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2 IN THE SUPREME COURT OF THE STATE OF NEVADA
3

4 Supreme Court No. Electronically Filed
5 District Court Case No. A-18-77276 May 15 2020 10:14 a.m.
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' REPLY BRIEF**
17 **Volume 14 (Exhibits 57-61)**

18 Michael A. Royal, Esq. (SBN 4370)
19 Gregory A. Miles, Esq. (SBN 4336)
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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.

INDEX/TABLE OF CONTENTS

Tab	Document/Exhibit Description	Bate Number	<u>Vol.</u>
1	Complaint (filed April 14, 2018), Case A772761	VEN 001-004	1
2	Venetian Security Narrative Report, No. 1611V-0680	VEN 005-006	1
3	Acknowledgment of First Aid Assistance & Advice to Seek Medical Care, No. 1611V-0680	VEN 007	1
4	Venetian Security Scene Photos	VEN 008-014	1
5	Transcript of Joyce Sekera Deposition (taken March 14, 2019)	VEN 015-032	1
6	First Amended Complaint (filed June 28, 2019)	VEN 038-41	1
7	Plaintiff's Request for Production of Documents and Materials to Defendant (served August 16, 2018)	VEN 042-049	1
8	Fifth Supplement to Defendants' 16.1 List of Witnesses and Production of Documents For Early Case Conference (served January 4, 2019)	VEN 050-053	1
9	Defendants' Motion for Protective Order (filed February 1, 2019)	VEN 054-083	1
10	Declaration of Peter Goldstein, Esq. (Dated February 13, 2019)	VEN 084-085	1
11	Defendants' Reply to Plaintiff's Opposition to Motion for Protective Order (filed March 5, 2019)	VEN 086-139	1

Tab	Document/Exhibit Description	Bate Number	Vol.
12	Sekera's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Sekera's Motion for Terminating Sanctions, in the matter of Smith v. Venetian, case no. A-17-753362-C (filed March 12, 2019)	VEN 140-185	1
13	Recorder's Transcript of Hearing [On] Defendant's Motion for Protective Order (March 13, 2019)	VEN 186-200	1
14	Discovery Commissioner's Report and Recommendation (filed April 4, 2019)	VEN 201-206	1
15	Transcript of Hearing on Objection to Discovery Commissioner's Report (May 14, 2019)	VEN 207-266	2
16	Order (filed July 31, 2019)	VEN 267-270	2
17	Motion for Leave to File Motion for Reconsideration on Order Reversing Discovery Commissioner's Report and Recommendation and Motion to Stay Order Until Hearing On Reconsideration or, Alternatively, Motion to Stay All Proceedings Pending Application for Writ of Mandamus On Order Shortening Time (filed August 12, 2019)	VEN 271-488	2
18	Findings of Fact, Conclusions of Law and Order Granting Petitioners' Motion for Partial Summary Judgment on Mode of Operation Theory of Liability (filed July 23, 2019)	VEN 449-452	2
19	Order Granting in Part and Denying in Part Sekera's Motion to Extend Discovery Deadlines and Continue Trial (Second Request) on Order Shortening Time (filed August 28, 2019)	VEN 453-455	2
20	Transcript of Hearing on Motion for Leave to File Motion for Reconsideration (September 17, 2019)	VEN 456-483	3
21	Court Minutes, Discovery Commissioner (September 18, 2019)	VEN 484-485	3

Tab	Document/Exhibit Description	Bate Number	<u>Vol.</u>
22	Privacy Policy, The Venetian Resort Las Vegas (July 7, 2019), https://www.venetian.com/policy.html	VEN 486-495	3
23	Order Regarding Plaintiff's Motion for Terminating Sanctions for Willful Suppression of Evidence Pursuant to Rule 37; and Defendant's Related Motion(s) to Strike	VEN 496-498	4
24	Defendants' Initial 16.1 List of Witnesses and Production of Documents for Early Case Conference (July 6, 2018)	VEN 499-508	4
25	Documents Related to Termination of Gary Shulman	VEN 509-514	4
26	Notice of Taking Deposition (Gary Shulman) (April 1, 2019)	VEN 515-517	4
27	Appendix to Petitioners' Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(a)(6) and Emergency Motion Staying Execution, Volume 1, 2 & 3, filed September 27, 2019	VEN 518 - 532	5
28	Appendix to Petitioners' Reply Brief, Volume 4, filed October 28, 2019	VEN 533 - 537	5
29	Petitioners' Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(a)(6) and 27(e), filed September 27, 2019	VEN 538 - 606	5
30	Emergency Motion Under NRAP 8 Staying Execution of Order Directing Petitioners to Disclose Private, Protected Information of Guests Not Involved in Underlying Lawsuit, filed September 27, 2019	VEN 607 - 625	5
31	Order Directing Answer and Imposing Temporary Stay, filed October 1, 2019	VEN 626 - 627	5
32	Joyce Sekera's Motion for Extending Briefing, filed October 8, 2019	VEN 628 - 631	5

Tab	Document/Exhibit Description	Bate Number	<u>Vol.</u>
33	Joyce Sekera's Opposition to Appellants' Emergency Motion for Stay Under NRAP 27(e), filed October 8, 2019	VEN 632 - 648	5
34	Joyce Sekera's Answering Brief, filed October 11, 2019	VEN 649 - 701	5
35	Reply to Joyce Sekera's Opposition to Petitioners' Emergency Under NRAP 27(e), filed October 15, 2019	VEN 702 - 710	5
36	Order Granting Stay, filed October 17, 2019	VEN 711 - 712	5
37	Petitioners' Reply Brief, filed October 28, 2019	VEN 713 - 749	5
38	Defendants' Motion for Protective Order as to Plaintiff's Request for Production of Incident Reports from May 1999 to Present, Motion to Compel Information and Documents of Prior Incident Reports Provided to Plaintiff Expert Thomas Jennings and Identified in His May 30, 2019 Rebuttal Report and for Leave to Retake the Jennings Deposition to Address the 196 Prior Claims Referenced in His Report at Plaintiff's Expense, filed August 5, 2019	VEN 750 - 936	6
39	Notice of Hearing on Defendants' Motion for Protective Order as to Plaintiff's Request for Production of Incident Reports from May 1999 to Present, Motion to Compel Information and Documents of Prior Incident Reports Provided to Plaintiff Expert Thomas Jennings and Identified in His May 30, 2019 Rebuttal Report and for Leave to Retake the Jennings Deposition to Address the 196 Prior Claims Referenced in His Report at Plaintiff's Expense, filed August 5, 2019	VEN 937	6

Tab	Document/Exhibit Description	Bate Number	<u>Vol.</u>
40	Plaintiff's Motion to Compel Testimony and Documents, filed August 5, 2019	VEN 938 - 988	6
		989-1005	7
41	Notice of Hearing on Plaintiff's Motion to Compel Testimony and Documents, filed August 5, 2019	VEN 1006	7
42	Opposition to Plaintiff's Motion to Compel Testimony and Documents and Countermotion to Strike False Accusations Levied by Plaintiff in "I. Introduction" and "Legal Argument" Section "III.D." With Appropriate Sanctions, filed August 14, 2019	VEN 1007 - 1228	7
		1229 - 1476	8
		1477 - 1486	9
43	Plaintiff's Opposition to Defendants' Motion for a Protective Order and Opposition to Defendants' Motion to Compel, filed August 30, 2019	VEN 1487 - 1719	9
44	Reply to Plaintiff's Opposition to Defendants' Motion for a Protective Order and Reply to Plaintiff's Opposition to Defendants' Motion to Compel, filed September 10, 2019	VEN 1720 - 1896	10
45	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, filed September 11, 2019	VEN 1897 - 1917	10
46	Plaintiff's Reply in Support of Countermotion for Rule 11 Sanctions, filed September 12, 2019	VEN 1918 - 1921	10
47	Hearing Transcript of Proceedings re: All Pending Motions, dated September 18, 2019	VEN 1922 - 1964	10
48	Discovery Commissioner's Report and Recommendation, filed December 2, 2019	VEN 1965 - 1975	11

1	Tab	Document/Exhibit Description	Bate Number	<u>Vol.</u>
2				
3	49	Defendants' Limited Objection to Discovery Commissioner's Report and Recommendation dated December 2, 2019, filed December 16, 2019	VEN 1976 - 2204	11
4			2205 - 2222	12
5				
6	50	Plaintiff's Objection to Discovery Commissioner's Report and Recommendation dated December 2, 2019, filed December 16, 2019	VEN 2223 - 2391	12
7				
8				
9	51	Defendants' Opposition to Plaintiff's Objection to Discovery Commissioner's Report and Recommendation dated December 2, 2019, filed December 23, 2019	VEN 2392 - 2444	12
10			2445 - 2595	13
11				
12	52	Plaintiff's Response to Defendant's Limited Objection to Discovery Commissioner's Report and Recommendation dated December 2, 2019, filed December 23, 2019	VEN 2596 - 2602	13
13				
14				
15	53	Order for Hearing, filed January 2, 2020	VEN 2603 - 2615	13
16				
17	54	Court Minutes re: Objection to Discovery Commissioner's Report, January 21, 2020	VEN 2616	13
18				
19	55	Hearing Transcript re: Objection to Discovery Commissioner's Report, January 21, 2020	VEN 2617 - 2660	13
20				
21	56	Order on Objection to Discovery Commissioner's Report, filed March 13, 2020	VEN 2661 - 2664	13
22				
23	57	Responses to Plaintiff's Requests for Production of Documents and Materials to Defendant, served October 9, 2018	VEN 2665 - 2671	14
24				
25	58	Supplemental Responses to Plaintiff's Requests for Production of Documents and Materials to Defendant, served January 4, 2019	VEN 2672 - 2678	14
26				
27	59	Email Correspondence Between Keith Galliher, Esq., and Michael Royal, Esq., dated August 16, 2019,	VEN 2679 - 2682	14
28				

Tab	Document/Exhibit Description	Bate Number	Vol.
60	Stipulation and Order (filed August 30, 2019)	VEN 2683 - 2687	14
61	Opposition to Plaintiff's Motion to Compel (filed July 12, 2019)	VEN 2688 - 2904	14
		VEN 2905 - 3005	15
62	Register of Actions	VEN 3006	15
63	Petition Granted in Court of Appeals matter No. 79689-COA (filed May 14, 2020)	VEN 3007 - 3020	15

The Appendix shall be contained in additional 2 separate volumes (15 volumes in total) in accordance with NRAP 30(c)(3) (2013), each volume containing no more than 250 pages.

DATED this 14 day of May, 2020.

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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:

R:\Master Case Folder\383718\Discovery\3Produce (Plaintiff) 1st.wpd

Case Number: A-18-772761-C

VEN 2665
Docket 80816-COA Document 2020-18568

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.

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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
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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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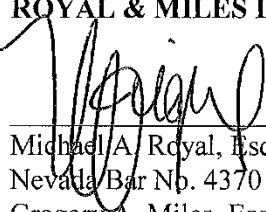
RESPONSE NO. 10:

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.
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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

**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.

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.

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

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.
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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;

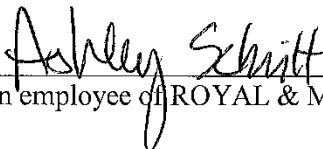
13 to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

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

From: [Keith Galliher](#)
To: [Mike Royal](#)
Cc: [Kathleen Gallagher](#)
Subject: Sekera
Date: Friday, August 16, 2019 3:03:31 PM

Mike: We will need extensions on the pending motions in this case. Kathleen starts a medical malpractice trial with my brother Jeff on Monday which is supposed to last 2 weeks before Crockett. Can we have a 2 week extension on our oppositions and replies? We can then move the hearing dates 2 weeks out from their present dates. Please let me know. Thanks.

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Ste. 107
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kgalliher@galliherlawfirm.com
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From: [Mike Royal](#)
To: "Keith Galliher"
Cc: [Kathleen Gallagher](#)
Subject: RE: Sekera
Date: Friday, August 16, 2019 3:04:00 PM

Certainly.

Michael A. Royal, Esq.

Royal & Miles LLP
1522 W. Warm Springs Rd.
Henderson, NV 89014
(702) 471-6777 (o)
(702) 531-6777 (f)
mroyal@royalmileslaw.com
<http://www.royalmileslaw.com/>

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From: Keith Galliher [mailto:kgalliher@galliherlawfirm.com]
Sent: Friday, August 16, 2019 3:02 PM
To: Mike Royal
Cc: Kathleen Gallagher
Subject: Sekera

Mike: We will need extensions on the pending motions in this case. Kathleen starts a medical malpractice trial with my brother Jeff on Monday which is supposed to last 2 weeks before Crockett. Can we have a 2 week extension on our oppositions and replies? We can then move the hearing dates 2 weeks out from their present dates. Please let me know. Thanks.

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From: [Keith Galliher](#)
To: [Mike Royal](#)
Cc: [Kathleen Gallagher](#)
Subject: RE: Sekera
Date: Friday, August 16, 2019 3:07:33 PM

Thank you. We'll prepare the Stipulations for your review.

Keith E. Galliher, Jr., Esq.
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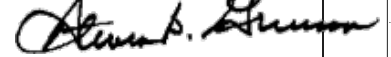
From: Mike Royal <mroyal@royalmileslaw.com>
Sent: Friday, August 16, 2019 3:04 PM
To: Keith Galliher <kgalliher@galliherlawfirm.com>
Cc: Kathleen Gallagher <kathleen.hannah.gallagher@gmail.com>
Subject: RE: Sekera

Certainly.

Michael A. Royal, Esq.

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5 Nevada Bar No. 8078
6 George J. Kunz, Esq.
7 Nevada Bar No. 12245
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11 Facsimile: (702) 735-0204
12 kgalliher@galliherlawfirm.com
13 jgalliher@galliherlawfirm.com
14 gkunz@lvlawguy.com
15 Attorneys for Plaintiff

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

14 JOYCE SEKERA, an Individual,)
15)
16 Plaintiff,)
17)
18 v.)
19)
20 VENETIAN CASINO RESORT, LLC,)
21 d/b/a THE VENETIAN LAS VEGAS, a)
22 Nevada Limited Liability Company;)
23 LAS 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

24 **STIPULATION AND ORDER**

25 IT IS HEREBY STIPTULATED AND AGREED that the oppositions and hearing will be
26 moved as follows:

27 1. Move the hearing on Defendants' motion for reconsideration on order reversing
28 discovery commissioner's report and recommendation and motion to stay order until hearing on

AUG 26 2019

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

1 reconsideration or, alternatively, motion to stay all proceedings pending application for writ of
2 mandamus on order shortening time, from August 27, 2019, to September 18, 2019 or as soon
3 thereafter as the Court can hear the matter.

4 2. Extend Plaintiff's opposition to Defendants' motion for protective order as to
5 Plaintiff's request for production of incident reports from May 1999 to present, motion to compel
6 information and comments of prior incident reports provided to Plaintiff expert Thomas Jennings and
7 retake the Jennings deposition to address the 196 prior claims reference in his report at Plaintiff's
8 expense from August 15, 2019, to and including August 29, 2019;

9 3. Extend Plaintiff's opposition to Defendants' counter-motion to strike false accusations
10 levied by Plaintiff in "I. Introduction" and "Legal Argument" section "III.D." with appropriate
11 sanctions from August 24, 2019, to and including September 6, 2019;

12 4. Extend Plaintiff's time to object to the Discovery Commissioner's Report and
13 Recommendation of June 26, 2019, from August 21, 2019, to and including September 4, 2019;

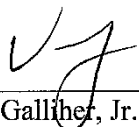
14 5. Extend Plaintiff's opposition to motion for leave to file motion for reconsideration on
15 order reversing discovery commissioner's report and recommendation and motion to stay order until
16 hearing on reconsideration or, alternatively, motion to stay all proceedings pending application for
17 writ of mandamus on order shortening time, from August 22, 2019, to and including September 5,
18 2019;

19 6. All replies will remain due 5 days before the hearings in accordance with EDCR
20 2.20(h).

21 **IT IS SO STIPULATED BY:**


22 DATED this 19th day of August, 2019

23 THE GALLIHER LAW FIRM

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

DATED this _____ day of August, 2019

ROYAL & MILES, LLP

24
25 
26 Michael A. Royal, Esq.
27 Nevada Bar Number 4370
1522 W. Warm Springs Road
Henderson, Nevada 89014
Attorney for Defendant

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Las Vegas, Nevada 89104
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1 reconsideration or, alternatively, motion to stay all proceedings pending application for writ of
2 mandamus on order shortening time, from August 27, 2019, to September 18, 2019 or as soon
3 thereafter as the Court can hear the matter.

4 2. Extend Plaintiff's opposition to Defendants' motion for protective order as to
5 Plaintiff's request for production of incident reports from May 1999 to present, motion to compel
6 information and comments of prior incident reports provided to Plaintiff expert Thomas Jennings and
7 retake the Jennings deposition to address the 196 prior claims reference in his report at Plaintiff's
8 expense from August 15, 2019, to and including August 29, 2019;

9 3. Extend Plaintiff's opposition to Defendants' counter motion to strike false accusations
10 levied by Plaintiff in "I. Introduction" and "Legal Argument" section "III.D." with appropriate
11 sanctions from August 24, 2019, to and including September 6, 2019;

12 4. Extend Plaintiff's time to object to the Discovery Commissioner's Report and
13 Recommendation of June 26, 2019, from August 21, 2019, to and including September 4, 2019;

14 5. Extend Plaintiff's opposition to motion for leave to file motion for reconsideration on
15 order reversing discovery commissioner's report and recommendation and motion to stay order until
16 hearing on reconsideration or, alternatively, motion to stay all proceedings pending application for
17 writ of mandamus on order shortening time, from August 22, 2019, to and including September 5,
18 2019;

19 6. All replies will remain due 5 days before the hearings in accordance with EDCR
20 2.20(h).


21 **IT IS SO STIPULATED BY:**

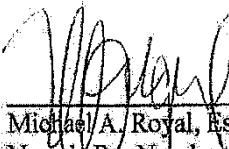
22 DATED this 19th day of August, 2019

DATED this 19 day of August, 2019

23 THE GALLIHER LAW FIRM

ROYAL & MILES, LLP

24
25 
26 Keith E. Gallher, Jr., Esq.
27 Nevada Bar Number 220
1850 E. Sahara Avenue, Suite 107
28 Las Vegas, Nevada 89104
Attorney for Plaintiff


Michael A. Royal, Esq.
Nevada Bar Number 4370
1522 W. Warm Springs Road
Henderson, Nevada 89014
Attorney for Defendant

ORDER

This Court, having reviewed and considered the above Stipulation by the parties and for good cause shown, enters the following **ORDER**:

1. The hearing on Defendants' motion for reconsideration on order reversing discovery commissioner's report and recommendation and motion to stay order until hearing on reconsideration or, alternatively, motion to stay all proceedings pending application for writ of mandamus on order shortening time is moved from August 27, 2019, to September 17, 2019.

2. Plaintiff's opposition to Defendants' motion for protective order as to Plaintiff's request for production of incident reports from May 1999 to present, motion to compel information and comments of prior incident reports provided to Plaintiff expert Thomas Jennings and retake the Jennings deposition to address the 196 prior claims reference in his report at Plaintiff's expense is **due August 29, 2019;**

3. 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 is **due September 6, 2019;**

4. Plaintiff's time to object to the Discovery Commissioner's Report and Recommendation of June 26, 2019 is **extended to September 4, 2019;**

5. Plaintiff's opposition to motion for leave to file motion for reconsideration on order reversing discovery commissioner's report and recommendation and motion to stay order until hearing on reconsideration or, alternatively, motion to stay all proceedings pending application for writ of mandamus on order shortening time, is **due September 5, 2019;**

//

//

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

1 6. All replies will remain due 5 days before the hearings in accordance with EDCR
2 2.20(h).

3 IT IS SO ORDERED

4
5
6 DISTRICT COURT JUDGE

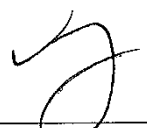
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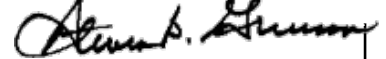
mk

7
8 Dated this _____ day of August, 2019

9 Submitted by:

10 THE GALLIHER LAW FIRM

11
12 
13
14 Keith E. Gallher, Jr., Esq.
15 Nevada Bar Number 220
16 1850 E. Sahara Avenue, Ste. 107
17 Las Vegas, Nevada 89104
18 Attorney for Plaintiff
19
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28



1 **OPPS**

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;

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.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

Before the Discovery Commissioner

Hearing Date: August 2, 2019

Hearing Time: 9:00 am

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

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

1 COMES NOW, Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS
2 SANDS, LLC (collectively referenced herein as *Venetian*), by and through their counsel, ROYAL &
3 MILES LLP, and hereby file this OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL
4 TESTIMONY AND DOCUMENTS AND COUNTERMOTION FOR PROTECTIVE ORDER AS
5 TO PLAINTIFF'S REQUEST FOR PRODUCTION OF INCIDENT REPORTS FROM JANUARY
6 1, 2000 TO PRESENT, COUNTERMOTION TO COMPEL INFORMATION AND DOCUMENTS
7 OF PRIOR INCIDENT REPORTS PROVIDED TO PLAINTIFF EXPERT THOMAS JENNINGS
8 AND IDENTIFIED IN HIS MAY 30, 2019 REBUTTAL REPORT AND FOR LEAVE TO RETAKE
9 THE JENNINGS DEPOSITION TO ADDRESS THE 196 PRIOR CLAIMS REFERENCED IN HIS
10 REPORT.
11

12 This Opposition and Countermotion is based on the pleadings and papers on file, the
13 memorandum of points and authorities contained herein, the affidavit of counsel, the attached exhibits
14 and any argument permitted by this Court at the time set for hearing.
15

16 DATED this 12 day of July, 2019.

17 **ROYAL & MILES LLP**

18
19 By 

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

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

1522 W. Warm Springs Rd.

Henderson, NV 89014

Attorney for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DECLARATION OF MICHAEL A. ROYAL, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Q. But it's not marble flooring?

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

20 Q. Is it tile?

21 A. It's a ceramic tile.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 The WOW Fountain Feature is not located within or anywhere near the Venetian casino area,
7 but is on the Palazzo side of the property. Defendants would not have produced this report from its
8 initial search for like falls occurring on marble flooring within the Venetian casino level of the property
9 and maintain that it is not relevant today.
10

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

12 Information provided in Plaintiff's summary in the Opposition on page 6, ln 13-15, describes
13 this as a trip and fall on a metal strip. Since the alleged incident does not involve a foreign substance
14 on the floor, nor does it involve a slip, Defendants would not have produced it since it is not at all
15 factually similar.
16

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

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

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

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

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

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

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

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

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

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

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

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

1 41. On July 11, 2019, I spoke with Mr. Galliher regarding the 196 prior incident reports
2 provided to Mr. Jennings and the request for production of prior incident reports back to January 1,
3 2000. Mr. Galliher advised that he would be producing the information he provided to Tom Jennings;
4 however, I have not yet received them as of the date of this filing. Mr. Galliher and I also discussed
5 his intent to insist that Venetian produce records related to prior incidents for the preceding twenty (20)
6 years. We disagree that Venetian is obligated to produce records in the broad scope of the production
7 request.
8

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

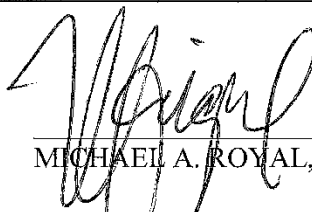
12 43. This opposition and counter motion is not brought in bad faith, or for any improper
13 purpose.
14

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

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

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

Executed on 12 day of July, 2019.


MICHAEL A. ROYAL, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF RELEVANT FACTS

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

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

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

11 II.

12 NATURE OF OPPOSITION

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

LEGAL ANALYSIS

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

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

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

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

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

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

B. **Unredacted Reports**

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

²EDCR 2.25(a).

³NRCP 37(a)(1).

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

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

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

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

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

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

1 Discovery Commissioner responded that parties were to address it and then bring it before her later
2 after an EDCR 2.34 conference if it remained unresolved. (*See id.* at 14-15.) Defendants reviewed
3 the issue of the four (4) alleged missing reports and addressed it in correspondence of March 25, 2019.
4 (*See Exhibit L.*) There has been no further discussion regarding those four (4) reports pursuant to
5 EDCR 2.34 as directed by the Discovery Commissioner. Therefore, this issue is not properly before
6 the Court. If the Court chooses to address it, Defendants explained that three (3) of the four (4) prior
7 incident reports were outside the three (3) years requested by Plaintiff and that one (1) of the reports
8 within the three year time period was an exterior lobby in the parking garage area of the property, not
9 remotely close to the subject Grand Lux rotunda area.
10

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

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

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

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

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

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

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

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

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

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

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

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

25
26
27
28 ⁵This was Mr. Jennings' explanation of why his coefficient of friction measurements were so
different in the *Smith v. Venetian* litigation in an area less than 100 feet away.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11
12 There is no basis to support Plaintiff's motion to compel the production of subsequent incident
13 reports in a slip and fall case from a temporary transitory condition based on negligence.
14

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **IV.**

8 **CONCLUSION**

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

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

17 DATED this 12 day of July, 2019.

18 **ROYAL & MILES LLP**

19
20 By 

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

Gregory A. Miles, Esq. (SBN 4336)

1522 W. Warm Springs Rd.

Henderson, NV 89014

Attorney for Defendants

LAS VEGAS SANDS, LLC, and

VENETIAN CASINO RESORT, LLC

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 12 day of July, 2019, and pursuant to NRCP 5(b), I caused
3 a true and correct copy of the foregoing **OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL**
4 **TESTIMONY AND DOCUMENTS AND COUNTERMOTION FOR PROTECTIVE ORDER**
5 **AS TO PLAINTIFF'S REQUEST FOR PRODUCTION OF INCIDENT REPORTS FROM**
6 **JANUARY 1, 2000 TO PRESENT, COUNTERMOTION TO COMPEL INFORMATION AND**
7 **DOCUMENTS OF PRIOR INCIDENT REPORTS PROVIDED TO PLAINTIFF EXPERT**
8 **THOMAS JENNINGS AND IDENTIFIED IN HIS MAY 30, 2019 REBUTTAL REPORT AND**
9 **FOR LEAVE TO RETAKE THE JENNINGS DEPOSITION TO ADDRESS THE 196 PRIOR**
10 **CLAIMS REFERENCED IN HIS REPORT** to be served as follows:
11

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

14 _____ to be served via facsimile; and/or

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

18 _____ to be hand delivered;

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

20 Keith E. Galliher, Jr., Esq.
21 THE GALLIHER LAW FIRM
22 1850 E. Sahara Avenue, Suite 107
23 Las Vegas, NV 89104
24 *Attorneys for Plaintiff*
25 Facsimile: 702-735-0204

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


An employee of ROYAL & MILES LLP

EXHIBIT “A”

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,)

)

Plaintiff,)

)

vs.)

CASE NO.: A-18-772761-C

DEPT NO.: XXV

VENETIAN CASINO RESORT, LLC,)

)

d/b/a, THE VENETIAN LAS)

VEGAS, a Nevada Limited)

Liability Company; LAS VEGAS)

SANDS, LLC d/b/a THE)

VENETIAN LAS VEGAS, a Nevada)

Limited Liability Company;)

YET UNKNOWN EMPLOYEE; DOES I)

through X, inclusive,)

)

Defendants.)

)

DEPOSITION OF JOYCE P. SEKERA

Taken on Thursday, March 14, 2019

By a Certified Court Reporter

At 1522 West Warm Springs Road

Henderson, Nevada

At 10:00 a.m.

Reported by: Blanca I. Cano, CCR No. 861, RPR

Job No.: 31775

1 27th. I'm not sure. But at any rate, in August of
2 2018, this says you reviewed the answers to
3 interrogatories, you verified that they were accurate,
4 and that's your signature?

5 A. Yes.

6 Q. Okay. So having looked at these again, did it
7 refresh your recollection?

8 A. Yes.

9 Q. Did you see any of your responses that appeared
10 inaccurate or --

11 A. Yes.

12 Q. Let's go --

13 MR. KUNZ: You're talking about the
14 interrogatories or the admissions?

15 MR. ROYAL: Yes, the interrogatories.

16 MR. KUNZ: So there are two different --

17 THE WITNESS: Oh.

18 BY MR. ROYAL:

19 Q. Yeah. Let's just focus on the interrogatories.

20 Did you see anything in the interrogatories you
21 wanted to change?

22 A. No.

23 Q. Okay. Did you see something in the admissions
24 that you wanted to change?

25 A. Yes.

1 Q. Okay. That's -- the admissions are Exhibit B,
2 so let's just look at those.

3 Was there more than one?

4 A. Yes.

5 Q. Okay. Let's go to the first one.

6 Which one did you note that is not correct?

7 MR. KUNZ: Page 2, No. 2.

8 THE WITNESS: Thank you.

9 BY MR. ROYAL:

10 Q. I'll read it. "Admit that you did not see
11 liquid on the floor of the subject area after your fall
12 on November 4, 2016," and then it says, "Deny."

13 A. Yes, because I didn't see it. I was looking
14 through the people to walk to the restroom. I felt it
15 when I fell.

16 Q. Okay. So --

17 A. I remember my pants being wet.

18 Q. Okay. So I get it. So you would change that
19 to "Admit"?

20 I'll read it to you again. Request No. 2 in
21 Exhibit B, page 2, says, "Admit that you did not see
22 liquid on the floor of the subject area after your fall
23 on November 4, 2016."

24 You would admit that; is that correct?

25 A. I felt it.

1 Q. No. I get that you -- I understand. Look, the
2 question is you did not see it?

3 A. Right. Correct.

4 Q. Okay. So you would admit you did not see it?

5 A. Correct.

6 Q. Okay. I understand you felt it, and we'll get
7 into the specifics of that.

8 Was there another change?

9 MR. KUNZ: Page 7.

10 BY MR. ROYAL:

11 Q. Before we get to that one, let me look at
12 Request No. 3 and have you look at that.

13 Request No. 3 reads, "Admit that you did not
14 see a foreign substance on the floor potentially causing
15 your fall on November 4, 2016, at any time."

16 Again, I know you said you felt it, but the
17 question is did you see it?

18 A. No, I did not.

19 Q. Okay. So the answer to No. 3, would that also
20 be "Admit" instead of "Deny"?

21 A. Correct.

22 Q. Okay. Those were kind of the same.

23 Which one are we on now?

24 MR. KUNZ: Page 7.

25 MR. ROYAL: Which number?

1 employment?

2 A. No. Only if we had a question which the guest
3 wanted that particular seat and they couldn't have it
4 because it was reserved for the hotel, so...

5 Q. Okay. The time that -- it sounds to me like
6 you were spending anywhere from 40 to 60 hours a week at
7 the Venetian.

8 A. Yes.

9 Q. Does that sound right?

10 A. Yes.

11 Q. And that would be pretty much from December 26,
12 2015, until the date of the incident?

13 A. Yes.

14 Q. Did you take any vacations?

15 A. No, I did not. And I was always there at least
16 an hour or two prior.

17 Q. What does that mean? Prior to what?

18 A. Prior to my shift starting.

19 Q. So if your shift started at 9:00, you would
20 arrive at 7:00?

21 A. Yeah, because I would set up all the computers
22 for everybody.

23 Q. And you're not paid for that time?

24 A. No.

25 Q. So you actually would have been there from,

1 like, what, 7:00 to 7:00?

2 A. Pretty much, or at least 8:00 to 7:00.

3 Q. Okay. I'm just doing the math in my head here.

4 That's a lot of hours. So you're talking about -- you
5 could actually be working 80 hours a week.

6 A. Yeah.

7 Q. Does that sound right?

8 A. Yes.

9 Q. Okay.

10 A. And that wasn't every day, but I tried to help
11 people because -- and have it all ready for them when
12 they walked on the shift.

13 Q. So during the time that you work there for
14 sounds like -- I'm going to say 50 to 70 hours a week
15 maybe --

16 Does that sound about fair?

17 A. Fair.

18 Q. -- were you ever aware of any incidents where
19 guest or employees would slip and fall?

20 A. No.

21 Q. The times that you were working at this booth,
22 you don't recall ever responding to someone who had
23 fallen; is that correct?

24 A. I would say yes. I don't remember helping
25 anybody.

1 Q. Okay. When you would go to -- let's say on
2 breaks, use the restroom and stuff, do you recall ever
3 seeing security responding to somebody on the floor,
4 anything like that?

5 A. No.

6 Q. Did you ever have any conversations that you
7 can recall prior to your fall with hotel -- Venetian
8 hotel security about incidents occurring on property?

9 A. No. I didn't really know anybody there.

10 Q. Okay. So prior to your incident of November 4,
11 2016, is it fair to say that you were never aware of
12 anyone slipping and falling at the Venetian property?

13 A. Yes.

14 Q. Okay. That was a correct statement; is that
15 right?

16 A. Yes.

17 Q. So for all the time that you were at the
18 Venetian working for Allstate Ticketing and Tours and
19 then for Brand Vegas, the only fall that you're aware of
20 occurring at the Venetian property was your fall?

21 A. That's correct.

22 Q. Okay. Do you recall during the time that you
23 worked at the Venetian property -- now I'm going to
24 expand it from any time that you're working there from
25 1995 until 2016, I'm just going to ask you all of your

1 experience as an employee where you were working at a
2 kiosk at the Venetian property, do you recall ever
3 seeing foreign substances on the floor?

4 A. I have to just say this. When I worked for
5 Allstate Ticketing, they didn't acquire the Venetian
6 kiosk till a few years before, so earlier they weren't
7 there. From '96 to -- I just can't remember the date.
8 You said from '96 to...

9 Q. Okay. Thank you. But what I'm trying to do is
10 you said you were probably at the Venetian 10 to 20
11 times over the 15 years --

12 A. Yeah, not a lot.

13 Q. Okay. That's when you were at Allstate?

14 A. Right.

15 Q. And then you were there it sounds like almost
16 every day for almost close to a year --

17 A. Oh, for Brand, yes.

18 Q. -- for Brand Vegas; correct?

19 A. Yes.

20 Q. All right. And during all that time,
21 collectively, you don't recall ever seeing a substance
22 on the floor, like somebody spilled a drink or something
23 like that?

24 A. Oh, sure, I might have and I might have called
25 housekeeping. See, I don't remember that. If that

1 happened, it was, like, once.

2 Q. Okay. But I'm asking if you have a specific
3 memory --

4 A. No.

5 Q. -- of something like that.

6 A. Oh, no.

7 Q. Okay. So that's -- that's one of those things
8 where I don't want you to speculate. If you have a
9 specific memory, "Oh, yeah, I remember once or twice" --

10 A. Okay.

11 Q. Do you have a specific memory?

12 A. No.

13 Q. Okay. All right. Did you -- in all your time
14 working at the Venetian talking with people, selling
15 tickets, people walking by, casual conversation, even
16 people that you were working with in your kiosk with
17 that other company, okay, do you recall speaking with
18 anyone who made any reference to any slip-and-falls that
19 occurred on the company?

20 A. No.

21 Q. This would be a good time to take a break
22 because I'm going to move into something else.

23 Let's go off the record.

24 (A short recess was taken from 11:41 a.m.
25 to 11:48 a.m.)

1 Q. This particular photo, this represents the
2 bathroom that you were going to at the time of the
3 incident?

4 A. Yes.

5 Q. And this is the bathroom that you would
6 typically use at least once a day when you were working
7 at the Venetian?

8 A. Yes.

9 Q. And typically to get to the bathroom, you would
10 either go down the elevator or go down the escalator,
11 both of which would be off to the left of the photo in
12 this vantage point?

13 A. Yes.

14 Q. Okay. Let's go to the next photo. I'll
15 represent to you my understanding is is that you'll see
16 the column here and that this VEN 040 represents the
17 area where you fell.

18 Do you recognize it?

19 A. Yes.

20 Q. As you look at this photo, does anything about
21 this photo refresh your recollection to anything you
22 testified to at this point?

23 A. I'm looking at the pillar and I know they have
24 a pillar. I don't remember the floor per se, but I
25 fell --

EXHIBIT “B”

Arrest <input type="checkbox"/> Crime <input type="checkbox"/> Non-Criminal <input checked="" type="checkbox"/>	Venetian Security 3355 LAS VEGAS BLVD., S. LAS VEGAS, NV 89109 Narrative Report	CASE # 1611V-0680 Page 1 of 2
OFFENSE(S) Protected Health Information		OFFENSE(S) cont'd
DATE, TIME AND DAY OF OCCURRENCE 11/04/16 12:39 Friday TO 11/04/16 13:31 Friday		DATE AND TIME REPORTED 11/04/16 12:39
LOCATION OF OCCURRENCE	LOCATION NAME Outside Grand Lux Cafe Restrooms	TYPE OF LOCATION BEAT SECTOR
NARRATIVE <p>On November 4th, 2016 at 12:39pm, I was dispatched to the area outside of the restrooms adjacent to the Grand Lux Cafe for report of a slip and fall incident. I arrived on scene and met with Las Vegas Tours (business located in Grand Canal Shoppes) employee Sekera, Joyce who was seated on the marble flooring. I noted that a Public Areas Department team member was on scene and mopping the flooring in the area. Sekera apologized for falling and did not appear to be in any immediate distress. I did not observe an obvious injuries to threats to life at that time.</p> <p>Sekera was alert and oriented to person, place, time, and events, had a patent airway, and was breathing adequately. She stated she was walking through the area when she slipped in what she believed was water on the floor. She reported that she fell backwards and put her right hand behind her head to protect it. She landed on the marble flooring and her left elbow struck the base of a pillar next to her. She denied striking her head during the fall and denied losing consciousness prior to, or after, falling. She denied any head pain, neck pain, back pain, weakness, dizziness, or nausea at that time. I noted that she was guarding her left elbow and reported she was only experiencing pain there at that time. She stated she was embarrassed to which I offered to assist her to a more private area. She agreed and was assisted to a standing position. I asked if she felt any new pain, weakness, dizziness, or nausea to which she denied at that time. She agreed to be assessed in the Medical Room and refused wheelchair assistance. She was able to ambulate on her own to the Medical Room and was able to sit without assistance.</p> <p>Sekera's left elbow was exposed which presented with an abrasion. I did not observe any other injuries or deformities to the area. Palpation of the area showed an increase in tenderness with no obvious signs of instability or crepitation. Distal circulation, motor function, and sensory function were found intact in the left arm. Grip strength was found to be equal bilaterally in the upper extremities. She rated her pain at approximately 7 on a 1-10 severity scale. She had a limited range of motion in the left elbow due to increasing pain on movement. She stated that she was starting to feel a tingling sensation in left phalanges II and III (index and middle finger). A SAM splint was formed on the right arm and applied to the left arm. The splint covered the left elbow and wrist and was secured using four-inch Kerlix gauze and tape. Distal circulation, motor function, and sensory function were rechecked and found to be intact with no changes. The splinted left arm was placed into a</p>		
ADMINISTRATION		
BY OFFICER J. Larson 000025821	DATE/TIME 11/04/2016 15:30	APPROVED BY Michael Dean 000041303
OFFICER	UNIT/SHIFT	ASSIGNED TO
		DATE APPROVED 11/05/16
		CASE STATUS Closed

Arrest <input type="checkbox"/> Crime <input type="checkbox"/> Non-Criminal <input checked="" type="checkbox"/>	Venetian Security 3355 LAS VEGAS BLVD., S. LAS VEGAS, NV 89109 Narrative Report	CASE # 1611V-0680 Page 2 of 2
OFFENSE(S) Protected Health information		OFFENSE(S) cont'd
DATE, TIME AND DAY OF OCCURRENCE 11/04/16 12:39 Friday TO 11/04/16 13:31 Friday		DATE AND TIME REPORTED 11/04/16 12:39
LOCATION OF OCCURRENCE	LOCATION NAME Outside Grand Lux Cafe Restrooms	TYPE OF LOCATION BEAT SECTOR
NARRATIVE <p>sling made out of a triangle bandage to which she reported the treatment provided some relief from her pain. She added that she was beginning to feel minor pain and soreness to her left lower back and left side (localized to the axillary line).</p> <p>Sekera agreed to seek further medical attention, but refused ambulance transport. She stated her job did not provide Workers' Compensation and did not know where she should go. After some discussion, she opted to self-transport to Centennial Hills Hospital as it was close to her home. She refused to complete a Voluntary Statement for the incident and completed a Medical Release. She was escorted to her booth in the Grand Canal Shoppes, collected her belongings, and was escorted to her vehicle in the Team Member Garage on level 8.</p> <p>I checked the area of incident and noted that the marble flooring appeared to be flat, even, and dry throughout the area. I did not observe any wet or slick areas and no obstructions were observed. An Accident Scene Check was completed by Facilities Team Member Chavez, Rafael TM#9648 at 1:28pm which found no defects in the area of incident.</p> <p>Video coverage is available per Surveillance.</p> <p>Risk Management was notified.</p> <p>Attached Items 1 Scan of the Medical Release 1 Scan of the Accident Scene Check 2 Photographs of Sekera's left arm 2 Photographs of Sekera's shoes (top and bottom) 5 Photographs of the area of incident</p>		
ADMINISTRATION		
BY OFFICER J. Larson 000025821	DATE/TIME 11/04/2016 15:30	APPROVED BY Michael Dean 000041303
OFFICER	UNIT/SHIFT	ASSIGNED TO
		DATE APPROVED 11/05/16
		CASE STATUS Closed



EXHIBIT "C"

EXHIBIT “D”



VEN 043

VEN 2734

EXHIBIT “E”

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.

DEPOSITION OF MARIA CONSUELO CRUZ

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

On Wednesday, April 17, 2019
At 2:00 p.m.

Reported By: PAULINE C. MAY
CCR 286, RPR

1 APPEARANCES:

2 For the Plaintiff: KEITH E. GALLIHER, JR., ESQ.
3 Galliher Law Firm
4 1850 East Sahara Avenue
Suite 107
Las Vegas, Nevada 89104
(702) 735-0049

6 For the Defendants: MICHAEL A. ROYAL, ESQ.
7 Royal & Miles LLP
1522 West Warm Springs Road
Henderson, Nevada 89014
(702) 471-6777

15 * * * * *

18 I N D E X

20 WITNESS	PAGE
MARIA CONSUELO CRUZ	
21 Examination By Mr. Galliher	3
Examination By Mr. Royal	30
22 Further Examination By Mr. Galliher	41

25 -o0o-

MARIA CONSUELO CRUZ 4/17/2019

Page 3

1 GRACIA M. FELDMAN, SPANISH INTERPRETER,
2 having been first duly sworn to interpret Spanish into
3 English and English into Spanish, interpreted as
4 follows:
5 MARIA CONSUELO CRUZ,
6 having been first duly sworn to tell the truth, the
7 whole truth and nothing but the truth, was examined
8 and testified as follows:
9
10 EXAMINATION
11 BY MR. GALLIHER:
12 Q Would you state your name, please.
13 A Maria Consuelo Cruz.
14 Q Your address.
15 A I live at 911 Melrose Drive, Las Vegas,
16 Nevada 89101.
17 Q Is that a home?
18 A Yes.
19 Q Do you own the home or rent it?
20 A It's mine.
21 Q Have you ever had your deposition taken
22 before?
23 A No.
24 Q Do you understand today we're going to take
25 your testimony under oath?

Page 4

1 A Yes.
2 Q The oath you've taken today carries with it
3 the same solemnity as if you were testifying in court
4 before a judge or a jury.
5 Do you understand that?
6 A Yes.
7 Q It also carries with it the penalties of
8 perjury. Do you know what "perjury" means?
9 A I would be fined.
10 Q Perjury means lying under oath.
11 A Oh. Okay.
12 Q Do you understand?
13 A Yes.
14 Q A little general background on you first.
15 How long have you lived in Las Vegas?
16 A Almost 16 years.
17 Q Where did you come from?
18 A I came from my country in Guatemala, but I
19 lived in California for about 13 years before.
20 Q So you have lived 29 years in the United
21 States?
22 A Yes.
23 Q Are you married?
24 A No. I was married.
25 Q Do you have any children?

Page 5

1 A Yes.
2 Q How many?
3 A Three.
4 Q And how old are you?
5 A 34, 36, and 39.
6 Q Do any of your children still live with you?
7 A One lives with me.
8 Q And which one would that be?
9 A The middle one.
10 Q All right. Are you presently working?
11 A Oh, yes. I work.
12 Q And where do you work now?
13 A Me?
14 Q Yes.
15 A At the Plaza Hotel.
16 Q The Plaza downtown?
17 A Yes.
18 Q How long have you been at the Plaza?
19 A It's going to be two years and two months.
20 Q What do you do at the Plaza?
21 A Casino porter.
22 Q Were you ever employed at the Venetian?
23 A Yes, for 13 years.
24 Q And why did you leave Venetian and go to the
25 Plaza?

Page 6

1 A Problems.
2 Q Were they problems with you at the Venetian?
3 A Yes.
4 Q Can you tell me what the problems were?
5 A It's personal.
6 Q Well, I understand that. Did you leave the
7 Venetian voluntarily or were you fired?
8 A I was fired.
9 Q And do you believe the firing was justified?
10 A No, but -- but if they do it, there's
11 nothing that I could say.
12 Q How long were you out of work before you
13 went to the Plaza after leaving the Venetian?
14 A A week.
15 Q So let's back up, then, to your time at the
16 Venetian.
17 What was your position when you worked at
18 the Venetian?
19 A Casino porter.
20 Q Were you a casino porter for the entire 13
21 years you worked at the Venetian?
22 A No, I was a maid for one year.
23 Q Is that -- were you a maid when you first
24 started at the Venetian for one year?
25 A Yes.

3 (Pages 3 to 6)

1 Q Then, were you a casino porter for the next
2 12 years?
3 A Yes.
4 Q Tell me what a casino porter does at the
5 Venetian.
6 A Cleans slot machines, takes care of the
7 floors, no spills, no trash, vacuum, clean bathrooms,
8 pick up the trash and customer service.
9 Q When you say "customer service," what do you
10 mean?
11 A We are aware if the customer needs something
12 and offer assistance.
13 Q When you worked at the Venetian, did you
14 work in a specific area of the hotel?
15 A No, they moved us around. They switched us
16 to a different station every day.
17 Q Do you know how many stations there are on
18 the ground floor at the Venetian?
19 A Gosh, so many. That's a very large casino.
20 Q Do you know how many casino porters work the
21 same shift that you worked at the Venetian when you
22 worked there?
23 A Like 20, maybe, or 24.
24 Q Is that your best estimate?
25 A Approximation.

1 Q All right. So when you were working at the
2 Venetian as a casino porter, there were approximately
3 20 other casino porters working the same shift?
4 A Yes.
5 Q And do you understand I'm talking strictly
6 about the Venetian and not the Plaza?
7 A Yes.
8 Q So when we're talking about 20 casino
9 porters, we're talking strictly about the Venetian?
10 A Yes.
11 Q Did you have a specific shift that you
12 worked at the Venetian?
13 A I was working for some time in the
14 afternoon, then later on in the night shift, and then
15 during toward the end, in the morning.
16 Q So you actually worked all three shifts at
17 the Venetian when you were employed there as a casino
18 porter?
19 A Yes, yes.
20 Q What are the hours of the morning shift?
21 A It used to be from 7:00 to 3:00, and then it
22 was switched to from 8:00 to 4:00 in the daytime.
23 Q And then what about the afternoon shift?
24 A It was from 3:00 to 11:00, and then it was
25 3:00 -- 4:00 to 12:00, and graveyard was from midnight

1 to 8:00.
2 Q And did it ever change?
3 A Those were shifts, you know, that for a
4 season you would work like that, and then they would
5 be switched.
6 Q My question is, was the graveyard shift ever
7 from 11:00 to 7:00 and then changed from 12:00 to
8 8:00 like the other shifts?
9 A Yes. When one shifts, the three of them
10 change.
11 Q Did you work one shift more than any of the
12 other shifts?
13 A No.
14 Q When I say worked more, did you spend more
15 time working the day shift versus the afternoon shift
16 versus the evening shift?
17 A I was more at night.
18 Q And when you talk "more at night," you are
19 talking about the 11:00 a.m. -- or 11:00 p.m. to
20 7:00 a.m. or 12:00 a.m. to 8:00 a.m. shift?
21 A What happened is, while we worked from
22 11:00 to 7:00 and then somehow we were switched from
23 midnight to 8:00 a.m. It was not me, the one who was
24 switched.
25 Q But it's your recollection that most of the

1 time when you worked at the Venetian, you worked the
2 evening shift?
3 A Yes.
4 Q We call it graveyard. Do you understand
5 what I mean?
6 A Yes.
7 Q You talked earlier about one of your duties
8 as a casino porter was to clean and maintain the
9 floors.
10 A Yes.
11 Q When you talk about the floors, I'm talking
12 strictly now about the ground floor. Is that where
13 you worked?
14 A Yes.
15 Q So for the 13 years that you were employed
16 at the Venetian, you would work on the ground floor?
17 A When I was in the day shift; yes.
18 Q And --
19 A Also when I was in the graveyard shift. But
20 since they would switch us around to different
21 stations, there were times when I was assigned to the
22 small tower and another day I would be assigned close
23 to the food court.
24 But they were the ones -- say somebody does
25 not show up for a shift, and then we are placed in a

1 different station.
 2 Q All right. So as I understand it, you are
 3 saying most of the time you would work on the ground
 4 floor, but on occasion you would be called upon to
 5 work near the food court or, as you referred to it,
 6 the small tower?
 7 A Oh, no. Food court is the ground floor,
 8 yes.
 9 Q I understand. When you worked the small
 10 tower, did you work the ground floor or did you work
 11 another floor?
 12 A No. I was on the third floor, below the
 13 fourth floor.
 14 Q Did you ever work the same floor as the
 15 Bouchon Restaurant was located?
 16 A Oh, yes.
 17 Q Is the Bouchon Restaurant in the small
 18 tower?
 19 A Yes.
 20 Q So when you worked in the small tower, did
 21 you work on the same floor as the Bouchon Restaurant?
 22 A Yes.
 23 Q How would you describe the floors at the
 24 Venetian? In other words, what their composition is.
 25 A Well, I guess they are floors, they call it

1 tile or --
 2 Q Marble?
 3 A -- marble, and they shampoo a lot -- no, no,
 4 not shampoo. There is wax.
 5 Q All right. So the floors, the ground floor
 6 of the Venetian, the floors are marble?
 7 A They are marble.
 8 Q And the floor where the Venetian is located
 9 or the Bouchon Restaurant is located, is that also
 10 marble?
 11 A Yes. All around it.
 12 Q You talked earlier about the marble floors
 13 being cleaned. Can you tell me how that's done?
 14 A Me or who?
 15 Q Well, if you did the cleaning.
 16 A We were just trying to see that there were
 17 no spills and no trash, but the special cleaning was
 18 done by their graveyard shift.
 19 Q And when we talk about "special cleaning,"
 20 did you ever do any special cleaning yourself?
 21 A No, not me. That's done with a special
 22 machinery. I can't use them.
 23 Q And that's a machine that you did not
 24 operate?
 25 A No, no. I couldn't.

1 Q Did you have a specific area that you were
 2 supposed to keep watch on when you were working as
 3 casino porter?
 4 A Usually by the restaurants or around the
 5 restaurants in the food court, because that also
 6 includes the area where the dealers are.
 7 Q And was that -- when you talk about the
 8 restaurants, are we talking about the Lux Cafe?
 9 A All of that, all around it. The stations
 10 were pretty large.
 11 Q When you say pretty large, can you give me
 12 an idea of how large the stations were?
 13 A Like -- I don't know if you know the place.
 14 From where the bathrooms are, all the way around the
 15 corner where the bathrooms are going by the security
 16 podium. It also includes where the escalators are,
 17 close to the elevators.
 18 Q And does it include the areas that are next
 19 to the Lux Cafe in the food court?
 20 A Yes.
 21 Q So when you worked that area, were you the
 22 only person responsible for making sure that area was
 23 clean?
 24 A No. From the stairs where the escalators,
 25 to that side, there was someone else.

1 Q And when you say "to that side," are you
 2 talking about the side that's adjacent to the food
 3 court and the Bouchon Bakery?
 4 A No, the Grand Lux Cafe.
 5 Q And so what I'm trying to determine is, it
 6 sounds like you are splitting the area in two
 7 stations. Would that be correct?
 8 A Correct, yes. Uh-huh.
 9 Q Were you ever responsible for making sure
 10 that one station versus the other station was safe?
 11 A Yes. That's our duty.
 12 Q Was there a concern on your part about what
 13 would happen if there was water or liquid on these
 14 floors?
 15 A Yes, even though it wasn't my station.
 16 Q And were these floors -- when they were wet,
 17 were they slippery?
 18 A Yes, because we are pretty careful. Even
 19 just a little tiny spill of coffee, we would clean it
 20 up.
 21 Q And why would you do that?
 22 A It was -- otherwise, we would have been
 23 disciplined. That was our job.
 24 Q And did you -- did you have an understanding
 25 that the floors, when they were wet, were dangerous to

1 your customers?
 2 MR. ROYAL: Objection, form.
 3 THE WITNESS: Yes, yes.
 4 BY MR. GALLIHER:
 5 Q So you knew the floors, when they were wet,
 6 they were slippery and dangerous to customers?
 7 MR. ROYAL: Same objection.
 8 THE WITNESS: Yes.
 9 BY MR. GALLIHER:
 10 Q And did you --
 11 A You don't move away from them.
 12 Q Did you find that yourself, or did anyone at
 13 the Venetian tell you that the floors were dangerous
 14 when they were slippery?
 15 MR. ROYAL: Objection, form.
 16 THE WITNESS: No. We are pretty
 17 conscientious about it and we have seen videos.
 18 BY MR. GALLIHER:
 19 Q So my question is, do you know if -- who
 20 were your supervisors?
 21 A Oh, gosh. I had so many.
 22 Q Do you know what their titles were -- job
 23 titles were?
 24 A Supervisor.
 25 Q Did your supervisors ever tell you that the

1 floors at the Venetian, the marble floors, were
 2 slippery and dangerous when wet?
 3 A Of course.
 4 Q Is that why you kept a close -- you tried to
 5 keep a close eye on the floors, to make sure they
 6 didn't get wet?
 7 A Yes. We had a radio. If they were pretty
 8 wet, we needed to call to have someone come help us.
 9 Q And when you see a floor that was pretty
 10 wet, who did you call to come help you?
 11 A Our supervisor, that we call the supervisor
 12 to ask for someone to come.
 13 Q And when you asked for someone to come, who
 14 would usually come?
 15 A Whoever it was close by.
 16 Q So was it another casino porter?
 17 A Yes.
 18 Q Now, when you worked as a casino porter, did
 19 you use or carry around any specific equipment?
 20 A Yeah, our cleaners, a broom and a dust mop.
 21 Q Did you say "cleaners"?
 22 A No, no, towels.
 23 Q So how many towels would you carry?
 24 A Two.
 25 Q Were they cloth towels?

1 A Yes.
 2 Q All right. So you carried cloth towels, a
 3 broom and a dust mop with you when you worked as a
 4 casino porter?
 5 A Yes. We also had a locker as well.
 6 Q So what was in the locker?
 7 A More towels, glass cleaner, towels for vomit
 8 and red bags.
 9 Q And what?
 10 A Red bags.
 11 Q Red bags?
 12 A For -- for throw-ups.
 13 Q Anything else?
 14 A No, not that I can remember.
 15 Q So when you saw a larger spill on the floor
 16 at the Venetian and called for help, did that usually
 17 mean that someone would come to the spill with a mop?
 18 A Yes, with a bucket.
 19 Q So for the larger spills, someone would come
 20 by and clean it up with a mop and a bucket; is that
 21 right?
 22 A Yes, uh-huh. And also the security would be
 23 close by.
 24 Q All right. So what I'm trying to get at is,
 25 when you talked about calling for help earlier when

1 you saw a larger spill, that would usually mean that
 2 another casino porter would come to the scene of the
 3 spill with a mop and a bucket?
 4 A Yes. If it was large, we would say: Please
 5 send someone with a bucket.
 6 Because there are people that have
 7 containers with ice and sometimes they drop it on the
 8 floor, so we have to call someone.
 9 Q Have you ever seen situations where people
 10 spill water on the floor?
 11 A Yes, yes. That's why we are keeping an eye.
 12 Otherwise, you have to follow them to see where that
 13 spill is coming from.
 14 Q What about soft drinks?
 15 A Same; we clean. It's just the same; we're
 16 cleaning everything.
 17 Q But what I'm trying to get at, though, is
 18 have you ever seen spills at the Venetian, when you
 19 were employed there as a casino porter, involving soft
 20 drinks?
 21 A No, not that. Mostly water, because people
 22 carry some ice coolers.
 23 Q Have you ever seen people carrying water
 24 bottles?
 25 A Yes.

MARIA CONSUELO CRUZ 4/17/2019

Page 19

1 Q So do you actually know where the water
2 would come from? Whether it would come from the ice
3 or whether it would come from a bottle?
4 MR. ROYAL: Objection, form.
5 THE WITNESS: No. When the water spill is
6 from a water cooler, you can see the water coming from
7 it.
8 BY MR. GALLIHER:
9 Q When you say water cooler, what do you mean?
10 A An ice cooler.
11 Q So people carry ice coolers over those
12 floors?
13 A Yes.
14 Q Now, have you ever seen anyone use the food
15 court and leave the food court with drinks?
16 A Sometimes, yes.
17 Q And how about the Bouchon Bakery; have you
18 ever seen anyone order drinks from the Bouchon Bakery
19 and leave from it?
20 A No, hu-huh.
21 Q Have you ever seen anyone walk around with
22 liquor or alcohol in a glass or cup?
23 A Everyone does it in the casino; yep.
24 Q So would it be fair to say that you have
25 seen that?

Page 20

1 A Oh, yes.
2 Q Now I want you to isolate, on a given
3 shift -- we'll say the day shift.
4 On the average, what's your best estimate of
5 how many spills you would see during the day shift
6 when you were a casino porter at the Venetian?
7 A Sometimes I did, but I did not work always
8 at the same station.
9 Q Well, I understand. What I'm looking for is
10 your best estimate of the number of times on one shift
11 that you would see spills when you were employed at
12 the Venetian.
13 MR. ROYAL: Object to form.
14 THE WITNESS: At times two or three times.
15 BY MR. GALLIHER:
16 Q Would that be an average?
17 A Yes.
18 Q And we're talking about spills that would be
19 in the area that you were responsible for?
20 A The floor close to the food court and Lux
21 Cafe, it's floor. But there are areas that are
22 carpeted.
23 Q Well, I'm talking strictly about the marble
24 floors.
25 A In rare occasions.

Page 21

1 Q So are you saying that on rare occasions,
2 you would see spills on the floor, the marble floors,
3 next to the Lux Cafe or the food court?
4 A Not spills -- spills, but say that someone
5 just dropped a little bit of a soda.
6 Q And if someone dropped a little bit of soda,
7 that's something that you would clean up?
8 A Yes, yes.
9 Q And why would you do that?
10 A Because I had to. I was being paid to do
11 that.
12 Q And was there a concern about whether or not
13 the floor was dangerous with that little bit of liquid
14 on it?
15 MR. ROYAL: Objection, form.
16 THE WITNESS: Yes. It also gets stained.
17 BY MR. GALLIHER:
18 Q And is that why you cleaned it up, to
19 protect the customers?
20 A Yes.
21 Q That was your job; right?
22 A Yes, and I would also get tips.
23 Q When you say you get tips, who would give
24 you tips?
25 A The guests, when they say that you are

Page 22

1 keeping an eye to make sure that they didn't fall.
2 Q During your time at the Venetian, had you
3 ever seen a customer fall on liquid on the marble
4 floor?
5 A Yes.
6 Q And how many occasions?
7 A The one I recall is a lady that fell with a
8 coffee.
9 Q And you recall a lady that fell with a
10 coffee?
11 A Yes.
12 Q And how do you recall that?
13 A Well, we were cleaning and suddenly I think
14 a lady came out with a coffee from a bakery, the
15 Bouchon Bakery on the first floor.
16 Q And so was that a fall that you personally
17 saw?
18 A Well, we saw her fall and we were close by.
19 I had been checking the floor.
20 Q So is that the only time that you've seen a
21 customer fall at the Venetian on the marble floor?
22 A Oh, many, but they were drunk.
23 Q So you've seen a lot of drunk people fall on
24 the marble floor at the Venetian?
25 A No, just that they had fallen because they

7 (Pages 19 to 22)

1 were drunk.
 2 Q And how do you know that?
 3 A Because you can see it.
 4 Q Did you witness those falls?
 5 A Yes.
 6 Q So how many of these falls did you witness?
 7 A Well, about three I would say, the ones that
 8 I watched.
 9 Q When you saw these people that you described
 10 as drunk fall, were they hurt?
 11 A These people were not alone. There were
 12 other drinkers.
 13 Q All right. But my question is when you saw
 14 these people fall, were they hurt?
 15 MR. ROYAL: Objection, form.
 16 THE WITNESS: I don't know because we can't
 17 get involved with that. And if they're drunk, they
 18 get up. They are to get up on their own or someone
 19 picks them up.
 20 BY MR. GALLIHER:
 21 Q So it sounds to me like you are saying you
 22 don't know whether they were hurt or not.
 23 A Well, no. No.
 24 Q Is that right?
 25 A Yes, because if they were drunk, they would

1 just get up and go. We can't stick our hands in that
 2 situation.
 3 Q I understand. But you don't know whether
 4 those people, when they got up, were hurt?
 5 A No.
 6 Q We're here today basically to -- because
 7 we're involved in a lawsuit as a result of a fall
 8 occurring on November 4, 2016. It happened in the
 9 early afternoon hours.
 10 A Early wasn't it?
 11 Q Yeah. Do you know?
 12 A I was in that morning shift.
 13 Q So how is it that you know which fall I'm
 14 talking about?
 15 A Because I was sent the video.
 16 Q And you were sent the video by whom?
 17 A I don't know who.
 18 Q So you've seen the video showing the fall?
 19 A Yes.
 20 Q So you didn't see the fall until you saw the
 21 video?
 22 A No, I remember that lady.
 23 Q Do you remember seeing the lady fall?
 24 A Yes.
 25 Q All right. So you were sent a video that

1 showed a fall on November 4, 2016; right?
 2 A Yes.
 3 Q And you watched the video?
 4 A Yes.
 5 Q And that fall was a fall that you personally
 6 saw when it occurred?
 7 A Yes. I was there.
 8 Q So when you talked about a fall involving a
 9 lady with coffee, is that the fall you were talking
 10 about?
 11 A She's the one.
 12 Q So how is it that you determined that she
 13 fell carrying coffee?
 14 A Because I was there.
 15 Q Did anyone discuss this fall with you?
 16 A No, but I remember it. But I no longer work
 17 at the Venetian.
 18 Q I understand. Did you meet with anyone in
 19 preparation for today's deposition?
 20 A I just received some documents stating that
 21 I had to come.
 22 Q Did you -- so you did not meet with anyone
 23 to discuss today's deposition?
 24 A No.
 25 Q Did you discuss today's deposition with

1 anyone over the telephone?
 2 A I was only called and told to be here today.
 3 Q So what I'm trying to determine is, where
 4 did you form your opinion that the lady was carrying
 5 coffee?
 6 A Because I know that she was coming from
 7 purchasing coffee.
 8 Q And you testified that she was coming from
 9 purchasing coffee at the Bouchon Bakery; right?
 10 A I think so, because she was coming down next
 11 to the area where they sell coffee.
 12 Q So you did not discuss your testimony of
 13 today's deposition with anyone before you showed up?
 14 A No.
 15 Q And I want to make sure I'm clear on this:
 16 That you personally witnessed this fall when it
 17 happened, separate and apart from what you saw in the
 18 video?
 19 A Yes.
 20 Q So you actually saw the fall twice. You saw
 21 the fall in person when it happened and then you saw
 22 it again on the video; is that right?
 23 A Yes, yes. I was there. I was cleaning in
 24 the surroundings.
 25 Q When the video was sent to you, was it sent

1 to you in a letter?
 2 A No.
 3 Q How was it sent to you?
 4 A I don't know. I received -- no. The next
 5 day I received these papers.
 6 Q Well, my question was, how was the video
 7 sent to you?
 8 A I don't know.
 9 Q Well, did you receive it at your home?
 10 A No, my phone.
 11 Q All right. So the video that you described
 12 was sent to you on your telephone?
 13 A Uh-huh, yes.
 14 Q And you don't know who sent it?
 15 A No.
 16 Q Did the sender identify themselves in any
 17 way to tell you who sent it to you?
 18 A No. I was only mailed these papers and then
 19 I was called from the telephone.
 20 Q All right. When you say you were called
 21 from the telephone, did the call from the telephone
 22 result in the video being sent to you?
 23 A I believe so. That's how I got it.
 24 Q So when the person called you on the
 25 telephone, did they identify themselves?

1 A Yes. I was told that it was from here.
 2 Q From where?
 3 A From this page, what it says on this page.
 4 Q So did someone tell you that the video was
 5 coming from my office?
 6 A No, no. I didn't pay attention. They only
 7 send me a video and this letter stating that I had to
 8 be here. And I don't know why I'm involved in this.
 9 Q I'm still trying to figure out how you
 10 received the video.
 11 So when the person called you on the
 12 telephone, did they -- how did they get your telephone
 13 number?
 14 MR. ROYAL: I'm going to -- I'm sorry -- a
 15 belated objection as to form.
 16 Go ahead.
 17 BY MR. GALLIHER:
 18 Q So when the person called, did you ask them
 19 how they got your telephone number?
 20 A No, but since it was coming from the
 21 Venetian, they know my telephone number.
 22 Q All right. So then, you knew that the video
 23 that was being sent to you on your telephone was
 24 coming from the Venetian; is that right?
 25 A Yes.

1 Q So when the person that talked to you on the
 2 telephone about this case, did they tell you they were
 3 from the Venetian?
 4 A Yes. It was from the Venetian, about an
 5 accident that happened at the Venetian.
 6 Q Did the video that was sent to you, was it
 7 accompanied by any type of a message?
 8 A No.
 9 Q No text or anything of that nature?
 10 A No. I was only sent the video and that
 11 paper that I received.
 12 Q All right. So you were sent the video, you
 13 were sent the paper, which is the subpoena to today's
 14 deposition.
 15 A And I don't even know why.
 16 Q And you weren't sent anything else?
 17 A No. I don't even know why I'm here.
 18 Q So have you understood all my questions
 19 today?
 20 A Yes.
 21 Q Anything you want me to repeat or rephrase
 22 for you?
 23 A No.
 24 MR. GALLIHER: Pass the witness.
 25 /////

1 EXAMINATION
 2 BY MR. ROYAL:
 3 Q Okay. I just have a few questions for you.
 4 A Again?
 5 Q I'm going to show you -- strike that.
 6 You testified that you saw a video, and I'm
 7 going to show you what's been identified -- I'm not
 8 sure how you want to do this, but I've got it right
 9 here.
 10 MR. GALLIHER: Okay. Just for the record,
 11 you are showing her your -- the video on computer.
 12 MR. ROYAL: Exactly.
 13 BY MR. ROYAL:
 14 Q So it's been identified as VEN019. And I
 15 have a laptop and I'm going to try and turn this so
 16 you can see it with the witness as best I can. A
 17 little bit tricky here. One second. You can scoot
 18 back just a little bit.
 19 Okay. I'm just going to -- and what I'm
 20 going to do for the record, I'm just going to indicate
 21 numbers so we can identify what we're looking at.
 22 Right now it's paused. It's at 12:31:33 of the -- of
 23 the footage.
 24 Do you recognize the area?
 25 A That's in front of the Grand Lux Cafe.

MARIA CONSUELO CRUZ 4/17/2019

Page 31

1 Q And when you said that you patrolled an
2 area -- strike that. What would this --
3 When you're assigned to work this area, what
4 would the area be called?
5 A Station 2.
6 Q Okay. And you kind of broadly told us what
7 you did in Station 2. Did that include cleaning the
8 restroom?
9 A No, not -- the bathrooms were something
10 separate.
11 Q Okay. So you weren't cleaning bathrooms?
12 A No, no.
13 Q Do you know who was cleaning bathrooms on
14 the day this happened?
15 A I don't remember.
16 Q Okay. So if you are not cleaning bathrooms,
17 what was your general job -- strike that. Let me ask
18 it again.
19 Looking at VEN019 at 12:31:33, does this
20 depict an area that you would have been patrolling on
21 the day of the incident?
22 A That's called the rotunda. It's a big round
23 circle and then you take the hallway on the way to the
24 corner. Around the corner by security that passes in
25 front of the Grand Lux Cafe, that's Station 2.

Page 32

1 Q Okay. Okay. I'm going to let this run
2 starting at 12:33:10, and I'm going to make it go a
3 little bit faster to kind of move it along here.
4 There's a -- at 12:33:35, there's a woman
5 approaching a man. He's looking down. Do you know
6 who that woman is?
7 A No.
8 Q I want you to watch from the left over here.
9 Okay. It's 12:33 -- I'm going to go back here, sorry.
10 12:33:52. I want -- there's a woman coming from the
11 left with a broom and so forth.
12 Do you recognize that person?
13 A No. Maybe it was me.
14 Q Well, that's my question. I want you to
15 watch again.
16 A I think I am.
17 Q Okay.
18 A Yes.
19 Q Do you think that was you?
20 A Yes, it's me. It's me.
21 Q So starting at -- I want to get the times
22 right. So starting at 12:33:52, on the left side
23 that's a person. You think that's you?
24 A I think so.
25 Q Okay. And what was -- what did you notice?

Page 33

1 What was that person doing?
2 A Me?
3 Q Yeah. What were you doing?
4 A Checking around.
5 Q Okay.
6 A We went to the bathroom to check the towels
7 to get a clean towel.
8 Q Okay. Do you recall, or can you tell
9 watching this at 12:33:52, whether or not you noticed
10 there was anything on the floor in the area to your
11 immediate right?
12 A No, no. I was -- I would have walked right
13 over it.
14 Q You didn't see anything?
15 A No.
16 Q All right. You were -- okay.
17 I'm going to continue and we're now moving
18 ahead to about 12:38:40, we'll call it. There is a
19 woman depicted sitting on the floor and a couple of
20 men in suit jackets.
21 Do you remember this scene as it's depicted
22 here generally?
23 A You mean where she fell?
24 Q Yes. Do you remember seeing something
25 similar to this?

Page 34

1 A That's not the lady that fell.
2 Q Well, okay. Let's move to --
3 A Or this is her.
4 Q Okay. At 12:39:37 we see a PAD -- a male
5 PAD person. Do you know who that is kind of at the
6 top of the screen? Okay. I'm just trying to identify
7 people. Maybe you can't tell from this.
8 At 12:39:48, do you see yourself?
9 A Yes.
10 Q Okay. And that's you on the right?
11 A As I said, the other one is David.
12 Q There is a man with a bucket at 12:39:51.
13 Who is that?
14 A That's David.
15 Q David Martinez?
16 A Yes, uh-huh.
17 Q Now he's pointing to someone at 12:40:01.
18 Do you know who that is?
19 A I don't know.
20 Q Okay. Now, Mr. Martinez, you see him
21 mopping up an area?
22 A But it wasn't wet there.
23 Q Okay. Do you know -- well, that was my
24 question. You see him -- we're at 12:40:15. He's got
25 a bucket.

10 (Pages 31 to 34)

1 What's your recollection of what he was
2 doing at this particular time depicted here on the
3 video?
4 A It seems like she dropped something -- she
5 spilled some coffee.
6 Q Okay. Did you actually see anything on the
7 floor?
8 A No.
9 Q And then I'm going to fast-forward a little
10 here. Okay. I'm going to go back.
11 At 12:41:07, do you see yourself?
12 A Before she fell, you mean?
13 Q No. I'm looking at -- right now it's at
14 12:41:09, the video. Do you see yourself in the
15 video?
16 A Yes.
17 Q Okay, I'm going to let it run now. What are
18 you doing?
19 A Drying whatever the other one has been
20 cleaning.
21 Q Okay. So just tell me the process. You've
22 got a towel on the floor that you are using under your
23 foot.
24 A To dry whatever. To dry whatever is being
25 wet by the other one with a bucket, but there was

1 but...
2 Q Okay. So...
3 A What happened to -- the floor right there
4 you see is waxed.
5 THE COURT REPORTER: I'm sorry, I'm having a
6 hard time.
7 THE INTERPRETER: "It was waxed."
8 THE COURT REPORTER: Could you repeat the
9 whole response?
10 MR. ROYAL: Well, I don't think there's a
11 question pending, but go ahead.
12 THE WITNESS: The floor is heavy with wax
13 right there.
14 BY MR. ROYAL:
15 Q Okay. Now, do you remember cleaning the
16 area beyond what we watched on the video as you
17 remember what you did?
18 A Yes. We clean the entire surroundings.
19 People left beer, soda, coffee.
20 Q When you say the entire surroundings, what
21 were you making reference to?
22 A Well, look, we have to be careful going
23 around this column because the floor -- everything
24 that has to do with cleaning.
25 Q Well, okay. I just want to make sure. I'm

1 nothing there.
2 Q I see, okay.
3 So when Mr. Martinez goes over an area with
4 a mop, your job was to follow with a dry towel?
5 A Well, yes. At that moment, yes.
6 Q Okay. Now I'm going to go back. I'm going
7 to go back to -- okay. I'm going to go back to
8 12:36:49 and I want you to watch. I'm going to start
9 it.
10 A They are in suits.
11 Q Is that something that you recall seeing,
12 what we just watched there? I stopped it at 12:36:58.
13 A Yes. I remember the lady falling.
14 Q Did you ever talk to the lady who was --
15 A No, you can't. You can't.
16 Q Do you remember hearing any conversations
17 between the lady who fell and anyone else as you were
18 at the scene?
19 A No, because the security guards are the ones
20 that speak to them.
21 Q Okay. You didn't hear any of the
22 conversation?
23 A No.
24 Q Now, I heard you say something about shoes.
25 A Some people fake falls to get something,

1 going to show you -- I'm just going to show this. I'm
2 not going to run it at 12:43:17.
3 Okay. You mentioned something about beer,
4 sodas and so forth. What are you making reference to?
5 A Right there at the corner, people leave beer
6 cans, soda cans, so we have to clean it.
7 Q I meant in what we're looking at at
8 12:43:17. Do you see any beer cans or soda cans
9 there?
10 A No, no. No, but this is the least busy
11 time.
12 Q Okay. All right. I just want to focus on
13 this time. So I'm clear with my question, do you
14 remember completing the task of cleaning up this area
15 or working with David Martinez after the woman got up
16 and left?
17 A Well, yes. It was cleaned. We had to clean
18 because she spilled coffee.
19 Q Okay. Other than her -- the woman spilling
20 coffee, did you see anything else on the floor when
21 you were cleaning after she fell?
22 A No, but we have to check everything anyway.
23 Q Okay. Now, earlier when you're talking
24 about equipment, I heard you say you have cleaners,
25 towels, broom and dust pans.

1 A Yes.
2 Q Okay. Because I made a note here that I was
3 confused whether you had a dust pan or dust mop.
4 A Dust pan.
5 Q So when I showed that video of you earlier
6 walking around the area when you were carrying some
7 things, can you tell us what you had in your hands?
8 A Dust pan and a broom.
9 Q Okay. You were also asked about the tower.
10 Does that area have, like, the bridge? Does that have
11 a bridge that goes over the Las Vegas Boulevard?
12 A No.
13 Q I wasn't clear what you meant by "tower." I
14 know there's a bell tower or a clock tower.
15 A I was talking about the small tower where
16 there was sun coming in.
17 Q Oh, I see what you mean. I see. I was
18 confused.
19 A And now they have Bouchon Bakery around it,
20 but the restaurant is at the small tower.
21 Q Okay. All right. You were asked earlier
22 about when mops and a bucket would come to an area.
23 And in this particular case, what we just saw in the
24 video was a mop and a bucket came to the area.
25 A David is the one who brought it to see if

1 there was a big spill.
2 Q Was there a big spill?
3 A No, no, there was not. I had just walked by
4 that area.
5 Q Was there a little spill?
6 A No, no.
7 Q Were there pieces of ice that you found on
8 the floor?
9 A No, no.
10 Q You testified about drunk people that you
11 have seen in the past fall.
12 A Yes.
13 Q For any of those people, do you recall
14 inquiring as to why they fell?
15 A No. What for? They drink and then they
16 fall and then between each other, they pick up each
17 other. They usually are not alone.
18 Q Okay. And I want to make sure I understand.
19 When you were asked about falls and you said the lady
20 that fell with coffee, is that the lady that we saw in
21 the video that I showed you that's been marked as
22 VEN019?
23 A Yes. I remember the lady falling.
24 Q And that's the lady you were making
25 reference to?

1 A Yes. It's the most recent. She's the one
2 that I remember.
3 MR. ROYAL: Thanks. I'll pass.
4
5 FURTHER EXAMINATION
6 BY MR. GALLIHER:
7 Q I heard your remark during your testimony in
8 response to Mr. Royal's question, some people, they
9 fall to get something. What did you mean by that?
10 A Sometimes they look like they fall.
11 Q And is that what you saw in the video,
12 someone who looked like they fell?
13 A I don't know. I don't know her intentions,
14 but there was no water there.
15 Q Did she look like she fell or not?
16 A Yes, she slips, but it must have been her
17 shoe. It wasn't water.
18 Q And you mentioned also that the area where
19 the fall happened had been heavily waxed. What did
20 you mean by that?
21 A I wasn't talking about that area in
22 particular. Those floors are cleaned every night.
23 Q Are they waxed every night?
24 A No, no. They clean them with a machine.
25 Q And that's every night?

1 A No. I don't recall.
2 Q Do you know one way or the other?
3 A Yes, they do it.
4 Q So as I understand what you are saying, you
5 never saw anything liquid on the floor where the fall
6 happened at any time that day; is that right?
7 MR. ROYAL: I object. Misstates testimony.
8 THE WITNESS: No, no, that is correct.
9 BY MR. GALLIHER:
10 Q All right. So you didn't see any water on
11 the floor, you didn't see any coffee on the floor, you
12 didn't see anything wet on the floor; is that right?
13 A No -- yes, that is correct.
14 Q So the only fluid you saw in connection with
15 this fall on that day was a dry floor?
16 A Yes. I think what you see is that she
17 slipped, but it was her shoe.
18 Q All right. So your testimony is that she
19 didn't slip because she hit anything wet, she slipped
20 because of her shoe?
21 A Because of her shoe.
22 Q All right. So the answer to my question is
23 yes?
24 A Yes.
25 Q Thank you. Nothing further.

MARIA CONSUELO CRUZ 4/17/2019

Page 43

1 THE WITNESS: Is that it?
2 MR. ROYAL: Yes. Nothing for me.
3 MR. GALLIHER: Okay, we're done. Thank you.
4 (The deposition concluded at 3:09 p.m.)
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13 (Page 43)

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VEN 2748

REPORTER'S DECLARATION

STATE OF NEVADA)
COUNTY OF CLARK)

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

That I reported the taking of the deposition of the witness, MARIA CONSUELO CRUZ, commencing on Wednesday, April 17, 2019 at the hour of 2:00 p.m.

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

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

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

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

Pauline C. May, CCR 286, RPR

EXHIBIT “F”

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.

DEPOSITION OF MILAN GRAOVAC

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

On Monday, April 22, 2019
At 2:40 p.m.

Reported By: PAULINE C. MAY
CCR 286, RPR

1 APPEARANCES:

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9

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18 I N D E X
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20 WITNESS	PAGE
MILAN GRAOVAC	
21 Examination By Mr. Galliher	3
Examination By Mr. Royal	21
22 Further Examination By Mr. Galliher	28
Further Examination By Mr. Royal	30
23 Further Examination By Mr. Galliher	31

24
25 -oOo-

MILAN GRAOVAC 4/22/2019

Page 3

Page 5

1 MIKI KUZMANOVIC, SERBIAN INTERPRETER,
2 having been first duly sworn to interpret Serbian into
3 English and English into Serbian, interpreted as
4 follows:

5 MILAN GRAOVAC,
6 having been first duly sworn to tell the truth, the
7 whole truth and nothing but the truth, was examined
8 and testified as follows:

9
10 EXAMINATION

11 BY MR. GALLIHER:

12 Q Would you state your name, please.

13 A Milan Graovac. M-i-l-a-n. Last name,
14 G-r-a-o-v-a-c.

15 Q Your address.

16 A 7660 West Eldorado, Apartment Number 140.
17 ZIP code is 89113.

18 Q Is that in Las Vegas?

19 A Yes.

20 Q Have you ever had your deposition taken
21 before?

22 A No.

23 Q Do you understand that you are under oath
24 today?

25 A Yes.

1 THE INTERPRETER: On the phone, he had
2 someone interpreting over the phone.

3 BY MR. GALLIHER:

4 Q All right. So who was the person who
5 interpreted over the phone?

6 A The girl, I don't know the name. Just a
7 girl that was interpreting. Her name, I don't
8 remember.

9 Q Did you arrange for the girl to be on the
10 phone to interpret, or someone else?

11 A I asked for interpreter because I'm not very
12 good in English, so they arrange it.

13 Q When you say "they," you are referring to
14 Mr. Royal's office?

15 A Where I was. If that's his office, that's
16 where it was. I'm not sure.

17 Q And how long were you in the office
18 preparing for your deposition?

19 A What I was asked, I answered, and it was
20 maybe half an hour to 40 minutes at most.

21 Q So your preparation consisted of meeting
22 with Mr. Royal, having an interpreter present,
23 responding to the questions and reviewing surveillance
24 video; is that right?

25 A That's correct.

Page 4

Page 6

1 Q And the oath you've been given today carries
2 with it the same solemnity as if you were testifying
3 in court before a judge or a jury?

4 A Yes.

5 Q And it also carries with it the penalties of
6 perjury. Do you understand that?

7 A Yes, I understand.

8 Q How did you prepare for today's deposition?

9 A As soon as I got the paper, what I know I'll
10 tell you and what I don't, I don't.

11 Q Did you meet with anyone before today's
12 deposition to prepare?

13 A Yes, I met with the gentleman. He showed me
14 the picture of what happened and that's all.

15 Q All right. You said you met with the
16 gentleman, who was the gentleman in the room with us?

17 A Yes, it is.

18 Q That would be Mr. Royal and you say he
19 showed you a picture. Is that what we call the
20 surveillance video?

21 A Yes, it is.

22 Q And when you met with Mr. Royal, did you
23 bring your interpreter with you?

24 A It was a megaphone connected.

25 Q A what?

1 Q How long have you worked at the Venetian?

2 A Twenty years.

3 Q And when you started at the Venetian, what
4 was your job title?

5 A Casino porter.

6 Q Is that still your job title?

7 A Yes, it is.

8 Q Have you remained with your same job title
9 over the past 20 years?

10 A Yes, it is.

11 Q In reviewing the surveillance video of this
12 fall, did you see yourself?

13 A Yes, I have. When I was watching it, I saw
14 myself.

15 Q Did you actually see the fall happen?

16 A When I was watching the video, then I saw
17 the fall. But they called us when there was a spill.

18 Q And when you say "they called us," do you
19 know who called you?

20 A My supervisor.

21 Q Who is your supervisor?

22 A Maybe Dina or somebody. They change them
23 every six months to a year.

24 Q You said Dina?

25 A Dina.

3 (Pages 3 to 6)

1 Q Is that a male or female?
 2 A Female.
 3 Q And you see the video. You are the person
 4 in the video that's holding the mop.
 5 A Yes. My colleague was holding it.
 6 Q All right, so your colleague was holding the
 7 mop?
 8 A Yes.
 9 Q So what did you do at the scene?
 10 A When the spill happens, they called for us
 11 to come immediately. If we don't have the equipment
 12 that we need to clean it, we got to stand there so
 13 nobody else -- nobody falls.
 14 Q So did you arrive at the scene before the
 15 colleague with the mop arrived at the scene?
 16 A Yes, I did.
 17 Q How long were you at the scene before the
 18 colleague with the mop arrived?
 19 A Very short. It was couple of minutes.
 20 Q Did you make any calls that day?
 21 A No, I didn't. They were calling us to come
 22 there and stand there.
 23 Q And did you bring any equipment with you to
 24 the scene?
 25 A No, because I don't know if I was in the

1 one.
 2 Q So in your 20 years, have you only used a
 3 mop once on a spill?
 4 A If it's soaked, then we wipe it up and then
 5 we take a small mop to go over it. For that
 6 particular time, it wasn't needed to do that.
 7 Q So I'm trying to get the answer.
 8 During the 20 years that you've worked at
 9 the Venetian, have you only cleaned up one spill with
 10 a mop?
 11 THE INTERPRETER: He still didn't answer
 12 your question. He said: People walk around with a
 13 cup and they spill. I warn them not to keep spilling
 14 it and I go over with them with a rag and I clean it
 15 after them.
 16 Would you like me to explain?
 17 BY MR. GALLIHER:
 18 Q We'll try a little different. Why is it
 19 that you immediately clean up the spill at the
 20 Venetian? And I presume you are talking about the
 21 marble floor.
 22 A Yes, marble floor.
 23 Q And is that because the floor becomes
 24 dangerous when it's wet?
 25 A They're very dangerous. Even one drop.

1 bathroom or just passing by when I heard that on the
 2 radio, so I came there. And maybe the rag was in my
 3 hand that I was cleaning the machines with.
 4 Q So the colleague that arrived with the mop,
 5 do you know his name?
 6 A David. I know that his name was David.
 7 Q So how long after you arrived at the scene
 8 did David arrive?
 9 A Very short time.
 10 Q What did David do with the mop?
 11 A I was standing on the left side next to the
 12 pillar and he was standing on the right side of me.
 13 Q And so what did he do with the mop?
 14 A I don't know if there was a drop of
 15 something there. He was looking down to see.
 16 Q Did you see him mop the floor?
 17 A Yes.
 18 Q Did you see him wring out the mop in the
 19 pail?
 20 A No.
 21 Q Did you see that on the video?
 22 A Yes.
 23 Q Have you ever used a mop at the Venetian to
 24 clean up a spill?
 25 A Yes. Not that particular one, but another

1 Q So tell me about that. What makes you think
 2 it becomes very dangerous with one drop?
 3 A The shoes, if it's -- you know, the shoes
 4 and contact with the shoes, and the drop of something
 5 on marble, it's like ice. You can slip and fall real
 6 easy.
 7 Q Have you, in your 20 years, ever seen
 8 anybody slip and fall on a wet spot at the Venetian on
 9 the marble floor?
 10 A No, I have not.
 11 Q Go back to the question earlier. During
 12 your 20 years, on how many occasions have you had to
 13 clean up a spill on the marble floor at the Venetian?
 14 A It's not every day. When they call us, we
 15 go and we clean it up.
 16 Q So can you give me your best estimate of,
 17 say, how many times a week you would clean up a spill
 18 at the Venetian on the marble floor?
 19 A Maybe once, maybe not at all. And I'm not
 20 the only one.
 21 Q And I think we had previous testimony
 22 regarding the number of PAD workers that were
 23 stationed on the marble floors at the ground floor at
 24 the Venetian.
 25 Do you know how many there are?

1 A On the marble floor? On the cleaning?
 2 Q How many are stationed for the marble floor?
 3 A There's six or eight stations in the casino.
 4 I'm the only one in my station.
 5 Q And how about the other stations? Do you
 6 only have one?
 7 A We have the first shift, second shift and
 8 third shift.
 9 Q How many people are stationed in each
 10 station?
 11 A Just one.
 12 Q So on the day of this fall, were you
 13 stationed in the restroom?
 14 A I think I was. I cannot guarantee.
 15 Q How often are you stationed in the restroom
 16 as a PAD employee at the Venetian?
 17 A I am there nonstop, my eight hours.
 18 Q All right. So would it be fair to state
 19 that in your time at the Venetian as a PAD employee,
 20 you've been principally stationed in the restroom?
 21 A Not all the time. We were being shifted
 22 around like every three months, six months, but now
 23 for a year we've been staying in the same place.
 24 Q And when you say you've been staying in the
 25 same place, where is that?

1 A In the garage.
 2 Q So how long did you work in the garage?
 3 A Six months or three months, you know. It
 4 depends.
 5 Q And where else have you worked in the
 6 Venetian as a PAD employee?
 7 A Casino.
 8 Q I'm talking about the past five years.
 9 A The garage, Las Vegas Boulevard, the casino
 10 station and the balconies, casino.
 11 Q When you talk about Las Vegas Boulevard,
 12 what does that mean?
 13 A We have -- towards the Las Vegas Boulevard,
 14 if there's anything, or any trash or anything, we have
 15 to clean it up.
 16 Q Is that outside work?
 17 A Yes, it is.
 18 Q Okay. So you work outside, you have worked
 19 in the garages, you've worked in Restroom Number 2 and
 20 then you said you worked in casino stations?
 21 A Yes, everywhere. We keep rotating.
 22 Q Is that correct in terms of all the
 23 locations you've worked at over the past five years?
 24 A Yes, it is.
 25 Q When you talked about the casino stations,

1 A Restroom Number 2.
 2 Q And Restroom Number 2 is off the marble
 3 flooring in the casino?
 4 A Yes, it is.
 5 Q So you've been stationed solely in Restroom
 6 Number 2 over the past year. And did you mention to
 7 me that you were in the restroom at the time that you
 8 learned about this fall?
 9 A Most likely I was working then there, but
 10 it's been more than two, two and a half years.
 11 Q When you say working then there, you mean
 12 working in Restroom Number 2?
 13 A Yes.
 14 Q So we'll say over the past five years, how
 15 would you allocate the time that you spent as a PAD
 16 employee at the Venetian in terms of the restroom
 17 versus other stations?
 18 A We have like a poker room close by that I go
 19 and I check two bathrooms there and immediately I go
 20 back to my station, and then I go to lunch for one
 21 hour and that's all.
 22 Q Is that your station for the past five
 23 years, you're stationed in Restroom Number 2?
 24 A Last one year. I was working in the garage.
 25 Q Working in where?

1 can you tell me where you are positioned when you are
 2 working with the casino stations?
 3 A Cleaning the machines, carpet, ashtrays for
 4 cigarettes, pick up the glasses from the machines, put
 5 them away. If there's any spill, we clean it up. If
 6 not, not.
 7 Q When you talk about spills, sounds like when
 8 you were working at the casino you are talking about
 9 spills on the carpeted areas.
 10 A If someone spills something on the carpet,
 11 then you got to stand there and the machine -- they
 12 bring the machine to vacuum it and special cleaning so
 13 that it's not wet anywhere there.
 14 Q So when you work in the casino station,
 15 would it be fair to say, when there are spills, the
 16 spills happen on carpet?
 17 A Yeah. I have to call the supervisor if
 18 there is a spill to send the machine over.
 19 Q But is it your experience, as a PAD employee
 20 in the casino station, that when you clean up the
 21 spill or someone cleans up the spill, it's on the
 22 carpet?
 23 A Yes, it is.
 24 Q So let's go back to the scene of this fall.
 25 You said you arrived, you were called to the scene.

1 Do you remember who called you?
 2 (Crosstalk.)
 3 THE COURT REPORTER: Wait, wait. Your words
 4 are drowning his out.
 5 BY MR. GALLIHER:
 6 Q Yeah. Wait until you finish to interpret.
 7 I know what you're trying to do here.
 8 A What I said is, Dina or some other
 9 supervisor -- but I know it was some other supervisor
 10 who called. I didn't remember the name.
 11 Q When you arrived at the scene, did you do
 12 anything in terms of cleaning up the spill or anything
 13 of that nature?
 14 A I couldn't clean anything because she was
 15 still sitting on the floor.
 16 Q So the answer to my question is you didn't
 17 do anything to clean up anything that day?
 18 A Nothing. We cannot touch it until the
 19 person is moved from there.
 20 Q And the only person you saw clean it up is
 21 David?
 22 A David was cleaning it behind her back, but
 23 we couldn't see anything there. The mop was kind of
 24 dry.
 25 Q And so did you actually watch David clean

1 A No, I didn't. The only way to see it, we
 2 looked at the video.
 3 Q Did you -- did you see any liquid on the
 4 floor after the fall?
 5 A I saw some drops from the liquid, I was
 6 telling her, but I've seen it on the video as well.
 7 Q All right. So you have seen drops of liquid
 8 on the floor when you came to the scene of the fall?
 9 A Yes, and they were reaching a little bit to
 10 the carpet as well.
 11 Q All right. So but you don't know where that
 12 liquid came from?
 13 A It cannot come from anywhere except from
 14 her. Yeah, you could see when she was there and the
 15 other guests are walking by, if there was a little
 16 more of liquid, some other guest could have slipped.
 17 Q But do you know whether there was any liquid
 18 on the floor before she fell?
 19 A You cannot see it because she was on the
 20 floor sitting, so you can't see it whether it was or
 21 not.
 22 Q So the answer to my question is, you don't
 23 know whether there was any liquid on the floor before
 24 the fall?
 25 A That's -- I couldn't have seen anything

1 the floor?
 2 A Yes, I did.
 3 Q So you then saw David take his mop and put
 4 it in the bucket and wring it out?
 5 A No, no.
 6 Q You didn't see that?
 7 A No.
 8 Q Did you see it on the video?
 9 A I think I have seen it, but I can't really
 10 recall it.
 11 Q What else did you do at the scene other than
 12 stand there?
 13 A I didn't do anything because I didn't see
 14 anything that I needed to do. But there's a
 15 possibility that when she's carrying her own glass,
 16 that something could have spilled from her own glass.
 17 Q And what glass was she carrying?
 18 A I think that she was carrying the white
 19 plastic glass, from what I've seen on the picture.
 20 Q And how is it that you assumed that she was
 21 carrying a glass and that's what resulted in water or
 22 liquid on the floor?
 23 A When she was falling in the picture, she
 24 threw away the glass from her hand.
 25 Q Did you see the top come off the cup?

1 then.
 2 Q All right. I want to make sure we're clear
 3 on this.
 4 A I am sure on myself.
 5 Q All right. So you do not know, as you
 6 testify here today, whether there was any liquid on
 7 the floor before the fall?
 8 A I don't know.
 9 Q All right. How long did you remain at the
 10 scene?
 11 A I didn't stay much there because David was
 12 there. I left the scene.
 13 Q So did you leave the scene after David
 14 arrived?
 15 A Yes. He came with a mop and I left.
 16 Q So how long after David arrived did you
 17 leave?
 18 A Very short time.
 19 Q Were you there when the EMT security guard
 20 arrived?
 21 A No, I don't think I was there.
 22 Q Did you leave your name with anyone?
 23 A No.
 24 Q Did anybody contacted you after the date of
 25 the fall to get a statement from you?

1 A One time I went to see the -- to view the
2 footage, if I can remember anything, and that was such
3 a long time ago. But no.
4 Q So when did you go review the footage?
5 A Three or four months ago.
6 Q And it was at somewhere other than
7 Mr. Royal's office?
8 A This gentleman wasn't there. It was just a
9 secretary and in the office.
10 Q What office?
11 A This gentleman's office; yes.
12 Q So you went to Mr. Royal's office and you
13 watched the video with the secretary present?
14 A Well, where the secretary is sitting, that's
15 where I --
16 Q But that was at Mr. Royal's office?
17 A Where I was sitting with him, it was a
18 different office.
19 Q Was it the same location?
20 A Same location.
21 Q So apart from the two times you've seen the
22 surveillance video at Mr. Royal's office, have you
23 seen it anywhere else?
24 A No. Just with him at this office and the
25 lady's office.

1 Q Have you told me everything you can remember
2 about the fall and your involvement in it?
3 A Everything.
4 Q Is there anything else that you can recall
5 about the fall that we haven't talked about?
6 A I wouldn't have anything, and I wouldn't
7 want to add anything that I'm not sure of and that I
8 don't know about.
9 Q Have you understood all my questions today?
10 A Yes, yes, I understood questions and my
11 translation.
12 Q And any questions you want me to repeat or
13 rephrase for you?
14 A Not really. What bugs me is when somebody
15 falls and won't move from that spot until security
16 comes so that we can see if there is any water or
17 anything there.
18 Q So what if that person is injured to the
19 point where they were unable to move?
20 A Then they should sit and wait and see who's
21 spilled that, whether it's their spill or somebody
22 else.
23 Q And is that what the lady you saw on the
24 floor did in this case?
25 A She was waiting for security and I left.

1 When people are walking around with a glass
2 in their hand, they are looking around and a lot of
3 times they accidentally, you know, turn the glass and
4 start spilling. So we have to remind them to watch it
5 so that whatever they have, they don't spill around.
6 Q And that's because one drop on a marble
7 floor at the Venetian makes it extremely dangerous?
8 MR. ROYAL: Objection, foundation.
9 Go ahead.
10 THE WITNESS: Very dangerous.
11 MR. GALLIHER: Pass the witness.
12
13 EXAMINATION
14 BY MR. ROYAL:
15 Q When you reviewed footage of the incident,
16 did you have to leave the Venetian property?
17 A I continued to work after.
18 Q Okay. Today you are at a deposition. Did
19 you drive here?
20 A Yes, I have.
21 Q When you reviewed video either of the times
22 that you referenced in your responses to
23 Mr. Galliher's questions, did you ever have to drive
24 and leave the property?
25 A After I finished work, I drive home.

1 Q Okay. Okay. When you first arrived at the
2 scene -- strike that. You know what? Hold on, strike
3 that.
4 I'm going to show you what has been
5 identified as VEN019, and this is a video and it's at
6 12:39:34.
7 MR. GALLIHER: If he's going to commentate,
8 I think we need to know what you're saying.
9 THE INTERPRETER: I'm going to come from the
10 left side.
11 BY MR. ROYAL:
12 Q So wait for a question. All right. At
13 12:39:34, I'm going to start this. I want you to
14 watch for yourself, okay? I stopped it at three --
15 sorry -- 12:39:36. Can you see yourself?
16 A Yes, right here.
17 Q Is that you in a PAD uniform?
18 A Yes, it is.
19 Q And there's a column to your right in at
20 least what's depicted here?
21 A Yes, it is.
22 Q Do you see a woman on the floor?
23 A Yes.
24 Q As you look at this, does this refresh your
25 memory about anything you've testified to?

1 A Yes, it does.
 2 Q In what way?
 3 A That when I came, I saw that she was
 4 sitting. I was bending my head to look at the spill
 5 and I didn't see any at all where I'm looking at.
 6 Q Did you look anywhere else in this area for
 7 a spill?
 8 A That part, the part over there, I couldn't
 9 see it.
 10 Q Okay.
 11 A I'm moving.
 12 Q Hold on. I'm going to let it run from that
 13 point. I'm going to stop it at 12:39:51.
 14 Do you see David?
 15 A I think that's David there.
 16 Q Okay. And that would be at the top right
 17 area of this stopped video?
 18 A Yeah.
 19 Q Do you see someone else from PAD there?
 20 A I think Maria is her name.
 21 Q Okay. Do you know Maria's last name?
 22 A No. On the last name, I don't.
 23 Q I'm going to now run it a little further.
 24 I'm going to stop it at 12:39:55.
 25 A They took a mop and they started to clean.

1 See how he's bending his head looking for a spill?
 2 Q Okay. You are still there at 12:39:53?
 3 A Yes, I am.
 4 Q 55, I should say.
 5 Were you watching David mop at this time?
 6 A I was standing there so nobody walks into it
 7 to protect the area.
 8 Q Okay. Did you see anything on the floor
 9 where David was mopping at this particular point, at
 10 12:39:55?
 11 A We have to check and then go over it just in
 12 case there is something.
 13 Q Okay. Starting again, okay. I'm going to
 14 stop it at 12:40:01. You were just doing something
 15 with your foot. Do you recall? I'm going to go
 16 backward.
 17 A I was showing that there was a little bit
 18 there where it had spilled from her glass.
 19 Q Okay. So at 12:39:57, I'm going to start
 20 it. I want you to watch yourself.
 21 A Okay.
 22 Q Pointing with your foot. I'll stop it at
 23 12:40:01. Do you remember having a conversation with
 24 David?
 25 A Yeah. What I said was -- and he told me to

1 stand there so that nobody goes into it.
 2 Q Okay. Now at 12:40:04, you have now left.
 3 A Yes, to my station.
 4 Q Okay. Now, David's mop at that point is in
 5 the area where you are pointing with your foot
 6 earlier.
 7 A Yes, it is.
 8 Now he's draining it.
 9 Q Okay. So at any time, do you specifically
 10 recall seeing something on the floor other than the
 11 woman sitting?
 12 A Not really. The only thing it could be was
 13 that there was a little -- a little spill from a glass
 14 that would be on the floor.
 15 Q What glass do you have -- but did you
 16 actually see anything on the floor?
 17 A When I came there, only her spill would be
 18 from the white coffee or something.
 19 Q Did you talk with Maria or David after the
 20 incident?
 21 A No. We don't talk about that.
 22 Q You said you worked in the casino area and
 23 there's a lot of carpet. Is there also a marble floor
 24 that goes through the casino area?
 25 A Marble is usually when you're going towards

1 the exit or to front desk or sports book.
 2 Q I see. When you were working Restroom 2, I
 3 think you testified that you also do poker the
 4 restroom.
 5 A Yes. That's the same job that I have.
 6 Q Okay. And how far away are the restrooms
 7 between the poker rooms and the one by the Grand Lux
 8 in the casino area?
 9 A Three or four machines, maybe one table, and
 10 then I move into poker room about 20 yards, my first
 11 room on the right.
 12 When I finish with that one, I go further
 13 forward on the corner on the left, and then further
 14 forward on the right side. I check what I need to do,
 15 I have some paper and then I go back.
 16 Q I see, okay. In between the two restrooms,
 17 as you walk in between, do you have any kind of
 18 responsibility?
 19 A If I see anything in the way of spill or
 20 dirty papers or anything, I'm supposed to take care of
 21 it. I need to clean it up.
 22 Q In your experience in your 20 years at the
 23 Venetian as a PAD employee, what are some of the
 24 reasons that you have to use a mop as a PAD employee?
 25 A To pick up spill and clean it so

1 everything's okay.
 2 Q Do you use a mop in the bathrooms?
 3 A Yes.
 4 Q Do you only use it in the bathroom if
 5 there's a spill, or do you use it for other reasons?
 6 A The complete cleaning for the floor and
 7 everything.
 8 Q In your experience as a Venetian PAD
 9 employee, how important is it to you to maintain the
 10 floors in the course of your duties?
 11 MR. GALLIHER: Objection, foundation.
 12 But you can answer.
 13 THE WITNESS: To me, it's the most important
 14 because of the company and because of me so that
 15 nobody can fall down.
 16 BY MR. ROYAL:
 17 Q All right. And you saw the woman on the
 18 floor when you got to the scene?
 19 A Yes.
 20 Q How many times have you seen that occur in
 21 your 20 years?
 22 A Maybe I've seen a couple of times. It
 23 doesn't happen to all the stations. I can be here and
 24 it could happen half of the casino, so I don't go all
 25 the way there to look.

1 Q Is the poker room carpeted?
 2 A Yes. There's one circle of marble and,
 3 yeah, it's a combination. They're like little squares
 4 of marble and then carpet and so on, repeated like
 5 that.
 6 Q How about where the players walk and sit?
 7 A That's carpet there.
 8 Q And would that also be true of the casino?
 9 A Where the machines are, the casino, yes, and
 10 tables too.
 11 Q So wherever the players walk or sit is
 12 carpeted in the casino?
 13 A Yes.
 14 Q I think you testified earlier that as a PAD
 15 employee, you've used a mop on a number of occasions;
 16 is that right?
 17 A That mop that we use when there's a spill
 18 outside of the bathroom. But if it's being used in
 19 the bathroom, it's not being used outside of the
 20 bathroom.
 21 Q I want to make sure we're clear on this. In
 22 your 20 years, you've presumed you've used a mop in
 23 your 20 years as PAD employee.
 24 A If something dirty. There's no people, no
 25 spill, I've never used it.

1 Q I'm just asking about what you have
 2 personally seen.
 3 A Personally that I've seen, maybe two times.
 4 Q All right. Would this be one of those two
 5 times?
 6 A I'm including this time as the second time.
 7 Q All right. Thank you.
 8
 9 FURTHER EXAMINATION
 10 BY MR. GALLIHER:
 11 Q So let me clarify this. So in the 20 years
 12 you've worked at the Venetian as a PAD employee, you
 13 have seen two falls on the marble floors with liquid?
 14 A That's for sure. Two times, but not more.
 15 Q Two times at the most?
 16 A From all these 20 years that since I started
 17 working.
 18 Q And you've never seen or heard of any other
 19 falls, other than the two that you've witnessed, of
 20 the marble?
 21 A Only what I see with my eyes I believe it's
 22 true, but not what else you talk about.
 23 Q All right. So I want to make sure we're
 24 clear. Two falls at the most?
 25 A At the most, me personally with my eyes.

1 Q So let's try this again. In your 20 years
 2 as a PAD employee at the Venetian, have you used a mop
 3 and a bucket?
 4 A I always use it in the bathroom and then if
 5 there's a spill outside.
 6 Q So on how many occasions would you say
 7 you've used your mop and bucket in the last 20 years?
 8 A When I'm working in the bathroom, I use it
 9 more than five times a day, maybe 10 times a day
 10 because of urinary.
 11 Q And so when we talk about using it in the
 12 bathroom, you've used the mop to clean up liquids?
 13 A Yes.
 14 Q And then after you clean up the liquids,
 15 what do you do with the mop and your bucket?
 16 A I wash it in a bucket, I change the water.
 17 Q Do you wring out the mop?
 18 A Of course.
 19 MR. GALLIHER: Pass the witness.
 20 THE WITNESS: I can't allow it if somebody
 21 falls, then I carry it on myself.
 22
 23 FURTHER EXAMINATION
 24 BY MR. ROYAL:
 25 Q In the times you've used -- or strike that.

1 Do you also use a mop to clean up scuffs?
 2 A Yeah. You have to clean it.
 3 Q Have you ever used a mop as a precautionary
 4 measure?
 5 MR. GALLIHER: Objection, vague.
 6 You may answer.
 7 THE WITNESS: If there's anything dirty, any
 8 spill, I have to. I cannot leave it dirty anywhere.
 9 BY MR. ROYAL:
 10 Q You don't -- you don't -- when David was
 11 using a mop in this case or in this instance, when you
 12 arrived at the scene, you didn't see what he was
 13 mopping up; correct?
 14 A If there was a spill, I guarantee that I
 15 would have seen it. If it was a lot of spill, yeah,
 16 you would have seen a lot of spill.
 17 If they spill a big glass, it would be the
 18 size of half of this table, the area.
 19 Q Okay. You didn't see -- strike that.
 20 Did you see anything that looked like water
 21 in the area on the floor when you were there?
 22 A No.
 23 MR. ROYAL: That's it.
 24
 25 /////

1 wearing; right?
 2 A No, I don't. And I cannot even ask.
 3 MR. GALLIHER: Thank you. Nothing further.
 4 MR. ROYAL: That's it for me.
 5 MR. GALLIHER: All right. Thanks very much,
 6 sir.
 7 (The deposition concluded at 3:35 p.m.)
 8
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1 FURTHER EXAMINATION
 2 BY MR. GALLIHER:
 3 Q But a little spot of water at that location
 4 would have made that lady fall; right?
 5 MR. ROYAL: Objection, form; calls for
 6 speculation.
 7 BY MR. GALLIHER:
 8 Q You may answer.
 9 A Depends on the shoes.
 10 Q So what would make a difference in her
 11 shoes?
 12 A Some shoes that are easily -- you slip with.
 13 Q Some shoes that would easily slip on a spot
 14 of water?
 15 A One drop you can slip if the shoe is not
 16 good.
 17 Q So one drop you can slip on the shoes on the
 18 marble floor at the Venetian if the shoe wasn't good?
 19 MR. ROYAL: Objection, foundation.
 20 THE WITNESS: Yes, you could.
 21 BY MR. GALLIHER:
 22 Q So did you look carefully at this lady's
 23 shoes?
 24 A No.
 25 Q So you don't know what shoes she was

REPORTER'S DECLARATION

STATE OF NEVADA)
COUNTY OF CLARK)

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

That I reported the taking of the deposition of the witness, MILAN GRAOVAC, commencing on Monday, April 22, 2019 at the hour of 2:40 p.m.

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

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

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

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

Pauline C. May, CCR 286, RPR

EXHIBIT “G”

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.

DEPOSITION OF LOUIE CALLEROS

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

On Monday, April 22, 2019
At 2:00 p.m.

Reported By: PAULINE C. MAY
CCR 286, RPR

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18 I N D E X

19 WITNESS	PAGE
LOUIE CALLEROS	
20 Examination By Mr. Galliher	3
Examination By Mr. Royal	13
21 Further Examination By Mr. Galliher	22
Further Examination By Mr. Royal	23
22 Further Examination By Mr. Galliher	25
Further Examination By Mr. Royal	26
23 Further Examination By Mr. Galliher	27
Further Examination By Mr. Royal	28
24 Further Examination By Mr. Galliher	30

25 -o0o-

LOUIE CALLEROS 4/22/2019

Page 3

1 LOUIE CALLEROS,
2 having been first duly sworn to tell the truth, the
3 whole truth and nothing but the truth, was examined
4 and testified as follows:

5
6 EXAMINATION

7 BY MR. GALLIHER:

8 Q Would you state your name, please.

9 A Louie Calleros.

10 Q And your business address.

11 A It's 3355 Las Vegas Boulevard South.

12 Q And that's the Venetian?

13 A Correct.

14 Q How long have you been employed by the
15 Venetian?

16 A 15 years May of this year.

17 Q When you started, what was your job title?

18 A I worked as a reservations agent.

19 Q And what's your job title now?

20 A Front desk agent.

21 Q What's the difference between a reservation
22 agent and front desk agent?

23 A Reservation agents book the reservations for
24 future guests who are coming out to the hotel, and
25 front desk agents check in the guests who are there

Page 5

1 Q The oath you've taken carries with it the
2 same solemnity as if you were testifying in court
3 before a judge and a jury.

4 A Correct.

5 Q It also carries with it the penalties of
6 perjury; do you understand that?

7 A Correct.

8 Q You've been identified by the Venetian as --
9 this is what I read from the scope here, "The witness
10 was a reservations front desk employee present when
11 the subject incident occurred and is expected to
12 testify as to the facts and circumstances surrounding
13 the controversy."

14 That's a description given by the Venetian.

15 Is that accurate?

16 A Correct.

17 Q And so you were present when my client fell?

18 A I wasn't present at the time, but I had seen
19 it, like, out -- something out of the corner of my
20 eye.

21 Q All right, let's talk about that. The fall
22 occurred November 4, 2016. Do you understand that?

23 A Yes.

24 Q In the early afternoon hours?

25 A Yes.

Page 4

1 present for the hotel.

2 Q How long were you a reservations agent?

3 A Two years.

4 Q And so you've been a front desk agent for
5 the past 13 years?

6 A No, kind of different titles between.

7 Q Tell me about the different titles.

8 A If you are a reservations agent, it was job
9 duties dealing with e-mail correspondence for
10 reservations wholesale company. I held that position
11 for about two years.

12 After that was manager for reservations and
13 did the same, two years. After that was a training
14 quality assurance and communications manager for the
15 same reservations department. And then after that,
16 went to the front desk.

17 Q So how long have you been at the front desk?

18 A Front desk is going on -- let me see --
19 three years, maybe four.

20 Q So have you ever had your deposition taken
21 before?

22 A No, I have not.

23 Q You understand today that you are under
24 oath?

25 A Yes, I do.

Page 6

1 Q And why don't you start with what you first
2 saw that day and just move me through it.

3 A The day or the time?

4 Q Well, I'm talking about the time of the
5 incident.

6 A Okay. So I was going to lunch. So on my
7 way, I seen a flash of something fall and I
8 immediately walked over to the area of where the guest
9 was and I seen her on the floor. I started to call
10 security and just kind of waited there until they
11 came.

12 Q Now, there's some video surveillance that
13 shows someone wearing a jacket. He's got his back to
14 the camera. Would that be you?

15 A That would be me.

16 Q Okay. All right. So how long after the
17 sound you heard -- apparently you didn't see the fall,
18 but you saw the movement?

19 A Correct.

20 Q And so it appears to you that someone had
21 fallen because you -- what? -- went to the scene and
22 there was a lady on the floor?

23 A Correct.

24 Q Did she appear to be injured?

25 A Not to my knowledge.

3 (Pages 3 to 6)

1 Q So she didn't appear to be injured to you.
2 Did you talk to her?
3 A No, I did not.
4 Q And when you say you walked over to the
5 scene where she was on the floor, tell me what you did
6 once you got there.
7 A I seen her on the floor; I immediately
8 called security. I'm not trained for whatever
9 happened, so my immediate thing was to call the EMT to
10 get her assistance.
11 Q And did you call the EMT because there was
12 some concern, in part, because she had been injured in
13 the fall?
14 A Correct.
15 Q The EMTs at the Venetian are security
16 officers who receive emergency medical technician
17 training?
18 A I would assume.
19 Q Do you know?
20 A I don't know. I don't know if they go
21 through the qualifications or anything.
22 Q Apparently you knew enough and saw enough to
23 call an EMT?
24 A Correct.
25 Q Now, how long did you remain at the scene of

1 the fall after you arrived?
2 A I'm not too sure how long. I know I
3 remained until security was meeting with her. So from
4 the time the event happened until then; and then after
5 they left, I departed as well.
6 Q Do you have a best estimate of how long you
7 were on the scene?
8 A Maybe 15, 20 minutes.
9 Q During that 15 or 20 minutes, did you speak
10 with anyone other than my client?
11 A I believe I spoke with Han and the gentleman
12 who was helping her to let them know that I was
13 calling security.
14 Q You say "Han." Who is Han?
15 A Han Sang is an employee at the hotel. He
16 was my supervisor currently at the time.
17 Q There appears to be a smaller Asian man that
18 walks over with a suit and tie a little bit later
19 after you arrived. Would that be Han?
20 A I believe so; yes.
21 Q Did you see any other Asian guys at the
22 scene other than Han?
23 A Not to my knowledge.
24 Q You said there was a gentleman that was
25 apparently helping the lady. Can you describe him for

1 me?
2 A Short, white complexion, bald gentleman.
3 Q You said shorts?
4 A No, "short."
5 Q Short in stature?
6 A Yes.
7 Q And you said bald and light complexion?
8 A Yes.
9 Q Do you remember what he was wearing?
10 A I do not.
11 Q Did you review the surveillance video before
12 you came to today's deposition?
13 A Yes, I did.
14 Q And when you reviewed the surveillance
15 video, did you see the bald person you described in
16 the surveillance video?
17 A Yes.
18 Q But you don't know what he was wearing?
19 A I don't.
20 Q Now, apart from the bald man that you
21 described and Han and the lady on the floor, anybody
22 else that arrived at the scene that you know?
23 A Well, there was the EMT who came and then I
24 want to say another casino person, like a lady.
25 Q Do you know who she was?

1 A I do not; no.
2 Q Did you see any PAD personnel come to the
3 scene?
4 A Yes.
5 Q The video appears to show a male and/or a
6 female.
7 A I believe it was a male.
8 Q So you didn't see a female at the scene?
9 A No, I don't remember.
10 Q So the only one you remember seeing at the
11 scene was the male?
12 A Correct.
13 Q And you described him. Did you see anybody
14 that looked like the fellow that remained in our
15 waiting room today?
16 A Possibly. I'm not too sure. I don't really
17 remember.
18 Q So you wouldn't know one way or the other?
19 A Yes.
20 Q When that person arrived at the scene, what
21 did you see him do?
22 A Immediately, like, searching the area to
23 clean up the spill or if there was a spill or anything
24 like that.
25 Q Did you see him use his mop on the floor?

1 A I believe so, yes.
2 Q Did you see him put his mop in a bucket and
3 wring it?
4 A That's -- I don't remember.
5 Q And you don't remember seeing a female with
6 towels on the floor either; is that right?
7 A No; correct.
8 Q So the only one you remember seeing from PAD
9 at the scene would be the male and you do remember,
10 however, that he brought a mop with him.
11 A Correct.
12 Q And he used the mop on the floor?
13 A Correct.
14 Q Did you have any conversations with him?
15 A I did not, no.
16 Q Now, during that 15 minutes that you were at
17 the scene and I'm getting -- that's your best
18 estimate.
19 Did you have conversations with anyone we
20 haven't talked about?
21 A I think the security guard.
22 Q When you talk about the security guard --
23 A The EMT.
24 Q And do you remember anything about the
25 conversation; that is, what he said to you, what you

1 said to him?
2 A Just asked him if he needed me for anything
3 else and that was it.
4 He said no, and then that was the end of the
5 conversation.
6 Q And did the security officer that came to
7 the scene -- the security officer EMT, ask you for
8 your contact information?
9 A No.
10 Q Did he take down your name or ask you to
11 give a statement?
12 A No, he did not.
13 Q Would that explain why we don't see you
14 mentioned in the security report?
15 A Quite possibly.
16 Q Now, have you had conversations with anyone
17 else at the Venetian after you were at the scene after
18 it occurred?
19 A Not to my knowledge; no, I don't remember.
20 Q So have you told me everything that you
21 remember about the incident today?
22 A Correct.
23 Q And that's even after reviewing the
24 surveillance video?
25 A Correct.

1 Q Do you know of any other documents or
2 information that would give you any more to talk about
3 today?
4 A I do not, no.
5 Q Have you understood all my questions today?
6 A Yes.
7 Q Anything you want me to repeat or rephrase
8 for you?
9 A No.
10 MR. GALLIHER: Pass the witness.
11 MR. ROYAL: Off the record for a second.
12 (Discussion off the record.)
13
14 EXAMINATION
15 BY MR. ROYAL:
16 Q I'm going to show you some portions of a
17 video that was referenced in your -- by Mr. Galliher
18 in his examination of you. For the record, this is
19 VEN019. So right now I'm starting this at 12:36:46.
20 Do you see where I'm looking here on the
21 time stamp?
22 A Yes.
23 Q Before I started it, what's depicted
24 generally of that area? The video that was asked of
25 you that you reviewed, does this look like the same --

1 depicts the same area?
2 A Yes, correct.
3 Q Okay. And by the way, before I start it --
4 again, we're at 12:36:46. Do you see yourself?
5 A Yes.
6 Q And where are you?
7 A Here.
8 Q Okay. You are pointing to the top center of
9 the video?
10 A Correct.
11 Q And looks like you are standing in the
12 carpeted area; is that right?
13 A Correct.
14 Q Okay. The slot area I guess it would be.
15 Yes?
16 A Correct.
17 Q Okay. So right here at 12:36:50 the woman
18 goes down, you saw that. And then you see yourself
19 approaching; correct?
20 A Correct.
21 Q And that's you and you are wearing a nametag
22 and a jacket?
23 A Right.
24 Q You described a gentleman -- and we're at
25 12:37:07. I'm going to stop it here, 12:37:09.

1 There's a gentleman who is bald in a suit.
 2 A Uh-huh.
 3 Q There is a gentleman here who is standing,
 4 it looks like, between two women not far from where
 5 the woman fell in front of her; is that right?
 6 A Correct.
 7 Q Okay. Is that the man that you remember?
 8 A Correct.
 9 Q Okay. And do you remember having any
 10 specific conversations with that particular gentleman
 11 at the scene?
 12 A No.
 13 Q Okay. So I'm going to -- I'm going to stop
 14 it at 12:37:15. And at this particular time, do you
 15 remember observing anything about the floor?
 16 A Nothing in particular; no.
 17 Q Okay. Did you notice anything about the
 18 floor other than the fact that the woman was on the
 19 floor?
 20 A I do not; no.
 21 Q Okay. By that I'm asking, did you notice
 22 any foreign substances or anything on the floor in the
 23 area?
 24 A I did not; no.
 25 Q Why were you standing in this area that is

1 depicted, again, at 12:37:15? Why are you standing
 2 facing the woman on the ground?
 3 What were you doing there?
 4 A So there, I would be contacting security.
 5 So just getting on my phone to call the center number
 6 to get the news to security.
 7 Q Okay. So you were on your cell phone and
 8 that's what you are doing?
 9 A Correct.
 10 Q So I'm going to speed this up just a tad.
 11 Okay, now I'm just going to go back just a moment.
 12 Let's go to 12:38:43.
 13 You see the bald man coming to speak to you?
 14 A Uh-huh.
 15 MR. GALLIHER: Is that yes?
 16 THE WITNESS: Yes. I'm sorry.
 17 BY MR. ROYAL:
 18 Q Okay. I'll stop it at 12:38:52. Do you
 19 remember anything you had about your conversation with
 20 him at that time?
 21 A I do not; no.
 22 Q So at about -- or 12:38:52, he points
 23 towards the restrooms; is that right?
 24 A Correct.
 25 Q But you don't recall what he said to you?

1 A I do not; no.
 2 Q All right, now at 12:58. You know, I let it
 3 run until 12:58. I stopped it again. You kind of
 4 turned around, you are looking.
 5 Do you remember what you are looking for?
 6 A Security. Their office is directly behind
 7 here to the right.
 8 Q Behind -- so at 12:39:10, let's say -- let
 9 me back up here. Sorry about that.
 10 12:39:06, there is a woman on a phone who
 11 shows up, and she would be to your right as you are
 12 standing facing the woman on the floor; correct?
 13 A Correct.
 14 Q And that's the woman that you referenced
 15 earlier in your testimony?
 16 A Correct.
 17 Q And you don't recall who that is?
 18 A I do not; no.
 19 Q You don't recall having a conversation with
 20 her?
 21 A I do not; no.
 22 Q Okay. Now we're at 12:39 -- 12:39:18,
 23 12:39:20, the bald man who appears to be a coworker;
 24 correct?
 25 A Correct.

1 Q Okay. He comes back from the restroom area
 2 and looked like he was talking with someone and looks
 3 like he was maybe talking with you.
 4 Again, you don't recall any kind of
 5 discussion you had with him at the time?
 6 A I can't remember; no.
 7 Q At 12:39:35, the gentleman at the top, do
 8 you recognize what department he's from by his
 9 uniform?
 10 A Yes.
 11 Q What would it be?
 12 A From PAD.
 13 Q All right. And at 12:39:42, that Asian
 14 gentleman that you identified, does he then show up?
 15 A Correct.
 16 Q And what's his name again?
 17 A Han Sang.
 18 Q Now, at 12:39:43, you will notice you are
 19 pointing at the floor. Do you see that?
 20 A Correct.
 21 Q You are having a conversation with Mr. Han
 22 Sang?
 23 A Correct.
 24 Q Do you remember anything about that
 25 conversation?

1 A I do not. Just maybe something along the
2 line of she fell here.
3 Q Do you remember at the time of pointing at
4 the floor, do you remember what you saw on the floor?
5 A I don't recall seeing anything on the floor.
6 Q All right. You were asked about a PAD
7 showing up with a mop. At 12:39:56, do you see a
8 gentleman with a mop?
9 A Yes.
10 Q And you were standing there as he was
11 mopping; correct?
12 A Correct.
13 Q And I'm going to stop it at 12:40:00. By
14 that time, had you noticed anything on the floor that
15 he was mopping up?
16 A I had not; no.
17 Q Okay. And again, you don't recall any
18 specific conversations that you had with anyone at the
19 scene up to the point of 12:40:06 in the video?
20 A Correct.
21 Q All right. Now, 12:40:12, you will see that
22 the PAD man with the mop has gone over by the column.
23 Do you see that?
24 A Yes.
25 Q Do you remember watching what he was doing

1 as you were standing there?
2 A No, I don't.
3 Q You were just waiting for security to show
4 up?
5 A Correct.
6 Q Okay. I'm going to stop it at 12:41 -- I'm
7 sorry, 12:41:41, where a security officer has -- I
8 assume that's a security officer.
9 Could you identify the uniform?
10 A Yes, that would be a security officer.
11 Q When you testified earlier about an EMT,
12 would that be the officer you were talking about?
13 A Correct.
14 Q Do you remember having any discussions with
15 that gentleman who is -- at this point, at 12:41:46,
16 is bent over or kneeled down, squatted down, is
17 talking to the woman on the floor?
18 A At this point, no, I had not spoken with
19 him.
20 Q Okay. Now at 12:43:17, another person
21 arrives with something on his back and looks like --
22 looks like he's got a wheelchair with him.
23 Do you remember that?
24 A Yes.
25 Q Okay. The man with the something on his

1 back, do you know who that is?
2 A Don't know who it is.
3 Q Do you know what department he's from by the
4 way he looks here?
5 A He would be from security as well.
6 Q Do you remember speaking with him while you
7 were at the scene?
8 A Not speaking with him. Not at the scene,
9 no. Like, the VP was the one I asked, when we
10 departed, if he needed to speak with me or needed me
11 any further.
12 Q Okay. Now, as we have looked at the video
13 where I've stopped at 12:43:35, did you notice how
14 many PAD people were there?
15 A No, no way.
16 Q That's okay, I didn't ask you to watch. So
17 I'll go back. Okay.
18 Right now at 12:39:50, how many PAD people
19 do you see that?
20 A Three.
21 Q Okay. How many of them are men and women?
22 A Two men, one woman.
23 Q Does that refresh your recollection about
24 anything you testified to? Do you remember there
25 being more than one person there cleaning up?

1 A Now, yes.
2 Q Okay. So in having reviewed the video --
3 you know what? I just had one more. Let me go back
4 one here.
5 Okay. I'm going to stop it at 12:39:35 just
6 for a moment. Looking at the particular point where
7 I've stopped the video, are you able to identify
8 anything on the floor that you can recall was foreign
9 or should not have been there? Any kind of a
10 substance?
11 MR. GALLIHER: For the record, are you
12 asking him to look at the surveillance video on your
13 computer?
14 BY MR. ROYAL:
15 Q No. Let me ask it this way.
16 My understanding of your testimony is you
17 did not see anything on the floor; is that correct?
18 A Correct.
19 Q At any point?
20 A Correct.
21 MR. ROYAL: I pass the witness.
22
23 FURTHER EXAMINATION
24 BY MR. GALLIHER:
25 Q Actually, I just reviewed the surveillance

1 video with you and correct me if I'm wrong. In all
2 the surveillance video that I saw, I didn't really see
3 you looking at the floor. You seemed to be focused on
4 the bald man and obviously with security and turning
5 around and looking for security.
6 Did you ever study carefully the floor and
7 determine whether there was anything on it?
8 MR. ROYAL: Objection to form.
9 BY MR. GALLIHER:
10 Q You may answer.
11 A Okay. Sorry.
12 No, I don't recall, like, specifically
13 examining the floor for any type of substance.
14 Q It wouldn't have been your function as a
15 front desk person; correct?
16 A Correct.
17 Q That would have been the function of
18 security and PAD people?
19 A That would be correct.
20 MR. GALLIHER: That's all I have.
21
22 FURTHER EXAMINATION
23 BY MR. ROYAL:
24 Q Do you happen to know if that would be the
25 function of a table games supervisor to notice

1 floor from the time you arrived until you left with
2 security; correct?
3 A Correct.
4 Q Did you ever speak with anyone who indicated
5 to you that they saw something on the floor while you
6 were there?
7 A I did not; no.
8 Q Did you speak with anyone after the fact
9 that indicated to you that they saw something on the
10 floor?
11 A I did not; no.
12 MR. ROYAL: Okay. I'll pass.
13
14 FURTHER EXAMINATION
15 BY MR. GALLIHER:
16 Q Protocol. Protocol at the Venetian was that
17 if you saw something on the floor, spills, something
18 of that nature, it was your obligation to call PAD;
19 right?
20 A Correct.
21 Q So if the table games person that you saw
22 with the bald head has testified at deposition that
23 when he arrived at the scene, he looked at the floor
24 and called PAD, would that be the protocol if one
25 would expect if there was something on the floor?

1 something on the floor?
2 A I do not; no.
3 Q I mean if you notice something on the floor,
4 was there a protocol that you would follow?
5 A We call PAD to have them come and clean up
6 the spill.
7 Q Now, again I showed you at 12:39:40 when
8 Mr. Han Sang came. You see how you looked down at the
9 floor at that point -- stopping it at 12:39:44 -- and
10 had a conversation with him?
11 A Correct.
12 Q Does that refresh your recollection about
13 what you testified to today related to your
14 observation about the floor?
15 A Correct.
16 Q Well, when you looked at the floor and had
17 this conversation with Mr. Han Sang, what do you
18 remember telling him, if anything, about what was on
19 the floor?
20 A I don't remember speaking about anything on
21 the floor. Just that she fell on -- like, she had
22 fallen on the floor, but not any type of, like, that
23 there was something on the floor specifically to cause
24 the fall.
25 Q Okay. So you didn't see anything on the

1 A I would assume. I mean it's mostly, like,
2 the -- kind of instilled with us to take care of the
3 property, you know, be proud of where you work.
4 So if I see something, right away -- you
5 know, I call right away and say something. I usually
6 stay on scene until it's cleaned up just to make sure
7 that it is taken care of. But what somebody else
8 would do, I'm not really too sure.
9 Q All right. Presuming he had the same
10 training you had since he was an employee of the
11 Venetian that -- you testified about 15 years?
12 A Correct.
13 Q Well, he was employed that long. He
14 probably would have had the same protocol you were
15 taught, that is, if you see something on the floor
16 that you think is a danger, you call PAD?
17 A Correct.
18 Q All right. Thank you. Nothing further.
19
20 FURTHER EXAMINATION
21 BY MR. ROYAL:
22 Q That table games gentleman also testified
23 that he saw water on the floor right in the area in
24 front of you where you were standing at the time this
25 woman was on the floor.

1 And so, in fact, his testimony was that
 2 there was water right in the area where you're
 3 pointing at 12:39:43. Did you see water on the floor?
 4 A I cannot recall seeing water on the floor;
 5 no.
 6 Q Ever?
 7 A Correct.
 8 Q And you don't recall having a conversation
 9 with the baldheaded gentleman who indicated to you
 10 that he saw water on the floor; is that correct?
 11 A Correct.
 12 Q And at 12:38:51, that baldheaded gentleman
 13 is standing between you and the woman on the floor;
 14 correct?
 15 A Correct.
 16 Q And at that particular time, you don't
 17 remember him saying anything to you about there being
 18 water on the floor right in front of you; correct?
 19 A Correct.
 20 MR. ROYAL: Nothing further.
 21
 22 FURTHER EXAMINATION
 23 BY MR. GALLIHER:
 24 Q Just a couple more. All right. As a lay
 25 person employed at the Venetian -- you are still

1 employed at the Venetian?
 2 A Correct.
 3 Q When I'm talking about lay person, I'm
 4 talking about a non-lawyer; do you understand?
 5 A Yes.
 6 Q If you see a PAD person coming to the area
 7 of a fall and the first thing you do is take out a mop
 8 and mop, and then they put their mop in the bucket, as
 9 you just saw on the video, and wring it, what would
 10 that tell you about what was on the floor?
 11 MR. ROYAL: Objection -- objection, calls
 12 for speculation.
 13 BY MR. GALLIHER:
 14 Q You may answer.
 15 A No -- yes, I'm sorry. I would assume there
 16 would be something on the floor.
 17 MR. GALLIHER: Okay. Thank you. Nothing
 18 further.
 19
 20 FURTHER EXAMINATION
 21 BY MR. ROYAL:
 22 Q Okay. You would assume that. What other
 23 reasons would someone take out a mop to clean the
 24 floor?
 25 A Like debris or dust, like, they have a

1 very -- some kind of, like -- what is it? I can't
 2 even think of what it's called -- like a smudge, you
 3 know, like shoes -- a scuff. Like a scuff on the
 4 floor or something like that.
 5 Q Okay. You've never worked in PAD?
 6 A No.
 7 Q You are not aware of PAD protocol?
 8 A No, sir.
 9 Q And you are not aware of PAD, what they do
 10 when they patrol an area?
 11 A I am not; no.
 12 Q You are not aware of what PAD does when it
 13 routinely just cleans a bathroom or cleans a floor; is
 14 that right?
 15 A Correct.
 16 Q And you don't know what PAD protocols are
 17 when it comes to just responding to someone who claims
 18 there was something on the floor, whether they find it
 19 or not?
 20 A Correct.
 21 Q Okay. Despite the fact that the video shows
 22 PAD actually mopping or using a mop or whatever, you
 23 still didn't see anything on the floor?
 24 A Correct.
 25 Q You don't know what they were doing?

1 A Correct.
 2 Q All right. You didn't give them any
 3 instructions at the scene?
 4 A No.
 5 MR. ROYAL: That's all.
 6
 7 FURTHER EXAMINATION
 8 BY MR. GALLIHER:
 9 Q You do know what a mop is for, don't you?
 10 A Correct.
 11 MR. GALLIHER: Thank you. Nothing further.
 12 Okay.
 13 MR. ROYAL: Well, just a minute.
 14 Nothing further.
 15 MR. GALLIHER: All right, we're done. Thank
 16 you very much for coming.
 17 (The deposition concluded at 2:37 p.m.)
 18
 19
 20
 21
 22
 23
 24
 25

1 REPORTER'S DECLARATION

2 STATE OF NEVADA)

)

3 COUNTY OF CLARK)

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

6 That I reported the taking of the deposition of the
7 witness, LOUIE CALLEROS, commencing on Monday,
8 April 22, 2019 at the hour of 2:00 p.m.

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

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

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

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

25 _____
Pauline C. May, CCR 286, RPR

EXHIBIT “H”

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.

_____ /

DEPOSITION OF SANG HAN

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

On Monday, May 6, 2019
At 3:00 p.m.

Reported By: PAULINE C. MAY
CCR 286, RPR

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15 I N D E X

16	WITNESS	PAGE
17	SANG HAN	
	Examination By Mr. Galliher	3
18	Examination By Mr. Royal	21
	Further Examination By Mr. Galliher	27
19	Further Examination By Mr. Royal	34

20		
21	EXHIBITS	PAGE
	Defendants':	
22	A Color photocopy	21
	B Color photocopy	24
23	C Color photocopies	34

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1 SANG HAN,
2 having been first duly sworn to tell the truth, the
3 whole truth and nothing but the truth, was examined
4 and testified as follows:
5
6 EXAMINATION
7 BY MR. GALLIHER:
8 Q Would you state your name, please.
9 A Sang Han.
10 Q And your business address.
11 A 3355 South Las Vegas Boulevard.
12 Q At the Venetian Hotel and Casino?
13 A That's right.
14 Q How long have you been working at the
15 Venetian?
16 A Since October 2012.
17 Q And when you started at the Venetian, what
18 was your job title?
19 A Hotel manager for the front office.
20 Q And what is your present job title?
21 A Assistant director of housekeeping.
22 Q And have you held any other positions at the
23 Venetian since you started there?
24 A No, I have not.
25 Q When did you assume your present position of

1 2016, about 1:30 in the afternoon.
2 Do you understand that?
3 A Yes.
4 Q Now, how did you prepare for today's
5 deposition?
6 A I'm sorry?
7 Q How did you prepare for today's deposition?
8 By the way, my voice is not so good because I'm just
9 getting over a virus.
10 A Yeah. I was informed that I was being
11 called upon today, and so I was told what I would be
12 doing generally.
13 Q When you say you were told, by whom?
14 A I was informed by Mr. Royal.
15 Q All right. I don't want to know about your
16 conversation with Mr. Royal, they're privileged.
17 Now let's go back into your preparation.
18 Did you review the surveillance video regarding this
19 event?
20 A I did.
21 Q And did you see the entire video or do you
22 know?
23 A I did.
24 Q And did you see the events leading up to the
25 fall?

1 assistant director of housekeeping?
2 A 2016, May.
3 Q And let's start when you first started at
4 the Venetian. What were your duties as a manager?
5 A As a hotel manager?
6 Q Yes.
7 A I would describe it as overall
8 responsibility for the front desk operation, to kind
9 of briefly describe it. Different things that go with
10 that, but a general responsibility for the front
11 office.
12 Q So was there a reason you moved to your
13 present position?
14 A For career growth.
15 Q For what?
16 A For career growth.
17 Q Is the idea that you need to become more
18 familiar with various aspects of the hotel operations
19 so that, somewhere down the line, you can be the
20 general manager of the whole hotel?
21 A That would be one of the reasons, yes.
22 Q Any other reasons?
23 A Just learning I guess, yes.
24 Q Fair enough. So we're here to talk about a
25 fall that happened at the Venetian on November 4,

1 A I believe I have.
2 Q Did you see the fall itself?
3 A Yes.
4 Q And did you see the aftermath of the fall?
5 A Yes.
6 Q You are on the video, right?
7 A Yes.
8 Q In fact, I see you arriving at I guess
9 12:39:40. You leave at 12:42:42 which means you are
10 there roughly three minutes.
11 Would that square with your recollection?
12 A I didn't time myself, but I guess if that's
13 the information you have, yeah.
14 Q Well, if you are not so sure, you can
15 disagree with me. But I timed it, a little over three
16 minutes.
17 Does that sound about right?
18 A I would agree.
19 Q So how is it you were summoned to the scene
20 of the fall?
21 A I was not summoned, necessarily. I was
22 nearby at a coffee shop, Bouchon Bakery, on the video
23 and I saw Louie. So I went.
24 Q And "Louie," Louie who?
25 A He was at the time a front desk agent and I

1 believe still is.
 2 Q Is that the -- Louie's the big fellow that's
 3 very wide, got his back to the camera most of the
 4 time?
 5 A Got a mustache.
 6 Q Yes. Latino fellow, I believe.
 7 A I believe that would be correct, yeah.
 8 Q So you were at Bouchon Bakery. Were you
 9 getting something to eat or drink?
 10 A Afternoon coffee.
 11 Q What do they sell at Bouchon Bakery? They
 12 sell coffee. Do they sell water?
 13 A I'm not quite certain.
 14 Q Or do you know?
 15 A I'm not sure.
 16 Q When you go there, you go there for coffee?
 17 A Correct.
 18 Q And do they have a variety of coffee drinks?
 19 A Sure.
 20 Q Like cappuccinos and espressos and lattes,
 21 that type of thing?
 22 A I believe so.
 23 Q So when you order coffee there, what do you
 24 get?
 25 A I haven't visited the establishment in quite

1 that?
 2 A I do.
 3 Q And do you recall the conversations you had
 4 with my client when you knelt down and spoke with her?
 5 A Vaguely, yes.
 6 Q Can you tell me what you vaguely remember
 7 about the conversations.
 8 A I remember asking, you know, if she was okay
 9 and if she's hurt in any particular area and if I
 10 could be of any assistance.
 11 And, you know, just kind of the whole
 12 purpose of the conversation was to kind of keep her
 13 calm and be empathetic about what had happened to her
 14 and just to make sure that she knows that, you know,
 15 we're here to assist.
 16 Q Did you ask her what happened to her?
 17 A Yes.
 18 Q And what did she say?
 19 A She informed me that she had fallen.
 20 Q Did she also respond to your questions about
 21 whether or not she was hurt?
 22 A She told me that her, I believe, left arm
 23 was -- like the elbow area, was hurting.
 24 Q Any other areas of her body you remember?
 25 A I do not recall her mentioning any other

1 some time, but just a regular iced coffee.
 2 Q Now, at the time that you were -- the day of
 3 the fall, November 4, 2016, what was your job title at
 4 the Venetian at that time?
 5 A November '16?
 6 Q November 4, 2017.
 7 A I would have been with the housekeeping
 8 department.
 9 Q So when did you start with the housekeeping
 10 department?
 11 A May '17.
 12 Q And were you on break at the time, or lunch?
 13 A I believe so, yes.
 14 Q That would be why you were down at Bouchon
 15 Bakery?
 16 A I certainly hope so, yes.
 17 Q And what is it that caught your attention to
 18 the fall?
 19 A I saw Louie kind of looking around I
 20 believe, and so -- and I was nearby. And so just
 21 being in the position that I'm in, I went over to see
 22 if there was anything that I could be of assistance
 23 with.
 24 Q The video seems it shows you kneeling down
 25 and speaking with my client. Do you recall seeing

1 areas.
 2 Q Do you have an intact recollection of all of
 3 those conversations?
 4 A I have a general recollection of the
 5 conversation; yes.
 6 Q Have you told me about your general
 7 recollection of all of those conversations today, or
 8 is there something else that you talked about that we
 9 haven't addressed?
 10 MR. ROYAL: I'm just going to object to
 11 form.
 12 BY MR. GALLIHER:
 13 Q That's the question.
 14 A If you are asking if I was working on
 15 information, I believe I said I answered the question
 16 to the best of my ability.
 17 Q Actually I'm not asking you that.
 18 A Okay.
 19 Q What I'm asking you, was there any other
 20 conversation you had with her that you and I haven't
 21 talked about?
 22 A Not that I can recall, no.
 23 Q So the subject, basically, of the
 24 conversation were: Are you hurt and, if so, where?
 25 A Yes.

1 Q And: What happened to you?
 2 A Sure.
 3 Q Were those the two subjects or were there
 4 others?
 5 A Those are the main that I can think of.
 6 Q How long did your conversations last with my
 7 client?
 8 A Evidently, not more than three minutes.
 9 Q Very astute on your part.
 10 Do you know -- when you reviewed the video,
 11 do you know whether you spent the entire three minutes
 12 talking to my client or did you talk with anyone else
 13 on the scene?
 14 A I interacted with Louie briefly, seeing --
 15 you know, asking him what had happened.
 16 Q And what did he tell you?
 17 A I recall him telling me that she had fallen
 18 and at the location and that the EMT was on the way.
 19 Q And did the EMT arrive while you were there?
 20 A I recall a security officer arriving.
 21 Q Wasn't that the fellow dressed in blue in
 22 the video?
 23 A That would be correct, yes.
 24 Q And the EMT fellow was dressed with a white
 25 top, black pants and he had a backpack?

1 towels, mopping the floor with the towels?
 2 A That, I don't recall.
 3 Q You see it in the video?
 4 A Yes. I have, yes.
 5 Q You see in the video, you see a female PAD
 6 employee that's got towels on her feet and she's
 7 moving the feet around on the floor using it to dry
 8 the floor.
 9 Do you see that?
 10 A I do recall seeing perhaps, too, but I might
 11 have missed that detail.
 12 Q So what might have happened, you might not
 13 have seen that at the time?
 14 A Uh-huh.
 15 Q But you might have seen it when you see the
 16 surveillance video; would that be fair?
 17 A You know, I can't say that with confidence.
 18 Q So we've got a little bit of a situation
 19 here where you've got some recollection of what you
 20 saw at the time of the event.
 21 A Uh-huh.
 22 Q And you were there three minutes, and you
 23 have other information that you've accumulated now
 24 that you've seen the video surveillance video.
 25 Would that be fair?

1 A That would be correct.
 2 Q Did you see him arrive?
 3 A I believe I did, yes. I believe I did.
 4 Q Did you see any PAD employees arrive? The
 5 porters?
 6 A Yes, I believe I did.
 7 Q How long after you arrived at the scene did
 8 you see the first PAD person there?
 9 A I don't know the exact time frame that had
 10 passed.
 11 Q And when the PAD person arrived, what did he
 12 or she do?
 13 A They attended to the general area, just kind
 14 of doing their due diligence.
 15 Q When you say "attended to the general area,"
 16 can you describe physically what they did?
 17 A I believe they arrived with a mop and a
 18 bucket and then they walked around the area, kind of
 19 generally I guess walking around. I'm not quite sure
 20 exactly what they were --
 21 Q Well, did you see them mopping the floor?
 22 A I'm sorry?
 23 Q Did you see them mopping the floor?
 24 A Yes.
 25 Q And did you see anybody with their foot on

1 A Yes.
 2 Q So can you separate the two, while you
 3 testify, concerning what you saw?
 4 A Not quite sure what the question is.
 5 Q Well, can you separate what you saw at the
 6 time you arrived, in this three minutes, versus what
 7 you saw when you reviewed the surveillance video?
 8 A I'm not quite sure how to answer that
 9 question.
 10 Q Okay. Let's go back, then, to your three
 11 minutes that you were at the scene.
 12 A Okay.
 13 Q You talked about the conversations you had
 14 with my client; right?
 15 A Yes.
 16 Q And you talked about the conversations you
 17 had with -- what's the gentleman's name?
 18 A Louie.
 19 Q Louie. And you've told me about all these
 20 conversations; correct?
 21 A Correct.
 22 Q And the only thing you can recall about
 23 those conversations, you asked what happened and you
 24 said the lady fell basically?
 25 A Yes.

1 Q Did you surveil the scene? Did you walk
2 around it? Did you look at the floor? Did you look
3 at my client's clothes? Any of that?
4 A I did not inspect her clothing. I did
5 observe the nearby area, yes.
6 Q Did you observe the area before or after it
7 was mopped?
8 A It would be before because PAD arrived
9 afterwards.
10 Q All right. So when you observed the floor
11 before it was mopped, what did you see?
12 A I saw her lying on the floor.
13 Q Okay. Did you see any liquid on the floor?
14 A No.
15 Q Did you see a gentleman there at the time
16 you arrived, a bald fellow who worked in the casino?
17 A I remember seeing a gentleman in a suit,
18 yes.
19 Q A bald fellow?
20 A I believe that fits the description.
21 Q He's been identified as a Gary Shulman. Did
22 you know Mr. Shulman personally before that day?
23 A I did not.
24 Q Have you ever had any conversations with
25 him?

1 A So I believe the immediate area of where the
2 fall had happened was within my immediate view and,
3 from my observation, there was nothing on the floor
4 that came across to me as a concern.
5 Q Mr. Shulman's identified water on the floor.
6 So would you disagree?
7 A I guess -- I guess, yeah, I do.
8 Q And your position at the time, you were the
9 assistant director of housekeeping?
10 A That's correct.
11 Q And housekeeping would be in charge, I
12 presume, of the porters.
13 A Porters as in --
14 Q PAD employees.
15 A No.
16 Q So they're not part of the housekeeping
17 department?
18 A That is correct.
19 Q So do you have any supervisory control over
20 any PAD employees?
21 A Not in the general sense, no.
22 Q Is this the first fall that you've been part
23 of or witnessed as an employee of the Venetian on the
24 marble floors?
25 A That's correct.

1 A I don't recall having a conversation with
2 him, no.
3 Q Do you remember seeing him point out
4 anything on the floor while you were there?
5 A I don't remember him pointing anything out
6 on the floor while I was there.
7 Q And do you remember anyone else pointing out
8 anything on the floor while you were there?
9 A I do not remember anyone pointing out
10 anything on the floor.
11 Q Did you walk completely around the area
12 where the fall occurred in order to examine the floor
13 when you arrived?
14 MR. ROYAL: I'm going to just object to
15 form.
16 BY MR. GALLIHER:
17 Q You may answer.
18 A So I observed the floor of the immediate
19 area.
20 Q So I see you kneeling down and talking with
21 my client. That's what I see in the video.
22 A Yes.
23 Q Is there anything on the video that would
24 show me that you walked around and inspected the floor
25 when you arrived?

1 Q So you've never seen another one?
2 A That's correct.
3 Q Have you ever heard about any falls on the
4 marble floors at the Venetian?
5 A Not that I can recall, no.
6 Q And so you've been there since what year?
7 A 2012.
8 Q All right. So, since 2012, this is the only
9 fall that you ever witnessed in the sense of being
10 part of?
11 A That's correct.
12 Q And your part of this fall was basically you
13 arriving after it happened?
14 A That's correct.
15 Q You didn't see it happen?
16 A That's correct.
17 Q And when you arrived after it happened, you
18 had a conversation with my client which you've told me
19 about, right?
20 A That's correct.
21 Q You also had a conversation with your
22 co-employee that you told me about?
23 A That's correct.
24 Q And it's your testimony that -- did you
25 perform a complete inspection of the floor in the area

1 where the fall occurred when you arrived?
 2 MR. ROYAL: Object to form.
 3 THE WITNESS: I observed the immediate area
 4 of where the fall had occurred.
 5 BY MR. GALLIHER:
 6 Q And could you have missed anything?
 7 MR. ROYAL: Object to form.
 8 THE WITNESS: From my recollection, what I
 9 observed of the immediate area of the fall I did not
 10 see of any concern.
 11 BY MR. GALLIHER:
 12 Q All right. So you wouldn't have missed
 13 anything because your inspection was thorough; is that
 14 right?
 15 MR. ROYAL: I object to form.
 16 THE WITNESS: From my immediate observation
 17 of the immediate area, I did not see anything of
 18 concern.
 19 BY MR. GALLIHER:
 20 Q Let's go back, then. You had not had a
 21 chance to see the fall itself, right?
 22 A In the -- not -- not in person.
 23 Q But you saw it on the video surveillance?
 24 A That's correct.
 25 Q So when you saw the fall on the video

1 surveillance, what does it look like the woman slipped
 2 on?
 3 MR. ROYAL: Object to form.
 4 THE WITNESS: I can't answer that question
 5 intelligently.
 6 BY MR. GALLIHER:
 7 Q Do you know?
 8 A I do not.
 9 Q Okay. Does the fall in any way look like
 10 she slipped on liquid?
 11 MR. ROYAL: Object to form.
 12 THE WITNESS: I can't answer that question.
 13 BY MR. GALLIHER:
 14 Q So you don't know one way or the other?
 15 A I can't answer whether the -- how the person
 16 may have fallen.
 17 Q All right. But as you testify here today,
 18 you don't know whether or not she slipped on water or
 19 liquid. All you know is she fell?
 20 A That's correct, yes.
 21 Q Have you understood all my questions today?
 22 A I believe I have.
 23 Q And anything you want me to repeat or
 24 rephrase for you?
 25 A No, I don't believe there is anything.

1 Q Okay. Pass the witness.
 2
 3 EXAMINATION
 4 BY MR. ROYAL:
 5 Q I'm going to show you -- I've got some
 6 stills that I'm just going to show you and mark. This
 7 one I'm going to mark as Exhibit A is VEN950.
 8 (Defendants' Exhibit A marked for
 9 identification.)
 10 MR. ROYAL: I'm not marking the whole thing,
 11 just giving those to you. So if you don't mind, I
 12 might want these back at the end of the depo. It's
 13 just so you can look at them.
 14 MR. GALLIHER: Okay.
 15 BY MR. ROYAL:
 16 Q So we're going to mark that as "A," and just
 17 for the record, this says 12:39:43. And so
 18 Mr. Galliher provided you with times and you didn't
 19 have the benefit of looking at times, but that's
 20 pretty close to what I think he said.
 21 I have, at 12:39:42 -- I have your arrival
 22 at 12:39:42 on the video and your departure at
 23 12:42:32. You are not going to know that unless you
 24 look at the video.
 25 A Yes.

1 Q So I'm showing you Exhibit A.
 2 MR. GALLIHER: What's the Bates?
 3 MR. ROYAL: VEN950. I have it marked on the
 4 side.
 5 BY MR. ROYAL:
 6 Q So do you recognize yourself in this?
 7 A I do.
 8 Q And which one would you be?
 9 A That handsome fellow.
 10 Q So your back is to the camera?
 11 A Correct.
 12 Q And you would be to the left. Do you see
 13 the woman on the floor?
 14 A I do.
 15 Q Now, Counsel asked about a bald gentleman
 16 who was a coworker who is also in a suit. Do you see
 17 him also in the photo?
 18 A Yes, I believe I do.
 19 Q And what's he doing?
 20 A Seems to me that he is speaking with the
 21 lady who's on the floor.
 22 Q Okay. And then you also identified --
 23 there's a man to your right?
 24 A Yes.
 25 Q And who is that?

1 A That would be Louie Calleros.
 2 Q Okay. Now, in this particular still, what
 3 is Mr. Calleros doing?
 4 A He is asking -- he is identifying to me the
 5 area in which the fall had occurred.
 6 Q Okay. Now, and what are you doing at this
 7 particular time as depicted in this still?
 8 A I am acknowledging the area where the fall
 9 had occurred and observing the immediate area of the
 10 fall.
 11 Q Okay. Now, you were asked questions about
 12 observations and inspections and so forth. What were
 13 you inspecting at this particular time?
 14 A I was inspecting, looking to see if there
 15 would be any, I guess, conditions that may be of
 16 concern.
 17 Q Elaborate on that. What do you mean by --
 18 what would be of concern?
 19 A Anything that shouldn't be there naturally.
 20 Foreign objects including, you know, liquid or
 21 anything of that matter.
 22 Q Okay. And what did you observe at that
 23 time?
 24 A I did observe the floor. I didn't see any
 25 foreign material --

1 A Correct.
 2 Q And then Mr. Calleros is on the very
 3 right -- far right?
 4 A Correct.
 5 Q Okay. As you are having -- and I'm sorry.
 6 This is at 12 -- can you read what that says?
 7 A 12:40:37.
 8 Q So at 12:40:37 that's you talking to the
 9 plaintiff, asking her the questions that you've
 10 already gone over today?
 11 A Right.
 12 Q Do you remember her saying anything during
 13 that conversation about how she fell?
 14 A No.
 15 Q Do you remember her saying anything about
 16 what caused her to fall?
 17 A No.
 18 Q During the three minutes that you were there
 19 as depicted on the video, did you ever see any foreign
 20 substance on the floor anywhere that you recall?
 21 A No, I did not.
 22 Q Do you recall at any time while you were
 23 talking with the woman, the plaintiff, her -- strike
 24 that.
 25 Okay. What I'm going to do before I

1 Q Okay.
 2 A -- at that time.
 3 Q When you had a conversation with Louie at
 4 this particular time, or that started around this time
 5 as indicated on Exhibit A, do you remember him saying
 6 anything about what he had observed?
 7 A He had informed me that the lady had fallen
 8 in that particular area.
 9 Q Okay. Anything else that you recall?
 10 A Not -- not that I can recall; no.
 11 Q All right, so we'll mark this next one as --
 12 VEN953 and we'll mark that as B. I'm just going to
 13 show you that, put that in front of you here and ask
 14 if you can identify yourself.
 15 (Defendants' Exhibit B marked for
 16 identification.)
 17 THE WITNESS: Yes, that would be me.
 18 BY MR. ROYAL:
 19 Q Okay. So the woman in the center is the
 20 woman that we have referred to as the plaintiff. You
 21 don't remember her name, do you?
 22 A I do not, no.
 23 Q Now, you were kind of squatting down; right?
 24 I don't know. Kneeling. The knee indicates you got
 25 your knee on the ground, but that's you?

1 complete this, I'm just going to -- since we're only
 2 talking three minutes here, I'm going to have you
 3 watch the three minutes of video while you were there.
 4 I'm going to start this at 12:39:40. And then I just
 5 want you to watch it. I've got a couple questions,
 6 then I'll be done.
 7 (Video Plays.)
 8 BY MR. ROYAL:
 9 Q So I've stopped it at 12:42:43. You've just
 10 now watched all that.
 11 Did any of that refresh your recollection as
 12 to what you testified to today?
 13 A Seems like pretty much in line to what I've
 14 answered today.
 15 Q Okay. Did you see PAD mopping in the area,
 16 in the video?
 17 A I did, yes.
 18 Q Do you have any idea what they were mopping
 19 up -- why they were mopping the floor?
 20 A Not quite sure what exactly they were
 21 mopping up or why.
 22 Q All right. Now, you saw at 12:39 -- I'm
 23 going to go back to -- let's go to 12:40:33. Maybe
 24 I'll go back to 12:40:24.
 25 At 12:40:24, there's Mr. Shulman, the man --

1 the bald man who's talking to the woman on the floor
 2 and you are on the far right. Do you see that?
 3 A I do.
 4 Q Okay. Do you recall having any discussion
 5 with Mr. Shulman, who is depicted in this video, where
 6 he indicated to you anything about what he had
 7 observed at the scene?
 8 A I don't believe I did, no.
 9 Q So you talked with Officer Johnson when he
 10 arrived, the officer in blue?
 11 A Yes.
 12 Q Do you remember anything specific about that
 13 conversation?
 14 A No. Well, just that and what the lady had
 15 informed me about her, you know, hurting her arm and
 16 then that, You've got it, and so essentially excused
 17 myself, handing it over to the security officer.
 18 Q Okay. Let me see if I have anything else.
 19 That's all I have.
 20
 21 FURTHER EXAMINATION
 22 BY MR. GALLIHER:
 23 Q Just a couple more. I think we established
 24 earlier that your job title as assistant manager of
 25 housekeeping did not include any supervisory control

1 Q Yeah. If you see a spill on the floor, you
 2 report it to PAD and they clean it up, right?
 3 A That would be, generally speaking, yes.
 4 Q And of course, you also see the other
 5 photograph here -- I'm looking at 952. And let's look
 6 at 952. Mike, do you have 952 to show him? This is
 7 part of the package that you've already reviewed.
 8 This is 952, so we have a PAD employee there.
 9 MR. ROYAL: I'm sorry. I'm sorry, I was
 10 just going to say the time.
 11 BY MR. GALLIHER:
 12 Q All right, that's fine. It's 12:39:59. We
 13 have a PAD employee, he's wearing the black-and-red
 14 uniform; is that right?
 15 A Okay. Yes.
 16 Q And looks like the PAD employee is using the
 17 mop on the floor.
 18 A Right.
 19 Q And as you testify here today, you don't
 20 know what he was mopping?
 21 A Correct.
 22 Q And then look at the next photograph, which
 23 would be 953, that's at 12:43:37. That would be
 24 VEN953, following 952.
 25 MR. ROYAL: Okay. That's already marked as

1 over the PAD employees; is that right?
 2 A As the assistant director of housekeeping, I
 3 do not on a daily basis have direct control over PAD
 4 employees.
 5 Q So do you have any managerial control over
 6 them at any time?
 7 A The answer to the question would be no.
 8 Q So the safety of the floors at the Venetian
 9 would not be really your department, it would be
 10 within the PAD department?
 11 MR. ROYAL: I'm just going to object to
 12 form.
 13 THE WITNESS: So generally speaking, I do
 14 not oversee the Public Area Department as being that
 15 I'm with the housekeeping department.
 16 BY MR. GALLIHER:
 17 Q Right.
 18 A However, at any given point, should I feel
 19 that there's any conditions that exist on the floor
 20 that may need further attention, it would be my
 21 responsibility as a Venetian employee to make sure
 22 that is addressed.
 23 Q So that responsibility is a responsibility
 24 of every Venetian employee, not just you?
 25 A People who would -- who can, yes. Sure.

1 "B."
 2 BY MR. GALLIHER:
 3 Q So again looking at that photo, is that the
 4 same PAD employee with a mop on the floor?
 5 A I believe so, yes.
 6 Q And you don't know what he's mopping?
 7 A Correct, yes.
 8 Q Then we have VEN954 and that's at 12:40:15.
 9 And would it be fair to say, it looks like the same
 10 employee and the mop's on the floor as well?
 11 A I'm sorry, could you ask that question
 12 again?
 13 Q Looks like the same PAD employee and there's
 14 a mop in his right hand?
 15 A Correct.
 16 Q You don't know what he's mopping?
 17 A Correct.
 18 Q And then the next photo, which is VEN955,
 19 that's at 12:41:01. Do you see it's -- looks like the
 20 same PAD employee?
 21 A Correct.
 22 Q What's he doing with his right arm, if you
 23 know?
 24 A Not quite sure what he's doing in that
 25 picture.

1 Q Is he restraining the person who's got the
2 backpack on, trying to get his attention?
3 A I'm not sure.
4 Q Let's go, then, back to VEN956, next
5 photograph. Now, would you agree with me it shows the
6 same PAD employee with a mop on the floor mopping?
7 A Correct.
8 Q And you don't know what he's mopping, right?
9 A Not quite sure, no.
10 Q And you see -- just to the left of him, you
11 see it looks like a female PAD employee wearing
12 glasses.
13 Do you see that?
14 A I do.
15 Q You see down by her feet, what her feet are
16 on top of?
17 A In the photo I cannot tell.
18 Q You can't tell what they are. How about the
19 video? Would the video help you there?
20 A Perhaps.
21 Q I'll represent these are towels and she's
22 using her feet to move the towels on the floor.
23 Does that seem logical, what you are seeing?
24 A In that particular still photo, it's not
25 certain what I'm looking at.

1 MR. GALLIHER: So, Mike, if you would, can
2 you show him just that spot on the video and see if it
3 helps him?
4 MR. ROYAL: Okay. I'll start it at
5 12:41:19. She would be on the left.
6 THE WITNESS: Yeah.
7 MR. ROYAL: So I'm going to stop it at
8 12:41.
9 BY MR. GALLIHER:
10 Q Is that a better quality than the photograph
11 you just reviewed?
12 A It is.
13 Q And am I being fair in stating that it looks
14 like she's got her feet on top of towels, and she's
15 moving her feet on top of the towels on the floor?
16 A Just to be clear, seems on reviewing the
17 video and the photo still, she's got a -- technically
18 not a towel, but the mop head on the floor.
19 Q All right, so she's got her foot on top of
20 the mop head?
21 A That's what it seems to me, yes.
22 Q And is she moving that mop head on the
23 floor?
24 A Appears to be, yes.
25 Q Do you know what she's mopping up?

1 A I'm not quite sure what she's mopping up.
2 Q Now, you said you've also seen the video.
3 Let's go -- as a matter of fact, let's go to VEN958,
4 and that's the last photo I'll be asking you about.
5 MR. ROYAL: Okay.
6 BY MR. GALLIHER:
7 Q Would you agree with me, that's the same PAD
8 employee and that's his mop on the floor? Talking
9 about the gentleman.
10 A Yes.
11 Q And again, do you know what he's mopping?
12 A Not sure, no.
13 Q You've seen the surveillance video?
14 A I have.
15 Q And you see there in the surveillance video,
16 after he mops the floor, he puts the mop in a bucket?
17 A Yes, I do.
18 Q And he wrings it dry in the bucket?
19 A I do.
20 Q Do you know what he was wringing in the mop?
21 A I do not, no.
22 Q Thank you. That's all I have.
23 MR. ROYAL: I'm going to mark these all
24 collectively as "C."
25 /////

1 (Defendants' Exhibit C marked for
2 identification.)
3 MR. GALLIHER: Fine with me. Actually, are
4 you making them "C" or we can make them joint exhibits
5 if you want.
6 MR. ROYAL: I've already referred to these
7 as "A" and "B." Let's just mark them collectively as
8 "C."
9 MR. GALLIHER: All right.
10 MR. ROYAL: And that would be, just for the
11 record, VEN952, 954, 955, 956 and 958. And I just had
12 a couple of followups.
13
14 FURTHER EXAMINATION
15 BY MR. ROYAL:
16 Q So looking at Exhibit C. Looking at
17 Exhibit C, VEN952, do you see where the gentleman is
18 who's mopping -- do you see him in the center of the
19 still?
20 A I do.
21 Q Do you see where he's standing?
22 A I do.
23 Q Is that -- now I want you to compare that
24 with Exhibit A, VEN950.
25 A Okay.

1 Q Is that the area that Mr. Louie was pointing
2 out to you that you observed when you first arrived?

3 A It would seem so.

4 Q Okay. Sounds like, when you were there at
5 the scene, you were focused on basically finding out
6 what happened and seeing if you could kind of keep the
7 guest calm until security got there.

8 A That would be fair.

9 MR. ROYAL: All right. I don't have
10 anything further.

11 MR. GALLIHER: We're done.

12 (The deposition concluded at 3:36 p.m.)
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REPORTER'S DECLARATION

STATE OF NEVADA)
)
COUNTY OF CLARK)

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

That I reported the taking of the deposition of the witness, SANG HAN, commencing on Monday, May 6, 2019 at the hour of 3:00 p.m.

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

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

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

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

Pauline C. May, CCR 286, RPR

EXHIBIT “I”

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual,

Plaintiff,

vs.

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

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

Defendants.

DEPOSITION OF CHRISTOPHER JOHNSON

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

On Monday, May 6, 2019
At 2:00 p.m.

Reported By: PAULINE C. MAY
CCR 286, RPR

1 APPEARANCES:

2 For the Plaintiff: KEITH E. GALLIHER, JR., ESQ.
3 Galliher Law Firm
4 1850 East Sahara Avenue
Suite 107
5 Las Vegas, Nevada 89104
(702)735-0049

6 For the Defendants: MICHAEL A. ROYAL, ESQ.
7 Royal & Miles LLP
1522 West Warm Springs Road
8 Henderson, Nevada 89014
(702)471-6777

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18 I N D E X

20 WITNESS	PAGE
CHRISTOPHER JOHNSON	
21 Examination By Mr. Galliher	3
Examination By Mr. Royal	16
22 Further Examination By Mr. Galliher	20
Further Examination By Mr. Royal	22

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CHRISTOPHER JOHNSON 5/6/2019

Page 3

Page 5

1 CHRISTOPHER JOHNSON,
2 having been first duly sworn to tell the truth, the
3 whole truth and nothing but the truth, was examined
4 and testified as follows:

6 EXAMINATION

7 BY MR. GALLIHER:

8 Q Would you state your full name, please.
9 A Christopher Johnson.
10 Q And your business address.
11 A I'm -- my business address?
12 Q Yes.
13 A I don't know the address at the Venetian,
14 but that's where I'm at.
15 Q All right. How long have you been working
16 at the Venetian?
17 A About six and a half years.
18 Q When you started at the Venetian, what was
19 your job title?
20 A Security officer.
21 Q Is it still security officer?
22 A Yes.
23 Q So your title hasn't changed since then.
24 A No.
25 Q By the way, don't mind my voice. I'm just

1 Q So did you start at the Venetian immediately
2 after getting out of the service?
3 A No, I went to college. I went to California
4 College at San Diego and I started in computer science
5 there.
6 Q Did you graduate?
7 A Yes.
8 Q So you have a bachelor's degree in computer
9 science?
10 A Yes.
11 Q Congratulations.
12 A Thank you.
13 Q Any aspiration to go further?
14 A My parents kind of wanted me to, and I kind
15 of like what I'm doing now and so just kind of stuck
16 with that.
17 Q During your time at the Venetian as a
18 security officer, how many cases have you been called
19 to a scene of an injury fall?
20 A Being called, maybe once or twice because
21 normally it's the EMTs that get called. Sometimes if
22 there's not one around, you can be the first responder
23 while you are waiting for the EMT.
24 Q Because I notice in the video, looks like
25 you are the fellow wearing the blue outfit.

Page 4

Page 6

1 getting over a virus so it's not real strong today.
2 Give me just a general description of what
3 you do as a security officer at the Venetian.
4 A It's actually a myriad of duties. Sometimes
5 you work outside at checkpoint checking for drugs,
6 stuff like that. Then you also work inside at the
7 lobby areas, making sure everybody has a room key
8 coming up so there's no -- for basically people coming
9 up into the hotel rooms.
10 I work on the casino floor doing a variety
11 of things, like you do drops, you know. With the
12 slots, you do slot escorts. If there's fights, you
13 stop that. I mean, there is just a lot of things you
14 do.
15 Q What was your background before you became a
16 security officer?
17 A I was in the Navy for about 13 and a half
18 years.
19 Q And when you were in the Navy, what did you
20 do?
21 A I was in IT, information technology.
22 Q When you left, what was your rank?
23 A I was E5.
24 Q Were you honorably discharged?
25 A Yes.

1 A That's correct.
2 Q And the EMT security comes in a white outfit
3 carrying a backpack?
4 A Yes.
5 Q So that's the difference between the two of
6 you?
7 A Yeah, I understand he's got his med bag and
8 everything.
9 Q But in this particular situation I notice
10 you are on the video, you are there for a few minutes.
11 How is it that you got called to the scene?
12 A I don't recall how I got called there. I
13 don't know if I showed up and saw her on the ground or
14 if I was dispatched to be a first responder. Honestly
15 can't remember that.
16 Q I notice it appears that an EMT Security
17 Officer Larsen was the one most involved with
18 conversing with her, taking information from her.
19 Would that be correct?
20 A That would be correct.
21 Q It appears, though, that you did have some
22 conversations with my client at the scene of the fall.
23 Can you recount or recall any of those?
24 A Just a little bit. It's been a long time,
25 but normally when you walk up and see someone like

3 (Pages 3 to 6)

1 that, one of the first things you are going to say is,
2 "Did you hit your head? Did you lose consciousness?
3 Are you a guest at the hotel? What hurts?" Just
4 basic information so you can relay that once the EMT
5 gets there.
6 Q Do you recall if you had that conversation
7 with my client in this case?
8 A I remember her saying one of her arms hurt,
9 I believe. I'm not exactly sure which arm, and she
10 stated that I believe she worked for -- inside the
11 hotel, like Grand Canal Shops or something.
12 Q Do you remember anything else from the
13 conversation you had?
14 A That was pretty cut-and-dry. Wasn't a long
15 conversation.
16 Q Did you make any notes regarding the
17 conversation?
18 A Just for what I specified earlier, where she
19 worked at, she didn't lose consciousness, anything
20 like that.
21 Q Yeah, but did you make any notes yourself of
22 the conversations you had with her?
23 A Yeah, just what I said, she worked at the
24 Grand Canal Shops and she hurt her arm or something.
25 Q And do you know where those notes went?

1 Were you looking for anything on the floor
2 or anything on her clothes? Anything of that nature?
3 A I wasn't specifically looking for that. I
4 was just trying to go over there and make sure that
5 she was all right. I didn't specifically look for
6 that.
7 Q And you tried to turn things over to the EMT
8 security officer when he arrived?
9 A Yes, sir.
10 Q And as you sit here today, have you seen the
11 surveillance video showing the fall?
12 A Yes, I've seen some of it.
13 Q And when did you see it?
14 A I think it was a few minutes ago that I got
15 a good look at it.
16 Q Where did you see it?
17 A At the Venetian. They took me up and showed
18 me the footage.
19 Q You say "they" took you up. Who took you
20 up?
21 A I don't know what the department is. I
22 don't know if it's legal or -- but they took me in,
23 wanted me to look at the footage.
24 Q So the people that took you and wanted you
25 to look at the footage, were they Venetian employees?

1 A They would be trash-canned once your
2 notepad's full, you get rid of it and get a new
3 notepad.
4 Q So, in other words, the notes weren't turned
5 in to security or anyone else at the hotel?
6 A No.
7 Q So they were basically your notes for your
8 purposes and then when your notepad was full, they
9 were tossed?
10 A That's correct.
11 Q Because the fall actually occurred, looks
12 like November 4, 2016. It looks like at roughly 3:30
13 in the afternoon.
14 Does that sound about right?
15 A Sounds about right.
16 Q I take that back. About 1:30 in the
17 afternoon.
18 A I couldn't tell you what time.
19 Q So you don't recall the time of the fall?
20 A No.
21 Q Have you told me about all the conversations
22 you can remember with my client?
23 A Yes.
24 Q Now, when you went to the scene, did you
25 physically observe anything?

1 A Yes.
2 Q Was Mr. Royal present at the time?
3 A No, he was not.
4 Q So when you looked at the video, did you
5 have any conversations with any Venetian personnel
6 regarding the contents of the video that you remember?
7 A I'm kind of not understanding the question.
8 They walk you through, they say, What did you see, do
9 you remember, anything like that kind of information.
10 Q That's what I'm trying to determine, what
11 the conversation was. So apparently someone set up
12 the video.
13 Do you remember where it started?
14 A It started with a bunch of people walking in
15 before I arrived. They showed me that and then they
16 showed when I finally arrived on the scene and all the
17 way up into EMT Larsen took her to the back.
18 Q Did they show you the actual fall?
19 A I don't remember if they showed me the
20 actual fall, yeah.
21 Q So as you testify here today, you don't
22 remember exactly how the fall occurred, what happened
23 to the person who fell, the way her body moved,
24 anything like that?
25 A No.

CHRISTOPHER JOHNSON 5/6/2019

Page 11

Page 13

1 Q So you don't remember, as you testify here
2 today, whether or not you were shown that part of the
3 video; is that correct?

4 A That's correct.

5 Q But you do remember you were shown the
6 portion leading up to the fall and apparently the
7 portion after you arrived, after EMT Security Officer
8 Larsen arrived and when they left?

9 A Yes.

10 Q And you don't have a recollection of seeing
11 anything else in terms of the video; is that right?

12 A Yes.

13 MR. ROYAL: Can I just ask for
14 clarification? In your summary, you said you had seen
15 the portion leading up to the fall; is that what you
16 said?

17 MR. GALLIHER: That was my understanding
18 from his testimony.

19 MR. ROYAL: Just make sure it's clear.

20 BY MR. GALLIHER:

21 Q Let me see if I can clarify. I understand,
22 from your testimony earlier, that you saw a portion of
23 the video that preceded the fall, before the fall,
24 where people were walking through the area.

25 A Yes, I was shown that.

1 A Yes, that's correct.

2 Q And then you also saw a female on the phone
3 who walked into the scene on the phone and then walked
4 away.

5 Do you remember that?

6 A No.

7 Q So in terms of -- and then you remember
8 seeing the EMT Security Officer Larsen in the video?

9 A Yes.

10 Q Do you remember seeing any other employee of
11 the Venetian in the video that you saw?

12 A I think I had direct contact with that Asian
13 male that you were talking about, but other than that,
14 I can't -- I don't remember. I don't remember
15 speaking to anybody else.

16 Q Do you remember speaking with any of the PAD
17 employees?

18 A No, not at all.

19 Q So the only person that you had a
20 conversation with would be that Asian fellow -- who I
21 think we're deposing next, Sang Han.

22 A I believe so.

23 Q And do you remember the conversation you had
24 with him?

25 A I don't remember the actual conversation. I

Page 12

Page 14

1 Q And you don't remember seeing the video of
2 the actual fall. You remember they started showing
3 the video of you once you arrived at the scene?

4 A Yes, sir.

5 Q And that was you in the blue outfit?

6 A Yes, sir.

7 Q And again, is there anything else that you
8 remember about any conversations with anyone else at
9 the scene after the fall?

10 A The people that were there? Are you talking
11 about the people that were showing me the video?

12 Q I'm talking about the people -- I'm going
13 back now to the time of the fall, okay.

14 You've seen the video. Now, in the video
15 you saw several people. You saw a bald guy in a
16 suit --

17 A Yes, yes.

18 Q -- you saw a big guy with his back to the
19 camera.

20 A Yes.

21 Q And then you saw what looks like an Asian
22 fellow who arrived at the scene and knelt down and
23 talked with my client.

24 A Uh-huh.

25 Q Is that yes?

1 don't know if he was letting me know that the EMT was
2 already called or what happened with her. I don't
3 recall that conversation; no.

4 Q All right. So sounds like a relatively
5 brief conversation.

6 A Yes, it was brief.

7 Q But as you testify here today, you don't
8 remember the content of the conversation?

9 A That's right.

10 Q Did you make any notes or any documents that
11 you can look at that would refresh your memory
12 concerning the conversation?

13 A I don't believe so, no.

14 Q And if there were notes, you would have
15 taken them down and tossed them; isn't that right?

16 A Any notes that I would have taken there,
17 they would have been gone now.

18 Q Do you know whether you would have taken any
19 notes regarding your conversation with Sang Han?

20 A Most likely not, because I had all the
21 information that I needed at that point.

22 Q So primarily, what would have been on your
23 notepad would have been any conversations you had with
24 my client?

25 A That's correct.

5 (Pages 11 to 14)

1 Q And how about any physical observation at
2 the scene; would you have made notes of that?
3 A I don't believe so. That's not my duty to
4 actually make on the scene. We have engineers that
5 come out and they do accident checks and stuff like
6 that.
7 Q So would it be fair to state that the only
8 thing that would have been on your notepad would have
9 been your summary of any conversations you had with my
10 client?
11 A Yes, sir.
12 Q Nothing else you can think of?
13 A No.
14 Q Is that right?
15 A Uh-huh.
16 Q Have you understood all my questions today?
17 A Pretty much. Yeah, kind of going back and
18 forth there for a minute.
19 Q Anything you want me to repeat or rephrase?
20 A Not at this time. No, sir.
21 Q Thank you. Pass the witness.
22 MR. ROYAL: Off the record for a second.
23
24 /////
25 /////

1 the point of your arrival.
2 MR. GALLIHER: Can you give me the time?
3 MR. ROYAL: Yeah, I'm going to. Okay.
4 All right. It's not cooperating with me.
5 BY MR. ROYAL:
6 Q Okay. We're at 12:41:36, and do you see
7 yourself walk into the frame?
8 A Yes.
9 Q And you are in blue?
10 A Yes.
11 Q And then as you -- now I'm going to go back.
12 Then what you did is, you walked in, you walked
13 through an area and then you sort of -- I'll call it
14 kneeling down.
15 You kind of squat down and have a
16 conversation with the plaintiff, the woman on the
17 floor. Right?
18 A Yes.
19 Q All right. So I'm going to go back to the
20 point of your entry or arrival at the scene again.
21 I'm going to stop it at 12:41:37. At this point,
22 there's -- there's someone to the left as you are
23 approaching.
24 Do you -- can you recognize or identify the
25 uniform?

1 EXAMINATION
2 BY MR. ROYAL:
3 Q Okay. Now, I just wanted to verify a couple
4 of things that you testified to, one of which was when
5 you started watching this video.
6 A Uh-huh.
7 Q Okay. So one of the things that Counsel
8 asked you is whether you saw the video before -- and
9 I'm showing you right now the video at 12:40:53. And
10 it's just a still shot, and it has a woman on the
11 floor and an Asian male who is kind of kneeling down
12 in front of her.
13 A Yes, sir.
14 Q See that?
15 A Yes, sir.
16 Q Are you saying that you saw a video before
17 there was a woman sitting on the floor?
18 A Yes.
19 Q Okay. You just don't remember actually
20 seeing the event that caused her to fall?
21 A I don't recall the event, no.
22 Q Doesn't mean you didn't see it, you just
23 don't recall it?
24 A Exactly.
25 Q Okay. I'm going to advance this, okay, to

1 A That is a PAD employee.
2 Q Okay. Now, you didn't -- you testified you
3 didn't have any recollection of any conversations you
4 had with anybody wearing that kind of uniform near the
5 scene.
6 A I didn't have any, no.
7 Q Do you remember them being there?
8 A No.
9 Q All right. So as you -- I'm going to
10 continue it now from 12:41:37 and I'm going to stop it
11 at 12:41:40.
12 Okay. Before you kneel down or squat down
13 and talk to the plaintiff, as you walked through that
14 particular area at that time, do you remember seeing
15 anything on the floor?
16 A No, I don't recall.
17 Q Do you remember having any trouble walking
18 through that area?
19 A No, I didn't have any trouble walking
20 through.
21 Q Do you remember anyone telling you to stop,
22 don't walk through that area?
23 A No, no one told me.
24 Q All right. Now, as you kneel down at
25 12:42 -- I'm sorry -- 12:41:42, as you squat down,

1 Mr. Han had been there it looked like speaking with
2 the woman on the floor.
3 Do you agree with that?
4 A I agree with that.
5 Q And you don't recall having a conversation
6 with Mr. Han, just with the woman on the floor?
7 A No, I believe I did have that conversation
8 with Mr. Han.
9 Q Okay.
10 A I did.
11 Q I'm sorry I missed it. What did he tell
12 you?
13 A I don't remember. I can't recall exactly
14 what he told me. I could guess.
15 Q Don't do that.
16 A Okay.
17 Q Do you remember seeing anything on the woman
18 by way of -- strike that.
19 You said that she complained about pain in
20 her arm, but you don't remember which arm; is that
21 right?
22 A Yes.
23 Q What kind of -- can you remember anything
24 else about what she complained about related to her
25 arm? Any specifics?

1 A No, I don't have any specifics. I know I
2 can't remember any specifics. I believe that she just
3 stated that her arm hurt. She said her arm.
4 Q All right. Thank you.
5
6 FURTHER EXAMINATION
7 BY MR. GALLIHER:
8 Q All right. Did you notice, when you arrived
9 at the scene, any people around that were witnesses to
10 the fall?
11 A I can't explain if they were witnesses or
12 not or if they arrived later. I don't know.
13 Q I mean, would it be your job as security
14 officer to ask these people to identify themselves and
15 did you, in fact, see anything?
16 A No, that would pretty much be an EMT thing.
17 I'm just there for, like, the initial report and then
18 the EMT would come and talk with them.
19 Q So it would generally be the EMT's job to
20 locate witnesses if, in fact, they existed, or get the
21 contact information and take witness statements?
22 A Yes, sir.
23 Q And at the Venetian, is it practice to, when
24 you locate a witness or something like this, you get
25 the contact information and ask them to fill out a

1 statement?
2 A As far as filling out a statement, I'm not
3 positive on that, but I do believe that you do get the
4 names of the people you can add to the report.
5 Q From your perspective, have you ever been a
6 report-writer at the Venetian?
7 A I have, yes.
8 Q So when you arrive at the scene in
9 connection with the event, you write a report, do you
10 ask witnesses to fill out statements?
11 A Depending on what the occasion was. So,
12 yeah, a counterfeit bill or something like that we
13 have them fill out, but not everything always requires
14 a voluntary statement.
15 Q And have you ever investigated a
16 slip-and-fall like this?
17 A I've never investigated one, no.
18 Q So do you know what the policy and procedure
19 is regarding having people fill out witness statements
20 when they witness something like that?
21 A I do not, no.
22 Q That would be beyond your pay grade, huh?
23 A Yes.
24 Q Thank you. That's all I have.
25

1 FURTHER EXAMINATION
2 BY MR. ROYAL:
3 Q Did anyone -- did you speak with anyone,
4 once you arrived, who told you that they had witnessed
5 the accident?
6 A No, I did not.
7 Q Thank you.
8 MR. GALLIHER: We're done, Chris. Thank
9 you.
10 (The deposition concluded at 2:22 p.m.)
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REPORTER'S DECLARATION

STATE OF NEVADA)
)
COUNTY OF CLARK)

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

That I reported the taking of the deposition of the witness, CHRISTOPHER JOHNSON, commencing on Monday, May 6, 2019 at the hour of 2:00 p.m.

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

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

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

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

Pauline C. May, CCR 286, RPR

EXHIBIT “J”

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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

**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.

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.

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
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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

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

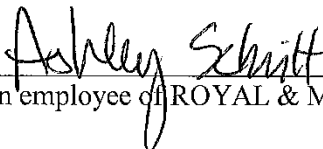
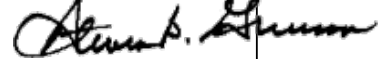
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23 An employee of ROYAL & MILES LLP
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EXHIBIT “K”



1 **RTRAN**

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5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7
8 **JOYCE SEKERA,**
9 **Plaintiff,**

CASE NO.: A-18-772761

DEPT. XXV

10 **vs.**

11 **VENETIAN CASINO RESORT**
LLC, ET AL.,

12 **Defendants.**

13
14 **BEFORE THE HON. ERIN TRUMAN, DISCOVERY COMMISSIONER**
15 **WEDNESDAY, MARCH 13, 2019**

16 ***RECORDER'S TRANSCRIPT OF HEARING***
17 **DEFENDANT'S MOTION FOR PROTECTIVE ORDER**

18
19 **APPEARANCES:**

20 **For the Plaintiff: KEITH E. GALLIHER, JR., ESQ.**

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22 **For the Defendants: MICHAEL A. ROYAL, ESQ.**

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25 **RECORDED BY: FRANCESCA HAAK, COURT RECORDER**

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Las Vegas, Nevada, Wednesday, March 13, 2019

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[Case called at 9:06 a.m.]

DISCOVERY COMMISSIONER: Sekera versus Venetian.

MR. GALLIHER: Good morning, Commissioner. Keith
Galliher, on behalf of the Plaintiff.

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

DISCOVERY COMMISSIONER: Good morning. All right.
This is on for Plaintiff's motion for protective order.

MR. ROYAL: This is Defendant's motion, Your Honor.

DISCOVERY COMMISSIONER: All right.

MR. ROYAL: This is --

DISCOVERY COMMISSIONER: Do I have the wrong -- okay,
no, I got it. Sorry. I had the wrong note on my thing. Sorry about that.
Here we go. Defendant's motion for protective order.

MR. ROYAL: Your Honor, this relates to a motion we filed
regarding the disclosure of our incident reports. They were requested by
counsel. Prior to our disclosure of these reports, we requested that
counsel enter into a stipulation for a protective order as relates to the
information that we couldn't get at, counsel wouldn't agree, so we
provided him with redacted copies.

DISCOVERY COMMISSIONER: So all the redacted copies of
the incident reports have already been provided.

MR. ROYAL: That's correct. They've been provided. There

1 were 65 prior reports, somewhere in the neighborhood of 650 pages that
2 we produced.

3 Mr. Galliher objected to the fact that they were redacted. We
4 had some further discussion about how we could resolve this, perhaps
5 entering again into a -- to get a protective order so that if we disclose the
6 identities of these people, that they're not going to be passed around to
7 the world, legal community or the world. We don't know where it's going
8 to go.

9 And so we had a disagreement. I went ahead and filed this
10 motion, and while this motion was pending learned that some of the
11 redacted copies that we've already produced to Mr. Galliher have been
12 provided to other Plaintiffs' attorneys outside this case, which is exactly
13 what we were trying to protect against.

14 And so in my reply I just asked the Court to just simply enter
15 an order that we can have a 26(c) protective order in this case related to
16 these documents and that they remained in redacted form, and that if
17 Mr. Galliher has a specific case factually that he believes is potentially
18 relevant on point where he wants to contact individuals, perhaps use
19 them as witnesses for whatever reason related to this case, that we can
20 meet and confer on that, and then if we can't agree, we can bring it to
21 the Court.

22 But to just give him carte blanche information to everybody at
23 this point I think is just not something my client wants to provide. It has
24 concerns about exposing all of these people, prior guests, nonemployee
25 witnesses, to not just contact from Mr. Galliher's office, but from any

1 other attorney that this information is provided to, any other person, we
2 believe that there's other privacy issues that are play here, there's
3 HIPAA related information in these reports, and so just to provide them
4 to counsel with carte blanche access to all this information, to all these
5 people, that can be passed around to the world we think is just simply
6 not reasonable. So for that reason we move the Court for an order -- or
7 rather a Report and Recommendation granting our motion for protective
8 order as it relates to the redacted copies that we provided and that Mr. --
9 and that if Mr. Galliher sees something that he believes is relevant to our
10 case, that again we meet and confer and we can discuss disclosing
11 personal information of those particular people.

12 Now, if I can add just one other thing. We contest that this slip
13 and fall in this case was the result of foreign -- any kind of foreign
14 substance on the floor. There's no objective evidence that there was, in
15 fact, any foreign substance on the floor causing her to slip and fall.
16 Regardless, we still provided Mr. Galliher with 65 prior incidents, and all
17 of them that I can think of -- I can't think of one that did not involve a
18 foreign substance. So these are even, in our view, dissimilar cases. We
19 went ahead in good faith and provided these to counsel, so I only give
20 that to the Court just to realize or -- so the Court knows that we've acted
21 in good faith. We're doing everything we can.

22 Our primary issue is protecting the privacy of our prior guests
23 and our relationship with those guests.

24 DISCOVERY COMMISSIONER: And all those guests and
25 witnesses, their names have been redacted prior, the reports that were

1 disclosed.

2 MR. ROYAL: That's correct.

3 DISCOVERY COMMISSIONER: And just so that I'm clear,
4 the allegation is that there was water or some other substance on the
5 floor so it was a transient condition, is that correct?

6 MR. ROYAL: That's the allegation.

7 DISCOVERY COMMISSIONER: That's the allegation, okay.
8 That's the -- that's what I meant to ask. Okay.

9 All right. Mr. Galliher.

10 MR. GALLIHER: Thank you, Your Honor.

11 First of all, I don't doubt what Mr. Royal is saying in good faith,
12 but The Venetian's certainly not in good faith in this case, and I'll explain
13 why.

14 First of all, you know that prior falls are relevant to the notice
15 issue, and a foreseeability issue, which, of course, it's our obligation to
16 prove in this case, so prior falls are always discoverable.

17 Now, the thing that surprises me is that the defense actually
18 makes the argument late in this argument that they contest that my client
19 slipped and fell on liquid or water. There's a surveillance video, and
20 whoever wrote the brief could not have looked at the surveillance video.
21 The surveillance video shows what is clearly a slip on liquid and a fall.
22 She hits her head on a big marble post as she falls. There are two
23 women that see it and are right next to her when she falls.

24 Shortly thereafter we've got three security personnel from The
25 Venetian at the scene with shirts and ties and radios. Someone's talking

1 to someone upstairs. While they're talking, one of the women who sees
2 the fall walks over, points to the spill, and the guy, the security officer,
3 looks at it, then summons porters who come to the scene, one of the
4 porters takes out a mop, mops up the spill, another walks on with some
5 towels and wipes up the spill around the very area where my client fell.
6 That's pretty clear, that this was a slip and fall on water.

7 Now, here's the problem. The Venetian has polished marble
8 floors throughout its entire ground floor and also on the Bouchon floor,
9 which I think is floor number 10. They're very pretty, very attractive, and,
10 as the expert report attached to our opposition shows, also very slippery
11 when wet.

12 So when we talk about a transitory condition, not really. This
13 is a marble floor that's been at The Venetian from the get-go.

14 And then we start talking about the number of falls. Well, I
15 deposed their -- one EMT security officer who said that during the nine
16 years that he had been there he had personally investigated 100 --
17 approximately 100 injury falls on the marble floors at The Venetian.

18 Now, there are two EMT security officers per shift, sometimes
19 three, so if we do the math, we've got at least six security officers
20 working the three shifts at The Venetian, up to nine. So if we do that
21 math -- this one's -- this fellow has investigated personally 100 injury
22 falls, and we assume he's average -- then that means that there are
23 somewhere between 600 and 900.

24 DISCOVERY COMMISSIONER: Well, didn't three respond to
25 this one alone, and so that would be a, you know --

1 MR. GALLIHER: Well, no, no. Those weren't the same
2 security people.

3 DISCOVERY COMMISSIONER: Oh.

4 MR. GALLIHER: See, there -- The Venetian, Commissioner,
5 has security officers/EMTs. They are the ones that go to the injury
6 falls -- the other people do not -- because they're trained. Well, that's
7 who I deposed. So he's the one that told me under oath two security
8 officers/EMTs per shift, sometimes three, three shifts, very simple math.

9 Now we go from 100 falls investigated by one, to somewhere
10 around 900, and then we take it and we back out the nine years and
11 make it five -- 'cause that's what I was looking for. We're somewhere
12 between five, six hundred falls at The Venetian.

13 Now, what I received was 62 reports for a five-year period.
14 Well, that doesn't compute with my math, so the other thing that -- and
15 we talk about sharing information. Peter Goldstein has a case against
16 Venetian. In that case The Venetian furnished him 26 reports for the
17 same time frame. Well, how does that happen? Then what we did is we
18 compared the reports that he received with reports that we received. He
19 didn't get 26 of ours, we didn't get four of his; well, how does that
20 happen? Then we find out there's three defense firms representing The
21 Venetian in these three different cases; they're all different.

22 So what we're finding and what I'm alleging in this situation is
23 what The Venetian is doing is they're selectively distributing reports to
24 their defense firm to distribute to the Plaintiffs in individual cases, and
25 they're not giving everybody all the reports. It's very easy to determine

1 when I get a situation like this and I compare and find that Mr. Goldstein,
2 who got 26 has four I don't have for the same time frame. A couple of
3 them were on the same day; I got the one in the afternoon; he got the
4 one in the morning. Well, sorry, it's not Mr. Royal's fault. The
5 Venetian's not a good corporate citizen, that's for sure. They are
6 withholding these reports and selectively giving them to the Plaintiffs'
7 attorneys through the different defense firms that they're hiring. So
8 that's why this information needs to be disclosed.

9 But also, when we talk about the identification of the people
10 who fell -- you have probably tried slip and fall cases, I've tried my
11 share -- what does a defense attorney normally do in these cases?
12 They try to establish comparative negligence, particularly if there's liquid
13 on the floor. Well, weren't you looking where you were walking? Didn't
14 you see the spill on the floor? Why didn't you see it? It was right there.
15 Look at it. Comparative negligence, that's what this is about.

16 So if we have the identity of people who previously fell on
17 these same floors at The Venetian in liquid, we put on five of 'em or ten
18 of 'em to say -- very simple questioning -- what's your name; did you
19 stay at The Venetian; were you walking through The Venetian; did you
20 fall; did you fall on liquid; were you injured; did you see the liquid before
21 you fell; pass the witness.

22 DISCOVERY COMMISSIONER: Don't you already have an
23 expert who's going to testify regarding the coefficient of friction or, as
24 you allege --

25 MR. GALLIHER: Sure.

1 DISCOVERY COMMISSIONER: -- the slipperiness of the --

2 MR. GALLIHER: Absolutely.

3 DISCOVERY COMMISSIONER: -- the floor?

4 MR. GALLIHER: We have. That's attached to our opposition.

5 But that's a separate issue 'cause he's talking about the fact these floors
6 are slippery when wet; we know that. However, the comparative
7 negligence issue is a big one because invariably juries will come back
8 and apportion the negligence in the case. It's a little --

9 DISCOVERY COMMISSIONER: But the comparative
10 negligence of another party versus your own party wouldn't be relevant
11 to this action.

12 MR. GALLIHER: Well, I disagree, and I'll tell you why. If
13 you've got a situation like this where people are slipping on the same
14 floor on liquid -- and all the floors' identical, it's not like it's different -- and
15 these people don't see the liquid before they fall, which is why they fall,
16 why would that not be relevant to the question of comparative
17 negligence? Because if five people didn't see it, or ten people didn't see
18 it, why should my client have seen it? Very relevant.

19 I mean, remember, we're not talking just about admissibility,
20 because that's the call that's going to be made by Judge Delaney.
21 We're talking about discoverability, that's all.

22 So the bottom line -- and there's this privacy concerns, and
23 HIPAA violations, and -- these aren't medical records. They're security
24 reports. The Venetian doesn't have standing to reserve privacy
25 concerns on behalf of people who fell and were injured in their place, so

1 I'm not even sure where that argument comes from.

2 The question is whether or not it's discoverable. The question
3 is whether or not it leads to discoverable evidence; certainly does
4 because Judge Delaney will make the call concerning how many prior
5 fall victims she will allow to testify; she may say one; she may say five;
6 she may say ten. I have a case before Judge Crockett --

7 DISCOVERY COMMISSIONER: She may say none.

8 MR. GALLIHER: -- right now where he's -- Judge Crockett's
9 given us ten.

10 So bottom line is it's still discoverable, and they should be
11 forced to give us the information, and we'll contact the people, if we
12 choose to, and they'll talk to us, if they choose to, or not.

13 DISCOVERY COMMISSIONER: Mr. Royal.

14 MR. ROYAL: Just regarding -- I mean, I certainly could give
15 the Court the video; I don't think it's necessary. But there's issues in this
16 case regarding her shoes. I have an expert who's going to testify her
17 shoes are what caused the accident, that there was nothing on the floor,
18 and certainly everything counsel represented as far as indisputable
19 evidence regarding something on the floor, they're wiping something up.
20 She had coffee cup in her hand at the time that she fell.

21 I mean, Your Honor, to me that -- well, let me just get back to,
22 you know, our position simply is this -- we're happy -- we've given them
23 the information. They want to make arguments about notice, great,
24 they've got that. They want to make arguments and extrapolate
25 information from some -- from an employee who is -- who worked at the

1 property for nine years, great, they have that. They can make all their
2 notice arguments, their mode of operation arguments, they've already
3 got all that.

4 Contacting all of these people to march 'em -- just because
5 they may want to march 'em in, you know what, if there are certain
6 cases, certain people, certain facts, that are sufficiently related that Mr.
7 Galliher says, you know what, I'd like to bring the people in for this, or I'd
8 like to bring the people in for that, that's fine, I can deal with that, and I
9 think that's fair.

10 But to just give him carte blanche, here's everybody, go ahead
11 and contact them, share 'em with Mr. Goldstein, Mr. Bochanis, anybody
12 else that you want I think is -- I just think that's unreasonable.

13 And so I believe, Your Honor, at least it's our position that the
14 motion for protective order should be granted, that we've already
15 complied by giving them redacted information. If they want something in
16 addition to that -- and, by the way, you know, he's already shared this
17 information with Mr. Goldstein. I don't know who else this information's
18 been shared with, and counsel's allegation that there has been some
19 kind of conspiracy associated with The Venetian and how they're
20 handling one case, another case. These cases are different insofar as
21 what kind of information is being requested, and I should add that it's my
22 understanding from defense counsel in the Goldstein case is he got
23 redacted copies as well, and they were not -- and, in fact, I believe the
24 Discovery Commissioner even ordered that they could be redacted.

25 Regardless, Your Honor, I think the motion for protective

1 order, in our -- it's our view should be granted.

2 DISCOVERY COMMISSIONER: All right. The motion for
3 protective order is granted in part as follows -- The Venetian may
4 continue to provide redacted reports as previously done. However, with
5 regard to Mr. Galliher's claim that not all have been produced, The
6 Venetian is recommended to produce all reports that fit within the
7 requests made by Mr. Galliher, and if there are more, that needs to be --
8 they need to be supplemented immediately.

9 With regard to the reports that are produced, they are to be
10 redacted for the names and the contact information for all witnesses and
11 individuals who reported incidents.

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

24 I do believe there is -- there are privacy and HIPAA issues that
25 are to be considered, and so my inclination is not to disclose the names

1 and contact information for all people on all reports. It needs to be much
2 more narrow than that.

3 And, finally, I am going to issue a protective order that the
4 reports that are disclosed in this case are not circulated outside of this
5 case and for use only in this case.

6 Mr. Royal, would you please prepare the Report and
7 Recommendation?

8 MR. ROYAL: Yes, Your Honor.

9 DISCOVERY COMMISSIONER: Is there anything that I didn't
10 cover that the two of you wanted me to address, or does that cover all
11 the issues?

12 MR. GALLIHER: Not that I'm aware of.

13 MR. ROYAL: Think that covers everything.

14 DISCOVERY COMMISSIONER: So if there's any more that
15 your client has, the entirety, of all of the falls for the -- if there are any
16 other reports that your client has not disclosed, they are recommended
17 to produce all reports for the relevant time periods that have been
18 requested by the Plaintiff in this case.

19 MR. GALLIHER: If they've produced -- well, okay. Certainly.

20 DISCOVERY COMMISSIONER: And this just goes to the
21 issue he's claiming there are more than what have been produced to
22 him. And certainly Mr. Galliher can identify the ones that he has gotten
23 that supposedly were not produced and inquire further into that matter.

24 So if you would please prepare, Mr. Royal, the --

25 MR. ROYAL: Can I just ask, Your Honor --

1 DISCOVERY COMMISSIONER: Certainly.

2 MR. ROYAL: -- as to the scope, I mean, we're talking about
3 common areas, 'cause what was produced to Mr. Galliher was common
4 areas on the casino level floor.

5 DISCOVERY COMMISSIONER: Okay. And I don't know.
6 He's raised the issue that there are reports that he was not given. I think
7 you said that there were four --

8 MR. GALLIHER: That's pretty obvious.

9 DISCOVERY COMMISSIONER: -- that another attorney
10 had --

11 MR. ROYAL: Well, I'm not aware of --

12 DISCOVERY COMMISSIONER: Okay.

13 MR. ROYAL: -- of those four.

14 DISCOVERY COMMISSIONER: And so that's something that
15 the two of you need to discuss in a 2.34 before you bring it back to me,
16 and --

17 MR. GALLIHER: I think what he was getting at was, I mean,
18 we have a casino floor that's large, and the floor is identical throughout
19 this casino floor. It's not like there's anything different. The linoleum's
20 the same color, the same configuration, same design, same slip
21 resistance. It's uniform throughout the ground floor of The Venetian, and
22 also, for that matter, the Bouchon floor.

23 DISCOVERY COMMISSIONER: Okay. Well, I think that the
24 two of you need to work through the four reports at issue that you
25 believe you were not provided, have a 2.34 to discuss; if there is a

1 continuing issue regarding that, bring it back.

2 And I'm going to ask, Mr. Royal, can you please provide that
3 within ten days?

4 MR. ROYAL: Yes, Your Honor.

5 DISCOVERY COMMISSIONER: Thank you very much.

6 MR. GALLIHER: Thank you.

7 [Hearing concluded at 9:25 a.m.]

8 * * * * *

9 ATTEST: I do hereby certify that I have truly and correctly transcribed the
10 audio-video recording of this proceeding in the above-entitled case.

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FRANCESCA HAAK
Court Recorder/Transcriber

EXHIBIT “L”

Michael A. Royal*
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March 25, 2019

Sent Via US Mail &

Facsimile: 702-735-0204

Keith E. Galliher, Jr., Esq.

THE GALLIHER LAW FIRM

1850 E. Sahara Avenue, Suite 107

Las Vegas, NV 89014

Attorney for Plaintiff

Re: Venetian adv. Sekera, Joyce

Our Clients: VENETIAN CASINO RESORT, LLC and
LAS VEGAS SANDS, LLC

Date of Incident: November 4, 2016

Our File No.: 3837-18

Dear Keith:

I have been through all prior incident reports that, to my knowledge, were produced in the *VCR adv. Carol Smith* matter you raised before the Discovery Commissioner. Since you did not identify the documents for either the Court or me, I went through each of them and identified three matters that pre-date November 3, 2013, and one that occurred on the fifth floor of the parking garage. None of these reports are responsive to your production request. Consequently, I have no additional documents to provide related to production from the *VCR adv. Carol Smith* litigation. If you have other information that is inconsistent with the above, please advise.

Very truly yours,

ROYAL & MILES LLP

Michael A. Royal, Esq.

MAR/as

VEN 2820

TRANSACTION REPORT

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FAX COVER SHEET

To: Keith E. Galliher, Jr., Esq.
 THE GALLIHER LAW FIRM **Fax No:** 702-735-0204

From: Michael A. Royal, Esq.
Assistant: Ashley Schmitt

Date: March 25, 2019

File No: 3837-18

Subject: Venetian adv. Sekera

Number of Pages 2
(including cover):

Message: Please see attached correspondence dated March 25, 2019; your immediate attention is appreciated. Thank you!

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EXHIBIT “M”

1 TRAN
2 CASE NO. A-18-772761-C
3 DEPT. NO. 25
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * * * *

8
9 JOYCE SEKERA,)
10 Plaintiff,)
11 vs.) REPORTER'S TRANSCRIPT
12) OF
13 VENETIAN CASINO RESORT,) PLTF'S MOTION TO AMEND
14 Defendant.) DEFT'S MOTION TO STRIKE
15 _____)
16

17 BEFORE THE HONORABLE KATHLEEN DELANEY
18 DISTRICT COURT JUDGE

19 DATED: TUESDAY, MAY 28, 2019
20
21
22
23

24 REPORTED BY: SHARON HOWARD, C.C.R. NO. 745
25

1 APPEARANCES:

2 For the Plaintiff:

KEITH GALLIHER, ESQ.

3 KATHLEEN GALLIHER, ESQ.

4
5 For the Defendant:

MICHAEL ROYAL, ESQ.

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1 LAS VEGAS, NEVADA; TUESDAY, MAY 28, 2019

2 P R O C E E D I N G S

3 * * * * *

4
5 THE COURT: Page 8, Joyce Sekera vs. Venetian
6 Casino Resort.

7 MR. GALLIHER: Good morning, your Honor. Keith
8 Galliher and Kathleen Galliher on behalf of Joyce
9 Sekera.

10 THE COURT: Good to see you back. Now, you're
11 all seasoned. You don't get any special --

12 MR. GALLIHER: Very experienced now.

13 MR. ROYAL: Mike Royal for Defendants, your
14 Honor.

15 THE COURT: Good morning.

16 So this is Plaintiff's motion for leave to amend
17 the complaint, and the Defendant's motion to strike
18 related to information that was included in the reply to
19 the Defendant's opposition. And the strike was geared
20 toward what has been styled as unauthenticated evidence or
21 alternatively to allow defense the opportunity to respond
22 on order shortening time.

23 The way this all boils down, I really think we can
24 address it here today. They want to add punitive damages.
25 The argument is this is essentially a negligence claim and

1 at the Venetian are very dangerous, very dangerous. And
2 if there is a spot of water, a slight amount of water on
3 the floor a customer can slip and fall. This is coming
4 from management. So it's not like they don't know that
5 their floors are very, very dangerous to their customers.
6 So that's coming again from their own employees'
7 testimony.

8 Then we've got the David Elliot situation. This is
9 something which is recent which we have yet to discover,
10 but we intend to. And that is the Venetian in the
11 mid-2000s -- 2005, 2006, 2007 -- hired David Elliot -- who
12 the court is probably familiar with. He's a court
13 qualified bio-mechanical engineer, PE. They hired him to
14 evaluate their floors at the Venetian and make
15 recommendations concerning how they can make the floors
16 safer.

17 The one thing we've determined so far, Mr. Elliot
18 told him that under no circumstances is marble an
19 acceptable surface for a floor such as a hotel/casino like
20 the Venetian. He made recommendations concerning how they
21 could go from marble to tile and increase the co-efficient
22 of friction -- slip resistance -- to the .5 industry
23 standard from where it is now.

24 As we know from Dr. Jennings report the slip testing.
25 When wet the slip resistance was .33. It's far below the

1 industry average. Now we've got the Venetian hiring
2 somebody, who's an expert, to come in and advise
3 concerning the floors and how to make them safer. Nothing
4 has changed. The floors are still marble. They're still
5 not slip resistant. We've got that information as well.

6 Also we've got the fact that there are now coatings
7 available for these types of marble floors. And if you
8 use a coating on the marble floors you can make them more
9 slip resistant. And the Venetian has elected -- what we
10 know so far -- remember, we're talking about an amendment,
11 so we need an opportunity to discover information. But
12 what we know is that the Venetian has not utilized all of
13 the substances available to it to coat the marble floors
14 and, perhaps, make them more slip resistant.

15 THE COURT: Let me turn your argument back to
16 you, Mr. Galliher, that you made to Mr. Royal on his
17 motion, which was like where is the law to support this.

18 You know that if we're going to have punitives that
19 ultimately -- and it's a viable claim in a case, then it's
20 ultimately going to have to be proven by clear and
21 convincing evidence that there was oppression, fraud,
22 malice. That type of things. What you're arguing is just
23 sheer quantity of accident and that that converts what
24 occurred here into oppression, fraud, or malice. Where is
25 the case law that would support, in a negligence action,

EXHIBIT “N”

In the Matter Of:

LIVIA FARINA vs DESERT PALACE, INC.

A542232

DAVID A. ELLIOTT, P.E.

February 13, 2009



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DISTRICT COURT
CLARK COUNTY, NEVADA

LIVIA FARINA,

Plaintiff,

vs. CASE NO. A542232
DEPT. NO. XII

DESERT PALACE, INC. dba
CAESARS PALACE HOTEL AND
CASINO, and DOES 1 through 20,
inclusive,

Defendants.

DEPOSITION OF DAVID ALLEN ELLIOTT, P.E.

Taken on Friday, February 13, 2009

At 12:16 p.m.

At 2300 West Sahara Avenue
Suite 770
Las Vegas, Nevada

Reported by: John L. Nagle, CCR 211

1 APPEARANCES:

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22
23
24
25

	INDEX	
	Examination	Further Examination
By Mr. McGrath	5	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
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EXHIBITS

Deposition Exhibits	Page
41 -Farina v. Caesars Palace Comparable Hotel Entryway Analysis	73

1 DAVID ALLEN ELLIOTT, P.E.,
2 having been first duly sworn, was
3 examined and testified as follows:
4

5 EXAMINATION

6 BY MR. McGRATH:

7 Q. Good afternoon, Mr. Elliot. Could you
8 please state your full name for the record?

9 A. Yes. It's David Allen Elliott, A-l-l-e-n
10 and E-l-l-o-i-t-t.

11 Q. My name is Tom McGrath. I'm here for
12 defendant Desert Palace, Inc. It's my understanding
13 you've been designated as an expert by the plaintiffs
14 in this case.

15 How many times have you been deposed
16 before?

17 A. Over a hundred.

18 Q. Are you comfortable, then, with me
19 skipping the admonitions which explain to you the
20 deposition process?

21 A. I am.

22 Q. Okay. Good.

23 Can you briefly summarize for me, starting
24 after high school, your educational background?

25 A. Starting after high school, I went to



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1 school at the University of Arkansas, where I obtained
2 a Bachelor of Science degree in mechanical engineering.

3 While I was there, I also received the
4 National Engineering Merit Award and I was an Academic
5 All-American.

6 My studies there were primarily in
7 mechanical engineering, and for those who don't know
8 that, that deals with physics, dynamics, statics,
9 strength of materials, and design safety.

10 Q. I'm sorry to interrupt. Go ahead.

11 A. From there, I worked at General Dynamics
12 in Fort Worth, Texas, where I was an advanced design
13 engineer. I did work on the F-16 designs and the YF-22
14 designs.

15 I also had to design proof stations, which
16 involved a lot of training right there in-house for
17 ergonomics and human factors, and I also had to
18 reconstruct mid-air collisions of airplanes when they
19 do shows and things that you never hear about on the
20 news.

21 From there, I went to work at Renfro
22 Engineering, where I did design work a little bit, but
23 mostly it was accident reconstruction.

24 Vehicle dynamics was really heavy there.
25 We did a lot of rollover-type cases, ATV dynamics.



1 And then I came here and worked for
2 WM Morrison & Associates for a short time before
3 starting my own business.

4 Q. How long have you been in Nevada? I'm
5 sorry to interrupt.

6 A. I've been here since 1995.

7 Q. Do you currently hold any licenses in
8 engineering?

9 A. Yes. I have a professional engineering
10 license in mechanical engineering in the state of
11 Nevada.

12 Q. Well, this is compound, but have either of
13 those licenses ever been revoked or suspended?

14 A. No, sir.

15 Q. They're in good standing?

16 A. Yes, sir.

17 Q. How many times have you testified at trial
18 as an expert?

19 A. Over 50.

20 Q. When you've testified as an expert, has it
21 been in the field or concerning the field of
22 biomechanics?

23 A. Yes.

24 Q. Of the 50 times you've testified in trial,
25 can you give me an estimate of how many times you were

1 testifying on behalf of the plaintiff as opposed to the
2 defendant?

3 A. Probably -- you know, I might be better
4 off counting that, because just -- I know where you're
5 going.

6 I'd say that probably 85 percent of the
7 work I bring in is for defendants, and 15 percent is
8 for plaintiffs, and that's not by choice. It's just
9 how it comes in.

10 When it comes to trial, it seems like it's
11 probably pretty close to 50/50 when it actually comes
12 down to testifying.

13 Q. Understood.

14 Have you ever testified at trial on behalf
15 of a plaintiff where Mr. Zimmerman was the attorney for
16 the plaintiff?

17 A. No, I don't believe I ever have.

18 Q. How many cases currently do you have open
19 with Mr. Zimmerman's office?

20 A. This is the only one that I'm aware of.

21 Q. What was the last Nevada case that you
22 testified at trial at as an expert?

23 A. It was last week. I don't remember the
24 name. Let me see if it's in my list.

25 Q. You don't need to find it. I'm just kind

1 of getting a general overview here.

2 A. I've testified twice in the last three
3 weeks in trial.

4 Q. I see you brought a three-ring binder with
5 you today.

6 A. I did.

7 Q. Does this three-ring binder hold all of
8 the documents that you have retained for your file on
9 this case?

10 A. Yeah. There's some other documents that
11 would be in books if I had to refer to them or if
12 someone wanted to look at them, but this is everything
13 I need to testify.

14 Q. When you're talking about the books that
15 aren't in there, these are books and treatises that
16 you're relying on in part for your opinions?

17 A. Sure.

18 Q. Do you mind if I just open this up? I'd
19 like to briefly kind of summarize what's in here --

20 A. Be my guest.

21 Q. -- if that's possible.

22 I see color photographs, and I have read
23 your report. Are there any color photographs in here
24 that depict the other casinos that I believe you
25 indicated you investigated to determine whether they

1 put mats down on the marble floors?

2 A. Yes, sir.

3 Q. And then there's also photos of the site
4 where the incident occurred?

5 A. Yes, sir.

6 Q. And then I see you have your October 13,
7 2008, report in here. Do you have your billings in
8 here?

9 A. No. They're maintained on computer. We
10 don't ever print them out, but I could get you a copy
11 if you'd like.

12 Q. That's okay for now.

13 Do you know off the top of your head the
14 approximate amount of time you've billed on this file?
15 I'm not asking the amount, just the hours.

16 A. No, sir. It was quite a bit, you know,
17 because we had the walk-around looking at all those
18 casinos, and we visited the site twice.

19 I could call my secretary and ask her and
20 she could tell you exactly, if you want to know.

21 Q. Does the file also include documents that
22 you were provided by plaintiff's attorney that they
23 received from the defendants' production of documents
24 in this case, or at least a portion of them?

25 A. It's my understanding that some of these

1 documents came from defendants' production.

2 Q. What I'm specifically interested in
3 knowing, if you have copies in there, is there's some
4 spec sheets that have been referenced in Mr. Moffott's
5 deposition regarding the specifications for the marble
6 flooring.

7 What I'm trying to find out is what spec
8 sheets you have and, therefore, determine what you're
9 relying on in forming your opinions in this case.

10 A. I think it all starts right here with
11 Allard Design or Allard & Conversano.

12 Q. These were provided to you by counsel?

13 A. That's correct.

14 Q. Did you attempt to review the approved
15 plans and specifications for the Caesars Palace that
16 are applicable to the area in question?

17 A. No. I haven't seen any approved plans.
18 This is what was requested, and it was what was
19 provided.

20 Q. So you don't know if the specifications
21 that you have in your file that are on Allard &
22 Conversano letterhead were actually part of the
23 approved plans and specifications for the project?

24 A. I don't know one way or the other.

25 Q. Have you looked at the flooring

1 subcontract for the Caesars Palace project?

2 A. If it's included in the documents you
3 provided, I did, but I didn't rely on that for
4 anything.

5 This was just -- I just noted in here that
6 they wanted a wet .6 coefficient of friction or slip
7 resistance.

8 Q. There's quite a lot of documents in here,
9 and we have quite a lot of this stuff. I'm not going
10 to mark this as an exhibit. I'm just going to ask that
11 you agree to maintain your file and that if you add
12 anything to it, you or your counsel indicate to defense
13 counsel what has been added to it.

14 A. Okay.

15 Q. I want to try to summarize what I think
16 you're going to be offering opinions at trial, so this
17 is agree/disagree questions.

18 You're going to be offering opinions about
19 the cause of plaintiff's slip and fall, correct?

20 A. Correct.

21 Q. And that includes opinions regarding the
22 coefficient friction rating for the marble flooring
23 where she slipped?

24 MR. ZIMMERMAN: Do you mean coefficient of
25 friction?



1 MR. McGRATH: Yes.

2 THE WITNESS: No. It would be slip
3 resistance.

4 BY MR. McGRATH:

5 Q. That's a better term, "slip resistance"?

6 A. It is.

7 Q. Have you reviewed the video surveillance
8 that depicts the plaintiff immediately before and
9 during the slip-and-fall incident?

10 A. I've reviewed a provided DVD with some
11 surveillance footage that shows the incident to some
12 degree, but I only have one view. I don't know if
13 there's other views that exist.

14 Q. Then are you also offering opinions
15 relating to the standard of care that's applicable to
16 the owner of a casino as it relates to the safety of
17 the flooring surfaces?

18 A. I think to some degree. I think that
19 there's another expert that's an architect that may
20 cover that more thoroughly, but I'll be going through
21 the standards and what they say and how they would
22 apply to this situation.

23 Q. The reason I ask that question is we
24 deposed Mr. Moffott, and I understand that he's
25 offering opinions on that subject. This is my summary

1 of what he said, but he seems to be relying on you for
2 the wet test that you conducted on the floor.

3 Do you agree with that?

4 A. Well, I can't say what he's thinking of,
5 but I did do wet testing, and he mentioned it in his
6 report.

7 Q. But he didn't participate in the wet
8 testing, correct?

9 A. No, sir.

10 Q. Okay. And I think he's also relying on
11 you for the survey that you discuss in your report
12 regarding what other casino properties do in terms of
13 putting mats down on marble floors.

14 MR. ZIMMERMAN: Well, that misstates what
15 the testimony is. It's not what he talked about. He
16 didn't talk about putting mats down on floors. He
17 talked about different types of flooring surfaces and
18 different types of slip-resistant preventive measures.
19 You say putting mats down, so it misstates what Moffott
20 said.

21 BY MR. McGRATH:

22 Q. Do you understand the question?

23 A. I do, and I think what would be the
24 easiest thing here would be I can't -- I can't tell you
25 what Mr. Moffott relied upon, and I'm not going to

1 comment upon his opinions.

2 But I can tell you what I -- well, you've
3 asked -- you said and it's true that Mr. Moffott is
4 relying on this. I don't know if he's relying. I did
5 it. And I did it for myself. What he relied upon in
6 my file, you'd have to ask him.

7 Q. Let's ask the question another way.

8 You're not relying on any surveys
9 Mr. Moffott conducted regarding what casinos do with
10 their marble flooring in terms of making it more slip
11 resistance?

12 A. No, I'm not relying on anything of
13 Mr. Moffott.

14 Q. Let's turn to your October 13, 2008,
15 report.

16 A. Okay.

17 Q. Do you have that in your file?

18 A. I do.

19 Q. First of all, when did you conduct the wet
20 testing of the flooring area in question?

21 A. It would have been during my first
22 inspection, which is on March 24th, 2008.

23 Q. How many times did you visit this area for
24 the specific purpose of working on this case?

25 A. Two times.

1 Q. And the first time you went there, you did
2 the wet test?

3 A. That's right.

4 Q. How did you determine what areas of the
5 floor to test?

6 A. Well, it was my understanding that she
7 entered through the double doors that were the handicap
8 entrance, and there's a variety of tile there.

9 It's mostly homogenous, so I just tested a
10 likely area where a person may be walking, and I tested
11 all the different colors of tile that were available.

12 And I would expect that every spot on that
13 tile would be the same as what I measured, because all
14 three tiles measured the same thing.

15 Q. And I notice that in your report, is it
16 fair to say that you apply no significance to the fact
17 that the tiles have different color in certain areas in
18 terms of slip resistance?

19 A. Right. I negated the possibility that
20 there may be a difference in slip resistance on the
21 various tile by testing all of them. I didn't go in
22 with the perception they would all be the same. That's
23 why I tested each one.

24 Q. Now, what wet testing procedure did you
25 apply?

1 A. I followed the procedure that you find in
2 ASTM F1679, which pertains specifically to the English
3 XL.

4 Q. And when you say it pertains to it, can
5 you elaborate for me? What do you mean by that?

6 A. It gives you the guidelines for the
7 testing procedure, the things that should be followed,
8 the way you prepare the machine, the way you prepare
9 the test foot, what you set the pressure at. It's
10 just -- it's basically an instruction guide for
11 operating the English XL.

12 Q. Did you conduct any dry test?

13 A. No, I didn't.

14 Q. Why not?

15 A. Because the slip and fall didn't occur on
16 a dry floor.

17 Q. Are there any regulations, written
18 regulations, that you're aware of, that require an
19 owner who puts a marble floor in his property to
20 install it in a manner that the slip resistance would
21 pass the wet test that you conducted?

22 A. Yes, I believe so.

23 Q. Could you tell me what those are?

24 A. You find it -- you're just talking about
25 marble?

1 Q. Correct.

2 A. You'll find language to that effect in the
3 ADAAG manual.

4 MR. ZIMMERMAN: What does "ADAAG" stand
5 for?

6 MR. McGRATH: Thank you.

7 THE WITNESS: It stands for Americans With
8 Disabilities Act Accessibility Guideline.

9 BY MR. McGRATH:

10 Q. Is that the same as the ADA?

11 A. Well, the ADA is the group. The ADAAG is
12 the publication.

13 Q. And do you know if the -- I'm going to use
14 ADAAG instead of ADA. Do you know if the ADAAG was --
15 well, first of all, has that been adopted by Clark
16 County?

17 A. Yes, it has. It's a federal standard.

18 Q. So when this marble flooring was
19 installed, do you believe that the contractors were
20 required to comply with ADAAG?

21 A. Yes, because not only is the ADAAG manual
22 there, but you also have ANSI 81 -- 87 -- 117.1, which
23 is essentially exactly the same as the ADAAG manual,
24 and that has been officially adopted by Clark County.

25 Q. Who promulgates 117.1?

1 A. ANSI.

2 Q. And tell us what "ANSI" stands for.

3 A. American National Standards Institute.

4 Q. So it's your testimony that both ADAAG and
5 ANSI require marble flooring installed in public
6 accommodations to pass the wet test similar to the one
7 you conducted at Caesars Palace?

8 A. I think I probably need to clean up your
9 statement a little bit.

10 Q. Thank you.

11 A. It would require that you provide flooring
12 that is slip resistant under the foreseeable
13 conditions.

14 Q. So is that another way of telling me that
15 if it's foreseeable that the floor is going to have
16 some type of liquid substance on it at any time, that
17 the marble flooring must comply with the wet test
18 standards?

19 A. No, I don't think so.

20 Q. Why is that an incorrect statement?

21 A. Because there's other things you can do
22 to -- for example, you can etch marble. You can groove
23 it.

24 You could apply a sealant that contains an
25 aggregate. You could have mats and runners over it.

1 You could have a doorman that's right there to
2 instantly clean up any spill that he sees.

3 But in the situation we have here, that
4 the area doesn't appear to be policed that often, and
5 given the time it took them to respond to the plaintiff
6 in this case, I'd say that they really don't have the
7 opportunity to clean up spills in this arena in a
8 timely manner.

9 And it's foreseeable that that area could
10 become wet from water tracked in from rain or from
11 someone spilling a drink or someone throwing up, as in
12 this case.

13 And since they're not able to police that
14 in a timely manner, I think that they should have
15 provided a floor that would be slip resistant under
16 those foreseeable conditions.

17 Q. Do you know what time the slip-and-fall
18 incident occurred?

19 A. Well, on the tape I remember it was
20 something like 18 -- I can't remember. It was in the
21 evening, early evening, maybe 10:00.

22 Q. 10:00 p.m.?

23 A. Yeah. I don't know what time it was.

24 Q. When you conducted your surveys of the
25 other casinos, did you go to these casinos at the same

1 time that this incident occurred?

2 A. No, sir. I went to the casinos during
3 working hours.

4 Q. Casinos are open 24 hours a day, right?

5 A. Right.

6 Q. So what do you mean by working hours, your
7 working hours?

8 A. Yes.

9 Q. You didn't go to any of these casinos at
10 10:00 at night, right?

11 A. Well, I've been to all the casinos
12 probably at least once in my life, but not with the
13 intention of doing a survey of how they watch their
14 floors or prepare -- and prepare those floors.

15 Q. When you visited these casinos with the
16 intention of doing the survey, did you go to any of
17 them at 10:00 at night?

18 A. No, I didn't.

19 Q. Did your survey attempt to determine
20 whether other casinos had doormen present for the
21 purpose of identifying spills and cleaning them up?

22 A. Well, yes. There's one hotel I could
23 think of in particular that does.

24 Q. Other than this October 13, 2008, report,
25 did you make any written notes or another report

1 regarding the results of your survey?

2 A. I have notes from it.

3 Q. Are your notes in your file?

4 A. Yes, sir.

5 Q. Can you find those for me?

6 A. This page, the back of this page, and that
7 page.

8 MR. McGRATH: I would like to ask our
9 court reporter -- well, we can take break or even do
10 this afterwards, but I would like to mark that as a
11 separate exhibit. I believe we're on No. 40. Let's
12 say 41, just in case, okay?

13 We're going to mark as Exhibit 41 a
14 two-page document that has handwritten notations on the
15 back, at least of one of the pages. It has Farina
16 Caesars Palace --

17 BY MR. McGRATH:

18 Q. Can you read that for me? I need
19 bifocals.

20 A. Yeah. I'm getting to that point, too. It
21 says "Farina v. Caesars Palace, Comparable Hotel
22 Entryway Analysis."

23 Q. And if you wouldn't mind, would you go
24 through each of the columns that you appeared to create
25 and tell me what the columns indicate? I don't want

1 you to read the name of each casino, but just tell me
2 the subjects or categories.

3 A. Okay. The categories are the name of the
4 casino; the address of the casino; what type of entry
5 it had, whether it was a double-door entry, meaning it
6 has a vestibule; what sort of flooring surfaces they
7 had at the entrance just off the exterior.

8 Q. I'm sorry to interrupt you.

9 So the fifth column from left to right is
10 the column that shows what type of flooring surface was
11 present at the casino you investigated?

12 A. Right. Flooring surfaces. Some casinos
13 have various surfaces.

14 Q. Okay.

15 A. And then they just have was nonslip
16 material used and what it was, and then any other given
17 notes that you might find.

18 Q. Now, how were you able to tell whether
19 nonslip-resistance material was used?

20 A. Well, based on my experience, I've tested
21 lots and lots of different flooring, and I can tell you
22 that carpet, you can pretty much count on being slip
23 resistant under any condition for a contaminant like a
24 spill. I guess if you were to spill motor oil on it,
25 it might not be.

1 Q. Let me ask a better question. Well,
2 slip-resistant material includes carpet, but could it
3 also include any type of sealant that a layperson could
4 not identify?

5 A. Well, the sealant -- I guess I'd have to
6 give you a little background in slip resistance. For
7 dry slip resistance, I can't think of a single walking
8 surface that you would find that's not slip resistant
9 when clean and dry.

10 And you can put sealants and other sort of
11 waxes on there that will actually make it more slip
12 resistant when dry, but they're not going to do
13 anything for you at all in the wet sense unless you add
14 an aggregate to it that's stuck to the surface and that
15 requires a lot of maintenance, because it will get worn
16 off.

17 And when you coat something with a
18 sealant, you're actually filling the surface
19 disparities that are naturally present on the surface
20 and can potentially make it more slippery in a wet
21 condition.

22 So when you add this nonslip wax to the
23 surface, you might make it more slip resistant dry, but
24 you're making it less slip resistant wet.

25 Q. Did any of the casinos that you

1 investigated that did use some type of slip-resistant
2 material use anything other than carpet?

3 A. There were tiles that were -- that were --
4 had greater surface disparities than the marble. There
5 were grates, things of that nature, that wouldn't allow
6 the buildup of a contaminant, that the contaminant
7 would fall right through.

8 Q. So tile flooring? When you say tile, is
9 it tile flooring?

10 A. Right. There's tile out there that is
11 slip resistant when wet.

12 Q. Well, is it your opinion that the
13 slip-resistant material only needs to be applied at or
14 near entrances, or do you have to put it on every
15 section of marble flooring in the property?

16 A. Well, I think that kind of goes back to my
17 answer a while ago. I think that it depends on the
18 circumstance.

19 I think that entrances to buildings,
20 particularly if they're not monitored, would -- you'd
21 have a duty to put in a nonslip flooring.

22 Q. Was it raining on any of the days that you
23 visited these other casinos specifically to conduct
24 this survey?

25 A. No, sir.

1 Q. Do you know if it was raining on the day
2 plaintiff's slip-and-fall incident occurred?

3 A. It's my understanding that it didn't.

4 Q. Is it your opinion that owners of casinos
5 should be putting down carpets, whether it's raining or
6 not or whether there's inclement weather or not?

7 MR. ZIMMERMAN: I'm sorry. It's vague and
8 ambiguous as to where. You mean at the entry area?

9 MR. McGRATH: At the entry vestibule
10 areas. Yes.

11 THE WITNESS: I would say if you're going
12 to put down something like marble that's -- such as we
13 had at Caesars Palace, that it would be my opinion that
14 yes, you should have some sort of additive
15 slip-resistant feature, whether it be a mat or runner,
16 or you etch it or replace it with a slip-resistant
17 tile.

18 BY MR. McGRATH:

19 Q. And that's regardless of whether it's
20 raining or not?

21 A. Right, because it's very foreseeable that
22 someone could throw up or spill a drink in the
23 entryway, and it's just in an area that they're not
24 going to catch.

25 Q. Okay. In looking back at what we've

1 marked as Exhibit 41, and in that sixth column
2 regarding the slip-resistant material, some of the
3 columns are blank --

4 A. Right.

5 Q. -- for the properties. What does that
6 indicate?

7 A. Well, the initial matrix you see there was
8 provided to me just as a guide of what my clients, the
9 Zimmerman law firm, wanted, and I basically just
10 collected the information I felt was important.

11 Q. Well, if you look at, say, for example,
12 New York-New York --

13 A. Uh-huh.

14 Q. -- it looks like there's no indication of
15 whether they used slip-resistant material at all.

16 A. They didn't. New York-New York is one of
17 the few hotels in this town that I found that is very
18 similar to Caesars Palace.

19 Q. Okay. So if it's blank, that means they
20 didn't do anything at all?

21 A. I'd have to look at each one specifically.

22 Q. The ones that I see that are blank are
23 Golden Nugget.

24 A. No. The Golden Nugget has a great system.
25 They have runners and attendants.

1 Q. But that's not indicated in this chart
2 here?

3 A. I didn't do that chart.

4 Q. Did you prepare anything that's in written
5 form that would tell me, for example, what you found at
6 the Golden Nugget when you investigated it?

7 A. Sure. That would be in the downtown
8 section. It says Golden Nugget entry type is -- it's a
9 double door. It's -- the flooring surface are mats,
10 carpet, carpet, permanent runners.

11 And there is marble. I didn't put that
12 down, but they have the mats and runners. Nonslip
13 material used, carpets, and there are attendants there.

14 Q. I thought I noticed that you conducted
15 this survey in May of 2008; is that correct?

16 A. No. That would have been done -- let me
17 see here. Yeah. It was done on May 5th and May 13th.
18 My apologies.

19 Q. So all the properties you visited for the
20 specific purpose of conducting this survey, you did
21 that all in two days?

22 A. Two separate days, yes.

23 Q. On two separate days. I'm sorry.

24 And did you go to Caesars Palace to
25 investigate the entrance to the vestibule area where

1 the incident occurred on either of those two days?

2 A. No, sir.

3 Q. On the first day you went there to do your
4 wet test, did you observe any carpet or any other
5 slip-resistant material in that area?

6 A. No.

7 MR. ZIMMERMAN: You mean in the vestibule
8 area?

9 MR. McGRATH: Yes.

10 BY MR. McGRATH:

11 Q. Unless I specify otherwise -- and your
12 counsel can object whenever he wants, obviously --
13 that's what I'm talking about, is the vestibule area.

14 MR. ZIMMERMAN: I just wanted it to be
15 clear because the lobby has carpet in with the tile,
16 and I didn't know if you were referring to that.

17 MR. McGRATH: And I wasn't, but thank you.

18 BY MR. McGRATH:

19 Q. I want to go back to something, the ADAAG
20 manual, which is part of ADA, right?

21 A. That's their publication, yes.

22 Q. I want to make sure that it's your opinion
23 that's required, not just recommended, because when I
24 deposed Mr. Moffott -- and we were talking perhaps
25 about something different, but I think what we were

1 talking about was ADA Section 4.5, and he acknowledged
2 to me that that's a recommended, not required,
3 regulation.

4 A. Well, the actual numbers they give are
5 recommended.

6 Q. So ADAAG is recommended, correct?

7 A. The number is recommended. The overall --
8 the overall meaning of the document is not.

9 Q. When you say "the number is recommended,"
10 what are you specifically talking about?

11 A. The number they threw out there of .6,
12 that's their recommendation, but the bottom line is
13 they want it to be slip resistant under the foreseeable
14 conditions.

15 Q. Okay. So what you're telling me is that
16 it is not required in Clark County that if you're going
17 to install a marble floor in a public accomodation
18 building, that it meet a 0.6 wet testing score?

19 A. No. The number that's been accepted by
20 the court system of the United States and is accepted
21 by all professional safety individuals is .5.

22 Q. Okay. I'm sorry to interrupt. Go ahead.

23 A. The .6 is just something that they threw
24 out there because it's recognized that people who
25 ambulate in a pathological manner or abnormal manner

1 would require greater traction, and so they just pumped
2 it up a little bit from the .5 that's already been
3 accepted.

4 If you want to read directly from 4.5, it
5 says, "Slip resistance is based on the frictional force
6 necessary to keep a shoe heel or crush tip from
7 slipping on a walking surface under conditions likely
8 to be found on the surface."

9 And the recommendation they make is slip
10 resistance should be specified according to the
11 conditions likely to be found on the surface.

12 Exterior routes and spaces that are not
13 protected, such as lobbies, entrances, bathing
14 facilities and other areas where floor surfaces are
15 often wet, should have a higher level of slip
16 resistance.

17 Q. Does ADAAG expressly say anything about
18 whether the 0.5 that's required is a 0.5 under a wet
19 test or a dry test?

20 A. It doesn't specify. It says, "Under the
21 foreseeable conditions."

22 Q. And if I understand you correctly, it's
23 your position or it's your opinion that -- well, let's
24 back up a little bit.

25 Just so I understand what your opinion is

1 based upon, what are the factors that make it
2 foreseeable that a floor will be wet as opposed to dry?

3 A. That would be responsible engineering,
4 responsible design. You'd look at this, and I don't
5 think anybody would argue with the fact that it's
6 likely that a drink would be spilled in an entryway of
7 a casino, that water could be tracked into an entryway
8 of a casino, that someone could vomit in the entryway
9 of a casino.

10 Q. Let me ask a better question.

11 Is it your opinion that the wet test
12 criteria applies to any public accommodation building
13 because it's foreseeable that any guest of a public
14 accomodation can spill a drink?

15 A. It would depend on your ability to police
16 up the drink. If you have somebody that's vigilant,
17 that's standing there, I would say that you could
18 probably let it go.

19 But in this case we didn't have that. I
20 think you have a duty to provide slip-resistant
21 flooring in public places.

22 Q. But you do agree that ADAAG does not
23 expressly indicate whether the 0.5 that you say is
24 required is measured by a wet test or a dry test?

25 A. No, it doesn't specify. It's for whatever

1 foreseeable conditions are there.

2 Q. How about ANSI? First of all, the 0.6, is
3 that a recommendation in ANSI or a requirement?

4 A. They don't mention .6 at all in ANSI.

5 Q. So they don't even have a measurement, a
6 required measurement, for the friction rating?

7 A. No, sir. It just has to be slip resistant
8 under the foreseeable conditions.

9 Q. And is there anything in ANSI that you
10 believe mandates that the floor pass a wet test at 0.5
11 as opposed to a dry test?

12 MR. ZIMMERMAN: This is the floor in the
13 vestibule?

14 BY MR. McGRATH:

15 Q. Any marble flooring in a public
16 accomodation.

17 A. You know, I think we're just beating a
18 dead horse here. I understand the definition of slip
19 resistance, and what is slip resistant.

20 Being a pedestrian safety professional, I
21 can tell you exactly what number, in my opinion, and
22 the same opinion of everybody else that does this, is
23 slip resistant.

24 It wouldn't do you any good to test a
25 floor dry, because I can already tell you it's going to

1 be slip resistant when it's dry, but it's not going to
2 do you any good, again, to take that same floor and run
3 sprinklers on it all the time and tell people to walk
4 across it, because we tested it dry. It makes no
5 sense.

6 Q. Have you ever tested marble flooring in a
7 casino in the Las Vegas area using the wet test where
8 the marble flooring passed the 0.6 standard?

9 A. Never.

10 Q. How about the 0.5 standard?

11 A. No, sir. Marble is a horrible choice.

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

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

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

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

22 Q. But it's not marble flooring?

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

24 Q. Is it tile?

25 A. It's a ceramic tile.

1 Q. Any other properties that you can give me
2 a specific example of where they don't use marble?

3 A. Well, no pool deck uses marble, obviously,
4 and sidewalks accessing pool decks are concrete, and
5 they usually have a very rough surface on them.

6 Whenever I've had a client that has had
7 marble in their casino and I'm working for the defense,
8 I've just told them that "Hey, this is slippery when
9 it's wet. You shouldn't be using it. If you want to
10 continue using it, you got to take certain things into
11 account. You have to take other preventive measures to
12 prevent slipping."

13 And sometimes they're receptive to those
14 ideas and sometimes they're not. These are just my
15 opinions as a pedestrian safety consultant.

16 Q. What are you assuming in terms of how far
17 in terms of feet the plaintiff slipped -- withdraw the
18 question.

19 I'm trying to ask you about the location
20 of the slip-and-fall incident. How far into the
21 property past the entrance door are you assuming that
22 it occurred?

23 A. Well, if I remember right, the depth of
24 that vestibule is about 12 feet, and it looks like
25 she's maybe halfway, maybe a hair over halfway, so

1 she's probably six, seven, eight feet into the
2 vestibule at the time it occurred.

3 Q. What is your recommendation in terms of
4 any areas similar to the vestibule area, how far should
5 the carpet extend that you think the casino should be
6 putting down if they don't have someone right there to
7 immediately clean up any spills?

8 MR. ZIMMERMAN: That mischaracterizes his
9 testimony because he hasn't said that it's only carpet
10 that needs to be there.

11 BY MR. McGRATH:

12 Q. You know what, I understand that --
13 If I use the term "mat," would you be more
14 comfortable with that? Is that more all-encompassing
15 in terms of putting something down, other than
16 something --

17 I understand ceramic tile is a different
18 flooring material than marble, but if you're going to
19 use marble -- I know Mr. Moffott said this, and I think
20 it's your opinion, that it's okay to use marble as long
21 as you put mats, carpet or something, the equivalent of
22 that type of a mat down, right?

23 A. If you're going to insist on using marble
24 in the vestibule, you have to do something, and the
25 easiest thing to do would be to put down mats and

1 runners.

2 Q. But is it your opinion that you have to
3 put down mats and runners over every section of marble
4 flooring in the property or just near the entrances?

5 A. That's up to the discretion of the hotel.
6 I mean, whatever they're comfortable with, if they
7 think they can police that area.

8 I would think that a spill would be more
9 recognized if it happened in the actual foyer beyond
10 the vestibule because we've got people that work for
11 the hotel right there.

12 But that's still no guarantee because,
13 again, in this case we had someone break her hip and
14 laying on the floor for 10 to 15 minutes before anybody
15 even came to help her, and that's an emergency
16 situation.

17 A little spill on the ground, I don't
18 think anybody would really take that seriously until
19 someone breaks their hip.

20 Q. You don't have any information about how
21 long the vomit was on the surface before the plaintiff
22 slipped on it, correct?

23 A. I do.

24 Q. Oh, you do?

25 A. Yeah.

1 Q. What is that information?

2 A. It's about -- from the videotape, I saw
3 the woman vomit in the video.

4 Q. Okay. How much time elapsed -- based on
5 what you reviewed in the videotape, how much time
6 elapsed between the time the woman got sick and Ms.
7 Farina came along and slipped?

8 A. It was a short amount of time. It was a
9 little less than a minute.

10 Q. Your October 13 report indicates that you
11 came back to the property on April 1, 2008. What was
12 the purpose of that second visit?

13 A. When I went back out there the second
14 time -- and it is April 1 -- was just to look at it at
15 night in the conditions that were present supposedly at
16 the time, and just to get an idea of that.

17 I took some pictures, tried to get
18 pictures that looked like that, but you really can't
19 take photographs at night, particularly color
20 photographs, and say at all that they represent what a
21 person may or may not see because film and digital
22 cameras are all color adjusted for sunlight, which is a
23 broad spectrum. It has all sorts of different colors.

24 If your area is, say, lit by sodium
25 lights, the film will look different.

1 Q. What time in the evening did you visit the
2 property on April 1?

3 A. It was -- I don't remember specifically,
4 but it was dark. It was fully nighttime.

5 Q. Assuming you could tell who was an
6 employee of Caesars Palace, did you see anything that
7 indicated to you that there was an employee stationed
8 at that vestibule entrance that you visited on April 1?

9 A. No. There was no employee there that I
10 saw.

11 Q. And when you reviewed the DVD of the
12 incident -- now I understand that you reviewed the
13 video at least a minute before her slip and fall -- how
14 much total time on the video did you review?

15 A. Well, I reviewed it all at once just to
16 make sure I got everything, but I focused primarily on
17 the time of the vomit and the time when Ms. Farina was
18 walking up to the entry vestibule, entering the entry
19 vestibule and falling. That was the area I
20 concentrated on.

21 Q. Did you observe depicted in the videotape
22 someone who you believed to be an employee or who you
23 assumed to be an employee of Caesars Palace in the area
24 anytime before Mrs. Farina's slip-and-fall incident?

25 A. I didn't look for it with that -- in that

1 respect, but I didn't see anybody that clearly looked
2 like a casino employee to me.

3 Q. And am I correct in assuming that you
4 didn't attempt to review the video to the extent it
5 depicts time anytime five minutes or further back
6 before the incident occurred?

7 MR. ZIMMERMAN: It assumes that that was
8 provided.

9 MR. McGRATH: I understand.

10 THE WITNESS: I don't remember how much
11 was provided beforehand, but I know that I didn't have
12 to go very far to the point where the lady threw up.

13 BY MR. McGRATH:

14 Q. Okay. The 88 photographs that you
15 reference on page 2 of your October 13 report, Bullet
16 Point Item No. 4 regarding your surveys of the other
17 casinos -- I don't want to look through all 88 of them
18 right now -- I just want to know, when you took a
19 photo, was it to document whether there was or wasn't
20 some type of slip-resistant material?

21 A. Yes. It was to show the entryway, and as
22 you can see, my notes are somewhat chicken scratch
23 because they're just notes to remind me of what's going
24 on, but the real proof is in the pictures.

25 Q. And you took a picture of every area you

1 visited on the casinos that are listed in Exhibit 41?

2 A. Yes, sir.

3 Q. I think we already discussed this, but you
4 reviewed provided specifications and bid forms prepared
5 by Allard & Conversano Design. That's the specs we've
6 already discussed that are in your folder, correct?

7 A. Yes, sir.

8 Q. And you haven't reviewed anything that's
9 not in the folder that came from Allard & Conversano
10 Design?

11 A. No, sir.

12 MR. ZIMMERMAN: Can we go back one second?
13 You had asked questions about what standards he had
14 reviewed, and he started to give testimony about that,
15 and then you've gone now to a different subject.

16 I just wanted to make sure whether you had
17 finished your answer on that, because I know he
18 interrupted you. Were there any other standards that
19 you had in your book?

20 THE WITNESS: Well, yes. I have quite a
21 few standards that I've copied.

22 MR. ZIMMERMAN: Okay. So he can, if he
23 chooses to, ask you questions about that.

24 BY MR. McGRATH:

25 Q. And these are standards that apply to a

1 wet test?

2 A. Yes.

3 Q. I will get to that.

4 A. Okay.

5 MR. ZIMMERMAN: I just wanted to make sure
6 that you didn't then ask him, "Well, have you told me
7 everything," because I think that's what you tend to
8 do.

9 BY MR. McGRATH:

10 Q. You indicated that you reviewed a
11 transcript of the deposition of Donald Trujillo. First
12 of all, was that important to you in any respect in
13 terms of the opinions you're going to offer at trial?

14 A. Let me take a look at my notes for a
15 minute and make sure.

16 It's not essential to my opinions. It's
17 just basically he's the director of public areas, and
18 he indicated that the site would be dust mopped three
19 times a day.

20 He's been there since the Augustus Tower
21 opened. He's aware of other slip-and-fall incidents
22 that have occurred in the vicinity of the subject
23 incident. Things of that nature.

24 But as far as anything of the meat of my
25 opinions, no.

1 Q. Is the same true in terms of you've
2 indicated you reviewed the deposition of Richard
3 Duclos, D-u-c-l-o-s.

4 A. I understand that he's a surveillance guy,
5 and he just basically said that he had footage on
6 Camera 2102, that he couldn't say if any other camera
7 was checked by someone other than himself.

8 He says that he saw Caesars employees put
9 down mats when it rains outside, along with wet floor
10 signs.

11 He says unfortunately guests frequently
12 spill liquid on the flooring surfaces throughout the
13 premises. Vomit is not as common.

14 Just basically -- nothing that's really
15 substantial to my opinions, but as I said, the people
16 are aware that slip and falls occur and that people
17 spill drinks. It doesn't take a genius to know that
18 that's going to happen in this environment.

19 Q. Let's turn to page 3 of your October 13
20 report, under the section with the heading
21 "Discussion." Would it be easier if I gave you this
22 copy, instead of turning that thing around?

23 A. Sure.

24 Q. I'm going to read the very first sentence.
25 "The three described test areas proved to not provide

1 slip resistance consistent with the industry accepted
2 minimum required value of 0.50 when contaminated with
3 tap water."

4 I think we've kind of discussed this
5 already, but I want to make sure I understand if
6 there's any additional reason why you're using the word
7 "required" as opposed to "recommended."

8 A. Because I know what's required to keep
9 people from slipping.

10 Q. Okay. As an engineer, in other words, you
11 know that if there's water or any liquid on marble
12 flooring, it's going to be slippery. Is that what you
13 mean by that?

14 A. Well, I didn't go in there with that
15 immediate assumption. I did the testing to prove it,
16 but yeah, I would say that any marble that's not
17 treated in a manner that I've described in my report
18 will not be slip resistant when wet.

19 Q. What written or codified industry accepted
20 minimum required value requires 0.50?

21 A. Well, there's OSHA standards that require
22 0.50 when wet. There's -- and, you know, it sort of
23 falls under the blanket because you don't want to --
24 you don't want to limit it.

25 You have to have the foreseeable

1 conditions, and it's got to be slip resistant. The
2 definition of "slip resistant" is clearly defined. I
3 understand it completely.

4 Q. Let me ask a better question.

5 What written or codified standards
6 expressly state that marble flooring must meet a 0.50
7 slip-resistant standard?

8 A. There is nothing that says that marble
9 flooring has to meet specifically 0.5, but that's the
10 number, as I said, that's been accepted by the U.S.
11 court systems for over 50 years. No one has ever
12 challenged it.

13 It's the number that's been accepted by
14 professionals in the pedestrian safety industry, and
15 it's not based -- it's not a number that's just grabbed
16 out of nowhere. It's a scientific number.

17 Q. Well, when you say it's been accepted by
18 the U.S. court systems, what do you mean by that? On
19 the cases you've testified at trial, the juries decided
20 that that's the standard or the judges decided?

21 A. No. It's the number that's always been
22 accepted. If you -- just like primary perception and
23 reaction for an automobile accident is accepted at 1.5.
24 Nobody challenges that.

25 Q. We're not going to do this very long, but

1 in law school I learned that you either get laws out of
2 statutes or cases or there's things called standard of
3 care.

4 There's no case law that you're relying on
5 that says 0.50 is the accepted standard, right?

6 A. Well, there is things, but not
7 specifically marble floors. That's what you asked
8 about.

9 So if you want -- if you're looking for a
10 statement that says "Marble floors, 0.5, wet," you're
11 not going to find that.

12 Q. On the second paragraph of your report,
13 you write, "Because the depth between the inner and
14 outer doors of the vestibule was only approximately
15 12.5" --

16 Is that --

17 A. Feet.

18 Q. -- "feet, Ms. Farina would have had little
19 chance to visually notice the vomit, as it would have
20 been well beneath her Frankfort plane as she focused
21 upon the inner door, which would have been her next
22 visual target as she entered and began to transverse
23 the vestibule."

24 As I read this sentence, the first thing
25 that comes to mind is that it seems that you were

1 offering opinions that are outside the scope of your
2 expertise, and what I mean specifically is you're
3 assuming where she would be looking.

4 MR. ZIMMERMAN: That's argumentative.
5 He's a human factors biomechanical expert.

6 BY MR. McGRATH:

7 Q. That's what I want you to explain to me.
8 Does part of the field of biomechanics include how
9 people walk?

10 A. Absolutely.

11 Q. Where their eyes are directed when they're
12 walking?

13 A. Absolutely.

14 Q. Other than looking at the video, what
15 other information are you relying upon to form the
16 opinion that her field of vision would not have been
17 directed at the spill area when she entered the
18 vestibule area?

19 A. Well, you could find that in any book on
20 human factors that deals with the way people take
21 information with their eyes, and it's simply that you
22 have what's called a cone of vision.

23 And people always think of peripheral
24 vision as just being far left and far right, but you
25 also have peripheral vision high and low, and in order

1 to see something in your peripheral vision, it has to
2 have great contrast.

3 And people, when they walk, they look out.
4 They don't -- especially if they have a new target, the
5 handle at the next door they're going to grab. They
6 don't walk looking at their feet.

7 So you have what's called the Frankfort
8 plane that sort of defines your lower peripheral
9 vision, and it's basically a line that goes from your
10 ear hole to the bottom of your orbit, and anything
11 that's below that is going to be in your peripheral
12 vision. It's going to require very high contrast,
13 usually motion, for you to detect it.

14 When you walk in the door, that door is
15 tinted, and you can't really see anything through that
16 door when you open it.

17 Now you've opened it and you've got 12
18 feet before the next door. If you're walking normally,
19 you're going to focus out in the distance. You're not
20 going to look at your feet. Or you're going to focus
21 right where you're going to grab.

22 And you can figure out where a person's
23 peripheral vision starts and where their central vision
24 starts based on how tall they are and the Frankfort
25 plane and how far that Frankfort plane will extend.

1 Anything that's below that, a person is
2 not likely to perceive unless it is in high contrast.

3 Q. When you reviewed the video surveillance
4 DVD, were you able to discern the color of the marble
5 flooring where the spill area was?

6 A. I don't recall that I could discern one
7 way or the other. I wasn't looking to see if I could
8 discern that.

9 Q. Were you able to discern where the spill
10 was?

11 A. No, I couldn't see where the spill was.

12 Q. Is that part of the reason you're assuming
13 there was no -- I think your word was there was no
14 contrast between the vomit and the marble flooring?

15 A. Well, no, that's not my reasoning. I
16 mean, I know what color the flooring was, and I'm
17 assuming that this, being vomit, was probably from a
18 lot of alcoholic drinks, so it was probably pretty much
19 alcohol.

20 But liquids don't show up that well on
21 floors. A lot of times I'll do testing, and during the
22 test, I'll take pictures of the test I'm doing, and
23 it's very hard to see the water on the floor in my
24 photographs.

25 You'd have to have great contrast, like

1 stark white on top of the black, green on top of red,
2 where everything is red and all of a sudden you've got
3 a green spot, or something that's moving. Moving is
4 the best contrast.

5 Q. This isn't water, though. We're talking
6 about vomit. So you're not assuming it was colorless?

7 A. No, but I think it would be very hard to
8 pick up. And the other thing is that it would never be
9 in her central vision.

10 It -- she would never have the opportunity
11 to look right at that and say, "Hey, that's vomit on
12 the floor. I better watch out."

13 Q. Just so I understand, once she opens the
14 door -- this is a hypothetical. Once she opens the
15 door, where is her field of direction at that point?
16 What I mean by that is, how many feet off in the
17 distance is her field of vision?

18 A. Well, you can -- your eye is taking
19 information for everything that you can see, but
20 whether it actually perceives that and sends
21 information to your brain on what it is depends on the
22 strength of the signal.

23 In this case it's going to be the strength
24 of the contrast. When she walks through that door, as
25 I said, when that spill would be maybe within her

1 central vision, she's probably too far away for it to
2 be in contrast.

3 And we know that the doors are tinted, and
4 she comes into the door, and now with the next door,
5 she will be focusing on where she's going to place her
6 hand.

7 And if she wasn't doing that, she's still
8 going to be looking off in the distance, and the spill
9 is below that. Is it within her visual plane? Sure.
10 But it's in her peripherals.

11 Q. When you say she's going to be looking off
12 in the distance, how many feet off in the distance are
13 you assuming most people in that situation would be
14 looking?

15 A. They look quite a ways down, and it
16 depends on their height.

17 Q. Twenty feet? She's only 4'11", correct?

18 A. Well, if we were to do the calculation --

19 Q. You're going to do a calculation for a
20 4'11" person?

21 A. Yeah.

22 Q. Okay. Thank you.

23 (Discussion off the record.)

24 THE WITNESS: If you have a person that's
25 4'11", their central vision is going to extend -- or

1 their peripheral vision will extend out about 17 to 25
2 feet from where they're currently standing.

3 BY MR. McGRATH:

4 Q. Okay.

5 A. So anything that's less than 17 feet, you
6 could be pretty sure that they won't pick it up unless
7 it's in high contrast.

8 Q. Unless it's in their central vision?

9 A. Well, in order for it to be in their
10 central vision, they would have to look down on the
11 ground.

12 Q. If it was 12 feet in front of them, they
13 wouldn't have to look right down at the ground.

14 I understand what you've been saying about
15 the Frank -- is it the Frankfurt field of vision?

16 A. Frankfurt plane.

17 Q. Another way of asking these questions is
18 to try to find out how far off in the distance that
19 begins.

20 A. Right. And it could begin as close as --
21 for a 4'11" person, it could begin as close as 17 feet.

22 Q. If you go down to the last paragraph of
23 page 3 of your October 13 report -- and we've talked
24 about these already, the specs and bid forms in your
25 file from Allard & Conversano Design. In your report,

1 you say that those documents indicate that the flooring
2 must be tested to meet a 0.6 wet coefficient of
3 friction.

4 MR. ZIMMERMAN: You misstated it. It said
5 must be treated. You said tested.

6 BY MR. McGRATH:

7 Q. I'm sorry. Must be treated. I agree.

8 Can you find for me the exact
9 specifications that you're relying on to support your
10 opinion that the project specifications required the
11 marble flooring to meet a 0.6 wet coefficient of
12 friction?

13 A. Well, it's exactly what it says. It's the
14 documents that I reviewed from Allard & Conversano
15 Design. I have to take all these pictures out.

16 Q. What I'm really trying to get at is, is
17 there just one spec or is there more than one that says
18 that?

19 A. Well, they all basically say it. It just
20 says -- under "Notes," it says, "Stone flooring must be
21 treated to meet .6 wet coefficient of friction ADA.
22 Finish may require adjustment and/or slip-resistant
23 topical post-installation procedure.

24 Q. And you don't know if that was actually a
25 part of the approved set of plans and specifications?

1 You're assuming that, correct?

2 A. Well, I'm just reading what it says.

3 Q. No, I understand that, but what you're
4 reading, you don't know if that was a part of the
5 approved plans and specifications for the project?

6 A. No, I don't know, but --

7 MR. ZIMMERMAN: If you had produced those,
8 then he may.

9 MR. McGRATH: It's a speaking objection.

10 THE WITNESS: That's what I was going to
11 say, is just that this is what these documents said,
12 and if there's other documents that have greater weight
13 than these, they probably should have been provided
14 with the disclosure of documents.

15 This is what I'm relying on. I didn't use
16 it for any of my opinions whether the floor was safe or
17 not. I'm just saying that the person who made out this
18 form was aware of what the ADA recommendation is, and
19 they understand that those areas could become wet, and
20 those are foreseeable conditions, so, therefore, they
21 would have to be in a wet condition.

22 BY MR. McGRATH:

23 Q. Well, you believe that the marble flooring
24 can't pass that standard, correct?

25 A. That's not what I said. I said you'd have

1 to etch it. You'd have to do something. The marble
2 the way it is, it will never pass unless you do
3 something to it.

4 Q. When you etch it, what does it typically
5 look like after you're done etching it?

6 A. It's dull, a matte finish. It's not as
7 aesthetically pleasing, but are we talking about
8 aesthetics or safety?

9 Q. Well, is it your opinion that if this is,
10 in fact, what Allard & Conversano was requiring, that
11 it was negligent on their part to do so because marble
12 flooring can't pass that criteria unless you etch it,
13 as you've described?

14 A. I mean, what they're saying is that finish
15 may require adjustment and/or slip-resistant topical
16 post-installation procedure, so they're recognizing
17 that -- well, they're saying it may not meet this, but
18 I think they probably know it's not going to.

19 Q. If you wrote that, you wouldn't use the
20 word "may," would you? You'd say "definitely will
21 require"?

22 A. I wouldn't have written this thing in the
23 first place. I wouldn't have recommended marble.

24 Q. That's where I'm going. You think it's
25 negligent for a designer to recommend marble in a

1 public accomodation building like this one unless they
2 say you've got to put carpets and mats down?

3 A. No. I think you have to consider the
4 area, and in this case we have an entry vestibule that
5 has no surveillance within it. You can't see through
6 it.

7 The only way that hotel management is
8 going to find out about a spill that's in there is if
9 the person that created the spill told them or somebody
10 else walked in and noticed it.

11 And I wouldn't think anybody is going to
12 notice it walking through there except for the person
13 that vomited, until somebody falls on it, and in that
14 area you're going to have falls when spills occur.

15 You know, you look at all those documents
16 that I was provided for other instant reports involving
17 falls, and almost every one of them, it says
18 specifically occurred on a wet surface. There's some
19 that doesn't say one way or the other, but --

20 Q. It doesn't surprise you, does it?

21 A. What's that?

22 Q. That it occurs on a wet surface.

23 A. No. That's my whole philosophy, that dry
24 surfaces are not slippery. Wet surfaces can be,
25 depending on their surface disparities.

1 Q. But most people know wet marble is going
2 to be slippery?

3 A. If it's shiny, smooth marble, yeah, it's
4 going to be slippery, but you'd have to have the
5 foreknowledge that it's wet.

6 Q. You didn't review any documents that
7 indicated one way or the other whether the marble
8 flooring was tested by the flooring contractor after it
9 was installed, to meet the Allard specification?

10 A. No, I didn't see that, but if there's
11 somebody out there that says that it did, I will say
12 they're a liar.

13 Q. Let's assume hypothetically that somebody
14 tested it and it did pass the test. Would the owner
15 have to do anything in terms of maintenance to maintain
16 the slip resistance of the original installation?

17 I guess it's not a fair hypothetical
18 because you already assume there's no way it's going to
19 pass the test, but assuming it did immediately after
20 it's constructed, would you expect the slip resistance
21 to fade or wear away?

22 A. Again, it depends. There's a lot of
23 factors. If -- for example, limestone could start
24 off -- this isn't limestone, obviously, but it could
25 start off smooth, and as people walk on it and water

1 gets on it, it becomes actually more rough.

2 There might be some things that may become
3 more polished and you actually wear away the surface
4 disparities with your feet almost like you're honing
5 it.

6 Q. Would you recommend to any architect that
7 was going to specify marble flooring in a public
8 accomodation that it not only be tested after
9 installation, but every six months, every three months,
10 to ensure that it has maintained its slip resistance?

11 A. Well, I think you have to start at the
12 beginning. I would never recommend marble for this
13 area.

14 But if -- and if my clients -- if I was a
15 marble installer or a floor installer, which I'm not,
16 and a client said, "I want marble in this entry
17 vestibule," I'd say, "It's against my conscience. I
18 can't put it in there, unless we totally dull it down
19 and make it look kind of ugly, or I could recommend
20 other things you could put in there, but I would not
21 install marble in that specific area."

22 Q. You don't know one way or another whether
23 the owner asked for marble or it was proposed by a
24 designer or contractor?

25 A. It's of no issue to me.

1 Q. But in your mind, any of the designers
2 that are involved in either suggesting marble flooring
3 or approving the suggestion by somebody else are doing
4 something you wouldn't recommend?

5 A. Well, for that area, yeah, but I think
6 that the person that wrote this out had some knowledge
7 of pedestrian safety, and I think that they were
8 covering their butt by saying that the finish may have
9 to be treated and taken care of.

10 Because I think anybody that cares about
11 pedestrian safety is going to know that shiny marble is
12 not going to be slip resistant under contaminated
13 conditions.

14 Q. Have you reviewed the report by the
15 defense experts, S.C. Wright Construction, regarding
16 their dry testing --

17 A. I have.

18 Q. -- of the vestibule area?

19 A. I have.

20 Q. Do you recall their conclusions or
21 opinions as to why wet testing should not be the
22 applicable standard?

23 A. Because they don't know what they're
24 talking about.

25 Q. I understand.

1 What I want you to do is tell me why you
2 disagree with their opinions and conclusions in that
3 regard.

4 A. Let me get down here to the report.

5 Q. Do you have that in there? Because I
6 don't have an extra copy. I think what we're focusing
7 on is the last paragraph of the first page continuing
8 on to the second.

9 A. I'd like to start off by saying if they
10 think they're going to argue with me about this stuff,
11 they're barking up the wrong tree because, number one,
12 I was taught directly by William English how to use the
13 English XL. I am certified. They're not. They were
14 not taught by William English. They're not a member of
15 F13.

16 Q. What is F13?

17 A. It's Pedestrian Walkway Safety and
18 Traction. It's a division of ASTM. And the guy is a
19 member of ASTM, but he's in construction, not
20 pedestrian safety.

21 Also, I've been the chairman of the
22 standard that governs the English XL. I've written
23 standards for pedestrian safety for ASTM.

24 We'll just get down here to --

25 Q. That's something different than what I'm

1 looking at. Why don't I give you my copy. What I want
2 you to do is review the beginning of this last
3 paragraph on page 1 of their December 3, 2008, report,
4 which I see you have a December 31. So this is a
5 preliminary that I'm looking at.

6 MR. ZIMMERMAN: I'd like to see the one
7 that wasn't produced that you have.

8 BY MR. McGRATH:

9 Q. Take a look at it. You guys can make
10 copies afterwards.

11 A. Okay. What was your question?

12 Q. My question is, they're saying that you
13 cannot use the wet test because you're -- they're
14 explaining that it is William English, inventor of the
15 English 40 and author of the book "Pedestrian Slip
16 Resistance, How To Measure It and How To Improve It,"
17 defines SCOF as "The force required to initiate
18 relative motion between an object and a surface it is
19 in intimate contact with. It is inherent that the two
20 surfaces must be in direct contact with each other. If
21 there is anything on the interface, you are not
22 measuring SCOF. One cannot take an SCOF reading on a
23 wet floor. It is for this reason that recent ASTM
24 standards for SCOF measurements specify dry conditions
25 only."

1 The way I understand that is they're
2 saying if there's liquid between your measuring device
3 and the floor, you're putting something in between and
4 then you're not getting a true measurement.

5 A. What they've done is -- they're either
6 intentionally trying to mislead the reader or they
7 don't know what they're talking about, because they
8 just took a small snippet that kind of meets what
9 they're trying to say.

10 I agree with that. I agree that if you
11 are measuring a dry surface with the English XL, that
12 you're measuring SCOF.

13 I agree that if you have anything in
14 between preventing intimate contact between the two
15 surfaces, you're not testing SCOF.

16 That's why in the beginning I said we're
17 testing slip resistance. SCOF is for pacts. It's for
18 people that aren't educated in this business.

19 We all know that SCOF has nothing to do
20 with pedestrian safety because in order to measure
21 SCOF, like you pointed out, the surface has to be dry.
22 And dry surfaces are not slippery, so it's not even
23 interesting to a person that's involved in pedestrian
24 safety.

25 He goes on to say that -- he starts

1 talking about that when you measure it wet, that you're
2 measuring DCOF. You're not.

3 Q. What is DCOF?

4 A. Dynamic coefficient of friction, and that
5 has nothing to do with pedestrian safety either,
6 because dynamic coefficient of friction is the measure
7 of the force required to keep an object in sliding
8 motion at a given acceleration or velocity once sliding
9 has occurred.

10 Q. My question is not meant to be
11 argumentative, but I'm asking it because you've
12 testified that you have been involved in writing
13 pedestrian safety standards for the ASTM.

14 A. That's correct.

15 Q. How come the ASTM standards, then, don't
16 expressly state that the wet testing is the applicable
17 standard for measuring the coefficient of friction?

18 A. There is nothing that says that that's
19 what you're supposed to do except for the equipment
20 that cannot measure anything wet.

21 Q. My question is, why not?

22 A. Well, there's a lot of reasons. I mean,
23 if you want to get all into it -- there's equipment out
24 there that's manufactured by people that want to
25 continue manufacturing it, and it's only good for

1 testing dry surfaces, because in order to accurately
2 meter a wet surface, you have to apply the vertical
3 forces and the horizontal forces at exactly the same
4 moment in time.

5 If you take and you set a test block down
6 on a wet surface and then you test it, it's invalid
7 because there's a phenomenon called stiction where
8 there's a cohesion, and it gives you false high
9 numbers.

10 That's why William English and
11 Mr. Brungraber invented their machines, which do apply
12 the forces, and those are the only two machines that
13 are approved for wet testing.

14 I mean, it says specifically, "Do not use
15 the HPS for wet testing. Do not use the Model 80.
16 Don't use the Tortus," but what it does say is you can
17 use the English XL or the Brungraber Mark III or II. I
18 use the English XL.

19 Q. I want to make sure I understand
20 something. So arriving at your opinions regarding the
21 application of the wet testing to the marble flooring,
22 I think we've already discussed, you're relying on the
23 ADAAG manual?

24 A. Right.

25 Q. You're relying on ANSI?

1 A. Right.

2 Q. And ASTM?

3 A. Right.

4 Q. Anything else?

5 A. OSHA.

6 Q. What OSHA standard specifically?

7 A. OSHA 1926.754, Section C, paragraph 3.

8 And it says specifically that "You have to achieve a
9 minimum average slip resistance of .5 when measured
10 with an English XL tribometer or equivalent tester on a
11 wetted surface."

12 Q. Why is that applicable to this case here?
13 When I hear OSHA, I think of worker safety standards.

14 A. Well, it's another standard that's talking
15 about pedestrian safety. I mean, you think that a
16 person at a job has a greater right to safety than a
17 guest at a hotel?

18 Q. It probably was a poor question. I mean,
19 why do you believe OSHA applies to an owner building a
20 casino -- well, not building a casino, but after the
21 construction is complete, why is OSHA applicable to
22 anything?

23 A. It's not directly applicable. It's a
24 standard for occupational safety and health, but it's a
25 standard that's out there that says specifically --

1 where your expert says there is no standard, that says
2 wet testing or .5. It says exactly that. He's not
3 aware of what standards are out there.

4 You know, we can stick our heads in the
5 sand all we want and we can argue over .5. We can
6 argue over .6. We can argue over slip resistance.

7 I use the definition for slip resistant
8 that's accepted by ADA, by ANSI, by ASTM. And I know
9 as a pedestrian safety expert, who is thoroughly
10 involved in gait analysis, what is required to make a
11 safe walking surface.

12 It does us no good to measure a surface
13 dry and say this is a great surface when it's going to
14 be wet sometimes and it's not so great then.

15 Q. I understand your opinion and I understand
16 your testimony. The only thing -- you keep saying
17 "required," and I think we've established that those
18 are all accepted standards that are recommended by ANSI
19 and ADA.

20 A. When I say "required," it's what I know to
21 be the requirement to prevent people from slipping.

22 Q. I understand.

23 Okay. If you give me a moment, I just
24 want to look through the file.

25 And you said that your billings are not

1 included in here, correct?

2 A. No. I can provide those to you, though.

3 Q. What's your hourly rate for your work on
4 this case?

5 A. It's the same as every case. It's 250 an
6 hour and 350 an hour for testimony.

7 Q. Okay. And trial time?

8 A. It's 350 an hour.

9 Q. It's 350 also?

10 A. Well, the 350 an hour is specifically for
11 the amount of time I'm sitting on the stand. All the
12 rest, if I'm sitting in the hallway, it's 250.

13 Q. First of all, did you notice the plaintiff
14 to have any discernible gait as she opened the door and
15 before she actually slipped and fell?

16 A. Yeah. I read your medical doctor's
17 report, and I noticed something there.

18 Q. Did you factor that in in terms of
19 arriving at your opinions as to why she slipped and
20 fell?

21 A. No, because if you have a Trendelenberg
22 gait, you could likely have a greater traction demand,
23 and that's why the ADA standard wants to pump it up a
24 little bit. I'm not holding them to that. I'm only
25 holding them to .5.

1 Q. Did you observe what looked like to you to
2 be a Trendelen gait?

3 A. Trendelenberg?

4 Q. Yeah, sorry.

5 A. Maybe ever so slightly. What we have
6 is -- there's two types of gait analysis you can do.
7 There's observational gait analysis, and there's
8 scientific gait analysis.

9 Scientific gait analysis involves kinetics
10 and kinematics that are determined from a force plate
11 and motion capture systems, whereas observational gait
12 analysis is where you do nothing more than watch a
13 person walk.

14 Q. That's all you could do here, right?

15 A. Right. And we're kind of at a little bit
16 of a disadvantage in that observational gait analysis
17 should be done from directly behind a person, and
18 obviously you wouldn't want that person to be carrying
19 anything. She's got a bag in her -- or something in
20 her right hand.

21 But what I can see there is that if there
22 is a slight waddling, it's on the right side, and what
23 would that indicate is that when she's walking, when
24 she's in stance phase with her right leg, it looks like
25 her body leans ever so slightly to the right, and then

1 when she's in stance with the left, it returns to
2 vertical.

3 And what that would indicate is that she
4 has a deficiency in her hip abductors on her right
5 side.

6 Now, it's ever so slight because it's
7 almost imperceivable, and it could be caused by her
8 carrying that bag on the right side.

9 But in this case she fractured her left
10 hip. The left hip is the dominant hip, if you look at
11 the video. Her left hip is the good hip, prior to the
12 accident.

13 Q. What you observed relating to her right
14 hip or maybe related to the slight gait you observed,
15 was that a factor that caused her to slip?

16 A. It may have been. I don't know.

17 Q. You don't know. How about the fact that
18 she's holding -- I believe she's holding a drink, but
19 she's holding an item other than just having the purse
20 or the bag around her right shoulder. She's also got
21 an item in her right hand.

22 A. Well --

23 Q. Correct?

24 A. She's got a -- she had a drink in her left
25 hand.

1 Q. I apologize.

2 So you observe her to be holding a drink
3 in her left hand, and then she had a bag around her
4 right shoulder?

5 A. Okay. Just to straighten this up, I can
6 observe the bag on her right shoulder. I can't observe
7 anything in her left hand, but her deposition testimony
8 was such that she said she had a drink in her left
9 hand.

10 Q. Would the fact that someone was carrying a
11 drink in a hand contribute to or increase the
12 likelihood that they would slip and fall?

13 A. To my knowledge, there's been no studies
14 done that indicate whether carrying a drink has any
15 effect one way or another. I would think not.

16 The bag, it would depend on how heavy it
17 is and a lot of other factors.

18 Q. So there's been no studies done on whether
19 someone holding a drink is more or less likely to lose
20 their balance?

21 A. Yeah, I would say that it would make no
22 difference.

23 Q. Tell me, because you're an expert and I'm
24 just as a layperson, it seems to me sometimes people
25 try to avoid spilling a drink, and they might slip and

1 fall because they try to avoid spilling a drink. Is
2 that something that's completely an unreasonable
3 assumption?

4 MR. ZIMMERMAN: And might slip and fall on
5 vomit? Incomplete hypothetical.

6 THE WITNESS: In this case we know that
7 she slipped on vomit. I don't think a person would be
8 too concerned about their drink unless they're on
9 unsure footing.

10 I think if you have good traction
11 underneath and you're walking in a normal manner, I
12 think that your drink is probably pretty safe and so
13 are you.

14 BY MR. McGRATH:

15 Q. But for someone who steps on a floor
16 surface that's wet if they're holding a drink in one
17 hand, in your opinion, does that make it more or less
18 likely that they're going to fall?

19 A. It would be my opinion, just based on the
20 things I know, that it probably wouldn't make any
21 difference because you're most likely going to drop
22 that drink once you begin to slip and fall.

23 Q. And we at least have established that you
24 think or believe that her left hip was her good hip
25 before the incident.

1 A. Oh, clearly.

2 Q. Did she slip on her right foot or her left
3 foot, if you could tell?

4 A. Her left foot slipped.

5 Q. And you didn't observe her right foot to
6 slip on anything?

7 A. No. It was during stance phase with her
8 left foot that the slip occurred.

9 Q. And describe for me how she fell in terms
10 of the mechanics, what you observed.

11 A. It's very hard to see exactly what
12 happened, but from watching her walk and when she began
13 to fall, it is evident to me that it occurred when the
14 left foot was in stance, and it looked as if she fell
15 to her left onto her left hip.

16 Q. When you say left foot was in stance, does
17 that mean her left leg is extended straight?

18 A. No. It's on the ground and her right foot
19 is in swing, was in the swing phase.

20 Q. I think that's all I have. I want to
21 thank you for coming here today.

22 A. Okay.

23 Q. It looks like we went an hour and 35
24 minutes, so could you give me, so we have it on the
25 record, your tax ID number, if you have it handy?

1 A. Sure. I know it. It's 86-0884947.

2 Q. Thank you again. It's Dr. Elliot?

3 A. It's just David.

4 Q. Thank you for being here today.

5 MR. GOLDMAN: The plaintiff reserves the
6 right to have Mr. Elliot review his deposition
7 transcript and make any changes he desires to make.

8 BY MR. McGRATH:

9 Q. I'd just ask before we go off the record
10 again that you maintain this file and that if you add
11 anything to it, you indicate to counsel so that we know
12 if there's anything else put into the file.

13 A. Okay.

14 MR. ZIMMERMAN: Are you going to give us a
15 copy of that --

16 MR. GOLDMAN: Are we off the record? Are
17 you done?

18 MR. McGRATH: Yes.

19 THE COURT REPORTER: Do you want a copy?

20 MR. GOLDMAN: No.

21 (Deposition Exhibit 41 marked.)

22 (Whereupon the deposition
23 was concluded at 1:35 p.m.)
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DEPOSITION CORRECTION SHEET

PAGE	LINE	CHANGE FROM	TO	REASON
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DEPONENT'S SIGNATURE:

STATE OF COUNTY OF

Subscribed and sworn to before me this day
of , 2009.

NOTARY PUBLIC



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CERTIFICATE OF DEPONENT

I, DAVID ALLEN ELLIOTT, P.E., deponent herein,
do hereby certify and declare the within and foregoing
transcription to be my deposition in said action; that
I have read, corrected, and do hereby affix my
signature to said deposition.

DAVID ALLEN ELLIOTT, P.E.

Subscribed and sworn to before me this
day of , 2009.

Notary Public