONE 3
CHARGES		
ADMINISTRATION		
VICTIM DESIRES PROSECUTION YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> FOLLOW-UP YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> COPIES TO: <input type="checkbox"/> PAT. <input type="checkbox"/> DET. <input type="checkbox"/> DA <input type="checkbox"/> COURT <input type="checkbox"/> PROBATION <input type="checkbox"/> VWAP <input type="checkbox"/> OTHER:		
BY OFFICER R. Marquez 000016346	DATE/TIME 05/02/14 17:29	APPROVED BY DATE APPROVED 05/02/14
OFFICER	UNIT/SHIFT	ASSIGNED TO CASE STATUS Closed

Arrest <input type="checkbox"/> Crime <input type="checkbox"/> Non-Criminal <input checked="" type="checkbox"/>	Venetian Security 3355 LAS VEGAS BLVD., S. LAS VEGAS, NV 89109	CASE# 1405V-0687 <hr/> PAGE 1
CR-1		
OFFENSE(S) PHI - T/M Protected Health Information		OFFENSE(S) cont'd
DATE, TIME AND DAY OF OCCURRENCE 05/03/14 15:36 Saturday TO 05/03/14 15:57 Saturday		DATE AND TIME REPORTED 05/03/14 15:36
LOCATION OF OCCURRENCE 1 Grand Hall		MORE CHARGES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
LOCATION NAME		ESTIMATED LOSS VALUE \$ 0.00
TYPE OF LOCATION		BEAT 1 SECTOR
PERSONS		
Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE R 1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX [REDACTED]	HOME [REDACTED]
OCCUPATION [REDACTED]	RACE W SEX F AGE 49 DOB [REDACTED]	HOTEL ROOM Luxor,,
DL STATE [REDACTED] SS# [REDACTED] INJURIES	ADDRESS 3	
CODE SO 1 OF 2	NAME - LAST, FIRST, MIDDLE, SUFFIX Harris, Thomas	ADDRESS 1
OCCUPATION Security Officer	RACE [REDACTED] SEX [REDACTED] AGE [REDACTED] DOB [REDACTED]	ADDRESS 2
DL STATE [REDACTED] SS# [REDACTED] INJURIES	ADDRESS 3	
CODE SO 2 OF 2	NAME - LAST, FIRST, MIDDLE, SUFFIX Rescigno, Gary	ADDRESS 1
OCCUPATION Security/EMT	RACE [REDACTED] SEX [REDACTED] AGE [REDACTED] DOB [REDACTED]	ADDRESS 2
DL STATE [REDACTED] SS# [REDACTED] INJURIES	ADDRESS 3	
CASE SUMMARY / VEHICLE INFORMATION		
SUMMARY Protected health information. Non-guest [REDACTED]		
VEHICLE USED IN CRIME YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> OF	LICENSE (NO. AND STATE)	YEAR MAKE MODEL BODY TYPE COLOR VIN
TOW REPORT YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	GARAGE NAME AND PHONE	REGISTERED OWNER R/O ADDRESS
SUSPECT(S) / ARRESTEE(S)		
Codes: S = Suspect A = Arrestee D = Detainee SV - Suspect/Victim AV - Arrestee/Victim DV - Detainee/Victim		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE [REDACTED] OF	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1
RACE [REDACTED] SEX [REDACTED] HT [REDACTED] WT [REDACTED] HAIR [REDACTED] EYE [REDACTED] AGE [REDACTED] DOB [REDACTED]	ADDRESS 2	
OCCUPATION	ADDRESS 3	
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>	AKA's	ARRESTEE DISPOSITION
DL STATE [REDACTED] ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING#	WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/> CITATION#
CHARGES		
CODE [REDACTED] OF	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1
RACE [REDACTED] SEX [REDACTED] HT [REDACTED] WT [REDACTED] HAIR [REDACTED] EYE [REDACTED] AGE [REDACTED] DOB [REDACTED]	ADDRESS 2	
OCCUPATION	ADDRESS 3	
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>	AKA's	ARRESTEE DISPOSITION
DL STATE [REDACTED] ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING#	WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/> CITATION#
CHARGES		
ADMINISTRATION		
VICTIM DESIRES PROSECUTION YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	FOLLOW-UP YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	COPIES TO: <input type="checkbox"/> PAT. <input type="checkbox"/> DET. <input type="checkbox"/> DA <input type="checkbox"/> COURT <input type="checkbox"/> PROBATION <input type="checkbox"/> VWAP <input type="checkbox"/> OTHER:
BY OFFICER T. McFate 000033912	DATE/TIME 05/04/14 13:35	APPROVED BY George Valley 000013454
OFFICER	UNIT/SHIFT	ASSIGNED TO
DATE APPROVED 05/04/14		CASE STATUS Closed

Arrest <input type="checkbox"/> Crime <input type="checkbox"/> Non-Criminal <input checked="" type="checkbox"/>	Venetian Security 3355 LAS VEGAS BLVD., S. LAS VEGAS, NV 89109	CASE# 1405V-5900 PAGE 1
CR-1		
OFFENSE(S) PHI - T/M Protected Health Information		OFFENSE(S) cont'd.
DATE, TIME AND DAY OF OCCURENCE 05/24/14 21:49 Saturday		DATE AND TIME REPORTED 05/24/14 21:49
LOCATION OF OCCURENCE 1 Lobby 1		MORE CHARGES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
LOCATION NAME		ESTIMATED LOSS VALUE \$ 0.00
TYPE OF LOCATION		BEAT SECTOR
PERSONS Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE C	1 OF 1 NAME - LAST, FIRST, MIDDLE, SUFFIX [REDACTED]	ADDRESS 1 PHONE 1
OCCUPATION [REDACTED]	RACE H SEX F AGE 31 DOB [REDACTED]	ADDRESS 2 PHONE 2
DL STATE [REDACTED]	SS# [REDACTED] INJURIES [REDACTED]	ADDRESS 3 PHONE 3
CODE MN	1 OF 2 NAME - LAST, FIRST, MIDDLE, SUFFIX Sidhoo, Karan 22352	ADDRESS 1 PHONE 1
OCCUPATION Front Desk Manager	RACE [REDACTED] SEX [REDACTED] AGE [REDACTED] DOB [REDACTED]	ADDRESS 2 PHONE 2
DL STATE [REDACTED]	SS# [REDACTED] INJURIES [REDACTED]	ADDRESS 3 PHONE 3
CODE MN	2 OF 2 NAME - LAST, FIRST, MIDDLE, SUFFIX Alvonellos, Tim	ADDRESS 1 PHONE 1
OCCUPATION Security Shift Manager	RACE [REDACTED] SEX [REDACTED] AGE [REDACTED] DOB [REDACTED]	ADDRESS 2 PHONE 2
DL STATE [REDACTED]	SS# [REDACTED] INJURIES [REDACTED]	ADDRESS 3 PHONE 3
CASE SUMMARY / VEHICLE INFORMATION		
SUMMARY Protected Health Information. Registered Guest suite 27-124 [REDACTED]		
VEHICLE USED IN CRIME YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> OF [REDACTED]		
LICENSE (NO. AND STATE) [REDACTED] YEAR [REDACTED] MAKE [REDACTED] MODEL [REDACTED] BODY TYPE [REDACTED] COLOR [REDACTED] VIN [REDACTED]		
TOW REPORT YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> GARAGE NAME AND PHONE [REDACTED] REGISTERED OWNER [REDACTED] R/O ADDRESS [REDACTED]		
SUSPECT(S)/ ARRESTEE(S) Codes: S = Suspect A = Arrestee D = Detainee SV - Suspect/Victim AV - Arrestee/Victim DV - Detainee/Victim		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX [REDACTED]	ADDRESS 1 PHONE 1
RACE [REDACTED] SEX [REDACTED] HT [REDACTED] WT [REDACTED] HAIR [REDACTED] EYE [REDACTED] AGE [REDACTED] DOB [REDACTED]	ADDRESS 2 PHONE 2	
OCCUPATION [REDACTED]	INJURIES [REDACTED] ADDRESS 3 PHONE 3	
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/> AKA's [REDACTED]		
ARRESTEE DISPOSITION [REDACTED] RELEASE LOCATION [REDACTED] ARREST DATE / TIME [REDACTED]		
DL STATE [REDACTED]	ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING # [REDACTED]
WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/> CITATION # [REDACTED] SS# [REDACTED] CII# [REDACTED]		
CHARGES [REDACTED]		
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX [REDACTED]	ADDRESS 1 PHONE 1
RACE [REDACTED] SEX [REDACTED] HT [REDACTED] WT [REDACTED] HAIR [REDACTED] EYE [REDACTED] AGE [REDACTED] DOB [REDACTED]	ADDRESS 2 PHONE 2	
OCCUPATION [REDACTED]	INJURIES [REDACTED] ADDRESS 3 PHONE 3	
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/> AKA's [REDACTED]		
ARRESTEE DISPOSITION [REDACTED] RELEASE LOCATION [REDACTED] ARREST DATE / TIME [REDACTED]		
DL STATE [REDACTED]	ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING # [REDACTED]
WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/> CITATION # [REDACTED] SS# [REDACTED] CII# [REDACTED]		
CHARGES [REDACTED]		
ADMINISTRATION		
VICTIM DESIRES PROSECUTION YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
FOLLOW-UP YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
COPIES TO: PAT. <input type="checkbox"/> DET. <input type="checkbox"/> DA <input type="checkbox"/> COURT <input type="checkbox"/> PROBATION <input type="checkbox"/> VVAP <input type="checkbox"/> OTHER:		
BY OFFICER T. Morgan 000038731	DATE/TIME 05/25/14 16:26	APPROVED BY Tim Alvonellos 000003460
OFFICER	UNIT/SHIFT	ASSIGNED TO
DATE APPROVED 05/25/14		CASE STATUS Closed

CR-1 Morga/038731 Entered by: Tim Morgan

APDC (Rev. 08/10/16) Print Date: 10/09/2018

APP132

Arrest <input type="checkbox"/> Crime <input type="checkbox"/> Non-Criminal <input checked="" type="checkbox"/>	Venetian Security 3355 LAS VEGAS BLVD., S. LAS VEGAS, NV 89109	CASE# 1406V-6937 <hr/> PAGE 1
CR-1		
OFFENSE(S) PHI - T/M Protected Health Information		OFFENSE(S) cont'd
DATE, TIME AND DAY OF OCCURRENCE 06/28/14 02:10 Saturday TO 06/28/14 03:20 Saturday		DATE AND TIME REPORTED 06/28/14 02:10
LOCATION OF OCCURRENCE 1 Grand Lux Cafe		MORE CHARGES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
LOCATION NAME		ESTIMATED LOSS VALUE \$ 0.00
TYPE OF LOCATION		BEAT
		SECTOR
PERSONS		
Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE MN	1 OF 2	NAME - LAST, FIRST, MIDDLE, SUFFIX Kluver, Connie
OCCUPATION		ADDRESS 1
RACE	SEX	PHONE 1
AGE	DOB	PHONE 2
DL	STATE	ADDRESS 2
SS#	INJURIES	PHONE 3
CODE MN	2 OF 2	NAME - LAST, FIRST, MIDDLE, SUFFIX Coronado, Nicholas
OCCUPATION		ADDRESS 1
RACE	SEX	PHONE 1
AGE	DOB	PHONE 2
DL	STATE	ADDRESS 2
SS#	INJURIES	PHONE 3
CODE R	1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX Florentino, Andres
OCCUPATION		ADDRESS 1
RACE	SEX	PHONE 1
AGE	DOB	PHONE 2
DL	STATE	ADDRESS 2
SS#	INJURIES	PHONE 3
CASE SUMMARY / VEHICLE INFORMATION		
SUMMARY Protected Health Information-registered Guest of Suite 8-109 slip and fall on a wet floor.		
VEHICLE USED IN CRIME YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> OF LICENSE (NO. AND STATE) YEAR MAKE MODEL BODY TYPE COLOR VIN MORE VEHICLES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
TOWREPORT YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> GARAGE NAME AND PHONE REGISTERED OWNER R/O ADDRESS		
SUSPECT(S)/ ARRESTEE(S)		
Codes: S = Suspect A = Arrestee D = Detainee SV - Suspect/Victim AV - Arrestee/Victim DV - Detainee/Victim		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE	OF	NAME - LAST, FIRST, MIDDLE, SUFFIX
RACE SEX HT WT HAIR EYE AGE DOB		ADDRESS 1
OCCUPATION		PHONE 1
INJURIES		ADDRESS 2
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>		PHONE 2
AKA's		ADDRESS 3
ARRESTEE DISPOSITION		PHONE 3
RELEASE LOCATION		ARREST DATE / TIME
DL	STATE	ARRESTED
YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING #	WARRANT
CITATION #	SS#	CI#
CHARGES		
CODE	OF	NAME - LAST, FIRST, MIDDLE, SUFFIX
RACE SEX HT WT HAIR EYE AGE DOB		ADDRESS 1
OCCUPATION		PHONE 1
INJURIES		ADDRESS 2
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>		PHONE 2
AKA's		ADDRESS 3
ARRESTEE DISPOSITION		PHONE 3
RELEASE LOCATION		ARREST DATE / TIME
DL	STATE	ARRESTED
YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING #	WARRANT
CITATION #	SS#	CI#
CHARGES		
ADMINISTRATION		
VICTIM DESIRES PROSECUTION YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> FOLLOW-UP YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> COPIES TO: <input type="checkbox"/> PAT. <input type="checkbox"/> DET. <input type="checkbox"/> DA <input type="checkbox"/> COURT <input type="checkbox"/> PROBATION <input type="checkbox"/> VVAP <input type="checkbox"/> OTHER:		
BY OFFICER J. Lopez 000031497		DATE/TIME 06/30/14 05:16
OFFICER		APPROVED BY Nicholas Coronado 000032415
UNIT/SHIFT		ASSIGNED TO
		DATE APPROVED 07/01/14
		CASE STATUS Closed

CR-1 Lopez/031497 Entered by: Jose Lopez

APDC (Rev. 08/10/16) Print Date: 10/09/2018

APP133

Arrest <input type="checkbox"/> Crime <input type="checkbox"/> Non-Criminal <input checked="" type="checkbox"/>	Venetian Security 3355 LAS VEGAS BLVD., S. LAS VEGAS, NV 89109	CASE# 1407V-1121 PAGE 1
CR-1		
OFFENSE(S) PHI - T/M Protected Health Information		OFFENSE(S) cont'd.
DATE, TIME AND DAY OF OCCURENCE 07/05/14 18:05 Saturday		DATE AND TIME REPORTED 07/05/14 18:05
LOCATION OF OCCURENCE 1 Lobby 1		MORE CHARGES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
LOCATION NAME		ESTIMATED LOSS VALUE \$ 0.00
TYPE OF LOCATION		BEAT
		SECTOR
PERSONS		
Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE C	1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX [REDACTED]
OCCUPATION		HOME
RACE F	SEX [REDACTED]	AGE [REDACTED]
DOB [REDACTED]	ADDRESS 1	PHONE 1
DL	STATE	SS#
INJURIES		ADDRESS 2
		PHONE 2
CODE MN	1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX Peck, Brittany
OCCUPATION Front Desk Mgr		ADDRESS 1
RACE	SEX	AGE
DOB	ADDRESS 2	PHONE 2
DL	STATE	SS#
INJURIES		ADDRESS 3
		PHONE 3
CODE TM	1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX Pemberton, Sean
OCCUPATION Engineer		ADDRESS 1
RACE	SEX	AGE
DOB	ADDRESS 2	PHONE 2
DL	STATE	SS#
INJURIES		ADDRESS 3
		PHONE 3
CASE SUMMARY / VEHICLE INFORMATION		
SUMMARY Protected Health Information-Pham-Tung		
VEHICLE USED IN CRIME YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> OF		
LICENSE (NO. AND STATE) YEAR MAKE MODEL BODY TYPE COLOR VIN MORE VEHICLES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
TOWREPORT GARAGE NAME AND PHONE REGISTERED OWNER R/O ADDRESS YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		
SUSPECT(S)/ ARRESTEE(S)		
Codes: S = Suspect A = Arrestee D = Detainee SV - Suspect/Victim AV - Arrestee/Victim DV - Detainee/Victim		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE	OF	NAME - LAST, FIRST, MIDDLE, SUFFIX
RACE SEX HT		ADDRESS 1
WT	HAIR	PHONE 1
EYE	AGE	ADDRESS 2
DOB	ADDRESS 3	PHONE 2
OCCUPATION	INJURIES	PHONE 3
SCARS / MARKS / TATTOOS		
YES <input type="checkbox"/> NO <input type="checkbox"/>		
AKA's		
ARRESTEE DISPOSITION		
RELEASE LOCATION		
ARREST DATE / TIME		
DL	STATE	ARRESTED
YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING #	WARRANT
YES <input type="checkbox"/> NO <input type="checkbox"/>		CITATION #
		SS#
		CI#
CHARGES		
CODE	OF	NAME - LAST, FIRST, MIDDLE, SUFFIX
RACE SEX HT		ADDRESS 1
WT	HAIR	PHONE 1
EYE	AGE	ADDRESS 2
DOB	ADDRESS 3	PHONE 2
OCCUPATION	INJURIES	PHONE 3
SCARS / MARKS / TATTOOS		
YES <input type="checkbox"/> NO <input type="checkbox"/>		
AKA's		
ARRESTEE DISPOSITION		
RELEASE LOCATION		
ARREST DATE / TIME		
DL	STATE	ARRESTED
YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING #	WARRANT
YES <input type="checkbox"/> NO <input type="checkbox"/>		CITATION #
		SS#
		CI#
CHARGES		
ADMINISTRATION		
VICTIM DESIRES PROSECUTION YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
FOLLOW-UP YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
COPIES TO: <input type="checkbox"/> PAT. <input type="checkbox"/> DET. <input type="checkbox"/> DA <input type="checkbox"/> COURT <input type="checkbox"/> PROBATION <input type="checkbox"/> VVAP <input type="checkbox"/> OTHER:		
BY OFFICER L. Sivrais 000038582		DATE/TIME 07/05/14 22:52
OFFICER		APPROVED BY Tim Alvonellos 000003460
UNIT/SHIFT		ASSIGNED TO
		DATE APPROVED 07/05/14
		CASE STATUS Closed

CR-1 Sivra/038582 Entered by: Lynn Sivrais

APDC (Rev. 08/10/16) Print Date: 10/09/2018

APP134

Arrest <input type="checkbox"/> Crime <input type="checkbox"/> Non-Criminal <input checked="" type="checkbox"/>	Venetian Security 3355 LAS VEGAS BLVD., S. LAS VEGAS, NV 89109	CASE# 1407V-2272 <hr/> PAGE 1
CR-1		
OFFENSE(S) PHI - T/M Protected Health Information		OFFENSE(S) cont'd.
DATE, TIME AND DAY OF OCCURRENCE 07/10/14 13:09 Thursday TO 07/10/14 13:41 Thursday		DATE AND TIME REPORTED 07/10/14 13:09
LOCATION OF OCCURRENCE 1 Grand Lux Cafe		MORE CHARGES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
LOCATION NAME		ESTIMATED LOSS VALUE \$0.00
TYPE OF LOCATION		BEAT
SECTOR		
PERSONS		
Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE C	1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX [REDACTED]
OCCUPATION	RACE SEX AGE DOB	HOME [REDACTED]
DL STATE	SS# INJURIES	HOTEL, ROOM MGM Grand,
ADDRESS 1		PHONE 1
ADDRESS 2		PHONE 2
ADDRESS 3		PHONE 3
CODE SO	1 OF 2	NAME - LAST, FIRST, MIDDLE, SUFFIX [REDACTED]
OCCUPATION Security Officer / EMT	RACE SEX AGE DOB	ADDRESS 1
DL STATE	SS# INJURIES	ADDRESS 2
ADDRESS 3		PHONE 1
ADDRESS 2		PHONE 2
ADDRESS 3		PHONE 3
CODE SO	2 OF 2	NAME - LAST, FIRST, MIDDLE, SUFFIX [REDACTED]
OCCUPATION Security Officer	RACE SEX AGE DOB	ADDRESS 1
DL STATE	SS# INJURIES	ADDRESS 2
ADDRESS 3		PHONE 1
ADDRESS 2		PHONE 2
ADDRESS 3		PHONE 3
CASE SUMMARY / VEHICLE INFORMATION		
SUMMARY Protected Health Information - Non Guest - [REDACTED]		
VEHICLE USED IN CRIME YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> OF		
LICENSE (NO. AND STATE)		
YEAR MAKE MODEL BODY TYPE COLOR VIN		
MORE VEHICLES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
TOW REPORT YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		
GARAGE NAME AND PHONE		
REGISTERED OWNER		
R/O ADDRESS		
SUSPECT(S) / ARRESTEE(S)		
Codes: S = Suspect A = Arrestee D = Detainee SV - Suspect/Victim AV - Arrestee/Victim DV - Detainee/Victim		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1
RACE SEX HT WT HAIR EYE AGE DOB	ADDRESS 2	
OCCUPATION	ADDRESS 3	
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>	AKA's	ARRESTEE DISPOSITION
DL STATE	ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>	RELEASE LOCATION
BOOKING #	WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/>	ARREST DATE / TIME /
CITATION #		
SS#		
CHARGES		
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1
RACE SEX HT WT HAIR EYE AGE DOB	ADDRESS 2	
OCCUPATION	ADDRESS 3	
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>	AKA's	ARRESTEE DISPOSITION
DL STATE	ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>	RELEASE LOCATION
BOOKING #	WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/>	ARREST DATE / TIME /
CITATION #		
SS#		
CHARGES		
ADMINISTRATION		
VICTIM DESIRES PROSECUTION YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	FOLLOW-UP YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	COPIES TO: <input type="checkbox"/> PAT <input type="checkbox"/> DET. <input type="checkbox"/> DA <input type="checkbox"/> COURT <input type="checkbox"/> PROBATION <input type="checkbox"/> VWA* <input type="checkbox"/> OTHER
BY OFFICER J. Larson 000025821	DATE/TIME 07/10/14 14:55	APPROVED BY Christopher Mosier 000026118
OFFICER	UNIT/SHIFT	ASSIGNED TO
DATE APPROVED 07/11/14		CASE STATUS Closed

Acknowledgement of First Aid Assistance & Advice to Seek Medical Care

☒ I (or my guardian) have been informed that only an initial Emergency First Aid treatment and evaluation has been rendered to me by a Venetian or Palazzo Emergency Medical Technician (EMT) who is not a medical doctor and that I (or my guardian) have been advised that I should seek the advice of a physician as soon as possible.

☐ I (or my guardian) refuse treatment by a Venetian or Palazzo Emergency Medical Technician (EMT) and have been advised that I should seek the advice of a physician as soon as possible.

Name (Print): _____

Signature: X V. V. V.

Address: _____

Date of Birth: _____ Social Security #: N/A

Phone: _____

Witness: _____

Witness: _____

Date: 7-10-2014 Time: 1322

Refused to Sign: _____

Venetian/Palazzo EMT: T. McFATE ID#: 330112

Age: <u> </u> Gender: <u>M/F</u> Chief Complaint: <u>LT KNEE PAIN</u> <input type="checkbox"/> CP <input type="checkbox"/> SOB <input type="checkbox"/> Abd Pain <input type="checkbox"/> Nausea <input type="checkbox"/> Vomiting <input type="checkbox"/> Diarrhea <input type="checkbox"/> Weakness <input type="checkbox"/> Dizziness <input type="checkbox"/> Headache <input type="checkbox"/> Blurred vision Pain Scale: <u>10</u> out of 10 A/O x 4 Trauma: <u>NO</u> <u>NO</u> <u>NO</u> <u>NO</u> <u>NO</u> <u>NO</u> <u>NO</u> <u>NO</u> <u>MEDICAL HISTORY</u>	Medical Hx: 1. <u> </u> 2. <u> </u> 3. <u> </u> 4. <u> </u> 5. <u> </u> 6. <u> </u> 7. <u> </u>	Notes: <u>STP BACKWARDS TO BUTTOKS</u> <u>NEG H/W/S PAIN, OVAL</u> <u>FATIGUE - SLEEPING</u>
Treatment: <input type="checkbox"/> Advice only <input type="checkbox"/> Vital signs taken <input type="checkbox"/> Oxygen: <u> </u> LPM via <u> </u> <input checked="" type="checkbox"/> Other: <u> </u>	Medications: 1. <u> </u> mg 2. <u> </u> mg 3. <u> </u> mg 4. <u> </u> mg 5. <u> </u> mg 6. <u> </u> mg 7. <u> </u> 8. <u> </u> Medication(s) taken today: <u>Y/N</u>	Vital Signs: Temp: <u> </u> F B/P: <u>1</u> / <u>2</u> / <u>3</u> Pulse: <u> </u> Resp: <u> </u> Pupils: <u>(b) PERRL</u> <u>() Unequal</u> <u>()</u> <u>Ro</u> <u>ar</u>
Dispatched: <u>1317</u> hours CCFD: Res/Eng <u>1326</u> Arrival <u>1330</u> MedicWest / AMR: <u>1325</u> Arrival <u>1330</u>	Allergies: <u>(X) NKDA</u> 1. <u> </u> 2. <u> </u> 3. <u> </u> 4. <u> </u>	Cab # <u> </u>

Arrest <input type="checkbox"/> Crime <input type="checkbox"/> Non-Criminal <input checked="" type="checkbox"/>	Venetian Security 3355 LAS VEGAS BLVD., S. LAS VEGAS, NV 89109 CR-1	CASE# 1407V-2142 PAGE 1
OFFENSE(S) PHI - T/M Protected Health Information		OFFENSE(S) cont'd.
DATE, TIME AND DAY OF OCCURENCE 07/10/14 00:30 Thursday TO 07/10/14 01:00 Thursday		DATE AND TIME REPORTED 07/10/14 00:30
LOCATION OF OCCURENCE 1 Grand Hall		MORE CHARGES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
LOCATION NAME		ESTIMATED LOSS VALUE \$ 0.00
TYPE OF LOCATION		BEAT 1
SECTOR		
PERSONS Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE MN 1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX Han, Sang Jeen	ADDRESS 1
OCCUPATION Front desk manager		PHONE 1
RACE SEX AGE DOB	ADDRESS 2	
DL STATE SS# INJURIES	ADDRESS 3	
PHONE 3		
CODE GU 1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX [REDACTED]	HOME
OCCUPATION [REDACTED]		PHONE 1
RACE SEX AGE DOB	ADDRESS 2	
DL STATE SS# INJURIES	ADDRESS 3	
PHONE 3		
CODE MW 1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX Medic West, 706	ADDRESS 1
OCCUPATION		PHONE 1
RACE SEX AGE DOB	ADDRESS 2	
DL STATE SS# INJURIES	ADDRESS 3	
PHONE 3		
CASE SUMMARY / VEHICLE INFORMATION		
SUMMARY Protected Health Information - Reg Guest 6-102 [REDACTED]		
VEHICLE USED IN CRIME YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> OF		
LICENSE (NO. AND STATE)		
YEAR MAKE MODEL BODY TYPE COLOR VIN		
MORE VEHICLES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
TOW REPORT YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		
GARAGE NAME AND PHONE		
REGISTERED OWNER		
R/O ADDRESS		
SUSPECT(S) / ARRESTEE(S) Codes: S = Suspect A = Arrestee D = Detainee SV - Suspect/Victim AV - Arrestee/Victim DV - Detainee/Victim		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1
RACE SEX HT WT HAIR EYE AGE DOB		PHONE 1
OCCUPATION		ADDRESS 2
INJURIES		PHONE 2
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>		ADDRESS 3
AKA's		PHONE 3
ARRESTEE DISPOSITION		
RELEASE LOCATION		
ARREST DATE / TIME 1		
DL STATE	ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING #
WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/>		CITATION #
SS#		CI#
CHARGES		
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1
RACE SEX HT WT HAIR EYE AGE DOB		PHONE 1
OCCUPATION		ADDRESS 2
INJURIES		PHONE 2
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>		ADDRESS 3
AKA's		PHONE 3
ARRESTEE DISPOSITION		
RELEASE LOCATION		
ARREST DATE / TIME 1		
DL STATE	ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>	BOOKING #
WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/>		CITATION #
SS#		CI#
CHARGES		
ADMINISTRATION		
VICTIM DESIRES PROSECUTION YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
FOLLOW-UP YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
COPIES TO: <input type="checkbox"/> PAT. <input type="checkbox"/> DET. <input type="checkbox"/> DA <input type="checkbox"/> COURT <input type="checkbox"/> PROBATION <input type="checkbox"/> WWP <input type="checkbox"/> OTHER:		
BY OFFICER E. Gizelbach 000031617		DATE/TIME 07/10/14 03:26
OFFICER		APPROVED BY Richard Davies 000028074
UNIT/SHIFT		ASSIGNED TO
DATE APPROVED 07/10/14		CASE STATUS Closed

CR-1 Gizel/031617 Entered by: Eve Gizelbach

APDC (Rev. 08/10/16) Print Date: 05/23/2017

APP137

Arrest <input type="checkbox"/> Crime <input type="checkbox"/> Non-Criminal <input checked="" type="checkbox"/>	Venetian Security 3355 LAS VEGAS BLVD., S. LAS VEGAS, NV 89109 CR-1	CASE# 1407V-3057 PAGE 1
OFFENSE(S) PHI - T/M Protected Health Information		
DATE, TIME AND DAY OF OCCURRENCE 07/13/14 08:02 Sunday TO 07/13/14 09:01 Sunday		
LOCATION OF OCCURRENCE 1 Lobby 1		
DATE AND TIME REPORTED 07/13/14 08:02		
MORE CHARGES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
ESTIMATED LOSS VALUE \$0.00		
TYPE OF LOCATION Lobby 1		
BEAT 		
SECTOR 		
PERSONS Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE MN 1 OF 2	NAME - LAST, FIRST, MIDDLE, SUFFIX Johnson 25575, Jacob	ADDRESS 1
OCCUPATION Asst Sec Manager	RACE 	SEX
DL 	STATE 	SS#
INJURIES 		ADDRESS 2
ADDRESS 3 		PHONE 1
CODE MN 2 OF 2	NAME - LAST, FIRST, MIDDLE, SUFFIX Peck, Brittany	ADDRESS 1
OCCUPATION Front Desk Mgr	RACE 	SEX
DL 	STATE 	SS#
INJURIES 		ADDRESS 2
ADDRESS 3 		PHONE 1
CODE SO 1 OF 1	NAME - LAST, FIRST, MIDDLE, SUFFIX McFate, Tyler	ADDRESS 1
OCCUPATION EMT Security Officer	RACE 	SEX
DL 	STATE 	SS#
INJURIES 		ADDRESS 2
ADDRESS 3 		PHONE 1
ADDRESS 3 		PHONE 2
ADDRESS 3 		PHONE 3
CASE SUMMARY / VEHICLE INFORMATION		
SUMMARY Protected Health Information. Guest of suite		
VEHICLE USED IN CRIME YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> OF <input type="checkbox"/>		
LICENSE (NO. AND STATE) 		
YEAR 		
MAKE 		
MODEL 		
BODY TYPE 		
COLOR 		
VIN 		
MORE VEHICLES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
TOW REPORT YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		
GARAGE NAME AND PHONE 		
REGISTERED OWNER 		
R/O ADDRESS 		
SUSPECT(S) / ARRESTEE(S) Codes: S = Suspect A = Arrestee D = Detainee SV - Suspect/Victim AV - Arrestee/Victim DV - Detainee/Victim		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE 	NAME - LAST, FIRST, MIDDLE, SUFFIX 	ADDRESS 1
OF 		
RACE 	SEX 	HT
WT 	HAIR 	EYE
AGE 	DOB 	ADDRESS 2
OCCUPATION 		ADDRESS 3
INJURIES 		PHONE 1
ADDRESS 3 		PHONE 2
ADDRESS 3 		PHONE 3
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>		
AKA's 		
ARRESTEE DISPOSITION 		
RELEASE LOCATION 		
ARREST DATE / TIME 		
DL 	STATE 	ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>
BOOKING # 		WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/>
CITATION # 		SS#
CHARGES 		CI#
CODE 	NAME - LAST, FIRST, MIDDLE, SUFFIX 	ADDRESS 1
OF 		
RACE 	SEX 	HT
WT 	HAIR 	EYE
AGE 	DOB 	ADDRESS 2
OCCUPATION 		ADDRESS 3
INJURIES 		PHONE 1
ADDRESS 3 		PHONE 2
ADDRESS 3 		PHONE 3
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>		
AKA's 		
ARRESTEE DISPOSITION 		
RELEASE LOCATION 		
ARREST DATE / TIME 		
DL 	STATE 	ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>
BOOKING # 		WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/>
CITATION # 		SS#
CHARGES 		CI#
ADMINISTRATION		
VICTIM DESIRES PROSECUTION YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
FOLLOW-UP YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
COPIES TO: <input type="checkbox"/> PAT. <input type="checkbox"/> DET. <input type="checkbox"/> DA <input type="checkbox"/> COURT <input type="checkbox"/> PROBATION <input type="checkbox"/> WAP <input type="checkbox"/> OTHER:		
BY OFFICER G. Rescigno 000034137	DATE/TIME 07/13/14 14:59	APPROVED BY Jacob Johnson 000025575
OFFICER 	UNIT/SHIFT 	ASSIGNED TO
		DATE APPROVED 07/14/14
		CASE STATUS Closed

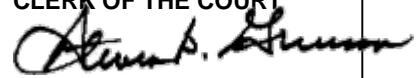
EXHIBIT 9

Arrest <input type="checkbox"/> Crime <input type="checkbox"/> Non-Criminal <input checked="" type="checkbox"/>	Venetian Security 3355 LAS VEGAS BLVD., S. LAS VEGAS, NV 89109 CR-1 <i>RC 00008621</i>	CASE# 1611V-0680 PAGE 1
OFFENSE(S) Protected Health Information		
OFFENSE(S) cont'd		
DATE, TIME AND DAY OF OCCURRENCE 11/04/16 12:39 Friday TO 11/04/16 13:31 Friday		DATE AND TIME REPORTED 11/04/16 12:39
LOCATION OF OCCURRENCE Outside Grand Lux Cafe Restrooms		MORE CHARGES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
ESTIMATED LOSS VALUE \$ 0.00		TYPE OF LOCATION BEAT SECTOR
PERSONS Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE C	NAME - LAST, FIRST, MIDDLE, SUFFIX 1 of 1 Sekera, Joyce	HOME 7840 Nesting Pine Place, Las Vegas, NV 89143
OCCUPATION Las Vegas Tours Employee	RACE W SEX F AGE 60 DOB 03/22/1956	CELLULAR (702) 467-5457
DL STATE SS# INJURIES	ADDRESS 1 ADDRESS 2 ADDRESS 3	PHONE 1 PHONE 2 PHONE 3
CODE TM	NAME - LAST, FIRST, MIDDLE, SUFFIX 1 of 1 Chavez, Rafael	ADDRESS 1 ADDRESS 2 ADDRESS 3
OCCUPATION Facilities	RACE M SEX M AGE DOB	PHONE 1 PHONE 2 PHONE 3
DL STATE SS# INJURIES	ADDRESS 1 ADDRESS 2 ADDRESS 3	PHONE 1 PHONE 2 PHONE 3
CASE SUMMARY / VEHICLE INFORMATION		
SUMMARY Protected Health Information - Grand Canal Shoppes Employee - Sekera, Joyce		
VEHICLE USED IN CRIME YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> OF TOW REPORT YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		
LICENSE (NO AND STATE) YEAR MAKE MODEL BODY TYPE COLOR VIN REGISTERED OWNER R/O ADDRESS		
MORE VEHICLES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
SUSPECT(S)/ ARRESTEE(S) Codes: S = Suspect A = Arrestee D = Detainee SV - Suspect/Victim AV - Arrestee/Victim DV - Detainee/Victim		
MORE NAMES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX 1 of 1	ADDRESS 1 ADDRESS 2 ADDRESS 3
RACE SEX HT WT HAIR EYE AGE DOB	OCCUPATION INJURIES	PHONE 1 PHONE 2 PHONE 3
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>	AKA's ARRESTEE DISPOSITION RELEASE LOCATION ARREST DATE / TIME	DL STATE ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>
CHARGES	BOOKING # WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/>	CITATION # SS# C/M
CODE OF	NAME - LAST, FIRST, MIDDLE, SUFFIX 1 of 1	ADDRESS 1 ADDRESS 2 ADDRESS 3
RACE SEX HT WT HAIR EYE AGE DOB	OCCUPATION INJURIES	PHONE 1 PHONE 2 PHONE 3
SCARS / MARKS / TATTOOS YES <input type="checkbox"/> NO <input type="checkbox"/>	AKA's ARRESTEE DISPOSITION RELEASE LOCATION ARREST DATE / TIME	DL STATE ARRESTED YES <input type="checkbox"/> NO <input type="checkbox"/>
CHARGES	BOOKING # WARRANT YES <input type="checkbox"/> NO <input type="checkbox"/>	CITATION # SS# C/M
ADMINISTRATION		
VICTIM DESIRES PROSECUTION YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
FOLLOW-UP YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
COPIES TO: <input type="checkbox"/> PAT. <input type="checkbox"/> DET <input type="checkbox"/> DA <input type="checkbox"/> COURT <input type="checkbox"/> PROBATION <input type="checkbox"/> VWAP <input type="checkbox"/> OTHER:		
BY OFFICER J. Larson 000025821	DATE/TIME 11/04/16 15:30	APPROVED BY Michael Dean 000041303
OFFICER	UNIT/SHIFT	DATE APPROVED 11/05/16
		CASE STATUS Closed

CR-1 Larso/025821 Entered by: Joseph Larson

APDC (Rev. 12/13/13) Print Date: 11/18/2016

EXHIBIT 10



OPP
THE GALLIHER LAW FIRM
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

CASE NO.: A-18-772761-C
DEPT. NO.: 25

v.

VENETIAN CASINO RESORT, LLC, d/b/a
THE VENETIAN LAS VEGAS, a Nevada
Limited Liability Company; LAS VEGAS
SANDS, LLC d/b/a THE VENETIAN LAS
VEGAS, a Nevada Limited Liability
Company; YET UNKNOWN EMPLOYEE;
DOES I through X, inclusive,

Defendants.

Before the Discovery Commissioner

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER

In it's Motion for Protective Order, The Venetian represents that 660 pages of redacted

documents produced in response to Plaintiff's Request For Production Of Documents No. 7 references 64 incident reports showing slip and falls occurring on the marble flooring within The Venetian Hotel and Casino presumably during the 3 years prior to the November 4, 2016 slip and fall up to the present date. The Venetian then argues that this production is sufficient and that Plaintiff is not entitled to discover their names, addresses, and contact information of those individuals who suffered slip and falls events at the Venetian on marble floors.

In connection with its Motion, The Venetians cites authority which is not relevant to the present dispute. Reference to case authority involving social security numbers has nothing to do with the issue presented to the Discovery Commissioner as The Venetian incident reports do not contain this information. **Exhibit 1.** Further, Plaintiff has no interest in receiving this information.

On the contrary, Plaintiff has requested complete, unredacted incident reports which contain contact information for those individuals injured in slip and falls at The Venetian during the relevant time frames. This would include full name, address, telephone number, and names of witnesses who witnessed the slip and fall, if any. The reports should also describe whether or not the individual was injured and, if so, the nature of the injury suffered.¹

The Venetians cites alleged "privacy concerns" in support of its attempt to keep this information from Plaintiff. It has no standing to even raise this argument. On the contrary, the individuals who previously experienced slip and falls at the Venetian are witnesses to the conditions of the marble floor at The Venetian and the fact that this flooring is very unsafe when topped with water or some other liquid substance.

To be clear, a slip and fall at The Venetian is not an isolated event. Rather, there is a systematic series of slip and falls created by an unsafe slippery marble floor which become very

¹ The Commissioner has heard and decided this issue before, Cohen v. Venetian, Case No.: A-17-761036-C. **Exhibit 4.**

1 dangerous when covered with any type of liquid substance, including water.

2
3 In support of the Plaintiff's allegations that this is a continuing and well known hazard with
4 respect to The Venetian, Plaintiff deposed Joseph Larson, a present Venetian employee who
5 describes himself as a EMT/Security Officer. During his deposition, Mr. Larson testified to facts
6 which make The Venetian's production of only 64 incident reports extremely suspect. Attached
7 hereto are the relevant portions of the transcript of Mr. Larson's deposition for the Commissioner's
8 review and information. **Exhibit 2.** The Commissioner's attention is directed to page 24-25 line 8
9 and page 27 line 10-12, where Mr. Larson estimates that he investigated approximately 100 injury
10 falls as an EMT/Security Officer with respect to the marble flooring outside the 7000 suites at The
11 Venetian Hotel and Casino during the 9 years he has been employed there.

12
13 At page 28 of his deposition, Mr. Larson testifies that there are two or three EMT/Security
14 Officers per shift per side (Venetian and Palazzo). If we do the math, and assume Mr. Larson was
15 an average EMT/Security Officer, there would be somewhere in the neighborhood of 600-1000
16 injury falls occurring at the marble floors at the Venetian in a period of 9 years. If we narrow that 9
17 year time frame to the scope of the Plaintiff's Request for Production, (5 years) there should be
18 approximately 300-500 incident reports documenting injury slip and falls at The Venetian on it's
19 marble flooring outside of its 7000 suites during the relevant time frames requested by the Plaintiff.
20 Using these numbers, The Venetian has produced approximately 15-20% of the incident reports
21 requested by the Plaintiff.

22
23 To reiterate, the Plaintiff has no interest in social security numbers. However, information
24 enabling Plaintiff's counsel to contact fall victims as witnesses in this case inclusive of full name,
25 address, telephone number, and identification of witnesses to theses injury falls is clearly designed to
26 lead to discoverable evidence in this case.
27
28

1 Prior and subsequent falls on the marble floors at The Venetian are relevant in this case to show
2 notice on its part that its marble floors, when wet, are dangerous slip hazardous.² This is
3 particularly true when The Venetian locates a number of business which sell liquids and food for
4 takeout adjacent to these marble floors.³

6 The Plaintiff retained Tom Jennings, a court-qualified expert to test the marble flooring at
7 The Venetian to determine whether or not this flooring is dangerous when wet. Attached is a copy
8 of Mr. Jennings' preliminary report which it documents his visit, his measurements, and the reasons
9 why The Venetian marble flooring is a continuous and well known slip hazard to The Venetian
10 management. **Exhibit 3.** In this report, Mr. Jennings references the presence of businesses located
11 adjacent to this marble flooring and further points out that the mode of operation selected by The
12 Venetian has resulted in the likelihood of many slip and fall injury events. This information is
13 corroborated by the testimony of Mr. Larson and the common sense mathematics addressed in this
14 Opposition.

16 Lastly, The Venetian has cited no relevant case authority which should require the signing of
17 any type of confidentiality agreement restricting the use of the requested information in this case,
18 only. This request is nothing more than an attempt by The Venetian to suppress this potentially
19 explosive information and shield it from other attorneys who represent similar victims in similar
20 circumstances.

22 ///

25 ² In *Galloway v. McDonalds Restaurant of Nevada, Inc.*, 102 Nev. 534, 728 P.2d 826 (1986), the Court stated evidence of
26 prior incidents is admissible to show the Defendant was on notice of dangerous conditions and likewise, the lack of prior
incidents can be argued by the Defendant that the condition was safe, or Defendant had no knowledge of it.

27 ³ Plaintiff intends to request a "mode of operation" jury instruction at trial. The Venetian has no less than 9 separate
28 business locations in close proximity to it's marble floors which sell food and drink, including water for take out by
customers. *Sprague v. Lucky Stores Inc.*, 849 P.2d 320, 109 Nev. 247 (1993). See *FGA, Inc. v. Giglio*, 278 P.3d 480
(Nev. 2012).

1 To its credit, The Venetian has not made any argument that the information sought is not
2 reasonably calculated to lead to discoverable evidence. While The Venetian may seek to limit
3 and/or exclude this evidence at trial, that is a decision for the trial court. Since the prior and
4 subsequent falls show actual and/or constructive notice on the part of The Venetian, it seems fairly
5 obvious to the Plaintiff that the attempts by The Venetian to suppress this information and exclude it
6 from evidence at trial will not be successful. These slip and falls are all substantially similar.⁴
7

8 In any event, the showing made by The Venetian with respect to its Motion for Protective
9 Order is insufficient to justify a report and recommendation that excludes relevant contact
10 information with respect to victims of slip and fall at The Venetian, and imposes a confidentiality
11 agreement as a condition of disclosing information which should have been disclosed upfront in
12 response to Plaintiff's Request for Production No. 7.
13

14 For these reasons, The Venetian's Motion must be denied. The Venetian should be ordered
15 to promptly supply the requested unredacted reports to the Plaintiff. Moreover, the Plaintiff should
16 not be required to sign any type of confidentiality agreement as a condition of receipt of what she
17 has requested from The Venetian in this case. If there are any documents produced by The Venetian
18 which contain social security numbers, Plaintiff has no problem with their deletion from the
19 production.
20

21 Lastly, the disclosure of 64 prior incident reports appears to be a relatively small fraction of
22 the incident report actually generated in slip and fall cases at the Venetian as requested by the
23 Plaintiff per Mr. Larson's sworn testimony. Accordingly, Plaintiff also request that the Discovery
24 Commissioner specifically order The Venetian to produce all the requested incident reports rather
25

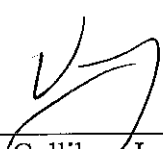
26 ///

27
28 ⁴ *Jaquillard v. Home Depot USA, Inc.*, 2012 U.S. Dist. Lexis 19898, 2012 WL527421 (D.GA. 2012).

than a relatively small percentage of them within the next 30 days.

DATED this 13th day of February, 2019.

THE GALLIHER LAW FIRM



Keith E. Galliher, Jr., Esq.
Nevada Bar No. 220
1850 E. Sahara Avenue, Suite 107
Las Vegas, Nevada 89104
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER** was serve on the 13th day of February, 2019, to the following addressed parties by:

____ First Class Mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P 5(b)

____ Facsimile, pursuant to EDCR 7.26 (as amended)

☒ Electronic Mail/Electronic Transmission

____ Hand Delivered to the addressee(s) indicated

____ Receipt of Copy on this ____ day of February, 2019,

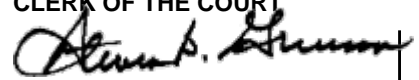
acknowledged by, _____

Michael A. Royal, Esq.
Gregory A. Miles, Esq.
ROYAL & MILES LLP
1522 W. Warm Springs Road
Henderson, Nevada 89014
Attorneys for Defendants



An Employee of THE GALLIHER LAW FIRM

EXHIBIT 11



ROPP

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

ROYAL & MILES LLP

1522 West Warm Springs Road

Henderson Nevada 89014

Tel: (702) 471-6777

Fax: (702) 531-6777

Email: mroyal@royalmilesllp.com

Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

Plaintiff,

v.

VENETIAN CASINO RESORT, LLC, d/b/a
THE VENETIAN LAS VEGAS, a Nevada
Limited Liability Company; LAS VEGAS
SANDS, LLC d/b/a THE VENETIAN LAS
VEGAS, a Nevada Limited Liability Company;
YET UNKNOWN EMPLOYEE; DOES I
through X, inclusive,

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

Before the Discovery Commissioner

Hearing Date: 03/13/19

Hearing Time: 9:00 am

**ADDENDUM TO REPLY TO PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR PROTECTIVE ORDER**

COMES NOW, Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS
SANDS, LLC (collectively referenced herein as *Venetian*), by and through their counsel, ROYAL &
MILES LLP, and hereby files this ADDENDUM TO REPLY TO PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR PROTECTIVE ORDER.

ROYAL & MILES LLP
1522 W Warm Springs Road
Henderson NV 89014
Tel: (702) 471-6777 ♦ Fax: (702) 531-6777

1 This Reply is based on the pleadings and papers on file, the memorandum of points and
2 authorities contained herein, the affidavit of counsel, the attached exhibits and any argument permitted
3 by this Court at the time set for hearing.

4 DATED this 4 day of March, 2019.

5 ROYAL & MILES LLP

6 By 

7 MICHAEL A. ROYAL, ESQ.

8 Nevada Bar No. 4370

9 1522 W. Warm Springs Rd.

10 Henderson, NV 89014

11 Attorney for Defendants

12 VENETIAN CASINO RESORT, LLC and

13 LAS VEGAS SANDS, LLC

14 **DECLARATION OF MICHAEL A. ROYAL, ESQ.**

15 STATE OF NEVADA)
16) ss.
17 COUNTY OF CLARK)

18 MICHAEL A. ROYAL, ESQ., being first duly sworn, under oath deposes and states:

19 1. I am an attorney duly licensed to practice law in the State of Nevada and I am counsel
20 for Venetian in connection with the above-captioned matter. I have personal knowledge of the
21 following facts and if called upon could competently testify to such facts.

22 2. That today I became aware of a motion pending in the matter of *Carol Smith v. Venetian*
23 *Casino Resort, LLC*, Case No. A-17-753362-C, entitled *Plaintiff's Notice of Motion and Motion for*
24 *Terminating Sanctions, Monetary Sanctions for Wilful Suppression of Evidence Pursuant to NRCP*
25 *Rule 37*, filed by Peter Goldstein, Esq. (exhibits omitted), attached hereto as Reply Exhibit B.

26 3. On pages 4-5 of the aforementioned motion filed by Mr. Goldstein, he writes the
27 following:
28

1 Keith Gallagher, Esq. represents the Plaintiff in the pending case Joyce Sekera v.
2 Venetian Casino Resort, case no. A-18-772761-C, another slip and fall case against
3 the same Defendant (filed subsequent to Smith v Venetian). **Mr. Gallagher and Mr.**
4 **Goldstein discussed their respective cases and what the Venetian produced with**
5 **regard to prior slip and fall incident reports on February 7, 2019. Mr. Goldstein**
6 **learned that Venetian produced twice as many prior incident reports to Mr. Gallagher**
7 **in Sekera than what was produced in Smith. Mr. Gallagher produced those prior**
8 **reports to Mr. Goldstein's office on February 7, 2019. They contain 660 pages of**
9 **PDF documents of prior slip and falls on wet marble floors. Moreover, Mr. Gallagher**
10 **took the deposition of a former EMT/security officer whose testimony suggested that**
11 **there may have been as many as 300 to 400 falls on marble floors at the Venetian**
12 **within the last eight years. Goldstein Decl. at 5, 6, 7, 8.**

13 **After comparing and compiling the prior incident reports from both cases it was**
14 **clear that Venetian produced 35 additional incident reports to Keith Gallaher in**
15 **Joyce Sekera v. Venetian of slip and falls on marble floors in both Lobby 1 and other**
16 **lobbies with marble flooring on the property from 2013-2016 that were produced by**
17 **the Venetian yet were not produced in this case. See EXHIBIT 4 (list of incident**
18 **reports produced in Sekera case containing 61 prior reports in a spreadsheet with a**
19 **column indicating which incidents were not produced in Smith). More than half of the**
20 **Sekera reports were intentionally omitted and not produced in the Smith case.**

21 (See Exhibit B at 4, ln 22-28; 5, ln 1-10, emphasis added.)

22 4. In the *Declaration of Peter Goldstein*, dated February 13, 2019, attached as Reply

23 Exhibit B, Mr. Goldstein writes the following in pertinent part:

24 *Mr. Keith Gallagher provided additional incident reports of slip and falls on marble*
25 *floors on property, produced by the Venetian in the case Sekera v. Venetian and that*
26 *he "can provide PDF copies of all incident reports disclosed in . . . Sekera v. Venetian.*

27 (See *id.* at 10, ln 21-25, emphasis added.)

28 5. In the *Smith* case referenced in Paragraph 2, the Discovery Commissioner issued a
Report and Recommendation regarding the production of prior incident reports on July 2, 2018 which
provides the following in pertinent part:

COMMISSIONER RECOMMENDED, Defendant Venetian Casino Resort LLC's
Motion for Protective Order is GRANTED; re: transitory condition of the floor;
counsel can have the number of falls in the lobbies . . . but REDACT the names; after
reviewing information, if there is a specific fall event that happened in the general
area of Plaintiff's fall, have a 2.34 conference with Defense counsel and bring back
to Commissioner's attention.

1 (See Reply Exhibit C, *Smith, supra*, Case No. A-17-753362-C, *Discovery Commissioner's Report and*
2 *Recommendations* (dated July 2, 2018), emphasis added.) Therefore, the Discovery Commissioner has
3 previously not only held in a similar Venetian litigated matter that information from prior incident
4 reports qualifies for protection under NRCP 26(c), but also that contact information of prior guests is
5 likewise to be protected, to be withheld from Plaintiff absent a showing of relevance and need based
6 on similarities of circumstances on a case by case basis. (*See id.*)
7

8 6. It is apparent that, despite the presence of a protective order in the *Carol Smith v.*
9 *Venetian* litigation, that Plaintiff's counsel, Peter Goldstein, Esq., nevertheless shared information with
10 Mr. Gallagher, Plaintiff's counsel in the instant matter. It is also apparent that Mr. Gallagher not only
11 shared testimony of former Venetian EMT, Joseph Larson, to Plaintiff's counsel in the matter of *Cohen*
12 *v. Venetian Casino Resort, LLC*, Case No. A-17-761036-C, but that he did the same in the *Smith* matter
13 according to the motion filed by Mr. Goldstein. (*See Reply Exhibit B at 5, ln 1-3.*)
14

15 7. The above latest information further underscores Defendants' concern that Plaintiff has
16 every intention of obtaining the private information of prior Venetian guests and distributing
17 throughout the legal community, thereby subjecting prior guests to untold contact from any number
18 of other unknown persons.

19 8. While Venetian initially agreed with Plaintiff's counsel to submit unredacted
20 information pursuant to a Protective Order, it now withdraws that offer and moves the Court to order
21 an NRCP 26(c) Protective Order related to the approximate 650 pages of redacted materials previously
22 produced to Plaintiff in this matter.
23

24 ///

25 ///

26 ///

1 9. I further declare that the exhibits identified in the Addendum to Reply to Plaintiff's
2 Opposition to Defendants' Motion For Protective Order, as outlined below, are true and correct copies
3 of documents produced in or otherwise related to this matter.

4 Executed on 6 day of March, 2019.

5
6 
7 MICHAEL A. ROYAL, ESQ.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 Based on the latest information obtained by Defendants regarding the relationship between Mr.
10 Gallagher and Mr. Goldstein, in addition to that previously disclosed between Mr. Gallagher and
11 George Bochanis, Esq., in the *Cohen* matter, as referenced in Defendants' Reply filed on March 5,
12 2019, Defendants not only move for a protective order under NRCP 26(c), but further move for an
13 order by the Discovery Commissioner consistent with its ruling of July 2, 2018, allowing for the
14 production of redacted contact information for guests involved in prior incidents, with personal contact
15 information to be provided on a case by case basis upon a showing of relevance by Plaintiff's counsel.

17 It appears quite clear that Mr. Gallagher intends to share any and all information obtained in
18 this matter related to prior guests of Venetian with all the world, without the slightest limitation, and
19 that is simply untenable. Defendants cannot subject prior guests to such apparent invasions to their
20 privacy, where HIPPA protected information is often found.

21 DATED this 6 day of March, 2019.

22
23 ROYAL & MILES LLP

24 By 

25 MICHAEL A. ROYAL, ESQ.

26 Nevada Bar No. 4370

27 1522 W. Warm Springs Rd.

28 Henderson, NV 89014

Attorney for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6 day of March, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **ADDENDUM TO REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER** to be served as follows:

_____ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

_____ to be served via facsimile; and/or

☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

_____ to be hand delivered;

to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

Keith E. Gallagher, Jr., Esq.
THE Gallagher LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Plaintiff
Facsimile: 702-735-0204
E-Service: kGallagher@Gallagherlawfirm.com
dmooney@Gallagherlawfirm.com
gramos@Gallagherlawfirm.com
sray@Gallagherlawfirm.com

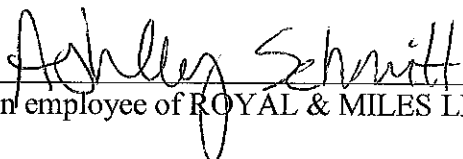
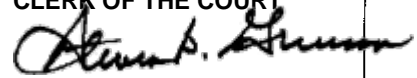

An employee of ROYAL & MILES LLP

EXHIBIT 12



1 THE GALLIHER LAW FIRM
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4 Jeffrey L. Galliher, Esq.
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12 kgalliher@galliherlawfirm.com
13 jgalliher@galliherlawfirm.com
14 gkunz@lvlawguy.com
15 Attorneys for Plaintiff

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA
14

15 JOYCE SEKERA, an Individual,
16 Plaintiff,

CASE NO.: A-18-772761-C
DEPT. NO.: 25

17 v.

18 VENETIAN CASINO RESORT, LLC,
19 d/b/a THE VENETIAN LAS VEGAS, a
20 Nevada Limited Liability Company; LAS
21 VEGAS SANDS, LLC d/b/a THE
22 VENETIAN LAS VEGAS, a Nevada
23 Limited Liability Company; YET
24 UNKNOWN EMPLOYEE; DOES I
through X, inclusive,
Defendants.

PLAINTIFF'S OBJECTION TO
DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS
DATED APRIL 2, 2019

25 Plaintiff hereby submits her Objection to the Discovery Commissioner's Report and
26 Recommendations dated April 2, 2019.

27 //
28

I. INTRODUCTION

On November 4, 2016 Plaintiff slipped and fell in the lobby of the Venetian on water on the marble floor. During discovery Plaintiff requested Venetian provide similar incident reports from November 4, 2013 to present, a total of five years of reports. In response to this request, Venetian produced 64 redacted incident reports. Plaintiff requested Venetian provide the unredacted reports so Plaintiff could identify witnesses to counter Venetian's comparative negligence claim that Plaintiff should have seen liquid on the floor before she fell. Venetian refused to produce the unredacted reports and filed a Motion for Protective Order. After subsequent briefing the Discovery Commissioner issued a Report and Recommendation. As discussed below, the Court should not adopt the recommendations because they are inconsistent with the Nevada Rules of Civil Procedure, applicable law, and the distinct majority opinion in courts across the country.

II. FACTUAL BACKGROUND

On August 15, 2018 Plaintiff requested Venetian produce:

True and correct copies of any and all claim forms, legal actions, civil complaints, statements, security reports, computer generated lists, investigative documents or other memoranda which have, as its subject matter, slip and fall causes occurring on marble floors within the subject VENETIAN CASINO RESORT within three years prior to the incident described in Plaintiff's Complaint [November 4, 2016], to the present.

(Defendant's Mot., Exhibit "A.")

On October 11, 2018 Plaintiff took the deposition of Joseph Larsen, a security officer/ENT at the Venetian. During his deposition Mr. Larsen indicated approximately 300-500 injury slip and fall injuries occurred on the marble floors at Venetian in the last five (5) years.¹ (Plaintiff's Opp. at 3:8-

¹ Mr. Larson estimated he investigated 100 injury falls on marble floors during the 9 years he has been employed at Venetian. (Plaintiff's Opp., Exhibit "2" at 24:3-27:14.) Mr. Larson testified there were two or three other EMT/Security Officers per shift per side (Venetian and Palazzo). (*Id.* at Exhibit "2" 28:23-35.) If Mr. Larson is an average EMT/Security Officer, 600-1000 injury falls occurred on marble floors in Venetian in the last 9 years. (*Id.* at 3:14-16.) Narrowing that down to the scope of Plaintiff's Request for Production (5 years), there should be 300-500 slip and fall incident reports. (*Id.* at 3:16-20.)

20.) Thus, when Venetian disclosed a mere 64 redacted incident reports Plaintiff instantly suspected the vast majority were missing. To verify Venetians compliance with the discovery request, Plaintiff's Counsel contacted Mr. Peter Goldstein, Esq., ("Mr. Goldstein") Plaintiff's counsel in another pending premise liability action against the Venetian. (*See Carol Smith v. Venetian Casino Resort, LLC*, Case No. A-17-753362-C.) From their discussion, Mr. Galliher determined Venetian willfully left out four reports in response to Plaintiff's Requests for Production which were disclosed in *Smith v. Venetian*. (Defendant's Addendum to Rplt., Exhibit "B.") Likewise, Mr. Goldstein determined Venetian willfully left out 35 reports in its response to plaintiff's requests for production in *Smith v. Venetian*. (*Id.*)

Around the same time, Plaintiff requested Venetian provide the unredacted reports. Venetian refused and sought a protective order. (Defendant's Mot.) Initially, Venetian only wanted to prevent disclosure of the individuals' contact information in the 64 reports. (*Id.* at 11:17-19.) However, once Venetian realized Mr. Galliher shared the redacted reports with Mr. Goldstein, leading to a Motion for Terminating Sanctions and Monetary Sanctions for Willful Suppression of Evidence in *Smith v. Venetian*, Venetian changed its position and requested a protective order on the previously disclosed redacted materials. (Defendant's Addendum to Rply. At 4:19-23.)

After briefing the Discovery Commissioner made the following Recommendations:

1. "that all information within the redacted prior incident reports produced by Venetian are to be protected under an NRCP 26(c) order, not to be shared with anyone who is not directly affiliated with the litigation (i.e. counsel, counsel's staff, experts, etc.), and when attached as exhibits to any filings with the Court are to be provided under seal."; and
2. "that the prior incident reports produced by Venetian are to remain in redacted form as originally provided in response to an NRCP 34 request, the Court agreeing that this

presents a privacy issue as it pertains to the identity of prior Venetian guests and includes protected HIPPA related information.”

(Report and Recommendation at 3:5-14.)

III. LEGAL ARGUMENT

A. Plaintiff Cannot Be Prohibited from Sharing the Redacted Incident Reports

First, Plaintiff disagrees with the recommendation that the redacted incident reports be subject to a protective order and not be shared with anyone who is not directly affiliated with the instant litigation. (Report and Recommendation at 3:10-14.) There is no justification for this recommendation: it directly contradicts the vast majority of cases across the country, it encourages Venetian’s scheme of hiding evidence and disobeying court orders and it negatively impacts the civil justice system, Nevadans and visitors to our state.

1. Courts Uniformly Agree the Risk of Collaborative Sharing of Information Is Not Grounds for a Protective Order

Courts uniformly agree that a risk of public disclosure or collaborative sharing of information does not constitute good cause for a protective order under Rule 26(c). *See, e.g. Olympic Refining Co. v. Carter*, 332 F.2d 260 (9th Cir. 1964); *see also De La Torre v. Swift Transp. Co.*, No. 2:13-CV-1786 GEB, 2014 WL 3695798, at *3 (E.D. Cal. July 21, 2014).² **“The risk—or in this case, the certainty—that the party receiving the discovery will share it with others does not alone constitute good cause for a protective order.”** *Wauchop*, 138 F.R.D. at 546. Rule 1 of both the Federal Rules and the Nevada Rules of Civil Procedure require they “be construed, administered,

² *See also Wauchop v. Domino's Pizza, Inc.*, 138 F.R.D. 539, 546 (N.D. Ind. 1991); *Ericson v. Ford Motor Co.*, 107 F.R.D. 92, 94 (E.D. Ark. 1985); *Baker v. Liggett Group, Inc.*, 132 F.R.D. 123, 125 (D.Mass 1990); *Garcia v. Peebles*, 734 S.W. 2d 343, 347-348 (Tex. 1987); *Earl v. Gulf & Western Mf. Co.*, 366 N.W.2d 160, 165 (Wis. App. 1985); *Nestle Foods Corporation v. Aetna Casualty & Surety*, 129 F.R.D. 483, 484 (D. N.J. 1990); *Farnum v. G.D. Searle & Co.*, 339 N.W.2d 384, 390 (Iowa 1983); *American Telephone and Telegraph Co. v. Grady*, 594 F.2d 594 (7th Cir. 1979); *Johnson Foils, Inc. v. Huyck Corp.*, 61 F.R.D. 405 (N.D.N.Y.1973); *Williams v. Johnson and Johnson*, 50 F.R.D. 31 (S.D.N.Y. 1970); *Parsons v. Gen. Motors Corp.*, 85 F.R.D. 724, 726 (N.D. Ga. 1980); *Deford v. Schmid Prod. Co., a Div. of Schmid Labs.*, 120 F.R.D. 648, 654 (D. Md. 1987);

1 and employed by the court and the parties to secure the just, speedy, and inexpensive determination
2 of every action and proceeding.” See Fed. R. Civ. Pro. 1; see also Nev. R. Civ. Pro 1. Collaborative
3 use of discovery material fosters the goals of Rule 1 by eliminating the time and expense involved in
4 “re-discovery.” *Williams*, 50 F.R.D. at 32; *Wauchop*, 138 F.R.D. at 546; *Wilk v. American Medical*
5 *Ass’n*, 635 F.2d 1295, 1299 (7th Cir.1980); *Grady*, 594 F.2d at 597; *Phillips Petroleum Co. v.*
6 *Pickens*, 105 F.R.D. 545, 551 (N.D.Tex.1985); *Carter-Wallace v. Hartz Mountain Industries*, 92
7 F.R.D. 67, 70 (S.D.N.Y.1981); *Parsons*, 85 F.R.D. at 726; *Garcia*, 734 S.W.2d at 347; *Ward v. Ford*
8 *Motor Co.*, 93 F.R.D. 579, 580 (D.Colo.1982) (“Each plaintiff should not have to undertake to
9 discovery [sic] anew the basic evidence that other plaintiffs have uncovered. To so require would be
10 tantamount to holding that each litigant who wishes to ride a taxi to court must undertake the
11 expense of inventing the wheel.”); *Baker*, 132 F.R.D. at 126 (“[T]o routinely require every plaintiff
12 ... to go through a comparable, prolonged and expensive discovery process would be
13 inappropriate.”); *Patterson v. Ford Motor Co.*, 85 F.R.D. 152, 154 (W.D.Tex.1980) (“The
14 availability of the discovery information may reduce time and money which must be expended in
15 similar proceedings, and may allow for effective, speedy, and efficient representation.”). “It is
16 particularly appropriate that this principle be applied in... cases in which individual plaintiffs must
17 litigate against large, corporate defendants.” *Baker*, 132 F.R.D. at 126 “Maintaining a suitably high
18 cost of litigation for future adversaries is not a proper purpose under Rules 1 or 26.” *Wauchop*, 138
19 F.R.D. at 547; see also *Cipollone v. Liggett Grp., Inc.*, 113 F.R.D. 86, 87 (D.N.J. 1986).

20 Thus, the recommendation that the redacted incident reports be subject to a protective order
21 and not be shared with anyone who is not directly affiliated with the instant litigation violates Rule 1
22 by increasing the time and expense of litigation by forcing parties to re-discovery information in
23 each case. This is especially applicable here because Venetian is a large corporation with a team of
24 skilled lawyers who zealously argue on their behalf. Though there is nothing wrong with this, it
25
26
27
28

1 increases the cost of individual plaintiffs bringing claims. Nonetheless, Venetian attempts to limit
2 the collaborative sharing of information by regularly seeking protective orders³ so they can safely
3 violate discovery rules, ignore court orders and selectively disclose information.

4 Moreover, “[s]hared discovery is an effective means to insure full and fair disclosure.”
5 *Garcia v. Peebles*, 734 S.W.2d 343, 347 (Tex. 1987). “Parties subject to a number of suits
6 concerning the same subject matter are forced to be consistent in their responses by the knowledge
7 that their opponents can compare those responses.” *Garcia*, 734 S.W.2d at 347; *Buehler v. Whalen*,
8 70 Ill. 2d 51, 65, 374 N.E.2d 460, 466 (1977). The improper conduct the *Garcia* and *Buehler* courts
9 guarded against is evident here: Venetian refused to fully disclose documents, knowingly violated
10 court orders and ignored discovery rules in not one, but two pending lawsuits. Venetian’s failure to
11 secure a protective order before it disclosed the redacted reports is the only reason Mr. Galliher and
12 Mr. Smith discovered Venetian’s selectively disclosed incident reports and violated discovery rules
13 and court orders. Thus, the recommendation the Court prohibit Plaintiff from sharing the redacted
14 reports serves only one purpose: to give Venetian peace of mind future plaintiffs won’t catch its
15 violations. This is not a legitimize purpose for a protective order and the Court should therefore
16 decline to follow the recommendation.

17
18
19
20 **2. Venetian’s Protective Order Violates Public Policy, Undermines the Civil
Justice System, and Hurts Nevadans and Other Visitors to Our State.**

21 Venetian’s request is concerning for many reasons beyond the obvious discussed above.
22 Adopting Venetian’s request to prohibit Plaintiff from sharing the redacted reports undermines the
23 purpose of the civil justice system: deterrence of unsafe practices through imposition of financial
24

25
26 ³ See *Maria Potts vs Venetian Casino Resort LLC* (08A568029); *Andrew Gold vs. Las Vegas Sands LLC* (A-09-604694-
27 C); *Judy Sorci vs. Venetian Casino Resort LLC* (A-10-612854-C); *Freida Robinson vs. Venetian Casino Resort, LLC*
28 *(A-11-638095-C)*; *Soloman Cogan vs. Venetian Casino Resort LLC* (A-12-663219-C); *Grace Aye vs. Las Vegas Sands*
Corp (A-15-716380-C); *Mui Lim, Plaintiff vs. Venetian Casino Resort LLC* (A-15-728316-C); *Eric Cohen vs. Venetian*
Casino Resort, LLC (A-17-761036-C); *John Kierce vs. Las Vegas Sands Corp (A-17-757314-C)*; *Carol Smith vs.*
Venetian Casino Resort LLC, (A-17-753362-C).

liability.⁴ The tort system's economic function is deterrence of non-cost justified accidents through creation of economic incentives for "allocation of resources to safety."⁵ The possibility of tort liability deters culpable wrongdoers from repeating their negligence or misconduct and gives them the proper economic incentives to become more safe and responsible. In cases where criminal laws are violated but are not properly enforced, the potential for civil damages can become a more effective deterrent than criminal sanctions. However, when wrongdoers are not forced to bear the full cost of the damages they cause, they do not take sufficient precaution to prevent future harm.⁶ In other words, "[t]he tort system seems to be the most significant mechanism to keep risk aversion in the market."⁷

The civil justice system deters not only by imposing financial liability but also by forcing disclosure of important internal information about unsafe premises, products, drugs, toxics and other practices and processes, and by allowing dissemination of this information to millions of people through the mass media.⁸ When disputes are resolved without trial and without a public record, wrongdoers can often suppress the information.

⁴ See, e.g., W. Page Keeton et al., *Prosser & Keeton on the Law of Torts*, p. 25 (5th ed. 1984).

⁵ See William M. Landes & Richard A. Posner, *The Economic Structure of Tort Law*, 28 (1987) ("[M]uch of tort law can be explained on the simple hypothesis that it is indeed a system for bringing about an efficient allocation of resources to safety."). Richard Posner is a former 7th Circuit Court of Appeals judge.

⁶ It has long been recognized that there is a "moral hazard" associated with insurance which is characterized by the fact that the party causing the damage does not bear the full costs of his actions, and, therefore, may take insufficient precautions to prevent future harm. See, e.g. Jeffrey Stempel, et. al., *Principals of Insurance Law*, § 1.05 Fortuity, Adverse Selection, and Moral Hazard (4th ed. 2012.)

⁷ MASSACHUSETTS INSTITUTE OF TECHNOLOGY, *The Role of Changes in Statutory/Tort Law and Liability Insurance in Preventing and Compensating Damages from Future Releases of Hazardous Waste* (Oct. 1987). (finding of a study of hazardous waste litigation by a Massachusetts Institute of Technology research team led by Dr. Nicholas Ashford created for the Special Legislative Commission on Liability for Releases of Oil and Hazardous Materials); See also William B. Schwartz, M.D. & Neil K. Komesar, J.D., *Doctors, Damages and Deterrence - An Economica View of Medical Malpractice*, 298 NEW ENG. J. MED. 1282 (1978). (finding "replacing the present tort system with a no-fault insurance scheme ... might well abolish the deterrent signal or distort clinical decision making.." because the fault system, which assesses damages against negligent doctors, sends "signals" to other doctors that discourage future carelessness and reduce future damages.

⁸ Asbestos is an example. Asbestosis, or asbestos disease, was reported for the first time in Britain in 1900, and for 40 years, the U.S. asbestos industry suppressed data about asbestos hazards. The first jury to hear an asbestosis lawsuit,

By hiding 80-85% of the incident reports of slip and falls on its marble floors, Venetian ensures the public will never determine the magnitude of the problem, will never have the opportunity to deter Venetian from wrongdoing, and will never be able to encourage Venetian to make their premises safer. By granting the protective order, the Court ensures litigants will not be able to gather enough evidence to demonstrate Venetian knew its floors were unreasonably hazardous and failed to act. Without this evidence plaintiffs will struggle to seek the punitive damages necessary to incentivize Venetian to become safer and more responsible. The recommendation that Plaintiff be prohibited from sharing these reports with other plaintiffs in Nevada impedes the civil justice system and hurts all individuals who visit Venetian including Nevada's citizens, individuals from out of state and visitors from other countries.

Moreover, the recommendation that the Court prohibit Plaintiff from sharing the redacted reports interferes with the rights of current and past plaintiffs. Plaintiffs in current cases have a right to these reports to determine if they are entitled to sanctions against Venetian for hiding evidence. Likewise, plaintiffs in previously resolved cases have a right to these reports to determine if they are entitled to re-open their judgments for fraud and misconduct. *See* NRCP 60(b)(3) ("the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party...")

brought in 1971 by a worker with asbestosis, awarded only \$68,000 in actual damages. *Borel v. Fibreboard Paper Prods. Corp.*, 493 F.2d 1076 (5th Cir. 1973). Punitive damages were not requested. *Id.* It took several years of similar civil jury trials before victims' attorneys finally obtained enough documents to demonstrate that many asbestos manufacturers had known about asbestos hazards and had covered up the information. As this evidence became available, judges allowed juries to consider and award punitive damages against asbestos manufacturers. For example, in the 1986 case *Fisher v. Johns-Manville*, a jury awarded compensatory damages of \$86,000 to James Fischer and \$5,000 to Geneva Fischer and punitive damages totaling \$300,000. *Fischer v. Johns-Manville Corp.*, 103 N.J. 643, 512 A.2d 466 (1986). Because of information released in connection with asbestos cases, millions have learned of the dangers of asbestos and have taken their own precautions, while public officials have enacted stronger health and safety standards. The Ford Pinto case is another example. *Grimshaw v. Ford Motor Co.*, 119 Cal. App. 3d 757, 174 Cal. Rptr. 348 (Ct. App. 1981).

As such, the Court should not follow the Recommendation that Plaintiff be prohibited from sharing these reports with other Plaintiff's attorneys in Nevada as it goes against the strong trend of case law, violates public policy, undermines our court system, harms Nevadans, harms our state's visitors and encourages Venetian to continue its elaborate scheme of ignoring court orders and selectively disclosing evidence.

B. Venetian Must Produce the Unredacted Incident Reports

Second, Plaintiff takes issue with Venetian's production of redacted reports. Neither Venetian nor the Discovery Commissioner cite authority to support the recommendation that "the prior incident reports produce by Venetian are to remain in redacted form... [as] this presents a privacy issue as it pertains to the identity of prior Venetian guests and includes protected HIPAA information." (Report and Recommendation at 3:5-9.)

The HIPAA Rules (42 USC § 1320d et seq) do not apply to Venetian, rather they only apply to "covered entities" and "business associates." U.S. Department of Health and Human Services, *Covered Entities and Business Associates* HHS.GOV (2017), <https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html> (last visited Apr 12, 2019). "Covered entities" include healthcare providers, health plans, and health care clearinghouses. *Id.*; *see also* 45 CFR § 160.103. Individuals, organizations, and agencies that meet the definition of a "covered entity" under HIPAA must comply with the Rules' requirements to protect the privacy and security of health information and must provide individuals with certain rights with respect to their health information. U.S. Department of Health and Human Services, *Covered Entities and Business Associates* HHS.GOV (2017), <https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html> (last visited Apr 12, 2019); *see also* 42 USC § 1320d et seq. If a covered entity engages a "business associate" to help it carry out its health care activities and functions, the covered entity must have a written business associate contract or other arrangement with the business associate that establishes specifically what

1 the business associate has been engaged to do and requires the business associate to comply with the
2 Rules' requirements to protect the privacy and security of protected health information. U.S.
3 Department of Health and Human Services, *Covered Entities and Business Associates* HHS.GOV
4 (2017), <https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html> (last visited Apr
5 12, 2019); *see also* 45 CFR § 160.103. If an entity does not meet the definition of a covered entity or
6 business associate, it does not have to comply with the HIPAA Rules. U.S. Department of Health
7 and Human Services, *Covered Entities and Business Associates* HHS.GOV (2017),
8 <https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html> (last visited Apr 12, 2019);
9 *see also* 42 USC § 1320d-1.

10
11 Venetian is not a covered entity as defined in 42 USC § 1320d and 45 CFR § 160.103.
12 Venetian is not a healthcare provider, not a health plan, and not a health care clearinghouse.
13 Venetian is also not a business associate of one these entities. Rather, Venetian is a hotel casino, and
14 as such, the HIPAA laws do not apply. Because the HIPAA laws do not apply to Venetian, the Court
15 should decline to following the recommendation that HIPAA laws provide a legal basis for the
16 requested protective order.
17

18 Moreover, Plaintiff needs the names and contact information on the incident reports because
19 they are potential witnesses. The identity of the individuals who fell at Venetian and were injured on
20 its marble floors as a result of impacting liquid are important because they will enable Plaintiff's
21 Counsel to locate these witnesses and present them to counter Venetian's expected claims that
22 Plaintiff was comparatively negligent because she did not see the liquid substance on the floor
23 before she fell. The identity of other slip and falls victims at Venetian are clearly discoverable as the
24 information obtained from them regarding the visibility of liquid substances on the marble floor at
25 Venetian is reasonably calculated to lead to discoverable evidence in this case.
26
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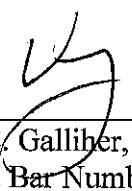
1 **IV. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests this court decline to adopt the
3 Recommendations from the Discovery Commissioner and instead hold:

- 4 1. Prior injury incident reports should be disclosed in unredacted form.
- 5 2. A protective order should not be issued to prevent Plaintiff's counsel from exchanging
6 and comparing similar information obtained by other plaintiffs in lawsuits against the Venetian
7 resulting from the unsafe condition of its marble floors.

8 DATED this 15th day of April, 2019

9
10 THE GALLIHER LAW FIRM

11
12 
13 _____
14 Keith E. Galliher, Jr., Esq.
15 Nevada Bar Number 220
16 1850 E. Sahara Avenue, Ste. 107
17 Las Vegas, Nevada 89104
18 *Attorney for Plaintiff*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **PLAINTIFF'S OBJECTION TO DISCOVERY**

COMMISSIONER'S REPORT AND RECOMMENDATIONS DATED APRIL 2, 2019 was served on the 16th day of April, 2019, to the following addressed parties by:

_____ First Class Mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P 5(b)

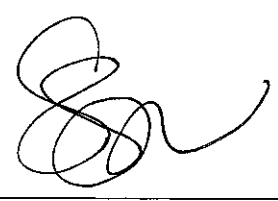
_____ Facsimile, pursuant to EDCR 7.26 (as amended)

☒ _____ Electronic Mail/Electronic Transmission

_____ Hand Delivered to the addressee(s) indicated

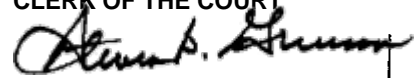
_____ Receipt of Copy on this _____ day of April 2019,
acknowledged by, _____

Michael A. Royal, Esq.
Gregory A. Miles, Esq.
ROYAL & MILES LLP
1522 W. Warm Springs Road
Henderson, Nevada 89014
Attorneys for Defendants



An Employee of THE GALLIHER LAW FIRM

EXHIBIT 13



ROPP

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

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1522 West Warm Springs Road

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Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

Plaintiff,

v.

VENETIAN CASINO RESORT, LLC, d/b/a
THE VENETIAN LAS VEGAS, a Nevada
Limited Liability Company; LAS VEGAS
SANDS, LLC d/b/a THE VENETIAN LAS
VEGAS, a Nevada Limited Liability Company;
YET UNKNOWN EMPLOYEE; DOES I
through X, inclusive,

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**RESPONSE TO PLAINTIFF'S OBJECTION TO DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS DATED APRIL 2, 2019, COUNTERMOTION TO
STRIKE FACTS AND ARGUMENTS NOT BRIEFED BEFORE THE DISCOVERY
COMMISSIONER, , COUNTERMOTION FOR ORDER DIRECTING PLAINTIFF
TO COMPLY WITH PROTECTIVE ORDER BY RETRIEVING ALL INFORMATION
DISTRIBUTED TO PERSONS OUTSIDE THE LITIGATION, AND COUNTERMOTION
FOR APPROPRIATE SANCTIONS UNDER NRCP 37(b)(2)**

ROYAL & MILES LLP
1522 W Warm Springs Road
Henderson NV 89014
Tel: (702) 471-6777 ♦ Fax: (702) 531-6777

1 COMES NOW, Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS
2 SANDS, LLC (collectively referenced herein as *Venetian*), by and through their counsel, ROYAL &
3 MIILES LLP, and hereby files this RESPONSE TO PLAINTIFF'S OBJECTION TO DISCOVERY
4 COMMISSIONER'S REPORT AND RECOMMENDATIONS DATED APRIL 2, 2019,
5 COUNTERMOTION TO STRIKE FACTS AND ARGUMENTS NOT BRIEFED BEFORE THE
6 DISCOVERY COMMISSIONER, COUNTERMOTION FOR ORDER DIRECTING PLAINTIFF TO
7 COMPLY WITH PROTECTIVE ORDER BY RETRIEVING ALL INFORMATION DISTRIBUTED
8 TO PERSONS OUTSIDE THE LITIGATION, AND COUNTERMOTION FOR APPROPRIATE
9 SANCTIONS UNDER NRCP 37(b)(2). This Response is based on the pleadings and papers on file,
10 the memorandum of points and authorities contained herein, the affidavit of counsel, the attached
11 exhibits and any argument permitted by this Court at the time set for hearing.
12

13 DATED this 22 day of April, 2019.
14

15 **ROYAL & MILES LLP**

16 By _____
17

Michael A. Royal, Esq.

Nevada Bar No. 4370

1522 W. Warm Springs Rd.

Henderson, NV 89014

Attorney for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC
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DECLARATION OF MICHAEL A. ROYAL, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

MICHAEL A. ROYAL, ESQ., being first duly sworn, under oath deposes and states:

1. I am an attorney duly licensed to practice law in the State of Nevada and I am counsel for Venetian Casino Resort, LLC, and Las Vegas Sands, LLC, in connection with the above-captioned matter. I have personal knowledge of the following facts and if called upon could competently testify to such facts.

2. This action arises out of an alleged incident involving a floor located within a common area of the Venetian casino on November 4, 2016, when Plaintiff slipped and fell on a dry marble floor.

3. On or about August 16, 2018, Plaintiff served Plaintiff's Request for Production of Documents and Materials to Defendant in which Plaintiff requested reports related to slip and falls occurring within three years preceding the subject incident to the present.

4. Defendants objected to providing information related to any incident reports following the subject incident of November 4, 2016, and produced a total of sixty-four (64) prior incident reports from November 4, 2013 to November 4, 2016.¹

5. I had discussions with Mr. Galliher regarding Defendants' desire to keep such information protected pursuant to NRCP 26(c), which was memorialized in correspondence dated December 17, 2018.

6. Mr. Galliher refused to execute a stipulation to provide NRCP 26(c) protection of information requested, which included the names, addresses, phone numbers, dates of birth, Social

¹Even though Defendants maintain Plaintiff slipped on a dry marble floor, they nevertheless produced prior incidents occurring from guests slipping on a foreign substance on the Venetian casino level common areas for the three preceding years.

1 Security information, and HIPAA protected information related to alleged injuries and first responder
2 care provided to involved guests of the Defendants.

3 7. Despite Mr. Galliher's refusal to stipulate to an NRCP 26(c) order, I sent him a total
4 of sixty-four (64) incident reports from November 4, 2013 through November 4, 2016 in redacted form
5 to protect the identity of involved persons, which Defendants not only deemed irrelevant (*see* footnote
6 1), but that Defendants insist they have an obligation to protect.

7
8 8. Mr. Galliher thereafter contacted me to discuss his objection to Venetian having
9 provided redacted reports, and stated his desire to name sixty-four (64) additional witnesses to testify
10 about their particular incidents and experiences on Defendants' property. During that conversation,
11 Mr. Galliher did not relay his theory that this evidence is relevant to address Defendants' anticipated
12 arguments of comparative fault, as indicated in Plaintiff's Objection, filed with the court. (*See*
13 *Plaintiff's Objection* at 2, ln 6-8.) Further, Mr. Galliher did not then advise that he had been meeting
14 privily with other attorneys handling presently litigated matters against Venetian and producing
15 information to them which he knew Venetian desired to be protected under NRCP 26(c). Mr. Galliher
16 likewise did not advise that he had been receiving information from the same attorneys in other
17 litigated matters which were under NRCP 26(c) protective orders.

18
19 9. Mr. Galliher first set forth his rationale for client's need for unfettered access all persons
20 identified in the prior incident reports during argument at the March 13, 2019 hearing, which is
21 presented as follows in pertinent part:
22

23 *MR. GALLIHER: . . . the comparative negligence issue is a big one because invariably*
24 *juries will come back and apportion the negligence in the case. It's a little --*

25 *DISCOVERY COMMISSIONER: But the comparative negligence of another party*
26 *versus your own party wouldn't be relevant to this action.*

27 *MR. GALLIHER: Well, I disagree, and I'll tell you why. If you've got a situation like*
28 *this where people are slipping on the same floor on liquid -- and all the floors'*
identical, it's not like it's different -- and these people don't see the liquid before they
fall, which is why they fall, why would that not be relevant to the question of

1 comparative negligence? Because if five people didn't see it, or ten people didn't see
2 it, why should my client have seen it? Very relevant. I mean, remember, we're not
3 talking just about admissibility, because that's the call that's going to be made by
4 Judge Delaney. We're talking about discoverability, that's all.

5 (See Exhibit A, Transcript of Hearing Before the Discovery Commissioner (March 13, 2019) at 9, ln
6 4-21, emphasis added)

7 10. In response to Mr. Galliher's never previously articulated commentary regarding use
8 of witnesses involved in unrelated incidents occurring on Defendants' property with entirely dissimilar
9 fact patterns in order to contest comparative fault arguments, I advised the Discovery Commissioner
10 that the facts of this case are unique from each of the sixty-four (64) redacted reports of prior incident
11 provided to Plaintiff, as this incident does not involve a foreign substance on the floor. (See *id.* at 4,
12 ln 12-23; 10, ln 14-20.) Yet, in good faith, Defendants nevertheless produced the redacted reports.
13 As a compromise, I offered to provide Mr. Galliher with unredacted information for specific prior
14 incidents where he can show substantially similar facts, which the Discovery Commissioner agreed
15 to be fair.

16 11. Mr. Galliher advised the Court during the March 13, 2019 hearing that he has been
17 sharing information obtained in this case with attorneys presently representing parties in unrelated
18 litigation against Venetian - despite the fact that he knew from the beginning of Venetian's desire to
19 have it protected. One such attorney is Peter Goldstein, Esq., who I understand to be operating under
20 an NRCP 26(c) Protective Order in the matter of *Carol Smith v. Venetian*, case no. A-17-753362-C.
21 Mr. Galliher acknowledged that he obtained protected information from Mr. Goldstein regarding prior
22 incidents obtained from Venetian in the *Smith* matter and compared it with requested NRCP 26(c)
23 protected information he obtained from Venetian in this matter.² (See *id.* at 7, ln 13-25; 8, ln 1-8.)
24
25

26
27 ²It is my understanding that Mr. Goldstein was operating under an NRCP 26(c) Protective
28 Order, in the *Smith* litigation, which he clearly did not honor by sharing prior incident information with
Mr. Galliher, who then used that information to raise issues which were not addressed in the motion
for protective order or in Plaintiff's opposition thereto.

1 12. During the March 13, 2019 hearing, Mr. Galliher attempted to portray Defendants in
2 an unfair light, raising issues not briefed before the Court or raised in the Opposition regarding his
3 sharing of protected information regarding prior incident reports with Mr. Goldstein in *quid pro quo*
4 fashion. In addition, Mr. Galliher has also been distributing other information obtained in this case
5 (which he knew Venetian had requested to be protected) with George Bochanis, Esq., in the matter of
6 *Cohen v. Venetian Casino Resort, LLC*, case no. A-17-761036-C.³
7

8 13. When I discovered that Mr. Galliher not only wanted unredacted information for the
9 sixty-four (64) prior incident reports identified and produced by Defendants, but that he also intended
10 to both contact them and share their personal information with anyone, any way, and anywhere for
11 whatever purpose he fancied (as he had already accomplished with Attorneys Goldstein and Bochanis),
12 I argued at the March 13, 2019 that any such reports produced must remain in redacted form and
13 likewise be protected pursuant to NRCPP 26(c).⁴
14

15 14. The Discovery Commissioner ordered as follows: "*the reports that are to be produced,*
16 *they are to be redacted for the names and the contact information for all witnesses and individuals*
17 *who reported incidents.*" (See *id.* at 12, ln 9-11.) She added: "*there are privacy and HIPAA issues*
18 *that are to be considered, and so my inclination is not to disclose the names and contact information*
19 *for all people on all reports.*" (*Id.* at 12, ln 24-25; 13, ln 1.)
20

21 15. Mr. Galliher did not reveal that he was freely sharing and comparing prior incident
22 reports with Mr. Goldstein, Mr. Bochanis or any other attorney unrelated to this litigation prior to the
23 hearing of March 13, 2019, despite the fact that he was aware of the issue and Defendants' desire for
24

25 ³Mr. Galliher attached a DCRR from the *Cohen* matter as Exhibit 4 to his Opposition to the
26 Motion for Protective Order, and made reference to "*three different defense firms representing The*
Venetian in these three different cases; they're all different." (See Exhibit A at 7, ln 17-21.)

27 ⁴It seems apparent that this private guest information shared by Mr. Galliher with Mr. Goldstein
28 and Mr. Bochanis (perhaps among others), would be used in some kind of depository for access by
others for the purpose not only of identifying prior incidents, but also of making unwanted repeated
contact with these persons. (See Exhibit A at 11, ln 10-25.)

1 NRCP 26(c) protection as of mid-December 2018, and despite the fact that a motion for protection was
2 pending before the Court.⁵ This appears to have been very much by design, so Mr. Galliher could share
3 all information he knew Venetian deemed worthy of protection before the matter could be ruled upon
4 by the Discovery Commissioner.

5 16. The Discovery Commissioner's Report and Recommendation was filed April 2, 2019.
6 (See Exhibit B.)
7

8 17. Following the March 13, 2019 hearing, I sent correspondence to Mr. Galliher advising
9 that I had reconciled an alleged discrepancy in production of prior incident reports, an issue raised for
10 the first time by Mr. Galliher during the March 13, 2019 hearing, which was not an issue before the
11 court, where Mr. Galliher claimed to have compared documents he obtained from Mr. Goldstein in the
12 *Smith* litigation. (See Exhibit C, *Correspondence from Michael Royal, Esq., to Keith Galliher, Esq.*,
13 dated March 25, 2019.)
14

15 18. It is Defendants' position that production of certain information provided in prior
16 incident reports is an invasion of privacy, that said information is not necessary for Mr. Galliher to
17 present evidence and make arguments related to notice, comparative fault, etc., and his stated desire
18 to contact any and all such prior patrons personally is the very kind of fishing expedition contemplated
19 by *Schlatter v. Eighth Jud. Dist Court*, 561 P.2d 1342 (Nev. 1977).
20

21 19. **There is no stay in place as to the Discovery Commissioner's Report and**
22 **Recommendation of April 2, 2019**, and to my knowledge Mr. Galliher has not made any effort to
23 comply with the NRCP 26(c) order by retrieving the protected information he has already shared with
24 Mr. Goldstein and Mr. Bochanis regarding the sixty-four (64) prior incidents produced in this matter,
25 which are protected pursuant to NRCP 26(c). To the contrary, Mr. Goldstein and Mr. Bochanis are
26

27
28 ⁵Mr. Galliher did not comply with EDCR 2.34 by discussing this issue with me prior to
presenting it before the Discovery Commissioner at the March 13, 2019 hearing.

1 in fact presently using the NRCP 26(c) protected information provided to them by Mr. Galliher in their
2 respective litigated matters against Venetian without any regard for the Discovery Commissioner's
3 ruling that the protective order is presently in place. (See NRCP 37(b)(2); *Bahena v. Goodyear Tire*
4 *& Rubber Co.*, 235 P.3d 592, 597 (2010).) (See Exhibit D, *Smith v. Venetian Casino Resort, LLC*,
5 Plaintiff's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Plaintiff's Motion for
6 Terminating Sanctions, Monetary Sanctions for Willful Suppression of Evidence Pursuant to NRCP
7 Rule 37 (March 12, 2019), with exhibits.)

9 20. I attended the deposition of former Venetian employee, Gary Shulman, at the office of
10 Plaintiff's counsel on April 17, 2019. While this deposition occurred well after the April 2, 2019
11 DCRR at issue here, events unfolding at the deposition are germane to pending issues before the Court.
12 I first met Mr. Shulman on June 28, 2018, when he was employed as a Table Games Supervisor for
13 Venetian Casino Resort, LLC. On that date, Mr. Shulman and I discussed his recollection of events
14 while he was on a shift break at my client's property. Mr. Shulman's employment was terminated on
15 or about January 23, 2019. I was unaware of Mr. Schulman's termination until a few weeks prior to
16 his deposition. Mr. Shulman refused to meet with me before his April 17, 2019 deposition. At the
17 outset of the deposition, I learned that Mr. Shulman had, in fact, met with Mr. Galliher a few days
18 earlier and related to Mr. Galliher certain facts and communications Mr. Shulman had with me during
19 his employment in my capacity as legal counsel for Venetian in this matter. Over my objection, Mr.
20 Shulman testified about conversations he had with me where the witness made false claims against me,
21 personally, which put me in a very difficult and troubling position. Mr. Galliher was well aware of the
22 ambush he had set for me at the deposition and contended that I had no right to prevent this former
23 employee of revealing what I considered to be privileged communications to Mr. Galliher on the
24 record. I was unprepared to adequately cross Mr. Shulman on issues raised, as Mr. Galliher did not
25 provide any prior warning that a former employee witness would be making salacious allegations
26
27
28

1 against me personally, based on private communications he had with Mr. Galliher. Without question,
2 Mr. Galliher knew what was coming. Mr. Galliher also knew that there was no effective way for me
3 to cross-examine Mr. Shulman without getting into our privileged communications.

4 21. **I fully expect that Mr. Galliher intends to provide a copy of Mr. Shulman's**
5 **deposition transcript with Mr. Goldstein and Mr. Bochanis, among many others, as part of his**
6 **ongoing practice** (as he has already done with the deposition transcript of **Joseph Larson, EMT**,
7 which has been identified under NRCP 16.1 by both Mr. Goldstein in the *Smith* litigation and also by
8 Mr. Bochanis in the *Cohen* litigation). In the case of Mr. Shulman's deposition, Mr. Galliher elicited
9 information he knew was deemed protected by attorney/client privilege from the witness, over
10 objection, knowing that it would essentially turn me into a witness. I will be moving to strike all
11 testimony elicited from Mr. Shulman in this matter based on Mr. Galliher's conduct, and **most**
12 **certainly contend that the NRCP 26(c) order presently in place should preclude Mr. Galliher**
13 **from sharing deposition transcripts, such as that of Mr. Shulman where confidential**
14 **communications with legal counsel have been elicited and shared.**

15 22. Mr. Shulman also testified in his approximate 14 years working on the casino floor of
16 Defendants' property, the subject incident of November 4, 2016 was the only occasion where he was
17 aware of a guest falling on the marble floor.

18 23. I discovered on April 22, 2019 that on April 19, 2019, Mr. Goldstein filed *Plaintiff's*
19 *Supplemental Opposition to Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to*
20 *Strike* in the matter of *Smith* matter. (See Exhibit I.) In that document filed with the court, Mr.
21 Goldstein actually attached a copy of the pending *Plaintiff's Objection to Discovery Commissioner's*
22 *Report and Recommendations Dated April 2, 2019*, along with an affidavit related to the production
23 of all prior incident reports from the instant matter of *Sekera*, which was attached to the March 12,
24 2019 Reply filed by Mr. Goldstein. (See *id.* Compare Exhibit D.)

24. The timing of the Goldstein disclosure in the matter of *Smith* is critical. Mr. Goldstein received documents which were the subject of a motion for protective order while the issue was pending before the court, and actually filed them to support a motion one day before the Discovery Commissioner granted the Defendants' motion for protective order. The April 19, 2019 filing by Mr. Goldstein demonstrates that both he and Mr. Galliher are working in concert to defy a Court Order in order to promote their respective causes. The fact that Mr. Goldstein has attached the pending Objection filed by Mr. Galliher as an exhibit to the April 19, 2019 filing by the court in *Smith* is further evidence of that.

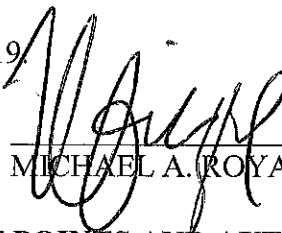
25. Plaintiff testified in deposition on March 14, 2019 that she worked from December 2015 to November 2016 for as much as 50-70 hours a week, with no vacations, during which time she made many hundreds of walks through the incident area without incident. (See Exhibit J, *Transcript of Joyce Sekera Deposition* (taken March 14, 2019) at 75-79.) Plaintiff further testified that she never saw a foreign substance on the floor of Defendants' property. (See *id.*)

26. I further declare that the exhibits identified in this response and counter-motion, as outlined below, are true and correct copies of documents produced in or otherwise related to this matter.

EXHIBIT	TITLE
A	Recorder's Transcript of Hearing [On] Defendant's Motion for Protective Order (March 13, 2019)
B	Discovery Commissioner's Report and Recommendation (April 2, 2019)
C	Correspondence from Michael Royal, Esq., to Keith Galliher, Esq., dated March 25, 2019
D	<i>Smith v. Venetian Casino Resort, LLC</i> , Plaintiff's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Plaintiff's Motion for Terminating Sanctions, Monetary Sanctions for Willful Suppression of Evidence Pursuant to NRCP Rule 37 (March 12, 2019), with exhibits
E	Surveillance Footage of Subject Incident (VEN 019)
F	Narrative Report (VEN 008-09)

EXHIBIT	TITLE
G	Acknowledgment of First Aid Assistance & Advice to Seek Medical Care (VEN 017)
H	Correspondence from Michael Royal to Keith Galliher, Esq., dated April 19, 2019
I	<i>Smith v. Venetian Casino Resort, LLC</i> , Plaintiff's Supplemental Opposition to Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to Strike (April 19, 2019)
J	Transcript of Joyce Sekera Deposition (March 14, 2019), pp 75-79

Executed on 22 day of April, 2019.



MICHAEL A. ROYAL, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF RELEVANT FACTS

This litigation arises from a November 4, 2016 incident occurring when Plaintiff fell in a lobby area of the Venetian while taking a break from her work station where she was employed as a salesperson for Brand Vegas, LLC, working pursuant to an agreement between Venetian and her employer, Brand Vegas, LLC, to sell tickets to Venetian events. At around 12:36 pm, as Plaintiff was en route to the women's bathroom located on the Venetian casino level near the Grand Lux Café, while carrying a covered beverage in her left hand, Plaintiff stepped with her left foot, then slipped and fell to the floor.

The cause of Plaintiff's fall is in dispute, as Venetian denies that there was any foreign substance on the floor at the time the incident occurred. This is very clear from surveillance footage of the incident. (*See Exhibit E.*)⁶ Regardless, Venetian produced sixty-four (64) prior incident reports

⁶Mr. Galliher misrepresented what is depicted on the surveillance footage to the Discovery Commissioner in the March 13, 2019 hearing. (*See Exhibit A at 5, ln 17-23.*) Surveillance footage was offered by Defendants to the Discovery Commissioner at the March 13, 2019 hearing in the event

1 from November 4, 2013 through November 4, 2016, in redacted form, to protect the privacy of its
2 patrons, with the understanding that Plaintiff desired the prior incident reports to argue notice and
3 related theories of liability. Plaintiff refused to protect the privacy of information related to the prior
4 incident reports, and demanded that they be produced in unredacted form so that she can not only use
5 them in the present litigation to contact those involved in prior incidents, but also that she may share
6 their personal information with others outside the litigation in uncontrolled and unfettered fashion,
7 including but not limited to Mr. Goldstein and Mr. Bochanis (which Plaintiff's counsel has already
8 accomplished, despite Defendants' request for a protective order, its motion for a protective order, and
9 a present DCRR providing for an NRCP 26(c) protective order).

11 Following a hearing on March 13, 2019, the Discovery Commissioner ruled that the sixty-four
12 (64) prior incident reports produced by Venetian in this matter must remain in redacted form and that
13 they are protected pursuant to NRCP 26(c). (*See* Exhibit B.) To Venetian's knowledge, **Plaintiff has**
14 **taken no action to honor the Discovery Commissioner's determination by requesting return of**
15 **information her counsel produced to counsel representing parties against Venetian in other**
16 **matters. To the contrary, that protected information is being used by counsel for plaintiffs in**
17 **other ongoing Venetian litigation with impunity and complete disregard for the ruling presently**
18 **in place.**⁷ Since Plaintiff has not moved to stay the Discovery Commissioner's Report and
19

20
21 she wanted to review it to gain perspective regarding the alleged condition of the floor in light of
22 Defendants' very liberal NRCP 34 production to Plaintiffs. (*See id.* at 10, ln 14-20.) The subject
23 incident occurs at 12:36:50 of the video. (*See* Exhibit E.) At 12:33 53, just under three minutes
24 earlier, Venetian PAD employee Maria Cruz walks through the subject area with a broom and dust pan,
25 and testified in deposition on April 17, 2019 that she did not see anything on the floor at that time.
26 (*See id.*) Numerous people walk through the area over the following three minutes with absolutely no
27 indication of any foreign substance on the floor. At 12::39:37, the camera zooms in close to the slip
28 area and there is nothing identified from the video on the floor. Maria Cruz testified in deposition on
April 17, 2019 that she did not see anything on the floor when she returned to the area with other PAD
personnel at 12:39:54. Plaintiff denies she ever saw anything on the floor before or after the incident,
but related that the left side of her pants were wet. (*See* Exhibits F and G.)

⁷As noted in the above Declaration, Paragraphs 20-21, Mr. Galliher has been sharing deposition transcripts with counsel in other cases, despite the fact that a Rule 26(c) protective order is in place.

1 Recommendation, **Plaintiff is presently in blatant violation of the Rule 26(c) protective order.**
2 (See NRCp 37(b)(2); *Bahena v. Goodyear Tire & Rubber Co.*, 235 P.3d 592, 597 (2010).) Plaintiff
3 rang a bell she knew could not be unrung here by both eliciting and sharing protected information.
4 Even as late as April 19, 2019, the documents which are the subject of the Objection to the DCRR now
5 before the Court have been filed with the court hearing the *Smith* matter. (See Exhibits D and I.) There
6 is no stay in place, the documents at issue are under a protection order, and they are now being shared
7 and used by counsel outside this litigation with virtual impunity.⁸

9 II.

10 NATURE OF RESPONSE

11 Defendants have provided Plaintiff with sixty-four (64) prior incident reports over a period of
12 three (3) years. **The number of prior incident reports produced by Defendants' to Plaintiff in this**
13 **matter is not at issue.** The only matter brought before the Discovery Commissioner was Defendants'
14 Motion for Protective Order. Defendants moved to have information related to the sixty-four (64) prior
15 incidents protected pursuant to NRCp 26(c), and to keep the information in redacted form. Plaintiff
16 did not raise the issue of what she now refers to as "*Venetian's scheme of hiding evidence and*
17 *disobeying court orders*" (see *Objection* at 4, ln 11-2) until the March 13, 2019 hearing. Now, in the
18 Objection, Plaintiff has added facts and arguments that were neither briefed nor presented to the
19 Discovery Commissioner in oral argument at the March 13, 2019 hearing.

20 Despite having very unclean hands, Plaintiff now comes before This Honorable Court and
21 portrays herself as a victim in need of relief. Accordingly, Defendants not only respectfully submit that
22 the Discovery Commissioner's Report and Recommendation be adopted by the District Court, but
23

24
25
26 See also Exhibit H, *Correspondence from Michael Royal, Esq., to Keith Galliher, Esq.*, dated April
27 19, 2019.

28 ⁸Plaintiff has actually allowed documents protected by the pending DCRR to become part of
the public record, and does so without the slightest concern.

1 move to strike Plaintiff's arguments related to actions she has taken "*To verify Venetian's compliance*
2 *with the discovery request*" **which included improperly obtaining information from Mr. Goldstein,**
3 who was under an NRCP 26(c) protective order in the *Smith* litigation, which issue was not briefed
4 before the Discovery Commissioner below but was merely thrown out by Mr. Galliher during the
5 March 13, 2019 hearing in sandbag fashion, and further moves the Court to issue sanctions against
6 Plaintiff for her continued refusal to comply with the Rule 26(c) order presently in place.
7

8 III.

9 ARGUMENT

10 A. Defendants Appropriately Sought and Obtained an NRCP 26(c) Protective Order

11 Rule 26 (b)(1), Nevada Rules of Civil Procedure, governs the scope of discovery, and provides
12 for protection of both parties and other persons, against annoyance, embarrassment, oppression, or
13 undue burden or expense. Rule 26(c), Nevada Rules of Civil Procedure, reads as follows in pertinent
14 part:
15

16 ***Protective Orders.** Upon motion by a party or by the person from whom discovery is*
17 *sought, accompanied by a certification that the movant has in good faith conferred or*
18 *attempted to confer with the other affected parties in an effort to resolve the dispute*
19 *without court action, and for good cause shown, the court in which the action is*
20 *pending may make any order which justice requires to protect a party or person from*
21 *annoyance, embarrassment, oppression, or undue burden or expense, including one or*
22 *more of the following:*

- 23 (1) *that the discovery not be had;*
- 24 (2) *that the discovery may be had only on specified terms and conditions, including a*
25 *designation of the time or place;*
- 26 (3) *that the discovery may be had only by a method of discovery other than that selected*
27 *by the party seeking discovery;*
- 28 (4) *that certain matters not be inquired into, or that the scope of the discovery be limited*
to certain matters;
- (5) *that discovery be conducted with no one present except persons designated by the*
court;
- (6) *that a deposition after being sealed be opened only by order of the court;*
- (7) *that a trade secret or other confidential research, development, or commercial*
information not be revealed or be revealed only in a designated way;
- (8) *that the parties simultaneously file specified documents or information enclosed in*
sealed envelopes to be opened as directed by the court.

1 The objective of discovery rules is to limit discovery to relevant matters, and to prevent "*fishing*
2 *expeditions*" by restricting litigants to discovery that only implicates matters raised by them in the
3 pleadings. (See FED. R. CIV. P. 26(b), Advisory Committee Note, Amendments to Federal Rules
4 of Civil Procedure, at 388-90). Pursuant to the Nevada Rules of Civil Procedure, the court in which
5 the action is pending may make any order/recommendation which justice requires to protect a party
6 so that certain discovery abuses do not occur. (See NRCP 26). The compulsion of a party to produce
7 irrelevant information is an inherently undue burden. (See *Jimenez v. City of Chicago*, 733 F. Supp.
8 2d 1268, 1273 (W.D. Wash. 2010) (citing, *Compaq Computer Corp. v. Packard Bell Elecs.*, 163
9 F.R.D. 329, 335-336 (N.D. Cal.1995)). Here, the private information Plaintiff desires has no good,
10 relevant purpose other than to harass, vex and annoy Defendants and their guests by not only making
11 direct contact themselves, but sharing the personal information of all such guests with the world.
12 Plaintiff's actions are, in a word, unbelievable. The fact that Plaintiff has obtained NRCP 26(c)
13 protected information from counsel in other ongoing litigated matters and refuses to abide by the
14 pending NRCP 26(c) ruling by the Court is likewise very troubling.

15
16
17 **B. This is the kind of circumstance NRCP 26(c) is designed to address**

18 Plaintiff claims entitlement to all unredacted information related to the sixty-four (64) prior
19 incident reports, and to do whatever she pleases with personal information provided on unredacted
20 reports of prior incidents, including freely sharing them with anyone in any forum, in any manner
21 whenever and however she chooses. Plaintiff cares nothing for the rights of those persons identified
22 in the prior incident reports. Here, Plaintiff is seeking the very kind of *carte blanche* information
23 (*fishing expedition*) the Nevada Supreme Court has so objected to in its holding of *Schlatter v. Eighth*
24 *Judicial Dist. Court*, 93 Nev. 189, 192 (1977). Contrary to what she would have this Court believe,
25 Plaintiff is not a victim.
26
27
28

1 **1. Guest Privacy Rights**

2 The Discovery Commissioner agreed that the people identified in the prior incident reports have
3 certain rights to privacy, that there is **protected HIPAA information** in the prior incident reports, and
4 that producing these reports in redacted form to protect the privacy of these individuals is appropriate.
5 (See Exhibit B.) The Health Insurance Portability and Accountability Act of 1996 (*HIPAA*) prohibits
6 unauthorized disclosure of certain protected health information. (See 42 USCS. § 1320d *et seq.*; 45
7 C.F.R. §§160-164.)
8

9 Providing Plaintiff with *carte blanche* personal information of all Venetian guests previously
10 involved in incidents sets up Defendants for a cause of action for invasion of privacy by these persons.
11 (See *e.g. Iorio v. Check City P'ship, LLC*, No. 64180, 2015 Nev. Unpub. LEXIS 658, 2015 WL
12 3489309, at *3 (Nev. May 29, 2015); *People for Ethical Treatment of Animals v. Bobby Berosini, Ltd.*,
13 111 Nev. 615, 895 P.2d 1269, 1279 (Nev. 1995) holding modified by *City of Las Vegas Downtown*
14 *Redevelopment Agency v. Hecht*, 113 Nev. 632, 940 P.2d 127 (Nev. 1997), holding modified by *City*
15 *of Las Vegas Downtown Redevelopment Agency v. Hecht*, 113 Nev. 644, 940 P.2d 134 (Nev. 1997).)
16

17 **2. Guest Personal Information**

18 Defendants employ emergency medical technicians who respond to injury related matters on
19 Venetian property. Those EMTs routinely perform triage like exams and render first aid care, which
20 includes not only collecting information about present condition of a guest, but also information related
21 to past medical history, medications, etc. They also frequently provide information relayed by
22 responding paramedics, which information is intended to be relayed to hospital personnel. Statements
23 to responding EMTs and outside EMS personnel are often recorded in incident reports. By collecting
24 and reporting this information, Venetian contends that it is a provider within the umbrella of HIPAA
25 and, as such, cannot release information related to complaints of injury. Take Plaintiff's own incident,
26 for example. Plaintiff was examined by Joe Larson, EMT, who provided intricate details of his
27
28

1 exchange with Plaintiff, from her initial complaints to his physical examination. (See Exhibit F,
2 *Narrative Report*, VEN 008-09; Exhibit G, *Acknowledgment of First Aid Assistance & Advice to Seek*
3 *Medical Care*, VEN 017.) Defendants have Plaintiff's personal information for use in this litigation;
4 however, it does not assert *carte blanche* right to freely disseminate Plaintiff's information wherever
5 and however it pleases.

6
7 Plaintiff cannot reasonably articulate how the identity of individuals involved in prior incidents
8 on Venetian's premises, with no relation to Plaintiff's case, without any similar facts or circumstances,
9 could be remotely relevant to any of Plaintiff's claims here. Her personal injury litigation arises from
10 the allegation that Plaintiff slipped and fell on a marble floor. Individuals involved in prior slip-and-
11 fall incidents would be unable to provide any information regarding the alleged hazard which Plaintiff
12 contends caused her fall. Reports of prior slip and fall incidents, which occurred on different
13 circumstances, and on different dates, in different areas of the property have no relevancy to the issue
14 of whether Venetian had notice of any condition contributing to Plaintiff's fall on November 4, 2016.
15 (See *Eldorado Club, Inc. v. Graff*, 78 Nev. 507 (1962); *Southern Pac. Co. v. Harris*, 80 Nev. 426,
16 431 (1964).)

17
18 Venetian has very good reason to request protection for its prior guests - as Plaintiff holds their
19 privacy rights in complete disregard - much like her ongoing disregard for the present NRC 26(c)
20 order in place. Venetian's concern is that such information can be disseminated to the public in a
21 multitude of ways, and passed onto other persons having nothing to do with this litigation, thereby
22 subjecting the persons identified herein to multiple contacts by persons, who have access to their
23 personal information, including events, injuries, care provided, etc. (Plaintiff has already demonstrated
24 how this process works.) Plaintiff's desire to obtain this information and share it with the world serves
25 absolutely no good purpose and is very bad public policy.
26
27
28

1 C. **The policy interests of protecting the confidential personal information outweigh the**
2 **alleged need for discovery in this case**

3 Even where inquiries could reasonably lead to the discovery of admissible evidence, courts
4 must still balance the proponent's interest in discovery of the information against any legitimate interest
5 of the other party. "[T]he initiation of a lawsuit, does not, by itself, grant plaintiffs the right to
6 rummage unnecessarily and unchecked through the private affairs of anyone they choose. A balance
7 must be struck." (*Ragge v. MCA/Universal Studios*, 165 F.R.D. 601, 605 (C.D. Cal. 1995) (quoting
8 *Cook v. Yellow Freight Sys., Inc.*, 132 F.R.D. 548, 551 (E.D. Cal. 1990)). Discovery based on mere
9 suspicion or speculation is nothing more than the proverbial "fishing expedition." (See, *Mackelprang*
10 *v. Fid. Nat'l Title Agency of Nev.*, 2007 U.S. Dist. LEXIS 2379, *7 (D. Nev. Jan. 9, 2007); see
11 also, *Costella v. Clark*, 2009 U.S. Dist. LEXIS 120566, *5 (N.D. Cal. Dec. 7, 2009).)

13 Where privacy concerns are implicated by discovery requests, the party requesting such
14 information "must show that the value of the information sought would outweigh the privacy
15 interests of the affected individuals." (*Case v. Platte County*, No. 8:03CV160, 2004 WL 1944777,
16 at *2 (D. Neb. June 11, 2004) (emphasis added); see also, *Walters v. Breaux*, 200 F.R.D. 271, 274
17 (W.D. La. 2001), acknowledging legitimate privacy concerns with respect to social security
18 numbers.)

20 Public policy concerns surrounding the protection of personal medical information are far
21 reaching. Generally, public policy concerns favor the protection of individual health information.
22 Similar privacy concerns surround the protection of other confidential information of non-parties,
23 including individuals' Social Security numbers, unlisted telephone numbers and addresses, and dates
24 of birth. A protective order is warranted where the requested discovery "contains highly personal
25 information.." (*Knoll v. AT&T, et al.*, 176 F.3d 359 (6th Cir. 1999) (recognizing the need for
26 protection of information from non-parties including an individual's unlisted address and telephone
27 number, marital status, and medical background). In addition, many courts have found that social
28

1 security numbers are confidential and not reasonably calculated to lead to the discovery of admissible
2 evidence. (See, e.g., *Mike v. Dymon*, No. 95-2405-EEO, 1996 WL 674007, at *7 (D. Kan. Nov. 14,
3 1996) ("*The court does not find that requests for social security numbers and dates of birth of all*
4 *individuals who provided information to answer the interrogatories are reasonably calculated to lead*
5 *to the discovery of admissible evidence.*"); *Beasley v. First Amer. Real Estate Info. Serv., Inc.*, No.
6 3-04-CV-1059-B, 2005 WL 1017818, at *2 (N.D. Tex. April 27, 2005) ("*[T]he social security*
7 *numbers of employees are confidential and not reasonably calculated to lead to the discovery of*
8 *admissible evidence.*").

10 1. **Plaintiff plans to distribute all information freely as she has previously done**

11 The approximate 650 pages of incident reports include home addresses, dates of birth, driver's
12 license numbers, and Social Security Numbers, in addition to the private health related information.
13 Venetian has produced these prior reports with all personal identification information redacted, in order
14 to preserve the privacy of the guests. All other information contained in the prior incident reports,
15 which include the date, time, place and circumstances related thereto have been produced. Plaintiff's
16 counsel and those within his circle clearly do not honor protective orders. Therefore, anything
17 produced in unredacted form will be circulated whether a protective order is in place or not. That is
18 quite evident here.

19 Should unredacted reports be produced without a protective order, the personal identification
20 information, the medical information contained in the reports, including brief medical histories of the
21 guests, as well as other private information, including dates and durations of the guests' stay with the
22 hotel, injuries sustained during the prior incidents, and the perception of consumption of alcohol of the
23 guests at the time of the incidents, could be used for any number of reasons by untold others wholly
24 unrelated to this lawsuit. If this information were so disclosed, without court ordered protection, it
25 would likely lead to the annoyance and aggravation of the individuals involved in prior incidents on
26
27
28

1 Venetian's property; individuals who are not believed to have any personal knowledge or information
2 regarding any of the facts surrounding Plaintiff's alleged incident.

3 2. **Plaintiff is using information produce for improper purposes and cannot**
4 **articulate a reasonable need for guest contact information**

5 Disclosure of the guest information as it pertains to this litigation alone creates an issue for
6 Venetian, as it is potentially detrimental to its business interests to protect the confidential information
7 of its guests. Were Venetian to disclose this information without court ordered protection, subjecting
8 its customers to unrelenting contact by persons uninvolved with the litigation, it would likely diminish
9 the customer/client relationships which Venetian has extended extraordinary effort and resources
10 establishing. There is a recognized interest in protecting the disclosure of personal client information,
11 as unauthorized disclosure would likely be perceived negatively by customers and potential customers.
12 (See e.g., *Gonzales v. Google, Inc.*, 234 FRD 674, 684 (N.D.CA 2006) (disclosing client information
13 "may have an appreciable impact on the way which [the company] is perceived, and consequently the
14 frequency with which customers use [the company]").)

15
16 Guests who stay at Venetian do so with an expectation that their personal information
17 (especially when it involves health issues) will not be disclosed or disseminated freely without their
18 consent. Accordingly, Venetian respectfully requests that the private identification information of its
19 guests involved in prior incidents be protected from disclosure by anyone not involved in this litigation
20 as legal counsel, an expert witness, or otherwise.

21
22 **What has Plaintiff done to demonstrate her need for this information is so great that it**
23 **outweighs the privacy rights of Defendants' guests?** She provides the following:

24
25 . . . Plaintiff needs the names and contact information on the incident reports
26 because they are potential witnesses. The identity of the individuals who fell at
27 Venetian and were injured on its marble floors as a result of impacting liquid are
28 important because they will enable Plaintiff's Counsel to locate these witnesses and
present them to **counter Venetian's expected claims that Plaintiff was**
comparatively negligent because she did not see the liquid substance on the floor
before she fell.

1 (See *Objection* at 10, ln 18-24. Emphasis added.)

2 Plaintiff's explanation of why she *needs* unredacted information to potentially contact hundreds
3 of persons and share their personal information with the world makes absolutely no sense. Further,
4 there is not now, nor has there ever been, an argument by Defendants that Plaintiff ***did not see the***
5 ***liquid substance on the floor before she fell*** in this matter, because Defendants' position has always
6 been that **here was no foreign substance on the floor.** (See Exhibit E.)

8 Certainly, if Plaintiff can find a factually similar circumstance among the sixty-four (64) prior
9 redacted incident reports previously provided that truly identify someone with something potentially
10 relevant to provide in that regard, the Defendants will provide it to Plaintiff for the limited purpose of
11 this litigation. If Plaintiff's rationale above is the best she can do to articulate a reason to get the *carte*
12 *blanch* personal information for guests of Defendants to make contact with these people and other
13 persons with them, and to then freely share it with the world, then her objection should fail on its face.

15 This is a slip and fall incident. Plaintiff has all the information she needs to argue notice.
16 Plaintiff has an expert witness who has prepared a report and is identified to testify at trial. How can
17 the testimony of someone who had an incident on a different day and time, at a different location
18 within the property, under entirely different circumstances, be used to rebut an argument for
19 comparative fault made by Defendants? We do not know, and Plaintiff apparently cannot explain it.
20 She just *needs* it all.

22 Plaintiff's assertion that Venetian is acting to "*safely violate discovery rules, ignore court*
23 *orders and selectively disclose information*" is classic projecting. (See *Objection* at 6, ln 1-3.) If
24 Defendants were guilty of such conduct, certainly there would be some mention of it in the March 13,
25 2019 hearing transcript or within the Discovery Commissioner's Report and Recommendation.
26 Plaintiff's allegation that Defendants have been "*hiding 80-85% of the incident reports of slip and falls*
27 *on its marble floors*" is just more unsubstantiated rubbish tossed out by Plaintiff in the *Objection* that
28

1 should be stricken and ignored by the Court. (*See Objection* at 8, ln 1.)⁹ Moreover, the issue of how
2 many incident reports were produced by Defendants in response to Plaintiff's discovery request was
3 not at issue before the Discovery Commissioner. Plaintiff did not file a motion or countermotion, nor
4 did she hold a conference as required by EDCR 2.34.

5 Here is what Plaintiff has demonstrated in the Objection:

6 1. She received sixty-four (64) prior incident reports (consisting of about 650 pages) from
7 Defendants, with contact information of all non-employees involved redacted;

8 2. She obtained the deposition testimony of former security officer/EMT Joseph Larson
9 who opined that he may have responded to 100 or so slip/fall incidents over a nine year period - or
10 about eleven (11) per year; and
11

12 3. Plaintiff has a retained expert, Thomas Jennings, prepared to testify that the subject fall
13 area is slippery when wet, among other things.
14

15 Still, however, Plaintiff claims she cannot quite make her case unless she can identify all those
16 involved in prior incidents, name them as witnesses, contact them, prepare to bring them to trial to
17 testify about their unrelated experiences, and then share them freely with others wholly unaffiliated
18 with the present litigation. That is disingenuous, at best. Plaintiff is playing a game designed to
19 distract the finder of fact from the real issue here; *to wit*: Plaintiff fell on November 4, 2016 while
20 walking on a dry marble floor. All the smoke and mirrors she can muster will not change that fact.
21 Certainly, subjecting hundreds of Venetian guests who may have knowledge of unrelated prior
22 incidents to being harassed by Plaintiff and other legal offices unaffiliated with this matter will not get
23 us any closer to the truth. Such an effort would serve no good purpose other than to harass Defendants
24 and their guests.
25
26

27
28 ⁹Plaintiff's counsel is free to use his creative math skills to invent numbers of prior incidents
occurring on Defendants' property.

**COUNTERMOTION TO STRIKE FACTS, EVIDENCE AND
ARGUMENTS NOT BRIEFED BELOW**

Defendants hereby move this Honorable Court to strike and disregard the following factual assertions and arguments not presented to the Discovery Commissioner in Defendants' Motion for Protective Order.

1. *During his deposition Mr. Larson indicated approximately 300-500 injury slip and fall injuries (sic) occurred on the marble floors at Venetian in the last five (5) years. (See id. at 2, ln 21-23.)* That is a complete misrepresentation of Mr. Larson's sworn testimony. First Mr. Larson has not been employed with Venetian for more than two (2) years; therefore, Plaintiff's representation is false on its face. Second, this fabrication had nothing to do with any issue before the Discovery Commissioner.

2. *Thus, when Venetian disclosed a mere 64 redacted incident reports Plaintiff instantly suspected the vast majority were missing. (See id. at 3, ln 1-2.)* This is simply Plaintiff's post motion justification for colluding with Mr. Goldstein so that Plaintiff's counsel could improperly obtain information protected pursuant to NRCP 26(c) in the *Smith* litigation.

3. Nothing related to Mr. Galliher's collusion with Mr. Goldstein was briefed before the Discovery Commissioner. It should not be considered here other than to demonstrate Plaintiff's unclean hands and complete disregard for Court determinations, by refusing to comply with the NRCP 26(c) protective order presently in place both in this matter and in the *Smith* matter involving Mr. Goldstein.

4. *"By hiding 80-85% of the incident reports of slip and falls on its marble floors, Venetian ensures the public will never determine the magnitude of the problem, will never have the opportunity to deter Venetian from wrongdoing, and will never be able to encourage Venetian to make their premises safer."* (See *id.* at 8, ln 1-5.) No evidence has ever been produced by Plaintiff to substantiate her claim that Venetian is hiding anything. Again, this issue was not brief before

1 the Discovery Commissioner, there was no EDCR 2.34 conference held by Plaintiff's counsel, and
2 it is unrelated to the DCRR. Therefore, this commentary and any argument related thereto should
3 not be allowed or given consideration here.

4 To the extent such argument is so considered, the Court should be aware that Plaintiff
5 herself testified that while spending approximately 3,000 hours on Defendants property between
6 December 2015 and November 2016, making multiple walks through Venetian property a day, she
7 never saw a foreign substance on the floor, never saw a person fall, and never even heard of such
8 an occurrence. (See Declaration of Michael A. Royal, Esq., paragraph 25; Exhibit J.) Also, former
9 employee Gary Shulman testified that in his fourteen (14) years working on the Venetian casino
10 floor as a Table Games Supervisor, the subject incident was the only occasion in which he can
11 recall having any personal knowledge of a guest slip and fall. (See Declaration of Michael A.
12 Royal, paragraph 22.) That kind of testimony does not agree with the creative accounting
13 promoted by Plaintiff in her presented analysis above. It is just more fabrication by Plaintiff
14 present a false narrative and justify her refusal to comply with the present protective order.
15
16

17 **COUNTERMOTION FOR ORDER DIRECTING RETURN OF ALL NRCP 26(c)**
18 **PROTECTED INFORMATION AND COUNTERMOTION FOR SANCTIONS**

19 1. **An NRCP 26(c) Protective Order is in place, there is no stay, and Plaintiff is in**
20 **blatant violation**

21 Rule 2.34(e), Eighth Judicial District Court Rules, provides the following: "*The*
22 *commissioner may stay any disputed discovery proceeding pending resolution by the judge.*"
23 (Emphasis added.) Plaintiff did not move for a stay of the Court's ruling on Defendants' motion
24 for an NRCP 26(c) protective order. Accordingly, the NRCP 26(c) protective order is the law of
25 the case. Despite that, Plaintiff has done nothing to comply with it. To the contrary, as Plaintiff
26 has demonstrated here, she strategically conspired with counsel in the *Smith* matter to take all
27 protected prior incident reports at issue before the Discovery Commissioner and have them filed
28

1 with the court, becoming public record, on March 12, 2019 - one day before the March 13, 2019
2 hearing before the Discovery Commissioner. (See Exhibits D and I.) Plaintiff should have
3 protected the documents prior to the March 13, 2019 hearing. Most certainly, Plaintiff should have
4 taken action following the March 13, 2019 hearing to comply with the DCRR. To the contrary,
5 Plaintiff has ignored it entirely. She and counsel in the *Smith* and *Cohen* matters have collectively
6 shown complete disregard for the rule of law. Defendants therefore respectfully submit that
7 Plaintiff is now subject to sanctions under NRCP 37(b)(2) for her blatant violation of the DCRR.

9 2. **Plaintiff should be ordered to take every possible step to retrieve information**
10 **protected per the Discovery Commissioner's April 2, 2019 DCRR and ensure it**
11 **is not improperly used by anyone outside this litigation**

12 There is a protective order in place. Plaintiff disregarded it, distributed the information,
13 obtained information from other attorneys in unrelated ongoing litigation, and seeks to benefit from
14 her refusal to comply. That alone should be sufficient to affirm the DCRR. However, Plaintiff
15 quickly distributed information she knew was deemed protected by Defendants before the Court
16 could hear this matter, then did nothing as counsel in other cases swiftly identified it in their
17 respective NRCP 16.1 disclosures. Therefore, Defendants respectfully move this Honorable Court
18 to order that Plaintiff retrieve all information distributed in this matter to anyone outside this
19 litigation, with an order directing that such information cannot be used in any other matter, as
20 though there had been no inappropriate distribution by Plaintiff at all.

22 3. **Defendants move for appropriate sanctions**

23 The Nevada Supreme Court has held that “a district court has the discretion to sanction a
24 party for its failure to comply with a discovery order. . . .” (*Bahena v. Goodyear Tire & Rubber*
25 *Co.*, 235 P.3d 592, 596 (2010).) Therefore, this Honorable Court has discretion to impose
26 appropriate sanctions based on Plaintiff’s complete failure to protect information she has shared
27 with persons outside the litigation. (Indeed, Plaintiff’s sharing of information she knew Venetian
28

1 desired to be kept confidential prior to the issue being heard before the Discovery Commissioner
2 was a very calculated, premeditated end around to head off any potential adverse ruling by the
3 Court.)

4 The options available to the Court are set forth in NRCP 37(b)(2), which include
5 establishing certain disputed facts as true, striking certain claims or defenses, striking pleadings in
6 whole or in part, staying proceedings until the order is obeyed, or dismissal.
7

8 Plaintiff is under a legal obligation to comply with the Discovery Commissioner's Report
9 and Recommendation at issue. She has taken no steps to remedy the matter by retrieving
10 documents exchanged with other counsel in ongoing unrelated litigation against Defendants,
11 despite the Court order. In the meantime, Mr. Goldstein has used the prior incident reports (with
12 Plaintiff's knowledge and blessing) to support a motion for sanctions against Defendants which
13 hearing is set to be heard this week. Obviously, Plaintiff did not comply with the present Court
14 order because it would have impeded Mr. Goldstein's failed efforts against Venetian in the
15 *Smith* litigation. Yet, Plaintiff has the audacity to assert that Venetian is the one abusing discovery
16 and violating Court orders.
17

18 a. **Dismissal**

19 Based on Plaintiff's bad actions, Defendants hereby move for dismissal of the Complaint.
20 Plaintiff clearly fears she cannot win on the merits and has therefore elected to utilize unscrupulous
21 methods of discovery.¹⁰
22

23 b. **Establish a Disputed Fact**

24 Should the Court seek a lesser alternative, Defendants move for a finding that there was no
25 foreign substance on the floor, consistent with the evidence, and that Plaintiff pay Defendants' fees
26
27
28

¹⁰See *i.e.* Declaration of Michael A. Royal, Paragraphs 20-21. See also Exhibit H.

1 and costs associated with having to both bring the Motion for Protective Order, and to respond to
2 the Objection to the Discovery Commissioner's Report and Recommendation.

3 c. **Bass-Davis Like Instruction**

4 Alternatively, the Court could fashion an instruction or finding under *Bass-Davis v. Davis*,
5 122 Nev. 442, 134 P.3d 103 (2006), providing Defendants with a rebuttable presumption
6 instruction that Defendants had no constructive notice of any foreign substance on the floor prior to
7 Plaintiff's fall, and preclude Plaintiff from using evidence obtained from any other pending
8 litigation involving the Venetian property. Defendants would further move for an award of its fees
9 and costs associated with the Motion for Protective Order, and to respond to the present Objection.
10

11 d. **Affirm and Order Document/Information Retrieval, with Fees/Costs**

12 At a minimum, Defendants move for a finding that the DCRR be affirmed, that all
13 information provided to Plaintiff by Defendants in this matter be protected under NRCP 26(c), that
14 Plaintiff be ordered to pay Defendants' fees and costs associated with having to bring the motion
15 for protective order and respond to this Objection, along with any additional monetary sanctions
16 the Court deems appropriate to prevent Plaintiff from so blatantly disregarding a Court order in the
17 future, and that Plaintiff be ordered undertake to reacquire all documents previously distributed to
18 counsel in other litigated matters, with an order stating that these documents were inappropriately
19 shared by Plaintiff. Finally, the order should relate to all discovery exchanged and deposition
20 transcripts. As noted in Paragraphs 20-21 of the Declaration of Michael A. Royal, Plaintiff in this
21 case purposely elicited testimony protected by attorney/client privilege from a witness and will no
22 doubt distribute it wildly to the world when the transcript is received.
23
24

25 **Defendants also move for leave under NRCP 30(a)(2)(A) to retake the deposition of**
26 **Gary Shulman, if deemed necessary.**¹¹
27

28 ¹¹*See id.*

IV.

CONCLUSION

Based on the foregoing, Defendants respectfully submit that the Discovery Commissioner's Report and Recommendation of April 2, 2019 should be affirmed, and that Defendants' counter-motion for sanctions under NRCP 37(b)(2) should be granted based on Plaintiff's refusal to obtain a stay from the DCRR and comply with the protective order now in place, as set forth above.

DATED this 22 day of April, 2019.

ROYAL & MILES LLP

By 

Michael A. Royal, Esq.
Nevada Bar No. 4870
1322 W. Warm Springs Rd.
Henderson, NV 89014
Attorney for Defendants
VENETIAN CASINO RESORT, LLC and
LAS VEGAS SANDS, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23 day of April, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSE TO PLAINTIFF'S OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS DATED APRIL 2, 2019, COUNTERMOTION TO STRIKE FACTS AND ARGUMENTS NOT BRIEFED BEFORE THE DISCOVERY COMMISSIONER, COUNTERMOTION FOR ORDER DIRECTING PLAINTIFF TO COMPLY WITH PROTECTIVE ORDER BY RETRIEVING ALL INFORMATION DISTRIBUTED TO PERSONS OUTSIDE THE LITIGATION, AND COUNTERMOTION FOR APPROPRIATE SANCTIONS UNDER NRCP 37(b)(2)** to be served as follows:

- ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or (with exhibits)
- ☐ to be served via facsimile; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand delivered;

to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Plaintiff
Facsimile: 702-735-0204
E-Service: kgalliher@galliherlawfirm.com
dmooney@galliherlawfirm.com
gramos@galliherlawfirm.com
sray@galliherlawfirm.com

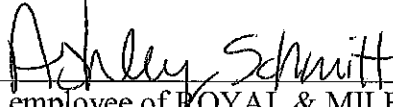

An employee of ROYAL & MILES LLP

EXHIBIT 14

REGISTER OF ACTIONS**CASE NO. A-18-772761-C**

Joyce Sekera, Plaintiff(s) vs. Venetian Casino Resort LLC, Defendant(s) §
 §
 §
 §
 §
 §

Case Type: **Negligence - Premises Liability**
 Date Filed: **04/12/2018**
 Location: **Department 25**
 Cross-Reference Case Number: **A772761**

PARTY INFORMATION

Defendant Las Vegas Sands LLC <i>Doing Business As</i> Venetian Las Vegas	Lead Attorneys Michael A Royal <i>Retained</i> 7024716777(W)
Defendant Venetian Casino Resort LLC <i>Doing Business As</i> Venetian Las Vegas	Michael A Royal <i>Retained</i> 7024716777(W)
Plaintiff Sekera, Joyce	Keith E. Galliher, Jr. <i>Retained</i> 7027350049(W)

EVENTS & ORDERS OF THE COURT

05/28/2019 **All Pending Motions** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)

Minutes

05/28/2019 9:00 AM

- Kathleen Galligher, Esq. present on behalf of Pltf. PLTF'S. MOTION FOR LEAVE TO AMEND THE COMPLIANT...DEFT'S. MOTION TO STRIKE ADDED EVIDENCE AND INFORMATION BY PLTF. IN REPLY TO DEFT'S. OPPOSITION TO PLTF'S. MOTION FOR LEAVE TO AMEND THE COMPLIANT AND TO STRIKE ALL UNAUTHENTICATED EVIDENCE, OR, ALTERNATIVELY, TO ALLOW DEFT'S. AN OPPORTUNITY TO RESPOND, ON ORDER SHORTENING TIME Extensive arguments regarding Pltf's. ability to add punitive damages, Deft's. concerns regarding representations made by Mr. Gary Shulman and if there was misrepresentation, if information in Pltf's. reply is accurate, if any information should be stricken, and prior recommendations made regarding Deft's. marble floors and discovery regarding the history of falls on the floors. COURT STATED FINDINGS, and ORDERED, Pltf's. Motion for Leave to Amend the Compliant GRANTED;it would be a disservice to the case to not allow discovery that could support punitive damages. Deft's. Motion DENIED. Mr. Galliher to prepare the Order, provide a copy to opposing counsel for review as to form and content, and return it back to the Court within 10 days. Upon Mr. Royal's inquiry, COURT ADVISED, It's prior Order regarding the Protective Order still STANDS.

[Parties Present](#)

[Return to Register of Actions](#)

EXHIBIT 15

ROYAL & MILES LLP
1522 W Warm Springs Road
Henderson NV 89014
Tel: (702) 471-6777 ♦ Fax: (702) 531-6777

RFP

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

ROYAL & MILES LLP

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Henderson Nevada 89014

Tel: 702-471-6777

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Email: mroyal@royalmilesllp.com

Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

Plaintiff,

v.

VENETIAN CASINO RESORT, LLC, d/b/a
THE VENETIAN LAS VEGAS, a Nevada
Limited Liability Company; LAS VEGAS
SANDS, LLC d/b/a THE VENETIAN LAS
VEGAS, a Nevada Limited Liability Company;
YET UNKNOWN EMPLOYEE; DOES I
through X, inclusive,

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**RESPONSES TO PLAINTIFF'S THIRD REQUEST FOR PRODUCTION OF
DOCUMENTS AND MATERIALS TO DEFENDANT**

TO: Plaintiff JOYCE SEKERA; and

TO: Keith E. Galliher, Jr., Esq.; her attorney:

Pursuant to Rules 26 and 34 of the Nevada Rules of Civil Procedure, Defendant VENETIAN
CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and through their counsel, ROYAL &
MILES LLP, responds to Plaintiff's first requests for production of documents and materials as
follows:

1 **REQUEST NO. 12:**

2 Any and all documents, reports, emails, correspondence, test results, including expert reports
3 generated by Plaintiffs and/or The Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas with
4 respect to the coefficient of friction, wet and dry, of the marble floors located on the ground floor and
5 Bouchon restaurant floor of The Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas from
6 three years before the fall, November 4, 2013, to the present.
7

8 **RESPONSE NO. 12:**

9 Defendants object to the extent this request lacks foundation and assumes facts not in evidence,
10 is overly broad, vague and ambiguous (*i.e.* “*ground floor*” would refer to the basement which has a
11 different floor surface, and “*Bouchon restaurant floor*” as Defendants did not own, manage, maintain
12 or control the premises of the Bouchon restaurant nor is there any evidence that Plaintiff ever in the
13 Bouchon restaurant at any time), is unduly burdensome and presupposes Defendants are in possession
14 of all information requested, further to the extent that it seeks information protected by attorney/client
15 privilege and/or attorney work product privilege, further to the extent it seeks information surrounding
16 expert consultants or seeks information related to the disclosure of experts prior to the time set forth
17 in the Joint Case Conference Report, and also to the extent it seeks information not reasonably
18 calculated to lead to the discovery of admissible evidence. Without waiving and subject to said
19 objection, Defendants respond as follows: As to any such reports obtained from November 3, 2013 to
20 November 4, 2016 on the main casino floor level where the subject incident occurred, Defendant has
21 no documents responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1
22 and all supplements thereto. Discovery is continuing.
23
24

25 **REQUEST NO. 13:**

26 Any and all documents invoices, work orders or communications with respect to the purchase
27 and/or application of any coating placed on the marble floors located on the ground floor and Bouchon
28

1 restaurant floor of the Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas from three years
2 before the fall, November 4, 2013, to the present.

3 **RESPONSE NO. 13:**

4 Defendants object to this request as vague, ambiguous and overly broad as to "*any coating*
5 *placed on the marble floor*" (*i.e.* this conceivably would include water used to clean), "*ground floor*"
6 (as this refers to the basement area, which has an entirely different floor surface), and "*Bouchon*
7 *restaurant floor*" (Defendants did not own, manage, maintain or control the premises of the Bouchon
8 restaurant nor is there any evidence that Plaintiff ever in the Bouchon restaurant at any time), lacks
9 foundation and assumes facts not in evidence (*i.e.* that Plaintiff was ever in and around the Bouchon
10 restaurant at any time prior to the subject incident or that there was a foreign substance on the floor at
11 the time of Plaintiff's fall, which Defendants deny), to the extent it seeks information not reasonably
12 calculated to lead to the discovery of admissible evidence. Without waiving and subject to said
13 objection, Defendants respond as follows: As to the area where Plaintiff fell, from the time period of
14 November 4, 2013 to November 4, 2016 on the main casino floor level where the subject incident
15 occurred, please see Defendants' disclosures pursuant to NRCP 16.1, including but not limited to VEN
16 1078-VEN 1097. Discovery is continuing.

17 **REQUEST NO. 14:**

18 Any and all incident/security reports regarding injury falls on the marble floors located at the
19 Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas, from three years before the fall
20 November 4, 2013, to the present.

21 **RESPONSE NO. 14:**

22 Defendants object to the extent this request lacks foundation and assumes facts not in evidence
23 (*i.e.* that there was a foreign substance on the floor at the time of Plaintiff's fall, which Defendants
24 deny), is overly broad, vague and ambiguous, unduly burdensome and presupposes Defendants are in
25

1 possession of all information requested, to the extent that it seeks information protected by
2 attorney/client privilege and/or attorney work product privilege, to the extent it seeks information
3 surrounding expert consultants or seeks information related to the disclosure of experts prior to the
4 time set forth in the Joint Case Conference Report, and to the extent it seeks information not
5 reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject
6 to said objection, Defendants respond as follows: *See* documents previously identified by Defendants
7 as VEN 269 - 928, and all supplements thereto, which relate to the common areas of flooring on the
8 casino floor area where the subject incident occurred. Discovery is continuing.

9
10 DATED this 15 day of April, 2019.

11 **ROYAL & MILES LLP**

12
13 By: 

14 Michael A. Royal, Esq.
15 Nevada Bar No. 4370

16 Gregory A. Miles, Esq.

17 Nevada Bar No. 4336

18 1522 W. Warm Springs Road

19 Henderson, NV 89014

20 *Attorneys for Defendants*

21 *VENETIAN CASINO RESORT, LLC and*

22 *LAS VEGAS SANDS, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15 day of April, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS AND MATERIALS TO DEFENDANT** to be served as follows:

_____ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

_____ to be served via facsimile; and/or

☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

_____ to be hand delivered;

to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

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dmooney@galliherlawfirm.com
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sray@galliherlawfirm.com

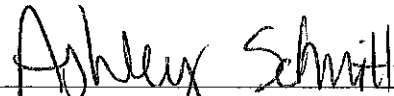
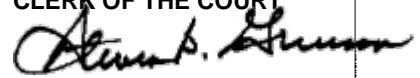

An employee of ROYAL & MILES LLP

EXHIBIT 16



THE GALLIHER LAW FIRM
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Jeffrey L. Galliher, Esq.
Nevada Bar No. 8078
George J. Kunz, Esq.
Nevada Bar No. 12245
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

CASE NO.: A-18-772761-C
DEPT. NO.: 25

v.

VENETIAN CASINO RESORT, LLC,
d/b/a THE VENETIAN LAS VEGAS, a
Nevada Limited Liability Company; LAS
VEGAS SANDS, LLC d/b/a THE
VENETIAN LAS VEGAS, a Nevada
Limited Liability Company; YET
UNKNOWN EMPLOYEE; DOES I
through X, inclusive,

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR LEAVE
TO FILE MOTION FOR
RECONSIDERATION OF ORDER
REVERSING THE APRIL 4, 2019 DCRR
ON UNREDACTED INCIDENT
REPORTS**

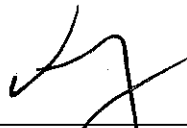
Defendants.

Plaintiff hereby submits her Opposition to Defendants' Motion for Leave to File Motion for
Reconsideration of Order Reversing the April 4, 2019 DCRR on Unredacted Incident Reports.

1 This Oposition is based upon and supported by the following memorandum of points and
2 authorities, the pleadings and papers on file, the exhibits attached hereto, and any argument that the
3 Court may allow at the time of hearing.

4 DATED this 5th day of September, 2019

THE GALLIHER LAW FIRM

5
6
7
8 
9 Keith E. Gallihier Jr., Esq.
10 Nevada Bar Number 220
11 Kathleen H. Gallagher, Esq.
12 Nevada Bar Number 15043
13 1850 E. Sahara Avenue, Ste. 107
14 Las Vegas, Nevada 89104
15 *Attorney for Plaintiff*

12 **MEMORANDUM AND POINTS OF AUTHORITIES**

13 **I. INTRODUCTION**

14 This is a personal injury case arising out of a slip and fall in the Venetian Casino Resort. On
15 November 4, 2016 around 12:30 p.m. Plaintiff Joyce Sekera was walking through Venetian. As
16 Joyce passed the Grand Lux Café Restrooms, she slipped and fell on water on the black marble
17 floors. On the way down Plaintiff struck her skull on the pillar and her left elbow on the ground. The
18 first Venetian employee to come to Joyce's aid, Gary Shulman, confirmed there was water on the
19 floor. (See Deposition of Gary Shulman, attached as Exhibit "1" at 8:6-10; 8:23-9:11; 10:8-17.)

20 Over the last two years Plaintiff underwent low back injections, medial branch blocks and
21 two rounds of radio frequency ablations. (July 10, 2019 Pain Institute of Nevada Record, attached as
22 Exhibit "2" at 2.) In June, after Plaintiff's most recent set of radio frequency ablations failed, Dr.
23 Smith opined "I do not see how this woman will be able to avoid surgical treatment" "Rhizotomies
24 in my opinion will give her some temporary relief, but certainty not long-term." (July 8, 2019
25 Western Regional record, attached as Exhibit "3.") Plaintiff will thus be undergoing L5-S1 surgery
26 in the near future.

Over a year ago Plaintiff sent Defendants a request for production for prior and subsequent incident reports. Defendants provided the redacted reports and moved for a protective order on the unredacted reports. The Discovery Commissioner granted the protective order however the Court overruled the Report and Recommendation stating: "Commissioner Truman made an error here, it is relevant discovery. Court does not see any legal basis upon which this should have been precluded." (Defendants' Mot. at Exhibit "C.") Defendants now move the Court to reconsider its order overruling the Discovery Commissioner's report and recommendation on the unredacted incident reports. As discussed in detail below, the Court should deny Defendants' Motion for Reconsideration ("Defendants' Motion") because it improperly re-argues previous arguments, improperly re-argues the same cases and improperly makes new meritless arguments which could have been presented in Defendants' original motion and opposition to Plaintiff's objection.

II. FACTUAL BACKGROUND

A. Plaintiff's Request for Production and Defendants' Motion for A Protective Order

On August 16, 2018 Plaintiff sent Defendants her first set of requests for production. Plaintiff's 7th request asked Defendants provide:

True and correct copies of any and all claim forms, legal actions, civil complaints, statements, security reports, computer generated lists, investigative documents or other memoranda which have, as its subject matter, slip and fall cases occurring on marble floors within the subject VENETIAN CASINO RESORT within three years prior to the incident described in Plaintiff's Complaint [November 4, 2013], to the present.

(Plaintiff's First Set of Requests for Production, attached as Exhibit "4" at 3:3-9.)

In response to this request, Defendants produced 64 redacted incident reports between November 4, 2013 and November 4, 2016. (Defendants' Motion for a Protective Order, attached as Exhibit "5" at 3:25-4:2.) Defendants produced these reports before moving for a protective order. (*Id.* at 3:25-26.) Defendants ignored the portion of Plaintiff's request which asked for subsequent incident reports and subsequently misrepresented to the Court that Plaintiff had only requested reports "occurring within three years preceding the subject incident." (*Id.* at 3:14-16.)

1 Plaintiff requested Defendants provide the unredacted reports so she could identify witnesses
2 to counter Defendants' comparative negligence claim that Plaintiff should have seen liquid on the
3 floor before she fell. (*Id.* at 4:3-14.) Defendants refused to produce the unredacted reports and filed a
4 motion for a protective order on the unredacted reports only. (*Id.*) Defendants' Motion for a
5 Protective Order argued, per *Eldorado Club*, the unredacted incident reports requested "have no
6 relevancy to the issue of whether Venetian had notice of any condition contributing to Plaintiffs fall
7 on November 4, 2016." (*Id.* at 7:27-8:2.) Defendants' further argued the privacy interests of the
8 affected individuals, including not having their names, address, dates of birth, medical information,
9 ect. disclosed, do not outweigh the need for discovery. (Exhibit "5" at 8:13-11:14.)

10 Plaintiff's Opposition argued she needed the unredacted reports to identify "witnesses to the
11 conditions of the marble floor at The Venetian and the fact that this flooring is very unsafe when
12 topped with water or some other liquid substance", that no privacy concerns were involved because
13 there are no social security numbers in the incident reports, and that even if there were privacy
14 concerns Venetian did not have standing to raise them. (Plaintiff's Opp. to Defendants' Mot. for a
15 Protective Order., attached as Exhibit "6" at 2:8-23.)

16 Defendants Reply in Support of their Motion argued "It is clear that Plaintiff does not care
17 about issues related to the protect (sic) of privacy rights" and reiterated their position that that
18 privacy concerns warrant a protective order. (Defendants' Rply. in Support of Their Mot. for a
19 Protective Order., attached as Exhibit "7" at 10:3-11:4.) Defendants also filed an Addendum to ask
20 the Discovery Commissioner for new relief: a protective order on the previously produced redacted
21 incident reports. (Defendants' Addendum to Their Rply. in Support of Mot. for a Protective Order,
22 attached as Exhibit "8" at 4:20-23.)

23 Based upon the briefing and oral argument, the Discovery Commissioner issued a Report and
24 Recommendation recommending "the prior incident reports produced by Venetian... remain in
25 redacted form as originally provided" and that the prior redacted reports "present[] a privacy issue as
26 it pertains to the identity of prior Venetian guests and includes protected HIPPA related information"
27 and should therefore be subjected to a protective order. (Defendants' Mot. at Exhibit "D" at 3:5-9.)
28

B. Objection to the April 4, 2019 DCRR

Plaintiff objected to the Report and Recommendation and argued courts uniformly agree a risk of public disclosure or collaborative sharing of information is not good cause for a protective order, and that sharing discovery amongst lawyers saves costs, expedites litigation and is an effective means of insuring full and fair disclosure from opposing parties. (Plaintiff's Obj. to April 4, 2019 DCRR, attached as Exhibit "9" at 4:13-5:18.) Plaintiff further argued that issuing a protective order in this case undermines the civil justice system because it ensures the public will never know the magnitude of the problem of Venetian's floors and will therefore never be able to encourage Venetian to make their premises safer in the future by holding them accountable. (*Id.* at 6:19-9:6.) Finally, Plaintiff argued the HIPAA rules do not apply to hotel-casinos. (*Id.* at 9:8-10:26.)

Defendants' opposed Plaintiff's Objection and argued the incident reports should remain in redacted form with a protective order preventing them from being shared to "protect the privacy of its [Venetian's] patrons" and to protect Defendants' guests for Plaintiff who wishes "to harass, vex, and annoy Defendants and their guests by not only making direct contact themselves, but sharing the personal information of all such guests with the world." (Defendants' Opp. to Plaintiff's Obj. to April 4, 2019 DCRR, attached as Exhibit "10" at 12:1-2, 15:11:13.) Defendants' further argued HIPAA protects the information sought. (*Id.* at 16:1-16.) Finally, Defendants reiterated their argument that under *Eldorado* the prior incident reports were irrelevant to the issue of notice, and that the policy interests of protecting the private information outweighed Plaintiff's need for discovery. (*Id.* at 16:12-17, 18:1-22:25.)

Plaintiff submitted a Reply in Support of her Objection which reiterated her arguments that courts uniformly agree the risk of collaborative sharing of information is not grounds for a protective order and that the HIPAA laws and supporting cases do not include hotel-casinos. (Plaintiff's Rply. in Support of Her Obj., attached as Exhibit "11" at 8:17-11:5.)

The Court heard Plaintiff's Objection on May 14, 2019. (Defendants' Mot. at Exhibit "C.") The Court determined "Commissioner Truman made an error here, it is relevant discovery. Court

1 does not see any legal basis upon which this should have been precluded.” (*Id.*) Thus, the Court
2 overruled the April 4, 2019 DCRR in its entirety. (*Id.*)

3 **C. Defendants’ History of Playing Hide the Ball in Discovery**

4 Also relevant background information is Defendants’ history of playing hide the ball in
5 discovery. On April 15, 2019 Defendants served their responses to Plaintiff’s third set of requests for
6 production which stated “As to any such [incidents] reports obtained from November 3, 2013 to
7 November 4, 2016 on the main casino floor level where the subject incident occurred, Defendants
8 have no documents responsive to this request beyond those which it has disclosed pursuant to NRCP
9 16.1 and all supplements thereto.” (Defendants’ Rspn. to Plt.’s Third RFPs, attached as Exhibit “12”
10 at 2:21-24.) Shortly after receiving this response Plaintiff’s counsel dug through a few prior cases to
11 identify unproduced responsive incident reports. Plaintiff’s counsel quickly found 2 prior responsive
12 incident reports that resulted in litigation (case nos. A-15-729566-C and A-17-751293-C) which
13 Defendants “missed” when compiling their responses. Defendants later admitted these reports
14 “should have been included by Venetian in its response to the request for prior incident reports” and
15 that “Defendants will supplement NRCP 34 responses to provide” these reports. (Excerpts of
16 Michael Royal’s Declaration in Support of Opposition to Motion to Amend, attached as Exhibit
17 “13” at 12:1-15.)

18 In July 2019 Plaintiff filed her first motion to compel in which listed additional responsive
19 reports Defendants again conveniently missed. (Defendants’ Opp. to Plt.’s Mot. to Compel filed July
20 12, 2019, attached as Exhibit “14.”) Defendants’ Opposition admitted they did not provide an
21 “11/7/13 (Grand Lux Cafe; Marble slip and fall)” and a 06/11/16 “Venetian front office” slip and fall
22 on “a puddle of water.” (*Id.* at 10:25-11:4, 12:1-12:8.) Defendants then provided both of these
23 reports.

24 Defendants also did not fully and fairly disclose incident reports in three other cases: *Smith v.*
25 *Venetian*, *Cohen v. Venetian* and *Boucher v. Venetian*. In *Smith v. Venetian*, Defendants left out 35
26 incident reports responsive to Smith’s request for production. (Motion for Case Ending Sanctions in
27 *Smith v. Venetian* attached as Exhibit “15” at 4:7-10, 5:5.) In *Boucher v. Venetian*, Defendants left
28

out 32 incident reports responsive to Boucher's request for production. (Excerpts of Motion to Amend in *Boucher v. Venetian* attached as Exhibit "16" at 7:19-11:19.)

III. LEGAL ARGUMENT

A. Standard of Review for A Motion for Reconsideration

A rehearing of a matter may only occur when a movant obtains leave of the court. EDCR. 2.24(a). *Murphy v. Murphy*, 183 P.2d 632, 635 (Nev. 1947). Under established practice, a litigant may not raise new legal points for the first time on rehearing. *In Re Ross*, 99 Nev. 657, 668 P.2d 1089, 1091 (1983). Further, a motion for rehearing may not be utilized as a vehicle to reargue matters considered and decided in the court's initial opinion. *Id.* Rather, a motion for rehearing should direct attention to some controlling matter which the court has overlooked or misapprehended. *Id.* Rehearings are not granted as a matter of right and are not allowed for the purpose to reargue, unless there is a reasonable probability the Court may have arrived at an erroneous conclusion. *Geller v. McCown*, 64 Nev. 102, 178 P.2d 380 (1947).

It is well-settled that rehearings are appropriate only where "substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 941 P.2d 486 (1997). In order to gain a "second bite at the apple" the defendant may not raise points or contentions not raised in its initial motion and oppositions. *Edward J. Achrem, Chartered v. Expressway Plaza, Ltd.*, 112 Nev. 373, 917 P.2d 447 (1996). The failure to make the arguments in the first instance constitutes a waiver. *Chowdry v. NLVH, Inc.*, 111 Nev. 560, 893 P.2d 385 (1995). Venetian's Motion should be denied because the new evidence raised is not substantially different and because it impermissibly reargues points and contentions not raised in the initial opposition in an attempt to gain a second bite at the apple.

Despite the fact that Defendants are well aware of these cases, the Motion conveniently leaves out all established precedent related to re-arguing points and raising new legal points for the first time on rehearing.¹

¹ Plaintiff cited these same cases in her opposition to Defendants' Motion for Reconsideration on the order granting Plaintiff's motion to amend her complaint to add a claim for punitive damages.

B. Defendants' Attempt to Sway the Court's Opinion by Misrepresenting the Facts of the Case

1. Plaintiff's Counsel Never Stated He is "Mining" Information for Other Lawyers and Is Not Using Discovery to Aid His Violation of NRPC 7.3(a)

Defendants repeatedly allege Plaintiff's counsel stated he is "min[ing]" information to share with multiple other attorneys within the local plaintiff's bar" "Keep in mind that Plaintiff is, in her counsel's own words, "*mining*" information. (Defendants' Mot. at 18:2-4, 5:7-8, 7:1-2, 14:3, 18:21-24.) Defendants are literally making up quotes from Plaintiff's counsel. The undersigned **NEVER** made such statements or otherwise implied, eluded to or suggested he was engaging in such conduct. This allegation is untrue, unsupported and was designed specifically and intentionally by Defendants to get the Court to rule in their favor.

The phrase – "mining information" – came from Defendants, who pulled one over on this Honorable Court by sneaking it into an order they submitted in May. Defendants strategically placed this phrase in the Order reversing the Discovery Commissioner's April 4, 2019 DCRR: Defendants argued "Plaintiff is using the discovery process to mine information." (Defendants' Mot. at Exhibit "A" at 3:1-3.) This was the first time the phrase "mining information" was used in this case. Coincidentally after Defendants filed this Order they suddenly began quoting these words as Plaintiff's counsel's.

Defendants then discuss the fact that these incident reports involved persons and "incidents within the two year statute of limitations." (Defendants' Mot. at 22:27-28; *see also* Defendants' Mot. for a Protective Order at 23:27-24:2 "this [Plaintiff's discovery] is a thinly veiled attempt by Plaintiff's counsel to "*mine information*" that will potentially allow him to identify potential clients involved in incidents within the preceding two years.") This second statement strongly implies Plaintiff's counsel is sending discovery requests to aid in his violation of NRPC 7.3(a) ("a lawyer

(Excerpts of Plaintiff's Opp. to Def.'s Mot. for Reconsideration, attached as Exhibit "17" at 6:19-7:18, 9:15-22, 10:15-25.) Despite the fact that Defendants were well aware they could not bring up new points which could have been raised in the initial briefing, Defendants insist on wasting the Court's and Plaintiff's time by filing a motion for reconsideration solely based on information available to Defendants at the time of the initial briefing.

1 shall not solicit professional employment from a prospective client with whom the lawyer has no
2 family or prior professional relationship, by mail, in person or otherwise, when a significant motive
3 for the lawyer's doing so is the lawyer's pecuniary gain.") Defendants offer no evidence to back up
4 this insinuation. The undersigned has been nothing less than an outstanding member of the bar for
5 the last 45 years. The fact that Defendants, without a scintilla of evidence, would imply otherwise is
6 gravely concerning.

7 **2. Plaintiff Never Shared "Unredacted" Information and Never Shared**
8 **Information with the Lawyers In *Boucher v. Venetian***

9 The Motion also alleges "Mr. Galliher is known to have already shared unredacted
10 information in his possession with attorneys representing plaintiff... *Boucher v. Venetian* (A-18-
11 773651-C). As noted, Mr. Galliher has acknowledged that he is presently in the process of "mining"
12 information from Venetian." This statement is absurd and a clear Rule 11 violation: it is impossible
13 for Plaintiff to have shared "unredacted information" because Defendants never provided the
14 unredacted information. Moreover, Plaintiff never provided the redacted incident reports to the
15 lawyer – Sarah Banda, Esq. ("Ms. Banda") – in *Boucher v. Venetian*. The first time Plaintiff's
16 counsel heard from Ms. Banda was on August 18, 2019 – 6 days after Defendants filed this Motion.
17 Ms. Banda reached out to the undersigned because she downloaded Defendants' Motion for
18 Reconsideration and saw this blatant misrepresentation. Ms. Banda wished to make sure the
19 undersigned knew she was not falsely representing to her opposing counsel
20 (Messner Reeves) that the undersigned provided her with copies of unredacted incident reports.

21 **3. Plaintiff Did Not Share Documents Which Were the Subject of a Pending**
22 **Protective Order**

23 The Motion states Defendants' initially produced the redacted incident reports "with the
24 understanding that Defendants would seek protection under NRCP 26(c) regarding the reports" and
25 that a "Motion for Protective Order was filed on February 1, 2019." (Defendants' Mot. at 10:20-23.)
26 Defendants then allege Plaintiff's counsel nonetheless "on or about February 7, 2019... shared all of
27 the sixty-four (64) prior incident reports at issue" after the Motion for a Protective Order was filed.
28 (*Id.* at 10:26-28.) This rendition of the facts is inaccurate. Defendants' filed their Motion for a

Protective Order on February 1, 2019 only on the UNREDACTED incident reports.² Defendants did not move for a protective order until they filed their Addendum to their Reply in Support of Their Motion for a Protective Order on March 6, 2019: Venetian now “moves the Court to order an NRCP 26(c) Protective Order related to the approximate 650 pages of redacted materials previously produced to Plaintiff in this matter.” (Exhibit “8” at 4:20-23.) Thus, on February 7, 2019 when Plaintiff supposedly shared the redacted incident reports there was no motion for a protective order pending on the same.

C. The Court Should Deny Defendants’ Motion Because It Improperly Reargues Cases, Improperly Presents New Cases and Improperly Presents New Arguments Which Could Have Been Made in the Original Motion

As Defendants are well aware long-established precedent states a litigant may not raise new legal points for the first time on rehearing. *In Re Ross*, 99 Nev. 657,668 P.2d 1089, 1091 (1983). A motion for rehearing may not be utilized as a vehicle to reargue matters considered and decided in the court's initial opinion. *Id.* Rather, a motion for rehearing should direct attention to some controlling matter which the court has overlooked or misapprehended. *Id.*

In order to gain a “second bite at the apple” the defendant may not raise points or contentions not raised in its initial motion and oppositions. *Edward J. Achrem, Chartered v. Expressway Plaza, Ltd.*, 112 Nev. 373, 917 P.2d 447 (1996). Information not presented - but which could have been presented - in the original opposition cannot be considered in a motion for reconsideration. *Chowdry v. NLVH, Inc.*, 111 Nev. 560,893 P.2d 385 (1995); *see also United States v. Wong*, 470 F.2d 129, 132 (9th Cir. 1972). An argument not previously raised is therefore waived. *Id.*; *see also Lippi v. City Bank*, 955 F.2d 599 (9th Cir.1992); *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d 496 (9th Cir. 1997).

Defendants’ Motion merely makes arguments which Defendants’ could have presented in their original motion. All the cases cited by Defendants in support of their Motion predate their

² “Venetian moves this Honorable Court for a protective order, that the unredacted information sought by Plaintiff not be disclosed for any purpose not directly related to this litigation.” (Exhibit “5” at 11:23-12:2.)

initial Motion for a Protective Order and these arguments were therefore waived. More significantly, many of the cases Defendants cite were previously argued in their initial Motion for a Protective Order (Exhibit "5") and Response to Plaintiff's Objection to the Discovery Commissioners' report and recommendation. (Exhibit "10.")

CASE	YEARS DECIDED BEFORE DEFENDANTS' BRIEFING	PAGE:LINE IN MOTION FOR RECONSIDERATION	LOCATION IN INITIAL MOTION AND RESPONSE TO OBJECTION
<i>Eldorado Club, Inc. v. Graff</i> , 78 Nev. 507, 377 P.2d 174 (1962)	<u>57 years</u>	9:6-7, 11:18, 11:23, 13:11, 13:17, 13:19, 14:24, 15:8, 16:11, 16:28, 17:17, 17:28, 18:15, 22:11	Exhibit "5" at 8:1; Exhibit "10" at 17:16
<i>Southern Pac. Co. v. Harris</i> , 80 Nev. 426, 431 (1964)	<u>55 years</u>	13:11	Exhibit "5" at 8:2; Exhibit "10" at 17:16
<i>Schlatter v. Eighth Judicial Dist. Court</i> , 93 Nev. 189, 192 (1977)	<u>42 years</u>	13:24	Exhibit "5" at 8:20-22; Exhibit "10" at 7:19, 15:24-25
<i>Ragge v. MCA/Universal Studios</i> , 165 F.R.D. 601, 605 (C.D. Cal. 1995)	<u>24 years</u>	13:25	Exhibit "5" at 8:22-9:1; Exhibit "10" at 18:5-7
<i>Cook v. Yellow Freight Sys., Inc.</i> , 132 F.R.D. 548, 551 (E.D. Cal. 1990)	<u>29 years</u>	13:25-26	Exhibit "5" at 9:1; Exhibit "10" at 18:8
<i>Mackelprang v. Fid. Nat'l Title Agency of Nev. Inc.</i> , 2007 U.S. Dist. LEXIS 2379, *7 (D. Nev. Jan. 9, 2007)	<u>12 years</u>	13:27-28	Exhibit "5" at 9:2-4; Exhibit "10" at 18:9-10
<i>Izzo v. Wal-Mart Stores, Inc.</i> , 2016 U.S. Dist. LEXIS 12210; 2016 WL409694,	<u>13 years</u>	15:3	
<i>Rowland v. Paris Las Vegas</i> , 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502,	<u>3 years</u>	15:19, 16:17-18	
<i>Bible v. Rio Props., Inc.</i> , 246 F.R.D. 614, 2007	<u>12 years</u>	16:14, 16:17-18	

1	U.S. Dist. LEXIS 80017			
2	<i>Lologo v. Wal-Mart Stores, Inc.</i> , 2016 U.S. Dist. LEXIS 100559; 2016 WL4084035	<u>3 years</u>	16:27	
3				
4	<i>Caballero v. Bodega Latina Corp.</i> , 2017 U.S. Dist. LEXIS 116869, 2017 WL 3174931	<u>2 years</u>	16:28-17:28	
5				
6	<i>Dowell v. Griffin</i> , 275 F.R.D. 613, 620 (S.D. Cal. 2011)	<u>8 years</u>	17:1-2	
7				
8	<i>Shaw v. Experian Info. Sols., Inc.</i> , 306 F.R.D. 293, 299 (S.D. Cal. 2015)	<u>4 years</u>	17:10-11	
9				
10	<i>Gonzales v. Google, Inc.</i> , 234 FRD 674, 684 (N.D.CA 2006)	<u>13 years</u>	18:8-9	Exhibit "5" at 11:6-9; Exhibit "10" at 20:13-16
11	<i>Beazer Homes, Nev., Inc. v. Dist. Ct.</i> , 120 Nev. 575, 97 P.3d 1132 (2004)	<u>15 years</u>	23:3	
12				

As set forth in the table, Defendants' Motion merely re-argues the same cases and presents "new" old cases to make arguments which could have been presented in the original motion. Nevada law is clear: "points or contentions not raised, or passed over in silence on the original hearing, cannot be maintained or considered on petition for rehearing." *Chowdhry*, 111 Nev. at 562, 893 P.2d at 387. As all of these cases pre-date Defendants' initial Motion for a Protective Order they could have been raised in that motion but were not. All of these cases are thus improperly included in Defendants' Motion. Defendants also included a pre-dated "privacy policy" which was "last updated: May 2018" a year before Defendants filed their initial Motion for a Protective Order on the underacted incident reports. (Defendants' Mot. at Exhibit "N.") As such, the privacy policy is also improperly included because it existed at the time of Defendants' initial Motion for a Protective Order and therefore could have been raised in it. Finally, Defendants included expired insurance contracts to argue they don't currently have coverage for data breaches and could therefore be subject to uninsured claims. (*Id.* at Exhibit "P" at VEN 1443, VEN 1447, VEN 1450.) These insurance contracts – which expired in 2016 and 2017 – similarly pre-date Defendants' initial Motion for a Protective Order and thus could also have been included in it. Defendants' choice to

1 and later regret of not including these cases, the privacy policy and their insurance contract is not a
2 valid reason for reconsideration. Under Nevada law these arguments are an improper attempt a to
3 gain “second bite at the apple” and the Court should therefore deny their Motion. *Edward J. Achrem,*
4 *Chartered*, 112 Nev. 373, 917 P.2d 447.

5 **D. The Court Should Deny Defendants’ Motion for Because There is No “New”**
6 **Law to Apply**

7 The Motion argues reconsideration should be granted because the court must order a
8 protective order “under the new NRCP 26(b)(1).” (Defendants’ Mot. at 11:24.) (emphasis added).
9 The Motion cites to these rules as the “new version of NRCP 26(b)(1).” (*Id.* at 11:24, 14:4, 14:7.)
10 Although Plaintiff’s counsel agrees these rules are relatively new, they are not “new” enough to
11 qualify for reconsideration. The amendments to NRCP 26(b)(1) became effective on March 1, 2019.
12 (Order Amending NRCP, attached as Exhibit “18” at 3.) Although Defendants filed their initial
13 Motion for a Protective Order before the effective date – on February 1, 2019 – Defendants’ initial
14 Motion for a Protective Order argued the new version of NRCP 26(b)(1). (Exhibit “5” at 6:5-10.)
15 More importantly, the hearing in front of the Discovery Commissioner, the Objection, and the
16 hearing on the Objection were all after the new rules went into effect. (Defendants’ Mot. at 3:20,
17 4:3-11.) Thus, the Discovery Commissioner and this Honorable Court applied the new rules, not the
18 old ones. As such, the “new version” of NRCP 26(b)(1) is irrelevant, and not a proper basis for
19 reconsideration.

20 **E. The Court Should Deny Defendants’ Motion Because the *Eldorado* Decision is**
21 **Irrelevant to The Case at Hand and Has Already Been Argued by Defendants**

22 Aside from the fact Defendants cannot re-argue *Eldorado*, Defendants’ Motion repeatedly
23 misleads to Court to believe *Eldorado* applies to this case when this Court and other courts have
24 indicated it does not. In *Eldorado* the plaintiff sued the defendant for negligence for leaving a lettuce
25 leaf on a ramp. *Eldorado Club v. Graff*, 78 Nev. 507, 510 377 P.2d 174, 176 (1962). The *Eldorado*
26 Court, in holding prior falls were inadmissible emphasized that “no contention is made that the ramp
27 was dangerous per se; that there was a structural, permanent or continuing defect.” *Id.* at 510, 377
28 P.2d 176. The *Eldorado* Court continued: “the admissibility of evidence of prior accidents in this

1 **kind of a case**, to show notice or knowledge of the danger causing the accident, is **generally**
2 **confined** to situations where there are conditions of permanency.” *Id.* at 511, 377 P.2d 176.
3 (emphasis added) “Evidence of the type here in question is **usually excluded** where it relates to a
4 **temporary condition** which might or might not exist from one day to the other **unless, of course,**
5 there is proper showing that the conditions surrounding the prior occurrences have continued and
6 persisted.” *Id.* (emphasis added). Thus, the *Eldorado* case only deals with transitory conditions.

7 To support the *Eldorado* argument the Motion grossly misstates Plaintiff’s position: “it is
8 Plaintiff’s claim that she fell due to a wet, temporary transient condition.” (Defendants’ Mot. at 13:3-
9 4.) Defendants know full well this is untrue; Plaintiff argued this numerous times to the Court, who
10 agreed with Plaintiff³ that punitive damages were appropriate because Venetian knew its **marble**
11 **floors were unreasonably slippery** and posed a high risk to guests. If the marble floors themselves
12 are the issue, then this case is not about a “temporary transient condition.” The whole basis for
13 Plaintiff’s punitive damages claim is the non-transitory condition of the marble floors. If Defendants
14 somehow forgot this after all the briefing on the Motion to Amend, all the briefing on their Motion
15 for Reconsideration, all the briefing on their Motion to Dismiss and all the briefing on their Motion
16 for Summary Judgment, Plaintiff reminded Defendants **in writing** at least another 6 times.⁴
17 Plaintiff’s theory of liability – backed by the Court’s stamp of approval on Plaintiff’s claim for
18 punitive damages – is that this case is about a non-transitory condition. Because this case involves
19
20

21 ³ The Court agreed with Plaintiff by granting her Motion to Amend on May 28, 2019 to allow her to
22 add a claim for punitive damages. The Court also agreed with Plaintiff by denying Defendants’
23 Motion to Dismiss or Alternatively for Summary Judgment on Plaintiff’s punitive damages claim on
August 27, 2019.

24 ⁴ See, e.g.

- 25 1. 6/12/2019 Opp. to Defendants’ Mot. to Quash at 2:17-21;
- 26 2. 7/19/2019 Mot. to Extend Discovery and Trial at 4:25-5:3;
- 27 3. 7/24/2019 Mot. for Jury Trial 2:22-25;
- 28 4. 7/25/2019 RIS Mot. to Compel at 4:25-27;
5. 8/2/2019 Opp. to MTD or Alternatively MSJ at 13:1, 14:1-2;
6. 8/13/2019 RIS Mot. for Jury Trial and Opp. to Mot. for Sanctions at 4:8-11.

1 the non-transitory condition of Defendants' marble floors *Eldorado* does not apply and therefore
2 cannot be the basis for granting reconsideration on the order reversing the April 4, 2019 DCRR.⁵

3 Defendants however, are well aware *Eldorado* is a meritless argument in this case as this is
4 not the first time their *Eldorado* argument has been shot down. This is not even the first time
5 Defendants have made this argument **with the same facts.** In December 2018 Defendants made this
6 same *Eldorado* transitory condition argument to Discovery Commissioner Bulla who ruled
7 Defendants' floors were not a "transitory condition":

8 DISCOVERY COMMISSIONER: But I think what you are not understanding is
9 that this case is not as simple as it looks at first glance. There is a difference
between a permanent condition and a transitory condition.

10 ...
11 Here's the small, little, tiny problem that the Venetian has -- you have a floor that,
12 in and of itself, isn't apparently a problem, but every time water goes on that floor,
13 which is foreseeable -- the people will bring in water bottles, or the drinks will be
14 shared on the casino floor and end up on the tile -- then your floor turns into
something different. It turns into a fall hazard. And if you didn't have that big, thick
notebook sitting in front of you to show all the slip and falls you've had on this
flooring, we might be able to argue something differently.

15 (October 31, 2018 Discovery Hearing Transcript from *Smith v. Venetian* at 4:17-5:11, attached as
16 Exhibit "19.") Defendants (also Venetian) in the *Smith* case objected to this report and
17 recommendation **with the same argument Defendants (Venetian) make here.** Compare the
18 argument in *Smith* (under *Eldorado* "prior slip and falls...are not relevant to the slip and fall here nor
19 admissible to show liability or notice") with Defendants' Motion in this case ("the *Eldorado Club,*
20 *Inc.* court expressly held that it is reversible error to receive "notice evidence" of prior similar
21 incidents involving transient conditions to prove constructive notice."). (Venetian's Objection to the
22 DCRR in *Smith v. Venetian* at 16:19-17:20, attached as Exhibit "20"; Defendants Mot. at 21:16-19.)
23 **The *Smith* District Court found this argument meritless, overruled Defendants' objection and**

24
25 ⁵ As such, the decisions Defendants cite that reply on *Eldorado* – *Izzo v. Wal-Mart Stores, Inc.*, No.
26 215CV01142JADNJK, 2016 WL 409694 (D. Nev. Feb. 2, 2016), *Lologo v. Wal-Mart Stores, Inc.*,
27 No. 2:13-CV-1493-GMN-PAL, 2016 WL 4084035 (D. Nev. July 29, 2016) and *Caballero v.*
Bodega Latina Corp., No. 217CV00236JADVCF, 2017 WL 3174931 (D. Nev. July 25, 2017) – are
also irrelevant. (Defendants' Mot. at 15:3-18, 16:26-28, 17:27-28.)

1 **affirmed the report and recommendation.** (Order on Objection to DCRR in *Smith v. Venetian*,
2 attached as Exhibit "21.")

3 Defendants' also **already argued Eldorado in twice in this case** in their initial Motion for a
4 Protective Order and in their Response to Plaintiff's Objection to the DCRR Dated April 4, 2019:
5 "Reports of prior slip and fall incidents, which occurred on different circumstances, and on different
6 dates, in different areas of the property have no relevancy to the issue of whether Venetian had
7 notice of any condition contributing to Plaintiffs fall on November 4, 2016. (See *Eldorado Club, Inc.*
8 *v. Graff*, 78 Nev. 507 (1962)." (Exhibit "5" at 8:1; Exhibit "10" at 17:16.) In other words,
9 Defendants previously argued, and are now again arguing, the incident reports should be protected
10 based upon the *Eldorado* case. This behavior is tantamount to relitigating issues which Defendants
11 know full well⁶ they are not allowed to do, especially in a motion for reconsideration. See *Mosley v.*
12 *Figliuzzi*, 113 Nev. 51, 58, 930 P.2d 1110, 1114 (1997), *overruled on other grounds by Castle v.*
13 *Simmons*, 120 Nev. 98, 86 P.3d 1042 (2004) (Parties cannot "file immediate, repetitive, serial
14 motions until the right circumstances or the right judge allows them to achieve a different result,
15 based on essentially the same facts."); see also *Nance v. Ferraro*, 418 P.3d 679, 684 (Nev. App.
16 2018) ("Parties may not file repetitive, serial motions seeking to relitigate the same issues based on
17 the same underlying facts."); *Edward J. Achrem, Chartered v. Expressway Plaza, Ltd.*, 112 Nev.
18 373, 917 P.2d 447 (1996) (holding parties may not raise points or contentions not raised in its initial
19 motion and oppositions on reconsideration). Defendants previously brought this *Eldorado* argument
20 in the *Smith* case, lost it, objected to the loss, lost again, brought the same argument in this case, lost
21 it and then decided it was necessary to argue the same meritless argument for the **FOURTH TIME**
22 **on reconsideration.** At this point Defendants are just wasting the Court's time, unnecessarily
23 delaying the litigation and increasing Plaintiff's costs in violation of Rule 11. See NRCP 11(b)(1).

24
25 ⁶ In their opposition to Plaintiff's initial Motion for a Protective Order, Defendants attempted to
26 relitigate the issue of whether incident reports outside the Grand Lux Café area were discoverable.
27 Plaintiff's reply in support, cited the same case law and informed Defendants they could not
28 relitigate issues. (Excerpts of Plt's RIS of Her Mot. to Compel, attached as Exhibit "23" at 12:6-12.)

F. The Court Should Deny Defendants' Motion Because Defendants Have No Potential Liability Based on Their Privacy Policy

The Motion argues, based upon Defendants' Privacy policy "could subject Defendants to liability for privacy violations" because "Defendants do not have the guests'/visitors' authority to disseminate their personal, private information to any other party" and that Defendants "must seek and obtain a waiver" with respect to this information. (Defendants' Mot. at 18:16, 19:10-11, 19:15.) Defendants' then attempt to improperly shift the burden to Plaintiff to prove that there is a "substantial need" for the information. (Defendants' Mot. at 19:12.) It is not Plaintiff's burden to prove "substantial need"; rather, it is Defendants' burden to demonstrate good cause for the information to be protected. *See NRCP 26(c)*; *see also Okada v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 83, 359 P.3d 1106, 1111 (2015); *Beckman Indus., Inc., v. Int'l. Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (to meet the burden of persuasion, "the party seeking the protective order must show good cause by demonstrating a particular need for the protection sought.")

Aside from the fact Defendants mislead the Court regarding the burden of proof, and the fact that they cannot raise this argument because it could have been raised in their initial opposition,⁷ Defendants' Motion misleads the Court to believe their privacy policy could subject Defendants to liability. There are three major problems with this argument.

First and most significantly, Defendants' privacy policy states "your use of our products and services and provision of information to us is at your own risk." (Defendants' Mot. at Exhibit "N" at 8.) Defendants drafted this policy to absolve themselves of all liability related to personal information. Anyone who provides personal information to them does so at their "own risk." Defendants thus cannot be liable guests/visitors under this policy.

Second, even if the privacy policy did not absolve Defendants of all liability, the privacy policy is unenforceable because it lacks offer and acceptance, meeting of the minds and consideration. *See May v. Anderson*, 119 P.3d 1254, 1257, 121 Nev. 668, 672 (2005) (a valid and

⁷ Defendants attach a pre-dated "privacy policy"⁷ which was "last updated: May 2018" a year before Defendants filed their initial Motion for a Protective Order on the underacted incident reports. (Defendants' Mot. at Exhibit "N.")

enforceable contract requires “an offer and acceptance, meeting of the minds, and consideration.”) Defendants’ privacy policy is online only. Defendants’ did not offer this policy to guests/visitors before collecting their information to complete an incident report. Under these circumstances there is no offer from Defendants and no acceptance from the individuals. Furthermore, because the individuals listed in the incident reports have no knowledge of Defendants’ online privacy policy there can be no “meeting of the minds.” Finally, although Defendants may claim they are passing consideration to the individuals (in the form of a promise to keep their information private) there is no return consideration from the individuals to Defendants. *See Pink v. Busch*, 100 Nev. 684, 691 P.2d 456 (1984) (to constitute consideration, a performance or return promise must be bargained for, and a performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.) This analysis of Defendants’ privacy policy is consistent with decisions from across the nation holding these privacy policies unenforceable against the companies that issue them. *See, e.g. In re Google, Inc. Privacy Policy Litig.*, 58 F. Supp. 3d 968, 986 (N.D. Cal. 2014) (holding that the plaintiff class adequately stated a claim for breach of contract when Google disclosed user data to third parties in violation of the company's privacy policy); *Trikas v. Universal Card Servs. Corp.*, 351 F. Supp. 2d 37,46 (E.D.N.Y. 2005) (stating that the court “need not address whether the Privacy Promise constitutes a contract, but broad statements of company policy do not generally give rise to contract claims”) (internal citations and quotations omitted); *Dunn v. First Nat. Bank of Olathe*, 111 P.3d 1076 (Kan. Ct. App. 2005) (rejecting claim for breach of contract based on bank's privacy policy); *In re Jetblue Airways Corp. Privacy Litigation*, 379 F. Supp. 2d 299 (E.D.N.Y. 2005) (denying breach of contract claims under the privacy policy where plaintiffs were unable to prove damages); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2017 WL 3727318, at *46 (N.D. Cal. Aug. 30, 2017); *Johnson v. Nat'l Beef Packing Co.*, 220 Kan. 52, 551 P.2d 779 (1976); *In re American Airlines, Inc., Privacy Litigation*, 370 F. Supp. 2d 552 (N.D. Tex. 2005); *In re Northwest Airlines Privacy Litigation*, No. Civ.04-126(PAM/JSM), 2004 WL 1278459, at *6 (D. Minn. June 6, 2004); *Kuhn v. Capital One Fin. Corp.*, No. CA015177, 2004 WL 3090707, at *3 (Mass. Super.

Nov. 30, 2004); *Crowley v. Cybersource Corp.*, 166 F. Supp. 2d 1263 (N.D. Cal. 2001); *In re Pharmatrak, Inc. Privacy Litigation*, 329 F.3d 9, 19-20 (1st Cir. 2003); *Dyer v. Northwest Airlines Corp.*, 334 F. Supp. 2d 1196 (D.N.D. 2004).

Third, Defendants are not required to “obtain a waiver” or get “authority to disseminate... personal private information to any other party” because Defendants’ privacy policy informs readers “we may also use your information in other ways... including but not limited to the following purposes... to comply with applicable laws and regulations.” (*Id.* at Exhibit “N” at 5-6.) The privacy policy further states “We may share information about you to the third parties as indicated below” when “required to respond to legal requests for your information” and “to comply with laws that apply to us or other legal obligations.” (*Id.* at Exhibit “N” at 6.) Defendants’ privacy policy clearly tells readers Defendants may share information collected to comply with the laws and to respond to other legal requests. Plaintiff’s request for production alone is a “legal request” within the meaning of this privacy policy. As such, Defendants’ do not need permission to disclose this information. Moreover, once the Court signed the order directing Defendants to turn over the information, their failure to comply with that order constituted contempt in violation of NRS 22.010(3). *See* NRS 22.010(3) (“The following acts or omissions shall be deemed contempts:... 3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.”) Providing the unredacted incident reports would thus be “complying with applicable laws.” Finally, the privacy policy states users’ requests regarding privacy will be “accomodat[ed] where your requests meet legal and regulatory requirements.” (*Id.* at Exhibit “N” at 7.) Thus, even if the individuals requested Defendants withhold their information from Plaintiff, Defendants own policy states they will ignore these wishes because they would force Defendants to violate NRS 22.010(3).

G. The Court Should Deny Defendants’ Motion Because Defendants’ Choice to Not Purchase Insurance Is Irrelevant to Discoverability

As a peripheral matter, the Court should note that Defendants just disclosed their insurance policy, and only did so because they believed it helped their argument. (Defendants 20th Supplement

1 to Their 16.1 Disclosures, attached as Exhibit “22.”) NRCP 16.1(a)(1)(A)(v) required Defendants
2 disclose this insurance agreement in their initial disclosures on July 6, 2018. **Defendants have thus**
3 **been in violation of the discovery rules for the last 13 months. In other words, Defendants**
4 **continue to show they believe they are the only litigant in the state of Nevada to whom the**
5 **discovery rules do not apply.**

6 Discovery rule violations aside, Defendants lack of “casualty insurance” on data breach
7 argument is improper because it could have been raised in Defendants’ initial opposition.
8 (Defendants’ Mot. at 21:24-22:15.) Moreover, this argument is completely illogical. Defendants’
9 essentially argue “we didn’t insure against it, therefore it’s not discoverable.” NRCP 26 does not
10 state a lack of insurance effects discoverability. Moreover, Defendants did not even produce their
11 current policy which would be the one covering a “data breach” occurring today. (Defendants’ Mot.
12 at Exhibit “P.”)

13 **H. The Court Should Deny Defendants’ Motion Because Defendants Have No**
14 **Potential Liability Based on NRS 603A**

15 Defendants’ allege “mass dissemination of Venetian’s guests’ private information is the
16 equivalent to a data breach, thereby exposing Venetian to additional third-party claims.”
17 (Defendants’ Mot. at 19:2-4.) Based upon the fact that the Defendants’ argument mirrors an
18 Venetian’s opposition in another case, Plaintiff believes Defendants are alluding to NRS 603A. (See
19 Excerpts of Defendants’ Opp. Mot. to Compel in *Cohen v. Venetian*, attached as Exhibit “23” at
20 11:7-14:21.) NRS 603A was designed “to protect personal information held by certain businesses to
21 address identity theft and to ensure security breaches of business databases containing personal
22 information will be disclosed to the persons affected by the breach.” (Excerpts of NV S. Comm. Min
23 4/5/2005, attached as Exhibit “24” at 16.) The bill, which later became NRS 603A, was prompted by
24 an incident involving ChoicePoint, Incorporated, a consumer data services company. *Id.* Criminals
25 posed as legitimate businesses to obtain personal information from ChoicePoint. *Id.* The data of
26 145,000 individuals, including their names, addresses, social security numbers and credit reports,
27 were accessed by criminals who then set up fraudulent accounts. *Id.* When this happened, California
28

1 was the only state which required companies to notify individuals when their personal data was
2 compromised. *Id.* ChoicePoint thus did not notify the Nevadans affected until the State put
3 substantial pressure on them to do so. *Id.* Thus SB 435 (aka NRS 603A) – requiring businesses to
4 notify consumers of security breaches of personal data – was born. *Id.* Based upon the legislative
5 history and the act itself, there are three major reasons NRS 603A does not apply to the
6 circumstances of this case.

7 Frist, NRS 603A was clearly designed to address identity theft by criminals. Neither
8 Plaintiff's counsel nor Plaintiff are identity thieves, and thus applying this statute under these
9 circumstances would be contrary to the purposes of its creation.

10 Second, providing unredacted incident reports is not within the meaning of "breach of the
11 security of system data." NRS 603A specifically deals with "breach of the security of the system
12 data" which is defined as "unauthorized acquisition of computerized data that materially
13 compromises the security, confidentiality or integrity of personal information maintained by the data
14 collector." NRS 603A.020. (emphasis added). A Court order by definition authorizes conduct and
15 has been understood to authorize conduct for nearly a century.^{8/9} As such, even if the information in

16 ⁸ See, e.g. *Matter of Connell*, 422 P.3d 713 (Nev. 2018) ("the district court order appointing the
17 trustee authorizes the trustee to..."); *Hernandez v. State*, 399 P.3d 333 (Nev. 2017) ("the requesting
18 officer could apply for a court order to authorize the blood draw"); *Clark Cty. v. Smith*, 96 Nev. 854,
19 855, 619 P.2d 1217, 1218 (1980) ("Clark County and its Comptroller appeal the district court's order
20 authorizing payment"); *In re Troyer's Estate*, 48 Nev. 72, 227 P. 1008, 1008 (1924) ("the
21 administrator was authorized by court order to compromise, settle, release, and discharge a claim");
22 *A 1983 Volkswagen, Id. No. IVWC0179V63656, License No. 2AAB574(CA) v. Washoe Cty., Washoe*
23 *Cty. Sheriff's Dep't Consol. Narcotics Unit*, 101 Nev. 222, 223–24, 699 P.2d 108, 109 (1985) ("This
24 is an appeal from the district court's order authorizing forfeiture of a vehicle used in violation of the
25 Uniform Controlled Substances Act."); *Club Vista Fin. Servs. v. Dist. Ct.*, 128 Nev. 224, 228, 276
26 P.3d 246, 248 (2012) ("the district court's order authorizing the deposition of Morrill"); *Jones v.*
27 *Free*, 83 Nev. 31, 36, 422 P.2d 551, 553 (1967) ("the trial court's order authorizing the receiver to
28 enter a compromise agreement"); *Bean v. State*, 81 Nev. 25, 25, 398 P.2d 251, 253 (1965) ("defense
counsel sought a court order authorizing him to employ, at public expense, two psychiatrists");
Tower Homes v. Heaton, 132 Nev. 628, 631, 377 P.3d 118, 120 (2016) ("the bankruptcy court's
order authorizing the same resulted in an impermissible assignment"); *Odin v. State*, No. 66806,
2015 WL 4715074, at *1 (Nev. App. Aug. 5, 2015) ("the deputy would then seek a court order
authorizing the test"); *City of N. Las Vegas v. Eighth Judicial Dist. Court of State ex rel. Cty. of*
Clark, No. 66204, 2014 WL 3891680, at *1 (Nev. Aug. 7, 2014) ("challenges a district court order
denying a motion for a protective order and authorizing a judgment debtor examination.")

1 the incident reports places them within the preview of this statute, Defendants disclosure of the
2 incident reports in compliance with the Court's July 31, 2019 Order would constitute "authorized"
3 acquisition. Because providing Plaintiff with the unredacted incident reports is authorized conduct, it
4 does not constitute a "breach of the security of system data" under NRS 603A.020 and therefore
5 cannot subject Defendants to liability for a "breach of the security of system data" under NRS
6 603A.215(3).

7 Third, the incident reports do not contain "personal information" as defined by NRS
8 603A.040. NRS 603A.040 defines "personal information" as:

9 1. "Personal information" means a natural person's first name or first initial and
10 last name **in combination with any one or more of the** following data elements,
when the name and data elements are not encrypted:

- 11 (a) Social security number.
- 12 (b) Driver's license number, driver authorization card number or
identification card number.
- 13 (c) Account number, credit card number or debit card number, in
combination with any required security code, access code or password that
14 would permit access to the person's financial account.
- 15 (d) A medical identification number or a health insurance identification
number.
- 16 (e) A user name, unique identifier or electronic mail address in combination
with a password, access code or security question and answer that would
17 permit access to an online account.

18 These incident reports are completely devoid of any fields to fill in account numbers,
19 credit/debit card numbers, medical ID numbers and usernames and passwords. Although the
20 redacted incident reports produced by Venetian leave spaces for social security numbers and drivers'
21 licenses', Defendants apparently do not collect this information. (See Excerpts of Redacted Incident
22 Reports, attached as Exhibit "25.") Defendants also apparently instruct guests not to fill out the
social security # line on the accident reports. (See, e.g. *Id.* at VEN287, VEN288, VEN359.)

23 //

24 //

25
26
27 ⁹ See *In re Troyer's Estate* decided in 1924: "the administrator was **authorized by court order** to
28 compromise, settle, release, and discharge a claim." 48 Nev. at 72, 227 P. at 1008 (emphasis added).

1 **I. The Court Should Deny Defendants' Motion Because There Are No Nevada**
2 **Privacy Rights Concerned and The California Courts Defendants Cite Support**
3 **Plaintiff's Position that the Contact Information Must Be Disclosed**

4 If the Court were to ignore the fact that the Motion improperly relitigates the issue of privacy
5 rights in relation to the incident reports and improperly re-argues the exact same cases, the Motion
6 still fails to cite any Nevada decision which supports their position that disclosing names, address
7 and phone numbers creates "privacy concerns." (*See generally*, Defendants' Mot.) The Motion cites
8 a myriad of California federal case law, which at first glance support their position. However, upon
9 closer examination these cases are clearly irrelevant. For example, the Motion cites *Bible v. Rio*
10 *Properties, Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007). The *Bible* Court based its privacy
11 determination at least partially on the California Constitution: the "responsive documents invade
12 third parties' privacy rights. In California, the right to privacy is set forth in Article I, Section I of the
13 California Constitution, as defendant cites..." *Id.* Similarly, unsupportive of Defendants' argument is
14 *Shaw v. Experian Info. Sols., Inc.*, 306 F.R.D. 293, 301 (S.D. Cal. 2015). (Defendants' Mot. at
15 18:20-21.) The *Shaw* Court actually required the defendants disclose the "names, addresses, and
16 telephone number" of third-parties without a protective order on the same. *Id.*

17 More important than the fact these cases do not support Defendants' position, California
18 federal district courts and California state courts consistently hold a Plaintiff's need to identify
19 potential witnesses outweighs any privacy concerns a defendant may have about disclosing those
20 witnesses' contact information. *See, e.g. Henderson v. JPMorgan Chase Bank*, No.
21 CV113428PSGPLAX, 2012 WL 12888829, at *4 (C.D. Cal. July 31, 2012) ("The Court finds that
22 plaintiffs' interest in identifying potential... witnesses here outweighs defendant's concern regarding
23 its employees' privacy interests in their names and personal contact information."); *Tierno v. Rite*
24 *Aid Corp.*, 2008 WL 3287035, at *3 (N.D. Cal. July 31, 2008) (plaintiffs' significant interest in
25 identifying potential witnesses outweighed those individuals' privacy interests in their identities and
26 contact information); *McArdle v. AT & T Mobility LLC*, No. C 09-1117 CW (MEJ), 2010 WL
27 1532334, at *4 (N.D. Cal. Apr. 16, 2010) ("Defendants' complaining customers may be considered
28 percipient witnesses to the relevant" issues and therefore are considered to be "persons having


discoverable knowledge and proper subjects of discovery.”); *Pioneer Elecs. (USA), Inc. v. Superior Court*, 40 Cal. 4th 360, 371, 150 P.3d 198, 205 (2007) (plaintiff sought the “names, addresses and contact information” of persons who submitted complaints because they were percipient witnesses, the court ordered this information disclosed because it “would not be particularly sensitive or intrusive”) The California appellate even held it was an abuse of discretion for the trial court to rule that an opt-in notification system was required to secure the consent of identified potential witnesses before disclosing their contact information to plaintiffs. *Puerto v. Superior Court*, 158 Cal. App. 4th 1242, 1256, 70 Cal. Rptr. 3d 701, 712 (2008). As previously discussed in Plaintiff’s Opposition to Defendants’ Motion for a Protective Order and her Objection, she seeks the contact information for these individuals because they are potential witnesses in her case. The California courts, which Defendants so eagerly urge the Court to follow, support Plaintiff’s position that she is entitled to the name and contact information for these potential witnesses. As such, granting Defendants’ motion for reconsideration and issuing a protective order on the names and contact information of these potential witnesses would be improper.

IV. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests this Court deny Defendants’ Motion for Reconsideration on the April 4, 2019 DCRR on the unredacted incident reports. Additionally, because all of Defendants’ arguments are meritless Plaintiff respectfully requests this Court deny Defendants’ motion for a stay.

DATED this 5th day of September, 2019

THE GALLIHER LAW FIRM



Keith E. Gallher, Jr., Esq.
Nevada Bar Number 220
Kathleen H. Gallagher, Esq.
Nevada Bar Number 15043
1850 E. Sahara Avenue, Ste. 107
Las Vegas, Nevada 89104
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of THE GALLIHER LAW FIRM and that service of a true and correct copy of the above and foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF ORDER REVERSING THE APRIL 4, 2019 DCRR ON UNREDACTED INCIDENT**

REPORTS was served on the 5th day of September, 2019, to the following addressed parties

by:

_____ First Class Mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P 5(b)

_____ Facsimile, pursuant to EDCR 7.26 (as amended)

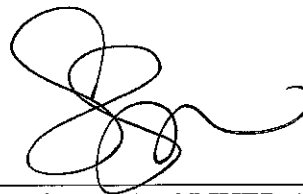
☒ Electronic Mail/Electronic Transmission

_____ Hand Delivered to the addressee(s) indicated

_____ Receipt of Copy on this _____ day of September 2019,

acknowledged by, _____

Michael A. Royal, Esq.
Gregory A. Miles, Esq.
ROYAL & MILES LLP
1522 W. Warm Springs Road
Henderson, Nevada 89014
Attorneys for Defendants



An Employee of THE GALLIHER LAW FIRM

EXHIBIT 17



1 MSNC
2 Peter Goldstein, Esq. (SBN 6992)
3 **PETER GOLDSTEIN LAW CORPORATION**
4 10795 W Twain Ave, Ste. 110
5 Las Vegas, Nevada 89135
6 Email: peter@petergoldsteinlaw.com
7 Tel: 702.474.6400
8 Fax: 888.400.8799
9 Attorney for Plaintiff
10 CAROL SMITH

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 CAROL SMITH, an individual,

10 Plaintiff,

11 vs.

12 VENETIAN CASINO RESORT, LLC; and
13 DOES 1 through 50, inclusive,

14 Defendants.
15
16

Case No.: A-17-753362-C

Dept. No.: X

Discovery Commissioner

Date of Hearing:

Time of Hearing:

17 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR TERMINATING SANCTIONS,**
18 **MONETARY SANCTIONS FOR WILLFUL SUPPRESSION OF EVIDENCE PURSUANT TO**
19 **NRCP RULE 37**

20 **NOTICE OF MOTION**

21 TO: ALL PARTIES and their ATTORNEYS:

22 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that Plaintiff, CAROL SMITH,
23 will bring the foregoing MOTION FOR TERMINATING SANCTIONS FOR WILLFUL
24 SUPPRESSION OF EVIDENCE, TO STRIKE DEFENDANT'S ANSWER AND FOR MONETARY
25 SANCTIONS FOR EXPERT FEES AND ATTORNEY FEES PURSUANT TO NRCP 37 on for
26 decision on the 20 day of March, 2019, at 9:00 o'clock a.m. or soon thereafter, in _____
27 of the above-entitled Court, as counsel may be heard.
28

1 DATED: _____

LAW OFFICES OF PETER GOLDSTEIN

2 BY: _____
3 PETER GOLDSTEIN, ESQ.
4 ATTORNEY FOR PLAINTIFF

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6
7 **I. Background – Statement of Facts**

8 This is a personal injury case arising from an incident at the Venetian Hotel Resort Casino in Las
9 Vegas on July 7, 2016. There was a large spill of water on the marble floor in Lobby 1 that Defendant
10 failed to timely discover and clean up, causing Plaintiff to slip and fall. Plaintiff suffered injuries
11 requiring four knee surgeries and diminution to her quality of life, including the inability to return to her
12 job as an instructional assistant for Irvine Unified School District, necessitating an early retirement.
13 Plaintiff alleges that the marble flooring is inherently unreasonable and dangerous because it is
14 extremely slippery when wet. Defendant's own expert testing of the flooring wet found a mean average
15 of 0.15 as the friction coefficient. Plaintiff's expert testing of the floor found it was significantly below
16 the 0.5 standard for safe walking surfaces. Although Defendants attempt to couch this case as one of
17 notice and focused on the 6 minute gap between the spill and the fall, Plaintiff's theory of liability
18 encompasses not only the fact that the floor is unsafe because when it mixes with water it becomes
19 extremely slippery, but also proffers the mode of operation theory of liability, essentially alleging that it
20 is foreseeable that the marble floor will become wet that water is extremely difficult to decipher and that
21 Defendants have chosen not to use any treatment to increase the friction coefficient of the marble floor.
22 In an effort to prove Plaintiff's case Plaintiff requested prior incident reports which Defendant has not
23 produced resulting in extreme prejudice to Plaintiff, and Plaintiff recently discovered Defendant
24 committed fraud on Plaintiff and this court.

25 **II. Discovery Commissioner's Orders**

26 This case concerns a marble floor that when wet, causes serious injuries to customers and patrons
27 due to frequent slip and fall events. Plaintiff alleges, among other things, that the marble floor itself,
28

1 when wet, constitutes an unreasonably dangerous condition. That the Venetian knows this and is
2 negligent in maintaining the floor (as products are available to make the floor more slip resistant when
3 wet) and is negligent in the training of Casino employees to mitigate the substantial risk that exists to
4 patrons when liquid is spilled on the marble flooring. The videos and the prior incidents go to notice
5 and Defendants have refused to stipulate to the admission of the prior incident reports, or even to discuss
6 the subject of admissibility nor has it produced the videos pertaining to the prior incidents. Plaintiff filed
7 two previous motions to compel prior incident reports and the videos that pertain to those reports. In the
8 Discovery Commissioner Report and Recommendation filed 12/27/2018, (see Exhibit 2) the Discovery
9 Commissioner made the following findings:

10
11 “there is a difference between a permanent condition and a transitory condition. If it is transitory, the
12 issue is whether or not the employees had reasonable notice of water on the floor to clean it up, so other
13 slip and falls are not relevant to the notice in that case. Here, Plaintiff is making the argument that the
14 Venetian's marble floor, in and of itself is not a problem, but turns into a fall hazard every time water
15 goes on the flooring, and that it is foreseeable people will bring in water bottles or drinks on the casino
16 floor which will end up on the tile, so the Discovery Commissioner finds the video is discoverable, with
17 certain protections.”

18 On July 2, 2018, the Discovery Commissioner ordered Defendant to produce:

19 (i) Incident reports from five years prior to the incident (2011 – 2016) of slip and falls on the
20 marble floors located in Lobby 1, and

21 (ii) Incident reports from three years prior to the incident (2013 – 2016) of slip and falls on
22 marble floors anywhere on the property.

23 See EXHIBIT 1 (July Discovery Commissioner's Order)

24 On November 29, 2018, the Discovery Commission ordered Defendant to produce video
25 footage. See EXHIBIT 2 (November Discovery Commissioner's R&R).

26 Defendant has repeatedly acted in bad faith and engaged in misleading and fraudulent discovery
27 tactics. Plaintiff has had to file two separate motions to compel, on March 28, 2018, and September 27,
28 2018, respectively. See Docket.

1 **III. Willful Failure to Produce Evidence and Cooperate**

2 Defendant has failed to comply with any of the above orders. Defendant produced prior reports
3 of slip and falls on the marble floor in lobby one from 2014 to 2016, and zero reports from 2011 to
4 2014.

5 Defendant produced 25 incident reports to Plaintiff, ranging from 7/10/2014 – 5/25/2016, of slip
6 and falls on marble floors in both the lobby and other lobbies with marble floors. See EXHIBIT 3 (excel
7 spreadsheet of incident reports produced in Smith Case). Plaintiff recently became aware that **The**
8 **incident reports produced are incomplete and deficient and Defendant failed to produce 35**
9 **reports from the same time period that they did produce in a different case, all those reports also**
10 **deal with slip and falls on wet marble floors.** It is shocking that Defendants violated court orders and
11 selectively produced what they deemed to be discoverable to the Plaintiff. Moreover Defendant has
12 failed to produce any video footage that comply with the Discovery Commissioner's report and
13 recommendation, even though the District Court affirmed that recommendation on January 22, 2019.
14 Goldstein Decl at 3, 4. Furthermore, Defendant has failed to supplement its disclosures and produce
15 additional reports knowing full well that the production to the Plaintiff in this case was grossly deficient.
16 One can only discern that Defendant intended to mislead Plaintiff and the Court by producing less than
17 half of the slip and fall incidents relevant to the discovery requests. Plaintiff requests that Defendants be
18 punished for this egregious conduct as enumerated below.

19
20 **IV. Discovery of Additional Incident Reports, Intentionally Omitted and Willfully**
21 **Suppressed by Defendant**

22 Keith Galliher, Esq. represents the Plaintiff in the pending case *Joyce Sekera v. Venetian Casino*
23 *Resort*, case no. A-18-772761-C, another slip and fall case against the same Defendant (filed subsequent
24 to *Smith v Venetian*). Mr. Galliher and Mr. Goldstein discussed their respective cases and what the
25 Venetian produced with regard to prior slip and fall incident reports on February 7, 2019. Mr. Goldstein
26 learned that Venetian produced twice as many prior incident reports to Mr. Galliher in *Sekera* than what
27 was produced in *Smith*. Mr. Galliher produced those prior reports to Mr. Goldstein's office on February
28 7, 2019. They contain 660 pages of PDF documents of prior slip and falls on wet marble floors.

1 Moreover, Mr. Gallagher took the deposition of a former EMT/security officer whose testimony
2 suggested that there may have been as many as 300 to 400 falls on marble floors at the Venetian within
3 the last eight years. Goldstein Decl. at 5, 6, 7, 8.

4 After comparing and compiling the prior incident reports from both cases it was clear that
5 Venetian produced **35 additional** incident reports to Keith Gallaher in *Joyce Sekera v. Venetian* of slip
6 and falls on marble floors in both Lobby 1 and other lobbies with marble flooring on the property from
7 2013-2016 that were produced by the Venetian yet were **not produced** in this case. See EXHIBIT 4 (list
8 of incident reports produced in *Sekera* case containing 61 prior reports in a spreadsheet with a column
9 indicating which incidents were not produced in Smith). More than half of the Sekera reports were
10 intentionally omitted and not produced in the Smith case.

11
12 **V. Plaintiff Has Been Harmed and Prejudiced by Defendant's Deceit**

13 This case has been ongoing since March 2017 and discovery has been conducted with
14 incomplete and misleading information. **Discovery closes** on February 14, 2019. Depositions of expert
15 witnesses have been conducted based upon false and incomplete information. All previous discovery has
16 been severely tainted and compromised as result of Defendants deceitful discovery tactics.

17 Plaintiff has relied on the incomplete and misleading reports produced by Defendant, and has
18 been severely prejudiced due to Defendant's willful and intentional suppression of evidence. If
19 Defendant's Answer is not stricken as a sanction for abusive litigation tactics, Plaintiff must re-conduct
20 its expert witness depositions and further discovery must be performed in light of this new information.
21 This is an extreme burden to Plaintiff in both time and expense, resulting in severe prejudice. Should
22 this motion be granted Plaintiff will submit a memorandum of fees and costs for the experts' retention
23 fees, expert depositions and attorney's fees incurred by conducting discovery based on misleading and
24 incomplete prior reports. Strikingly, during the depositions of Plaintiff's experts, one of defense
25 counsel's main lines of examination consisted of asking whether falls once or twice per month, rather
26 than nine or more per month constitute a danger knowing that his questions were based on false and
27 fraudulent discovery.

1 **VI. Plaintiff Requests Terminating Sanctions**

2 Defendant had these additional incident reports in its possession yet failed to produce them in
3 Discovery. Defendant has also completely failed to make any attempts to provide the ordered video
4 footage, to review and approve the proposed order after it objected to the discovery Commissioner's
5 report and recommendation or to engage in a good faith discussion of how to admit the prior falls into
6 evidence since the names of the victims of the prior falls were redacted. We can infer the bad intent in
7 this case. Defendant clearly found that it was better to be deceitful and attempt to hide evidence that
8 would harm their case than comply with discovery orders or to produce required documents in
9 discovery. It is impossible to know whether or not the *Sekera* case contains all the prior reports. At this
10 point, nothing the Defendant produced in this case can be relied upon as true and correct. Defendant's
11 deceit should not go unpunished. Even Defendants rationale and argument for redacting the names of
12 the victims of the prior falls is specious. Plaintiff believes that Defendant never obtained or attempted
13 to obtain medical records pursuant to the HIPAA requests that it had prior fall victims of the
14 dangerous slippery floor sign in order to shield providing the names of the victims in discovery. This
15 is another example of the subterfuge that Defendant has engaged in to hide its clear liability and justify
16 the following findings against Defendant:

- 17 (i) a willful suppression of evidence occurred; and
18 (ii) strike Defendant's Answer and affirmative defenses on liability and allow the case to
19 proceed to trial on damages only;
20 (iii) In absence of striking Defendant's Answer, allow for the additional incident reports
21 produced in the *Sekera* case to be admitted into evidence in this case and require Defendant to
22 produce videos associated with those omitted incident reports.
23 (iv) award costs for expert witness fees, both past and prospective;
24 (v) issue monetary sanctions for attorney fees against Defendant for its willful violation of
25 multiple Discovery Orders and violations of relevant discovery rules.

26 **VII. Willful Violation of Discovery Order**

27 NRCP 37 provides for discovery sanctions for a party's willful violation of a discovery order
28 and it is within the district court's "inherent equitable powers" to dismiss a defense for abusive
 litigation practices. *Young v. Johnny Ribetro Bldg, Inc.*, 109 Nev. 88, 92, 787 P.2d 777, 779 (1990)

1 (quotation omitted).

2 It is undisputed that Defendant has willfully violated multiple discovery orders. Defendant
3 failed to produce video footage and has attempted to mislead this Court in its selective production of
4 incident reports and failed in its duty to supplement its disclosures in discovery.

5 **A. Legal Standard.**

6 NRCP 37(c)(1) sets forth the appropriate sanctions for parties who fail to disclose and/or to
7 supplement disclosures of information required by NRCP 16.1 and 26(e)(1) ad (2). NRCP 37(c)(1)
8 provides in pertinent part:

9 **(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.**

10 (1) A party without substantial justification fails to disclose information required by
11 Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery as required by
12 Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a
13 trial, at a hearing, or on a motion any witness or information not so disclosed. In
14 addition to or in lieu of this sanction, the court, on motion or after affording an
15 opportunity to be heard, may impose other appropriate sanctions. In addition to
16 requiring payment of reasonable expenses, including attorney's fees, caused by the
17 failure, these sanctions may include any of the actions authorized under Rule
18 37(b)(2)(A), (B), and (C) and may include information the jury of the failure to make
19 the disclose.

20 In addition to informing the jury of the failure to make a disclosure, pursuant to NRCP 37(c)(1), the
21 following sanctions are authorized under NRCP 37(b)(2):

22 (A) An order that the matters regarding which the order was made or any other
23 designated facts shall be taken to be established for the purposes of the action in
24 accordance with the claim or the party obtaining the order;

25 (B) *An order refusing to allow the disobedient party to support or oppose designated
26 claims or defenses*, or prohibiting that party from introducing designated matters in
27 evidence;

28 (C) An order striking out pleadings or parts thereof, or staying further proceedings until
the order is obeyed, or dismissing the action or proceeding or any part thereof, or
rendering a judgement by default against the disobedient party;

NRCP 37(b)(2)(A), (B), and (C) (emphasis added).

Discovery sanctions are within the power of the district court, and the Supreme Court will not
reverse particular sanctions imposed absent a showing of abuse of discretion. *GNLV Corp v. Service*

1 *Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995). While Nevada case law specific to
2 NRCP 37(c)(1) is limited, the Nevada Supreme Court has a long-standing history relying on case law
3 interpreting its Federal counterpart, when interpreting the Nevada Rules of Civil Procedure. *See e.g.*
4 *Dougan v. Gustaveson*, 108 Nev. 517, 835 P.2d 795 (1992); *Bowyer v. Taack*, 107 Nev. 625, 817 P.2d
5 1176 (1991). Federal courts have consistently held that Rule 37(c)(1) gave “teeth” to the disclosure
6 requirements mandated by the Rules of Civil Procedure. *Yeti by Molly Ltd. V. Deckers Outdoors*
7 *Corp.*, 259 F.3d 1101, 1106 (9th Cir.2011). The rule was “explicitly designed to punish negligent or
8 elusive behavior during discovery and to prevent any party from gaining an advantage as a result of
9 discovery antics.” *Sanchez v. Stryker Corp.*, 2012 WL 1570569, at *2 (C.D. Cal. May 2, 2012) quoting
10 (*Yeti by Molly Ltd. V. Deckers Outdoor Corp.*, 259 F.3d at 1106).

11
12
13 Further, the Ninth Circuit has held that the burden is on the party who failed to comply with its
14 discovery obligations to demonstrate that it meets one of the two exceptions to sanctions. *Id.* At 1107
15 (“Implicit in Rule 37(c)(1) is that the burden is on the party facing sanctions to prove harmlessness.”).
16 Indeed, the burden is on the proponent of the evidence to demonstrate that the failure to disclose was
17 either substantially justified or harmless. *Id.* Moreover, according to the Ninth Circuit, a district court
18 need not find willfulness or bad faith to impose sanctions pursuant to Rule 37(c)(1). *Hoffman v. Contr.*
19 *Protective Servs., Inc.*, 541 F.3d 1175, 1179 (9th Cir. 2008).

20 21 22 **B. Willful Suppression of Evidence**

23 Alternatively, Plaintiff is requesting that a rebuttable presumption be granted against Defendant
24 for willfully and intentionally omitting the additional incident reports as well as the surveillance video.
25 Pursuant to NRS 47.250, it shall be a disputable presumption that “evidence willfully suppressed would
26 be adverse if produced and a recommendation that all the prior incident reports be admitted into
27 evidence.

28 In *Bass-Davis v Davis*, 134 P.3d 103, the court clarified the distinction that must be drawn
between awarding a party a “rebuttable presumption” versus an “adverse inference.” The court noted

1 that NRS 47.250(3) creates a rebuttable presumption when evidence is willfully suppressed or destroyed
2 with an intent to harm. See Bass-Davis, 134 P.3 at 107.

3 In this case, the evidence indicates that Defendant willfully omitted the inclusion of additional
4 incident reports that it actually had in its possession. This is worse than destroying evidence through the
5 general course of business. Defendant had the information and failed to produce it.


6
7
8 **VIII. Conclusion**

9 In summary, Defendant had these additional incident reports in its possession yet failed to
10 produce them in Discovery. Defendant has also completely failed to make any attempts to provide the
11 ordered video footage. We can infer the bad intent in this case. Defendant clearly found that it was
12 better to be deceitful and attempt to hide evidence that would harm their case than comply with
13 discovery orders or to produce required documents in discovery. It is difficult to know whether or not
14 the *Sekera* case contains all the prior reports. At this point, nothing the Defendant produced can be
15 relied on, accordingly Plaintiff respectfully requests that this court grant her Motion and find:

- 16 (i) a willful suppression of evidence occurred; and
17 (ii) recommend the District Court strike Defendant's Answer and affirmative defenses on
18 liability and allow the case to proceed to trial on damages only;
19 (iii) recommend allowing for the additional incident reports produced in the *Sekera* case to be
20 admitted into evidence in this case and require Defendant to produce videos associated with
21 those omitted incident reports.
22 (iv) award costs for expert witness fees, both past and prospective;
23 (v) issue monetary sanctions for attorney fees against Defendant for its willful violation of
24 multiple Discovery Orders and violations of relevant discovery rules.

25 Dated: February 13, 2019

PETER GOLDSTEIN LAW CORPORATION

Signed: 

PETER GOLDSTEIN, SBN 6992

Attorney for Plaintiff

DECLARATION OF PETER GOLDSTEIN

I, Peter Goldstein, declare as follows:

1. I am an attorney duly licensed to practice law in Nevada and am counsel of record for Plaintiff. I have personal knowledge of all matters stated herein that I know to be true.

2. The exhibits attached hereto are true and correct copies of the originals of those documents that I have kept in my office file for this matter in the ordinary course of business.

Exhibit 1 is the Discovery Commissioner's Report and Recommendations from May 2, 2018.

Exhibit 2 is the Discovery Commissioner's Report and Recommendations from October 31, 2018.

Exhibit 3 is a spreadsheet documenting the incident reports disclosed to Plaintiff in the Smith v. Venetian case.

Exhibit 4 is a spreadsheet documenting incident reports from Sekera v. Venetian and a column of what was not disclosed in Smith v. Venetian.

Exhibit 5 is Plaintiff's proposed Order regarding the Defendant's Objection to the Discovery Commissioner's Report and Recommendation, as well as correspondence with my office and the Defense, which has gone unanswered.

3. Defendant has failed to produce any video footage.

4. Defendant has failed to produce any incident reports from 2011 – 2013.

5. Mr. Keith Gallagher provided additional incident reports of slip and falls on marble floors on property, produced by the Venetian in the case Sekera v. Venetian, Case No. A-18-772761-C, on February 7, 2019.

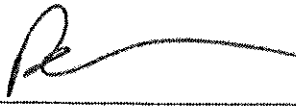
6. I can provide PDF copies of all incident reports disclosed in the Smith v. Venetian and Sekera v. Venetian cases, if required by the Court.

7. Defendant has refused to discuss the admissibility of prior reports.

8. Defendant has refused to respond to the proposed order, submitted to them on February 4, 2019.

1
2 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and
3 correct.
4

5 Dated February 13, 2019 at Las Vegas, Nevada.
6

7
8 Signed:  _____
9

10 Peter Goldstein, Declarant
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1
2 CERTIFICATE OF SERVICE
3

4 Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure and [N.E.F.R. 9(b)] I certify that
5 I am an employee of Peter Goldstein Law Corporation and that on February 13, 2019, I served a true
6 and correct copy of the foregoing document entitled **PLAINTIFF'S NOTICE OF MOTION AND**
7 **MOTION FOR TERMINATING SANCTIONS, MONETARY SANCTIONS FOR WILLFUL**
8 **SUPPRESSION OF EVIDENCE PURSUANT TO NRCP RULE 37** upon all parties listed below,
9 via the following means:
10
11

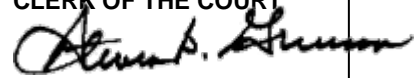
12 _____ Via U.S. Mail by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(B)]
13 X Via Electronic Filing [N.E.F.R. 9(b)]
14 X Via Electronic Service [N.E.F.R. 9]
15 _____ Via Facsimile [E.D.C.R. 7.26(a)]
16

17 Michael Edwards
18 Lisa Thayer
19 Lani Maile
20 Ryan Loosvelt
21 MESSNER REEVES LLP
22 8945 W. Russel Road, Suite 300
23 Las Vegas, Nevada 89148
24 Tel: (702) 363-5100
25 Fax: (702) 363-5101
26 Email: medwards@messner.com
27 Email: lthayer@messner.com
28 Email: lmaile@messner.com
Email: RLoosvelt@messner.com
Attorney for Venetian Casino Resort, LLC

29 2/13/19
Date

Joceyynn Jordan
Joceyynn Jordan
An employee of the Law Office of Peter Goldstein

EXHIBIT 18



MAMC

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Nevada Bar No. 8589
SARAH M. BANDA
Nevada Bar No. 11909
NAQVI INJURY LAW
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naqvi@naqvilaw.com
sarah@naqvilaw.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ANGELICA BOUCHER, individually,

Plaintiff,

vs.

VENETIAN CASINO RESORT, LLC d/b/a
VENETIAN RESORT HOTEL CASINO
d/b/a THE VENETIAN d/b/a THE
VENETIAN/THE PALAZZO; LAS VEGAS
SANDS, LLC d/b/a VENETIAN RESORT
HOTEL CASINO / PALAZZO RESORT
HOTEL CASINO d/b/a THE VENETIAN
CASINO d/b/a VENETIAN CASINO
RESORT; LAS VEGAS SANDS CORP.;
DOES 1 through 100 and ROE
CORPORATIONS 1 through 100, inclusive,

Defendants.

Case No.: A-18-773651-C
Dept. No.: X

**PLAINTIFF'S MOTION TO AMEND
COMPLAINT TO INCLUDE PUNITIVE
DAMAGES**

HEARING REQUESTED

Plaintiff ANGELICA BOUCHER, by and through her attorneys of record, FARHAN R. NAQVI and SARAH M. BANDA of NAQVI INJURY LAW, hereby moves this Court pursuant to Nevada Rule of Civil Procedure 15 to amend the Complaint to include punitive damages

Responding Defendant reserves the right to supplement this response pursuant to the Nevada Rules of Civil Procedure.

RESPONSE TO REQUEST NO. 10:

Defendant objects to this request as overbroad, irrelevant, and to the extent it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, please *see* Defendant's First Supplemental Early Case Conference List of Witnesses and Production of Documents at Bates Nos. VEN1423-VENI1782. Discovery is continuing and ongoing. Responding Defendant reserves the right to supplement this response pursuant to the Nevada Rules of Civil Procedure.¹⁹

The Defendant disclosed thirty-one (31) slip and fall incidents on the marble flooring in the Venetian, twenty-eight (28) of which occurred within two years of the incident at issue.²⁰ In the five (5) months preceding the subject incident, the Venetian responded to **at least** eight (8) known incidents involving patrons slipping on a liquid substance and falling to the ground.²¹

After taking the highly evasive depositions of two current Venetian Employees who responded to the incident (i.e. Emily Whiddon and Patrick Overfield), Plaintiff suspected that the Defendant had not produced all prior incidents involving slip and falls on the marble tile in the Venetian. After further researching the issue, the results are alarming and concerning, as outlined below.

Undisclosed Prior Incidents

A large concern in this case is the Defendant's failure to produce relevant prior incidents, which appears to be the Defendant's modus operandi. For example, a very recent review of the court filings revealed numerous incidents that were not disclosed, a few of which are outlined below:

¹⁹ See Defendant Venetian Casino Resort, LLC's Responses to Plaintiff's First Request for Production, attached hereto as *Exhibit 8*.

²⁰ See Venetian Security reports (7/22/11 – 5/25/16), collectively attached hereto as *Exhibit 9*.

²¹ See Venetian Security reports (2/20/16 – 5/25/16), collectively attached hereto as *Exhibit 9*.

- 1 • Joan Gartner v. Venetian, A-13-689661-C, which alleges a slip and fall on clear liquid in
2 the Grand Lobby on September 18, 2012. Venetian was also represented by Messner
3 Reeves LLP in this case.²²
- 4 • Bertha Matz v. Sands d/b/a Venetian, A-15-719757, which alleges a slip and fall on
5 liquid in the lobby on June 23, 2013. Venetian was also represented by Messner Reeves
6 LLP in this case.²³
- 7 • Nancy Rucker v. Venetian, A-15-729566-C, which alleges a slip and fall on clear liquid
8 in the lobby on August 23, 2014. Venetian was also represented by Messner Reeves LLP
9 in this case.²⁴

10 Additionally, the recent review of public records demonstrates that Defendant's modus
11 operandi of hiding relevant prior incident reports has been raised in another matter, Sekera v.
12 Venetian, A-18-772761-C.²⁵ In Sekera, Plaintiff's counsel spoke with counsel in another
13 Venetian matter (the Smith case) and realized that Venetian was not producing all incident
14 reports in all cases. For example, upon information and belief, Venetian produced 4 incident
15 reports in the Smith case that were not produced in the Sekera case and, even more alarmingly,
16 ***Venetian produced 36 incident reports in Sekera that were not produced in Smith.*** The
17 Plaintiff in Sekera created and filed the following table with its Motion for Leave to Amend
18 Complaint:²⁶

19
20
21
22
23
24
25 ²² See Defendant Venetian Casino Resort, LLC's Motion in Limine to Preclude Any Arguments Regarding
Alleged Spoliation of Evidence, Case No. A-13-689661-C, attached hereto as *Exhibit 10*.

26 ²³ See JCCR, Case No. A-15-719757-C, attached hereto as *Exhibit 11*.

27 ²⁴ See Complaint, Case No. A-15-729566-C, attached hereto as *Exhibit 12*.

28 ²⁵ See Plaintiff's Motion for Leave to Amend Complaint, Case No. A-18-772761-C, pertinent parts attached
hereto as *Exhibit 13*.

²⁶ See Plaintiff's Motion for Leave to Amend Complaint, Case No. A-18-772761-C, pertinent parts attached
hereto as *Exhibit 13 (Exhibit 7, sub-exhibit 4 to said Motion)*.

Incident Reports From Joyce Sekera v. Venetian Compared With Carol Smith v. Venetian

<u>Date of Incident</u>	<u>Incident Report ID</u>	<u>Location at Venetian</u>	<u>Disclosed in SMITH case?</u>
1 11/24/2013	1311V-5502	Grand Lux Café	No
2 11/24/2013	1311V-5588	Grand Hall	No
3 1/26/2014	1401V-5539	Lobby 1	No
4 5/2/2014	1405V-0423	Grand Hall	No
5 5/3/2014	1405V-0687	Grand Hall	No
6 5/3/2014	1405V-0704	Lobby 1	No
7 5/24/2014	1405V-5900	Lobby 1	No
8 6/28/2014	1406V-6937	Grand Lux Café	No
9 7/5/2014	1407V-1121	Lobby 1	No
10 7/10/2014	1407V-2272	Grand Lux Café	Yes
11 7/10/2014	1407V-2142	Grand Hall	No
12 7/13/2014	1407V-3057	Lobby 1	Yes
13 7/18/2014	1407V-4386	Lobby 1	No
14 7/25/2014	1407V-6125	Lobby 1	No
15 7/25/2014	1407V-6151	Grand Hall	No
16 7/29/2014	1407V-7161	Lobby 1	Yes
17 7/30/2014	1407V-7375	Lobby 1	No
18 8/4/2014	1408V-0843	Lobby 1	No
19 8/5/2014	1408V-1088	Lobby 1	No
20 8/28/2014	1408V-7104	Venetian Tower	Yes
21 8/31/2014	1408V-7791	Lobby 1	Yes
22 9/13/2014	1409V-2807	Lobby 1	No
23 9/15/2014	1409V-3261	Lobby 1	No
24 9/30/2014	1409V-6750	Grand Hall	No
25 10/11/2014	1410V-2293	Lobby 1	No
26 12/23/2014	1412V-4685	Lobby 1	No
27 1/17/2015	1501V-3857	Lobby 1	Yes
28 1/31/2015	1501V-6887	Lobby 1	No
29 2/9/2015	1502V-1803	Lobby 1	Yes
30 2/20/2015	1502V-4322	Lobby 1	Yes
31 3/8/2015	1503V-1561	Grand Hall	No
32 3/23/2015	1503V-5040	Lobby 1	No
33 4/24/2015	1504V-5396	Grand Hall	Yes
34 5/3/2015	1505V-0844	Grand Hall	No
35 5/22/2015	1505V-5319	Lobby 1	Yes
36 5/29/2015	1505V-7253	Lobby 1	No
37 5/30/2015	1505V-7506	Lobby 1	Yes
38 6/12/2015	1506V-2824	Lobby 1	No
39 6/30/2015	1506V-7480	Lobby 1	Yes
40 7/5/2015	1507V-1236	Venezia Tower	Yes
41 7/19/2015	1507V-5024	Grand Hall	No
42 7/19/2015	1507V-5121	Venetian Tower	Yes
43 7/20/2015	1507V-5392	Entrance/Lobby	No
44 8/2/2015	1508V-0357	Lobby 1	No
45 8/8/2015	1508V-1866	Grand Hall	No
46 8/8/2015	1508V-1869	Lobby 1	Yes
47 8/29/2015	1508V-7246	Lobby 1	Yes
48 9/6/2015	1509V-1497	Lobby 1	Yes
49 9/13/2015	1509V-3312	Grand Hall	No
50 12/27/2015	1512V-5875	Lobby 1	No
51 2/20/2016	1602V-4290	Lobby 1	Yes
52 3/6/2016	1603V-1233	Lobby 1	Yes
53 3/25/2016	1603V-5018	Lobby 1	Yes
54 4/9/2016	1604V-1850	Grand Hall	No
55 4/9/2016	1604V-1926	Lobby 1	Yes
56 4/10/2016	1604V-2136	Grand Hall	No
57 4/12/2016	1604V-2459	Lobby 1	Yes
58 5/5/2016	1605V-0952	Lobby 1	Yes
59 5/25/2016	1605V-5069	Lobby 1	Yes
60 7/7/2016	1607V-1506	Lobby 1	SMITH

36 Total Not Disclosed in Smith

From this table, the Defendant has not produced the following **32 incident reports** in the instant case: 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 17, 18, 19, 22, 23, 24, 25, 26, 28, 31, 32, 34, 36, 41, 43, 45, 49, 54, and 56. Also, of note, is that the Defendant did not disclose the instant case in Sekera even though the instant case occurred merely a month before said incident.

Plaintiff's counsel sent an email to defense counsel on June 12, 2019 at 4:43 p.m. which stated as follows: "In the meantime, I wanted to request that you also check with your client and confirm that there are not any additional incident reports related to slip and falls on the marble that have not been disclosed. I believe you produced 31 prior incidents in your First Supplement."²⁷ Rather than confirming that all incident reports have been produced, Defendant makes veiled allegations of impropriety against Plaintiff's counsel through the following email,²⁸

I am writing to follow up with you regarding an additional issue you raised during our telephone conference yesterday. As we discussed Defendant's responses to Plaintiff's Requests for Production of Documents in the *Boucher v. Venetian* case, you stated that you have Venetian incident reports or documents produced by Venetian in several different, active lawsuits currently pending against Venetian. Specifically, you claimed that by comparing Venetian's production of these incident reports among the various cases, you identified inconsistencies among Venetian's disclosures – the context of your statement seemed to imply some degree of impropriety by Venetian that could be at issue in this case.

Considering the substance of your statements during our June 11, 2019 telephone conference, it appears that you – or your law firm – have obtained Venetian's private/protected documents and information from unrelated, third-party sources, which is quite concerning to say the least.

In light of your claim that you contrasted Venetian's production of private/protected documents in extraneous, unrelated cases, further claiming that you identified inconsistencies among Venetian's documents produced among the various cases, **we request that you immediately contact our office in writing, and provide the following information with respect to Venetian Casino Resort** (Including Palazzo, Las Vegas Sands Corp., and any related company)

- (1) Specifically identify each and every document produced by Venetian, Palazzo, or any subsidiary of Las Vegas Sands Corp. in any other civil action, that was obtained by you (or your law firm obtained, received or reviewed that was provided by any source other than the Venetian or its representative(s), or that was obtained by you or your law firm from any source other than the Venetian outside of a civil action in which your firm actively appeared;
- (2) Specifically identify all attorneys, law firms, or third-parties from whom you received such documents or protected information; and
- (3) Identify the date each document was received and the format it which it was received (paper, mail, email, electronically, etc.).

Please let me know if you have any questions.

Truly,

David Pritchett

²⁷ See Email from Sarah M. Banda, Esq. (6/12/19), attached as *Exhibit 14*.

²⁸ See Email from David P. Pritchett, Esq. (6/12/19), attached as *Exhibit 15*.

The email, in addition to misquoting Plaintiff's counsel as Plaintiff's counsel merely said that she believes there are other incidents that have not been disclosed, indirectly acknowledges that the Defendant has other incident reports and/or prior incident information that it has intentionally withheld. However, instead of disclosing the same, Defendant makes allegations that Plaintiff somehow obtained Venetian's private/protected documents. This too is untrue, as all the information attached to this Motion and all information Plaintiff is aware of was obtained through a recent search of public records and cases on the Court website.

To date, Defendant Venetian has engaged in a deliberate pattern of evasive discovery abuse. For example, on June 14, 2019, the Discovery Commission heard the Plaintiff's Motion to Compel Production of Documents, which was largely granted, and requested that the Court compel items, such as the insurance policies, which the Defendant has yet to produce even though this case has been pending for over a year.²⁹ The gamesmanship that has ensued thus far in the discovery process leads the Plaintiff to believe that the failure to produce prior incident reports is deliberate and further evidence of Defendant's belief that the rules do not apply to the Venetian. Therefore, Plaintiff has reason to believe Defendant Venetian is withholding additional highly relevant documents regarding prior similar incidents.

The Incident at Issue

This matter arises from an incident that occurred on June 11, 2016 at approximately 2:36 p.m. on the premises of the Venetian Resort Hotel Casino located at 3355 S. Las Vegas Boulevard, Las Vegas, Nevada 89109.³⁰ On said date, Plaintiff was visiting the subject location when she slipped and fell on a wet and slippery walking surface in the lobby area. The Venetian

²⁹ See Plaintiff's Motion to Compel Production of Documents, pleading only, attached hereto as *Exhibit 16*.

³⁰ See Venetian Incident Report related to the instant case, attached hereto as *Exhibit 17*.

EXHIBIT 19

1 TRAN
2 CASE NO. A-18-772761-C
3 DEPT. NO. 25
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * * * *

8
9 JOYCE SEKERA,)
10 Plaintiff,)
11) REPORTER'S TRANSCRIPT
12) OF
13 vs.) PLTF'S MOTION TO AMEND
14) DEFT'S MOTION TO STRIKE
15 VENETIAN CASINO RESORT,)
16)
17 Defendant.)
18 _____)

19 BEFORE THE HONORABLE KATHLEEN DELANEY
20 DISTRICT COURT JUDGE

21 DATED: TUESDAY, MAY 28, 2019
22

23
24 REPORTED BY: SHARON HOWARD, C.C.R. NO. 745
25

1 APPEARANCES:

2 For the Plaintiff:

KEITH GALLIHER, ESQ.

3 KATHLEEN GALLIHER, ESQ.

4
5 For the Defendant:

MICHAEL ROYAL, ESQ.

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1 LAS VEGAS, NEVADA; TUESDAY, MAY 28, 2019

2 P R O C E E D I N G S

3 * * * * *

4
5 THE COURT: Page 8, Joyce Sekera vs. Venetian
6 Casino Resort.

7 MR. GALLIHER: Good morning, your Honor. Keith
8 Galliher and Kathleen Galliher on behalf of Joyce
9 Sekera.

10 THE COURT: Good to see you back. Now, you're
11 all seasoned. You don't get any special --

12 MR. GALLIHER: Very experienced now.

13 MR. ROYAL: Mike Royal for Defendants, your
14 Honor.

15 THE COURT: Good morning.

16 So this is Plaintiff's motion for leave to amend
17 the complaint, and the Defendant's motion to strike
18 related to information that was included in the reply to
19 the Defendant's opposition. And the strike was geared
20 toward what has been styled as unauthenticated evidence or
21 alternatively to allow defense the opportunity to respond
22 on order shortening time.

23 The way this all boils down, I really think we can
24 address it here today. They want to add punitive damages.
25 The argument is this is essentially a negligence claim and

1 punitive damages aren't warranted. There has been a lot
2 of discussion about -- in the pleadings about information
3 that's being pointed to, extrapolated from, otherwise not
4 really quantitative or admissible evidence, as I think
5 it's been argued by Mr. Royal, to show how many times
6 there might have been notice or actual slip and fall
7 circumstances.

8 I really want to just address this, do we get
9 punitives in or not. Is there any reason why we can't do
10 that. I'm not saying we can't talk about and look at
11 evidence and arguments or things that were pointed to in
12 the reply that shouldn't be there, but, you know, the
13 court can self-police -- the court can police and use
14 self-restraint to look at a bunch of things that really
15 don't have support and otherwise, I think, make the call
16 in terms of whether or not this really is to me an
17 operation of law as to whether what we have here is
18 sufficient to allow this standard to be met under Rule 15
19 or not.

20 Let me give Mr. Royal an opportunity, since he did
21 make the argument in his motion to strike, that there's
22 quite a bit of information here we should not be
23 considering.

24 MR. ROYAL: Thank you, your Honor.

25 What I'm most concerned about are

1 representations there was -- I noted about 11
2 representations that were made by counsel in the reply
3 that could have been made in the moving papers. But what
4 I'm most concerned about are representations to the court
5 such -- for example -- that relate to Mr. Shulman.
6 Counsel has repeatedly, before this court now and also in
7 front of the discovery commissioner, made false
8 representations specifically about Mr. Shulman's
9 testimony. It's all designed, your Honor, in order to
10 inflame the court against Defendants to make it appear
11 that Defendants are every bit this corporate criminal that
12 Plaintiff's counsel is alleging them to be.

13 Here, for example, Mr. Shulman was represented to
14 have testified that he met with me as relates to this
15 particular case. That he never had any prior disciplinary
16 warnings or anything on his record for the previous 13
17 years. They also represented that in the following 60
18 days he received a bunch of -- at least 3 warnings and
19 then he was fired all because, Mr. Shulman believed, that
20 he met with me. And he wouldn't lie.

21 Now, your Honor, that is untrue. It's unfounded. And
22 it's clear from the testimony of Mr. Shulman on cross that
23 it's untrue.

24 So what concerns me is that's one of many
25 misrepresentations that were made to the court in the

1 reply -- not in the moving papers -- that relate to --
2 that they're using to support their motion that they be
3 granted leave in order to add a claim of punitive
4 damages.

5 They are suggesting, for example, that what Venetian
6 does on a routine basis is meet with employees getting
7 ready to testify and tell them to lie. They're using --
8 they're making statements that are absolutely false.

9 THE COURT: It seemed to me though in the reply,
10 yes, okay, they talked about Mr. Shulman and some of these
11 communications and things, but they really, kind of, where
12 the court focused, right or wrong, because I recalled Mr.
13 Shulman's testimony was a point of contention before. But
14 they talk about, look, just look at our numbers.
15 Mr. Loron -- if I'm pronouncing that correctly -- his
16 testimony and simple calculation is more reliable. They
17 give this number, this average among how many things per
18 day or average days between. It seems to be that at the
19 end of the day what they're really just saying is, you
20 know, go with our numbers. Not necessarily that
21 Mr. Shulman is, you know, really --

22 I will say something to you that I just said to a
23 recent trial that I had. I really believe this to be
24 true. You don't win a case because you make the other
25 side look like a bad guy. Everybody wants to try the case

1 that way. Everybody thinks that's how it's going to work.
2 You are going to win or lose this case, and you're going
3 to win or lose this motion on the law and what is here and
4 what is appropriate facts to consider and how to apply the
5 law to those facts. Like, I'm not inflamed by the
6 arguments about what Mr. Shulman did or didn't do and the
7 conversations you may or may not have had. It's really
8 not the point.

9 The point for me is, you know, is there sufficient
10 basis here to believe that punitive damages is a viable
11 claim. It's not a high standard to meet to amend, as you
12 pointed out.

13 There's some argument it should just be automatically
14 gotten unless there's prejudice or some other thing. The
15 reality to me is I don't allow an amendment to a claim if
16 there's not a viable basis for the claim. That's all I'm
17 looking at.

18 MR. ROYAL: I understand, your Honor. I'm not
19 trying to make counsel look bad. What I see is in the
20 reply counsel has made misrepresentations.

21 THE COURT: You're not trying to make counsel
22 look bad.

23 MR. ROYAL: They're trying to make me look bad.

24 They say Mr. Royal told a witness to lie.

25 That's not trying to make me look bad. What am I supposed

1 to do with that. And they're using that to say, and, by
2 the way, it's a pattern of bad conduct by Venetian and
3 therefore you should grant our motion for leave to
4 amend.

5 If the court is not inclined to consider those
6 things, such as representations about Venetian purposely
7 omitting reports, in violation of discovery commissions
8 report and recommendation. Venetian violating court
9 orders in Smith vs. Venetian, which there's no evidence of
10 that. I don't know why that belongs in the reply in
11 support of this motion. They said, Venetian did not
12 review the discrepancy and provide, quote, all reports
13 deemed responsive to Plaintiff's request for prior
14 incident reports. There's no evidence of that, your
15 Honor. To the contrary. To the contrary we did respond
16 as the discovery commissioner asked us to. Sent a letter
17 to Mr. Galliher in that regard.

18 They've made other statements regarding counsel.
19 Counsel lied to the court. Venetian frivolously filed
20 motions for sanctions. Venetian unjustly accused
21 undersigned and Mr. Goldstein of criminal conspiracy and
22 implied professional responsibility violations. Harassed
23 and eventually fired Mr. Shulman, an employee, who had
24 never received written warnings in his 13 years of work
25 for Venetian. Venetian is an awful corporate citizen.

1 Venetian admitted it inadvertently missed 4 reports
2 provided in Smith vs. Venetian.

3 First of all, it's not true.

4 Secondly, they are the ones, Plaintiff is the one
5 trying to make me personally look bad in order to get this
6 motion -- the court to move in its favor of this motion.

7 Lastly, your Honor, my comment about Mr. -- about
8 the -- some case that I'm not familiar with and something
9 that Mr. David Elliot may or may not have said, put in the
10 reply. All of this information, all these things were
11 known to Mr. Galliher prior to filing his motion.

12 Certainly he knew about testimony from Joe Larsen.
13 That was provided in October 2018. The numbers he's
14 relying on, that you made reference to earlier --

15 THE COURT: Was it Larsen.

16 MR. ROYAL: Yes, Larsen.

17 Then there's -- he's made reference to Tom
18 Jennings in his report. It was done in December of 2018.
19 Those are -- that's the primary basis he's using, saying
20 we have some kind of strict liability standard, I guess,
21 that we have to meet. Otherwise, they're entitled to
22 punitive damages.

23 They've known all of this. They knew it well
24 before they filed this motion. I'll address that in more
25 detail, your Honor, after Mr. Galliher has his say on the

1 motion.

2 THE COURT: Do you want to speak to the -- Mr.
3 Galliher -- before we speak to the motion for leave to
4 amend, do you want to speak all to the -- obviously, it's
5 caused -- I'll use a mild word -- some chagrin for the
6 fact these things were put into the reply. And he's
7 obviously taking issue with the fact he finds them to be
8 not well-founded accusations, or frankly, false
9 accusations, he said. At the end of the day, again, I
10 didn't focus on that as being the overarching concern I
11 had about whether or not to grant your motion.

12 Did you just want to speak to what you put in the
13 reply and why you think it was appropriate to put it
14 there. I'm not terribly inclined to grant the motion to
15 strike and muddy the water. I really don't know what that
16 looks like to make you refile something and take it out.
17 The reality is I'm not considering it in terms of anything
18 terribly meaningful toward this decision making, but at
19 the end of the day, it's there, and he has the concern.

20 MR. GALLIHER: I have to say, Judge, I've been
21 practicing law for 45 years and I have to say this is
22 probably the first case and only case I remember being
23 called so many names.

24 But the thing that's of interest to me is
25 that -- we pointed this out in the paperwork we filed in

1 response to the motion to strike. We pointed out there
2 was no law cited in the motion to strike. When we
3 searched the law we found out that the legal basis for the
4 motion didn't exist. We've seen that throughout this
5 case. I'm not sure how to address it.

6 THE COURT: There's always a legal basis for a
7 motion to strike in the sense that we have a rule that
8 basically indicates anything impertinent, scandalous -- I
9 forget the other two adjectives -- but anything that comes
10 before the court that fall into those categories we can
11 strike.

12 What he's basically saying is this is not accurate
13 information. It shouldn't be in the reply. It either
14 bears no barring on punitive damages amendment request, or
15 it's just false and inflammatory. And I think that's the
16 basis. It's a 12(f) basis, regardless. Now, it is a
17 pleading. No. But I think 12(f), has been used for
18 purposes to strike for briefings too.

19 MR. GALLIHER: I understand that.

20 Normally the way this is done is we file a
21 motion to amend. The defense files an opposition. We
22 file a reply and that's the end of it. But what has
23 happened in this case consistently is we file a reply and
24 that's not the end of it. Then we have a motion to
25 strike, just like we did on the last hearing. And this

1 motion to strike is based on the fact the evidence was
2 supposedly not authenticated, which, of course, is not a
3 requirement. And that we raised new matters in the reply.
4 Which pursuant to Nevada law we're entitled to do. So we
5 didn't violate anything by the reply that we filed.

6 Now, I think the problem -- a lot of this is, to me,
7 is irrelevant to what we're doing. The allegations back
8 and forth. No. He said this. No. He didn't say that.
9 No. To me it's a very simple motion. And it was from the
10 get go.

11 THE COURT: Let's segue over to the motion. You
12 made a motion for leave to amend the complaint to add
13 punitive damages. The central argument is this is a
14 negligence claim. Where do you get punitives at. And how
15 do you have a legal basis to do that.

16 MR. GALLIHER: Very simple.

17 This is what we intend to prove at trial. The
18 Venetian has been open for 20 years. They have marble
19 floors in their casino area and walkway area on the ground
20 floor. They've had marble floors since they opened.

21 We have testimony from Joseph Larsen, the
22 security guard and EMT, employed by Venetian -- still
23 employed by Venetian -- who says during the 9 years I've
24 worked as an EMT/security officer I have personally
25 investigated over 100 injury falls at the Venetian.

1 Also, by the way, there are two security guards/EMTs
2 per shift at the Venetian, sometimes 3. So if we take 2
3 or 3 times 3 shifts, let's do the math.

4 Now, it goes from -- I'm assuming he's an average
5 security officer and EMT. We go from 100 to 900 injury
6 falls over a 9 year time frame. You add that into the 20
7 years Venetian has been open with the same floors, now
8 we're at 1,500 injury falls at the Venetian.

9 THE COURT: So we've gone from the number of
10 reports and the concern that some of the reports were left
11 out -- which number is significantly less than the number
12 you're quoting now -- to some extrapolation of testimony
13 of, well, I think it's probably about this many I've done.
14 If there's this many of me, then it's this many things.

15 MR. GALLIHER: That's not what he said. He was
16 very definite. I went over and over it with him in his
17 deposition. There was no, maybe, there's a hundred. A
18 hundred was minimum. So in his deposition testimony he's
19 not indefinite. He is very, very sure of what he's
20 testified to.

21 Let's take a look at that information first. Okay.
22 Then we've got the 73 injury fall reports, which is what
23 we discovered. Then we've got the porter's testimony.

24 Now, these again are Venetian employees who testified
25 that their supervisor informed them that the marble floors

1 at the Venetian are very dangerous, very dangerous. And
2 if there is a spot of water, a slight amount of water on
3 the floor a customer can slip and fall. This is coming
4 from management. So it's not like they don't know that
5 their floors are very, very dangerous to their customers.
6 So that's coming again from their own employees'
7 testimony.

8 Then we've got the David Elliot situation. This is
9 something which is recent which we have yet to discover,
10 but we intend to. And that is the Venetian in the
11 mid-2000s -- 2005, 2006, 2007 -- hired David Elliot -- who
12 the court is probably familiar with. He's a court
13 qualified bio-mechanical engineer, PE. They hired him to
14 evaluate their floors at the Venetian and make
15 recommendations concerning how they can make the floors
16 safer.

17 The one thing we've determined so far, Mr. Elliot
18 told him that under no circumstances is marble an
19 acceptable surface for a floor such as a hotel/casino like
20 the Venetian. He made recommendations concerning how they
21 could go from marble to tile and increase the co-efficient
22 of friction -- slip resistance -- to the .5 industry
23 standard from where it is now.

24 As we know from Dr. Jennings report the slip testing.
25 When wet the slip resistance was .33. It's far below the

1 industry average. Now we've got the Venetian hiring
2 somebody, who's an expert, to come in and advise
3 concerning the floors and how to make them safer. Nothing
4 has changed. The floors are still marble. They're still
5 not slip resistant. We've got that information as well.

6 Also we've got the fact that there are now coatings
7 available for these types of marble floors. And if you
8 use a coating on the marble floors you can make them more
9 slip resistant. And the Venetian has elected -- what we
10 know so far -- remember, we're talking about an amendment,
11 so we need an opportunity to discover information. But
12 what we know is that the Venetian has not utilized all of
13 the substances available to it to coat the marble floors
14 and, perhaps, make them more slip resistant.

15 THE COURT: Let me turn your argument back to
16 you, Mr. Galliher, that you made to Mr. Royal on his
17 motion, which was like where is the law to support this.

18 You know that if we're going to have punitives that
19 ultimately -- and it's a viable claim in a case, then it's
20 ultimately going to have to be proven by clear and
21 convincing evidence that there was oppression, fraud,
22 malice. That type of things. What you're arguing is just
23 sheer quantity of accident and that that converts what
24 occurred here into oppression, fraud, or malice. Where is
25 the case law that would support, in a negligence action,

1 sheer quantity of accident.

2 MR. GALLIHER: We cited case law in 1 case, 2
3 events were enough for an amendment to include a claim of
4 punitive damages.

5 THE COURT: If I recall those cases correctly,
6 there was evidence there that we may not, yet, have here.
7 I'm not seeing the smoking gun, so to speak, you know.
8 Well, I'm not going to try to say what I think is evidence
9 I should be seeing. I'm just saying I'm not sure I see
10 the tie in between the evidence I know to be in this case
11 so far and what was in those cases.

12 MR. GALLIHER: We only have to show that it's
13 arguable. We don't have to prove our case.

14 The court has the ultimate authority here. If we
15 have our complaint amended and we attempt to discover a
16 punitive damage claim, and we do not discover information
17 sufficient to support the claim, well, then the court can
18 move on a motion for summary judgment in this case brought
19 by the defense on the grounds there's no clear and
20 convincing evidence to show punitive damages. Or at
21 trial, once the testimony is presented the court at that
22 point in time can say, you know what, I don't think
23 there's clear and convincing evidence to show a punitive
24 damage claim in this case and the court can decline to
25 give the instruction.

1 So we're talking now about a motion to amended
2 to give us the opportunity. We have, what I believe, is a
3 smoking gun big time. Remember something. This is a
4 hotel/casino built 20 years ago for the purpose of
5 attracting customers through the hotel/casino. For the
6 purpose of attracting customers, who then use the marble
7 floors at the Venetian.

8 The fact that we've had so many falls documented
9 indicates to me that there have been a history of these
10 falls from the get go. The floors at the Venetian, when
11 they first erected the hotel, are still marble, and they
12 haven't changed the same marble. I don't think we have to
13 be rocket scientists to figure out there must be a
14 significant history of injury falls at this hotel/casino
15 on these floors.

16 So now the question is, what did the Venetian know
17 and when did they know it. Well, that's all part of
18 discovery that we have to do in order to substantiate our
19 claim for punitive damages. That's where the court comes
20 in. Because if, in fact, we can't prove the claim, it
21 will be a subject of a summary judgment motion, which the
22 court can rule on.

23 I'm talking strictly about whether it's an arguable
24 claim. Whether or not we get to amend the complaint.
25 Whether leave is freely given to, in this case, the

1 Plaintiff, to amend their complaint to include a claim for
2 punitive damages. If the evidence doesn't support the
3 claim, I'm going to be the first guy to say, well, we'll
4 dismiss it.

5 On the other hand, from what I can see here so far, I
6 think the evidence is going to show a 20-year history of
7 conscious disregard for the safety of the Venetian's
8 customers by hotel management, who were aware of the
9 dangerous floor that they installed when they built the
10 casino, who have been aware of the dangerous state of this
11 flooring from then to the present.

12 THE COURT: As counsel pointed out in the case
13 law, reckless disregard, this type of thing, doesn't
14 necessarily get you there to punitives. Your argument is
15 that somehow this evidence is going to show something more
16 then that.

17 MR. GALLIHER: We believe that's the case. Of
18 course, as the case law pointed out, that's one of the
19 reasons our motion to amend is granted. It gives us the
20 opportunity to explore the issue, discover the information
21 and it either supports our position or it doesn't.

22 THE COURT: I'm not, not mindful of the fact
23 that if I were to allow this that does change the scope of
24 discovery. The potential of this claim coming in against
25 a large casino/hotel enterprise could be, you know,

1 something that the jurors could take and run with, whether
2 or not the evidence is there or not. The court would have
3 to ultimately be the gatekeeper to determine whether or
4 not it survives summary judgment.

5 Why does it not meet the much lower standard at
6 this point of there's some evidence that could indicate
7 the type of decision making that is culpable -- if you
8 want to call it that -- at this point -- at least as
9 alleged -- and that ultimately discovery will pan that
10 out.

11 MR. ROYAL: Your Honor, as you know from prior
12 hearings, there is a dispute as to whether or not there
13 was any foreign substance on the floor in this case.

14 THE COURT: Whether it was wet or not is the
15 distinction you use.

16 MR. ROYAL: That's an important distinction
17 because their own expert says the floor is safe when it's
18 dry.

19 Our position is there was nothing wrong with the
20 floor. We have a lot of witnesses that will support that.
21 We provided the court with lots of surveillance evidence.
22 Their expert is not going to be able to testify there was
23 anything on the floor. At least from what he sees on the
24 video.

25 Let me make a couple of corrections what counsel

1 said. He said Mr. Larsen is still employed by Venetian.
2 That's not true. He hasn't been employed with Venetian
3 for quite some time. He's been using extrapolating
4 numbers from Mr. Larsen's testimony, again, since he got
5 it back in October of 2018. He's arguing about things
6 that he's known since that time, maybe even before that
7 time. He's been collaborating with Mr. Goldstein we know
8 in the Smith case. So he's waited -- I mean, we filed a
9 joint case conference report late July of 2018. He waited
10 until this late date making it appear as though he's just
11 coming up with this information now. I mean, he has a
12 burden to meet as it relates to undue delay, bad faith,
13 dilatory conduct and so forth. I don't believe he's met
14 that as relates to this particular motion.

15 Another thing, your Honor, that I just want to point
16 out. When Mr. Galliher is extrapolating all these numbers
17 about how dangerous this floors is, his client worked in
18 the Venetian on the property for a year. Spent many
19 thousands of hours, hundreds and thousands of time walking
20 across this very same marble floor, never even heard about
21 somebody slipping and falling. Much less experiencing it,
22 seeing it, or anything like that. So to the extent that
23 the court is at all influenced by the numbers he's
24 throwing out here, it's simply not supported by his
25 client's own testimony.

1 THE COURT: It's not the numbers. It's the
2 question of whether the current or former employees have
3 testimony that this is a known hazardous condition that
4 could have been ameliorated. It hasn't been. There's
5 been decision making. The evidence will bear out there's
6 that, as alleged -- and again, standard to amend is very
7 low.

8 I hear you, obviously. There's got to be some
9 discussion about whether or not there's any kind of
10 prejudice or undue delay, this type of thing. At this
11 point in litigation, I'm not sure we have that concern.

12 He's indicated in his argument that you should be
13 proving that up against them to prevent the amendment.
14 But at the end of the day, I'm not sure I see that as much
15 as I see is there any potential liability for this claim.
16 If there is, and the standard is low, they should be able
17 to explore it. If the evidence doesn't pan out, Mr.
18 Galliher is right, it will be kicked out on summary
19 judgment.

20 It's very hard to make a decision at this stage of
21 the case not to allow some exploration of this in light
22 of, at least, not just the numbers but in light of what
23 has been asserted to be the testimony of some of these
24 witnesses.

25 MR. ROYAL: One of the things he represented to

1 the court about what the PAD people said is also
2 incorrect. They didn't say they had been told by
3 supervisors it's slippery when wet. They're testifying
4 about their own experience.

5 Your Honor, I guess I'm concerned that every
6 single -- this is as simple a negligence case as you have.
7 He wants to try every case but the actual one that we
8 have. So what this is going to turn into is a huge
9 discovery deal where Mr. Galliher is going to now he's
10 seeking subsequent incidents and he's going to be making
11 demands to prove up his punitive damage claim, financials
12 and all kinds of stuff that he otherwise wouldn't be
13 entitled to in a simple negligence case.

14 If he had brought a claim for punitive damages in his
15 original complaint, we'd be filing a motion for summary
16 judgment today. He does not have and has not presented
17 evidence that would remotely support a punitive damages
18 claim.

19 I want to point out to the court there's no evidence
20 of conscious disregard. There's no evidence of even
21 something beyond gross negligence in this case. It's a
22 simple slip and fall that an expert will testify to that
23 if dry -- and we believe there's sufficient evidence that
24 it was -- that it's absolutely safe.

25 Also I'll just point out to the court there is no

1 national standard of .50 coefficient of friction. It's
2 not something Mr. Jennings is going to be able to
3 support.

4 MR. GALLIHER: You don't need to hear further
5 from me.

6 THE COURT: So this is a very difficult call to
7 make in all candor because I know and I respect the
8 consequences of allowing this amendment. I will also be
9 candid that coming in here today my inclination was
10 against it because I think we start from the premise this
11 is a negligence claim. It is an uphill battle to be able
12 to get a punitive damages allegation in a negligence
13 claim. And there has to be far, far more evidence to
14 support a punitive damages claim than could ever be there
15 to support or would ever be there to support a negligence
16 claim.

17 So, you know, there's a lot of talking about numbers.
18 There's no doubt in my mind the vast majority of that, if
19 not all of that, is purely speculative and extrapolations
20 from some personal experiences but not necessarily numbers
21 that we rely on to consider granting the motion to
22 amend.

23 I think what ultimately just tipped the scale over to
24 the side of it is appropriate to allow the amendment --
25 again, I do this with trepidation, because I will tell you

1 though I will be a very strong watch dog about this ever
2 getting before a finder of fact if there is not evidence
3 to support a punitive damages claim. And it's not the
4 same standard. It's not going to be the same standard as
5 this motion to amend. And there had better be substantial
6 evidence that will allow for that to get to the trier of
7 fact.

8 Should you be able to explore it, I think the Tichner
9 (ph) case and the cases cited do show that it is possible
10 to have a punitive damages claim in a case such as this.
11 And to the extent that there is some evidence indicated
12 now that there could be implied malice, that there could
13 otherwise be knowledge of possible harmful consequences
14 and a willful and deliberate failure to act, which is the
15 language that we see in cases where punitive damages were
16 found in negligence cases and/or statutory requirement for
17 punitive damages, I think it would be abuse of my
18 discretion not to grant the amendment.

19 The standard met to allow for amendment is here.
20 That there isn't evidence of undue delay or prejudice.
21 And while it's not going to be, perhaps, pretty, this
22 discovery, I think at the end of the day, with what's been
23 alleged, it would do a disservice to this case if I didn't
24 allow there to be some exploration to see if there's
25 evidence that could support the damages claim.

1 So in that regard I think the proper call to make is
2 to allow the amendment to include punitive damages. Allow
3 it to be filed as requested and see where discovery
4 goes.

5 If the evidence is not there, if we are talking about
6 multiple accidents but nothing more than that, it's very
7 hard for this court to see how punitive damages will ever
8 get to the fact finder. That's where I think the
9 potential harm to a large operation lies. The discovery
10 and the fact there may have been decisions made and some
11 sort of willful, deliberate failure to act to avoid
12 harmful circumstances, whether or not that's there or not,
13 we'll find out. I think it is appropriate to allow
14 exploration at this stage.

15 MR. GALLIHER: Thank you.

16 THE COURT: I'll grant the motion. Mr.
17 Galliher, you'll prepare the order.

18 MR. ROYAL: Your Honor, my only concern relates
19 to the prior motion that we had, prior decision that
20 relates to protective order we were seeking. Counsel is
21 going to be seeking subsequent incident reports, I'm sure,
22 as a result of this ruling.

23 THE COURT: That prior order still stands. I
24 made it clear to Mr. Galliher what he can use in support
25 and what he cannot.

1 MR. GALLIHER: That's a discovery commissioner
2 issue. We're going to be filing a motion to compel and
3 some other matters in this case as well, but that's not
4 before the court.

5 THE COURT: We do have the order the court
6 issued before that tells you what your disclosure scope is
7 and is not. And the fact that what you'd engaged in
8 before is not something the court is expecting you to be
9 engage in going forward. I expect that to be honored.

10 The prior order still stands. I appreciate that
11 clarification.

12 MR. GALLIHER: Thank you, your Honor.

13 THE COURT: Thank you, Counsel.

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CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

I, the undersigned certified court reporter in and for the
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the
time and place therein set forth; that the testimony and
all objections made at the time of the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing is a
true record of the testimony and of all objections made at
the time of the proceedings.

A handwritten signature in cursive script, reading "Sharon Howard", followed by a large, circular flourish.

Sharon Howard
C.C.R. #745

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