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2 IN THE SUPREME COURT OF THE STATE OF NEVADA

3
4 Supreme Court No. Electronically Filed
District Court Case No. A-18-77276-10 Mar 17 2020 02:20 p.m.
5 Elizabeth A. Brown
Clerk of Supreme Court

6 VENETIAN CASINO RESORT, LLC, a Nevada limited liability company;
7 LAS VEGAS SANDS, LLC, a Nevada limited liability company,
8 Petitioners,

9 v.

10 EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND
11 FOR THE COUNTY OF CLARK, AND THE HONORABLE KATHLEEN
12 DELANEY in her capacity as District Judge,
Respondent,
13 JOYCE SEKERA, an individual,
14 Real Party in Interest

15
16 **APPENDIX TO PETITIONERS' EMERGENCY PETITION FOR WRIT OF**
17 **MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES**
18 **21(a)(6) AND 27(e) AND ALTERNATIVE EMERGENCY MOTION TO STAY**
19 **UNDER NRAP RULES 8 AND 27(e)**
20 **Volume 10 (Exhibits 44-47)**

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Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, by and through their counsel of record, Royal & Miles LLP, hereby submit is Appendix in compliance with Nevada Rule of Appellate Procedure 30.

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1 The Appendix shall be contained in 13 separate volumes in accordance with
2 NRAP 30(c)(3) (2013), each volume containing no more than 250 pages.

3
4 DATED this 13 day of March, 2020.

5 ROYAL & MILES LLP

6
7
8 By: 

Michael A. Royal, Esq. (SBN 4370)

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12 Counsel for Petitioners
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CERTIFICATE OF SERVICE

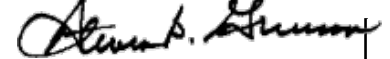
I hereby certify that I am an employee of the law firm of Royal & Miles LLP, attorney's for Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, and that on the 17 day of March, 2020, I served true and correct copy of the foregoing APPENDIX TO PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e) AND ALTERNATIVE EMERGENCY MOTION TO STAY UNDER NRAP RULES 8 AND 27(e) Volume 10 (Exhibits 44-47), by electronically filed with the Clerk of the Court by using ECF service which will provide copies to all counsel of record registered to the receive CM/ECF notification and by delivering the same via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
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and
Sean K. Claggett, Esq.
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Honorable Kathleen Delaney
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Respondent

Attorneys for Real Party in Interest


An employee of Royal & Miles LLP



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13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

18 Plaintiff,

19 v.

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

27 Defendants.

Before the Discovery Commissioner

28 **REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR A
PROTECTIVE ORDER AND REPLY TO PLAINTIFF'S OPPOSITION
TO DEFENDANTS' MOTION TO COMPEL**

29 COMES NOW, Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS
30 SANDS, LLC (collectively referenced herein as *Venetian*), by and through their counsel, ROYAL &
31 MILES LLP, and hereby submits the following Reply to Plaintiff's Opposition to Defendants' Motion
32 for a Protective Order and Reply to Plaintiff's Opposition to Defendants' Motion to Compel.

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 10 day of September, 2019.

5 ROYAL & MILES LLP

6
7 By 

8 MICHAEL A. ROYAL, ESQ.

9 Nevada Bar No. 4370

10 1522 W. Warm Springs Rd.

11 Henderson, NV 89014

12 *Attorney for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DECLARATION OF MICHAEL A. ROYAL**

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

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

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

23 2. This action arises out of an alleged incident involving a floor in a lobby area of the
24 Venetian property on November 4, 2016. Defendants dispute there was any foreign substance on the
25 floor causing Plaintiff to fall.

26 3. The parties have deposed eleven (11) of the persons identified in the surveillance
27 footage as having been present at the scene from its occurrence until Plaintiff left the property. Of
28 those eleven (11) witnesses, only Gary Shulman has testified that he saw water on the floor.

1 4. I affirmatively and unequivocally deny the continued unnecessary defamatory assertions
2 by Plaintiff's counsel filed in legal documents, such as on page two (2) of the Opposition, lines 18-22,
3 where counsel continues to disparage my professional and personal reputation by repeatedly declaring
4 that I had a meeting with Mr. Shulman in June 2018, a month prior to filing the Joint Case Conference
5 Report, and told him to lie about what he allegedly observed at the accident scene. Of note, if what
6 Mr. Shulman had to say about my conversation with him was remotely accurate - that there was a
7 foreign substance on the floor and he was pressured to testify otherwise - one would think that at least
8 one of the other ten (10) persons responding to the scene would have agreed with his observation that
9 there was something wet in the area causing Plaintiff's fall; however, none of them have done so.

11 5. Mr. Shulman is not the only former employee to testify in this case. In fact, depositions
12 have been taken of former security officer Joseph Larson, EMT, who responded to the incident and
13 prepared the written report. Mr. Larson confirmed he did not see any substance on the floor. As
14 previously related to the Court, former employees of Venetian's Public Area Department Maria Cruz
15 and David Martinez who cleaned the area around the Plaintiff both testified that there was nothing on
16 the floor in the area where Plaintiff slipped and fell.

18 6. Defendants have always objected to providing Plaintiff with post-incident security
19 reports or related documents. In its Responses to Plaintiff's Requests for Production of Documents
20 and Materials to Defendant, served October 9, 2018, Defendants objected to Plaintiff's Production
21 Request No. 7, which reads as follows:

23 *True and correct copies of any and all claim forms, legal actions, civil complaints,*
24 *statements, security reports, computer generated lists, investigative documents or*
25 *other memoranda which have, as its subject matter, slip and fall cases occurring on*
26 *marble floors within the subject VENETIAN CASINO RESORT within three years prior*
27 *to the incident described in Plaintiffs Complaint, to the present.*

28 (See Exhibit I, attached hereto, at 4.) Defendants responded as follows:

1 *Defendants object to the extent this request lacks foundation, assumes facts not in*
2 *evidence, is overly broad, vague and ambiguous, unduly burdensome and*
3 *presupposes there was a foreign substance on the floor causing Plaintiffs fall, which*
4 *Defendants deny. It also incorrectly identifies the subject premises as VENETIAN*
5 *CASINO RESORT. This request further seeks access to information which is equally*
6 *available to Plaintiff via public records, and otherwise seeks information that is not*
7 *reasonably calculated to lead to the discovery of admissible evidence. Defendant*
8 *objects as the request as over broad and not properly tailored to the issues in this case.*
9 *Without waiving said objection, Defendant responds as follows: Defendant is in the*
10 *process of making a good faith effort to identify information responsive to this*
11 *request and will respond as soon as the information is collected. Discovery is*
12 *continuing.*

13 (See *id.* at 4-5.)

14 7. Defendants provided a supplemental report related to this request on January 4, 2019,
15 with sixty-four (64) prior incident reports. (See Exhibit J, attached hereto, at 4-5.) This referenced the
16 documents produced by Defendants as VEN 269-928. Defendants have continued to object to the
17 production of any post-incident security reports throughout this litigation.

18 8. A true and correct copy of Defendants' Responses to Plaintiff's Second Requests for
19 Production of Documents and Materials to Defendants, served December 7, 2019, is attached hereto
20 as Exhibit K.

21 9. A true and correct copy of Defendants' Responses to Plaintiff's Third Requests for
22 Production of Documents and Materials to Defendants, served April 15, 2019, is attached hereto as
23 Exhibit L.

24 10. A true and correct copy of Defendants' Responses to Plaintiff's Sixth Requests for
25 Production of Documents and Materials to Defendants, served June 24, 2019, is attached hereto as
26 Exhibit M.

27 11. A true and correct copy of Defendants' Answers to Plaintiff's First Set of
28 Interrogatories, served July 22, 2019, is attached hereto as Exhibit N.

12. A true and correct copy of Responses to Plaintiff's Ninth Request for Production of
Documents and Materials to Defendant, served August 16, 2019, is attached hereto as Exhibit O.

1 13. A true and correct copy of Responses to Plaintiff's Tenth Request for Production of
2 Documents and Materials to Defendant, served August 16, 2019, is attached hereto as Exhibit P.

3 14. A true and correct copy of Defendants' Answers to Plaintiff's Second Set of
4 Interrogatories, served August 21, 2019, is attached hereto as Exhibit Q.

5 15. A true and correct copy of Responses to Plaintiff's Eleventh Request for Production of
6 Documents and Materials to Defendant, served August 28, 2019, is attached hereto as Exhibit R.

7 16. I am not counsel of record in the matters of *Smith v. Venetian*, *Boucher v. Venetian* or
8 *Cohen v. Venetian*, which Plaintiff's counsel frequently references in his filings with the Court.
9 Plaintiff's reference to these cases and what was reportedly "*left out*" by Venetian, referenced on page
10 10 of the Opposition, is entirely without context or supporting documents and has nothing to do with
11 the present litigation. The only thing remotely relevant about these other matters repeatedly referenced
12 by Plaintiff is that Plaintiff's counsel, Keith Galliher, Esq., shared prior incident reports with attorneys
13 in these matters after I filed a motion for protective order on February 1, 2019, which led to the
14 attorneys in these other cases using the documents (which were deemed privileged by the Discovery
15 Commissioner in the DCRR of April 4, 2019) in their respective matters, including filing all such
16 information with the court.
17

18 17. The area where Plaintiff slipped as depicted on the surveillance footage is identified at
19 **12:36:50.** (See Exhibit S, *Surveillance Footage*, VEN 019.)
20

21 18. Surveillance footage of the subject incident attached hereto reveals the following:
22

- 23 a. **12:06:49.** Coverage begins with no spill in the subject area.
- 24 b. **12:14:25.** An African-American female Venetian Public Area Department
25 (*PAD*) employee (wearing a black uniform with red collar, red on the shoulders, and gold name tag on
26 the front upper left lapel area) walks through area with a garbage bin. By this point, nearly 100 people
27
28

1 have walked through the subject area since the footage began at 12:06:49, without the slightest
2 indication of a foreign substance on the floor.

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

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

10 e. **12:25:09.** An African-American male Venetian PAD employee (dressed in
11 black/red uniform described in Paragraph 6.b above) holding a broom/dust pan walks about 10 feet
12 from the area towards bathrooms located just out of view to the left. By this point, approximately 250
13 people have walked through the area since the footage began, without any evidence of a spill or spill
14 related incident.

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

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

23 h. **12:33:53.** Venetian PAD employee **Maria Cruz** (wearing the uniform
24 described in Paragraph 6.b above) walks through the subject slip area with a dust pan and broom. Ms.
25
26
27
28

1 Cruz identified herself from this footage during her April 17, 2019 deposition and testified that this
2 depicts her patrolling the area, walking right through the alleged spill area without identifying anything
3 on the floor. By this time, less than three minutes before the subject incident occurred, there had been
4 approximately 330 people walk through the subject area, without the slightest hint of a spill or spill
5 related incident.

6
7 i. **12:33:58.** A woman walks right through the subject slip area within five (5)
8 seconds of Ms. Cruz, without the slightest hint of a spill or spill related incident.

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

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

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

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

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

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

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

9
10 q. **12:38:46.** The camera zooms into the subject area as Mr. Shulman walks
11 directly through the Plaintiff's slip area while speaking with Mr. Calleros. Mr. Shulman is then seen
12 departing the area without any evidence of any liquid substance being in the area where he had been
13 standing between Mr. Calleros and Plaintiff or evidence of a foreign substance being tracked across
14 the floor from the bottom of his shoes.

15
16 r. **12:39:45.** Three Venetian PAD employees (all wearing uniforms as described
17 in Paragraph 6.b above) respond to the scene: Maria Cruz (who arrives holding a broom/dustpan in her
18 left hand, green rag in her left hand, and wearing glasses), David Martinez (who arrives with a mop
19 and bucket) and Milan Graovac (depicted arriving without any cleaning tools, standing next to the
20 column in front of Plaintiff, top left area of footage). All have since testified that they did not observe
21 any foreign substance on the floor in the area where Plaintiff slipped.

22
23 s. **12:39:55.** Venetian PAD employee Martinez arrives at the slip area with a mop
24 and bucket, stepping directly into the slip area with his right foot, and begins mopping an area two to
25 three feet away, towards the column, while continuing to stand in the slip area. Mr. Martinez does not
26 actually drag the mop across the slip area where he originally stood until **12:41:12.** Mr. Martinez
27
28

1 testified on July 26, 2019 that there was nothing on the floor upon his arrival with the mop and bucket,
2 but that he mopped the area as a precaution.

3 19. Venetian PAD employee Maria Cruz testified on April 17, 2019 that she did not see any
4 evidence of a foreign substance on the floor in the subject area before when she walked through at
5 12:33:53 or upon her return at 12:39:45, prior to Mr. Martinez standing in the slip area and running
6 his mop through a different area. There is no dispute that Ms. Cruz walked through the subject area
7 as part of her assigned duties to patrol to identify potential hazards within three (3) minutes of the
8 subject incident.
9

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

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

16 22. Plaintiff has previously testified that while working daily on Defendants' property from
17 December 28, 2015 to November 4, 2016, she had walked the fall area hundreds of times prior to
18 November 4, 2016 without any safety concerns or issues with the subject flooring. (See Exhibit H at
19 78-79; see also *id.* at 86, ln 13-25; 87, ln 1-5; 88, ln 7-14.) She denied even hearing of such an
20 occurrence during that eleven (11) month period of time. (See *id.*)
21

22 23. Plaintiff has always asserted that she slipped due to a foreign substance in this matter.

23 24. Plaintiff's experts have both opined that the subject fall occurred because there was a
24 foreign substance on the floor.

25 25. Plaintiff's expert Tom Jennings has opined that the subject floor is safe when dry. (See
26 Exhibit T, *Transcript of Tom Jennings Deposition* at 20, ln 16-21; 80, ln 8-22.)
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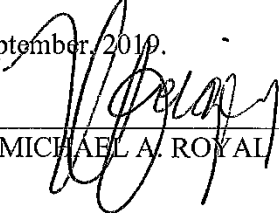
26. Plaintiff has offered absolutely no evidence to suggest that Defendants' use of marble flooring was not reviewed, approved, permitted, inspected and certified by the Clark County Building Department.

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

EXHIBIT	TITLE
I	Responses to Plaintiff's Request for Production of Documents and Materials to Defendant (served October 9, 2018)
J	Supplemental Responses to Plaintiff's Request for Production of Documents and Materials to Defendant (served January 4, 2019)
K	Defendants' Responses to Plaintiff's Second Requests for Production of Documents and Materials to Defendant (served December 7, 2018)
L	Defendants' Responses to Plaintiff's Third Requests for Production of Documents and Materials to Defendants, served April 15, 2019
M	Defendants' Responses to Plaintiff's Sixth Requests for Production of Documents and Materials to Defendants, served June 24, 2019
N	Defendants' Answers to Plaintiff's First Set of Interrogatories, served July 22, 2019
O	Responses to Plaintiff's Ninth Request for Production of Documents and Materials to Defendant, served August 16, 2019
P	Responses to Plaintiff's Tenth Request for Production of Documents and Materials to Defendant, served August 16, 2019
Q	Defendants' Answers to Plaintiff's Second Set of Interrogatories, served August 21, 2019
R	Responses to Plaintiff's Eleventh Request for Production of Documents and Materials to Defendant, served August 28, 2019
S	Surveillance Footage of Incident (VEN 019)
T	Transcript of Tom Jennings Deposition (July 2, 2019), selected pages
U	Transcript of Hearing (May 14, 2019), selected pages
V	Declaration of Peter Goldstein (dated February 13, 2019)
W	Plaintiff's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Plaintiff's Motion for Terminating Sanctions (dated March 12, 2019)

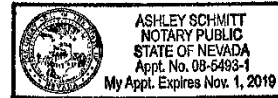
T	B I H X E	TITLE
X		Plaintiff's Reply in Support of Her Motion to Compel Testimony and Documents (filed July 25, 2019) (without exhibits)
Y		Discovery Commissioner's Report and Recommendation (filed July 9, 2019), <i>Boucher v. Venetian Casino Resort, LLC, et al</i> , Case No. A-18-773651-C

DATED this 10 day of September, 2019.


MICHAEL A. ROYAL

SUBSCRIBED and SWORN to
Before me this 10 day of September, 2019,


NOTARY PUBLIC



MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF PERTINENT FACTS

This litigation arises from a November 4, 2016 incident occurring when Plaintiff slipped and fell in an area known as the Grand Lux rotunda, where she had safely walked hundreds of times in the preceding year as a kiosk employee within the Grand Canal Shops. (See Exhibit H.) 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 position is clearly verified with video evidence submitted to the Court. (See Exhibit S.) There is no credible objective evidence of a foreign substance on the floor causing Plaintiff's fall.

II.

NATURE OF REPLY

Defendants have objected to all of Plaintiff's requests in the course of discovery for information dating back to May 1999 to the present. This motion for protective order was filed once Plaintiff

1 noticed an NRCP 30(b)(6) deposition demanding a *carte blanche* production of information sought
2 by Plaintiff is well beyond anything remotely reasonable under NRCP 26(b)(1).

3 Plaintiff has plead her cause of action as a slip and fall occurring on a wet floor. That, by
4 definition, is a temporary transitory condition. Defendants are not “*confused*” about the facts here,
5 as Plaintiff suggests in the Opposition. (See Opposition at 3, ln 13-15.) Plaintiff herself acknowledged
6 that the subject floor was safe during her hundreds of prior uses on Defendants’ property. Plaintiff’s
7 experts have also contended that she fell due to the existence of a foreign substance on the floor.
8 Plaintiff expert Tom Jennings has acknowledge the floor is safe when dry. Only one person responding
9 to the scene claims it was not dry based on his observation - Mr. Shulman, who Plaintiff now embraces
10 as her star witness.
11

12 The bottom line is that Plaintiff is seeking to bury Defendants in discovery in a very common
13 slip and fall case. Plaintiff’s counsel, by his own admission, is “*mining*” for evidence he can use not
14 only for this case, but for those cases on page 10 of the Opposition, among no doubt many others.
15 Plaintiff is abusing the discovery process at great cost to Defendants, who have moved the Court for
16 an order protecting them from this continued onslaught of discovery requests. Plaintiff’s discovery
17 requests are overly broad and unduly burdensome. They must be examined pursuant to the new
18 relevant/proportional requirement of NRCP 26(b)(1). Defendants therefore have moved this
19 Honorable Court for relief, direction and protection.
20
21

22 III.

23 DISCUSSION

24 A. Plaintiff Must Demonstrate Both Relevance and Proportionality

25 Rule 26, Nevada Rules of Civil Procedure, governs the scope of discovery, and provides for
26 protection of both parties and other persons, against annoyance, embarrassment, oppression, or undue
27 burden or expense. More specifically, NRCP 26(b)(1) provides as follows:
28

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

8 Contrary to Plaintiff's assertion, this is a simple slip and fall case. The problem for Plaintiff
9 is that she cannot win by focusing on the merits of her actual case; therefore, Plaintiff has engaged in
10 an abusive tactic of both demonizing Defendants and burying them in discovery. The Court has
11 already ruled that the *Mode of Operation* theory of liability does not apply here. So, Plaintiff is
12 required to show actual or constructive notice. There is no evidence of actual notice. Therefore,
13 Plaintiff must show constructive notice.

14 Defendants have an entire department dedicated to keeping the subject floors clean and safe
15 for guests - the Public Area Department. An employee of this department, Maria Cruz, was
16 responsible for patrolling the area where this incident occurred and is depicted walking through it
17 within less than three minutes prior to the subject incident. (See Exhibit S at 12:33:53.) Ten (10) of
18 the eleven (11) persons identified at the scene have been deposed and only one (1) of them testified
19 that he identified a substance on the floor - Gary Shulman; yet, Mr. Shulman is actually depicted
20 standing in the very area he claims there to have been standing water within minutes following the
21 incident - prior to the arrival of anyone to clean the area. (See *id.* at 12:38:46.)

22 The fact that the District Court has allowed Plaintiff to include a claim for punitive damages
23 does not open the floodgates of discovery here, nor does it change the fact that this is a simple
24 negligence case, with Plaintiff claiming to have fallen due to a temporary transitory condition. In the
25 lengthy thirty-three (33) page Opposition that Plaintiff filed without seeking leave of court as required
26 by EDCR 2.20(a), Plaintiff failed to present a case addressing the relevance and proportionality
27 requirements of NRCP 26(b)(1).
28

1 B. Plaintiff's "Mining" of Information is Systematic

2 Plaintiff takes issue with Defendants' assertion that her counsel is "mining information" here
3 to use beyond this litigation. In fact, counsel writes in the Opposition: "*The undersigned **NEVER***
4 *made such a statement or otherwise implied, eluded to or suggested he was engaged in such conduct.*"
5 (See Opposition at 14, ln 18-23, original emphasis.) However, Plaintiff's counsel has already done just
6 that and, in fact, argued before the District Court that he has every right to share anything and
7 everything obtained in this litigation. Consider what counsel argued on May 14, 2019:

9 *THE COURT: Just to be clear, it wasn't Attorney's Eyes Only. It was okay to be seen*
10 *by experts and –*

11 *MR. GALLIHER: Experts and –*

12 *THE COURT: -- and the client.*

13 *MR. GALLIHER: -- **and shared with other attorneys who have lawsuits against Venetian.***

14 (See Exhibit U, Transcript of Hearing (May 14, 2019) at 10, ln 3-8, emphasis added.) Mr. Galliher
15 continued:

16 *For example, in this case, I received 64 prior fall reports redacted. Attorney Goldstein*
17 *had another case against the Venetian. He received 32. Same time frames. What*
18 *happened when I got my redacted reports, I exchanged them with him. He sent them*
19 *to me -- and by the way, there was no Protective Order in place. **There was no motion***
20 ***practice in place, despite what's being represented.***

21 *THE COURT: I was going to say because I do have a counter motion for you --*

22 *MR. GALLIHER: Yeah. I know.*

23 *THE COURT: -- to comply with the Court order and a counter motion for sanctions related*

24 --

25 *MR. GALLIHER: This was done right upfront. The minute I got the information, I --*
26 *I exchanged it with counsel. George Bochanis also got a set. He exchanged a set. **So***
27 ***what we did is we got a set and compared notes.** And lo and behold, what we find is*
28 *I don't have four of the reports that Mr. Goldstein has. He doesn't have 35 of the*
reports that I have. And Mr. Bochanis has about 11 that I don't have.

(See *id.* at 11, ln 24-25; 12, ln 1-18, emphasis added.)

Of note, Mr. Galliher represented to the District Court on May 14, 2019 that he exchanged
information with other counsel when "*There was no motion practice in place*"; yet, that was clearly
untrue. To the contrary, Defendants filed a motion for protective order related to the redacted prior
incident reports on February 1, 2019, and while that motion was pending, Plaintiff's counsel shared

1 them with Peter Goldstein, Esq., on February 7, 2019. (See Exhibit V, *Declaration of Peter Goldstein*
2 at 10, ln 21-23.) Mr. Goldstein filed a copy of each prior incident report provided by Mr. Galliher
3 after Defendants filed their previous motion for protective order on March 12, 2019 - one day prior
4 to the March 13, 2019 hearing. (See Exhibit W, *Plaintiff's Reply to Defendant Venetian Casino*
5 *Resort, LLC's Opposition to Plaintiff's Motion for Terminating Sanctions*, dated March 12, 2019,
6 Exhibit 10.)

8 It is incredible that Plaintiff's counsel, who was transparent about his right to share any and all
9 information with other counsel obtained in this litigation however he desires now takes the position
10 in Opposition that he has never taken that position and has no intention to do the same with whatever
11 he is able to obtain on his "mining" expedition here. Plaintiff's counsel was not transparent about
12 having provided the prior incident reports at issue in the February 1, 2019 motion for protective order
13 with the Discovery Commissioner, nor did he advise the Court at the March 13, 2019 hearing that the
14 very documents the Discovery Commissioner ruled to be protected pursuant to NRCP 26(c) had been
15 filed in open court on the previous day by Mr. Goldstein.

17 Plaintiff's counsel has a pattern of sharing openly whatever he obtains in this case. He has
18 argued for his right to do so. Now, however, Plaintiff's counsel is arguing that he would never follow
19 such a course here? It is, frankly, absurd.

21 C. **Production of Prior Incident Reports Should Be Limited**

22 Defendants have provided Plaintiff with the three (3) years of prior incident reports she initially
23 requested. Now, however, Plaintiff is demanding twenty (20) years of prior incident reports. These
24 requests are not limited to the same area, factually similar circumstances, the same floor, common
25 areas, etc. They are all inclusive, broad and are not limited to time. That kind of a request falls
26 squarely within the definition of "mining".

1 Contrary to what Plaintiff claims in the Opposition, the Court has not yet considered or ruled
2 upon Defendants' request for a protective order under NRCP 26(c) as it relates to the scope of prior
3 incident reports. Defendants have presented its concerns with the Court and is seeking protection. It
4 is not attempting to "*relitigate*" the issue. However, if the Court is inclined to provide Plaintiff with
5 the kind of discovery being sought, Defendants renew their request for NRCP 26(c) protection
6 preventing Plaintiff's counsel from both "*mining*" information and sharing it at will.

8 Plaintiff's claim that *Eldorado Club, Inc. v. Graff*, 377 P.2d 174 (Nev. 1962), does not apply
9 because her issue is with the permanency of the marble flooring as a hazard itself goes against the grain
10 of the allegations in her Complaint, which are based on a foreign substance. Plaintiff has not offered
11 any credible evidence whatsoever to suggest that having marble flooring is *per se* negligent. There is
12 no evidence of a code violation or that Defendants have done anything but comply with the
13 requirements set forth by the Clark County Building Department.

15 Keep in mind that Plaintiff is no ordinary guest. She was a pseudo employee, parking with
16 Venetian employees, wearing ID issued by Venetian to come upon its premises daily, and used
17 Venetian facilities many times daily in the course of her employment from December 28, 2015 to
18 November 4, 2016. Plaintiff walked the subject flooring with ease and safety on hundreds of occasions
19 prior to the subject incident. (*See Exhibit H.*) Plaintiff not even heard of a slip and fall occurring on
20 the premises during the eleven (11) months of her past employment. (*See id.*) Yet, Plaintiff would
21 have the Court believe that the subject marble flooring is dangerous to anyone and everyone once a
22 drop of liquid is introduced to the surface.

24 If the Court considers that there was water on the floor causing Plaintiff's fall, as she claims,
25 Defendants invite the Court to carefully watch the surveillance footage for the thirty (30) minutes prior
26 to Plaintiff's fall and identify the number of people who walk through the area without the slightest
27

1 hind of a slip. (See Exhibit S.) There are none. That being the case, how on earth is the subject
2 flooring a permanent dangerous condition?

3 Once again, Plaintiff has not addressed the relevancy/proportionality requirements of NRCP
4 26(b)(1) in her response to Defendants' motion for protection as to her desire for more than seventeen
5 (17) years of prior incident reports. Defendants have produced reports it located on the casino level
6 of the property involving the common area marble flooring from November 4, 2013 to November 4,
7 2016. Plaintiff has sixty-six (66) prior incident reports and, according to expert Tom Jennings,
8 Plaintiff has independently obtained evidence of 196 prior incident reports in the Grand Lux rotunda
9 alone.¹ That being the case, Plaintiff has plenty of evidence to make her case for constructive notice
10 and punitive damages.

11
12 **D. Plaintiff's Demand for Computer Generated Information Should Be Denied or Limited**

13
14 Defendants have moved for protection under NRCP 26(c) regarding Plaintiff's demand for
15 information from Defendants' computer data system. In the Opposition, Plaintiff again confuses the
16 issues by referencing to other matters litigated against Venetian by attorneys with whom Plaintiff's
17 counsel admits to freely sharing information. (See Opposition at 18, ln 11-20.) This is another *carte*
18 *blanche* request by Plaintiff. Without question, there is nothing Plaintiff sees or obtains that will not
19 be shared outside this litigation absent a protective order (even then, as we have seen, that does not
20 guarantee anything here). Defendants have moved for reasonable limitations on the information to
21 which Plaintiff is entitled to prove up her case regarding constructive notice.

22
23 Defendants again refer the Court to the surveillance footage and to the fact that Mr. Shulman
24 is the one and only person to testify that he identified a foreign substance on the floor. Plaintiff is
25

26
27 ¹Recall that Plaintiff previously accused Defendants of failing to produce from forty-six (46)
28 to sixty-five (65) prior incident reports, which Plaintiff conceded in a filing with the Court on July 25,
2019 to be completely false. (See Exhibit X, *Plaintiff's Reply in Support of Her Motion to Compel*
Testimony and Documents, filed July 25, 2019, at 4, ln 5-10.)

1 using the discovery process not only to “mine” and fish, but to vex, harass and annoy. Then, if
2 Plaintiff does obtain information, it will be circulated to the world.

3 There is no evidence that Defendants have been hiding information as Plaintiff claims. Even
4 Plaintiff had to acknowledge in her filing with the Discovery Commissioner on July 25, 2019 that this
5 allegation is without any basis. In fact, on page four (4) of Plaintiff’s Reply in Support of Her Motion
6 to Compel Testimony and Documents, filed July 25, 2019, Plaintiff writes:

8 After a careful review of the previously disclosed table, the undersigned owes Venetian
9 an this Honorable Court an apology. The undersigned misinterpreted the notations of
10 staff on the comparison table they put together and in hindsight should have spent more
11 time studying the table and/or clarified the table summaries with staff before filing this
12 motion. **Since the filing of this motion Venetian has produced all additional
13 responsive reports.** Plaintiff therefore withdraws this portion of her motion.

14 (*See Exhibit X, Plaintiff’s Reply in Support of Her Motion to Compel Testimony and Documents*, filed
15 July 25, 2019, at 4, ln 5-10, emphasis added.) Even while acknowledging error, Plaintiff still had to
16 mislead the Court by suggesting that Defendants had taken some kind of remedial action since
17 Plaintiff’s earlier motion to compel. That did not occur. In truth, Plaintiff simply misled the Court.
18 That is an ongoing theme in this litigation, as Plaintiff is desperately try to vilify Defendants in filings
19 in order to persuade the Court to act in her favor.

20 This is an untenable situation. Regardless of how Plaintiff seeks to portray it, this is a very
21 simple negligence action based on a temporary transitory condition - nothing more. And, even that is
22 factually disputed by the evidence.

23 **E. Plaintiff is Not Entitled to Subsequent Incident Reports**

24 Defendants have taken the position, consistent with this Court’s prior rulings, that Plaintiff is
25 not entitled to subsequent incident reports in circumstances where Plaintiff claims to have slipped and
26 fallen due to a temporary transitory condition. Again, Plaintiff walked the same area hundreds of times
27 prior to her fall. The only thing that allegedly changed on November 4, 2016 was the existence of
28 some unidentified clear substance that none of the eleven (11) people responding to the scene identified

1 except for Mr. Shulman. While Plaintiff has quoted Mr. Shulman in deposition in the Opposition, she
2 failed to note for the Court that in his seventeen (17) years of work at the Venetian on the casino floor,
3 this was the first time he had become personally aware of a slip and fall. (See Opposition, Exhibit 1,
4 at 67, ln 1-15.)

5
6 Plaintiff has morphed her factual allegations from a temporary transitory condition to a
7 permanent, defective, dangerous condition for at least one primary reason - to get unredacted
8 subsequent incident reports to both "mine" and share in her counsel's repository. In fact, if everything
9 worked out just right, Plaintiff's counsel might even find cases where the two (2) year statute of
10 limitations has not yet lapsed and contact them as a "witness" here.

11
12 What exactly is the defective, permanent condition here? Marble/stone flooring that has been
13 reviewed, approved and certified by the Clark County Building Department? Plaintiff is not talking
14 about a permanent crack in the floor here. The floor is perfectly fine when dry and, like many other
15 surfaces, can become slippery when wet. That is why Defendants have employees dedicated to
16 cleaning and maintaining the flooring throughout its property. That is why Defendants had employee
17 Maria Cruz patrolling the subject area within three (3) minutes of Plaintiff's fall. (See Exhibit S at
18 12:33:53.)

19
20 In the Opposition, Plaintiff refers to cases involving permanent conditions like doors (*i.e.*
21 *Ginnis v. Mapes Hotel Corp.*, 470 P.2d 135 (Nev. 1970). There is no permanent condition here. The
22 floor was safe by Plaintiff's own experience and admission. She had a slip/fall on November 4, 2016,
23 the cause of which is contested. However, assuming for the sake of argument that Plaintiff slipped due
24 to a foreign substance, that is a temporary transitory condition. Plaintiff continues to twist and mold
25 the facts to transform this into a products case or one involving some permanent issue with the flooring
26 itself. That is not what is alleged in the Complaint nor is it a fact supported by the evidence.
27
28

1 Plaintiff has not presented any cases from Nevada supporting her claim that simply by alleging
2 punitive damages in a Complaint she is entitled to evidence of subsequent incidents. That is not the
3 law, nor is it the rule followed in prior similar cases by the Discovery Commissioner. (See Exhibit Y,
4 *Discovery Commissioner's Report and Recommendation* (filed July 9, 2019), *Boucher v. Venetian*
5 *Casino Resort, LLC, et al*, Case No. A-18-773651-C.)

6
7 Defendants therefore respectfully submit they have good basis to seek a protective order under
8 NRCP 26(c) as to any demand for subsequent incidents in this litigation.

9 F. **Evidence of 2008 Remodel is Not Relevant Here**

10 This, once again, is a simple negligence case based on a temporary transitory condition.
11 Plaintiff's requests for information about installation of the subject flooring is just more *fishing* and
12 *mining* expedition which is simply not relevant or proportional under NRCP 26(b)(1), nor is it
13 appropriate under *Schlatter v. Eighth Judicial Dist. Court*, 93 Nev. 189 (1977).
14

15 Plaintiff presently claims to have a total of 196 prior incidents in the area of the Grand Lux
16 rotunda in the five (5) years preceding the subject incident. That is plenty of data for Plaintiff to make
17 her case for both constructive notice and punitive damages. What happened in 2008 - other than the
18 Clark County Building Department reviewing, permitting and certifying the flooring as code compliant
19 - is irrelevant.
20

21 G. **Defendants Seek Reasonable Limitations on the Ever Increasing Scope of Discovery**

22 Defendants are being pummeled with discovery requests that have little to no bearing on the
23 subject incident, as Plaintiff is trying to reposition her claim from a slip/fall due to a temporary
24 transitory condition to a fall due to a permanent defective floor.

25 Plaintiff is seeking incident reports for more than (20) years and is further seeking information
26 that is clearly not discoverable (*i.e.* testing of the subject flooring by consulting experts). There is no
27
28

1 end to Plaintiff's insatiable appetite for *mining information*. Defendants hereby move the Court for
2 limitations as outlined in their moving papers.

3 Defendants have further outlined additional information for the Court to consider regarding
4 their desire to have any further disclosures to be protected pursuant to NRCP 26(c) in the motion,
5 which was not addressed by Plaintiff specifically in the Opposition.
6

7 **REPLY TO OPPOSITION TO MOTION TO COMPEL TOM JENNINGS INFORMATION**

8 In his July 2, 2019 deposition, Tom Jennings testified that he received information confirming
9 196 prior incident reports occurring in the Grand Lux rotunda. (*See* Exhibit T at 84, ln 7-25; 85-87,
10 88, ln 1-3.) Consider the following from Mr. Jennings' deposition:

11 Q. Okay. So you're saying, then, as I understand it, you received information from
12 Mr. Galliher that there were 196 slip-and-fall events between January 1st, 2012,
13 and August 5th, 2016, occurring in the vicinity of the Grand Lux rotunda?

14 A. Essentially that's correct, yes, sir.

15 (*See id.* at 87, ln 24-25; 88, ln 1-3; *see also id.* at 86, ln 15-19 (again affirming that all incidents
16 occurred within the Grand Lux rotunda area).) To be clear, the documents later produced by Plaintiff's
17 counsel do not identify 196 incidents in the Grand Lux rotunda. The documents produced by Plaintiff
18 are not as described by Mr. Jennings in deposition.

19 Since Plaintiff produced Defendants with something not consistent with Mr. Jennings'
20 description, and Mr. Jennings failed to produce the requested document, Defendants move for an order
21 directing Plaintiff to produce all such documents she has in her possession not previously produced
22 to her by Defendants pursuant to NRCP 16.1. Also, again, if Plaintiff has such information already
23 in her possession, it begs the question of why she needs such massive discovery to make a notice
24 argument - even one for punitive damages. Defendants are not playing "*hide the ball*" - Plaintiff is
25 doing that well enough here. Defendants believe that Plaintiff has access to even more unredacted
26 prior incident reports which have not been disclosed. Certainly, if that is the case, it suggests that
27 Plaintiff's need for discovery to prove up notice and punitive damages is very limited.
28

1 As for retaking Mr. Jennings' deposition, what Plaintiff did to require it is failing to produce
2 the information Plaintiff produced to Mr. Jennings to support the claim in his May 30, 2019 report that
3 there were 196 prior incidents in the Grand Lux rotunda area for a near five (5) year period prior to the
4 subject incident. Therefore, Defendants did not have the opportunity to review the alleged prior
5 incident information with Mr. Jennings. That is the basis for Defendants' request for an order granting
6 the retaking of Mr. Jennings' deposition limited in scope as it pertains to the alleged 196 prior incident
7 reports occurring in the Grand Lux rotunda area.
8

9 **IV.**

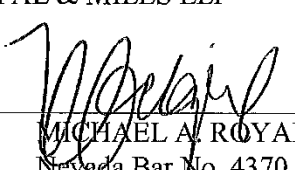
10 **CONCLUSION**

11 Based on the foregoing, Venetian respectfully submits that it has presented good cause to this
12 Honorable Court to issue an order protecting Defendants under NRCP 26(c), providing sufficient limits
13 on the massive discovery sought by Plaintiff in this matter. Defendants further submit that their
14 request for an order compelling Plaintiff to disclose all prior incident reports or information related to
15 prior incident reports occurring at the Venetian property in her possession pursuant to NRCP 16.1
16 should be granted.
17

18 DATED this 10 day of September, 2019.

19 ROYAL & MILES LLP

20
21 By


MICHAEL A. ROYAL, ESQ.

Nevada Bar No. 4370

1522 W. Warm Springs Rd.

Henderson, NV 89014

Attorney for Defendants

24 *VENETIAN CASINO RESORT, LLC and*
25 *LAS VEGAS SANDS, LLC*
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10 day of September, 2019, and pursuant to NRCP 5(b),

I caused a true and correct copy of the foregoing **REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR A PROTECTIVE ORDER AND REPLY TO PLAINTIFF'S OPPOSITION** 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
1850 E. Sahara Avenue, Suite 107
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An employee of ROYAL & MILES LLP

EXHIBIT “I”

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RFP

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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

**RESPONSES TO PLAINTIFF'S REQUESTS 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 36 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. 1:**

2 All written, oral, or recorded statements made by any party, witness, or any other person or
3 persons with knowledge of the incident described in Plaintiffs Complaint.

4 **RESPONSE NO. 1:**

5 Defendants object to the extent this request seeks information protected by attorney/client
6 privilege and/or attorney work product privilege. Without waiving said objection, Defendants refer
7 to their disclosures pursuant to NRCP 16.1, documents 2-9, and all supplements thereto. Discovery
8 is continuing.

10 **REQUEST NO. 2:**

11 Any and all accident and investigative reports, films, video tapes, charts, plats, drawings, maps
12 or pictures and/or photographs of any kind which has, as its subject matter, the incident described in
13 Plaintiffs Complaint.

15 **RESPONSE NO. 2:**

16 See Response No. 1.

17 **REQUEST NO. 3:**

18 A complete copy of the Defendant's insurance carriers and/or risk management pre-litigation
19 claim file.

21 **RESPONSE NO. 3:**

22 Objection. This request lacks foundation, assumes facts not in evidence, seeks information that
23 is protected from disclosure by the attorney/client and/or attorney work product doctrine. Without
24 waiving said objection all known discoverable documents regarding the investigation of the loss have
25 been produced. *See* Defendants' NRCP 16.1 early case conference disclosures, documents 2-9, and
26 all supplements thereto. Discovery is continuing.

27

28

1 **REQUEST NO. 4:**

2 The names of all expert witnesses or consultants that Defendant will use at the time of trial
3 along with any reports produced by the same.

4 **RESPONSE NO. 4:**

5 Objection. This request is premature. Defendants' expert disclosures containing the requested
6 information will take place as set forth in the court's scheduling order. It is also an improper request
7 for production of documents.
8

9 **REQUEST NO. 5:**

10 Any and all sweep sheets, sweep logs, or other similar documentation which reflects the
11 maintenance and/or cleaning of the flooring located within the VENETIAN CASINO RESORT
12 described in Plaintiffs Complaint for the day before, day of, and day after the incident described
13 therein.
14

15 **RESPONSE NO. 5:**

16 Defendants object to the extent this request lacks foundation, assumes facts not in evidence,
17 is overly broad, vague and ambiguous. This request also presupposes that there was a foreign
18 substance on the floor causing Plaintiff's fall, which Defendants deny. It also incorrectly identifies the
19 subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
20 reasonably calculated to lead to the discovery of admissible evidence (*i.e.* documents related to
21 November 5, 2016). Without waiving said objection, Defendants respond as follows: *See* documents
22 identified pursuant to NRCP 16.1, bates numbers VEN 044-106. Discovery is continuing.
23

24 **REQUEST NO. 6:**

25 True and correct copies of any and all manuals, documents, pamphlets, flyers, or other
26 memorandum which has, as its subject matter, the standard operating procedures with respect to the
27
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1 maintenance, cleaning and sweeping of the floors with respect to the VENETIAN CASINO RESORT
2 in which the fall occurred.

3 **RESPONSE NO. 6:**

4 Defendant objects to the extent this request lacks foundation, assumes facts not in evidence,
5 and is further overly broad, vague and ambiguous. This request also presupposes that there was a
6 foreign substance on the floor causing Plaintiff's fall, which Defendants deny. also incorrectly identifies
7 the subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
8 reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection,
9 Defendant responds as follows: *See* Response No. 5.

11 **REQUEST NO. 7:**

12 True and correct copies of any and all claim forms, legal actions, civil complaints, statements,
13 security reports, computer generated lists, investigative documents or other memoranda which have,
14 as its subject matter, slip and fall cases occurring on marble floors within the subject VENETIAN
15 CASINO RESORT within three years prior to the incident described in Plaintiffs Complaint, to the
16 present.

18 **RESPONSE NO. 7:**

19 Defendants object to the extent this request lacks foundation, assumes facts not in evidence,
20 is overly broad, vague and ambiguous, unduly burdensome and presupposes there was a foreign
21 substance on the floor causing Plaintiff's fall, which Defendants deny. It also incorrectly identifies the
22 subject premises as *VENETIAN CASINO RESORT*. This request further seeks access to information
23 which is equally available to Plaintiff via public records, and otherwise seeks information that is not
24 reasonably calculated to lead to the discovery of admissible evidence. Defendant objects as the request
25 as over broad and not properly tailored to the issues in this case. Without waiving said objection,
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1 Defendant responds as follows: Defendant is in the process of making a good faith effort to identify
2 information responsive to this request and will respond as soon as the information is collected.
3 Discovery is continuing.

4 **REQUEST NO. 8:**

5 Any and all documents, information, memoranda, paperwork, or other material which relates
6 to establishes, or otherwise pertains to the affirmative defenses alleged by the Defendant herein.

7 **RESPONSE NO. 8:**

8 See Response No. 1.

9 **REQUEST NO. 9:**

10 Any surveillance video showing the Plaintiffs fall at the VENETIAN CASINO RESORT
11 from any other angle, other than the one shown in the video surveillance produced by the
12 Defendants thus far.

13 **RESPONSE NO. 9:**

14 Defendants object to the extent this request incorrectly identifies the subject premises as
15 *VENETIAN CASINO RESORT*, and further that the term "*surveillance video*" is itself overly broad
16 and seeks information outside Defendants' knowledge, custody and control (*i.e.* videos taken by other
17 persons on the subject premises at the time). Without waiving said objection, Defendants respond as
18 follows: All known surveillance related to this matter was produced as Document No. 9 in Defendants'
19 NRCP 16.1 disclosure. Discovery is continuing.

20 **REQUEST NO. 10:**

21 Any other witnesses, documents, or other disclosures required by NRCP 16.1.

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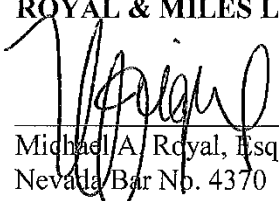
RESPONSE NO. 10:

See Response No. 1.

DATED this 9 day of October, 2018.

ROYAL & MILES LLP

By: _____



Michael A. Royal, Esq.
Nevada Bar No. 4370
Gregory A. Miles, Esq.
Nevada Bar No. 4336
1522 W. Warm Springs Road
Henderson, NV 89014
Attorneys for Defendants
VENETIAN CASINO RESORT, LLC and
LAS VEGAS SANDS, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9 day of October, 2018, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S REQUESTS 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:

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
Email: kgalliher@galliherlawfirm.com


An employee of ROYAL & MILES LLP

EXHIBIT “J”

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

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

**SUPPLEMENTAL RESPONSES TO PLAINTIFF'S REQUESTS 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 36 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. 1:**

2 All written, oral, or recorded statements made by any party, witness, or any other person or
3 persons with knowledge of the incident described in Plaintiffs Complaint.

4 **RESPONSE NO. 1:**

5 Defendants object to the extent this request seeks information protected by attorney/client
6 privilege and/or attorney work product privilege. Without waiving said objection, Defendants refer
7 to their disclosures pursuant to NRC 16.1, documents 2-9, and all supplements thereto. Discovery
8 is continuing.

10 **REQUEST NO. 2:**

11 Any and all accident and investigative reports, films, video tapes, charts, plats, drawings, maps
12 or pictures and/or photographs of any kind which has, as its subject matter, the incident described in
13 Plaintiffs Complaint.

15 **RESPONSE NO. 2:**

16 See Response No. 1.

17 **REQUEST NO. 3:**

18 A complete copy of the Defendant's insurance carriers and/or risk management pre-litigation
19 claim file.

21 **RESPONSE NO. 3:**

22 Objection. This request lacks foundation, assumes facts not in evidence, seeks information that
23 is protected from disclosure by the attorney/client and/or attorney work product doctrine. Without
24 waiving said objection all known discoverable documents regarding the investigation of the loss have
25 been produced. See Defendants' NRC 16.1 early case conference disclosures, documents 2-9, and
26 all supplements thereto. Discovery is continuing.

1 **REQUEST NO. 4:**

2 The names of all expert witnesses or consultants that Defendant will use at the time of trial
3 along with any reports produced by the same.

4 **RESPONSE NO. 4:**

5 Objection. This request is premature. Defendants' expert disclosures containing the requested
6 information will take place as set forth in the court's scheduling order. It is also an improper request
7 for production of documents.
8

9 **REQUEST NO. 5:**

10 Any and all sweep sheets, sweep logs, or other similar documentation which reflects the
11 maintenance and/or cleaning of the flooring located within the VENETIAN CASINO RESORT
12 described in Plaintiffs Complaint for the day before, day of, and day after the incident described
13 therein.
14

15 **RESPONSE NO. 5:**

16 Defendants object to the extent this request lacks foundation, assumes facts not in evidence,
17 is overly broad, vague and ambiguous. This request also presupposes that there was a foreign
18 substance on the floor causing Plaintiff's fall, which Defendants deny. It also incorrectly identifies the
19 subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
20 reasonably calculated to lead to the discovery of admissible evidence (*i.e.* documents related to
21 November 5, 2016). Without waiving said objection, Defendants respond as follows: *See* documents
22 identified pursuant to NRCP 16.1, bates numbers VEN 044-106. Discovery is continuing.
23

24 **REQUEST NO. 6:**

25 True and correct copies of any and all manuals, documents, pamphlets, flyers, or other
26 memorandum which has, as its subject matter, the standard operating procedures with respect to the
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1 maintenance, cleaning and sweeping of the floors with respect to the VENETIAN CASINO RESORT
2 in which the fall occurred.

3 **RESPONSE NO. 6:**

4 Defendant objects to the extent this request lacks foundation, assumes facts not in evidence,
5 and is further overly broad, vague and ambiguous. This request also presupposes that there was a
6 foreign substance on the floor causing Plaintiff's fall, which Defendants deny, also incorrectly identifies
7 the subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
8 reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection,
9 Defendant responds as follows: *See Response No. 5.*

11 **REQUEST NO. 7:**

12 True and correct copies of any and all claim forms, legal actions, civil complaints, statements,
13 security reports, computer generated lists, investigative documents or other memoranda which have,
14 as its subject matter, slip and fall cases occurring on marble floors within the subject VENETIAN
15 CASINO RESORT within three years prior to the incident described in Plaintiffs Complaint, to the
16 present.

18 **RESPONSE NO. 7:**

19 Defendants object to the extent this request lacks foundation, assumes facts not in
20 evidence, is overly broad, vague and ambiguous, unduly burdensome and presupposes there was
21 a foreign substance on the floor causing Plaintiff's fall, which Defendants deny. It also
22 incorrectly identifies the subject premises as VENETIAN CASINO RESORT. This request
23 further seeks access to information which is equally available to Plaintiff via public records, and
24 otherwise seeks information that is not reasonably calculated to lead to the discovery of
25 admissible evidence. Defendant objects as the request as over broad and not properly tailored
26 to the issues in this case. Without waiving said objection, Defendants respond as follows: Please
27
28

1 see Defendants' 5th Supplement to NRCP 16.1 Disclosure and all supplements thereto.

2 Discovery is continuing.

3 **REQUEST NO. 8:**

4 Any and all documents, information, memoranda, paperwork, or other material which relates
5 to establishes, or otherwise pertains to the affirmative defenses alleged by the Defendant herein.
6

7 **RESPONSE NO. 8:**

8 See Response No. 1.

9 **REQUEST NO. 9:**

10 Any surveillance video showing the Plaintiffs fall at the VENETIAN CASINO RESORT
11 from any other angle, other than the one shown in the video surveillance produced by the
12 Defendants thus far.
13

14 **RESPONSE NO. 9:**

15 Defendants object to the extent this request incorrectly identifies the subject premises as
16 *VENETIAN CASINO RESORT*, and further that the term "*surveillance video*" is itself overly broad
17 and seeks information outside Defendants' knowledge, custody and control (*i.e.* videos taken by other
18 persons on the subject premises at the time). Without waiving said objection, Defendants respond as
19 follows: All known surveillance related to this matter was produced as Document No. 9 in Defendants'
20 NRCP 16.1 disclosure. Discovery is continuing.
21

22 **REQUEST NO. 10:**

23 Any other witnesses, documents, or other disclosures required by NRCP 16.1.

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RESPONSE NO. 10:

See Response No. 1.

DATED this 3 day of January, 2019.

ROYAL & MILES LLP

By: _____

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

1522 W. Warm Springs Road

Henderson, NV 89014

Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 4 day of January, 2019, and pursuant to NRCP 5(b), I
3 caused a true and correct copy of the foregoing **SUPPLEMENTAL RESPONSES TO**
4 **PLAINTIFF'S REQUESTS FOR PRODUCTION OF DOCUMENTS AND MATERIALS TO**
5 **DEFENDANT** to be served as follows:

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

8 _____ to be served via facsimile; and/or

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

12 _____ to be hand delivered;

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

14 Keith E. Galliher, Jr., Esq.
15 THE GALLIHER LAW FIRM
16 1850 E. Sahara Avenue, Suite 107
17 Las Vegas, NV 89014

Attorneys for Plaintiff

17 Facsimile: 702-735-0204

18 E-Service: kgalliher@galliherlawfirm.com
19 dmooney@galliherlawfirm.com
20 gramos@galliherlawfirm.com
21 sray@galliherlawfirm.com

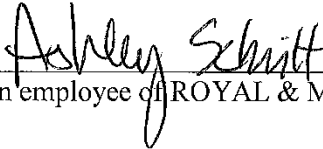
22 
23 An employee of ROYAL & MILES LLP
24
25
26
27
28

EXHIBIT “K”

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

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

**RESPONSES TO PLAINTIFF'S SECOND REQUESTS 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 36 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 second requests for production of documents and materials as follows:

1 **REQUEST NO. 11:**

2 Any and all reports, notes, charts, plats, drawings, videography or photographs of any slip
3 resistance testing of any marble flooring performed at The Venetian Las Vegas and/or The Palazzo Las
4 Vegas within the past three years.

5 **RESPONSE NO. 11:**

6 Defendant objects to this request to the extent it seeks information protected by attorney/client
7 privilege, attorney work product privilege or otherwise prematurely seeks information related to
8 experts in this matter pursuant to NRCP 16.1, as per the present Joint Case Conference Report
9 schedule. Defendant further objects to this request in that it is vague, ambiguous, overly broad in
10 scope, and seeks information not reasonably calculated to lead to the discovery of admissible evidence.
11 Without waiving said objection, Defendant responds as follows: See Defendants' NRCP 16.1
12 Supplement, identified as VEN 107-134.
13
14

15 DATED this 6 day of December, 2018.

16 **ROYAL & MILES LLP**

17
18 By: _____

19 Michael A. Royal, Esq.
20 Nevada Bar No. 4370
Gregory A. Miles, Esq.
21 Nevada Bar No. 4336
1522 W. Warm Springs Road
Henderson, NV 89014
22 *Attorneys for Defendants*
23 *VENETIAN CASINO RESORT, LLC and*
LAS VEGAS SANDS, LLC
24
25
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 7th day of December, 2018, and pursuant to NRCP 5(b),

3 I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S SECOND**
4 **REQUESTS FOR PRODUCTION OF DOCUMENTS AND MATERIALS TO DEFENDANT**

5 to be served as follows:

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

8 _____ to be served via facsimile; and/or

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

12 _____ to be hand delivered;

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

14 Keith E. Galliher, Jr., Esq.
15 THE GALLIHER LAW FIRM
16 1850 E. Sahara Avenue, Suite 107
17 Las Vegas, NV 89014
18 *Attorneys for Plaintiff*
19 Facsimile: 702-735-0204
20 Email: kgalliher@galliherlawfirm.com

21 
22 An employee of ROYAL & MILES LLP
23
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28

EXHIBIT “L”

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

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

**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
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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.

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19 **REQUEST NO. 14:**

20 Any and all incident/security reports regarding injury falls on the marble floors located at the
21 Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas, from three years before the fall
22 November 4, 2013, to the present.

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24 **RESPONSE NO. 14:**

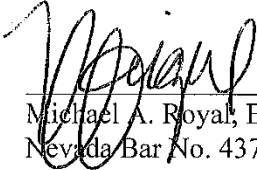
25 Defendants object to the extent this request lacks foundation and assumes facts not in evidence
26 (*i.e.* that there was a foreign substance on the floor at the time of Plaintiff's fall, which Defendants
27 deny), is overly broad, vague and ambiguous, unduly burdensome and presupposes Defendants are in
28

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.

10 DATED this 15 day of April, 2019.

11 **ROYAL & MILES LLP**

13 By: _____

12 
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*
23
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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:

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

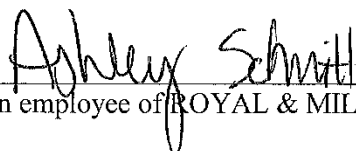

An employee of ROYAL & MILES LLP

EXHIBIT “M”

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

RFP

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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

**RESPONSES TO PLAINTIFF'S SIXTH 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 sixth requests for production of documents and materials as follows:

1 **REQUEST NO. 23:**

2 True and correct copies of any and all reports, documents, memoranda, or other information
3 describing or referring to slip testing performed on the marble floors at the Venetian Hotel and Casino
4 by any Plaintiff, or the Venetian, from January 1, 2000 to date.

5 **RESPONSE NO. 23:**

6 Defendants object to the extent this request lacks foundation and assumes facts not in evidence,
7 is overly broad, vague and ambiguous, is unduly burdensome and presupposes Defendants are in
8 possession of all information requested. Defendants further object to the extent that this request seeks
9 information equally accessible by Plaintiff and in the possession of her counsel (*i.e.* testing by experts
10 exchanged in the present litigation in accordance with NRCP 16.1), or that it is protected by
11 attorney/client privilege and/or attorney work product privilege (*i.e.* use of expert consultants as
12 contemplated by NRCP 26(b)(4)), further to the extent it seeks information surrounding expert
13 consultants or seeks information related to the disclosure of experts used in a consulting capacity
14 protected by NRCP 16.1(b), and further to the extent it seeks information not reasonably calculated
15 to lead to the discovery of admissible evidence, such as any testing performed following the subject
16 incident beyond what has been exchanged pursuant to NRCP 16.1. (Defendants contend that the
17 subject incident occurred on a dry marble floor, which is clearly established from surveillance footage
18 identified pursuant to NRCP 16.1 as VEN 019.) Finally, this is the kind of "*fishing expedition*"
19 contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189,
20 192 (1977), which it determined to be without reasonable justification. Without waiving and subject
21 to the above stated objection, Defendants respond as follows: *See* Defendants' Responses to Plaintiff's
22 Second Requests for Production of Documents and Materials to Defendant (12.07.18); *see also*
23 Defendants' NRCP 16.1 disclosure and all supplements thereto, including but not limited to documents
24 identified as follows: Tom Jennings April 23, 2018 Report (VEN 107 - 119); Joseph Cohen, Ph.D.,
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1 August 8, 2018 (VEN 120 - 132); Tom Jennings October 23, 2018 Report (VEN 133 - 134); Tom
2 Jennings December 28, 2018 report (produced by Plaintiff pursuant to NRCP 16.1); Toby Hayes, Ph.D.
3 May 17, 2019 report (produced by Defendants pursuant to NRCP 16.1). Defendants reserve the right
4 to supplement this response if additional information becomes available. Discovery is continuing.

5 **REQUEST NO. 24:**

6 Any and all communications, including correspondence, emails, internal communication, or
7 other memoranda which refers to the safety of marble floors located within the Venetian Hotel and
8 Casino from January 1, 2000 to date.

9 **RESPONSE NO. 24:**

10 Defendants object to this request as vague and ambiguous (*i.e.* "*safety of the marble floors*"),
11 is overly broad in scope and time, is unduly burdensome, seeks information protected by
12 attorney/client privilege and/or attorney work product privilege (*i.e.* disclosure of information protected
13 by NRCP 26(b)(4)), lacks foundation, and seeks information which is not reasonably calculated to lead
14 to the discovery of admissible evidence, but is intended to vex, harass and annoy. (Defendants contend
15 that the subject incident occurred on a dry marble floor, which is clearly established from surveillance
16 footage identified pursuant to NRCP 16.1 as VEN 019.) Finally, this is the very kind of "*fishing*
17 *expedition*" contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court,
18 93 Nev. 189, 192 (1977), which it determined to be without reasonable justification. Without waiving
19 and subject to the above stated objection, Defendants respond as follows: Defendants have no
20 documents responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1,
21 NRCP 34, and all supplements thereto. *See also* Response to Request No. 23. Discovery is
22 continuing.

23 ///

24 ///

25 ///

1 **REQUEST NO. 25:**

2 Any and all transcripts, minutes, notes, emails, or correspondence which has as a subject
3 matter, any meetings held by and between Venetian personnel, including management personnel,
4 where the subject of the safety of the marble floors at the Venetian was discussed and evaluated from
5 January 1, 2000 to date.

6
7 **RESPONSE NO. 25:**

8 Defendants object to this request as vague and ambiguous (*i.e.* "*safety of the marble floors*"),
9 is overly broad in scope and time, unduly burdensome, seeks information protected by attorney/client
10 privilege and/or attorney work product privilege (*i.e.* information protected by NRCP 26(b)(4)), lacks
11 foundation, and seeks information which is not reasonably calculated to lead to the discovery of
12 admissible evidence, but is intended to vex, harass and annoy. (Defendants contend that the subject
13 incident occurred on a dry marble floor, which is clearly established from surveillance footage
14 identified pursuant to NRCP 16.1 as VEN 019.) Finally, this is the very kind of "*fishing expedition*"
15 contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189,
16 192 (1977), which it determined to be without reasonable justification. Without waiving and subject
17 to the above stated objection, Defendants respond as follows: Defendants have no documents
18 responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1, NRCP 34, and
19 all supplements thereto. *See also* Response to Request No. 23. Discovery is continuing.

20
21
22 **REQUEST NO. 26:**

23 Any and all correspondence, emails, memoranda, internal office correspondence, or other
24 documents directed to the Venetian from a Contractor, Subcontractor, Flooring Expert, or similar entity
25 which discusses or refers to the safety of marble floors located within the Venetian Hotel and Casino
26 from January 1, 2000 to date.

1 **RESPONSE NO. 26:**

2 Defendants object to this request as vague and ambiguous (*i.e.* "*safety of the marble floors*"),
3 is overly broad in scope and time, unduly burdensome, seeks information protected by attorney/client
4 privilege and/or attorney work product privilege (*i.e.* information protected by NRCP 26(b)(4)), lacks
5 foundation, and seeks information which is not reasonably calculated to lead to the discovery of
6 admissible evidence, but is intended to vex, harass and annoy. (Defendants contend that the subject
7 incident occurred on a dry marble floor, which is clearly established from surveillance footage
8 identified pursuant to NRCP 16.1 as VEN 019.) Finally, this is the very kind of "*fishing expedition*"
9 contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189,
10 192 (1977), which it determined to be without reasonable justification. Without waiving and subject
11 to the above stated objection, Defendants respond as follows: Defendants have no documents
12 responsive to this request beyond those which it has disclosed pursuant to NRCP 16.1, NRCP 34, and
13 all supplements thereto. *See also* Response to Request No. 23. Discovery is continuing.

14 **REQUEST NO. 27:**

15 the marble floors located within the Venetian Hotel and Casino from January 1, 2000 to date.

16 **RESPONSE NO 27:**

17 Objection, this request is incomplete as drafted. It is vague and ambiguous, lacks foundation,
18 and cannot be responded to as phrased.

19 **REQUEST NO. 28**

20 Any and all current and dated policies, procedures and training manuals and amendments
21 referencing standards for flooring and procedures for slip and falls including, but not limited to a copy
22 of "Preventing Slips, Trips and Falls."
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1 **RESPONSE NO. 28:**

2 Defendants object to the extent this request lacks foundation, assumes facts not in evidence,
3 is overly broad, vague and ambiguous. This request lacks foundation and seeks information not
4 reasonably calculated to lead to the discovery of admissible evidence (*i.e.* documents created after the
5 subject incident). Without waiving said objection, Defendants respond as follows: *See* documents
6 identified pursuant to NRCP 16.1, bates numbers VEN 044-106, and all supplements thereto.
7
8 Discovery is continuing.

9 **REQUEST NO. 29:**

10 Any and all complaints submitted by guests or other individuals regarding the safety of the
11 marble floors.

12 **RESPONSE NO. 29:**

13
14 Defendants object to extent this is vague, ambiguous and overly broad as to "*submitted by*
15 *guests or other individuals*", "*regarding the safety*" and as to timing (*i.e.* information presumably
16 dating from Venetian's opening in 1999 to the present), is unduly burdensome, seeks information that
17 cannot possibly be known (*i.e.* "*complaints submitted*" to whom?), lacks foundation, and seeks
18 information not reasonably calculated to lead to the discover of admissible evidence, but is instead
19 intended to vex, harass and annoy. Without waiving and subject to said objection, Defendants respond
20 as follows: *See* documents previously produced by Defendants pursuant to NRCP 16.1, including but
21 not limited to those identified as VEN 269 - 928; VEN 1104 - 1122, and all supplements thereto.
22
23 Discovery is continuing.

24 **REQUEST NO. 30:**

25 Any and all quotes and estimates and correspondence regarding quotes and estimates relating
26 to the modification of the marble floors to increase their slip resistance.
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1 **RESPONSE NO. 30:**

2 Defendants object to this request as vague, ambiguous and overly broad as to "*the marble*
3 *floors*" and "*modification*" and further as to scope in location and time, lacks foundation, assumes
4 facts not in evidence, seeks information protected by attorney/client privilege and/or attorney work
5 product privilege, further seeks information regarding protected communications pursuant to NRCP
6 26(b)(4), and generally seeks information not reasonably calculated to lead to the discovery of
7 admissible evidence. Without waiving said objection, Defendants respond as follows: Defendants
8 cannot respond to this request as phrased. Discovery is continuing.
9

10 DATED this 21 day of June, 2019.

11 **ROYAL & MILES LLP**

12
13 By:

14 
15 Michael A. Royal, Esq.
16 Nevada Bar No. 4370
17 Gregory A. Miles, Esq.
18 Nevada Bar No. 4336
19 1522 W. Warm Springs Road
20 Henderson, NV 89014
21 Attorneys for Defendants
22 VENETIAN CASINO RESORT, LLC and
23 LAS VEGAS SANDS, LLC
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1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that on the 24 day of June, 2019, and pursuant to NRCP 5(b), I caused
3 a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S SIXTH REQUEST FOR**
4 **PRODUCTION OF DOCUMENTS AND MATERIALS TO DEFENDANT** to be served as
5 follows:
6

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

9 _____ to be served via facsimile; and/or

10 ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth
11 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

12 _____ to be hand delivered;

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

14 Keith E. Galliher, Jr., Esq.
15 THE GALLIHER LAW FIRM
16 1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014

Attorneys for Plaintiff

17 Facsimile: 702-735-0204

18 E-Service: kgalliher@galliherlawfirm.com
dmooney@galliherlawfirm.com
19 gramos@galliherlawfirm.com
20 sray@galliherlawfirm.com

21
22 
23 An employee of ROYAL & MILES LLP
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EXHIBIT “N”

ROYAL & MILES LLP
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ROGS

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;

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.

DEFENDANTS' ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO: Plaintiff JOYCE SEKERA; and

TO: Keith E. Galliher, Jr., Esq.; her attorney:

Pursuant to Rules 26 and 33 of the Nevada Rules of Civil Procedure, Defendants, VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS and LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, by and through their counsel, ROYAL & MILES LLP, and answers Plaintiff's Interrogatories as follows:

[illegible]

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1 **ANSWER NO. 1:**

2 Defendants object to the extent that this request lacks foundation, assumes facts not in evidence
3 (presupposing there was a foreign substance on the floor causing Plaintiff's fall, which Defendants
4 deny), is vague and ambiguous as to "*complaints*", is overly broad and not tailored to issues in the
5 present case (*i.e.* it is not limited to the area where the subject incident occurred, extends to non-
6 common areas, includes "*trip*" and falls, and seeks information related to post incident matters which
7 are not relevant to issues related to an alleged transient condition on the floor), is unduly burdensome
8 and seeks information which is equally available to Plaintiff via public records. This interrogatory
9 further seeks information which is not reasonably calculated to lead to the discovery of admissible
10 evidence. Without waiving and subject to said objection, Defendants respond as follows: *See*
11 Defendants' NRCP 16.1 Disclosures and all supplements thereto, including but not limited to the
12 following: VEN 269 - 928, VEN 1104 - 1122, VEN 1417 - 1437. *See also* Supplemental Responses
13 to Plaintiff's Requests for Production of Documents and Materials to Defendant (served 01.04.19),
14 Response No. 7. Discovery is continuing.

15
16
17 DATED this 22 day of July, 2019.

18 **ROYAL & MILES LLP**

19
20 By: _____

21 Michael A. Royal, Esq.
22 Nevada Bar No. 4370
23 Gregory A. Miles, Esq.
24 Nevada Bar No. 4336
25 1522 W. Warm Springs Road
26 Henderson, NV 89014
27 *Attorneys for Defendants*
28 *VENETIAN CASINO RESORT, LLC and*
LAS VEGAS SANDS, LLC

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JULIE ADDISON, hereby swears under penalty of perjury, deposes and says:

That I am the Person Most Knowledgeable for Defendants, VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS and LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, in the above-entitled action; that I have read the foregoing DEFENDANTS' ANSWERS TO PLAINTIFF'S INTERROGATORIES and knows the contents thereof; that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, I believe them to be true.

SUBSCRIBED AND SWORN to before me
this 18 day of July, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22 day of July, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **DEFENDANTS' ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** 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
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

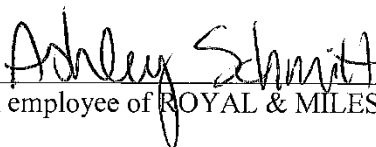

An employee of ROYAL & MILES LLP

EXHIBIT “O”

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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

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

**RESPONSES TO PLAINTIFF'S NINTH 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 seventh requests for production of documents and materials as follows:

1 **REQUEST NO. 35:**

2 True and correct copies of any and all claim forms, legal actions, civil complaints, statements,
3 security reports, computer generated lists, investigative documents or other memoranda which have,
4 as its subject matter, slip and fall cases occurring on marble floors within the subject VENETIAN
5 CASINO RESORT from the May 3, 1999 to the present.
6

7 **RESPONSE NO. 32:**

8 Defendants object to the extent this request lacks foundation and assumes facts not in evidence,
9 is overly broad, vague and ambiguous, is unduly burdensome and presupposes Defendants are in
10 possession of all information requested. Defendants further object to the extent that this request seeks
11 information equally accessible by Plaintiff and in the possession of her counsel (*i.e.* civil complaints
12 are matters of public record; further, Plaintiff allegedly is in possession of at least 196 prior incident
13 reports in the Grand Lux rotunda area according to the deposition testimony of Thomas Jennings (dated
14 July 2, 20-19) and as also noted in his May 30, 2019 rebuttal report), lacks foundation, seeks
15 information protected by attorney/client privilege and/or attorney work product privilege (*i.e.*
16 "*statements . . . computer generated lists, investigative documents or other memoranda*"), does not
17 meet the *relevant* and *proportional* requirements of NRCP 26(b)(1), and otherwise seeks information
18 not reasonably calculated to lead to the discover of admissible evidence, but is instead intended to vex,
19 harass and annoy. This is the kind of "*fishing expedition*" contemplated by the Nevada Supreme Court
20 in Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189, 192 (1977), which it determined to be without
21 reasonable justification. Without waiving and subject to the above stated objection, Defendants
22 respond as follows: *See* documents previously produced by Defendants pursuant to NRCP 16.1,
23 including but not limited to those identified as VEN 269 - 928; VEN 1104 - 1122, and all supplements
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thereto. Discovery is continuing.

DATED this 16 day of August, 2019.

ROYAL & MILES LLP

By: _____

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

1522 W. Warm Springs Road

Henderson, NV 89014

Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16 day of August 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S NINTH 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:

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
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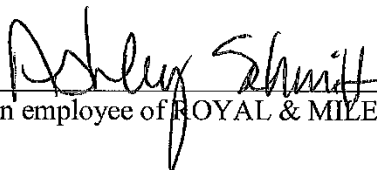

An employee of ROYAL & MILES LLP

EXHIBIT “P”

ROYAL & MILES LLP
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RFP

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

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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 TENTH 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 tenth requests for production of documents and materials as follows:

1 **REQUEST NO. 36:**

2 True and correct copies of any and all entries and information contained in the Venetian's
3 Alliance System regarding injury falls on marble flooring within the Venetian Las Vegas from January
4 1, 2000 to present.

5 **RESPONSE NO. 36:**

6 Defendants object to the extent this request lacks foundation and assumes facts not in evidence
7 (*i.e.* that Venetian has an *Alliance System* or that it has an obligation to maintain such records dating
8 back to 2000), is overly broad in scope (*i.e.* not limited to area of the subject incident or even to simply
9 slip/falls or factually similar circumstances, also seeks information far beyond any reasonable time
10 period is also far beyond anything remotely reasonable), is vague and ambiguous (*i.e. injury falls*), is
11 unduly burdensome and presupposes Defendants are in possession of all information requested.
12 Defendants further object to the extent that this request seeks information equally accessible by
13 Plaintiff and in the possession of her counsel (*i.e.* Plaintiff allegedly is in possession of at least 196
14 prior incident reports in the Grand Lux rotunda area provided to expert Thomas Jennings as noted in
15 his May 30, 2019 rebuttal report), seeks information protected by attorney/client privilege and/or
16 attorney work product privilege (*i.e. "all entries and information"*), does not meet the dual
17 requirements of NRCP 26(b)(1) of *relevant* and *proportional*, and seeks information not reasonably
18 calculated to lead to the discover of admissible evidence, but is instead intended to vex, harass and
19 annoy. This is the kind of "*fishing expedition*" contemplated by the Nevada Supreme Court in
20 Schlatter v. Eighth Judicial Dist. Court, 93 Nev. 189, 192 (1977), which it determined to be without
21 reasonable justification. Without waiving and subject to the above stated objection, Defendants
22 respond as follows: See documents previously produced by Defendants pursuant to NRCP 16.1,
23 including but not limited to those identified as VEN 269 - 928; VEN 1104 - 1122, and all supplements
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1 thereto. Discovery is continuing.

2 DATED this 16 day of August, 2019.

3 **ROYAL & MILES LLP**

4
5 By: 

6 Michael A. Roy, Esq.

7 Nevada Bar No. #370

8 Gregory A. Miles, Esq.

9 Nevada Bar No. 4336

10 1522 W. Warm Springs Road

11 Henderson, NV 89014

12 *Attorneys for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16 day of August 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S TENTH 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:

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 “Q”

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

ROGS

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

DEFENDANTS' ANSWERS TO PLAINTIFF'S SECOND SET OF INTERROGATORIES

TO: Plaintiff JOYCE SEKERA; and

TO: Keith E. Galliher, Jr., Esq.; her attorney:

Pursuant to Rules 26 and 33 of the Nevada Rules of Civil Procedure, Defendants, VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS and LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, by and through their counsel, ROYAL & MILES LLP, and answers Plaintiff's Interrogatories as follows:

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Defendant has not yet completed discovery or trial preparation of this action with respect to each and every claim. The responses below provide the information currently known or believe by Defendant as a result of discovery and investigation completed to date. Defendant reserves the right to produce or rely upon additional documents or facts subsequently recalled or discovered and to assert additional objections and privileges as may be deemed necessary.

INTERROGATORY NO. 2:

ANSWER NO. 2:

R:\Master Case Folder\383718\Discovery\3Rogs.2nd.wpd

1 reasonable time period is also far beyond anything remotely reasonable), is vague and ambiguous (*i.e.*
2 “*accident checks*”), is unduly burdensome and presupposes Defendants are in possession of all
3 information requested. Defendants further object to the extent that this request seeks information
4 equally accessible by Plaintiff and in the possession of her counsel (*i.e.* Plaintiff allegedly is in
5 possession of at least 196 prior incident reports in the Grand Lux rotunda area provided to expert
6 Thomas Jennings as noted in his May 30, 2019 rebuttal report), seeks information protected by
7 attorney/client privilege and/or attorney work product privilege (*i.e.* “*any and all individuals*
8 *designated . . .*”), and seeks information not reasonably calculated to lead to the discover of
9 admissible evidence, but is instead intended to vex, harass and annoy. This is the kind of “*fishing*
10 *expedition*” contemplated by the Nevada Supreme Court in Schlatter v. Eighth Judicial Dist. Court,
11 93 Nev. 189, 192 (1977), which it determined to be without reasonable justification. Finally, this
12 request was served on July 22, 2019 and the Discovery Cutoff per court order is August 15, 2019.
13 Therefore, pursuant to NRCP 34, Plaintiff has not provided Defendants with sufficient time to respond.
14 Without waiving and subject to the above stated objection, Defendants respond as follows: *See*
15 documents previously produced by Defendants pursuant to NRCP 16.1, including but not limited to
16 those identified as VEN 269 - 928; VEN 1104 - 1122, VEN 1417 - 1437, and all supplements thereto.
17 Discovery is continuing.

18
19
20 DATED this 19 day of August, 2019.

21
22 **ROYAL & MILES LLP**

23 By: _____

24 Michael A. Royal, Esq.

25 Nevada Bar No. 4370

26 Gregory A. Miles, Esq.

27 Nevada Bar No. 4336

28 1522 W. Warm Springs Road

Henderson, NV 89014

Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

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JULIE ADDISON, hereby swears under penalty of perjury, deposes and says:

That I am the Person Most Knowledgeable for Defendants, VENETIAN CASINO RESORT, LLC, d/b/a THE VENETIAN LAS VEGAS and LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS, in the above-entitled action; that I have read the foregoing DEFENDANTS' ANSWERS TO PLAINTIFF'S SECOND SET OF INTERROGATORIES and knows the contents thereof; that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, I believe them to be true.

SUBSCRIBED AND SWORN to before me
this _____ day of _____, 2019.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21 day of August, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **DEFENDANTS' ANSWERS TO PLAINTIFF'S SECOND SET OF INTERROGATORIES** 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
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Plaintiff
Facsimile: 702-735-0204
E-Service: kgalliher@galliherlawfirm.com
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sray@galliherlawfirm.com


An employee of ROYAL & MILES LLP

EXHIBIT “R”

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1522 W Warm Springs Road
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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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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 ELEVENTH 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 seventh requests for production of documents and materials as follows:

1 **REQUEST NO. 36:**

2 Any and all quotes, estimates, correspondence, emails, memorandums, minutes, file notes
3 and/or other documentation related to Venetian's decision to remove and replace the carpet with marble
4 flooring and Venetian's removal and replacement of carpet with marble flooring as referenced by
5 Christina Tonemah in her deposition. (25: 9-26; 26; 1-6.)
6

7 **RESPONSE NO. 37:**

8 Objection. This request is vague, ambiguous, overly broad and seeks information that is not
9 reasonably calculated to lead to the discovery of admissible evidence, nor does it meet the
10 proportionality requirement of NRCP 26(a). (Plaintiff's incident of November 4, 2016 did not occur
11 in the casino area where Ms. Tonemah was referring in deposition, but in the Grand Lux rotunda area,
12 which has never been carpeted.) This request is a "fishing expedition" which has nothing to do with
13 the subject incident, but is part of Plaintiff's *carte blanche* demand for records, documents and
14 information in violation of *Schlatter v. Eighth Judicial District Court*, 561 P.2d 1342 (1977).
15

16 DATED this 27 day of August, 2019.

17 **ROYAL & MILES LLP**

18
19 By: _____

20 Michael A. Royal, Esq.

21 Nevada Bar No. 4370

22 Gregory A. Miles, Esq.

23 Nevada Bar No. 4336

24 1522 W. Warm Springs Road

25 Henderson, NV 89014

26 *Attorneys for Defendants*

27 *VENETIAN CASINO RESORT, LLC and*

28 *LAS VEGAS SANDS, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28 day of August 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S ELEVENTH 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:

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

SURVEILLANCE VIDEO



EXHIBIT "S"

EXHIBIT “T”

Deposition of:

Thomas A. Jennings

Case:

Joyce Sekera v. Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas, et al.
A-18-772761-C

Date:

07/02/2019



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1 Q. And I understand that.

2 In this particular case, you had done a site
3 inspection and you'd received documents like you have in
4 this case.

5 A. Okay.

6 Q. And you reviewed the area at least enough to
7 prepare this affidavit.

8 You agree?

9 A. I do.

10 Q. Okay. Then paragraph 4 says, "Based on my
11 review to date, however, I can state with a reasonable
12 degree of probability that the walking surface at issue
13 is safe for ambulation when dry."

14 Do you see that?

15 A. I do.

16 Q. And that's your testimony, at least in -- and
17 we'll get to your report. But your testimony, as I
18 understand it, is that the marble floor, whether it's
19 exterior or interior, is safe when dry, the marble floor
20 at the Venetian; correct?

21 A. That's been my experience, yes.

22 Q. All right. Okay. You also stated here in the
23 same paragraph, "I can further state that the area,
24 although controlled by the Venetian, can be accessed
25 from various points in areas over which the Venetian

1 falls more so than other kind of footwear?

2 A. They can.

3 Q. So it's not always your opinion that footwear
4 is not a primary causal factor?

5 A. I think we discussed that earlier. It could be
6 a contributing factor, but I don't believe that was the
7 case in this situation.

8 Q. Okay. If a jury were to determine that the
9 area where the plaintiff slipped and fell was dry, your
10 opinion would be that -- would be what?

11 A. That the floor was slip resistant.

12 MR. KUNZ: Objection. Speculation.

13 Go ahead.

14 THE WITNESS: If it was dry, that the floor was
15 slip resistant as tested.

16 BY MR. ROYAL:

17 Q. And that the floor did not cause the
18 plaintiff's fall?

19 MR. KUNZ: Same objection.

20 BY MR. ROYAL:

21 Q. Would that be your opinion?

22 A. I think that would be reasonable, yes, sir.

23 Q. All right. I think you -- on page 2 of your
24 rebuttal report, you dismiss the Burnfield and Power
25 study just because it happened in a laboratory, it was

1 dynamic coefficient of friction that's been -- they make
2 reference to a 2014 --

3 A. Yes. I have seen multiple articles like that,
4 but, again, that presumes that someone is sliding across
5 the floor and then proceeds to slip. No relation to
6 static friction.

7 Q. Okay. All right. Let's go to the last page of
8 your May 30th, 2019, report. Look at the last
9 paragraph.

10 A. Yes, sir.

11 Q. It reads, "It should also be noted that the
12 Venetian Hotel Casino has experienced 196 slip-and-fall
13 events between January 1st, 2012, to August 5th, 2016,
14 with the majority of those events occurring on the
15 marble flooring within the same approximate area as
16 plaintiff's slip-and-fall."

17 Did I read that correctly?

18 A. You did.

19 Q. What information are you drawing from?

20 A. I'm drawing from -- and this is post-December
21 report. And everything that I base my initial opinions
22 and conclusions are based on the materials sent to me at
23 that time.

24 When I prepared this report, I was provided by
25 Mr. Galliher's office a spreadsheet, a run sheet of

1 slip-and-fall events within that referenced time period
2 at that same approximate area as Plaintiff's
3 slip-and-fall.

4 Q. Did you bring that with you today?

5 A. I don't believe so. It was sent to me via an
6 e-mail.

7 Q. Okay. If you relied on that, why didn't you
8 make reference to that document, that information at the
9 outset of your report of May 30th, 2019?

10 A. Just seemed the appropriate place to put it was
11 at the end of the report.

12 Q. I mean, this is a rebuttal report.

13 A. Yes.

14 Q. And so as a rebuttal report, it is intended to
15 rebut, as you're understanding --

16 A. Yes.

17 Q. -- opinions provided by Dr. Hayes; correct?

18 A. Yes.

19 Q. This information of 196 slip-and-fall events
20 was not provided in Dr. Hayes' initial report; correct?
21 That's not where you got the information?

22 A. Correct. That is true.

23 Q. This is additional information that you
24 received from Mr. Galliher; correct?

25 A. Yes, sir.

1 Q. You didn't look at the actual reports, you just
2 saw a spreadsheet?

3 A. Correct.

4 Q. Is that a spreadsheet that you can produce?
5 You can produce it, right, after this deposition today?

6 A. If it has not auto-erased itself, yes, sir, I
7 can do that.

8 Q. Okay. I'm going to ask you to do that --

9 A. Okay.

10 Q. -- since it's referenced in your report.

11 A. Sure.

12 Q. You make the comment here, "same approximate
13 area."

14 A. Yes, sir.

15 Q. What are you talking about? What area? Is it
16 the whole property or is it just in the Grand Lux
17 rotunda? Where is it?

18 A. Within the Grand Lux area, based on what I
19 reviewed in the details of each recorded incident.

20 Q. So you're -- I'm sorry. You say, "The details
21 of each recorded incident."

22 Tell me what the spreadsheet looks like.

23 A. Well, a spreadsheet is a typical spreadsheet.
24 It starts at a certain date and month, year. It
25 specifies a location. It shows a slip-and-fall and it

1 just continues on like that within that same general
2 location. That's how it was arranged as a spreadsheet.

3 Q. Okay. So did it identify people by name?

4 A. That, I don't recall. I think it was more
5 event oriented, but it could have.

6 Q. Would it have included Lobby 1, Lobby 2, Lobby
7 3, that kind of information?

8 A. Yes, sir, I believe it did.

9 Q. Would it have included areas like the Grand
10 Hall, the front desk, the porte-cochère?

11 A. No. It was simply addressed to the marble
12 flooring, and as I recall, the vast majority were in the
13 same general areas as Plaintiff's fall. I would have to
14 pull the spreadsheet out to refresh my memory.

15 Q. Would you consider the Carol Smith fall to be
16 in the same general area as Plaintiff's fall?

17 A. Yes, sir.

18 Q. So in your opinion, at least, based on your
19 testimony, so I understand, when you say "same
20 approximate area," the area where Carol Smith fell would
21 be within this Grand Lux rotunda area?

22 A. Yes, sir.

23 Q. Okay. So you're saying, then, as I understand
24 it, you received information from Mr. Galliher that
25 there were 196 slip-and-fall events between January 1st,

1 2012, and August 5th, 2016, occurring in the vicinity of
2 the Grand Lux rotunda?

3 A. Essentially that's correct, yes, sir.

4 Q. Okay. So I'm clear, do you know where the
5 Grand Hall is, the entryway to the property?

6 A. To the property, yes, sir.

7 Q. So when you enter the property, there's a
8 fountain, there's the front desk --

9 A. Yes, sir.

10 Q. -- there's a concierge desk to the right, and
11 then if you go to the left as you enter, there's a huge
12 grand hall with paintings on the ceiling.

13 A. There is, sir.

14 Q. Right?

15 A. Yep.

16 Q. All right. So when you say "same approximate
17 area," if there were slip-and-falls there, they would be
18 separate from the 196 slip-and-falls.

19 Would that be right?

20 A. I believe that's accurate.

21 Q. And if somebody slipped and fell somewhere in
22 the front desk area, that would not be part of this
23 196 --

24 A. I believe --

25 Q. -- number?

EXHIBIT “U”

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DISTRICT COURT
CLARK COUNTY, NEVADA

Joyce Sekera,)	
)	
Plaintiff,)	
)	Case No. A-18-773761
vs.)	Dept. No. XXV
)	
Venetian Casino Resort, LLC,)	
)	
Defendant.)	

Before the Honorable KATHLEEN E. DELANEY
Tuesday, May 14, 2019, 9:00 A.M.
Reporter's Transcript of Proceedings
OBJECTION TO DISCOVERY COMMISSIONER'S REPORT

APPEARANCES:

For the Plaintiff:	KEITH E. GALLIHER, JR., ESQ. KATHLEEN GALLAGHER, ESQ. Attorneys at Law
For the Defendant:	MICHAEL A. ROYAL, ESQ. Attorney at Law

REPORTED BY: RENEE SILVAGGIO, C.C.R. No. 122

1 information that should be readily available to anyone who sues
2 the Venetian.

3 THE COURT: Just to be clear, it wasn't
4 Attorney's Eyes Only. It was okay to be seen by experts and --

5 MR. GALLIHER: Experts and --

6 THE COURT: -- and the client.

7 MR. GALLIHER: -- and shared with other
8 attorneys who have lawsuits against Venetian.

9 THE COURT: Yeah. But, no, I'm not talking
10 about your position.

11 I was talking about -- because when you said
12 that it was -- the Protective Order was you and no one else, I
13 just wanted to clarify that it was for litigation purposes in
14 this litigation.

15 MR. GALLIHER: Yes.

16 THE COURT: So it would have been inclusive of
17 experts in this litigation and staff of the counsel in this
18 litigation.

19 It was just not to be shared outside of anybody
20 necessary for this litigation, because there are -- there's a
21 difference between an Attorney's Eyes Only request and a
22 request where the client and the expert can see it.

23 MR. GALLIHER: Understood. No, this is not an
24 attorney's only request.

25 This was you can use it in litigation but you

1 can't use it outside the litigation. You can't give it to
2 anybody else who's involved in litigation against the Venetian.
3 You have to keep it in this litigation.

4 And my response was: I can't agree to that
5 because I do not think that a Protective Order is proper in
6 this case given the nature of what we're asking for, injury
7 incident reports.

8 There are a number of pending lawsuits against
9 the Venetian as a result of these floors and people slipping on
10 these floors.

11 And, I mean, the Court should be aware that as
12 members of the Nevada Justice Association, we all share
13 information concerning our cases. We share briefing, we share
14 experts and we share discovery that, in fact, we collected in
15 our case.

16 And as the Court would note from the objection
17 that we filed, and by the way, giving credit where credit is
18 due, Kathleen wrote the objection. She researched it and wrote
19 it. And I thought she did an excellent job.

20 The bottom line is that the cases in this
21 country are uniform, that a Protective Order is not proper in a
22 situation like this because what it does is it increases
23 discovery costs.

24 For example, in this case, I received 64 prior
25 fall reports redacted. Attorney Goldstein had another case

1 against the Venetian. He received 32. Same time frames.

2 What happened when I got my redacted reports, I
3 exchanged them with him. He sent them to me -- and by the way,
4 there was no Protective Order in place. There was no motion
5 practice in place, despite what's being represented.

6 THE COURT: I was going to say because I do have
7 a counter motion for you --

8 MR. GALLIHER: Yeah. I know.

9 THE COURT: -- to comply with the Court order
10 and a counter motion for sanctions related --

11 MR. GALLIHER: This was done right upfront. The
12 minute I got the information, I -- I exchanged it with counsel.
13 George Bochanis also got a set. He exchanged a set.

14 So what we did is we got a set and compared
15 notes. And lo and behold, what we find is I don't have four of
16 the reports that Mr. Goldstein has. He doesn't have 35 of the
17 reports that I have. And Mr. Bochanis has about 11 that I
18 don't have.

19 So what we're finding is this -- and the
20 interesting thing about this is that the Venetian, when they
21 defend these cases, they always retain different defense firms.
22 So they don't retain the same firm to represent them in
23 defending these cases.

24 Now, why do I think that's the case?

25 Well, gee, if you have an ethical defense lawyer

EXHIBIT “V”

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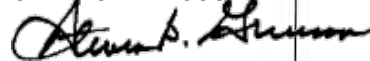
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2 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and
3 correct.

4
5 Dated February 13, 2019 at Las Vegas, Nevada.

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8 Signed:  _____

9 Peter Goldstein, Declarant
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EXHIBIT “W”



1 **ROPP**

2 Peter Goldstein, Esq. (SBN 6992)

3 **PETER GOLDSTEIN LAW CORPORATION**

4 10785 W Twain Ave, Ste. 230

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**

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 **CAROL SMITH, an individual,**

14 **Plaintiff,**

15 **vs.**

16 **VENETIAN CASINO RESORT, LLC; and**
17 **DOES 1 through 50, inclusive,**

18 **Defendants.**

Case No.: A-17-753362-C

Dept. No.: X

Discovery Commissioner

**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**

Date of Hearing: March 20, 2019

Time of Hearing: 9:00 a.m.

19 Plaintiff, CAROL SMITH, by and through her attorney of record, PETER GOLDSTEIN, ESQ.,
20
21 hereby submit Plaintiff's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Plaintiff's
22 Motion for Termination Sanctions, Monetary Sanctions for Willful Suppression of Evidence Pursuant to
23 NRCP Rule 37.

24 Dated: 3/12/19

PETER GOLDSTEIN LAW CORPORATION

BY: 

PETER GOLDSTEIN, ESQ.

Attorney for Plaintiff

1 **I. The Incident Reports In The Sekera Case And The Smith Case All Involve Falls**
2 **On Marble Floors**

3 Defendant argues that the discovery issues involving *Sekera v Venetian*, Case No. A-18-772761-
4 C and *Smith v Venetian* are not identical, but “rather are different”. The discovery requests and
5 responses involve prior falls on marble floors in lobbies of the Venetian Hotel and Casino primarily for
6 2014 to 2016. In request number 7, *Sekera* requested slip and fall incident reports on marble floors in the
7 Venetian Hotel and Casino for three years prior to the date of the *Sekera* incident (November 4, 2016).
8 Venetian provided 64 prior reports and 660 pages of documents in its Responses and Supplemental
9 Responses to Request for Production of Documents No. 7, see Exhibits 7 and 8. It is undisputed that 25
10 reports were produced in Smith for falls reports from 2014 to 2016, no reports were produced for the
11 two year period of time 2011 to 2013 for falls in Lobby One, see Exhibit 9, Defendant’s Ninth
12 Supplemental Disclosure.
13

14 Plaintiff will bring 660 bate stamped pages of documents produced by Defendant Venetian in
15 *Sekera v. Venetian*, to the hearing as they are responsive to the previous fall incident requests and
16 responses in Smith and directly relate to notice and knowledge of prior falls on wet marble floors (Ex.
17 10 not attached) but Plaintiff also attaches another spreadsheet of the incident reports, Exhibit 11,
18 showing the *Sekera* falls in black and the *Smith* falls in red. The *Sekura* reports were produced in
19 response to a request for prior falls on marble floors for a three-year period before November 14, 2016
20 and 56 involved falling on wet floors. Defendant’s argument that the cases differ in facts, circumstances,
21 allegations, discovery, orders, is more than misleading, it is flat out false. Of the 60 plus incident reports
22 disclosed in the 660 pages of documents, only four do not specifically state that Venetian patrons
23 slipped on a liquid on a marble floor. Of those four, two do not specify the reason for the fall and two
24 state that the individual tripped over their feet. Though, in those two reports, it is noted that the floor was
25 recently cleaned, so a wet floor cannot be ruled out. For example, an incident report, not disclosed in this
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1 case, dated 11/24/2013 the author of the narrative states “impossible to see because of the shiny floor
2 until the liquid was encountered”.

3 This cannot be viewed as an innocent mistake. The Venetian generates and maintains incident
4 reports of injured persons. Venetian failed to provide 36 incident reports involving falls to Plaintiff in
5 this case for the time period requested on marble floors. Additionally, of the 36 non-disclosed incident
6 reports which Defendant argues are not similar situations, 14 reported the impact from their falls
7 resulted in specific complaints of knee injuries, similar to Plaintiff.

9 Defendant’s “understanding” of what it produced is not the question. Defendant cannot hide
10 behind the fact that they produced less than half as many reports, within the same time frame as another
11 case for the same discovery requests. It is simply inexcusable and Defendant implicitly concedes it has
12 no defense by failing to provide any reasonable explanation. In an effort to obfuscate, Defendant
13 conflates whether evidence is admissible or discoverable which is not the point. The sheer number of
14 prior fall reports speaks to their admissibility at trial. As the court stated in *Eldorado v Graff* (1962) 78
15 Nev 507:
16

17 “The admissibility of evidence of prior accidents in this kind of a case, to show notice or
18 knowledge of the danger causing the accident, is generally confined to situations where there are
19 conditions of permanency. See annot. 70 A.L.R.2d 167. Evidence of the type here in question is
20 usually excluded where it relates to a temporary condition which might or might not exist from
21 one day to the other unless, of course, **there is proper showing that the conditions**
22 **surrounding the prior occurrences have continued and persisted.”** Moore v. American
23 Stores Co., 169 Md. 541, 182 A. 436; Boles v. Montgomery Ward & Co., 153 Ohio St. 381, 92
24 N.W.2d 9; Montgomery Ward & Co. v. Wright, 70 Ariz. 319, 220 P.2d 225.

25 Defendant’s motive for not producing the reports and to minimize the number of prior reports is
26 so they can argue that the prior occurrences are less than actually exists so that the prior reports would
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1 not be admissible at trial. This would be consistent with their failure to meet and confer regarding a
2 stipulation on the admissibility of the prior reports even though the Discovery Commissioner required
3 them to do so.

4 Similar to the Defendant's Opposition to Plaintiff's Motion for Disqualification, it rambles
5 between ad hominem attacks without any semblance of organized or cogent points and authorities. For
6 example, Defendant attack on Plaintiff's expert, Fred Hueston has nothing to do with the issues
7 presented in Plaintiff's Motion. Defendant falsely accuses Plaintiff of concealing information from the
8 Court without any basis. Fred Hueston's expert testimony concerns his opinions about the treatment,
9 maintenance and application of polymer to the marble floor in order to increase friction coefficient. He
10 is not testifying as an expert about anything other than his expertise in the area of marble flooring
11 treatment and maintenance. One of his opinions is that the product which Defendant utilizes to clean the
12 marble floors is V2, but after cleaning they fail to apply the V3 polymer which the manufacturer
13 recommends to help traction. This was admitted by defendant in its response to Request for Admissions,
14 set 3.

15
16 Defendant argues that the main line of questioning of Plaintiff's expert was the number of
17 incidents and gratuitously inserted an argument without any evidentiary support that the marble floors
18 were built within building codes which have been approved. This is unsupported hyperbole and lacks
19 evidentiary support.

20
21 Defendant then confuses and conflates the mode of operation theory of liability with the fact that
22 the marble floors are inherently dangerous when wet and are a serious slip hazard. It wasn't until 2012
23 when we heard the term in Nevada, the mode of operations, a legal variation to the traditional approach
24 to premises liability. Customarily, a business will only be held liable for a dangerous condition on its
25 floor (e.g., foreign substance) caused by someone other than an employee when the business had actual
26 or constructive notice of the condition and failed to remedy or warn of it. *See Sprague v. Lucky Store,*
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1 *Inc.*, 109 Nev. 247, 849 P.2d 320 (1993). However, the Nevada Supreme Court first departed from
2 tradition in *Sprague*, based on an approach near identical to the mode of operations. Even in the absence
3 of constructive notice, the court looked at Lucky's "chronic hazard" from its self-service produce area.
4 Continual debris from falling items onto the store's floor required more than sweeping; rather, a jury
5 could continue that further precautions were necessary. In *FGA, Inc. v. Giglio*, 278 P.3d 490, 128 Nev.
6 Adv. Op. 26 (Nev. June 14, 2012), the Nevada Supreme Court stated it had "implicitly adopted the mode
7 of operation approach" with its *Sprague* ruling. *Id.*, 278 P.3d at 497.
8
9

10 Plaintiff's Motion did not misrepresent the fact that Defendant failed to produce video footage in
11 violation of the Court Order. Defendant never responded to the proposed Order contained in the email
12 which Plaintiff's counsel submitted to defense counsel. Regardless, that Order has been signed by the
13 Court, and attached as Exhibit 10.
14

15 This litigation has been ongoing for years and been the subject of two discovery hearings with
16 the Discovery Commissioner and one by the District Court Judge, accordingly there is no requirement to
17 further meet and confer. Plaintiff relied on representations that the reports produced were true and
18 correct, and constituted all prior incidents involving falls on liquids on marble floors of the five lobbies
19 that contain marble tile. The reports disclosed in this Smith case are simply false and this Motion
20 demonstrates that defendants have engaged in flagrant discovery abuse. Plaintiff's Motion does not take
21 issue with the protective order, which was simply for the purpose of allowing redacted names of the
22 persons involved.
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25 **II. The Prior Falls Should Be Admitted As Evidence At Trial To Prove Notice And**
26 **Knowledge Of The Dangerous Condition.**
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1 The court in *Reingold v Wet and Wild* previously held that **evidence** of subsequent, similar
2 accidents involving the same condition may be relevant on the issues of causation and whether there is a
3 defective and dangerous condition. *Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 415, 470 P.2d 135, 139
4 (1970).

5 NRS 47.250(3) does provide for a disputable presumption “[t]hat **evidence willfully**
6 **suppressed** would be adverse if produced.” The district court apparently believed that
7 “**willful suppression**” requires more than following the company's normal records destruction policy.
8 We disagree. There is no dispute that the records were “**willfully**” or intentionally destroyed. Wet ‘N
9 Wild claimed that all records are destroyed at the end of each season. This policy means that the
10 accident records are destroyed even before the statute of limitations has run on any potential litigation
11 for that season. It appears that this records destruction policy was deliberately designed to prevent
12 production of records in any subsequent litigation. Deliberate destruction of records before the statute of
13 limitations has run on the incidents described in those records amounts to **suppression of evidence**. If
14 Wet ‘N Wild chooses such a records destruction policy, it must accept the adverse inferences of the
15 policy.
16
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18 Additionally, *Ault v. International Harvester Company*, 13 Cal.3d 113, 117 Cal.Rptr. 812, 817,
19 528 P.2d 1148, 1153 (1974), held that the lower court did not err by admitting **evidence** of both prior
20 and *subsequent* accidents to prove a defective condition or cause of the accident. The court noted that
21 the purpose of providing **evidence** of the other accidents was to show that all the accidents, including the
22 one in litigation, occurred due to the dangerous condition. *Id.*

23
24 The United States Supreme Court stated that:


25 [The other accidents] were proved simply as circumstances which, with other **evidence**, tended
26 to show the dangerous character of the sidewalk.... *The frequency of accidents at a particular place*
27 *would seem to be good evidence of its dangerous character*—at least, it is some **evidence** to that effect.
28

1 *District of Columbia v. Arms*, 107 U.S. 519, 524–25, 2 S.Ct. 840, 844–46, 27 L.Ed. 618 (1883).

2
3 Defendant clearly found that it was better to be deceitful and attempt to hide evidence that would
4 harm their case than comply with discovery orders.
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10 DATED: 3.12.19

LAW OFFICES OF PETER GOLDSTEIN

11 BY: 
12 PETER GOLDSTEIN, ESQ.
13 Attorney for Plaintiff
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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 March 12, 2019, I served a true
6 and correct copy of the foregoing document entitled **PLAINTIFF'S REPLY TO DEFENDANT**
7 **VENETIAN CASINO RESORT, LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR**
8 **TERMINATING SANCTIONS, MONETARY SANCTIONS FOR WILLFUL SUPPRESSION**
9 **OF EVIDENCE PURSUANT TO NRCP RULE 27.** upon all parties listed below, via the following
10 means:

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

26
27 3/12/19
28 Date

Jocelynn Jordan
Jocelynn Jordan
An employee of the Law Office of Peter Goldstein

EXHIBIT 7

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

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Fax: 702-531-6777

Email: mroyal@royalmileslaw.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 1
through X, inclusive,

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**RESPONSES TO PLAINTIFF'S REQUESTS 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 36 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. 1:**

2 All written, oral, or recorded statements made by any party, witness, or any other person or
3 persons with knowledge of the incident described in Plaintiffs Complaint.

4 **RESPONSE NO. 1:**

5 Defendants object to the extent this request seeks information protected by attorney/client
6 privilege and/or attorney work product privilege. Without waiving said objection, Defendants refer
7 to their disclosures pursuant to NRCP 16.1, documents 2-9, and all supplements thereto. Discovery
8 is continuing.

10 **REQUEST NO. 2:**

11 Any and all accident and investigative reports, films, video tapes, charts, plats, drawings, maps
12 or pictures and/or photographs of any kind which has, as its subject matter, the incident described in
13 Plaintiffs Complaint.

14 **RESPONSE NO. 2:**

15 See Response No. 1.

17 **REQUEST NO. 3:**

18 A complete copy of the Defendant's insurance carriers and/or risk management pre-litigation
19 claim file.

20 **RESPONSE NO. 3:**

21 Objection. This request lacks foundation, assumes facts not in evidence, seeks information that
22 is protected from disclosure by the attorney/client and/or attorney work product doctrine. Without
23 waiving said objection all known discoverable documents regarding the investigation of the loss have
24 been produced. See Defendants' NRCP 16.1 early case conference disclosures, documents 2-9, and
25 all supplements thereto. Discovery is continuing.

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1 **REQUEST NO. 4:**

2 The names of all expert witnesses or consultants that Defendant will use at the time of trial
3 along with any reports produced by the same.

4 **RESPONSE NO. 4:**

5 Objection. This request is premature. Defendants' expert disclosures containing the requested
6 information will take place as set forth in the court's scheduling order. It is also an improper request
7 for production of documents.
8

9 **REQUEST NO. 5:**

10 Any and all sweep sheets, sweep logs, or other similar documentation which reflects the
11 maintenance and/or cleaning of the flooring located within the VENETIAN CASINO RESORT
12 described in Plaintiffs Complaint for the day before, day of, and day after the incident described
13 therein.
14

15 **RESPONSE NO. 5:**

16 Defendants object to the extent this request lacks foundation, assumes facts not in evidence,
17 is overly broad, vague and ambiguous. This request also presupposes that there was a foreign
18 substance on the floor causing Plaintiff's fall, which Defendants deny. It also incorrectly identifies the
19 subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
20 reasonably calculated to lead to the discovery of admissible evidence (*i.e.* documents related to
21 November 5, 2016). Without waiving said objection, Defendants respond as follows: *See* documents
22 identified pursuant to NRCP 16.1, bates numbers VEN 044-106. Discovery is continuing.
23

24 **REQUEST NO. 6:**

25 True and correct copies of any and all manuals, documents, pamphlets, flyers, or other
26 memorandum which has, as its subject matter, the standard operating procedures with respect to the
27
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1 maintenance, cleaning and sweeping of the floors with respect to the VENETIAN CASINO RESORT
2 in which the fall occurred.

3 **RESPONSE NO. 6:**

4 Defendant objects to the extent this request lacks foundation, assumes facts not in evidence,
5 and is further overly broad, vague and ambiguous. This request also presupposes that there was a
6 foreign substance on the floor causing Plaintiff's fall, which Defendants deny. also incorrectly identifies
7 the subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
8 reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection,
9 Defendant responds as follows: *See Response No. 5*.

11 **REQUEST NO. 7:**

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

18 **RESPONSE NO. 7:**

19 Defendants object to the extent this request lacks foundation, assumes facts not in evidence,
20 is overly broad, vague and ambiguous, unduly burdensome and presupposes there was a foreign
21 substance on the floor causing Plaintiff's fall, which Defendants deny. It also incorrectly identifies the
22 subject premises as *VENETIAN CASINO RESORT*. This request further seeks access to information
23 which is equally available to Plaintiff via public records, and otherwise seeks information that is not
24 reasonably calculated to lead to the discovery of admissible evidence. Defendant objects as the request
25 as over broad and not properly tailored to the issues in this case. Without waiving said objection,
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1 Defendant responds as follows: Defendant is in the process of making a good faith effort to identify
2 information responsive to this request and will respond as soon as the information is collected.

3 Discovery is continuing.

4 **REQUEST NO. 8:**

5 Any and all documents, information, memoranda, paperwork, or other material which relates
6 to establishes, or otherwise pertains to the affirmative defenses alleged by the Defendant herein.

8 **RESPONSE NO. 8:**

9 See Response No. 1.

10 **REQUEST NO. 9:**

11 Any surveillance video showing the Plaintiffs fall at the VENETIAN CASINO RESORT
12 from any other angle, other than the one shown in the video surveillance produced by the
13 Defendants thus far.

15 **RESPONSE NO. 9:**

16 Defendants object to the extent this request incorrectly identifies the subject premises as
17 *VENETIAN CASINO RESORT*, and further that the term "*surveillance video*" is itself overly broad
18 and seeks information outside Defendants' knowledge, custody and control (*i.e.* videos taken by other
19 persons on the subject premises at the time). Without waiving said objection, Defendants respond as
20 follows: All known surveillance related to this matter was produced as Document No. 9 in Defendants'
21 NRCP 16.1 disclosure. Discovery is continuing.

23 **REQUEST NO. 10:**

24 Any other witnesses, documents, or other disclosures required by NRCP 16.1.

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RESPONSE NO. 10:

See Response No. 1.

DATED this 9 day of October, 2018.

ROYAL & MILES LLP

By: _____

Michael A. Royal, Esq.

Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

1522 W. Warm Springs Road

Henderson, NV 89014

Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9 day of October, 2018, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S REQUESTS 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:

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
Email: kgalliher@galliherlawfirm.com


An employee of ROYAL & MILES LLP

EXHIBIT 8

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

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 1
through X, inclusive,

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**SUPPLEMENTAL RESPONSES TO PLAINTIFF'S REQUESTS 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 36 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. 1:**

2 All written, oral, or recorded statements made by any party, witness, or any other person or
3 persons with knowledge of the incident described in Plaintiffs Complaint.

4 **RESPONSE NO. 1:**

5 Defendants object to the extent this request seeks information protected by attorney/client
6 privilege and/or attorney work product privilege. Without waiving said objection, Defendants refer
7 to their disclosures pursuant to NRCP 16.1, documents 2-9, and all supplements thereto. Discovery
8 is continuing.

9
10 **REQUEST NO. 2:**

11 Any and all accident and investigative reports, films, video tapes, charts, plats, drawings, maps
12 or pictures and/or photographs of any kind which has, as its subject matter, the incident described in
13 Plaintiffs Complaint.

14
15 **RESPONSE NO. 2:**

16 See Response No. 1.

17 **REQUEST NO. 3:**

18 A complete copy of the Defendant's insurance carriers and/or risk management pre-litigation
19 claim file.

20 **RESPONSE NO. 3:**

21 Objection. This request lacks foundation, assumes facts not in evidence, seeks information that
22 is protected from disclosure by the attorney/client and/or attorney work product doctrine. Without
23 waiving said objection all known discoverable documents regarding the investigation of the loss have
24 been produced. See Defendants' NRCP 16.1 early case conference disclosures, documents 2-9, and
25 all supplements thereto. Discovery is continuing.

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28

1 **REQUEST NO. 4:**

2 The names of all expert witnesses or consultants that Defendant will use at the time of trial
3 along with any reports produced by the same.

4 **RESPONSE NO. 4:**

5 Objection. This request is premature. Defendants' expert disclosures containing the requested
6 information will take place as set forth in the court's scheduling order. It is also an improper request
7 for production of documents.
8

9 **REQUEST NO. 5:**

10 Any and all sweep sheets, sweep logs, or other similar documentation which reflects the
11 maintenance and/or cleaning of the flooring located within the VENETIAN CASINO RESORT
12 described in Plaintiffs Complaint for the day before, day of, and day after the incident described
13 therein.
14

15 **RESPONSE NO. 5:**

16 Defendants object to the extent this request lacks foundation, assumes facts not in evidence,
17 is overly broad, vague and ambiguous. This request also presupposes that there was a foreign
18 substance on the floor causing Plaintiff's fall, which Defendants deny. It also incorrectly identifies the
19 subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
20 reasonably calculated to lead to the discovery of admissible evidence (*i.e.* documents related to
21 November 5, 2016). Without waiving said objection, Defendants respond as follows: *See* documents
22 identified pursuant to NRCP 16.1, bates numbers VEN 044-106. Discovery is continuing.
23

24 **REQUEST NO. 6:**

25 True and correct copies of any and all manuals, documents, pamphlets, flyers, or other
26 memorandum which has, as its subject matter, the standard operating procedures with respect to the
27
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1 maintenance, cleaning and sweeping of the floors with respect to the VENETIAN CASINO RESORT
2 in which the fall occurred.

3 **RESPONSE NO. 6:**

4 Defendant objects to the extent this request lacks foundation, assumes facts not in evidence,
5 and is further overly broad, vague and ambiguous. This request also presupposes that there was a
6 foreign substance on the floor causing Plaintiff's fall, which Defendants deny, also incorrectly identifies
7 the subject premises as *VENETIAN CASINO RESORT*. This request further seeks information not
8 reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection,
9 Defendant responds as follows: *See Response No. 5.*

11 **REQUEST NO. 7:**

12 True and correct copies of any and all claim forms, legal actions, civil complaints, statements,
13 security reports, computer generated lists, investigative documents or other memoranda which have,
14 as its subject matter, slip and fall cases occurring on marble floors within the subject VENETIAN
15 CASINO RESORT within three years prior to the incident described in Plaintiffs Complaint, to the
16 present.

18 **RESPONSE NO. 7:**

19 Defendants object to the extent this request lacks foundation, assumes facts not in
20 evidence, is overly broad, vague and ambiguous, unduly burdensome and presupposes there was
21 a foreign substance on the floor causing Plaintiff's fall, which Defendants deny. It also
22 incorrectly identifies the subject premises as *VENETIAN CASINO RESORT*. This request
23 further seeks access to information which is equally available to Plaintiff via public records, and
24 otherwise seeks information that is not reasonably calculated to lead to the discovery of
25 admissible evidence. Defendant objects as the request as over broad and not properly tailored
26 to the issues in this case. Without waiving said objection, Defendants respond as follows: Please
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1 | see Defendants' 5th Supplement to NRCP 16.1 Disclosure and all supplements thereto.

2 | Discovery is continuing.

3 | **REQUEST NO. 8:**

4 | Any and all documents, information, memoranda, paperwork, or other material which relates
5 | to establishes, or otherwise pertains to the affirmative defenses alleged by the Defendant herein.

6 | **RESPONSE NO. 8:**

7 | See Response No. 1.

8 | **REQUEST NO. 9:**

9 | Any surveillance video showing the Plaintiffs fall at the VENETIAN CASINO RESORT
10 | from any other angle, other than the one shown in the video surveillance produced by the
11 | Defendants thus far.

12 | **RESPONSE NO. 9:**

13 | Defendants object to the extent this request incorrectly identifies the subject premises as
14 | *VENETIAN CASINO RESORT*, and further that the term "*surveillance video*" is itself overly broad
15 | and seeks information outside Defendants' knowledge, custody and control (*i.e.* videos taken by other
16 | persons on the subject premises at the time). Without waiving said objection, Defendants respond as
17 | follows: All known surveillance related to this matter was produced as Document No. 9 in Defendants'
18 | NRCP 16.1 disclosure. Discovery is continuing.

19 | **REQUEST NO. 10:**

20 | Any other witnesses, documents, or other disclosures required by NRCP 16.1.

21 | ///

22 | ///

23 | ///

24 |

25 |

1 **RESPONSE NO. 10:**

2 See Response No. 1.

3 DATED this 3 day of January, 2019.

4 **ROYAL & MILES LLP**

6 By: _____

7 Michael A. Royal, Esq.

8 Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

1522 W. Warm Springs Road

Henderson, NV 89014

Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4 day of January, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **SUPPLEMENTAL RESPONSES TO PLAINTIFF'S REQUESTS 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:

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
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sray@galliherlawfirm.com

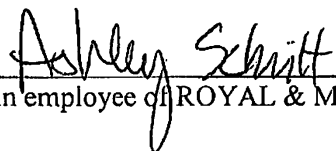

An employee of ROYAL & MILES LLP

EXHIBIT 9

1 **ECCD**
MARK B. SCHELLERUP
2 Nevada Bar No. 7170
ANDREW R. GUZIK
3 Nevada Bar No. 12758
MESSNER REEVES LLP
4 8945 W. Russell Road, Suite 300
Las Vegas, Nevada 89148
5 Telephone: (702) 363-5100
Facsimile: (702) 363-5101
6 Email: mschellerup@messner.com
Email: aguzik@messner.com
7 Attorneys for Venetian Casino Resort, LLC

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

11 CAROL SMITH, an individual,
12 Plaintiff,

Case No.: A-17-753362-C
Dept. No.: X

13 vs.

14 VENETIAN CASINO RESORT, LLC; and
15 DOES 1 through 50, inclusive,
16 Defendant(s).

**DEFENDANT'S NINTH
SUPPLEMENTAL EARLY CASE
CONFERENCE STATEMENT LIST OF
WITNESSES, EXHIBITS AND
PRODUCTION OF DOCUMENTS**

17
18 Defendant VENETIAN CASINO RESORT, LLC, by and through its attorneys of record,
19 Messner Reeves, LLP, hereby serves their Ninth Supplemental Early Case Conference Statement
20 List of Witnesses, Exhibits and Production of Documents with respect to the above captioned action.
21 New items in **[BOLD]**

22 **WITNESSES**

23 1. Security Officer, Patrick Overfield, Security Department of Venetian, c/o Messner
24 Reeves LLP, 8945 W. Russell Rd., Suite 300, Las Vegas, Nevada 89148. Expected to testify
25 regarding the facts and circumstances surrounding the subject incident, any investigation regarding
26 the subject incident, any interaction with the Plaintiff or witnesses, the Incident Report.

27 2. Rafael Chavez, Facilities Department of Palazzo, c/o Messner Reeves LLP, 8945 W.
28 Russell Rd., Suite 300, Las Vegas, Nevada 89148. Expected to testify regarding the facts and

1 circumstances surrounding the subject incident, the inspection conducted after the alleged incident,
2 the Accident Scene Check report which he authored, any interaction with the Plaintiff or any
3 witnesses.

4 3. Security Officer, Michael Chreene, Security Department of Venetian, c/o Messner
5 Reeves LLP, 8945 W. Russell Rd., Suite 300, Las Vegas, Nevada 89148. Expected to testify
6 regarding the facts and circumstances surrounding the subject incident, any investigation regarding
7 the subject incident, any interaction with the Plaintiff or witnesses, the Incident Report.

8 4. Person Most Knowledgeable, PAD Department of Venetian, c/o Messner Reeves
9 LLP, 8945 W. Russell Road, Suite 300, Las Vegas, Nevada 89148. Expected to testify regarding
10 the policies and procedures regarding floor maintenance in the area where this incident occurred.

11 5. Person Most Knowledgeable, Security Department of Venetian, c/o Messner Reeves
12 LLP, 8945 W. Russell Road, Suite 300, Las Vegas, Nevada 89148. Expected to testify regarding
13 the facts and circumstances surrounding the subject incident.

14 6. Carol Smith, Plaintiff, c/o PETER GOLDSTEIN LAW CORP, 10795 W. Twain,
15 #110, Las Vegas, NV 89135. Ms. Smith is the named Plaintiff in this matter and is expected to
16 testify regarding her interaction with security personnel, her visit to the Venetian, any conversations
17 she may have had with anyone relating to the subject incident, her medical treatment and medical
18 history and any other facts and circumstances surrounding the subject incident.

19 7. Plaintiff's medical providers.

20 8. Any witnesses identified by any party to this action.

21 9. Any necessary rebuttal witnesses.

22 Defendant hereby reserves the right to amend and/or supplement its Early Case Conference
23 Statement List of Witnesses, Exhibits and Production of Documents as it uncovers additional
24 information through discovery of this matter and it reserves the right to object to Plaintiff's
25 witnesses.

26 **EXHIBITS/DOCUMENTS**

27 A. Plaintiff's First Amended Complaint [Bates No. VEN001-VEN005]

28

- 1 B. Medical records produced with letter from Peter Goldstein dated 10/25/16 (letter
2 included) [Bates No. VEN006-VEN0027]
- 3 C. Venetian Incident Report w/ color photographs [Bates No. VEN028-VEN037]
- 4 D. Copy of Voluntary Statement authored by Carol Smith [Bates No. VEN038]
- 5 E. Copy of Accident Scene Check [Bates No. VEN039]
- 6 F. Copy of Letter of Representation from Peter Goldstein dated 7/19/16 [Bates No.
7 VEN040]
- 8 G. Copy of letter from Venetian to Peter Goldstein dated 8/2/16 [Bates No. VEN041]
- 9 H. Copy of letter from Venetian to Peter Goldstein dated 4/17/17 [Bates No. VEN042]
- 10 I. Copy of surveillance video [Bates No. VEN043]
- 11 J. Copy of records from Irvine Unified School District [Bates No VEN044-VEN132]
- 12 K. Copy of records from State of the Art Physical Therapy [Bates No. VEN133-
13 VEN223]
- 14 L. Copy of records from Orthopedic Surgery Center of Orange County [Bates No.
15 VEN224-VEN303]
- 16 M. Copy of records from State of the Art Physical Therapy [Bates No. VEN304-
17 VEN370]
- 18 N. Copy of Incident Reports of slip and falls for ~~two~~ FIVE (5) years prior to this
19 alleged incident, in the area where Plaintiff's incident occurred (with all personal information
20 redacted) [Bates No. VEN371-VEN499]
- 21 O. Copy of Preventing Slip, Trips & Falls [Bates No. VEN500-VEN510]
- 22 P. Copy of floor cleaner product documents [Bates No. VEN511-VEN522]
- 23 P. Copy of Public Area's Department Work Slips for two-years prior to incident
24 [Bates No. VEN523-VEN1750]
- 25 Q. Copy of Preventing Slips, Trips and Falls Lesson Plan [Bates No. VEN1751-
26 VEN1753]
- 27 R. Copy of Lobby 2 Day Shift Specialist Workslip [Bates No. VEN1754]
- 28 ///

1 S. Copy of Day Shift Schedule for 7/7/2016 [Bates No. VEN1755]
2 T. Copy of Slip & Fall Training Video [Bates No. VEN1756]
3 U. Copy of medical records from Newport Orthopedic Institute [Bates No. VEN1757-
4 VEN1891]

5 V. Copy of similar incident reports 7/7/14-7/7/16 with personal information
6 redacted [Bates No. VEN1892-VEN2251]

7 Defendant hereby reserves the right to amend and/or supplement its Early Case Conference
8 Statement List of Witnesses, Exhibits and Production of Documents as it uncovers additional
9 information through discovery of this matter and it reserves the right to object to Plaintiff's exhibits
10 and documents.

11 DATED this 8th day of June, 2018

12 MESSNER REEVES, LLP

13
14 By 

15 MARK B. SCHELLERUP
16 Nevada Bar No. 7170
17 ANDREW R. GUZIK
18 Nevada Bar No. 12758
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20 Las Vegas, NV 89148
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23 Attorneys for Venetian Casino Resort, LLC
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PROOF OF SERVICE
LV-Smith v. Venetian Casino Resort, LLC
Case No.: A-17-753362-C

The undersigned does hereby declare that I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by Messner Reeves LLP, 8945 W. Russell Road, Suite 300, Las Vegas, Nevada 89148. I am readily familiar with Messner Reeves LLP's practice for collection and processing of documents for delivery by way of the service indicated below.

On June 11, 2018, I served the following document(s):

**DEFENDANT'S NINTH SUPPLEMENTAL EARLY CASE CONFERENCE STATEMENT
LIST OF WITNESSES, EXHIBITS AND PRODUCTION
OF DOCUMENTS**

on the interested party(ies) in this action as follows:

Peter Goldstein
Nevada Bar No. 6992
PETER GOLDSTEIN LAW CORP
10795 W. Twain Avenue, #110
Las Vegas, NV 89135
Telephone: (702) 474-6400
Facsimile: (888) 400-8799
Attorneys for Plaintiff

By U.S. Mail and Electronic Service. Pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused said documents(s) to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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

Executed on June 11, 2018, at Las Vegas, Nevada.


An employee of MESSNER REEVES LLP

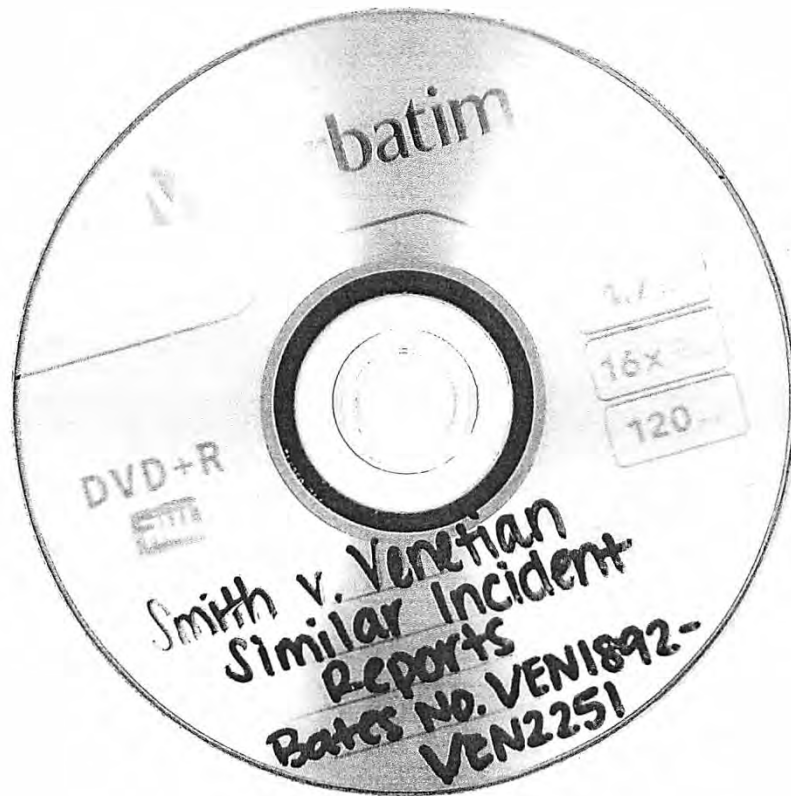


EXHIBIT 10

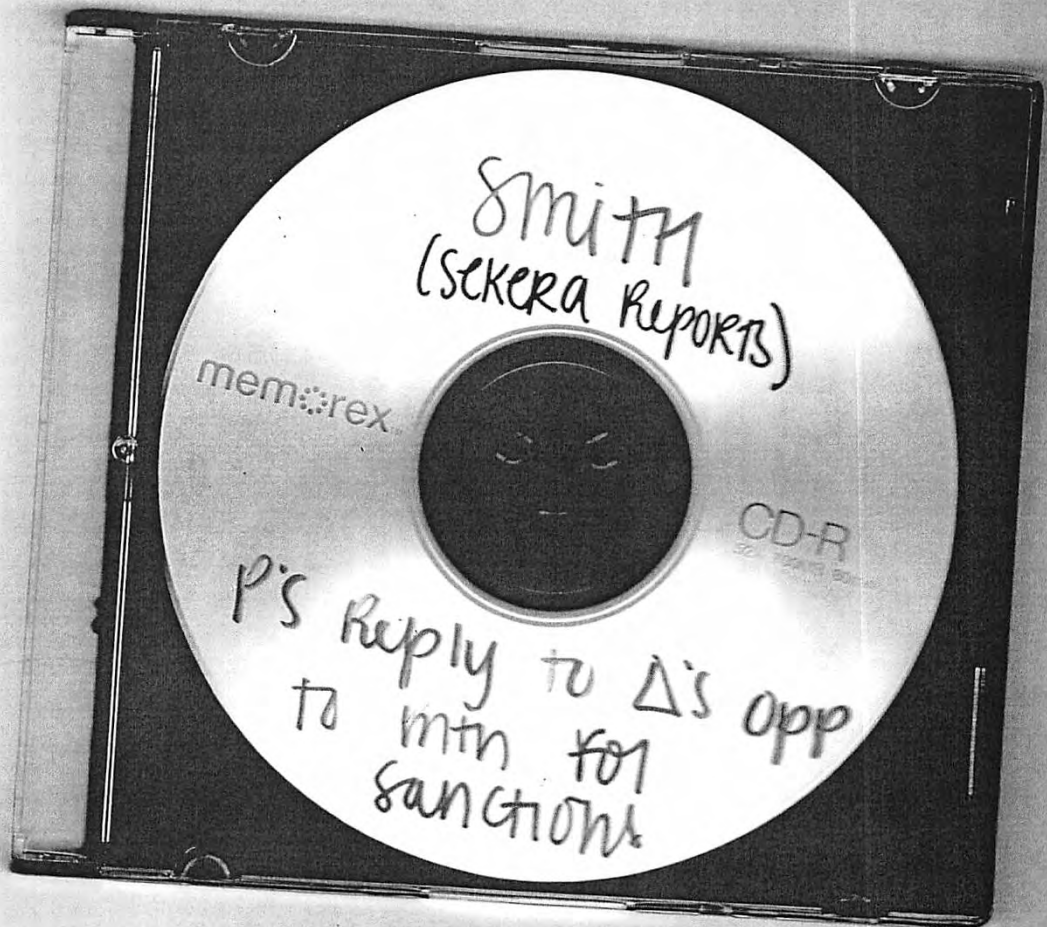


EXHIBIT 11

SEKERA FALLS

Sekera v. Venetian reports are in black
Smith v. Venetian reports are in red

DATE	TIME	REPORT	LOCATION	COMMENTS	SECURITY
11-24-13	5:27 a.m.	1311V-5502	Grand Luxe Café	Slip and fall	Mary Ros Eve Gizelbach Ryan Meyer J. Lopez report writer
11-24-13	1:54 p.m.	1311V-5588	Grand Hall	Slipped in apple cider given out by elves who are employees	Devon O'Brien manager Christopher Mosier ast. security manager G. Rescigno report writer David Magnism
1-26-14	12:28 a.m.	1401V-5339	Lobby 1	Water on marble	Conie Klaver Joe Barrett facilities senior watch L. Sivrais report writer Joe Barrett
5-2-14	4:42 p.m.	1405V-0423	Grand Hall LV	Water on marble	Manny Arguello R. Marquez report writer David Boyko
5-3-14	3:36 p.m.	1405V-0687	Grand Hall	Wet marble	Thomas Harris security officer Gary Rescigno security EMT T. McFate report writer Derek Santillan facilities
5-3-14	4:47 p.m.	1405V-0704	Lobby 1	Water on marble	Christopher Daniels Derek Santillan
5-24-14	9:49 p.m.	1405V-5900	Lobby 1	Wet marble	Karen Sidhoo front desk manager Tim Alvonells security shift manager T. Morgan report writer Sean Pemberton
6-28-14	2:10 p.m.	1406V-66937	Grand Luxe Café	Wet marble	Connic Kulver Nicholas Coronado Andres Florentino J. Lopez report writer John Burnett security officer
7-5-14	6:05 p.m.	1407V-1121	Lobby 1	Liquid stated he had fallen yesterday see report	Brittany Peck front desk manager Sean Pemberton engineer

				1407V-0807 (missing this report)	L. Sivas report writer
7-10-14	1:25 PM	1407V-2272	Grand Luxe	Water on floor	J. Larson report writer T. Mofate EMT/SO Merrick Anderson Facilities Eng.
7-10-14	12:30 a.m.	1407V-2142	Grand Hall	Drink on floor Prior to victim slipping group of unknown males with "yard" like drink spilled on floor	Sang Han front desk manager E. Gizelback report writer
7-13-14	8:02	1407V-3057	Lobby 1	Liquid	Jacob Johnson Asst. Sec. Mngr. Brittany Peck Front desk mngr. Taylor McFate, EMT S.O. G. Rescigno Report writer
7-13-14	8:02 a.m.	1407V-3057	Lobby 1	liquid marble	Jacob Johnson asst. security manager Brittany Peck front desk manager Tyler McFate EMT security G. Rescigno report writer
7-18-14	7:14 p.m.	1407V-4386	Venetian front desk	Fall happened at 6:00 p.m. victim stated there was a guy there said his buddy dropped his bottle of alcohol and left it there	Tim Avonellos security shift manager Conie Kluyer front desk manager kT. Morgan report writer
7-25-14	5:31 p.m.	1407V-6125	Lobby 1	Wet marble	Amy McCaslin front desk manager Kyle Donaldson Asst. security manager T. Morgan report writer
7-25-14	7:59	1407V-6151	Grand Hall	Liquid Victim Luz Gammio (unredacted)	Allen Backman facilities L. Sivrais report writer
7-29-14	2:47 p.m.	1407V-7161	Lobby 1	Liquid	Thomas Labert Front Desk Mngr. Christopher Moiser Asst. Sec Mngr. Sean Pemberton Eng. G. Rescigno Report writer Chris Malcom S.O.
7-29-14	2:47 p.m.	1407V-7161	Lobby 1	Liquid	Thomas Lambert front desk manager Christopher Mosier asst. security manager Sean Pemberton engineer

					G. Rescigno Chris Malcom security officer
7-30-14	9:55 a.m.	1407V-7375	Lobby 1	Water fluid was spilled by unknown male at 9:48	Mary Rosk front desk manager Joseph Florio security officer Joseph Larson EMT security officer T. McFate report writer Abimael Suarez internal maintenance PAD
8-4-14	4:31 a.m.	1408V-0843	Lobby 1	Tripped over own feet	Mary Ros front desk manager John Ballesteros facilities team member E. Gizelbach report writer
8-5-14	5:08 a.m.	1408V-1088	Lobby 1	Tripped over own feet Marc Fesel engineer no defects but a wet floor	Mary Ros front desk manager Garry Lee security officer E. Gizelbach report writer
8-28-14	10:30 p.m.	1408V-7104	Venetian Tower	Fall reported next morning. Fall occurred near bathroom by Grand Luxe Water	Mary Ros, Front Desk Monte McAnulty Facilities J. Larson, Report Writer 1/7/15
8-28-14	10:30 p.m.	1408V-7104	11 Venetian Tower 121	Fall reported next morning. Fall occurred near bathrooms by Grand Luxe Water	Mary Ros front desk manager Monte McAnulty facilities J. Larson report writer
8-31-14	2:43 p.m.	1408V-7791	Lobby 1	large water spill	Jacob Johnson Asst. Sec. Mgr. Archie Balon, S.O. G. Rescigno, report writer Derek Santillan, Facilities
8-31-14	2:43 p.m.	1408V-7791	Lobby 1	Large water spill	Jacob Johnson asst. security manager Archie Balon security officer G. Rescigno report writer Derek Santillon facilities
9-13-14	3:17 p.m.	1409V2807	Grand Hall	Slipped due to water or drink spill that another guest caused. Tyler Corbely had notified security earlier about his stand by due to this fluid spill	Jacob Johnson asst. security manager Tyler Corbely field training officer G. Rescigno report writer

9-15-14	5:29 a.m.	1409V-3261	Lobby 1	3 piles of feces slip and fall	Nicholas Coronado Mary Ros Hinkle Z. Hakim report writer Rosa Estela facilities
9-30-14	1:30	1409V-6750	Grand Hall	Slip and fall on marble. "I slipped on something spilled on marble" pictures of liquid looks like milk	George Valley security manager Jonathan Derleth front desk manager John Wells security officer Z. Hakim report writer James Guernick security officer
10-11-14	2:08 a.m.	1410V-2293	Lobby 1	Tripped over feet	Nachely frond desk manager Zachary Hakim EMT security E. Gizelbach report writer Rudy Conception facilities engineer
12-23-14	5:24 p.m.	1412V-4685	Lobby 1	Liquid Ashay Shah minor (not redacted) Jignesh Shah father	Sang Han hotel manager Tim Avonellos security shift manager L. Sivrais report writer Derek Sentilian facilities
1-17-15	11:49 p.m.	1501V-3857	Venetian Front Office	Liquid	Nicolas Coronado, asst. mgr. Jonathan Deruth, Front desk mgr. Jose Lopez, EMT Sec. Z. Hakim Report Writer Theodore Reash, Facilities
1-17-15	11:49 p.m.	1501V-3857	Venetian front office	Liquid	Nicholas Coronado asst. manager Jonathan Deruth front desk manager Jose Lopez EMT security Z. Hakim report writer Theodore Eash facilities
1-31-15	2:53 p.m.	1501V-6887	Lobby 1	Water "there appeared to be water all over immediate area"	Tim Alvonellos security shift manager Thomas Lambert front desk manager L. Dozier report writer
2-9-15	1:37 p.m.	1502V-1803	Lobby1	Liquid	Eric Wennerberg security officer Rudy Conception senor watch Eve Gizelbach report writer
2-9-15	1:37 a.m.	1502V-1803	Lobby 1	Liquid	Eric Wennerberg, S.O. Rady Conception. Seior Watch E. Gizelbach Report writer

2-20-15	1:28 p.m.	1502V-4322	Lobby 1	Liquid. Slipped on spilled beverage	Jacob Johnson Asst. Sec. Mngr. Brittany Peck, Front Desk L. Dozier. Report writer
2-20-15	1:28 p.m.	1502V-4322	Lobby 1	Liquid. Slipped on spilled beverage	Jacob Johnson asst. security manager Brittany Peck front desk manager L. Dozier report writer
3-8-15	8:45 a.m.	1503V-1561	Grand Hall	Slip. "I observed a wet sticky spot on marble floor"	Melissa Perry front desk manager Bryan Greenfield facilities E. Gizelbach report writer
3-23-15	3:18 a.m.	1503V-5040	Lobby 1	Slip. "appeared to have red sauce or grease on marble" previous injury under report #1503V-5119 (we don't have report) stated she had been injured earlier that morning at 3:00 a.m. when she slipped and fell in pasta sauce	Nathan Beyers front desk manager Garry Lee security officer E. Gizelbach report writer James Stoyer facilities engineer
4-24-15	3:25p.m..	1504V-5396	Grand Hall	Slip. Broken bottle of alcohol	Sang Han front desk manager Melissa Perry front desk manager Lynn Sivrais EMT Security G. Rescigno report writer Rodolfo Storino
4-24-15	3:25 p.m.	1504V-5396	Grand Hall	Broken Bottle of Alcohol	Sang Han, Front Desk Mngr. Melissa Perry Front Desk Mngr. Lynn Sivrais, EMT S.O. V-5319G. Rescigno Report writer Rodolfo Stoiono
5-3-15	1:08 p.m.	1505V-0844	Grand Hall	Slip. "small puddles of what appeared to be a clear liquid"	Jacob Johnson asst. security manager Tyler Corbaley field training officer G. Rescigno report writer
5-22-15	4:43 p.m.	1505V-5319	Lobby 1	Water on floor	Thomas Lambert Front Desk Tony Bersano Asst. Sec. Mngr. Crystal Clanton S.O. J. Lopez Report writer Jeffrey Dunihoo, S.O.
5-22-15	4:43 a.m.	1505V-5319	Lobby 1	Water on floor	Thomas Lamber front desk manager

					Tony Bersano asst. security manager Crystal Clanton security officer J. Lopez report writer Jeffrey Duniolo security officer
5-29-15	7:36 a.m.	1505V-7253	Lobby 1	Slip	Christopher Moiler asst. security manager Francesca Comeli front desk manager G. Rescigno report writer Steve Hansen facilities
5-30-15	4:35 p.m.	1505V-7506	Lobby 1	Slip Water	Tony Bersano, Asst. Sec. Mngr. Thomas Lambert, Front Desk Mngr. Michael Perez, S.O. D. Davila Report writer Heather Kaufmann, S.O. Zachary Hakim, EMT S.O.
5-30-15	4:35	1505V-7506	Lobby 1	Slip water	Anthony Bersano asst. security manager Thomas Lambert front desk manager Zachary Hakim security officer EMT Michael Perez security officer Heather Kaufmann security officer S. Davila report writer John Ballesteros facilities
6-12-15	12:51 p.m.	1506V-7480	Lobby 1	Liquid	Antonio Lopez David Magnuson A. Lopez report writer
6-12-15	5:51 p.m.	1506V-2824	Lobby 1	Wet floor, "so much foot traffic I asked two males to stand by spill" "The spill was small comprised of droplets of what seemed to be water stretching about a foot and a half in a straight line on the tile"	Antonio Lopez security officer David Magnuson A. Lopez report writer
6-30-15	11:38 a.m.	1506V-7480	Lobby 1	Slip and fall "small pool of clear liquid on marble flooring nearby"	Mary Ros front desk manager Gary Rescigno Security/EMT John Wells Security Officer J. Larson Report writer

6-30-15	11:58 a.m.	1506V-7480	Lobby 1	Slip and fall. "small pool of clear liquid on marble flooring nearby"	Mary Ros front desk manager Gary Rescigno security EMT John Wells security officer J. Larson report writer Bryan Greenfield facilities
7-5-15	12:40 p.m.	1507V-1236	6 Venezia Tower 417 Lobby 4	Slip and fall on water	Jacob Johnson Asst. Security Manager K Ecnammeste facilities G. Rescigno Report writer
7-5-15	12:40 p.m.	1507V-1236	6 Venezia Tower 417 Lobby 4	Slip and fall on water	Jacob Johnson asst. security manager Keenam Meste facilities G. Rescigno report writer
7-19-15	8:18 a.m.	1507V-5121	19 Venetian Tower 129 Lobby 1	Liquid	Melissa Perry Front desk manager Jacob Johnson Asst. Security manager L. Dozier report writer Jeffrey Duniho security officer Richard Heleman
7-19-15	1:47 a.m.	1507V-5024	Grand Hall	Slip and fall	Nicholas Coronado asst. manager S Tevan security L. Lopez report writer Brian Corpas security officer
7-19-15	8:18 a.m.	1507V-5121	Venetian Tower 129	Slip and fall. Liquid on floor at approximately 7:05	Jacob Johnson asst. security manager L. Dozier report writer Jeffrey Duniho security officer Richard Heleman Melissa Perry
7-20-15	5:36 a.m.	1507V-5392	Main entrance	Slip and fall. Sofia Loygren victim (unredacted) Swedish passport	Julianne Edward front desk manager Nicholas Coronado asst. manager James Stoyer facilities J. Burnett report writer Eric Wenneberg security officer
8-2-15	10:48 a.m.	1508V-0357	Lobby 1	Slip and fall. Puddle of water on floor	Conie Klayer M. Criddle report writer
8-8-15	1:30 p.m.	1508V-1866	Grand Hall	Slip and fall	Jacob Johnson asst. security manager Jonathan Derleth front desk manager L. Dozier report writer Glen Helman facilities
8-8-15	2:00 p.m.	1508V-1869	Lobby 1	Slip and fall.	Jacob Johnson Asst. Security Manager

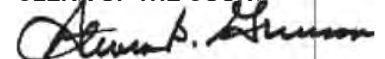
				Upon contacting surveillance I was advised an unknown guest had dropped a bucket	Brittany Peck Front desk manager Allan Hill security officer G. Rescigno report writer
8-8-15	2:00 p.m.	1508V-1869	Lobby 1	Slip and fall. Upon contacting surveillance I was advised an unknown guest had dropped a bucket	Jacob Johnson asst. security manager Brittany Peck front desk manager Allan Hill security officer G. Rescigno report writer
8-14-15	1:40 a.m.	1508V2554	17 Palazzo Tower 141	Slip and fall on water Susan hammonds (unredacted)	Michael Perez security officer Eddie Hoang security manager Mathan Byers facilities Marc Fesel facilities
8-29-15	11:34 a.m.	1508V-7246	Lobby 1	Slip and fall clear liquid. "significant pool of water"	Tim Alvonellos Security shift manager Thomas Lambert front desk manager D. Cabada report writer Marc Fesel facilities Joseph De Jesus security/EMT
8-29-15	11:34 p.m.	1508V-7246	Lobby 1	Slip and fall clear liquid. "significant pool of water"	Tim Alvonellos security shift manager Thomas Lambert front desk manager D. Cabada report writer Marc Fesel facilities Joseph De Jesus security officer EMT
9-6-15	6:39 p.m.	1509V-1497	Lobby 1	Slip and fall wet floor. Spilled drink on floor	Tim Alvonellos security shift manager Nachely Martinez front desk manager J. De Jesus report writer Catherine Carlson security officer
9-6-15	6:39 p.m.	1509V-1497	Lobby 1	Slip and fall wet floor. Spilled drink on floor	Tim Alvonellos security shift manager Nachely Martinez front desk manager Joseph De Jesus report writer Catherine Carlson security officer Derek Santillian facilities
9-13-15	11:26 p.m.	1509V-3312	Grand Hall	Slip and fall red liquid	Matthew Kaufman security manager Thomas Lambert front desk manager D. Cabada report writer Jose Lopez security officer Peter Guagiardo facilities
12-27-15	3:32 p.m.	1512V-5875	Lobby 1	Slip and fall clear liquid	Thomas Lambert front desk manager

				Tim Alvonellos security shift manager D. Cabada report writer Shane Navara facilities
2-20-16	2:56 p.m.	1602V-4290	1 Guest services podium	Liquid fall occurred earlier in day at 11:45 – 12:05 “very wet floor” Jacob Johnson asst. Security manager Devon O’Brien G. Rescigno report writer
2-20-16	2:56 p.m.	1602V-4290	Guest service podium	Jacob Johnson asst. Security manager Devon O’Brien G. Rescigno report writer
3-6-16	1:59 p.m.	1603V-1233	Lobby 1	Jacob Johnson Asst. security manager Kyle Kirchmeier VIP Services D. Winn report writer Rafael Chavez facilities
3-6-16	1:59 p.m.	1603V-1233	Lobby 1	Jacob Johnson security manager Kyle Kirchmeier VIP services D. Winn report writer Raphael Chavez facilities
3-18-16	2:57 p.m.	1603V-3584	5 th floor of the garage elevator lobby	Seljika Bucalo security officer David Boko facilities D. Wi report writer Devin O’Brien front desk manager Jacob Johnson security manager
3-25-16	1:14 p.m.	1603V-5018	Lobby 1	Sharry Kim front desk supervisor Rafael Chavez facilities J. Larson report writer
3-25-16	1:14	1603V-5018	Lobby 1	Sharry Kim front desk supervisor Rafael Chavez facilities J. Larson report writer
4-9-16	7:34 p.m.	1604V-1926	Lobby 1	Matthew Kaufman security manager C. Reanos report writer
4-9-16	2:44 p.m.	1604V-1850	Grand Hall	Archie Balon security officer Jacob Johnson security manger D. Winn report writer Raphael Chavez facilities
4-9-16	7:34 p.m.	1604V-1926	Lobby	Matthew Kaufman security manager C. Reanos report writer
4-10-16	1:51 p.m.	1604V-2136	Grand Hall	Nicole Floyd George Valley security manger

			Jason Palm guest (unredacted)	D. Winn report writer Shane Navara Facilities Sharry Kim front desk manager
4-12-16	3:40 p.m.	1604V-2459	Control 1 Slip and fall. Occurred on 4/10/16 SO "Felix" was attempting to stop foot traffic when he slipped and fell	Matthew Kaufman asst. manager Albert Liu D. Cabda report writer
4-12-16	3:40 p.m.	1604V-2459	1 control Slip and fall. Occurred on 4/10/16 SO "Felix" was attempting to stop foot traffic when he slipped and fell	Matthew Kaufman asst. manager Albert Liu D. Cabada report writer Felix Escobar security officer
5-5-16	9:12 p.m.	1605V-0952	Lobby 1 Slip and fall. Picture of red solo cup and liquid on floor	Tim Alvonellos security shift manager Royce Phung front desk manager J. Buscemi report writer James Johnson security officer
5-5-16	9:12 p.m.	1605V-0952	Lobby 1 Slip and fall. Picture of red solo cup and liquid on floor	Tim Alvonellos security shift manager Royce Phung front desk manager J. Buscemi report writer James Johnson security officer Shane Navara facilities
5-12-16	12:56 a.m.	1605V-5069	Lobby 1 Liquid	Amy McCaslin front desk manager Nicolas Coronado security manager John Ballesteros facilities J. Dietrich report writer Joseph Barr-Wilson
5-25-16	12:56 a.m.	1605V-5069	Lobby 1 Slip and fall earlier in day approx. 6:49	Ay McCaslin front desk manager Nicholas Coronado security manager John Ballesteros facilities J. Dietrich report writer Eve Gizelbach EMT security officer Joseph Barr-Wilson security officer
7-7-16	12:15 p.m.	1607V-1506	Lobby 1 Slip and fall. Large wet area	Jacob Johnson security manager Michael Chrene security officer R. Overfield report writer Raphel Chavez facilities

7-15-16	11:25 p.m.	1607V-3405	Lobby 1	Slip and fall. Ice cream on floor	Tim Alvonellos security shift manager Jonathan Derfeh front desk manager J. De Jesus report writer David Cabada EMT security officer Loren Harper security officer Rosa Estela facilities
8-5-16	11:07	1608V-0995	Casino	Slip and fall. Wet spill extended entire length of pit 9 guest walked into wet area and slipped and fell	Anthony Bersano assl. security manager Nathan Beyers front desk manager D. Cabada report writer Joseph De Jesus EMT security officer Dale Keezer field training officer Amber Platt security officer Laterrious Robinson field training officer Eddie Hinton facilities
8-5-16	5:04 p.m.	1608V-0947	Lobby 1	Slip and fall. Large pool of water	Tim Alvonellos security shift manager Monique Heng front desk manager J. De Jesus report writer Justin Vasquez security officer David Cabada EMT security officer Shane Naema facilities

EXHIBIT “X”



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11
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13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15
16 JOYCE SEKERA, an Individual,
17
18 Plaintiff,

19 v.

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

28 Defendants.

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

**PLAINTIFF'S REPLY IN SUPPORT OF
HER MOTION TO COMPEL
TESTIMONY AND DOCUMENTS,
OPPOSITION TO DEFENDANTS'
MOTION TO COMPEL DOCUMENTS
FROM JENNINGS AND OPPOSITION
TO DEFENDANTS' MOTION FOR A
PROTECTIVE ORDER**

//

Plaintiff hereby submits her reply in support of her motion to compel testimony and documents, opposition to Defendants' motion to compel documents from Jennings and opposition to Defendants' motion for a protective order.

This reply and 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 25th day of July, 2019

THE GALLIHER LAW FIRM



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MEMORANDUM AND POINTS OF AUTHORITIES

I. REPLY IN SUPPORT OF MOTION TO COMPEL

A. The Discovery Commissioner Should Compel Venetian to Produce the Prior Unredacted Incident Reports

The Discovery Commissioner should order Venetian to produce the unredacted incident reports because the Court ordered Venetian to produce the reports over 2 months ago. At the hearing on May 14, 2019 The Honorable Judge Delaney ruled Venetian's position was unsupported and "novel" in that no counsel for a casino, including herself while working in-house for Mirage, would or ever has moved to protect unredacted incident reports because there "is no legal basis" for such a protective order.¹ (Plaintiff's Mot. at Exhibit "4.") This issue is therefore not "open" or unresolved.

¹ Venetian's grossly misleads the Discovery Commissioner by stating "Judge Delaney appeared to be of the understanding that the April 2, 2019 DCRR related to the protection of prior incident

1 as the uniform holding of courts nationwide is that a court cannot grant a protective order on
2 unredacted incident reports.

3 More significantly, the Court should compel Venetian to produce the unredacted reports
4 because Venetian agreed the Court ordered it to produce the unredacted reports: both of the
5 competing orders Plaintiff and Venetian submitted state Venetian must provide the unredacted
6 reports.² (Email from Defense Counsel and attached document with proposed changes, attached as
7 Exhibit "1.") As set forth in Exhibit "1" Venetian approved the following language in Plaintiff's
8 Order:

9 IT IS HEREBY ORDERED that Plaintiff's Objection is GRANTED, the Discovery
10 Commissioner's Report and Recommendation is REVERSED in its entirety. There
11 is no legal basis to preclude Plaintiff from knowing the identity of the individuals
12 contained in the incident reports as this information is relevant discovery. There is
13 also no legal basis to preclude Plaintiff from sharing the ~~redacted~~ **unredacted**
14 incident reports **with persons not involved in this litigation**. However, the Court
15 strongly cautions Plaintiff to be careful with how she shares and uses this
16 information.

17 Based upon the above edits submitted by Venetian's, Venetian does not dispute the Court
18 ordered it to produce the unredacted incident reports. Court orders are not optional, they are
19 mandatory. To date, Venetian has not provided the 64 unredacted incident reports which the Court
20 ordered it to provide nearly 2 months ago. Further, all incident reports Venetian produced
21 subsequent to the hearing have likewise been in redacted form only. Venetian cites no authority to
22 support its opinion that it can ignore the Court's May 14, 2019 order because it has "rights."³

23 reports in this matter was a novel, isolated, outlier decision; therefore, she granted the objection and
24 ordered that unredacted reports be produced."

25 ² Venetian's claim it failed produce the incident reports because the parties submitted "competing
26 orders" is also misleading. The parties **only disputed** the wording of the 5th paragraph related to the
27 denial of Venetian's counter-motion for sanctions. (See Defendant's Opp. at 6:7-11, 8:3-4, 16:15-17

28 ³ Venetian instead throws around vague references to the facts that "The rules allow Defendants to
bring this new information before the judge. Since this issue remains open, and Defendants have not
exhausted their rights..." However, "not exhausting rights" is not a valid reason to violate a Court
order – if it was, everyone would ignore court orders and point to the fact their case had yet to come
before the United States Supreme Court. Rather, Venetian is required to request a stay, which it had
the opportunity to do (and did not do) during the objection hearing. Moreover, Venetian has no "new
factual information" and even if it did new facts are irrelevant because the Court determined there is
"no **legal** basis" to order a protective order on the incident reports. (Plaintiff's Mot. at Exhibit "4.")

(Defendant's Mot. at 18:1, 18:12.) Because Venetian cannot point to any authority excusing its conduct, the Discovery Commissioner should force Venetian to produce the unredacted incident reports.

B. Venetian Provided All Known Responsive Reports at This Time

After a careful review of the previously disclosed table, the undersigned owes Venetian and this Honorable Court an apology. The undersigned misinterpreted the notations of staff on the comparison table they put together and in hindsight should have spent more time studying the tables and/or clarified the table summaries with staff before filing this motion. Since the filing of this motion Venetian has produced all additional responsive reports. Plaintiff therefore withdraws this portion of her motion.

C. Venetian Must Produce Subsequent Incident Reports Because They Are Admissible to Prove Causation, Existence of a Dangerous Condition and Punitive Damages

The Discovery Commissioner should compel Venetian to produce the subsequent incident reports because they are admissible for three major reasons: (1) to prove the malice element of punitive damages, (2) to prove causation and (3) to prove punitive damages.

Venetian argues this is still a "simple negligence" case despite the fact the Court granted Plaintiff's motion to amend her complaint to add a claim for punitive damages, Venetian argues there is still an outstanding motion for reconsideration on the issue.⁴ (Defendant's Mot. at 23:21-28.) The Court will decide on the motion for reconsideration on July 30, 2019, three days before the hearing on this motion to compel. If the Court determines punitive damages stay, then the discovery rules allow Plaintiff to discover the subsequent incident reports because they are admissible at trial as "evidence which would tend to prove the essential factors of the conscious disregard concept of

⁴ Venetian also argues that even if the punitive damages claim remains Plaintiff is not entitled to subsequent incident reports because the issue is a "transitory condition." This argument is disingenuous. The Court granted Plaintiffs' motion to amend to add a claim for punitive damages because Venetian knew its marble floors were unreasonably slippery and posed a high risk to guests but nonetheless refused to increase their slip resistance. Marble floors have been in Venetian since it opened nearly 20 years ago and they are thus not a "transitory condition."

malice.” *Hilliard v. A. H. Robins Co.*, 148 Cal. App. 3d 374, 401, 196 Cal. Rptr. 117, 135 (Ct. App. 1983) citing *Blank v. Coffin*, 20 Cal.2d 457, 463, 126 P.2d 868, 871 (1942); see also *Ettus v. Orkin Exterminating Co.*, 233 Kan. 555, 568, 665 P.2d 730, 741 (1983) (citing *Byers v. Santiam Ford, Inc.*, 281 Or. 411, 416, 574 P.2d 1122, 1125 (1978)) (“Evidence of the parties’ conduct subsequent to the event, which produces plaintiff’s claim for punitive damages, whether aggravating or mitigating, must be probative of the defendant’s state of mind at the time of the transaction.”); *Jimenez v. Chrysler Corp.*, 74 F. Supp. 2d 548, 562 (D.S.C. 1999), *rev’d in part, vacated in part sub nom. Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439 (4th Cir. 2001) (holding “subsequent knowledge of problems” is admissible to prove conscious disregard and sufficient grounds to support the a jury’s verdict of punitive damages); *Webster v. Boyett*, 496 S.E.2d 459 (Ga. 1998). (holding evidence of prior and subsequent conduct should be admissible for the purpose of proving punitive damages in a **drunk driving accident**).⁵ The jury may hear, and Plaintiff may thus discover, subsequent incident

⁵ See also *Schaffer v. Edward D. Jones & Co.*, 1996 S.D. 94, ¶ 35, 552 N.W.2d 801, 813 (defendant’s proclivity to repeat wrongful conduct is relevant to punitive damages, as a major purpose of punitive damages is to deter similar future misconduct); *Roth v. Farnier Bocken Co.*, 2003 S.D. 80, ¶ 48, 667 N.W.2d 651, 666 (in determining “degree of reprehensibility,” one consideration is whether “the conduct involved repeated actions or was an isolated incident”); *Boshears v. Saint-Gobain Calmar, Inc.*, 272 S.W.3d 215, 226 (Mo. Ct. App. 2008) (“actions subsequent to those for which damages are sought may be relevant and ‘admissible under an issue of exemplary damages if so connected with the particular acts as tending to show the defendant’s disposition, intention, or motive in the commission of the particular acts for which damages are claimed”); *Bergeson v. Dilworth* 959 F.2d 245 (10th Cir. 1992) (“subsequent conduct is admissible on the issue of punitive damages when it is probative of the defendant’s state of mind at the time of the event giving rise to liability”); *Smith v. Ingersoll-Rand Co.*, 214 F.3d 1235, 1249 (10th Cir. 2000); *GM Corp. v. Mosely*, 213 Ga. App. 875, 877 (Ga. Ct. App. 1994) (in a product defect case evidence of other incidents involving a product are admissible and relevant to prove notice of a defect and punitive damages); *Wolfe v. McNeil-PPC Inc.*, 773 F.Supp.2d 561, 575-576 (E.D.Pa. 2011) (post incident concealment of information from the FDA relevant to the question of defendant’s state of mind relative to the imposition of punitive damages); *Coale v. Dow Chem. Co.*, 701 P.2d 885, 890 (Colo.App. 1985) (evidence of post-injury conduct is admissible to show the defendant acted wantonly in connection with a claim of punitive damages); *Palmer v. A.H. Robins Co.*, 684 P.2d 187, 204 (Colo. 1984) (observing that post-injury conduct is relevant for purposes of determining punitive damages); *Hoppe v. G.D. Searle & Co.*, 779 F.Supp. 1413, 1424--1425 (S.D.N.Y. 1991) (admitting evidence of post-injury conduct because it was relevant to pre-injury evidence supporting an award of punitive damages); *Hill v. USA Truck, Inc.*, No. 8:06-CV-1010-GRA, 2007 WL 1574545, at *15 (D.S.C. May 30, 2007); *Hallman v. Cushman*, 196 S.C. 402, 13 S.E.2d 498, 501 (1941); *Eaves v. Penn*, 587 F.2d 453, 464 (10th Cir.1978) (evidence of defendant’s subsequent conduct admissible under Rule 404(b)

1 reports because they are relevant to Venetian's culpable state of mind, i.e. malice: "It is indeed
2 manifest that subsequent conduct may tend to throw light upon the immediate occurrence under
3 investigation, especially where mental attitudes are important, such as a conscious failure to observe
4 due care, and the like." *Hallman*, 196 S.C. at 402, 13 S.E.2d at 501. Thus, if the Court determines
5 punitive damages stand, Plaintiff may discover (1) subsequent incident reports, (1) evidence of other
6 subsequent conduct discussed in RFPs Nos. 7, 29, 23, 34, 25, 26 and 30, and (3) testimony from
7 Venetian's 30(b)(6) witness about subsequent incidents, subsequent measures taken to change the
8 coefficient of friction and subsequent slip testing.

9 The Nevada Supreme Court also "previously held that evidence of subsequent, similar
10 accidents involving the same condition may be relevant on the issues of causation and whether there
11 is a defective and dangerous condition." *Reingold v. Wet "N Wild Nevada, Inc.*, 113 Nev. 967, 969,
12 944 P.2d 800, 802 (1997) *citing Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 416, 470 P.2d 135, 140
13 (1970); *see also Jeep Corp. v. Murray*, 101 Nev. 640, 646, 708 P.2d 297, 301 (1985). In other
14 words, the Supreme Court ruled that subsequent accidents are not only discoverable, but that they
15 meet the even higher standard of admissibility a trial. Subsequent incident reports are thus
16 discoverable and admissible at trial to show malice, to prove causation and to prove the existence of
17 a dangerous condition. Thus, because subsequent incident reports are admissible at trial to prove
18 three separate elements of the charged torts, the Discovery Commissioner should grant Plaintiff's
19 motion to compel.

20 //

21 //

22
23
24 to show defendant's intent at time of alleged breach of fiduciary duty); *Lakin v. Senco Prods., Inc.*,
25 925 P.2d 107, 116 (Or. Ct. App. 1996) (affirming introduction of evidence relating to the defendant's
26 post-accident conduct); *Chart v. General Motors Corp.*, 258 N.W.2d 680, 683-84 (1977); *Hodges v.*
27 *S.C. Toof & Co.*, 833 S.W.2d 896, 902 (Tenn. 1992) (in assessing punitive damages, jurors must
28 consider "whether, once the misconduct became known to defendant, defendant took remedial action
or attempted to make amends by offering a prompt and fair settlement for actual harm caused").

D. The Court Should Allow Plaintiff to Examine Venetian's 30(b)(6) Witness on Measures Taken to Produce/Locate Security Incident Injury Falls because Defendant's Opposition Does Not Set Forth an Argument Against It

The Nevada Supreme Court held the "failure to respond to an argument... acts as a concession." *See Wong v. Sunrise Mountainview Hosp., Inc.*, No. 61375, 2014 WL 3764807, at *2 (Nev. July 29, 2014) citing *See Citizens for Responsibility & Ethics in Washington v. Cheney*, 593 F.Supp.2d 194, 229 (D.D.C.2009) (holding when plaintiff only addressed two requirements in his opposition to defendant's motion to dismiss the other three requirements waived as "failure to respond to an argument... acts as a concession.") EDCR 2.20 reflects this principal: a party opposing a motion submit "a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion and/or joinder should be denied." EDCR 2.20(e). EDCR 2.20(e) gives the district court authority to "to grant motions that are not properly opposed..." *Benjamin v. Frias Transportation Mgmt. Sys., Inc.*, 433 P.3d 1257 (Nev. 2019). The opposing party's failure "to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same." EDCR 2.20(e).

In *Benjamin*, the district court granted the defendant's motion to dismiss because the plaintiff did not properly oppose the arguments made in the motion. *Benjamin*, 433 P.3d 1257 (Nev. 2019). When the plaintiff failed to timely serve the defendant driver, the defendant cab company filed a motion to dismiss on behalf of the driver for improper service, and in turn, the cab company, because the claims against the cab company were based on vicarious liability. *Id.* The trial court granted the defendant's motion to dismiss because the plaintiff failed to "properly oppose" it. *Id.* The Nevada Supreme Court affirmed because the plaintiff "did not present any argument in his opposition that [one defendant] remained liable for [plaintiff's] injuries even if the claims against the [other defendant] were dismissed." *Id.* *See also King v. Carlidge*, 121 Nev. 926, 928, 124 P.3d 1161, 1162-63 (2005) (upholding the trial court's grant of defendant's motion for summary judgment because plaintiff's opposition failed "to include any evidentiary support," but rather contained "mere allegations and conclusory statements").

Here, similar to the plaintiff in *Benjamin*, Venetian does not “properly oppose” Plaintiff’s motion because Venetian does not address the issue of the 30(b)(6) deposition. (*See generally*, Defendant’s Opp.) Plaintiff’s motion emphasizes that she should be allowed to discuss the measures Venetian took to locate and produce incident reports because (1) Venetian has shown time and time again in 4 cases – *Sekera v. Venetian*, *Cohen v. Venetian*, *Smith v. Venetian* and *Boucher v. Venetian* – that cannot be trusted to fully and fairly disclose incident reports, and because (2) the rules allowing discovery sanctions would be rendered meaningless if the parties were not permitted to discover information related to violations to ensure compliance with the rules. Venetian’s opposition fails to even mention “30(b)(6)” let alone address these arguments. This failure is clearly not an oversight, as Venetian references the body of Plaintiff’s argument regarding Venetian’s 30(b)(6) witness and questions the “relevance” of Plaintiff’s exhibit referenced in that same argument. (*See* Defendant’s Opp. At 13:22-23.) (“Exhibit 15 to Plaintiffs motion, identified as Plaintiff’s Notice a/Motion and Motion for Terminating Sanctions, et al filed by Peter Goldstein, Esq., on February 13, 2019 in the Smith matter, was denied by the District Court in a hearing held on May 7, 2019. Therefore, the relevance of that motion referenced on page 17 of the motion to compel is unclear.”) Venetian’s, like the plaintiff in *Benjamin*, therefore did not argue why the Plaintiff cannot question on measures taken to locate and produce incident reports. Thus, this Court should rule the same as the *Benjamin* Court and approve Plaintiff’s 30(b)(6) parameters because Defendant’s failure to address the argument is an admission the motion is meritorious.

II. LIMITED OPPOSITION / RESPONSE TO DEFENDANTS’ MOTION TO COMPEL DOCUMENTS PROVIDED TO TOM JENNINGS’

On July 22, 2019 Defendant served its 16th supplement to its list of witnesses and production of documents for early case conference. (Defendant’s 16th Supp., attached as Exhibit “2.”) This supplement contained the communication from Plaintiff’s counsel to Plaintiff’s expert Tom Jennings (“Mr. Jennings”) regarding the 196 incidents which occurred in the Venetian. The supplement also contained a copy of the table summarizing the reports that Plaintiff provided to Mr. Jennings. These

documents make up all the documents sought in Defendant's counter motion to compel documents provided to Mr. Jennings, and this issue is therefore moot.

III. OPPOSITION TO DEFENDANTS' MOTION FOR A PROTECTIVE ORDER

A. Factual Background

On May 31, 2019 Plaintiff made the following requests for production of documents relevant to the instant motion:

REQUEST NO. 23:

True and correct copies of any and all reports, documents, memoranda, or other information describing or referring to slip testing performed on the marble floors at the Venetian Hotel and Casino by any Plaintiff, or the Venetian, from January 1, 2000 to date.

REQUEST NO. 24:

Any and all communications, including correspondence, emails, internal communication, or other memoranda which refers to the safety of marble floors located within the Venetian Hotel and Casino from January 1, 2000 to date.

REQUEST NO. 25:

Any and all transcripts, minutes, notes, emails, or correspondence which has as a subject matter, any meetings held by and between Venetian personnel, including management personnel, where the subject of the safety of the marble floors at the Venetian was discussed and evaluated from January 1, 2000 to date.

REQUEST NO. 26:

Any and all correspondence, emails, memoranda, internal office correspondence, or other documents directed to the Venetian from a Contractor, Subcontractor, Flooring Expert, or similar entity which discusses or refers to the safety of marble floors located within the Venetian Hotel and Casino from January 1, 2000 to date.

REQUEST NO. 27:

Any and all directives, correspondence, emails, postings, or other documentation from Venetian management to PAD personnel which addresses or refers to concerns about the safety of the marble floors located within the Venetian Hotel and Casino from January 1, 2000 to date.

(Defendant's Opp. at Exhibit "I.")

On July 17, 2019 Plaintiff made the following additional request for production:

REQUEST NO. 35:

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

1 occurring on marble floors within the subject VENETIAN CASINO RESORT from
2 the May 3, 1999 to the present.

3 (Plaintiff's Ninth Req. for Production of Documents, attached as Exhibit "3.")

4 Additionally relevant to this opposition is the testimony of Christiana Tonemah, a former
5 Venetian executive. Ms. Tonemah testified that Venetian initially did not have marble flooring:
6 "when we first opened, the first five years, everything was carpeted... everything but the grand
7 hallway." (Deposition of Christiana Tonemah, attached as Exhibit "4" at 25:9-15.) Mr. Galliher
8 confirmed that Ms. Tonemah was "talking specifically about the casino... the marble walkway" to
9 which Ms. Tonemah responded "Correct." (*Id.* at 25:16-18.) Ms. Tonemah further testified the
10 marble walkways in the casino were installed "During their refurbishing probably after we had been
11 open – probably the year after or the year of the Palazzo opening..." (*Id.* at 25:21-23.) The Palazzo
12 opened in January 2008. *See Howard Stutz, Officials Open Palazzo Casino, LAS VEGAS REVIEW*
13 *JOURNAL* (Jan. 1, 2008), <https://www.reviewjournal.com/business/officials-open-palazzo-casino/>.

14 **B. Legal Standard for a Motion for a Protective Order**

15 NRCP 26(c) governs protective orders in the context of information sought in discovery and
16 states, in relevant part:

17 A party or any person from whom discovery is sought may move for a protective
18 order in the court where the action is pending — or as an alternative on matters
19 relating to an out-of-state deposition, in the court for the judicial district where the
20 deposition will be taken. The motion must include a certification that the movant has
21 in good faith conferred or attempted to confer with other affected parties in an effort
22 to resolve the dispute without court action. The court may, for good cause, issue an
23 order to protect a party or person from annoyance, embarrassment, oppression, or
24 undue burden or expense, including one or more of the following:

25 ...
26 If a motion for a protective order is wholly or partially denied, the court may, on just
27 terms, order that any party or person provide or permit discovery... Rule 37(a)(5)
28 applies to the award of expenses.

NRCP 26(c).

29 The party seeking the protective order has the burden of persuasion under Rule 26. *Cipollone*
30 *v. Liggett Grp., Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986) (discussing the burdens under the
31 analogous FRCP 26(c)). To meet the burden of persuasion, "the party seeking the protective order

1 must show good cause by demonstrating a particular need for the protection sought.” *Beckman*
2 *Indus., Inc., v. Int’l. Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). Rule 26(c) requires more than
3 “broad allegations of harm, unsubstantiated by specific examples or articulated reasoning.” *Id.*; see
4 also *Cipollone*, 785 F.2d at 1121; *Lewis v. St. Luke’s Hosp. Ass’n*, 132 F.3d 33 (6th Cir. 1997);
5 *Springs v. Ally Fin. Inc.*, 684 F. App’x 336, 338 (4th Cir.), cert. denied, 138 S. Ct. 221, 199 L. Ed. 2d
6 119 (2017). Rather, “the seeking protection from disclosure must “allege specific prejudice or
7 harm.” *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir. 2011).
8 If the party proves such harm will result from disclosure of the discovery documents, then the Court
9 must “balance “the public and private interests to decide whether maintaining a protective order is
10 necessary.” *Id.* (quoting *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir.2002) (internal
11 quotations omitted). No longer can the time-honored cry of ‘fishing expedition’ serve to preclude a
12 party from inquiring into the facts underlying his opponent’s case. Mutual knowledge of all the
13 relevant facts gathered by both parties is essential to proper litigation. To that end, either party may
14 compel the other to disgorge whatever facts he has in his possession.” *Washoe County Board of*
15 *School Trustees v. Pirhala*, 84 Nev. 1, 6, 435 P.2d 756, 759 (1968).

16 **B. The Discovery Commissioner Should Deny Defendant’s Motion for a Protective**
17 **Order Because Venetian Has Not Shown Good Cause**

18 Defendant’s entire argument for a protective order is as follows:

19 Defendants have always objected to Plaintiff’s demand for subsequent incident
20 reports. Plaintiff’s latest request is overly broad in that is not sufficiently limited in
time, limited to the subject area, limited to factually similar facts, ect. Plaintiff simply
demands everything.

21 (Defendant’s Opp. at 27:24-28:2.)

22 Venetian’s cry that Plaintiff’s request for production is “overly broad in that is not
23 sufficiently limited in time, limited to the subject area, limited to facts, ect,” is exactly what the 3rd,
24 4th, 6th and 9th Circuits meant when they stated “broad allegations of harm, unsubstantiated by
25 specific examples or articulated reasoning.” Venetian’s argument does not explain how Plaintiff’s
26 request is not “limited to facts.” Plaintiff and this Honorable Court have no idea what “facts”
27 Venetian even refers to. Venetian’s argument does not explain what “limited to the subject area”
28

1 means. Venetian's argument does not describe why Plaintiff's request is "not sufficiently limited in
2 time." Finally, Plaintiff the Court can only guess at to what Venetian means by "ect." Venetian's two
3 sentence explanation as to why good cause exists is grossly inadequate to satisfy the burden of proof
4 as it is too broad, too vague and lacks specific examples and articulated reasoning. For this reason
5 alone, Venetian's motion for a protective order should be denied.

6 Venetian also improperly attempts to re-litigate an issue which the Court previously decided
7 in Plaintiff's objection to Venetian's initial motion protective order. Parties cannot "file immediate,
8 repetitive, serial motions until the right circumstances or the right judge allows them to achieve a
9 different result, based on essentially the same facts." *Mosley v. Figliuzzi*, 113 Nev. 51, 58, 930 P.2d
10 1110, 1114 (1997), *overruled on other grounds by Castle v. Simmons*, 120 Nev. 98, 86 P.3d 1042
11 (2004); *see also Nance v. Ferraro*, 418 P.3d 679, 684 (Nev. App. 2018) ("Parties may not file
12 repetitive, serial motions seeking to relitigate the same issues based on the same underlying facts.")
13 Venetian's initial motion for a protective order argued "Reports of prior slip and fall incidents,
14 which occurred on different circumstances, and on different dates, in different areas of the
15 property have no relevancy to the issue of whether Venetian had notice." (Defendant's Mot. for a
16 Protective Order dated Feb. 1, 2019 at 7:25-8:1.) In response to Plaintiff's objection to the Discovery
17 Commissioner's report and recommendations Venetian then: "Reports of prior slip and fall
18 incidents, which occurred on different circumstances, and on different dates, in different areas of
19 the property have no relevancy to the issue of whether Venetian had notice." (Defendant's Rspn. to
20 Plt's Obj. to the DCRR dated Apr. 23, 2019 at 17:13-15.) At the hearing on the objection, the Court
21 did not limit the scope of Plaintiff's request for production in relation to factually similar
22 circumstances (wet vs. dry floor slips and falls as Venetian requested) or only to the immediate area
23 of Plaintiff's fall (in the Grand Lux Café rotunda). As Venetian previously raised this argument
24 before the Discovery Commissioner and the Court, the proper place for it is a motion for
25 reconsideration, not a new motion for a protective order.

26 //

27 //

1 **C. The Discovery Commissioner Should Deny Venetian's Motion Because The**
2 **Information Sought Is Relevant to Venetian's Conscious Disregard of a Known**
3 **Hazard**

4 A plaintiff may recover punitive damages when the evidence demonstrates that the defendant
5 acted with "malice, express or implied." *Wyeth v. Rowatt*, 126 Nev. Adv. Rep. 44, 244 P.3d 765, 783
6 (2010) *quoting* NRS 42.005(1). "'Malice, express or implied,' means conduct which is intended to
7 injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or
8 safety of others." *Id. quoting* NRS 42.001(3) (emphasis added). "A defendant has a 'conscious
9 disregard' of a person's rights and safety when he or she knows of 'the probable harmful
10 consequence of a wrongful act and a willful and deliberate failure to act to avoid those
11 consequences.' " *Id. quoting* NRS 42.001(1).

12 Prior incident reports from January 1, 2000 to present are relevant to show Venetian
13 consciously disregarded the safety of its customers when it failed to increase the marble floors' slip
14 resistance floors after receiving notice of the hazard from hundreds of customers. Prior incident
15 reports dating back to 2000 show a pattern of repeated notice and failure on Venetian's part to take
16 any action.

17 Additionally, former Venetian executive Ms. Tonomah testified the Venetian ripped up the
18 carpet casino walkways and replaced them with marble around 2007 or 2008. In other words,
19 Venetian not only consciously disregarded the dangerous condition of their marble floors, but they
20 actually added to the hazard by significantly increasing the square footage marble in their casino. By
21 choosing to replace carpet with marble Venetian made all 20 years of incident reports relevant to
22 Plaintiff's punitive damages claim. Incident reports from before 2007 or 2008 are relevant to show
23 Venetian knew slips and falls occurred at a lower rate when carpet covered their casino floor.
24 Incident reports from after 2007 or 2008 are relevant to show the spike in incidents caused by
25 Venetian's decision to install additional marble flooring and corresponding increase. Based upon
26 this trend, Plaintiff anticipates she will find internal documents, memorandum or reports indicating
27 concern regarding the increased number of incidents and/or the safety of the new marble floors.
28 These documents are relevant to show the Venetian knew marble was dangerous but nonetheless

1 consciously choose to add more of it or they realized the marble was dangerous and failed to switch
2 it back to carpet.

3 Interestingly, Venetian anticipated this argument from Plaintiff: numerous witnesses recently
4 testified **marble is not more slippery than carpet:**

5 Q: When we talk about the marble floors when wet, versus the carpeted floors
6 when wet, which one is the most slippery?

7 A: It's the same, basically.

8 Q: All right. So your testimony is that a carpeted floor, when wet, would be as
9 slippery?

10 A: Yeah.

11 (Deposition of Kecia Powell, attached as Exhibit "5" at 19:21-20:10.)

12 Q: So as you testify here today, do you think that a marble floor when wet is any
13 more dangerous than any other surface when wet?

14 A: I would have to say no.

15 Q: All right. So the answer to my question is no, you don't believe the marble
16 floor is any more dangerous?

17 A: No.

18 (Deposition of Pete Krueger, attached as Exhibit "6" at 19:21-20:10.) Common sense
19 however, tells us otherwise: marble floors are more slippery and therefore more dangerous
20 than carpet.

21 In sum, because Venetian choose to replace a safe floor with a more dangerous marble floor,
22 the incident reports from 2000 to present are relevant and discoverable. Moreover, the other
23 documents in Plaintiff's requests for production 23-27 (i.e. are also discoverable because conscious
24 disregard has no time limit. Any document that indicates Venetian knew its marble floors were
25 hazardous and consciously decided to do nothing about – whether dated January 1, 2000 or January
26 1, 2016 – is admissible and relevant to prove Plaintiff's case for punitive damages. As all documents
27 Plaintiff requested in her requests for production nos. 23-27 and 35 are relevant to the case at hand,
28 the Discovery Commissioner should deny Venetian's motion for a protective order on the same.

//

//

D. The Discovery Commissioner Should Deny Venetian's Motion Because The Information Sought Is Relevant to the Jury's Determination of the Amount of Punitive Damages

Nevada follows the federal factors to determine whether a punitive damages award violates the due process clause. *Bongiovi v. Sullivan*, 122 Nev. 556, 582-83, 138 P.3d 433, 451-52 (2006). The three factors are: "(1) the degree of reprehensibility of the defendant's conduct, (2) the ratio of the punitive damage award to the actual harm inflicted on the plaintiff, and (3) how the punitive damages award compares to other civil or criminal penalties that could be imposed for comparable misconduct." *Id.* at 452. (internal quotations omitted).

"[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575, 116 S. Ct. 1589, 1599, 134 L. Ed. 2d 809 (1996). "This principle reflects the accepted view that some wrongs are more blameworthy than others." *Id.* For example, repeated misconduct is more reprehensible than a single action:

Certainly, evidence that a defendant has repeatedly engaged in prohibited conduct while knowing or suspecting that it was unlawful would provide relevant support for an argument that strong medicine is required to cure the defendant's disrespect for the law. Our holdings that a recidivist may be punished more severely than a first offender recognize that repeated misconduct is more reprehensible than an individual instance of malfeasance.

Id. At 576-77, 116 S. Ct. 1599-600.

More importantly, the Nevada civil jury instruction on punitive damages instructs jurors:

The law provides no fixed standards as to the amount of such punitive damages, but leaves the amount to the jury's sound discretion, exercised without passion or prejudice.

In arriving at any award of punitive damages, you are to consider the following:

1. **The reprehensibility of the conduct of the defendant;**
2. The amount of punitive damages which will have a deterrent effect on the defendant in the light of defendant's financial condition.

(NEV. J.I. 10.20 BAJI 14.71) To determine the reprehensibility of the defendant's conduct, we consider, among other factors, whether "**the conduct involved repeated actions or was an isolated incident.**" *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 409, 123 S. Ct. 1513, 1516,

1 155 L. Ed. 2d 585 (2003); *see also Wyeth v. Rowatt*, 126 Nev. 446, 475, 244 P.3d 765, 785 (2010)
2 (considering the defendant's "conduct involved repeated actions" when analyzing the
3 reprehensibility.)

4 Here, Plaintiff seeks evidence – incident reports and other documents related to the slip
5 resistance of the marble floors dating back to 2000 – that directly related to the "reprehensibility" of
6 Venetian's conduct. The more times individuals notified Venetian of the hazardous condition of
7 their marble floors, the more reprehensible Venetian's conduct and the more punitive damages
8 Nevada instructs the jury to award. Similarly, the more times Venetian acknowledged hazardous
9 condition of their marble floors and failed to remedy it, the more reprehensible Venetian's conduct
10 and the more punitive damages Nevada instructs the jury to award. As each prior incident shows
11 another time Venetian was notified of the issue, all prior incidents are relevant to the jury's
12 determination of the amount of punitive damages. Similarly, each unfavorable slip test report,
13 correspondence or other document acknowledging are relevant to the jury's determination of the
14 amount of punitive damages. Thus, because the incident reports and other documents from 2000 to
15 present go directly to the reprehensibility of Venetian's conduct, they are discoverable.

16 **IV. CONCLUSION**

17 Based on the foregoing, Plaintiff respectfully requests this Court (1) grant her motion to
18 compel testimony and documents; (2) deny Venetian's counter motion to compel documents from
19 Mr. Jennings as moot and (3) deny Venetian's counter motion for a protective order.

20 DATED this 25th day of July, 2019

21 THE GALLIHER LAW FIRM

22 
23

24 Keith E. Galliher, Jr., Esq.
25 Nevada Bar Number 220
26 Kathleen H. Gallagher, Esq.
27 Nevada Bar Number 15043
28 1850 E. Sahara Avenue, Ste. 107
Las Vegas, Nevada 89104
Attorney for Plaintiff

THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, Nevada 89104
702-735-0049 Fax: 702-735-0204

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 REPLY IN SUPPORT OF HER MOTION TO COMPEL TESTIMONY AND DOCUMENTS, OPPOSITION TO DEFENDANTS' MOTION TO COMPEL DOCUMENTS FROM JENNINGS AND OPPOSITION TO DEFENDANTS' MOTION FOR A PROTECTIVE ORDER** was served on the 25th day of July, 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

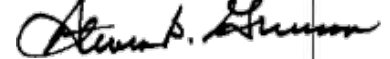
_____ Receipt of Copy on this _____ day of July 2019,

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 “Y”



DCRR

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sarah@naqvilaw.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ANGELICA BOUCHER, individually,

Plaintiff,

Case No.: A-18-773651-C
Dept. No.: X

vs.

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATION**

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.

HEARING DATE: June 14, 2019

HEARING TIME: 9:30 a.m.

Counsel for Plaintiff: SARAH M. BANDA, Esq. of NAQVI INJURY LAW

Counsel for Defendant: MICHAEL M. EDWARDS, Esq. of MESSNER REEVES LLP

I.

FINDINGS

The matter having come on for hearing on June 14, 2019 at 9:30 a.m., on *Plaintiff's First Motion to Compel Production of Documents, and Request for Sanctions on an Order Shortening Time ("Motion to Compel")*, filed on June 7, 2019, and *Defendant's Opposition and Countermotion for Protective Order*, filed on June 13, 2019, the Court having considered all pleadings on file associated therewith; there being good cause appearing, the Discovery Commissioner finds and recommends as follows:

THE COURT HEREBY FINDS that the JCCR was filed in this case on August 13, 2018.

THE COURT FURTHER FINDS Plaintiff propounded her first set of requests for production of documents on Defendant on October 18, 2018 and Defendant provided responses on December 4, 2018.

THE COURT FURTHER FINDS that Plaintiff served a letter on Defendant outlining the deficiencies in Defendant's Responses to Plaintiff's First Request for Production on December 10, 2018, which included but was not limited to a request for Defendant to produce the insurance policies.

THE COURT FURTHER FINDS that the Defendant did not supplement the responses thereafter.

THE COURT FURTHER FINDS that the Defendant's general statement that "[r]esponding Defendant does not have any documents responsive to this request at this time," is insufficient and leaves potential loopholes based upon the caveat "at this time."

THE COURT FURTHER FINDS that the Defendant must produce the applicable insurance policies *and declaration pages* (Request No. 2) under NRS 16.1(a)(1)(A)(v), NRCP 16.1(a)(1)(D), Vanguard

1 Piping v. Eight Jud. Dist. Ct., 129 Nev. 602, 309 P.3d 1017 (2013), and pursuant to the
2 Plaintiff's written discovery request.

3 THE COURT FURTHER FINDS that the claims file is discoverable, and must be
4 produced with a privilege log, if a privilege log is applicable (Request No. 1).

5 THE COURT FURTHER FINDS that the parties stipulated that the Defendant will
6 provide the prior six months' worth of record and documents related to any waxing, cleaning,
7 polishing or other maintenance of the walking surface. However, Plaintiff still seeks the
8 construction and repair documents, which are also discoverable (Request No. 7).

9 THE COURT FURTHER FINDS that any documents related to any warning provided to
10 Plaintiff regarding the subject condition are discoverable (Request No. 14).

11 THE COURT FURTHER FINDS that that parties have stipulated that Defendant will
12 provide documents related to changes to the walking surface, such as tile replacement. However,
13 changes made to the walking surface, such as subsequent remedial measures, and any changes to
14 the walking surface are discoverable (Request No. 15). Subsequent incident reports do not need
15 to be provided, *because liquid on a walkway is a transient condition.* (EJ)

16 THE COURT FURTHER FINDS that sub rosa video surveillance and research are
17 discoverable and must be produced (Request No. 16). *within 30 days of the*
18 *Plaintiff's deposition if it will be utilized at trial.*

19 THE COURT FURTHER FINDS that subsequent remedial measures are discoverable
20 (Requests No. 19 and 20).

21 THE COURT FURTHER FINDS that the individual employee files of any specifically
22 identified employee *who was responsible for maintenance of the location of the area*
23 *at issue, or inspection of the area,* (EJ)
24 on the day of the incident is discoverable. The remainder of the employee files are not
25 discoverable at this time (Request No. 22).

THE COURT FURTHER FINDS that the Defendant agreed to produce documents related to Team Member job performance, if any, that directly relate to the incident at issue. ^{training, policy and procedure} However, all job ~~performance~~ documents are discoverable (Request No. 23).

THE COURT FURTHER FINDS that the training materials and policies and procedures for the employees responsible for inspection the Walking Surface on the day of the incident at issue are discoverable (Request No. 24).

THE COURT FURTHER FINDS that the Plaintiff's request for "citations, warnings, reprimands, and/or code violations [Venetian] received concerning the Premises in the five years preceding the subject Incident through the present" is overbroad and should be limited to the flooring in the ^{subject} lobby only (Request No. 25).

THE COURT FURTHER FINDS that the Plaintiff's request for "documents and items evidencing any inspection, maintenance and/or cleaning performed on the Walking Surface..." should be limited to the flooring in the ^{subject} lobby only ^{and only for the 24 hours before and after the incident at issue.} (Request No. 29).

THE COURT FURTHER FINDS that Defendant filed a Countermotion requesting a protective order be issued regarding: [✓] Venetian incident reports stemming from unrelated incidents, team member personnel files, and construction or repairs within the Venetian.

II.

RECOMMENDATIONS

IT IS HEREBY RECOMMENDED that *Plaintiff's Motion to Compel* is GRANTED IN PART.

IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce the entire pre-litigation claims file, ^{subject to a privilege log.} with reference to bates number. This includes, but is not limited to, every note, email, and correspondence regarding the incident at issue. If there is no specific

claims file, Defendant must provide an explanation why a claims file does not exist. Defendant must produce a privilege log for any documents deemed privileged from the claims file (Request No. 1).

IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce any and all insurance policies and declarations pages, the policy amount of SIR, and whether the policy was self-depleting (Request No. 2).

IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce the prior six months' worth of records and documents related to any waxing, cleaning, polishing or other maintenance of the walking surface, ^{at issue in the subject lobby.} Defendant shall also produce the construction and repair documents from five years prior to the Incident to the present. The Defendant must clearly outline what it has, what it is giving, and what it is trying to obtain. If no such documentation exists, the Defendant must state that no such documentation exists (Request No. 7).

IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce evidence of any warnings to Plaintiff, such as photographs, signage, and statements. If no such documentation exists, the Defendant must state that no such documentation exists. Defendant must also state that a diligent inquiry was conducted and there were no documents located responsive to this request (Request No. 14).

IT IS HEREBY FURTHER RECOMMENDED that Defendant shall produce documents related to repairs, replacements, improvements, and/or changes to the walking surface, ^{in the subject lobby} including, but not limited to, tile replacement, from five years prior to the subject Incident to the present. If no such documentation exists, the Defendant must state that no such documentation exists (Request No. 15).

IT IS HEREBY FURTHER RECOMMENDED that sub rosa documents^{surveillance,} and information shall be produced within 30 days after the Plaintiff's deposition or it cannot be utilized at trial by the Defendant for any purpose. If sub rosa is conducted after the Plaintiff's deposition, said document and information must be produced within 30 days of receipt by counsel. If no such ^{ED} documentation exists, the Defendant must state that no such documentation exists (Request No. 16).

IT IS HEREBY FURTHER RECOMMENDED that any documents that any party obtains that are relevant and can be used for impeachment, including public information, must be produced under NRCP 16.1, ^{unless subject to privilege and then a privilege log must be submitted. ED}

IT IS HEREBY FURTHER RECOMMENDED that Defendant must produce any and all documents regarding action taken following the subject Incident to render the Walking Surface ^{ED} in a safer condition and/or any changes made to the Walking surface since the Incident, including subsequent remedial measures. If no such documentation exists, the Defendant must state that no such documentation exists. (Requests No. 19 and 20).

IT IS HEREBY FURTHER RECOMMENDED that the individual employee files are ^{who had the} PROTECTED WITHOUT PREJUDICE until he/she is identified as an employee with ^{responsibility to maintain or inspect ED} knowledge of or involvement in the incident or inspection of the area on the day of the incident ^{at issue.} (Request No. 22).

IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce documents related to Team Member job performance of any specifically identified employee with knowledge of or involvement in the incident or inspection of the area on the day of the incident (Request No. 23).

IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce maintenance and for inspection of training materials and policies and procedures for the employees responsible for inspection of the Walking Surface on the day of the incident at issue (Request No. 24).

IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce citations, warnings, reprimands, and/or code violations Defendant received concerning the subject lobby flooring in the Premises in the five years preceding the subject Incident through the present. If no such documentation exists, the Defendant must state that no such documentation exists (Request No. 25).

IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce documents and items evidencing any inspection, maintenance and/or cleaning performed on the Walking Surface in the subject lobby during the 24-hour period prior to the Incident through the 24-hour period after the subject Incident including but not limited to, any maintenance logs (Request No. 29).

IT IS HEREBY FURTHER RECOMMENDED that Plaintiff's Request for Sanctions is DENIED.

IT IS HEREBY FURTHER RECOMMENDED that *Defendant's Countermotion for Protective Order* is GRANTED WITHOUT PREJUDICE as to the personnel files as outlined above and DENIED on the issues of construction/repairs and incident reports. On the issue of incident reports stemming from unrelated incidents, Defendant must hold an EDCR 2.34 meeting and file a separate Motion as incident reports were not addressed in Plaintiff's underlying Motion to Compel.

///



1 IT IS HEREBY FURTHER RECOMMENDED that a status check hearing is set for July
2 25, 2019 in chambers.

3 The Discovery Commissioner, met with counsel for the parties, having discussed the
4 issues noted above and having reviewed any materials proposed in support thereof, hereby
5 submits the above recommendations.

6 DATED this 5th day of July, 2019.

7 
8

9 DISCOVERY COMMISSIONER

10 Respectfully Submitted by:

Approved as to Form and Content by:

11 NAQVI INJURY LAW

MESSNER REEVES LLP

12 
13

refused to sign
14

14 FARHAN R. NAQVI, ESQ.
15 Nevada Bar No. 8589
16 SARAH M. BANDA, ESQ.
17 Nevada Bar No. 11909
18 9500 West Flamingo Road, Suite 104
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20 *Attorneys for Plaintiff*

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NOTICE

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

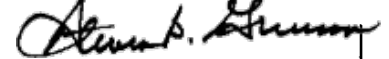
Objection time will expire on July 23 2019.

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____ 2019:

✓ Electronically filed and served counsel on July 9, 2019, Pursuant to N.E.F.C.R. Rule 9.

By: 
COMMISSIONER DESIGNEE



1 **RPLY**

2 Michael A. Royal, Esq.

3 Nevada Bar No. 4370

4 Gregory A. Miles, Esq.

5 Nevada Bar No. 4336

6 **ROYAL & MILES LLP**

7 1522 West Warm Springs Road

8 Henderson Nevada 89014

9 Tel: (702) 471-6777

10 Fax: (702) 531-6777

11 Email: mroyal@royalmilesllp.com

12 *Attorneys for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

18 Plaintiff,

19 v.

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

27 Defendants.

Before the Discovery Commissioner

28 **REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' COUNTERMOTION TO
STRIKE FALSE ACCUSATIONS LEVIED BY PLAINTIFF IN "I. INTRODUCTION"
AND "LEGAL ARGUMENT" SECTION "III.D." WITH APPROPRIATE SANCTIONS
AND OPPOSITION TO PLAINTIFF'S COUNTERMOTION FOR RULE 11 SANCTIONS**

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 REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS'
COUNTERMOTION TO STRIKE FALSE ACCUSATIONS LEVIED BY PLAINTIFF IN "I.
INTRODUCTION" AND "LEGAL ARGUMENT" SECTION "III.D." WITH APPROPRIATE

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

1 SANCTIONS AND OPPOSITION TO PLAINTIFF'S COUNTERMOTION FOR RULE 11
2 SANCTIONS.

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

6 DATED this 11 day of September, 2019.

8 ROYAL & MILES LLP

9 By 

10 Michael A. Royal, Esq.
11 Nevada Bar No. 4370
12 1522 W. Warm Springs Rd.
13 Henderson, NV 89014
14 Attorney for Defendants
15 VENETIAN CASINO RESORT, LLC and
16 LAS VEGAS SANDS, LLC

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

18 STATE OF NEVADA)
19) ss.
20 COUNTY OF CLARK)

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

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

25 2. This action arises out of an alleged incident involving a floor located within a common
26 area of the Venetian casino on November 4, 2016, when Plaintiff claims to have slipped and fallen due
27 to a foreign substance on the marble floor located in the Grand Lux rotunda area of the property. The
28 accident facts are disputed. The incident is captured on surveillance, which has previously been
submitted to the Court for review.

1 3. By Plaintiff's own description, she slipped and fell due to a temporary transitory
2 condition.

3 4. A true and correct copy of the Complaint, filed April 12, 2018, is attached hereto as
4 Exhibit EE. On page 2 of the Complaint, beginning at line 25, it reads as follows: *On or about*
5 *November 4, 2016 at approximately 1:00 pm, Defendants negligently and carelessly permitted a*
6 *pedestrian walkway to be unreasonably dangerous in that they allowed liquid on the floor causing the*
7 *Plaintiff to slip and fall."*
8

9 5. A true and correct copy of the First Amended Complaint, filed June 28, 2019, is
10 attached hereto as Exhibit FF. On page 3 of the First Amended Complaint, beginning at line 4, it reads
11 as follows: *On or about November 4, 2016 at approximately 1:00 pm, Defendants negligently and*
12 *carelessly permitted a pedestrian walkway to be unreasonably dangerous in that they allowed liquid*
13 *on the floor causing the Plaintiff to slip and fall."*
14

15 6. Defendants filed a motion to strike Plaintiff's false allegations in the Introduction of
16 her motion and within Section II.D under the Legal Argument because it was all untrue, Plaintiff had
17 acknowledged it to be untrue; yet, she again included these false accusations asserting Defendants had
18 failed to produce at least sixty-five (65) prior incident reports as a means of bolstering her argument
19 in the pending motion to compel. Indeed, Plaintiff asserted that because of this kind of conduct,
20 Defendants "*simply cannot be trusted.*" (See Motion to Compel at 12, ln 16-18.) Plaintiff even
21 accused Defendants of having "*engaged in a deliberate pattern of evasive discovery abuse.*" (See *id.*
22 at 12, ln 26-27.)
23

24 7. I am not counsel of record in the matters of *Smith v. Venetian*, *Boucher v. Venetian* or
25 *Cohen v. Venetian*, which Plaintiff's counsel frequently references in his filings with the Court.
26 Plaintiff's reference to these cases and what was reportedly "*left out*" by Venetian, referenced on page
27 10 of the Opposition, is entirely without context or supporting documents and has nothing to do with
28

1 the present litigation. The only thing remotely relevant about these other matters repeatedly referenced
2 by Plaintiff is that Plaintiff's counsel, Keith Galliher, Esq., shared prior incident reports with attorneys
3 in these matters after I filed a motion for protective order on February 1, 2019, which led to the
4 attorneys in these other cases using the documents (which were deemed privileged by the Discovery
5 Commissioner in the DCRR of April 4, 2019) in their respective matters, including filing all such
6 information with the court.
7

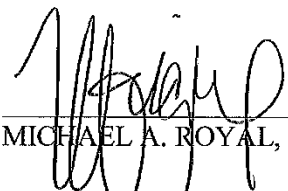
8 8. On July 9, 2019, Defendants produced documents related to two (2) additional prior
9 incident reports. Those are the only documents related to prior incident reports following the filing
10 of her initial motion to compel on July 1, 2019, which was ultimately rejected by the Court based on
11 Plaintiff's failure to comply with EDCR 2.34.

12 9. This reply and opposition is not brought in bad faith, or for any improper purpose.

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

EXHIBIT	TITLE
EE	Complaint (filed April 12, 2018)
FF	First Amended Complaint (filed June 28, 2019)

16 Executed on 11 day of September, 2019.

17
18
19
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MICHAEL A. ROYAL, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

A. **Reply to Opposition to Countermotion to Strike False Statements in the Motion to Compel and For Appropriate Sanctions**

This litigation arises from a slip and fall due to a temporary transitory condition. (See Exhibit EE, *Complaint*, filed April 12, 2018; Exhibit FF, *First Amended Complaint*, filed June 28, 2019). Defendants have responded to Plaintiff's request for prior incident reports for the period of time from

1 November 4, 2013 to November 4, 2016. A total of sixty-six (66) prior incident reports over that three
2 year period have been produced.

3 Plaintiff filed a motion to compel on July 1, 2019. (See Exhibit K.) In that motion, Plaintiff
4 claimed that Defendants had withheld forty-six (46) prior incident reports from November 4, 2013 to
5 November 4, 2016 (suggesting that there were a total of 102 during that same period of time). (See
6 *id.* at 5, ln 12-14; 13, ln 3-19.) Plaintiff then stated: “*In other words, Venetian has disclosed only 58%*
7 *of the requested incident reports*” and suggested that Defendants were “*deliberately hiding evidence.*”
8 (See *id.* at 13, ln 8-12.) Defendants filed an Opposition clearly addressing this issue and debunking
9 Plaintiff’s false claim related to the alleged failure to disclose prior incident reports. (See Exhibit L
10 at 19-22.) Plaintiff then filed a Reply on July 25, 2019 in which she acknowledged her error. (See
11 Exhibit M at 4, ln 5-10.) However, in so doing, Plaintiff suggested that Defendants had taken some
12 kind of action responsive to her false claim that Defendants were withholding forty-six (46) to sixty-
13 five (65) previously undisclosed prior incident reports, which is simply untrue.
14
15

16 The hearing on Plaintiff’s motion to compel was taken off calendar by the Court at the
17 conclusion of all briefing based on counsel’s failure to comply with EDCR 2.34. A second motion to
18 compel was then filed by Plaintiff on August 5, 2019. In that motion, Plaintiff once again alleged that
19 Defendants had withheld prior incident reports - only this time instead of forty-six (46) withheld
20 reports, Plaintiff actually increased the number to sixty-five (65). (See Motion to Compel at 5, ln 18-
21 23.) In the pending motion to compel, Plaintiff has included all the same accusatory language designed
22 to malign Defendants and inflame the court to action in her favor. For example, Plaintiff writes that
23 Defendants “*cannot be trusted*”, that Defendants have been “*repeatedly caught selectively disclosing*
24 *incident reports*”, and that Defendants have “*engaged in a deliberate pattern of evasive discovery*
25 *abuse.*” (See *id.* at 12, ln 16-27.)
26
27
28

1 In the Reply to Defendants' countermotion to strike and for sanctions, Plaintiff relates that her
2 counsel inadvertently left in a reference to the sixty-five (65) *undisclosed* reports from the July 1, 2019
3 motion. (See Plaintiff's Reply/Opposition to Countermotion at 20, ln 15-16.) Further, Plaintiff used
4 that false information to malign Defendants in an effort to increase her chances of success before the
5 Court by vilifying Defendants.

6
7 Defendants once again are in the position of unnecessarily having to respond to false claims
8 and accusations by Plaintiff. If there are any recurring patterns in this litigation, it is that Plaintiff uses
9 misinformation and gross hyperbole in order to gain favor with the Court. Defendants should not be
10 required to dissect every page of every motion filed by Plaintiff to highlight multiple inaccuracies -
11 especially when they are known to be inaccurate.

12
13 In filing the countermotion to strike Plaintiff's false assertions in the motion to compel,
14 Defendants referenced counsel's obligation under NRCP 11(b), noting counsel's obligation to present
15 the Court with accurate information. (See Opposition/Countermotion at 29, ln 24.) Reference was
16 made to NRCP 11(b) to highlight issues surrounding repeated misstatements of fact by Plaintiff's
17 counsel in this matter. It is a pattern. Therefore, Plaintiff's excuse that once again including the false
18 statement of sixty-five (65) undisclosed prior incident was inadvertent rings hollow. Further,
19 Plaintiff's counsel has not presented the Court with any explanation as to why Plaintiff's *apology* in
20 the July 25, 2019 document included yet another misstatement of fact. What that self-serving false
21 commentary somehow *inadvertent* as well?

22
23 Defendants have not moved expressly for sanctions under NRCP 11 in the countermotion. The
24 mere reference to the duty of Plaintiff's counsel to address the Court in a truthful, forthright matter
25 under NRCP 11(b) does not transform it into such a motion. Defendants have, frankly, wasted an
26 enormous amount of time and resources trying to refute many of Plaintiff's false accusations. For
27 Plaintiff to include the same false accusations again related to *undisclosed* reports, regardless of
28

1 whether it was *inadvertent*, is simply inexcusable as it is being used to sway the Court by presenting
2 Defendants in a bad light. Most certainly, the Court has discretion to consider Defendants' request not
3 only to strike the false allegations, but to impose appropriate sanctions.

4 Plaintiff has not opposed Defendants' motion to strike. Accordingly, the countermotion to
5 strike should be granted. The only remaining issue is whether any sanctions should issue, which is at
6 the court's discretion.
7

8 **B. Opposition to Countermotion for Rule 11 Sanctions**

9 Plaintiff's countermotion for sanctions under NRCP 11 is based on false premise that
10 Defendants filed a motion for sanctions under NRCP 11. The did not. Defendants merely responded
11 to Plaintiff's ongoing pattern of misstating facts and evidence to the court while highlighting the duty
12 of Plaintiff's counsel to present truthfully under NRCP 11(b). Plaintiff's countermotion, based on the
13 false premise that Defendants improperly filed a motion for sanctions under NRCP 11, is wholly
14 without merit and should be denied.
15

16 **IV.**

17 **CONCLUSION**

18 Based on the foregoing, Defendants hereby respectfully submit that Plaintiff's Motion to
19 Compel Production of Testimony and Documents must be denied in its entirety. Defendants further
20 hereby move by way of countermotion for an order finding that Plaintiff has received all incident
21

22 ///

23 ///

24 ///

25 ///

1 reports to which she is entitled in the course of discovery and for appropriate monetary sanctions for
2 forcing Defendants to respond to Plaintiff's frivolous claims.

3 DATED this 11 day of September, 2019.

4 **ROYAL & MILES LLP**

5
6 By _____

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11 day of September, 2019, and pursuant to NRCP 5(b),

I caused a true and correct copy of the foregoing **REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' COUNTERMOTION TO STRIKE FALSE ACCUSATIONS LEVIED BY PLAINTIFF IN "I. INTRODUCTION" AND "LEGAL ARGUMENT" SECTION "IIL.D." WITH APPROPRIATE SANCTIONS AND OPPOSITION TO PLAINTIFF'S COUNTERMOTION FOR RULE 11 SANCTIONS** 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
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89104
Attorneys for Plaintiff
Facsimile: 702-735-0204

E-Service: kgalliher@galliherlawfirm.com
dmooney@galliherlawfirm.com
gramos@galliherlawfirm.com
sray@galliherlawfirm.com

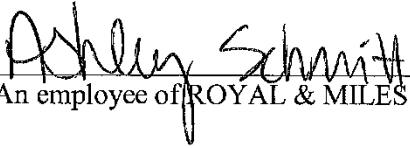

An employee of ROYAL & MILES LLP

EXHIBIT “EE”

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,)	CASE NO.:	A-18-772761-C
)	DEPT. NO.:	Department 24
Plaintiff,)		
)		
v.)		
)		
VENTIAN 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.)		

SUMMONS

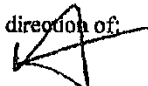
NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint:

Venetian Casino Resort, LLC d/b/a The Venetian Las Vegas through its resident agent CSC Services of Nevada, Inc. 2215-B Renaissance Drive, Las Vegas, Nevada

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:
 - a. File with the clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.
 - b. Serve a copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.


Issued at direction of:


Keith E. Galliher, Jr., Esq.
Attorney for Plaintiff
Nevada Bar Number 220
1850 E. Sahara Ave. Suite 107
Las Vegas, Nevada 89104

CLERK OF COURT

STEVEN D. GRIERSON
CLERK OF THE COURT

By:


DEPUTY CLERK Date
County Courthouse
200 Lewis Avenue Joshua Raak
Las Vegas, Nevada 89155

Steven D. Grierson

1 **COMP**
2 **THE GALLIHER LAW FIRM**
3 Keith E. Galliher, Jr., Esq.
4 Nevada Bar Number 220
5 1850 E. Sahara Avenue, Suite 107
6 Las Vegas, Nevada 89104
7 Tele: 702-735-0049
8 Fax: 702-735-0204
9 kgalliher@galliherlawfirm.com

10 Attorneys for Plaintiff

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 JOYCE SEKERA, an Individual,
14
15 Plaintiff,

CASE NO.: A-18-772761-C
DEPT. NO.: Department 24

16 v.

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

25 Defendants.

26 **COMPLAINT**

27 Plaintiff, by and through her undersigned attorneys, complains of Defendants as follows:

28 **GENERAL ALLEGATIONS**

I

Plaintiff is a resident of the State of Nevada. The incident which gives rise to this cause of action occurred within the State of Nevada.

II

Defendants, VENETIAN CASINO RESORT, LLC d/b/a THE VENETIAN LAS VEGAS (hereinafter VENETIAN), LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS (hereinafter VENETIAN), are, upon information and belief, Nevada Limited Liability Companies duly licensed and doing business within the State of Nevada.

III

1. The true names of DOES I through V, their citizenship and capacities, whether individual, corporate, associates, partnership or otherwise, are unknown to Plaintiff who therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes, and therefore alleges, that each of the Defendants, designated as DOES I through V, are or may be, legally responsible for the events referred to in this action, and caused damages to the Plaintiff, as herein alleged, and Plaintiff will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations.

2. DOES I through V are employers of Defendants who may be liable for Defendants negligence pursuant to NRS 41.130, which states:

Whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury shall be liable to the person injured for damages; and where the person causing such injury is employed by another person or corporation responsible for his conduct, such person or corporation so responsible shall be liable to the person injured for damages.

IV

On or about November 4, 2016 at approximately 1:00 p.m. Defendants negligently and carelessly permitted a pedestrian walkway to be unreasonably dangerous in that they allowed liquid on the floor causing the Plaintiff to slip and fall. Defendant had actual and/or constructive notice of

1 the condition which caused the fall. Pursuant to the mode of operation doctrine Defendant was on
2 continuous notice of the presence of liquid on its floors.

3
4 **V**

5 At the aforementioned place and time, Plaintiff was walking through the VENETIAN when
6 her foot came into contact with a liquid substance on the floor causing her to slip and fall. The
7 liquid on the floor coupled with the composition of the floor, rendered the area dangerous for use as
8 a passageway for the Plaintiff and for other patrons of the VENETIAN.

9 **VI**

10 The Defendant knew or should have known that liquid located in an area of the fall was
11 dangerous and in the exercise of ordinary care would have had reasonable opportunity to remedy the
12 situation prior to the happening of the fall herein alleged. In spite of Defendants actual, constructive
13 and/or continuous notice of the presence of the liquid, the Defendant failed to take appropriate
14 precautions to prevent injury to Plaintiff and/or guests and/or patrons.

15 **FIRST CLAIM FOR RELIEF**

16 **(Negligence)**

17 **I**

18 Plaintiff repeats and realleges the allegations contained in Paragraphs I through VI of her
19 General Allegations as though fully set forth herein.
20

21 **II**

22 As a direct and proximate result of the negligence of Defendant and its yet unknown
23 employee and/or employees, Plaintiff sustained personal injuries to her head, neck, back, arms and
24 legs and has suffered pain and discomfort all to her damage in a sum in excess of FIFTEEN
25 THOUSAND DOLLARS (\$15,000).
26

THE GALLIHER LAW FIRM
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Las Vegas, Nevada 89104
702-735-0049 Fax: 702-735-0204

III

Said injuries have resulted in medical treatment all to Plaintiff's damage in a sum in excess of FIFTEEN THOUSAND DOLLARS (\$15,000).

IV

Plaintiff has been compelled to retain the services of an attorney to prosecute this action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs of suit incurred herein.

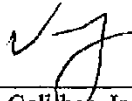
WHEREFORE, Plaintiff prays for judgment in her favor and against Defendant as follows:

FIRST CLAIM FOR RELIEF

1. General damages in a sum in excess of \$15,000;
2. Special damages in a sum in excess of \$15,000;
3. Attorney's fees and costs of suit incurred herein; and,
4. For such other and further relief as the Court may deem just and proper on the premises.

DATED this 19th day of March, 2018

THE GALLIHER LAW FIRM




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

EXHIBIT “FF”

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1 THE GALLIHER LAW FIRM
2 Keith E. Galliher, Jr., Esq.
3 Nevada Bar No. 220
4 Jeffrey L. Galliher, Esq.
5 Nevada Bar No. 8078
6 George J. Kunz, Esq.
7 Nevada Bar No. 12245
8 Kathleen H. Gallagher, Esq.
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14 kgalliher@galliherlawfirm.com
15 jgalliher@galliherlawfirm.com
16 jkunz@lvlawguy.com
17 kgallagher@galliherlawfirm.com
18 Attorneys for Plaintiff

Electronically Filed
6/28/2019 9:48 AM
Steven D. Grierson
CLERK OF THE COURT


DISTRICT COURT
CLARK COUNTY, NEVADA

16 JOYCE SEKERA, an Individual,
17
18 Plaintiff,
19
20 v.
21
22 VENETIAN CASINO RESORT, LLC,
23 d/b/a THE VENETIAN LAS VEGAS, a
24 Nevada Limited Liability Company; LAS
25 VEGAS SANDS, LLC d/b/a THE
26 VENETIAN LAS VEGAS, a Nevada
27 Limited Liability Company; YET
28 UNKNOWN EMPLOYEE; DOES I
through X, inclusive,

Defendants.

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

FIRST AMENDED COMPLAINT

Plaintiff, by and through her undersigned attorneys, complains of Defendants as follows:

I

II

III

2

1 the person causing such injury is employed by another person or corporation responsible for his
2 conduct, such person or corporation so responsible shall be liable to the person injured for damages.

3
4 IV

5 On or about November 4, 2016 at approximately 1:00 p.m. Defendants negligently and
6 carelessly permitted a pedestrian walkway to be unreasonably dangerous in that they allowed liquid
7 on the floor causing the Plaintiff to slip and fall. Defendant had actual and/or constructive notice of
8 the condition which caused the fall. Pursuant to the mode of operation doctrine Defendant was on
9 continuous notice of the presence of liquid on its floors.

10 V

11 At the aforementioned place and time, Plaintiff was walking through the VENETIAN when
12 her foot came into contact with a liquid substance on the floor causing her to slip and fall. The liquid
13 on the floor coupled with the composition of the floor, rendered the area dangerous for use as a
14 passageway for the Plaintiff and for other patrons of the VENETIAN.

15 VI

16 The Defendant knew or should have known that liquid located in an area of the fall was
17 dangerous and in the exercise of ordinary care would have had reasonable opportunity to remedy the
18 situation prior to the happening of the fall herein alleged. In spite of Defendants actual, constructive
19 and/or continuous notice of the presence of the liquid, the Defendant failed to take appropriate
20 precautions to prevent injury to Plaintiff and/or guests and/or patrons.

21 VII

22 The Defendant knew that its marble floors caused unreasonable amount of injury slip and
23 falls and thus were dangerous to pedestrians, and in the existence of ordinary care, would have had
24 opportunity to remedy the situation prior to Plaintiff's fall.

VIII

In the three years prior to Plaintiff's fall there were at least 73 injury slip and falls on the marble floors in Venetian. In spite of Defendant's actual, constructive, and/or continuous notice their marble floors were significantly more slippery than is safe for pedestrians, the Defendant failed to take any appropriate precautions to prevent injury to Plaintiff and other guests.

FIRST CLAIM FOR RELIEF

(Negligence)

I

Plaintiff repeats and realleges the allegations contained in Paragraphs I through VI of her General Allegations as though fully set forth herein.

II

As a direct and proximate result of the negligence of Defendant and its yet unknown employee and/or employees, Plaintiff sustained personal injuries to her head, neck, back, arms and legs and has suffered pain and discomfort all to her damage in a sum in excess of FIFTEEN THOUSAND DOLLARS (\$15,000).

III

Upon information and belief, Defendant had actual or constructive notice of the hazard posed by their marble floors. Defendant knew that the unsafe condition posed an unreasonable hazard or slip and fall risk to the general public, invitees, patrons and business invitees. Defendant's failure to remedy the situation was knowing, wanton, willful, malicious and/or done with conscious disregard for the safety of Plaintiff and of the public. Defendant's outrageous and unconscionable conduct warrants an award of punitive damages pursuant to NRS 42.005.

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Las Vegas, Nevada 89104
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IV

Said injuries have resulted in medical treatment all to Plaintiff's damage in a sum in excess of FIFTEEN THOUSAND DOLLARS (\$15,000).

V

Plaintiff has been compelled to retain the services of an attorney to prosecute this action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs of suit incurred herein.

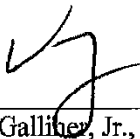
WHEREFORE, Plaintiff prays for judgment in her favor and against Defendant as follows:

FIRST CLAIM FOR RELIEF

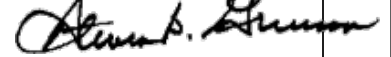
1. General damages in a sum in excess of \$15,000;
2. Special damages in a sum in excess of \$15,000;
3. Punitive damages;
4. Attorney's fees and costs of suit incurred herein; and,
5. For such other and further relief as the Court may deem just and proper on the premises.

DATED this 27th day of June, 2019

THE GALLIHER LAW FIRM



Keith E. Gallier, Jr., Esq.
Nevada Bar Number 220
1850 E. Sahara Avenue, Ste. 107
Las Vegas, Nevada 89104
Attorney for Plaintiff



1 THE GALLIHER LAW FIRM
2 Keith E. Galliher, Jr., Esq.
3 Nevada Bar No. 220
4 Jeffrey L. Galliher, Esq.
5 Nevada Bar No. 8078
6 George J. Kunz, Esq.
7 Nevada Bar No. 12245
8 Kathleen H. Gallagher, Esq.
9 Nevada Bar No. 15043
10 1850 East Sahara Avenue, Suite 107
11 Las Vegas, Nevada 89104
12 Telephone: (702) 735-0049
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14 kgalliher@galliherlawfirm.com
15 jgalliher@galliherlawfirm.com
16 gkunz@lvlawguy.com
17 kgallagher@galliherlawfirm.com
18 Attorneys for Plaintiff

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

16 JOYCE SEKERA, an Individual,
17 Plaintiff,

18 v.

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

25 Defendants.

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

**PLAINTIFF'S REPLY IN SUPPORT OF
COUNTERMOTION FOR RULE 11
SANCTIONS**

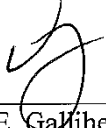
27 //

1 Plaintiff hereby submits her reply in support of countermotion for Rule 11 sanctions.

2 This reply is based upon and supported by the following memorandum of points and
3 authorities, the pleadings and papers on file, the exhibits attached hereto, and any argument that the
4 Court may allow at the time of hearing.

5 DATED this 12th day of September, 2019

6 THE GALLIHER LAW FIRM

7
8 
9 Keith E. Galliher, 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

16 **MEMORANDUM AND POINTS OF AUTHORITIES**

17 **I. LEGAL ARGUMENT**

18 Under EDCR 2.20 motions must contain a memorandum of points and authorities including
19 citations to statutes, rules, or case authority and argument regarding the facts of the case. *See* EDCR
20 2.20(c), EDCR 2.20(i). The Nevada Rule of Civil Procedure allow a party to move for sanctions
21 under two different rules: NRCP 11 and NRCP 37 (discovery sanctions). Per EDCR Defendants
22 were required to cite some sort of authority for their Counter-motion. Because Defendants
23 Counter-motion was for "sanctions" they necessarily had to rely upon NRCP 11 or NRCP 37.
24 Defendants complained of conduct relates to alleged false reports, misrepresentations and lies. The
25 complained of conduct is not sanctionable under NRCP 37 and Defendants' Counter-motion thus
26 must be brought under NRCP 11. This is confirmed by the fact that the only reference to any statute,
27 rule or case authority in Defendants' six (6) page Counter-motion the is to NRCP 11. As such
28 Defendants' Counter-motion is necessarily a Rule 11 counter-motion. Because Defendants improperly
brought a Rule 11 Counter-motion without complying with the safe harbor or separate motion
provisions Defendants' Counter-motion necessarily violates Rule 11.

THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, Nevada 89104
702-735-0049 Fax: 702-735-0204

1 **II. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests this Court grant her Countermotion for
3 Rule 11 Sanctions.

4 DATED this 12th day of September, 2019

THE GALLIHER LAW FIRM

5
6
7 

8 Keith E. Galliher, Jr., Esq.
9 Nevada Bar Number 220
10 Kathleen H. Gallagher, Esq.
11 Nevada Bar Number 15043
12 1850 E. Sahara Avenue, Ste. 107
13 Las Vegas, Nevada 89104
14 *Attorney for Plaintiff*
15
16
17
18
19
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THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, Nevada 89104
702-735-0049 Fax: 702-735-0204

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 REPLY IN SUPPORT OF HER COUNTERMOTION FOR RULE 11 SANCTIONS** was served on the 12 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

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA,

Plaintiff(s),

VS.

VENETIAN CASINO RESORT
LLC,

Defendant(s).

Case No. A-18-772761-C

DEPT. XXV

BEFORE THE HONORABLE ERIN TRUMAN,
DISCOVERY COMMISSIONER

WEDNESDAY, SEPTEMBER 18, 2019

**TRANSCRIPT OF PROCEEDINGS RE:
ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiff(s): KEITH E. GALLIHER, JR., ESQ.

For the Defendant(s): MICHAEL A. ROYAL, ESQ.

RECORDED BY: TRISHA GARCIA, COURT RECORDER

1 **LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 18, 2019**

2 [Proceeding commenced at 10:32 a.m.]

3
4 DISCOVERY COMMISSIONER: Sekera versus Venetian.

5 MR. GALLIHER: Good morning, Commissioner. Keith
6 Galliher on behalf of the plaintiff.

7 DISCOVERY COMMISSIONER: Good morning.

8 MR. ROYAL: Mike Royal on behalf of Defendants, Your
9 Honor.

10 DISCOVERY COMMISSIONER: All right. We have
11 Plaintiffs' Motion to Compel Testimony and Documents. The
12 Countermotion to Strike False Accusations levied by Plaintiff is off
13 calendar, as it does not relate to the motion under EDCR 2.20(f). So
14 I'm not going to consider the countermotion today.

15 So we've got Plaintiffs' Motion to Compel Testimony and
16 Defendants' Motion for Protective Order. Where do you guys want
17 to start?

18 MR. ROYAL: I'd like to start with the protective order,
19 since we filed it first.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. ROYAL: I mean, I --

22 MR. GALLIHER: Actually, I don't care. If he wants to start,
23 it's fine with me.

24 DISCOVERY COMMISSIONER: All right.

25 MR. ROYAL: We're both going to, you know, get our --

1 DISCOVERY COMMISSIONER: We're going to get to all of
2 it, so --

3 MR. GALLIHER: We'll do what we do.

4 DISCOVERY COMMISSIONER: Yeah, so -- and maybe it
5 would be helpful for me to start by saying Judge Delaney has
6 already made specific rulings in this case that I intend to follow.
7 Obviously, they were inconsistent with the rulings that I made. But
8 is -- as she is the trial judge, her rulings are, for now, the law of the
9 case, and so we're going to comply with what she said.

10 So with regard to Defendants' Motion for Protective
11 Order, as to Plaintiffs' Request for Production, I don't -- of the
12 incident reports from May 1999 to the present, I am -- with that said,
13 that we're going to follow what she's instructed, I will
14 provide 2.34(e) relief if requested by Defendant to -- that you don't
15 have to produce anything until it becomes an order of the Court,
16 this Motion for Protective Order.

17 So with that said, why don't I give you a chance to
18 proceed.

19 MR. ROYAL: Okay. Thank you, Your Honor.

20 You've -- first of all, by -- you've indicated that we're being
21 asked to produce documents from May 1999 to the present. This is
22 a slip-and-fall. It's a very typical slip-and-fall case. It's very simple
23 negligence case. The plaintiff worked in the Venetian premises for
24 almost a year. Prior to the incident, she walked across this area
25 safely hundreds of times according to her own testimony. She

1 never had any issues until November 4, 2016, when, according to
2 her and according to her counsel, she came into contact with a
3 foreign substance on the floor, which caused her to slip and fall.

4 So this is a case that is -- that relates -- that arises from a
5 temporary transitory condition. She -- according to their own
6 experts, the floor is safe when it's dry. Their only issue is
7 something gets introduced to it, then it becomes a slip hazard, and
8 that's why they claim the plaintiff slipped and fell.

9 To this point, we've produced -- we have produced 68 -- to
10 my count, 66 to 68, I've -- of prior incident reports going back three
11 years. Which, by the way, we produced, which are outside the area
12 of the incident. This incident occurred in the Grand Lux area, and
13 according to their expert, Tom Jennings, he is in possession of 196
14 prior incidents occurring, according to his trial -- or deposition
15 testimony, occurring strictly within the Grand Lux area.

16 DISCOVERY COMMISSIONER: All that 196 are in the
17 Grand Lux area?

18 MR. ROYAL: That was his testimony. That was his
19 testimony.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. ROYAL: Okay. Now, he didn't produce any of the
22 documents that he said that he looked at to come to that conclusion
23 and to put that down in his May 30, 2019, report.

24 DISCOVERY COMMISSIONER: Because I thought the 196
25 was a spreadsheet that you provided.

1 MR. ROYAL: No.
2 DISCOVERY COMMISSIONER: No? Okay.
3 MR. ROYAL: That's not correct.
4 DISCOVERY COMMISSIONER: All right.
5 MR. ROYAL: The --
6 MR. GALLIHER: We -- just let me interrupt for a minute.
7 We provided the spreadsheet to Mr. Jennings.
8 DISCOVERY COMMISSIONER: Okay.
9 MR. GALLIHER: He testified at deposition that reviewed
10 the spreadsheet.
11 MR. ROYAL: Well, he testified that he got something from
12 Mr. Galliher's office that he reviewed -- that he reviewed it, that he
13 didn't save it, and he didn't bring it with him to his deposition. I
14 didn't have an opportunity to review it with him, because he wasn't
15 clear on everything other than he said they all occurred in this area,
16 in this Grand Lux area.
17 Now, I subsequently got the spreadsheet from
18 Mr. Galliher, looked at those 196, if you take out -- there's a whole
19 bunch of duplicates and so forth from things we had already
20 produced and with some -- they're not in addition to the 68, for
21 example. But I could only come up with eight that say Grand Lux --
22 that say Grand Lux.
23 So I don't know where Mr. -- I don't know if he looked at a
24 different list. I don't know what information that they have. All I'm
25 saying is we have produced let's say 68 prior incident reports going

1 back three years preceding the incident, which are not limited to the
2 Grand Lux area. They are -- they go to the Grand Hall or to areas --
3 other areas on the casino level.

4 They -- what they want, what they're asking for,
5 essentially, is any kind of a slip-and-fall involving the marble floors
6 in common areas anywhere within the property. And we think
7 that's -- we just think that's -- it's asking too much, especially when
8 you're going back to 1999.

9 If you --

10 DISCOVERY COMMISSIONER: Well, I'm going to limit -- if
11 it'll -- I mean, I'm going to tell you this now. I'm going to limit it to
12 five years before the incident at issue.

13 MR. ROYAL: That would be --

14 DISCOVERY COMMISSIONER: Well, let me let
15 Mr. Galliher speak to that, because he looks like he's about to burst.
16 So --

17 MR. GALLIHER: I'm not -- no, I'm not ready to burst.

18 DISCOVERY COMMISSIONER: Okay.

19 MR. GALLIHER: I am far too old to burst.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. GALLIHER: Yeah, well, obviously, we're going to
22 have a problem with that order.

23 DISCOVERY COMMISSIONER: Okay.

24 MR. GALLIHER: Because as we pointed out in our points
25 and authorities, there's testimony from a casino executive at

1 Venetian, that approximately one year after the Palazzo opened,
2 which would be about 2009, the Venetian actually tore up carpet on
3 the floors in their casino and replaced the carpet with marble.

4 So, quite obviously, if there are a number of falls before
5 this happened, and we believe there are a large number of falls that
6 occurred on marble floors that are wet -- and by the way, that's the
7 issue here. This is not a transient condition. This has already been
8 established in the case. And what bothers me about the argument
9 is Mr. Royal's rearguing things that have already been argued
10 before the district judge, who has -- sustained, first of all, our
11 Motion to Amend, to include the claim for punitive damages, and
12 twice now, that decision has been attacked by Venetian. Both times
13 Judge Delaney had upheld her initial decision. So we now have a
14 viable claim for punitive damages, and she said that discovery will
15 continue on the punitive damage claim. Which is what we're trying
16 to do.

17 DISCOVERY COMMISSIONER: Okay.

18 MR. GALLIHER: So if we can establish that the Venetian,
19 when it was built in 1999, when they installed these marble floors,
20 and we have a history of a large number of falls on these marble
21 floors -- and by the way, the marble floors are all uniform. There's
22 no difference between the marble in the lobby versus the marble in
23 the front of the Grand Lux Cafe, versus the marble in the casino.
24 The marble is the same color, the same consistency, it's the same
25 floor.

1 DISCOVERY COMMISSIONER: Did this incident occur in
2 the area in front of the Grand Lux Cafe?

3 MR. GALLIHER: Yes.

4 DISCOVERY COMMISSIONER: Okay.

5 MR. GALLIHER: And that is a marble floor.

6 DISCOVERY COMMISSIONER: Okay.

7 MR. GALLIHER: And, of course, our position is that
8 marble is marble, and there's no difference in the flooring. So all
9 falls that occur on these marble floors when people come into
10 contact with wet substances, are relevant to the issue of punitive
11 damages. So if we are able to establish, for example, if there
12 are 100, 200, 300 falls on these marble floors between 1999, when
13 the hotel was built, and 2009, when the Venetian made a conscious
14 decision to tear up the carpet and replace it with marble, don't you
15 think that provides a predicate for punitive damages? It shows
16 conscious disregard for the safety of its customers.

17 Therefore, it's not only relevant, it's clearly discoverable.
18 Because we are -- we have a punitive damage claim. The Venetian
19 keeps wanting to limit us in terms of our discovery, but as we
20 pointed out in our briefing punitive damage claim opens up the
21 whole group of possibilities for us to try to prove our punitive
22 damages, and that includes going back to the time the hotel was
23 built and these floors were installed in the first place.

24 But the other thing that's bothering me is that we -- the
25 unredacted incident reports for the three years prior were ordered

1 by Judge Delaney back in May. We still don't have them. And
2 we've had motion practice after motion practice, Motion to Rehear,
3 Motion for Leave for -- to Rehear. And Judge Delaney had
4 remained consistent and she has said, Venetian, you need to
5 produce the unredacted incident reports.

6 The only thing that she said that should not be in the
7 report is a date of birth and a Social Security number, and that
8 information's not in the report anyway. So we're entitled to that
9 information. It's now a filed order from Judge Delaney. There's no
10 other way for the Venetian to attack it. So that's why it's a shame
11 that we have to file a Motion to Compel after we've had a decision
12 from the district judge several times now giving us the right to the
13 unredacted reports.

14 And the other issue, of course, is -- that we've raised, is
15 that we want to do a 30(b)(6) deposition. And we want to find out
16 what the Venetian knew about the safety of its floors and when they
17 knew it. And that is relevant to the punitive damage claim.

18 Just as the subsequent incident reports are relevant to the
19 punitive damage claim. We've given the Court a lot of case
20 authority to support our position. I haven't seen anything that does
21 not support our position. We've even given you a Nevada Supreme
22 Court case that says subsequent incidents are relevant, not only to
23 the question of notice, but certainly relevant in connection with the
24 punitive damage claim.

25 So I don't know, tell you the truth, I'm not sure why we're

1 here other than the fact that we keep, you know, requesting,
2 requesting, requesting, and we keep getting No, we're not giving it
3 to you. No, we're not giving it to you. File a motion, file a motion.
4 So we're here.

5 DISCOVERY COMMISSIONER: Well, to the extent that you
6 already had an order from Judge Delaney, rather than a Motion to
7 Compel before me, I would recommend that it be refiled as -- I
8 mean, you can file an order to show cause -- a Motion for an Order
9 to Show Cause before the judge. I mean, I'm not going to reverse
10 Judge Delaney on matters she's already determined in this case.

11 MR. GALLIHER: Well, I'm not asking you to do that. What
12 I'm asking is --

13 DISCOVERY COMMISSIONER: I know you're not.

14 MR. GALLIHER: No.

15 DISCOVERY COMMISSIONER: But I'm just telling you I'm
16 not going to.

17 MR. GALLIHER: No.

18 DISCOVERY COMMISSIONER: She's the judge in the
19 case.

20 MR. GALLIHER: Right.

21 DISCOVERY COMMISSIONER: And so if she's already
22 overruled my recommendation, I'm going to follow what she's
23 done. And so if you -- rather than moving --

24 MR. GALLIHER: But you can set a deadline.

25 DISCOVERY COMMISSIONER: I'm sorry?

1 MR. GALLIHER: But you can set a deadline for the
2 production of the reports, which is what I'm asking you to do.
3 DISCOVERY COMMISSIONER: Oh, that wasn't already
4 done initially?
5 MR. GALLIHER: No.
6 DISCOVERY COMMISSIONER: Okay.
7 MR. GALLIHER: No. And so I'm asking you to set a
8 deadline. And certainly they produced the redacted report, so they
9 have them.
10 DISCOVERY COMMISSIONER: Okay.
11 MR. GALLIHER: So all we're asking for is the unredacted
12 reports, and I'm asking you to set a deadline, say two weeks from
13 now, when these reports --
14 DISCOVERY COMMISSIONER: Okay. Well, now we're
15 getting into the Motion to Compel.
16 MR. GALLIHER: Okay.
17 DISCOVERY COMMISSIONER: I haven't given counsel an
18 opportunity --
19 MR. GALLIHER: Understood.
20 DISCOVERY COMMISSIONER: -- to finish his Motion for
21 Protection. So.
22 MR. GALLIHER: I'll sit down and shut up.
23 MR. ROYAL: We were in front of Judge Delaney on
24 May 14th. She did not -- the order related to that -- his objection
25 was not filed by the Court until July 31st.

1 DISCOVERY COMMISSIONER: Well, there's still an order
2 that it hasn't been filed, isn't it? From the Motion for
3 Reconsideration.

4 MR. ROYAL: Well, there was -- well, I filed a Motion for
5 Reconsideration on OSC. Mr. Galliher, she set on a date -- or he --
6 they were in trial and he asked that we continue it. So we
7 continued it out for, it turned out, about 30 days. We just had that
8 hearing yesterday in front of the Court.

9 And during that particular discussion or hearing, she did
10 not grant leave for the consideration. But we did -- she did suggest
11 that we file a writ, which is what we are in the process of doing at
12 this point.

13 DISCOVERY COMMISSIONER: Okay.

14 MR. ROYAL: And so it's not as though we're -- it's not as
15 though we're just defiant, you know, with respect to the district
16 judge. This was in front of the district judge yesterday. And so
17 Mr. Galliher certainly could have brought this up and had this
18 discussion and asked the judge to provide a deadline yesterday.

19 I would like to say, you know, something about --
20 something about these motions that have been in front of the judge
21 with respect to punitive damages. I mean, she's just -- she has just
22 ruled that they were allowed to amend the complaint to add
23 punitive damages claim. She never said, has never said that this --
24 or established that this is anything other than a transient -- a
25 temporary transient condition.

1 And so to the extent that counsel is suggesting that to the
2 Court today, that's not correct. She's just simply said -- Tom
3 Jennings, again, their expert has said, I've got 196 incident reports
4 that occurred within a four-and-a-half-year period in the Grand Lux
5 area. I'm not sure what it is, what more they need. But there is no
6 evidence that there was ever any carpet in the area of the Grand
7 Lux Cafe rotunda.

8 DISCOVERY COMMISSIONER: So that's not the area
9 where it was ripped out.

10 MR. ROYAL: Right.

11 DISCOVERY COMMISSIONER: Okay.

12 MR. ROYAL: That's correct.

13 And so, further, Mr. Jennings testified he's an expert on
14 another slip-and-fall case that occurred within 80 to 100 feet of this
15 particular accident, also in the Grand Lux area. He testified that his
16 findings on that particular area of the marble floor were much
17 different than they were on our floor. And when I asked him about,
18 Well, why would that be different? And he gave all kinds of reasons
19 from care of the floor to amount of traffic and so forth.

20 So what Mr. Galliher's suggesting, that the floor's the
21 same everywhere and it's going to test the same everywhere, I
22 mean, that's just not -- that's not accurate.

23 What we're really looking for from the Court is some
24 direction, some relief, so that we can go -- for example, we had
25 this 30(b)(6) -- they set this 30(b)(6) deposition with 18 topics that

1 I've gone through with the Court.

2 DISCOVERY COMMISSIONER: Okay.

3 MR. ROYAL: Topics 6 to 18 all relate to management of
4 the computer system going back to 1999. What kind of -- who
5 manages the system internally, externally, consultants and so forth,
6 employees, who's involved with all this. It's extremely broad.

7 They -- and one of the things that I expect counsel will say
8 is that, Well, we can't trust them. We can't trust the Venetian,
9 because they've withheld report, they've withheld information from
10 us. And the Court will recall that previously when they brought a
11 motion, they very inaccurately represented to the Court that we did
12 not disclose 65 reports over the same period of time of those 66
13 and 68 reports that we previously produced. And then they had to
14 come and say -- and advise the Court, okay, we're sorry, that's not
15 accurate.

16 So they're not here today saying that they have any
17 evidence that we're not producing documents, that we're doing
18 something improper. We have produced 68 prior incident reports
19 that are outside -- that are within and outside the Grand Lux area.
20 What we're asking the Court is just limit the scope in the area where
21 this occurred, limit it to five years, and we're fine. And we have no
22 problem with that.

23 Now, is -- with respect to some of these other things, the
24 carpeting, I mean, they're asking for --

25 DISCOVERY COMMISSIONER: Well, let's go through the

1 issues and I'll give you my recommendation and if you want to both
2 discuss it, we can.

3 But with regard to Plaintiffs' Demand for Information
4 Related to Incidents from May 1999 to the Present, I am going to
5 protect that as written, but I think it's appropriate for -- given Judge
6 Delaney's rulings, for Defendant to provide, from
7 November 4th, 2011, to the present. Counsel in his affidavit stated
8 that there was no water at the scene. And so I think that that -- with
9 a permanent condition, which I think is, you know, if there's no
10 water, it's not a transient condition, it's a permanent condition, that
11 I think they're entitled to prior and subsequent. So I think for five
12 years --

13 MR. ROYAL: But, Your Honor, that's --

14 DISCOVERY COMMISSIONER: -- prior to the present time.

15 MR. ROYAL: -- that's not their claim. Their claim is that
16 there was water there. They have a witness who says there was
17 water there. Just -- by the mere fact that we dispute their report
18 doesn't mean -- I mean, the complaint itself says that there was a
19 liquid substance. That doesn't -- just because we dispute their facts
20 doesn't turn it into a permanent condition. They have a witness,
21 Gary Schulman, who they -- who says, I saw it there.

22 And the plaintiff, in her own deposition testimony, I
23 slipped. Not only did she slip, but her pants were wet. So it's not
24 their contention that there was nothing there. The fact that we
25 dispute it doesn't turn it into a permanent condition and certainly

1 shouldn't burden my client from having -- from now he has to
2 produce subsequent incident reports.

3 DISCOVERY COMMISSIONER: Mr. Galliher?

4 MR. GALLIHER: My goodness, the law's so clear. We
5 have a punitive damage claim. It needs to be recognized by
6 Venetian. It's a punitive damage claim that's going to survive up
7 until the time of trial. Now, whether it survives trial, I don't know,
8 because we haven't discovered it yet. But the case law makes it
9 very clear. Subsequent incident reports are discoverable and even
10 admissible when you have a punitive damage claim. So that
11 should be the end of the argument.

12 MR. ROYAL: That --

13 DISCOVERY COMMISSIONER: Okay. I'm going to -- my
14 recommendation is going to be from November 4th, 2011, to the
15 present, the reports. And because Judge Delaney had -- her ruling
16 has been that they be unredacted, so that's what it will be.

17 With regard to number 2, Electronic Computer Data
18 Information Related to Communications Pertaining to the Subject
19 Floor with Consultants Other Than Experts Disclosed, Pursuant
20 to 16.1. I think that that is too vague. I'm going to protect that as
21 written. If there's some kind of alternative -- so I'm going to grant
22 the motion as to that request.

23 If there's some alternative relief we can craft, I'm willing to
24 entertain that, Mr. Galliher. But I think -- I'm not even sure what
25 you're asking for there. Consulting experts, I'm not giving you that

1 information.

2 MR. GALLIHER: Understood. And I -- we don't want
3 consulting experts.

4 DISCOVERY COMMISSIONER: So what -- well, because
5 you said with consultants other than experts disclosed pursuant to
6 NRCP 16.1.

7 MR. GALLIHER: Here's what --

8 DISCOVERY COMMISSIONER: It sounds like you're
9 asking for consulting experts.

10 MR. GALLIHER: Yeah. Here's what we don't know. I
11 mean, we've got --

12 DISCOVERY COMMISSIONER: What do you want? And
13 let's see if we can craft it --

14 MR. GALLIHER: What I want --

15 DISCOVERY COMMISSIONER: Yes.

16 MR. GALLIHER: -- is this. The Venetian, we're talking
17 about what a great burden it is for the Venetian to produce this
18 information. They have a computerized system. My recall, it's
19 called Alliance.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. GALLIHER: It's been identified by a PMK in a
22 deposition of the Venetian. And according to the PMK, every single
23 bit of information regarding what we're looking for is contained on
24 that computer system. And it can be accessed with the push of a
25 button.

1 So if that is true, we'd be --

2 DISCOVERY COMMISSIONER: That seems a little
3 oversimplified in my experience. But in any event, I'm listening.

4 MR. GALLIHER: All right. Again, I'm not a computer whiz.
5 All I know is that it was -- according to this PMK person, it can be
6 accessed very quickly.

7 DISCOVERY COMMISSIONER: Okay.

8 MR. GALLIHER: And if that's the case, I'll be more than
9 happy with that information from the computer system. And again,
10 we're going to quarrel --

11 DISCOVERY COMMISSIONER: Regarding what? What
12 information in the computer system? Because you've asked for
13 electronic computer data information related to communications
14 pertaining to the subject flooring with consultants other than
15 experts disclosed pursuant to NRCP 16.1.

16 MR. GALLIHER: Well, first of all, I don't know -- when we
17 talk about consultants, I do not know whether the Venetian has had
18 someone examine their floors and say, Look, there's a problem with
19 these floors. I have recommendations to make concerning how we
20 can make them safer. I don't know whether that's happened,
21 because that information has not been disclosed. We've requested
22 it.

23 So when we talk about -- I'm not talking about consulting
24 experts; I'm talking about the Venetian hiring somebody that knows
25 floors to come in, look at the floors, and say, Okay, what can we do

1 improve these floors and make them safer for our customers and
2 guests? And if they haven't hired somebody to do that, very simple
3 response: We haven't hired anybody.

4 If they have, that's not consulting expert stuff; that is
5 simply business situation where they hired someone to look at their
6 floors, and I'm entitled to find out whether that person that was
7 hired came to the Venetian management and said, These marble
8 floors are a problem. I recommend either, A, they be taken out and
9 replaced with something safer, or, B, there are some substances out
10 there that we can use to coat the floors to make them safer.

11 I don't know whether any of that's happened, because
12 that's why we've made that request.

13 DISCOVERY COMMISSIONER: Okay. Mr. Royal?

14 MR. ROYAL: We already went through something like this
15 with Mr. Elliott. And the Court will recall that they made these kind
16 of allegations that Mr. Elliott was going to provide this kind of
17 testimony. The very kind of testimony. Then we got his deposition
18 and found out that he didn't -- that that wasn't the case at all, that
19 he thought the Venetian -- and this was in 2009, and he thought the
20 Venetian floors were fine, were -- in fact, they were exemplary.
21 That was his testimony in that particular deposition.

22 I don't know what it is, necessarily, that he's asking for
23 and I agree that it's vague. I'm not aware -- I can't -- I don't know
24 who to bring to put on and present.

25 DISCOVERY COMMISSIONER: I'm going to protect this as

1 written. I think it's overly vague. If you want to depose someone,
2 any -- I mean, if you want to craft something that says, like, any
3 person who has knowledge that an expert told you to do X, Y, or Z
4 to your floors, put -- it needs to be tailored to -- because as it's
5 written, I think it's overly broad and vague, and I'm going to protect
6 Number 2 as written.

7 MR. GALLIHER: We'll try to fine tune it.

8 DISCOVERY COMMISSIONER: Okay. So fine tune it, try
9 to work together on it.

10 Number 3, Information Related to the Testing, Replacing
11 Flooring that is Not Within the Grand Lux Rotunda Area Where the
12 Incident Occurred, all right. If testing occurred in the Grand Lux
13 area anytime between 2011 to the present, I'm going to allow it.
14 But not if it's in an area that's not at issue in this litigation.

15 MR. GALLIHER: So that would include all the remaining
16 marble floors at the Venetian?

17 DISCOVERY COMMISSIONER: Yes.

18 MR. GALLIHER: Okay.

19 DISCOVERY COMMISSIONER: I think any testing that was
20 done in the Grand Lux area for -- be prepared to testify regarding
21 any testing that was done in the Grand Lux area from 2011 -- I'm
22 sorry, till 2016.

23 MR. ROYAL: Okay. Testing done from November 4, 2011
24 to --

25 DISCOVERY COMMISSIONER: To the date of the incident

1 at issue.

2 MR. ROYAL: And -- okay. And I want to make sure I'm
3 clear on the record, it's the Grand Lux area?

4 DISCOVERY COMMISSIONER: Well, what are -- where --
5 the incident area, is that the --

6 MR. ROYAL: That's the -- it's called the Grand Lux
7 rotunda.

8 DISCOVERY COMMISSIONER: Okay. The Grand Lux
9 rotunda. Anything that was done in that area. Okay?

10 Information About Casino Flooring Changes on or
11 About 2008 Which Did Not -- okay. And Defendant's position is that
12 this did not impact the subject area. If there were not -- if there
13 were not changes made -- were there any changes made to the area
14 where the impact -- or where the incident occurred?

15 MR. GALLIHER: We don't know that yet, because we
16 haven't been able to depose the person to find out exactly where
17 the carpet was taken up and the marble was replaced.

18 MR. ROYAL: There's no testimony whatsoever that there
19 was ever any carpeting in the Grand Lux rotunda. It's always been
20 marble. The testimony he's referring to is testimony by someone
21 who worked in the casino area. This is not the casino area. This is
22 the Grand Lux rotunda.

23 DISCOVERY COMMISSIONER: Okay. I think that that's
24 better. I'm going to protect that. I think that a better way to get at
25 that discovery would be to ask questions regarding whether the

1 area at issue had ever been remodeled or had ever previously had
2 carpet in it. So I'm going to protect 4.

3 Number 5, there is no -- I'm going to allow -- because
4 discovery has already included reports -- so this is dealing with an
5 order limiting the scope of Plaintiffs' discovery to the Grand Lux
6 rotunda area where the subject incident occurred. I am going to
7 allow any prior or subsequent reports that deal with slips and falls
8 on the marble flooring.

9 MR. ROYAL: Within the Grand Lux area?

10 DISCOVERY COMMISSIONER: Within -- I'm going to let
11 Mr. Galliher speak to that.

12 MR. GALLIHER: Well, as I --

13 DISCOVERY COMMISSIONER: They've already been
14 produced. I mean, the documents have already been produced --

15 MR. GALLIHER: Yes.

16 DISCOVERY COMMISSIONER: -- to my understanding.

17 MR. GALLIHER: Some of them have. And we -- we're not
18 sure how many more exist. But, certainly, we have requested all of
19 the others, however many there may be. And the documents that
20 have been produced already include slips and falls on marble
21 flooring.

22 DISCOVERY COMMISSIONER: Okay.

23 MR. GALLIHER: And that's exactly what we're looking for.

24 DISCOVERY COMMISSIONER: And that's what the prior
25 ruling was in this case. So I am going to allow it to be any incident

1 reports -- limited to the five years prior, going backwards, any
2 incident -- prior incident reports five years prior to the present time
3 for slips and falls on marble flooring at the Venetian.

4 MR. ROYAL: Well, Your Honor, I want to make sure I'm
5 clear. I thought your initial order was that it was limited to the
6 Grand Lux area. And this -- what you just said is all encompassing
7 of the entire property.

8 DISCOVERY COMMISSIONER: Okay. Yeah. To the
9 Grand -- I'm sorry, to the Grand Lux rotunda.

10 MR. GALLIHER: So you're not going to give us the reports
11 regarding all of the other marble flooring?

12 DISCOVERY COMMISSIONER: Just to the area, to this
13 Grand Lux marble flooring. I think that that's -- but you've
14 already -- my understanding is you've already were produced the
15 reports --

16 MR. ROYAL: We --

17 DISCOVERY COMMISSIONER: -- for all the marble
18 flooring.

19 MR. GALLIHER: They have. Well --

20 MR. ROYAL: Well --

21 MR. GALLIHER: -- we don't know what they produced, but
22 they produced floor falls --

23 DISCOVERY COMMISSIONER: Well, that was --

24 MR. GALLIHER: -- in other areas of the hotel on marble
25 flooring.

1 MR. ROYAL: Okay. Your Honor, they're asking for --
2 again, they claim to have 106 -- 90 -- 196 prior incident reports over
3 a five-year period for just the Grand Lux. Okay. So we're saying
4 okay, that's fine. We'll go through and we'll find whatever we can,
5 going back five years for the Grand Lux area.

6 The fact is that when we initially -- when we initially did
7 this, we limited it to the casino level. And -- but, Your Honor,
8 we've -- since then -- since then, Mr. Jennings has testified that his
9 testing outside the Grand Lux area was way different than what we
10 found in the Grand Lux area. And so we're just asking the Court to
11 limit it. To limit it to five years within the Grand Lux area, the
12 marble flooring there, and just --

13 DISCOVERY COMMISSIONER: So Jennings has already --
14 their expert has already said that the testing is different in the
15 Grand Lux area than the other areas of the marble flooring casinos?

16 MR. ROYAL: Than in other area of the marble floor, that's
17 correct.

18 MR. GALLIHER: Yeah. We're not in agreement with that.
19 And unless -- it's interesting how this continues to be discussed.
20 But Mr. Jennings made it very clear that he reviewed summaries of
21 reports. And it was his understanding that the summary reports
22 had to do with the Grand Lux area; they don't. He is now in the
23 possession of the reports that have been produced, so he actually
24 sees the actual reports, but he made it very clear. I reviewed his
25 summary.

1 DISCOVERY COMMISSIONER: All right.
2 MR. GALLIHER: And he's going to clarify that.
3 DISCOVERY COMMISSIONER: The original
4 recommendation was that -- the one that was objected to, and then
5 Judge Delaney changed it to be unredacted, didn't that include all
6 slips and falls on all marble flooring on the casino level?
7 MR. GALLIHER: It did.
8 MR. ROYAL: No, it did not, Your Honor.
9 MR. GALLIHER: Oh, it did too.
10 MR. ROYAL: Your Honor, I'd have to -- you know, I'd --
11 DISCOVERY COMMISSIONER: All right. I'm going to pull
12 it up. Just a second. Because I'm not reversing what we've already
13 decided.
14 MR. GALLIHER: Well, we wanted the reports -- we wanted
15 the unredacted reports that were produced to us redacted, and
16 those included falls on the casino floor.
17 DISCOVERY COMMISSIONER: Because I'm not changing
18 from -- we're not rehashing what's already been decided in this
19 case.
20 MR. ROYAL: Well, Your Honor, I'm not asking you to do
21 that. Because what he's asking for now is in addition to what we
22 previously produced. And we previously produced three years'
23 worth of documents to counsel. They were redacted.
24 DISCOVERY COMMISSIONER: Which now need to be
25 unredacted --

1 MR. ROYAL: That's correct.

2 DISCOVERY COMMISSIONER: -- pursuant to what Judge
3 Delaney has ordered.

4 MR. ROYAL: That's correct. But now he's asking for
5 something in addition. He's asking for another two years' of
6 documents and we're asking the Court to limit that. That's a new
7 ruling that has not been ruled on by this -- by the discovery
8 commissioner or considered by the district court. So we're asking
9 that -- and now, Your Honor, you're also ordering that we produce
10 not just two years before, but then everything up to the present.
11 And so that's new.

12 And so we're asking you to limit it to the Grand Lux area.
13 And that would not be in any way -- it shouldn't have any impact on
14 what you ordered previously as it relates to that three-year period.

15 MR. GALLIHER: And, of course, we respectfully disagree,
16 because it should be -- we should have the order include all the
17 marble flooring at the ground level at the Venetian, which is what
18 was produced in the first place by the defense.

19 MR. ROYAL: And, by the way, they've never requested
20 that. They've never had that specific request.

21 MR. GALLIHER: Actually, we have.

22 MR. ROYAL: We provided that --

23 MR. GALLIHER: Many times.

24 MR. ROYAL: -- as a courtesy. What they asked for was
25 everything within the property.

1 DISCOVERY COMMISSIONER: Okay. All right. I'm going
2 to limit it to the casino floor. That's -- the Grand Lux is on the
3 casino floor, correct?

4 MR. GALLIHER: Yes.

5 DISCOVERY COMMISSIONER: Okay. I'm going to limit it
6 to any slip-and-falls on the marble flooring on the casino level, five
7 years prior to the present, and pursuant to Judge Delaney's ruling,
8 unredacted. Okay.

9 MR. ROYAL: Just -- Your Honor, can I just ask for
10 clarification --

11 Can I?

12 MR. GALLIHER: You -- go ahead.

13 MR. ROYAL: Okay. Thank you.

14 For clarification, the subsequent incidents that are being
15 ordered that -- to be produced, is that based upon their punitive
16 damages claim or is it based upon the Court's determination that
17 it's --

18 DISCOVERY COMMISSIONER: The punitive damages
19 claim.

20 MR. ROYAL: Okay. All right.

21 DISCOVERY COMMISSIONER: Which is still pending. Is it
22 still active -- an active claim?

23 MR. GALLIHER: Yes. It survived two challenges from the
24 Venetian. The claim is still alive for sure.

25 MR. ROYAL: Okay. It's a punitive damages claim based

1 on a negligence action of a temporary transient condition. I just
2 want to make sure that's clear in front of the Court. This is not a
3 products case, this is not a permanent condition-type case, this is a
4 temporary transitory condition. So I just want to make sure that's
5 clear.

6 DISCOVERY COMMISSIONER: Well, I think it's unclear.
7 Because you're saying that the slip-and-fall was on the flooring,
8 you're saying with no water, they're saying there is water. I mean,
9 you've --

10 MR. ROYAL: But it's -- but, Your Honor, their complaint,
11 the complaint does not even make the allegation this is a
12 permanent condition. It is a slip-and-fall. It is a foreign substance
13 on the floor. The fact -- again, we dispute facts --

14 DISCOVERY COMMISSIONER: Which you dispute that
15 there was. So you're saying she slipped and fell on the perfectly
16 dry floor, is that you're saying.

17 MR. ROYAL: I'm saying she slipped and fell for some
18 reason other than, you know, I don't know why she slipped and fell.
19 But --

20 DISCOVERY COMMISSIONER: Well, your affidavit said
21 there was no foreign substance on the floor.

22 MR. ROYAL: Well, that's my opinion. But their experts
23 have both testified that there was a foreign substance on the floor,
24 Your Honor, both of them. And, in fact, their testimony has been --
25 Dr. Baker and Mr. Jennings both said there absolutely was

1 something on the floor. There had to be something on the floor.
2 That's their position.

3 And so for counsel -- I just want to make sure it's very
4 clear to the Court that this is an incident based upon their allegation
5 that it's a foreign substance that caused her to slip and fall. She
6 walked through that area hundreds of --

7 DISCOVERY COMMISSIONER: Well, I think it's your
8 affidavit that's conflated the issue. Because you're saying there
9 absolutely wasn't a foreign substance on the floor, which makes
10 that, then you're saying she slipped and fell on the way it is all the
11 time.

12 MR. ROYAL: I -- what I've said, Your Honor, it's -- there is
13 a disagreement, there's a dispute in the facts. They've got an
14 eyewitness. The first person who was there on the scene who said
15 there was a big puddle of water. That's his testimony. That's
16 Mr. Schulman's testimony. So we can't just pretend that that
17 doesn't exist because we dispute the facts.

18 And so this is a case based upon a foreign substance. I
19 just want to make it very clear that that is their claim, that's what
20 their experts say, that's what their star witness says, that's what the
21 plaintiff says. The fact that we dispute it doesn't transform it into a
22 permanent condition or nor should it entitle them to subsequent
23 incident reports.

24 I just want to make that clear, that's all.

25 DISCOVERY COMMISSIONER: Okay. Mr. Galliher?

1 MR. GALLIHER: Well, what's he's doing is misleading.
2 Because, the bottom line is that -- you saw Commissioner Bulla's
3 prior ruling against the Venetian, and she recognized, correctly, this
4 is a continuing hazard. This is not a transitory condition; that's
5 Mr. Royal's spin on it. The bottom line -- and --

6 DISCOVERY COMMISSIONER: Well, he's saying it's not a
7 transient condition --

8 MR. GALLIHER: Well, but -- well, he is in his affidavit --

9 DISCOVERY COMMISSIONER: -- because there was
10 nothing there.

11 MR. GALLIHER: -- but --

12 DISCOVERY COMMISSIONER: You're the one who's
13 saying it is a transient condition.

14 MR. GALLIHER: No, no.

15 DISCOVERY COMMISSIONER: It's a little confusing.
16 Usually, the defendant --

17 MR. GALLIHER: That's not what I'm saying. I'm saying
18 it's not a transient condition. It's a continuous hazard.

19 DISCOVERY COMMISSIONER: But you're saying there
20 was water present, which is a transient condition.

21 MR. GALLIHER: But he's -- well, it's not a transient
22 condition if it's on an inherently dangerous floor. That's entirely
23 different, as Commissioner Bulla recognized. That's not the same
24 thing. And, by the way, Judge Delaney --

25 DISCOVERY COMMISSIONER: Well, I disagree.

1 MR. GALLIHER: -- recognized it, as well.
2 DISCOVERY COMMISSIONER: I disagree.
3 MR. GALLIHER: Well --
4 DISCOVERY COMMISSIONER: In my mind, if there's
5 water present, it's a transient condition. If someone slips and falls
6 on a floor that you're saying is always dangerous, whether it's dry,
7 wet -- when it's dry, then that would be a different conversation
8 we're having.
9 MR. GALLIHER: But we're not saying that, and we haven't
10 said that. That's what Mr. Royal just said in his affidavit.
11 DISCOVERY COMMISSIONER: Mr. Royal's saying it.
12 MR. GALLIHER: I know.
13 DISCOVERY COMMISSIONER: Which is making this --
14 that's what's conflating the whole issue.
15 MR. GALLIHER: It -- well, that much I understand. Bottom
16 line is that he's also presented his share of Venetian employees
17 who have testified that the floor was dry. So, all right, so we have a
18 contested issue. It's a jury argument. That's what it is. It's
19 something we present at trial. But it should not affect our ability to
20 discover our case. And that's what we're doing at this juncture,
21 we're trying to discover the case, particularly our punitive damage
22 claim, and we've cited cases all over the place in our motion
23 practice that supports what we're doing here.
24 DISCOVERY COMMISSIONER: Okay. Mr. Royal?
25 MR. ROYAL: The plaintiff says it's -- it was due to a

1 foreign substance in the complaint. Even in the amended
2 complaint it says that she slipped and fell due to a foreign
3 substance. She testified she slipped and fell due to a foreign
4 substance.

5 Other witnesses at the scene, Mr. Schulman, testified he
6 saw -- he is the one person who did see it, and that's his testimony.
7 And so, you know, I have a right to dispute the facts, Your Honor,
8 but their own experts say there was water on the floor. And that's
9 what caused the fall.

10 They didn't say -- they haven't testified that this is a
11 dangerous floor that caused her to fall because it was dry; they say
12 she slipped and fell because it was wet.

13 Mr. Jennings actually testified it's a safe floor when it's
14 dry. He tested it that way. It doesn't become dangerous, in his
15 opinion, until it becomes wet. That is the --

16 DISCOVERY COMMISSIONER: Okay.

17 MR. ROYAL: And therefore, it is a temporary transitory
18 condition. That's the issue.

19 DISCOVERY COMMISSIONER: But the punitive damage
20 claims --

21 MR. GALLIHER: I'm not going to bounce up and down.

22 DISCOVERY COMMISSIONER: The punitive damage --
23 you guys can stay seated -- the punitive damage claim is still at
24 issue. And because of the punitive damage claim, I'm going to
25 allow the subsequent reports.

1 MR. ROYAL: Okay. Thank you.

2 DISCOVERY COMMISSIONER: All right. You're
3 requesting protection -- no, you're moving for an order, Defendants,
4 directing Plaintiff to produce all information of prior incidents
5 provided to Tom Jennings. Hasn't he already provided the
6 e-mailed spreadsheets -- the e-mailed spreadsheet that he
7 reviewed?

8 MR. ROYAL: The e-mails -- what I received was not what
9 Mr. Jennings described. That's all. That's not what he described.

10 DISCOVERY COMMISSIONER: Okay.

11 MR. GALLIHER: I don't agree with that.

12 MR. ROYAL: Well, you weren't at the deposition --

13 DISCOVERY COMMISSIONER: Okay. Then I'm -- Tom
14 Jennings is directed to produce all information of prior incidents
15 that were provided to him and he reviewed prior to issuing his
16 opinions.

17 MR. GALLIHER: And we have no problem with that.

18 DISCOVERY COMMISSIONER: Okay. Defendants are
19 moving for an order that Plaintiff provide copies of all prior
20 incidents reports in her possession not produced to Defendants.
21 Counsel?

22 MR. ROYAL: They've got this -- they've got these 196
23 reports, they produced those to the expert --

24 DISCOVERY COMMISSIONER: Do you have 196 reports,
25 Mr. --

1 MR. GALLIHER: No, actually, we don't.
2 DISCOVERY COMMISSIONER: -- Galliher?
3 MR. GALLIHER: We have quite a few reports we've
4 collected in the case from other counsel, as well. We don't have all
5 of those 196, because I understand from Mr. Bochanis's office that
6 he may not have been able to give those to us. So we don't have
7 all of them.
8 However, these are the Venetian's reports.
9 DISCOVERY COMMISSIONER: Okay.
10 MR. GALLIHER: So are they asking us to --
11 DISCOVERY COMMISSIONER: But if you're using them
12 for impeachment purposes, I mean, you have them. If you have
13 them, produce them to Defendants.
14 MR. GALLIHER: We'll be happy to do that.
15 DISCOVERY COMMISSIONER: Okay.
16 MR. GALLIHER: But again, that was not the -- from our
17 standpoint, Commissioner, that was not a problem. We can
18 produce what we have.
19 DISCOVERY COMMISSIONER: All right.
20 MR. GALLIHER: But we pointed out that Venetian,
21 basically, is asking us to produce the reports that they produced in
22 other litigation.
23 DISCOVERY COMMISSIONER: Well, any reports, any
24 prior incident reports in Defendant -- I'm sorry, in Plaintiffs'
25 possession must be produced to Defendants.

1 And Number 8, Defendants are -- that's on my list,
2 anyway. I don't know if it's Number 8 on yours. My -- I have
3 written down, For Leave to Retake Mr. Jennings' Deposition for One
4 Hour, With Plaintiff Bearing All Costs. That's quite an ask.

5 Mr. Royal?

6 MR. ROYAL: I only want that because he didn't have
7 that -- any of that information present. I wasn't able to
8 cross-examine him on these prior incidents.

9 DISCOVERY COMMISSIONER: Okay.

10 MR. ROYAL: Which is a big deal. I mean, he claims they
11 were all there in the Grand Lux area, 196. And I ask him -- I ask him,
12 you know, How did you receive them? What did they look like? I
13 would just like to be able to finish -- to complete my examination of
14 Mr. Jennings, which I could have done at the time had it been
15 produced.

16 MR. GALLIHER: And I have no problem with the
17 deposition. But I do have a problem with having to pay for the
18 deposition, because we didn't anything wrong.

19 DISCOVERY COMMISSIONER: Okay. I --

20 MR. GALLIHER: And of the 30(d)(2), they have not met the
21 standard.

22 DISCOVERY COMMISSIONER: I am going to allow the
23 deposition to continue. I am not going to require Plaintiffs to pay
24 for it, because if you had been able to continue, you would have
25 had to pay for the continued time. So there's really no prejudice to

1 the defendant for having you pay for the deposition to go forward.

2 Have we addressed everything now in your Motion for
3 Protective Order and Motion to Compel?

4 MR. ROYAL: Well, we have -- and I may have missed this.
5 The Topics 6 through 18 all relate to the computer data.

6 DISCOVERY COMMISSIONER: Okay. What day was that
7 filed? I have to pull it up on here. So which date was your motion
8 filed? This -- let's see.

9 MR. ROYAL: It was filed August 5th, 2019.

10 DISCOVERY COMMISSIONER: Let me just pull it up so I
11 can look at the topics. Okay. And what page is that on?

12 [Pause in proceedings.]

13 MR. ROYAL: Excuse me.

14 DISCOVERY COMMISSIONER: Or -- it's an exhibit?
15 Page 22 of the motion?

16 [Pause in proceedings.]

17 DISCOVERY COMMISSIONER: Okay. I see it. I'm here
18 now. 6 through 18.

19 MR. GALLIHER: Is that where we are, page 22?

20 DISCOVERY COMMISSIONER: All right. So --

21 MR. ROYAL: I'm there. I'm sorry.

22 DISCOVERY COMMISSIONER: The identity -- okay.

23 Page -- I'm sorry, page 22:

24 The identity of all employees who were responsible for
25 managing and maintaining Venetian's technology

1 infrastructure.

2 I think that's overly broad. The technology infrastructure
3 at the Venetian has far more components, I'm certain, than the
4 communications area of the -- like, employee communications.
5 What is it you're actually looking for? Because their technology
6 includes all of their security, all of their financial stuff, like, this
7 needs to be tailored.

8 So Topic Number 6 --

9 MR. GALLIHER: Might I suggest this --

10 DISCOVERY COMMISSIONER: Yes.

11 MR. GALLIHER: -- Commissioner, maybe to shortcut
12 things with -- what we're really interested in is the information
13 contained on the computerized Alliance system that the Venetian
14 maintains. All of this -- of the other topics here pertain to us trying
15 to verify that information. But I'm more than happy with simply an
16 order that they produce the information on their Alliance system,
17 by -- which, by the way, relates strictly to fall injury events or injury
18 events.

19 DISCOVERY COMMISSIONER: So is the Alliance system
20 their claims log system, for lack of a better word? Like how they --

21 MR. GALLIHER: That's --

22 DISCOVERY COMMISSIONER: -- how they document
23 injury incident claims in the casinos?

24 MR. GALLIHER: That's my understanding. And it contains
25 relevant information concerning those falls. It may even contain

1 copies of the reports.

2 DISCOVERY COMMISSIONER: Okay. So why don't we
3 just tailor it to be able to question the 30(b)(6) witness who has
4 knowledge regarding the documenting of injuries and claims that
5 occur in the Venetian casino property.

6 MR. GALLIHER: I'm fine with that.

7 DISCOVERY COMMISSIONER: And how those are
8 electronically stored and can be searched and obtained. Is that
9 what you're looking for?

10 MR. GALLIHER: That's what I'm looking for.

11 DISCOVERY COMMISSIONER: Okay. Does that take care
12 of all of these different -- 6 through 18, if that's the topic?

13 MR. GALLIHER: It does. It's actually a better idea than we
14 had.

15 DISCOVERY COMMISSIONER: Well, I'm here to help.

16 MR. ROYAL: Yeah, as long as we're going to --

17 DISCOVERY COMMISSIONER: If we're limiting it --

18 MR. ROYAL: Are we going to limit it --

19 DISCOVERY COMMISSIONER: We're limiting it to the
20 person -- the 30(b)(6) witness who has knowledge of how the claims
21 are reported, claims and injuries in the casino, the Venetian casino
22 property are reported, documented, stored electronically, how they
23 can be retrieved and identified. Does that cover it?

24 MR. GALLIHER: Yes. And hopefully there'll be a
25 transcript, since my note-taking isn't so good.

1 MR. ROYAL: Your Honor --

2 DISCOVERY COMMISSIONER: And that will replace
3 Topics 6 through 18.

4 MR. ROYAL: Right.

5 MR. GALLIHER: We're fine with that.

6 MR. ROYAL: Okay. And that works. Do we have a
7 specified period of time?

8 DISCOVERY COMMISSIONER: The specified period of
9 time would be five years prior to the incident to the present. Okay.

10 Does that cover everything then?

11 MR. GALLIHER: I think it does.

12 DISCOVERY COMMISSIONER: All right. Now we just
13 have one more motion, right? Or are we -- is this --

14 MR. GALLIHER: I think it --

15 DISCOVERY COMMISSIONER: We covered everything in
16 your --

17 MR. GALLIHER: I think it covered our Motion to Compel,
18 as well.

19 DISCOVERY COMMISSIONER: -- Motion to Compel?

20 MR. GALLIHER: Sure. I think it covered that as well.

21 DISCOVERY COMMISSIONER: Okay. Because -- pursuant
22 to -- this was the Motion to Compel Testimony and Documents,
23 Plaintiffs' Motion to Compel. So just so we're clear on Defendants'
24 Motion for Protective Order is granted in part, denied in part as
25 stated.

1 And with regard to Plaintiffs' Motion to Compel Testimony
2 and Documents, it's granted in part, denied in part. The judge has
3 already -- the three main issues in that motion were the prior
4 unredacted incident reports, which Judge Delaney has already
5 determined, so those will be -- will be allowed.

6 The 30(b)(6) we've handled, and the subsequent incident
7 reports we've handled. So that should take care of all of the Motion
8 to Compel.

9 MR. GALLIHER: Yes. The only other thing I'd ask is can
10 we still have, like, a two-week deadline to produce the unredacted
11 reports?

12 DISCOVERY COMMISSIONER: Well, I'm going to provide
13 alternative relief pursuant to EDCR 2.34(e) to Mr. Royal, because
14 he's waiting from a final -- for a final order from Judge Delaney
15 from yesterday, I believe. And so I'm going to provide him relief
16 that those do not need to be produced until it has become a final
17 order. That may be after a writ, since he intends to -- he's already
18 articulated that he intends to take it up.

19 But pursuant to 2.34, he does not need to produce it until
20 that has become a final order.

21 MR. GALLIHER: So can we have a date, then, after the
22 order is signed?

23 DISCOVERY COMMISSIONER: Two weeks after the order
24 is signed.

25 MR. GALLIHER: Okay.

1 DISCOVERY COMMISSIONER: And the writ would stay
2 that period of time.

3 MR. ROYAL: Okay. Now, this is my last clarification, I
4 want to make sure.

5 DISCOVERY COMMISSIONER: Okay.

6 MR. ROYAL: So it's five years to the present, casino level,
7 marble floors, and not limited to the Grand Lux.

8 DISCOVERY COMMISSIONER: Yes.

9 MR. ROYAL: Okay. And --

10 MR. GALLIHER: Unredacted.

11 MR. ROYAL: Right. Unredacted.

12 DISCOVERY COMMISSIONER: Unredacted.

13 MR. ROYAL: And the -- and we're going -- the subsequent
14 incidents are because even if this is a transitory -- temporary
15 transitory condition, he's got a punitive damage claim, and
16 therefore, those are to be produced.

17 DISCOVERY COMMISSIONER: The transitory, I would not
18 allow them, but because of the punitive allegations that have not --
19 that have survived now two Motions to Dismiss, I'm going to allow.

20 MR. ROYAL: I understand. Okay.

21 And to the -- is this an ongoing duty? Do we have to -- I
22 mean, when -- it says to the present, is it as of today? Is this going
23 to go on through trial? Do I have to keep supplementing this
24 response?

25 DISCOVERY COMMISSIONER: I think -- I would say

1 through today is probably -- or through the date of the production is
2 probably sufficient.

3 MR. GALLIHER: And I'll -- I'm okay with through the date
4 of production.

5 DISCOVERY COMMISSIONER: All right.

6 MR. ROYAL: Thank you.

7 MR. GALLIHER: Thank you.

8 DISCOVERY COMMISSIONER: Thank you. Have a great
9 day, both of you.

10 MR. ROYAL: So Mr. Galliher will prepare or -- did I -- I'm
11 sorry, I totally missed that. Who's --

12 DISCOVERY COMMISSIONER: You know, I didn't say.
13 You know, since his is really all part of yours, I'm going to say -- I'm
14 going to ask you, Mr. Royal, to prepare the report and
15 recommendation.

16 MR. ROYAL: Okay. Thank you.

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1 DISCOVERY COMMISSIONER: And please have that
2 submitted to Mr. Galliher for his review as to form and content and
3 have it submitted to me within 14 days.

4 MR. GALLIHER: Thank you.

5 DISCOVERY COMMISSIONER: I am -- thank you.

6 [Proceeding concluded at 11:18 a.m.]

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18 ATTEST: I do hereby certify that I have truly and correctly
19 transcribed the audio/video proceedings in the above-entitled case to
20 the best of my ability.

21 
22 Shawna Ortega, CET*562