IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE KATHLEEN DELANEY, DISTRICT JUDGE,

Respondents,

and

JOYCE SEKERA,

Real Party in Interest.

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Case No.: 80816-COA

ANSWER TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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NRAP 26.1 DISCLOSURE

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

Joyce Sekera ("Plaintiff") is an individual.

Claggett & Sykes Law Firm and the Galliher Law Firm have appeared on behalf of Joyce Sekera in this matter.

DATED this 24th day of April, 2020.

CLAGGETT & SYKES LAW FIRM

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I. ISSUES PRESENTED FOR REVIEW

A. WHETHER THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION TO DENY DEFENDANTS' MOTION FOR PROTECTIVE ORDER, AND WHETHER THEY HAVE WAIVED ANY PRIVILEGE ISSUES.

B. WHETHER THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION TO ORDER SIMILAR INCIDENTS TO BE PRODUCED IN AN UNREDACTED FORM.

II. STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT

This original petition filed by Venetian Casino Resorts, LLC and Las Vegas Sands, LLC (hereinafter "Defendants") is an example of defendants utilizing procedural rules and wasting resources to try to undermine the substance of a meritorious claim. This petition is made under a narrow exception for seeking extraordinary writ relief for discovery orders; i.e., the discovery order would require the disclosure of privileged information. *See Valley Health Sys., Ltd. Liab. Co. v. Eighth Judicial Dist. Court of Nev.,* 127 Nev. 167, 171, 252 P.3d 676, 678-79 (2011). Yet, Defendants fail to identify any statute, court rule, or case law that would make names of individuals with similar incidents of injuries privileged. For this reason alone, this Court should decline to intervene into this case.

A writ of mandamus is an inappropriate vehicle for addressing Defendants' arguments. *Id.* at 171, 252 P.3d at 678 ("[Writs of mandamus] are generally not available to review discovery orders."). The subject discovery was not ordered under a blanket order without regard to relevance, nor does it contain privileged

information. *See id.* at 171, 252 P.3d at 679 ("[T]here have been two main situations where this court has issued a writ to prevent improper discovery: blanket discovery orders with no regard to relevance, and discovery orders compelling disclosure of privileged information."). In fact, Defendants have not alleged that the order was made without regard to relevance, and, importantly, Defendants have not identified a privilege for the information to be withheld from discovery. Instead, Defendants argue that the District Court misapplied the relevance standard and that some of the information has a privacy interest. Therefore, as is the case with most discovery orders, the appropriate avenue for redress is an appeal from a final judgment, not a petition for a writ of mandamus or prohibition.

Defendants also failed to present this argument to the Discovery Commissioner. Defendants did this so they could focus on their argument that reports of similar incidents are supposedly not relevant and, therefore, not discoverable in this case. Defendants' argument is improper because discovery issues are generally limited by burden [on the producing party] and proportionality [to the needs of the case]. Relevance in the discovery phase is difficult to ascertain, which is why the standard is wider than relevance for admissibility at trial. Yet, Defendants ask this Court to relitigate a tight adherence to pre-trial relevance, while they retain the requested discovery, for this Court to hypothetically determine whether discovery will be relevant to Plaintiff's case.

Undoubtedly, Defendants have spent much more energy, time, and money trying to not produce the requested discovery than it would have spent just producing the reasonable discovery requested. Defendants' argument that the incident reports are not necessary to the case is not reviewable because the District Court will have the opportunity to disallow evidence at trial on the way to a final judgment. And, an appeal from a final judgment is an adequate remedy, such that this Court to elect to not intervene in this discovery dispute.

Defendants have never given Plaintiff or the Court a reasonable way of determining if the disputed information is worthy of protection. Defendants say that they only redacted the "private information of other customers." Pet. at 3. However, a plain viewing of the redactions shows that at least some of the information is public, some of the information has nothing to do with the victims, and some victims were not customers. A more in-depth analysis of exactly what the Defendants want to protect is not possible because Defendants have never produced a privilege log, nor any description of the redacted information. According to NRS 49.015(1)(b) and (c), no person, including Defendants, "has a privilege to . . . [r]efuse to disclose any matter . . . [or] [r]efuse to produce any object or writing." Defendants have not produced this information because their goal is not to protect any privileged information, but instead to block Plaintiff from accessing the discovery altogether.

Alternatively, this Court should either refuse to intervene or deny Defendants' writ petition because the District Court weighed the issues and information presented, and acted within its discretion to deny Defendants' motion for protective order in ordering that the similar incidents must be produced. The District Court did not address a protective order regarding the alleged confidentiality of the information contained in the subject incident reports because Defendants did not make such a request. As such, the District Court properly ordered the incident reports to be produced.

Defendants have not made a compelling argument for any redactions. Instead, Defendants ask this Court to enter a blanket protective order, but they do not demonstrate why a protective order is necessary or outline any specific information that should be protected. Despite Defendants' broad arguments of privilege or private information within the incident reports, they have never prepared a privilege log. As such, the Court should reject Defendants' generalized, blanket request for a protective order. For any of these reasons, Plaintiff respectfully requests that this Court deny Defendants' writ petition.

III. FACTUAL AND PROCEDURAL BACKGROUND

This petition arises from a discovery dispute in a slip and fall case. The slip and fall occurred on November 4, 2016, at around 12:30 p.m. 1 Petitioners' Appendix ("PA") 2. On that day, Plaintiff Joyce Sekera slipped on the wet marble

floor near the Grand Lux Cafe restrooms in the Venetian Casino Resort. *Id.* at 2-3. The highly-polished marble floor that Plaintiff slipped on is accessible by members of the public of every age at all hours of the day and night. *Id.*

On April 12, 2018, Plaintiff filed her complaint against Defendants. 1 PA 1-4. On June 28, 2019, Plaintiff amended her complaint to include a claim for punitive damages, alleging that Defendants "knew that its marble floors caused unreasonable amount of injury slip and falls and thus were dangerous to pedestrians." 1 PA 35.

Plaintiff also alleged that despite Defendants' notice of the dangerous condition, its "marble floors were significantly more slippery than is safe for pedestrians [and] Defendant failed to take any appropriate precautions to prevent injury." 1 PA 36.

When Plaintiff slipped, she struck her skull and elbow on a marble pillar and her left hip on the ground sustaining serious injuries. Plaintiff contends that the highly-polished marble floors are an unsafe condition which continually and repeatedly injures people. The Venetian has many guests walking in multiple directions and much of their navigating signage is head height or higher. As a result, a person must often keep their eyes up to navigate, increasing the risk posed by the extremely slippery marble floors.

On August 15, 2018 Plaintiff requested all security reports and investigative documents relating to slip and falls on Venetian's marble floors from the approximately five years from November 2013 to August 2018. 1 PA 40. The record does not reflect that Defendants asserted any objection to this request for documents. Accordingly, Defendants responded by producing 64 redacted incident reports that only spanned 2013-2016. 11 PA 1966. Within the time frame that Defendants chose to give a response, they concealed responsive incident reports which should have been produced. *Id.* Defendants also did not produce a privilege log or explain the redactions in any way. The redactions appear to include necessary witness information, such as victim's contact information and the names and titles of Venetian employees who attended the incidents.

Defendants did not supplement their production and instead moved for a protective order while claiming that Plaintiff only requested three years of incident reports. 1 PA 54-83. Defendants argued that the policy interests of protecting confidential personal information outweigh the need for discovery in the case. 1 PA 61. The Discovery Commissioner recommended that a protective order be issued, citing generalized privacy concerns and HIPAA-related information. 1 PA 201-06. On May 14, 2019, the District Court rejected Defendants' argument and reversed the Discovery Commissioner's recommendation holding "that there is no legal basis to preclude plaintiff from knowing the identity of the individuals

contained in the incident reports as this information is relevant discovery." 2 PA 269.

Defendants ignored the District Court's order and did not produce the unredacted documents. On July 2, 2019, Plaintiff filed a motion to compel Defendants to produce the unredacted documents, as well as the requested subsequent incident reports. 6 PA 938 through 7 PA 1005. On July 12, 2019, Defendants opposed Plaintiff's motion to compel and filed a counter-motion for a protective order, arguing that incident reports outside of what Defendants had already produced were irrelevant and burdensome. 7 PA 1007 through 9 PA 1486. Yet, Defendants did not argue that the information was private. *Id.*

The Discovery Commissioner heard arguments regarding Plaintiff's motion to compel and recommended that Defendant produce unredacted incident reports from November 2013 to the present (the date of production). 11 PA 1965-75. Defendants filed the prior writ petition regarding the District Court's rejection of their motion for protective order on September 26, 2019, which is docketed before this Court as Case No. 79689-COA.

The District Court heard objections to the Discovery Commissioner's recommendation on the Plaintiff's motion to compel and required Defendants to produce unredacted incident reports from November 2013 to the date of the subject incident, but reversed the recommendation that subsequent incident reports be

produced. 13 PA 2661-64. Defendants filed their petition for extraordinary relief based on the notion that there are generalized privacy concerns in the documents to be produced, even though this argument was not presented in their opposition to Plaintiff's motion to compel. 7 PA 1007 through 9 PA 1486. Plaintiff now urges this Court to deny Defendants' writ petition for any of the procedural or substantive reasons presented, or any other reason supported by the record. *See Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 403, 632 P.2d 1155, 1158 (1981) ("If a decision below is correct, it will not be disturbed on appeal even though the lower court relied upon wrong reasons.").

IV. STANDARDS OF REVIEW

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, or to control a manifest abuse of discretion. *See Beazer Homes, Nev., Inc. v. Eighth Judicial Dist. Court*, 120 Nev. 575, 579, 97 P.3d 1132, 1135 (2004); NRS 34.160. An abuse of discretion occurs if the district court's decision is arbitrary and capricious or if it exceeds the bounds of law or reason. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). "An appellate court is not an appropriate forum in which to resolve disputed questions of fact." *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981).

Appellate courts generally do not review discovery orders because an appeal from a final judgment is an available and appropriate remedy. *Valley Health*, 127 Nev. at 171, 252 P.3d at 678. However, an appellate court will review blanket discovery orders issued without regard to relevance and discovery orders that require disclosure of privileged information. *Id.* at 171, 252 P.3d at 678-79. An appellate court will not overturn a discovery order unless it finds a clear abuse of discretion. *Club Vista Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012).

A party seeking a protective order must demonstrate good cause under NRCP 26(c) why the requested discovery should not be produced as requested. *Cf. Okada v. Eighth Judicial Dist. Court*, 359 P.3d 1106, 1111 (Nev. 2015) (examining a protective order issue in the context of depositions). An appellate court only considers arguments that were properly preserved by being brought before both the discovery commissioner and the district court. *Valley Health*, 127 Nev. at 173, 252 P.3d at 680.

V. LEGAL ARGUMENT

A. DEFENDANTS HAVE NOT DEMONSTRATED THAT THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING THEIR REQUESTED PROTECTIVE ORDER, NOR HAVE THEY PRESERVED ANY PRIVILEGE ISSUES.

Defendants erroneously rely upon NRCP 26 to claim that information contained in incident reports of victims injured by Venetian's dangerous marble

floors is shielded from disclosure. The problem with Defendants' reliance upon NRCP 26 for this argument, however, is that it is a procedural rule. Procedural rules guide how our state legal system functions, but they do not supply substantive law. *See* BLACK'S LAW DICTIONARY, 1457 (11th ed. 2019) (defining "procedural law" as "[t]he rules that prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves").

In order for NRCP 26 to apply, Defendants must identify a substantive right to which the rule applies. Indeed, the party asserting such a privilege must demonstrate its existence. According to NRS 49.015(1)(b) and (c), no person, including Defendants, "has a privilege to . . . [r]efuse to disclose any matter . . . [or] [r]efuse to produce any object or writing." Defendants have not identified a substantive right and have not described the unknown information in a way that would allow Plaintiff and this Court to evaluate the substantive right. Defendants never offered a privilege log, or any particular description of the information it seeks to redact. Therefore, Plaintiff needs access to each piece of supposedly protectable information along with the specific privilege Defendants would like the Court to apply can fully consider the merit of Defendants' broad privilege assertion.

Defendants claim that HIPAA or a generalized right to privacy should preclude this Court from allowing individual's names from incident reports to be released. But, HIPAA only applies to specific covered entities that are required to handle private information in a specific way. *See* 45 C.F.R. §§ 160.102, 160.104; 42 U.S.C. § 1320d. Defendants are not statutorily-defined covered entities, and HIPAA protections do not apply to any of the information. Defendants do not articulate how a generalized right to privacy argument in this case prevents them from disclosing relevant discovery. Equally as important, Defendants have not presented any legal authority demonstrating that they have standing to assert privacy interests of unknown third parties. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (appellate courts do not consider arguments not cogently argued). Similarly, Defendants have not demonstrated that such unknown third parties have a substantive legal reason to withhold incident reports. *Id.*

Tellingly, the burden was placed upon Defendants to demonstrate good cause for seeking a protective order, identifying a relevant privilege, or preparing a privilege log. *See* NRCP 26(c); *Okada v. Eighth Judicial Dist. Court*, 359 P.3d 1106, 1111 (Nev. 2015) (examining a protective order issue in the context of depositions); NRS 49.015. But, Defendants made no effort to do any of these things. Nevada law does not presume that a privilege exists. Instead, Defendants

only desire to withhold relevant discovery from Plaintiff to delay this litigation.

In any event, Defendants argument regarding private information was not preserved because they did not present this argument to either the Discovery Commissioner or the District Court. Defendants only argued that the production was irrelevant and burdensome, but did not allege that the incident reports contained private information. 1 PA 54-83; 6 PA 750-78. As such, this Court should not allow Defendants to make one argument at the Discovery Commissioner and District Court level, then pivot to a different argument to this Court after the initial argument fails. "All arguments, issues, and evidence should be presented at the first opportunity and not held in reserve to be raised after the [discovery] commissioner issues his or her recommendation. All objections are to be presented to the commissioner so that he or she may consider all the issues before making a recommendation, so as not to frustrate the purpose of having discovery commissioners." *Valley Health*, 127 Nev. at 173, 252 P.3d at 680 (internal quotation marks omitted). Therefore, as in this case, when an issue is first heard by the Discovery Commissioner and then submitted to the District Court for approval, any argument that was not first raised before the Discovery Commissioner should be considered untimely and denied appellate review.

B. DEFENDANTS' ARGUMENTS REGARDING RELEVANCE AND THE CLAIMED IMPROPRIETY OF PRODUCING INCIDENT REPORTS ARE MERITLESS.

1. Defendants cannot preclude Plaintiff from accessing contact information for people who witnessed the same dangerous condition that injured her.

Defendants assert that the subject discovery order gives Plaintiff "unfettered access to personal and sensitive information from non-parties to this action, which is not relevant to any claims or defenses in this matter." Pet. at 22. Yet, Defendants admit that they have found no "Nevada case law applying [NRCP 26] to protecting the privacy rights of persons involved in other incidents." Pet. at 23. Defendants essentially want this Court to rule that Plaintiff must prove admissibility at trial before they will release relevant discovery. In this sense, Defendants want to appoint themselves as the gatekeepers of discovery, with an aim to withhold relevant evidence from Plaintiff, unless they are satisfied that Plaintiff can prove the relevance of a document at trial that Defendants have never disclosed. Defendants' erroneous assertion ignores NRCP 26(b)(1) which states, "Information within [the] scope of discovery need not be admissible in evidence to be discoverable."

Defendants' backwards argument is the same kind rejected by the Nevada Supreme Court in *Rocker v. KPMG LLP*, 122 Nev. 1185, 1187, 148 P.3d 703, 704 (2006) *overruled on other grounds by Buzz Stew, Ltd. Liab. Co. v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008): "[I]n certain cases, a plaintiff

cannot plead with particularity because the facts of the fraudulent activity are in the defendant's possession. In those cases, if the plaintiff pleads specific facts giving rise to an inference of fraud, the plaintiff should have an opportunity to conduct discovery and amend his complaint to include the particular facts."

2. Plaintiff met her burden for proving relevance.

Defendants make numerous accusations of how Plaintiff supposedly fell short on her burden to establish relevance but do not cite the record as to how Plaintiff's argument was inadequate. Instead, Defendants cite *Eldorado Club v. Graff*, 78 Nev. 507, 377 P.2d 174 (1962), for the contention that prior incidents are generally not admissible to establish notice in slip and falls involving a temporary substance. Defendants misuse *Eldorado Club* to accuse Plaintiff of failing to establish the relevance and proportionality of the discovery at issue. But, relevance and proportionality are only considered in a writ petition of a blanket order made without consideration of relevance. As such, this Court does not need to consider Defendants' argument because it did not allege that the District Court's order was issued without regard to relevance.

Alternatively, Defendants' reliance on *Eldorado Club* is inaccurate. The defendant in *Eldorado Club* argued that the court could not admit a prior incident to establish his knowledge of the dangerous condition because that condition (a foreign substance) was not permanent. *Eldorado Club v. Graff,* 78 Nev. 507, 509,

377 P.2d 174, 175 (1962). However, the Supreme Court held that prior similar incidents could be admitted when "the conditions surrounding the prior occurrences have continued and persisted." *Id.* at 511, 377 P.2d at 176. In the instant case, Plaintiff believes that the incidents surrounding the falls on Venetian's slippery marble floors have continued and persisted, which entitles her to receive the discovery and determine for herself the relevancy according to NRCP 26(b)(1) which states, "Information within [the] scope of discovery need not be admissible in evidence to be discoverable." However, Defendants are requesting that Plaintiff be kept from investigating the conditions surrounding the prior occurrences by blocking the incident reports altogether or redacting the witness contact information.

Moreover, the standards of review regarding relevancy of discovery are beyond the relief available in this original proceeding. In other words, it is improper for this Court to review the factual issues of relevancy in the context of Defendants' writ petition. *See State v. Garaventa Land & Livestock Co.*, 61 Nev. 407, 411, 131 P.2d 513, 514 (1942) (this Court does not disturb findings even where there is conflict evidence).

3. Defendants have no viable argument that the information contained in the incident reports is private.

In *Schlatter v. Eighth Judicial Dist. Court*, 93 Nev. 189, 192, 561 P.2d 1342, 1343-44 (1977), the discovery order was overturned because it included carte

blanche discovery of all information in tax returns and medical records without regard to relevance. The issue in *Schlatter* is supported by law because medical and financial information is protected by privacy laws such as HIPAA, when a discovery order is made without regard to relevance. However, in the instant case, the District Court considered the relevance of the information, and the subject incident reports are records kept in the regular course of business without any privacy laws that restrict disclosure. When a victim adds information to the Defendants' incident report, they do so voluntarily, to a private third-party business for the Defendants' benefit. Thus, Defendants have failed to demonstrate a privilege. According to NRS 49.015(1)(b) and (c), no person, including Defendants, "[have] a privilege to . . . [r]efuse to disclose any matter . . . [or] [r]efuse to produce any object or writing."

For their position on privilege, Defendants cite a federal case where particularized information about the prior slip and falls had already been produced to the plaintiff. The plaintiff in *Izzo v. Wal-mart Stores, Inc.*, No. 2:15-cv-01142-JAD-NJK, 2016 U.S. Dist. LEXIS 12210, at *11 (D. Nev. Feb. 2, 2016) requested "facts and circumstances surrounding any other slip and fall." The court reasoned that further discovery on prior slip and falls was unduly burdensome because plaintiff had the list of prior incidents and the discovery would require weeks or months of work to prepare. *Id.* at *13. *Izzo* is distinguishable from the instant case

because that defendant was asserting privilege for their protectable interest and the requesting party was asking for far more than the incident reports that Plaintiff has requested.

In another federal case cited by Defendants, a court addressed the privacy of hotel guests who gave their addresses and phone numbers to secure a room. *See Rowland v. Paris Las Vegas*, No. 13CV2630-GPC (DHB), 2015 U.S. Dist. LEXIS 105513, at *6-7 (S.D. Cal. Aug. 11, 2015). In that case, the plaintiff requested the names addresses and phone numbers of all prior hotel guests "who complained, reported or otherwise informed" the defendant of slippery floors. *Id.* at *6. This request broadly requested that the defendant to go through its hotel guest records and provide all information linked with those guests. The defendant raised a concern over the guest's constitutional right to privacy, and the court held that "[f]ederal courts ordinarily recognize a constitutionally-based right of privacy that **can be raised** in response to discovery requests." *Id.* at *7 (emphasis added). The court went on to explain that the right is not absolute and is subject to a balancing test. *Id.* In this case, the information was given voluntarily for the Defendants' benefit in connection with the incidents, as opposed to being mandated at registration for a hotel room. Importantly, Defendants have not raised a constitutionally-based right of privacy, nor has it suggested the Court apply a federal balancing test. Without articulating the claimed right, or even identifying

the legal authority that would supposedly create a constitutional right of privacy, Defendants have not demonstrated the right to extraordinary relief. *See* ***Edwards***, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Individuals do have a right to protect "private facts" from being released by government entities in accordance with the Fourth Amendment of the United States Constitution. *See Montesano v. Donrey Media Grp.*, 99 Nev. 644, 650-51, 668 P.2d 1081, 1085 (1983). However, information freely given to a non-public entity during an investigation of incidents is not considered private and does not invoke the Constitution. The statements and incidents to be produced were given voluntarily without privacy implication. *See* NRS 49.385(1) (Waiver of privilege by voluntary disclosure) ("A person upon whom these rules confer a privilege against disclosure of a confidential matter waives the privilege if the person or the person's predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter."). Thus, it is unclear how Defendants or unknown third parties have any privacy interest in voluntarily-provided information.

Defendants cites NRS 603A.010 et seq. for the purpose of arguing that the Nevada Legislature desires the protection of personal information by business entities. However, this statute does not apply to the basic contact information that

Plaintiff seeks. *See* NRS 603A.040(1).[1] Moreover, the information protected by that statute is nonpublic information used in a transaction (generally financial in nature), not information given freely to a private party in description of an incident. Regardless, Defendants did not raise this statute in either the Discovery Commissioner or the District Court proceedings.

Defendants also claim that releasing the subject discovery would expose them to liability. Pet. at 27. Defendants did not provide any authority for their feared liability, and Plaintiff is unable to find law which supports that assertion. In fact, the penalties imposed by NRS Chapter 603A are imposed against parties that "unlawfully obtained or benefitted from" the information. *See* NRS 603A.270. Plaintiff's discovery requests do not alter the manner in which Defendants obtained or benefitted from the information. Therefore, Defendants' bare assertion that they will face liability is unfounded.

[1] "Personal information" means a natural person's first name or first initial and last name in combination with any one or more of the following data elements, when the name and data elements are not encrypted:
(a) Social security number. (b) Driver's license number, driver authorization card number or identification card number. (c) Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account. (d) A medical identification number or a health insurance identification number. (e) A user name, unique identifier or electronic mail address in combination with a password, access code or security question and answer that would permit access to an online account.

Defendants' final argument is that they will incur liability for the release of information because they promised to keep the information private according to their own policy. This argument is flawed for several reasons, primarily the fact that Venetian explicitly states that it may change the policy and how it uses the information unilaterally: "This Privacy Notice may be updated periodically and without prior notice to you to reflect changes in our information practices." 3 PA 486-95. However, unilateral change will not be necessary for Defendants to comply because the Venetian policy explicitly states that Defendants reserve the right to release the information in connection with defending themselves in a court case, and to comply with a court order. Under "How We Share Your Personal Information," Venetian describes how it uses personal information: "Venetian may disclose personal information about you (1) **if we are required or permitted to do so by applicable law, regulation, or legal process (such as a court order or subpoena)**; (2) to law enforcement authorities and other government officials to comply with a legitimate legal request; (3) when we believe disclosure is necessary to prevent physical harm or financial loss to the Company, our guests, patrons, employees, or the public as required or permitted by law; (4) **to establish, exercise, or defend our legal rights**; and (5) in connection with an investigation of suspected or actual fraud, illegal activity, security, or technical issues." 3 PA 491 (emphases added). Therefore, this Court should disregard Defendants'

misleading and self-argument regarding their own policies.

4. Defendants' assertion that precluding discovery will promote efficiency offends the entire litigation process.

Defendants argue that judicial economy will be served by denying identifying information of witnesses because Plaintiff will not have to contact those witnesses. Pet. at 13. Plaintiff has repeatedly requested and argued for this witness information because it is necessary to properly adjudicate her claim. Yet, when Defendants are allowed to hide information from Plaintiff, Defendants' gamesmanship does not make that information unnecessary, it makes it more difficult to find, especially given the interminable delays. *See Foster v. Dingwall*, 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010) ("holding that, with respect to discovery abuses, '[p]rejudice from unreasonable delay is presumed' and failure to comply with court orders mandating discovery 'is sufficient prejudice'") (citing *In re Phenylpropanolamine (PPA) Prods.*, 460 F.3d 1217, 1236 (9th Cir. 2006)). Therefore, if Defendants are permitted to hide the identity of potential witnesses and other information in concealed incident reports, Plaintiff will be prejudiced.

VI. CONCLUSION

In summary, this Court should deny Defendants' request for extraordinary relief because the District Court properly exercised its discretion to deny Defendants' motion for protective order. Indeed, Defendants' unsupported request for a blanket protective order presented to this Court was not properly preserved

and should be rejected on this basis alone. Even if this Court were to reach the merits of Defendants' argument, they cannot demonstrate any legal reason to withhold discovery from Plaintiff. Therefore, Plaintiff respectfully requests that this Court deny Defendants' writ petition.

Dated this 24th day of April, 2020.

CLAGGETT & SYKES LAW FIRM

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CERTIFICATION OF COMPLIANCE

I hereby certify that I have read this answer, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this answer complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 24th day of April, 2020.

CLAGGETT & SYKES LAW FIRM

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CERTIFICATE OF SERVICE

I certify that I am an employee of Claggett & Sykes Law Firm and that on the 24th day of April, I submitted the foregoing **ANSWER TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION** for filing via the Court's e-Flex electronic filing system which will send electronic notification to the following:

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