

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court No. _____
District Court Case No. A-18-772761-C

Electronically Filed
Mar 17 2020 01:46 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

VENETIAN CASINO RESORT, LLC, a Nevada limited liability company,
LAS VEGAS SANDS, LLC, a Nevada limited liability company,
Petitioners,

v.

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

EMERGENCY PETITION UNDER NRAP 27(e)

PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS
AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e)

ACTION IS NEEDED BY MARCH 30, 2020 BEFORE PETITIONER IS
REQUIRED TO DISCLOSE THE CONFIDENTIAL INFORMATION

ALTERNATIVE EMERGENCY MOTION TO STAY UNDER NRAP RULES 8
AND 27(e) IS BEING FILED CONCURRENTLY WITH THIS PETITION

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NRAP 26.1 DISCLOSURE

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

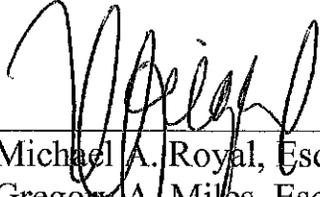
VENETIAN CASINO RESORT, LLC, Nevada limited liability company licensed to do business in the State of Nevada, active since 1997, doing business as the Venetian Resort Hotel Casino.

LAS VEGAS SANDS, LLC, Nevada limited liability company licensed to do business in the State of Nevada since 2005.

VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC (“Petitioners”) are represented in the District Court and in this Court by Michael A. Royal, Esq., and Gregory A. Miles, Esq., of the law firm of Royal & Miles LLP.

DATED this 11 day of March, 2020.

ROYAL & MILES LLP

By: 

Michael A. Royal, Esq. (SBN 4370)
Gregory A. Miles, Esq. (SBN 4336)
1522 W. Warm Springs Rd.
Henderson, NV 89014
(702) 471-6777
Counsel for Petitioners

ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals to hear and decide pursuant to NRAP Rule 17(b). NRAP Rule 17(b)(13) provides the Court of Appeals is presumptively assigned to hear and decide: “Pretrial writ proceedings challenging discovery orders” The instant writ petition challenges a discovery order denying Petitioners request to protect the information of non-litigant individuals from disclosure. This statement is made pursuant to NRAP, Rule 28(a)(5).

NOTICE OF RELATED PROCEEDING

The issues raised in this Petition for Writ of Mandamus and/or Writ of Prohibition arise from a March 13, 2020 discovery order issued in District Court Case No. A-18-772761-C. There is currently pending a writ proceeding in the Court of Appeals of the State of Nevada, Case Number 79689-COA arising from a July 31, 2019 discovery order issued in the same District Court case involving substantively identical issues.

NRAP 27(E) CERTIFICATE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

1. I am an attorney licensed to practice in the State of Nevada and am an attorney at the law firm of Royal & Miles LLP, Attorneys for Petitioners VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, in support of this PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e).

CONTACT INFORMATION FOR ATTORNEYS FOR THE PARTIES

2. The telephone numbers and office addresses of the attorneys for the Real Party in Interest are listed as follows:

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Geordan G. Logan, Esq.
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4101 Meadows Lane, Suite 100
Las Vegas, NV 89107
(702) 333-7777

NOTICE TO THE PARTIES

3. Counsel for Real Party In Interest, Joyce Sekera (hereinafter “Sekera”), was served with this Petition via electronic service as identified on the

proof of service in this document. Prior to filing this Petition and Motion my office contacted, by telephone, the clerk of the Supreme Court, the Clerk of the Eight Judicial District Court of the State of Nevada, and Real Party in Interest's attorney to notify them that Petitioners were filing the instant Petitioners' Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP, Rules 21(A)(6) And 27(E).

FACTS SHOWING EXISTENCE AND NATURE OF EMERGENCY

4. Petitioners will be required to divulge confidential information of non-party litigants immediately, if this Court does not take action. Concurrently with this Petition, Petitioner is filing an Emergency Motion for Stay pursuant to Rules 8 and 27(e). If this Court grants that motion, then this Petition may be considered on a non-emergency basis.

5. The facts showing the existence and nature of Petitioners' emergency are as follows: There is presently a writ pending before the Court of Appeals of the State of Nevada, Case Number 79689-COA, addressing an order by the District Court of July 31, 2019 that Venetian produce unredacted prior incident reports from November 4, 2013 to November 4, 2016 to the Plaintiff in the course of discovery without any requested protection under NRCP, Rule 26(c). An Order Directing Answer and Imposing Temporary Stay was filed by the Court of Appeals on October 1, 2019, which provided Petitioners with requested relief from the July

31, 2019 discovery order until the issue is adjudicated by the appellate court. An order granting the stay pending review of the petition was filed on October 17, 2019.

6. Following the entry of the above-referenced orders, the District Court considered a new and different motion regarding the same type of records for a different period of time. During a hearing before the District Court on January 21, 2020, District Court Judge Kathleen Delaney ordered that Petitioners must produce unredacted records of prior guest incidents from November 4, 2011 to November 4, 2013, without requested protections under NRCP, Rule 26(c). This order addresses the very same issue presently before the Nevada Court of Appeals on the earlier writ. Given that this was the same issue, Petitioners, in open court, requested the District Court to stay the production pending adjudication by the Nevada Court of Appeals on the prior writ petition. This request was denied.

7. An order was entered on March 13, 2020 directing Venetian to produce unredacted reports of other incidents involving Venetian guests from November 4, 2011 to November 4, 2013 without providing requested protection under NRCP, Rule 26(c). In denying Petitioners' request for a stay, Judge Delaney suggested at the January 21, 2020 hearing that Petitioners may file a second writ of mandamus and/or writ of prohibition and obtain a stay from the appellate court. Therefore, immediate action is required to prevent Venetian and its guests from

suffering irreparable harm. Inasmuch as this petition address the identical issues being reviewed by the Court of Appeals of the State of Nevada, Case Number 79689-COA; Petitioners move to have this writ consolidated therewith.

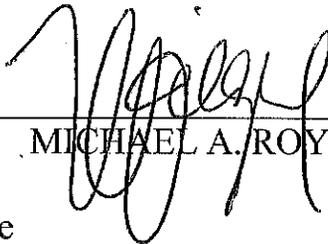
8. The relief sought in the Writ Petition is not available by the District Court. Petitioners moved to stay the March 13, 2020 order during the January 21, 2020 hearing. The District Court denied the Motion for Stay and indicated that relief would need to be obtained from the appellate court pursuant to NRAP 8. It is imperative this matter be heard at the Court's earliest possible convenience.

9. I certify that I have read this petition and, to the best of my knowledge, information and belief, this Petition complies with the form requirements of Rule 21(d) and is not frivolous or interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

10. I further certify that this brief complies with all Nevada Rules of Appellate Procedure, including the requirements of Rule 28(e) every assertion in the brief regarding matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand I may be subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

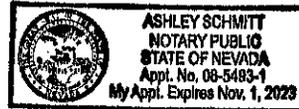
11. I have discussed the PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS with my Client, and have obtained authorization to file this Writ Petition.

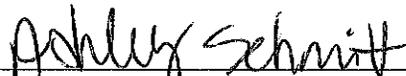
Further affiant sayeth naught.



MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before me by Michael A. Royal, Esq., on this 17 day of March, 2020.





NOTARY PUBLIC in and for said County and State

**AFFIDAVIT OF MICHAEL A. ROYAL, ESQ. IN SUPPORT OF
PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS
AND/OR WRIT OF PROHIBITION PURSUANT TO NRAP, RULE 21(a)(5)**

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

1. I am an attorney licensed to practice in the State of Nevada and am an attorney at the law firm of Royal & Miles LLP, Attorneys for Petitioners VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, in support of this PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e).

2. Petitioners will be required to divulge confidential information of non-party litigants immediately, if this Court does not take action. Concurrently with this Petition, Petitioner is filing an Emergency Motion for Stay pursuant to Rules 8 and 27(e). If this Court grants that motion, then this Petition may be considered on a non-emergency basis.

3. The facts showing the need for extraordinary writ relief are as follows: There is presently a writ pending before the Court of Appeals of the State of Nevada, Case Number 79689-COA, addressing an order by the District Court of July 31, 2019 that Venetian produce unredacted prior incident reports from November 4, 2013 to November 4, 2016 to the Plaintiff in the course of discovery without any requested protection under NRCP, Rule 26(c). An Order Directing

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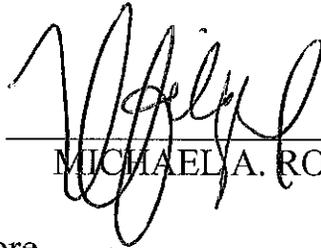
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9. I have discussed the PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS with my Client, and have obtained authorization to file this Writ Petition.

10. I declare under penalty of perjury that the above and foregoing is true and accurate. Executed on this 17th day of March, 2020 in Henderson, Nevada.

Further affiant sayeth naught.



MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before me by Michael A. Royal, Esq., on this 17 day of March, 2020.



NOTARY PUBLIC in and for said County and State

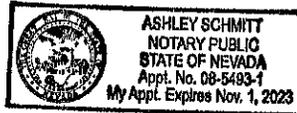


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PETITION

COMES NOW, Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC (“Petitioners”), by and through their counsel of record, ROYAL & MILES LLP, and hereby petition this Court for a Writ of Prohibition and/or Mandamus under NRAP Rule 21(a) ordering the Eighth Judicial District Court to vacate the March 13, 2020 order compelling Petitioners to produce unredacted reports of other incidents occurring on the property of the Venetian Resort Hotel Casino (“Venetian”).

Petitioners further request that this relief be granted pursuant to NRAP, Rules 27(e) and 21(a)(6). This matter involves the compelled disclosure of non-litigants private personal information and if the emergency relief is not granted irreparable harm will result.

Alternatively, Petitioners are filing concurrently with this Petition, a motion to stay the underlying proceedings pursuant to NRAP Rules 8(a) and 27(e). This motion requests a stay of the March 13, 2020 order. If this Court grants that motion then this writ petition may be considered on a non-emergency basis.

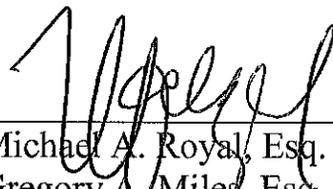
Pursuant to NRAP Rule 17(b)(13) this writ petition challenges a discovery order and should presumptively be assigned to the Court of Appeals.

This Petition is based on the following Memorandum of Points and Authorities, the Appendix of record and such oral arguments as presented to this Honorable Court.

DATED this 17 day of March, 2020.

ROYAL & MILES LLP

By: _____


Michael A. Royal, Esq. (SBN 4370)
Gregory A. Miles, Esq. (SBN 4336)
1522 W. Warm Springs Rd.
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Counsel for Petitioners

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF CASE

A. SUMMARY

This case arises from an alleged slip and fall at the Venetian that occurred on November 4, 2016, involving JOYCE SEKERA (“Sekera”). More specifically, Sekera alleges that as she was walking through the Grand Lux rotunda area of the Venetian property, she slipped on water and fell, resulting in bodily injuries.

In the course of discovery, Sekera requested that Petitioners produce incident reports related to other slip and falls at the Venetian. The first such request sought reports from November 4, 2013 to November 4, 2016. Petitioners produced reports responsive to this request with the private information of other customers redacted. These redactions were challenged in the District Court and resulted in a July 31, 2019, order requiring Petitioners to disclose the confidential information of these customers. The propriety of the July 31, 2019, order is currently being reviewed by the Court of Appeals of the State of Nevada in writ proceeding Case Number 79689-COA.

The current writ petition arises from a subsequent discovery request by Sekera in which she sought additional incident reports from 1999 to the present. This discovery request was also challenged in the District Court and resulted in a March 13, 2020 Order requiring petitioners to produce additional incident reports from November 4, 2011 to November 4, 2013. Despite the pending writ petition

on the confidential information issue, the Eighth Judicial District Court again ordered Petitioners to produce the incident reports without redacting consumer's confidential information.

The only difference between the order at issue in the instant petition and the order at issue in the prior writ petition is the timeframe of the records.

Accordingly, as both petitions deal with the exact same issue and seek the exact same relief, Petitioners will seek to consolidate this proceeding with the prior writ proceeding.

B. PROCEDURAL HISTORY

The discovery request at issue in writ proceeding number 79689-COA sought incident reports related to slip and falls from November 4, 2013 to the present. Petitioners responded by producing sixty-four (64) redacted prior incident reports from November 4, 2013 to November 4, 2016. Sekera objected to the production of redacted reports. So, on February 1, 2019, Petitioners filed a motion for protective order pursuant to NRCP, Rule 26(c) with the Discovery Commissioner. Following a hearing on March 13, 2019, the Discovery Commissioner issued a Report and Recommendation granting Petitioners' motion for protective order noting the need to protect the privacy interests of the uninvolved third-parties and potential HIPAA related information. Sekera filed an objection to the Discovery Commissioner's Report and Recommendation on April

4, 2019, which was heard by the Honorable Kathleen Delaney on May 14, 2019. Judge Delaney reversed the Discovery Commissioner and ordered Petitioners to produce prior incident reports in unredacted form without any restrictions related to dissemination of private guest information. The order reversing the Discovery Commissioner's Report and Recommendation of April 4, 2019 was filed on July 31, 2019.

Petitioners filed a petition for writ of mandamus and/or writ of prohibition with the Nevada Supreme Court on September 26, 2019 and a motion to stay the July 31, 2019 order on September 27, 2019. That writ proceeding is presently pending before the Court of Appeals of the State of Nevada, Case No. 79689-COA. On October 17, 2019, the Court of Appeal issued an order staying the July 31, 2019 District Court order until the issue could be fully adjudicated.

Subsequent to the discovery request at issue in case number 79689-COA, Sekera requested that Petitioners produce records of incident reports from 1999 to the present, which matter was brought before the Discovery Commissioner on September 18, 2019. In a December 2, 2019 Report and Recommendation, the Discovery Commissioner ordered that Petitioners must produce records from November 4, 2011 to the present, among other things. Both parties filed objections, which were heard by Judge Delaney on January 21, 2020.

Judge Delaney ordered that the Discovery Commissioner's Report and Recommendation would be reversed as follows: Petitioners are to produce only prior incident reports occurring in the area of Sekera's fall, known as the Grand Lux Rotunda, limited to the time period of November 4, 2011 to November 4, 2016. Judge Delaney also ordered that production of prior incident reports not yet produced, from November 4, 2011 to November 4, 2013, be in unredacted form without requested protections under NRCPP, Rule 26(c). Petitioners reminded Judge Delaney that the issue of privacy related to this very kind of production is presently before the Nevada Court of Appeals and, therefore, moved the District Court to stay the order of unredacted/unprotected production until the issue is resolved by the Nevada Court of Appeals. Judge Delaney denied Petitioners' motion to stay, requiring them to file this second petition with the higher court for relief.

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Judge Delany's order was entered March 13, 2020. Pursuant to that order Petitioners will again be required to produce unredacted incident reports involving other Venetian guests, including those guests' names, addresses, telephone numbers, dates of birth, social security numbers, and driver's license/identification card numbers. Under this order, Sekera again has no restrictions whatsoever on how the private information of Venetian guests will be used and shared.

Concurrently with this writ petition Petitioner is filing an emergency motion to stay the March 13, 2020 Order. If this Court grants that motion, then this writ may be considered on a non-emergency basis.

Petitioners will also be filing a motion seeking to consolidate this writ proceeding with case number 79689-COA.

III. ISSUES PRESENTED

Whether the District Court erred, as a matter of law, in denying Petitioners' motion for a protective order under NRCP, Rule 26(c) related to the privacy of guest information within other incident reports having nothing to do with the subject incident, failing to weigh the issues of relevance and proportionality required under NRCP, Rule 26(b)(1) in refusing to provide protection of personal information of guests involved in other incidents on Venetian property.

IV. STANDARD OF REVIEW

A. STANDARDS FOR WRIT REVIEW AND RELIEF

The Nevada Supreme Court has original jurisdiction to issue writs of prohibition and mandamus. (Nev. Const. Art. 6, § 4.) Mandamus is available to compel performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion. (*Ivey v. Dist. Ct.*, 299 P.3d 354 (2013). See also NRS § 34.160.)

"[W]here an important issue of law needs clarification and public policy is served

by this court's invocation of its original jurisdiction, our consideration of a petition for extraordinary relief may be justified." (*Mineral County v. State, Dep't of Conserv.*, 117 Nev. 235, 243, 20 P.3d 800, 805 (2001) (internal citations omitted).)

Writ relief is warranted where the Petitioners do not have a plain, speedy, and adequate remedy at law. (*Millen v. District Court*, 122 Nev. 1245, 1250-1251 (2006).) Special factors favoring writ relief include status of underlying pleadings, types of issues raised by the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented. (*D.R. Horton v. District Court*, 123 Nev. 468, 474-75 (2007).) An appellate court generally will address only legal issues presented in a writ petition. (See *Poulos v. Eighth Jud. Dist. Ct.*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).) "[T]he standard" in the determination of whether to entertain a writ petition is "[t]he interests of judicial economy." (*Smith v. Eighth Jud. Dist. Ct.*, 113 Nev. 1343, 1355, 950 P.2d 280, 281 (1997).) When the parties raise only legal issues on appeal from a district court order, the Court reviews the matter de novo. (*St. James Village, Inc. v. Cunningham*, 125 Nev. 211, 216 (2009).)

Petitioners contend that if they are forced to reveal private information of guests involved in other Venetian incidents without requested protections, "the assertedly [private and confidential] information would irretrievably lose its [private and confidential] quality and petitioners would have no effective remedy,

even later by appeal.” (See, *Wardleigh v. Second Judicial Dist. Court*, 111 Nev. 345, 350, 891 P.2d 1180, 1183-84 (1995).) Guests involved in other incidents, who are adversely impacted by the present district court order, are not parties to the district court proceedings, and are themselves not aggrieved parties within the meaning of NRAP 3A(a) rendering this the only forum for which relief can be granted. (*Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 358 P.3d 228, 231 (Nev. 2015).) In addition, the Supreme Court of Nevada and/or the Court of Appeals of Nevada are the proper forum to assess whether Petitioners are entitled to the relief being sought. Therefore, Petitioners seek to protect the privacy rights of Venetian guests wholly unaffiliated with the present litigation.

Petitioners moved for a stay of execution in district court, which was denied. Due to the exigent circumstances, and the potential violation of NRS § 34.320, where privacy rights for hundreds of individuals wholly unconnected to the subject litigation are at issue, this Emergency Petition is being filed with this Court pursuant to NRAP Rules 21(a)(6) and 27(e) asking this Court to grant the relief requested in less than 14 days. Alternatively, Petitioners herein move for an immediate stay pursuant to NRAP 8(a) so that the ordered discovery can be withheld until this Court can review the legal issues at hand in a non-emergency writ proceeding. Petitioners have no other available avenue for relief. This is a matter of great importance to Petitioners not only as to this litigation, but as to all

future litigation, as there are presently no restrictions placed on Sekera regarding what she is allowed to do with the personal information ordered produced.

Accordingly, without immediate relief or a stay, once Petitioners comply with the order by providing unredacted incident reports of unrelated matters to Sekera without any restrictions, there is no reasonable means of repairing the damage associated with Sekera's stated intent to distribute the information.

B. THIS PETITION PRESENTS EXTRAORDINARY CIRCUMSTANCES CALLING FOR EXTRAORDINARY RELIEF

The subject litigation arises from a slip and fall incident allegedly occurring due to a foreign substance on the Venetian marble floor on November 4, 2016. Petitioners argue that these prior incident reports have only marginal relevance to the case in light of prevailing Nevada law. (*See, Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962) ["where a slip and fall is caused by the temporary presence of debris or foreign substance on a surface, which is not shown to be continuing, it is error to receive "notice evidence" of the type here involved for the purpose of establishing the defendant's duty"]). Given the questionable relevance of this discovery, Petitioners contend there is no need for the discovery to include personal information on non-litigants. On the other hand, the irreparable damages of providing this unredacted information to Sekera without any of the requested protections under NRCP 26(c), where Sekera has acknowledged an

intent to share the information with persons outside the litigation, will cause irreparable harm to the identified individuals and Petitioner. Therefore Petitioners argue that it is clearly erroneous to require the production of this private guest information.

Absent intervention by this Court, Petitioners, and others similarly situated will suffer irreparable harm. In issuing its Order, the District Court created an avenue through which plaintiffs, in all premises liability negligence claims, can obtain reports of other unrelated incidents in unredacted form and not only use them for purposes of the pending litigation, but to circulate them widely without restriction, thereby subjecting the private information of non-party former guests to abuse.

This case is set to commence trial on October 5, 2020. This Petition for Writ contains an important issue of law that has already occurred once, and will certainly reoccur absent immediate direction from this Court. While Judge Delaney's rulings in this case are not controlling authority in other cases, it is common practice within the Eighth Judicial District Court for an attorney to attach rulings from other judges to motions as persuasive authority.

A substantial risk exists that Judge Delaney's ruling will be adopted by other judges in the Eighth Judicial District Court, and will result in an increase in cases in which plaintiffs seek unredacted other incident reports in similar cases without

any privacy consideration or protection. Moreover, deciding this issue on Writ will promote judicial economy, as it will avert the expenditure of increased time associated with Sekera (and like plaintiffs) repeatedly contacting potentially hundreds of non-parties involved in matters wholly unaffiliated with the subject litigation to engage in a prolonged fishing expedition to obtain information not admissible at trial.

This Honorable Court has previously determined that the privacy issue presently before it regarding the production of prior incident reports is worthy of a stay (see Court of Appeals of the State of Nevada, case no. 79689-COA, Order of October 17, 2019). Now, Petitioners are in the identical position of having to produce two more years of prior incident reports in unredacted form without requested protection under NRCPC, Rule 26(c). Petitioners respectfully submit that an immediate ruling overturning the March 13, 2020 order is necessary as they and their guests will suffer irreparable harm once this information is disclosed to Sekera.

Alternatively, Petitioners have concurrently filed a Motion for Stay of the March 13, 2020 order. If this honorable Court grants that motion for a stay, then this petition may be considered on a non-emergency basis.

V. RELEVANT FACTS

This litigation arises from a slip and fall allegedly occurring from a foreign substance on the floor on November 4, 2016. The underlying case was filed on April 12, 2018 by Sekera, who alleged that on November 4, 2016 at approximately 1:00 pm, “Petitioners negligently and carelessly permitted a pedestrian walkway to be unreasonably dangerous in that they allowed liquid on the floor causing the Sekera to slip and fall.”¹ Sekera related to Venetian security personnel at the scene following the incident that “she was walking through the area when she slipped in what she believed was water on the floor.”²

Sekera worked at a kiosk located in the Grand Canal Shops within the Venetian premises for nearly a year prior to the subject incident and testified in deposition that she walked through the subject fall area (“Grand Lux rotunda”) hundreds of times prior to the subject fall without incident.³ Sekera asserts that the condition which made the marble floors unsafe, causing her to slip and fall, was

¹ Appendix, Vol. 1, Tab 1, VEN 001-04, *Complaint* (filed April 12, 2018) at VEN 002, ln 25-28.

² Appendix, Vol. 1, Tab 2, VEN 005-06, *Venetian Security Narrative Report, No. 1611V-0680* (November 4, 2016); Appendix Vol 1, Tab 3, VEN 007, *Acknowledgment of First Aid Assistance & Advice to Seek Medical Care, No. 1611V-0680*; Appendix Vol 1, Tab 4, VEN 008-014, *Venetian Security Scene Photos*.

³ Appendix, Vol. 1, Tab 5, VEN 015-32, *Transcript of Joyce Sekera Deposition* (taken March 14, 2019) at VEN 021-025.

the presence of a liquid substance.⁴ On June 28, 2019, Sekera filed a First Amended Complaint after receiving leave of court to include a claim for punitive damages.⁵ In the First Amended Complaint, Plaintiff specifically alleged: “On or about November 4, 2016 at approximately 1:00 p.m. Defendants negligently and carelessly permitted a pedestrian walkway to be unreasonably dangerous in that they allowed liquid on the floor causing the Plaintiff to slip and fall.”⁶

VI. RELEVANT PROCEDURAL HISTORY

As set forth in Petitioners’ prior petition filed in case number 79689-COA, Sekera requested that Petitioners produce incident reports related to slip and falls on the Venetian marble floors from November 4, 2013 to the present.⁷ Petitioners responded by producing sixty-four (64) incident reports related to events from November 4, 2013 to November 4, 2016, redacting the names, addresses, phone numbers, dates of birth and other personal information of the individuals identified in the reports.⁸ When Sekera objected to the redactions, Petitioners filed

⁴ *Id.* at VEN 018, ln 13-25; VEN 019, ln 1-4; VEN 026, ln 23; VEN 030, ln 10-25; VEN 031, ln 1-20.

⁵ Appendix, Vol. 1, Tab 6, VEN 033-037, *First Amended Complaint* (filed June 28, 2019).

⁶ *Id.* at VEN 035, ln 4-7.

⁷ Appendix, Vol. 1, Tab 7, , VEN 038-041, *Plaintiff’s Request for Production of Documents and Materials to Defendant* (served August 16, 2018) at VEN 040, Request No. 7

⁸ Appendix, Vol. 1, Tab 8, VEN 042-053, *Fifth Supplement to Defendants’ 16.1 List of Witnesses and Production of Documents For Early Case Conference* (served January 4, 2019) at VEN 045, ln 9. .

Defendants' Motion for Protective Order with the Discovery Commissioner, seeking an order protecting the personal information of prior guests.⁹ The Discovery Commissioner granted Petitioners' motion for protective order.¹⁰

Sekera filed an objection to the April 4, 2019 Discovery Commissioner's Report and Recommendation, which was heard by the district judge on May 14, 2019. The district judge reversed the Discovery Commissioner's Report and Recommendation.¹¹ In a July 31, 2019, order Judge Delany ordered Petitioners to produce the subject reports unredacted.¹² Petitioners then filed a motion for reconsideration, which was denied at the September 17, 2019 hearing.¹³

Petitioners filed a petition for writ of mandamus and/or writ of prohibition with the Nevada Supreme Court on September 26, 2019, and it was assigned for adjudication by the Nevada Court of Appeals.¹⁴ A stay was ordered by the Nevada Court of Appeals on October 17, 2019.¹⁵ The exact same issue has been fully

⁹ Appendix, Vol. 1, Tab 9, VEN 054-083, *Defendants' Motion for Protective Order* (filed February 1, 2019).

¹⁰ Appendix, Vol. 1, Tab 14, VEN 201-06, *Discovery Commissioner's Report and Recommendation* (filed April 4, 2019), VEN 201-206.

¹¹ Appendix, Vol. 2, Tab 15, VEN 207-66, *Transcript of Hearing on Objection to Discovery Commissioner's Report* (May 14, 2019).

¹² Appendix, Vol. 2, Tab 16, VEN 267-70, *Order* (filed July 31, 2019).

¹³ Appendix, Vol. 3, Tab 20, VEN 456-83.

¹⁴ Appendix, Vol 5, Tab 27, VEN 518-32; Tab 28, VEN 533-37; Tab 29, VEN 538-606; Tab 30. *See also* Court of Appeals of the State of Nevada, case no. 79689-COA.

¹⁵ Appendix, Vol 5, Tab 31, VEN 626-27; Tab 36, VEN 711-12. *See also* Court of Appeals of the State of Nevada, case no. 79689-COA.

briefed by the same parties herein and is presently pending before the Nevada Court of Appeals.¹⁶

Following the discovery at issue in case number 79689-COA Sekera served Petitioners with a further request for production seeking incident reports from 1999 to the present. Petitioners filed a motion for protective order that was heard on September 18, 2019. During a hearing on September 18, 2019, the Discovery Commissioner, based on Judge Delaney's prior rulings, ordered that Petitioners to produce unredacted incident reports from November 4, 2011 to the present (which includes nearly three years of post-incident information).¹⁷ Both parties timely filed Objections to the Discovery Commissioner's Report and Recommendation, filed December 2, 2019 and responses thereto, with a hearing set for January 21, 2020 before the District Court.¹⁸

¹⁶ Appendix, Vol 5, Tab 29, VEN 538-606; Tab 34, VEN 649-701; Tab 35, VEN 702-10. *See also* Court of Appeals of the State of Nevada, case no. 79689-COA.

¹⁷ See Appendix, Vol. 3, Tab 21, VEN 484-85 (*Court Minutes, Discovery Commissioner* (September 18, 2019), indicating production of unredacted incident reports for the five years preceding and the three years after the subject incident); *see also* Appendix, Vol 6, Tab 38, VEN 750-936; Tab 39, VEN 937; Tab 40, VEN 938-88; Vol 7, Tab 40, VEN 989-1005; Tab 41, VEN 1006; Tab 42, VEN 1007-1228; Vol 8, Tab 42, VEN 1229-1476; Vol 9, Tab 42, VEN 1477-86; Tab 43, VEN 1487-1719; Vol 10, Tab 44, VEN 1720-1896; Tab 45, VEN 1897-1917; Tab 46, VEN 1918-21; Tab 47, VEN 1922-64.; Vol 11, Tab 48, VEN 1965-75.

¹⁸ Appendix, Vol 11, Tab 49, VEN 1976-2204; Vol 12, Tab 49, VEN 2205-22; Tab 50, VEN 2223-2391; Tab 51, VEN 2392-2444; Vol 13, Tab 51, VEN 2445-2595; Tab 52, VEN 2596-2602; Tab 53, Vol 2603-15.

At the January 21, 2020 hearing, Judge Delaney again ordered that Petitioners must produce unredacted copies of prior incident reports – this time for the time period of November 4, 2011 to November 4, 2013.¹⁹ The following exchange occurred during the January 21, 2020 hearing:

[MR. ROYAL]: The only thing I would add is, as relates to the two years beyond the five years, can I just suggest that they be -- or we can produce those timely to counsel, if they can be produced in redacted form with a protective order, at least temporarily until we get some kind of a ruling from the Court of Appeals?

THE COURT: The way it's going to go is, the time frame that was decided by the Discovery Commissioner, which as I understand it was from the incident, five years prior, but not the time frame forward. And it's unredacted is how the Court ordered the stuff to go before, and it's I guess you used the term unprotected, it's also that.²⁰

Petitioners moved the District Court to order that the production of these additional years of prior incident reports be in redacted form with protections afforded under NRCP Rule 26(c):

MR. ROYAL: . . . Could we just redact them and produce them as they were previously if that's our stipulation? That way I won't have to ask the Court for a stay and file something –

¹⁹ Appendix, Vol. 13, Tab 54, *Reporter's Transcript of Proceedings on Hearing of January 21, 2020*, VEN 2617-60, Tab 55 at VEN 2646:1-17; 2649:22-25; 2650:1-4,14-25; 2651:1-25; 2652:1-3; Tab 56, *Order On Objections to the Discovery Commissioner's Report and Recommendation Dated December 2, 2019* (filed March 13, 2020), VEN 2661-64. (Note that the issue of case no. 79689-COA, Nevada Court of Appeals, relates to the production of prior incident reports for time period of November 4, 2013 to November 4, 2016.)

²⁰ Appendix, Vol. 13, Tab 55 at VEN 2646:1-15.

THE COURT: No. I understand why you want to redact them, but that is not the ruling in the case, and until the Court of Appeals Court says so, it's not the ruling in the case, and if that's what they say, that's what they say, I'll live with that, but they need to get it, this case needs to move forward.²¹

The District Court denied Petitioners' request, inviting them to file a separate writ with this Honorable Court and again seeking protection under NRAP, Rule 8.²² Accordingly, Petitioners respectfully submit that they have presented sufficient cause for requested relief from the March 13, 2020 order as set forth herein in emergency fashion.²³

VII. LEGAL ARGUMENT

A. WHETHER THE DISTRICT COURT ERRED AS A MATTER OF LAW IN ORDERING PETITIONERS TO PRODUCE UNREDACTED OTHER INCIDENT REPORTS WITHOUT REQUESTED PROTECTIONS PURSUANT TO NRCP, RULE 26(C)

1. SEKERA DID NOT MEET HER BURDEN OF PROOF UNDER NRCP, RULE 26(B)(1) TO ESTABLISH THE NEED FOR UNREDACTED PRIOR INCIDENT REPORTS

This litigation arises from a slip and fall occurring from a temporary transitory condition on November 4, 2016 in the Venetian Grand Lux rotunda.²⁴

Although Sekera walked through the Grand Lux rotunda area hundreds of times

²¹ Appendix, Vol. 13, Tab 55 at VEN 2650:14-24; *see also id.* at VEN 2650:25; 2651:1-4; Tab 56, VEN 2661-64.

²² Appendix, Vol. 13, Tab 55 at VEN 2651:5-25; 2652:1-3; *see also* Tab 56 at VEN 2663-64.

²³ Appendix, Vol. 13, Tab 54 at VEN 2616; Tab 55 at VEN 2646:1-17; 2649:22-25; 2650:1-4,14-25; 2651:1-25; 2652:1-3; Tab 56 at VEN 2661-64.

²⁴ *See* Appendix, Vol. 1, Tabs 1-6, VEN 001-037, *generally*.

previously, on the day of the incident Sekera encountered a foreign substance for the first time, which caused her to slip and fall.²⁵

In *Eldorado Club, Inc.*, *supra*, 78 Nev. at 511, 377 P.2d at 176, the Nevada Supreme Court held that evidence of prior incident reports in cases involving the temporary presence of debris or foreign substances on a walking surface is not admissible for the purpose of establishing notice. Rule 26(b)(1), Nevada Rules of Civil Procedure, reads as follows:

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is **relevant** to any party's claims or defenses 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**. Information within this scope of discovery need not be admissible in evidence to be discoverable. (Emphasis added.)

Accordingly, Sekera has the burden of establishing that the production of unredacted prior incident reports is both **relevant** to issues surrounding the November 4, 2016 incident and that the production of this discovery is **proportional** to the needs of the case in light of five factors: 1) importance of

²⁵ See Appendix, Vol. 1, Tab 5, at VEN 021-025. See also Appendix, Vol. 1, Tabs 1-4, VEN 001-014, Tab 6, VEN 033-037, *generally*.

issues at stake; 2) amount in controversy; 3) parties' relative access to relevant information; 4) parties' resources; the importance of the discovery in resolving contested issues; and 5) the burden of proposed discovery vs. the likely benefit.

Sekera claims to have sustained injuries primarily to her neck and back. Her known treatment is approximately \$80,000, to date, thus far all conservative in nature nearly three (3) years post incident. Petitioners have produced evidence of other slip/fall incidents from a foreign substance occurring at Venetian occurring prior to Sekera's incident of November 4, 2016. The information for each such report identifies the date of incident, area of the incident, and the facts surrounding the incident. Sekera argued this information was insufficient and she needed the personal information of the guests involved in each incident. Her only purported need for obtaining this private information was to contact these people in the event Petitioners will present arguments at trial related to comparative fault.²⁶ Sekera provided no other reason for needing the non-litigant guests' private information. Sekera also argued she has an unqualified right to share the guests' private information with anyone she desires.²⁷

²⁶ See Appendix, Vol. 2, Tab 15, at VEN 214, ln 12-25; VEN 215, ln 1-14; VEN 222, ln 14-25; VEN 223, ln 1-11; VEN 234, ln 3-25; VEN 235, ln 1-18; Appendix, Vol. 3, Tab 20, at VEN 469, ln 16-25; VEN 470, ln 1-12.

²⁷ Appendix, Vol. 1, Tab 10, VEN 084-085, *Declaration of Peter Goldstein, Esq.* (dated February 13, 2019) at VEN 084, ln 21-25, indicating that the subject prior incident reports were produced to Mr. Goldstein by Sekera counsel on February 7, 2019; Tab 12, VEN 140-85, *Sekera's Reply to Defendant Venetian Casino Resort*,

Sekera's argument claiming there is no law restricting her use of confidential information is an inaccurate analysis of Nevada laws. Rule 26(b)(1), Nevada Rules of Civil Procedure, places restrictions on her ability to obtain this information. Sekera is required to show this information is relevant and that her need for this information outweighs the guests' need to protect their private information. Sekera utterly failed to make this showing in the District Court.

2. PERSONAL, PRIVATE INFORMATION OF GUESTS IN PRIOR INCIDENT REPORTS IS ENTITLED TO NRCP, RULE 26(c) PROTECTION

Pursuant to the March 13, 2020 Order, the District Court has provided Sekera with unfettered access to personal and sensitive information from non-parties to this action, which is not relevant to any claims or defenses in this matter.²⁸ She has already been provided with redacted prior incident reports from November 4, 2013 to November 4, 2016. Moreover, Petitioners are prepared to produce redacted versions of incident reports from November 4, 2011 to November 4, 2013. These records are sufficient to establish issues associated with notice.

The Nevada Supreme Court has found that writ relief is appropriate when a District Court's ruling exceeds the scope of NRCP, Rule 26(b)(1) and requires the

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), at VEN 141, ln 15-26, VEN 147, ln 12-13, VEN 173.

²⁸ Appendix, Vol 13, Tab 56, *Order On Objections to the Discovery Commissioner's Report and Recommendation Dated December 2, 2019* (filed March 13, 2020) at VEN 2661-64.

production of private information. (*Schlatter v. Eighth Judicial Dist. Court In and For Clark County*, 93 Nev. 189, 192, 561 P.2d 1342, 192-93 (1977).) While Petitioners have not found Nevada case law applying the rule to protecting the privacy rights of persons involved in other incidents, the United States District Court for the District of Nevada has dealt with this issue and found in favor of protecting the privacy rights of third parties by redacting personal information.

In *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694, the plaintiff, who slipped and fell on a clear liquid within a Las Vegas Wal Mart store on May 18, 2013, filed a motion to compel the defendant to produce evidence of prior claims and incidents for the three (3) years preceding the subject incident. The court evaluated the claim under the federal equivalent of NRCP, Rule 26(b)(1) and Nevada law as set forth in *Eldorado Club, Inc., supra* at 511, 377 P.2d at 176. In *Izzo*, the defense had previously produced a list of prior reported slip and falls. The plaintiff sought the incident reports including personal information of the other Wal Mart customers. The federal district court found that the burden on defendant and the privacy interests of the non-litigants outweighed the tangential relevance of the information to the issues in the lawsuit. (*Id.* at 4, 2016 U.S. Dist LEXIS at *11.) Similarly, in the instant matter, Sekera has shown no compelling reason under NRCP, Rule 26(b)(1) for the production of non-

litigant individual's private information. Accordingly, the District Court should have granted Petitioner's motion for a protective order.

In *Rowland v. Paris Las Vegas*, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502, the federal district court applying the federal equivalent of NRCPP, Rule 26(b)(1) found that third parties have a protected privacy interest in their identities, phone numbers and addresses. In *Rowland*, Plaintiff sued the defendant for injuries after slipping and falling on a recently polished tile floor. The plaintiff sought to compel the defendant to identify by name (with phone numbers and addresses) any person who had previously complained about the subject flooring. The court not only found the request to be overly broad, but also determined that it violated the privacy rights of the persons involved. It explained as follows:

Further, the Court finds that requiring disclosure of the addresses and telephone numbers of prior hotel guests would violate the privacy rights of third parties. "Federal courts ordinarily recognize a constitutionally-based right of privacy that can be raised in response to discovery requests." *Zuniga v. Western Apartments*, 2014 U.S. Dist. LEXIS 83135, at *8 (C.D. Cal. Mar. 25, 2014) (citing *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 191 (C.D. Cal. 2006)). However, this right is not absolute; rather, it is subject to a balancing test. *Stallworth v. Brollini*, 288 F.R.D. 439, 444 (N.D. Cal. 2012). "When the constitutional right of privacy is involved, 'the party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced.'" *Artis v. Deere & Co.*, 276 F.R.D. 348, 352 (N.D. Cal. 2011) (quoting *Wiegele v. Fedex Ground Package Sys.*, 2007

U.S. Dist. LEXIS 9444, at *2 (S.D. Cal. Feb. 8, 2007)).
"Compelled discovery within the realm of the right of privacy 'cannot be justified solely on the ground that it may lead to relevant information.'" *Id.* Here, Plaintiff has not addressed these privacy concerns, much less demonstrated that her need for the information outweighs the third party privacy interests. Therefore, the Court will not require Defendant to produce addresses or telephone numbers in response to Interrogatory No. 5.

(*Id.* at *7. Emphasis added.)

Based upon the foregoing it is clear that the non-litigant individuals have a protected privacy interest and Sekera has done nothing to demonstrate a "compelling need" to violate that protected interest. Given the Nevada Supreme Court's finding that prior incident information is irrelevant to establish notice in the facts at issue here before the Court (*i.e. Eldorado Club, Inc., supra*), Plaintiff necessarily cannot demonstrate a need outweighing the third party guests' privacy interest. Accordingly, the District Court's March 13, 2020 order once again denying Petitioner's request for a protective order is in error (especially under circumstances where the same issue related to the same kind of evidence is presently pending before the Nevada Court of Appeals as case no. 79689-COA).²⁹ (*See also, Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620-21, 2007 U.S. Dist. LEXIS 80017 at *16-17 ("the rights of third parties can be adequately protected by permitting defendant to redact the guest's complaints and staff incident reports to protect the guest's name and personal information, such as address, date of birth,

²⁹ Appendix, Vol 13, Tab 56, VEN 2661-64.

telephone number, and the like”); *Dowell v Griffin*, 275 F.R.D. 613, 620 (S.D. Cal. 2011) (ruling that the plaintiff was not entitled to identity, phone number, address, date of birth, social security number, or credit card number of unrelated third parties); *Shaw v. Experian Info. Sols., Inc.*, 306 F.R.D. 293, 299 (S.D. Cal. 2015) (redaction is appropriate to protect private information).)

The above cases support Petitioners' position in this case - that protection of sensitive personal information of anyone not a party to this suit should be redacted. Certainly, under *Eldorado Club, Inc., supra*, which provides the prior incident reports in circumstances such as those present here are not admissible, it is questionable whether Sekera has a right to them at all.

The incident reports at issue here contain the sensitive, and private information of individuals who are not parties to this lawsuit, and who are not believed to have any information, facts or circumstances surrounding Sekera's allegations. There is a recognized interest in protecting the disclosure of personal client information, as unauthorized disclosure would likely damage the Petitioners' guest relationships.³⁰ Guests who stay at the Venetian do so with an expectation that their personal information will not be disclosed or disseminated without their consent. There is simply no legitimate discovery interest which outweighs these

³⁰ See *Gonzales v. Google, Inc.*, 234 FRD 674, 684 (N.D. CA 2006) (disclosing client information "may have an appreciable impact on the way which [the company] is perceived, and consequently the frequency with which customers use [the company]").

third party privacy concerns in light of *Eldorado Club, Inc., supra*. Moreover, Sekera has not demonstrated a compelling need for this information. Furthermore, as discussed further below, it could subject Petitioners to liability for privacy violations.

3. PETITIONERS SHOULD NOT BE REQUIRED TO PRODUCE VENETIAN INCIDENT REPORTS WITHOUT REDACTIONS OF CONFIDENTIAL AND PRIVATE INFORMATION RELATING TO PETITIONER'S GUESTS AS IT EXPOSES PETITIONERS TO LIABILITY

The Nevada Legislature has demonstrated a desire to protect the personal data in the possession of business entities in NRS § 603A.010, *et seq.*, which relates to the Venetian's duty to securely maintain and protect the information collected from its guests and customers. By disclosing personal information of potentially hundreds of guests, Petitioners may be required under NRS § 603A.220 to contact each non-employee identified within every prior incident report to advise of the disclosure. The information contained within the incident reports at issue includes names, phone numbers, addresses, dates of birth, Social Security numbers, health information (*i.e.* handwritten notes from EMT evaluations, and typewritten summaries of alleged injuries, prior health related conditions, etc.) The mass dissemination of Venetian's guests' private information is the equivalent to a data breach, thereby exposing Venetian to additional third-party claims arising from the leaking of this information. There is simply no good reason to provide

this information to Sekera, much less to allow her to provide it to anyone else she desires outside the litigation.

As established below and in the proceedings on the prior discovery motion, good-cause exists to support an order providing that the personal, private information of Venetian's guests contained in the Incident Reports should be redacted.

Petitioners have a published policy to protect the privacy of their guests. The **Venetian's Data Privacy Policy** ("Privacy Policy") states in relevant part, as follows:

This is the Data Privacy Policy ("Privacy Policy") of Venetian Casino Resort, LLC and its parent, affiliate and subsidiary entities (collectively, the "Company") located in the United States. ... This Privacy Policy applies to activities the Company engages in on its websites **and activities that are offline or unrelated to our websites**, as applicable. We are providing this notice to explain our information practices and the choices you can make about the way your information is collected and used.

This Privacy Policy sets forth the principles that govern our treatment of personal data. We expect all employees and those with whom we share personal data to adhere to this Privacy Policy.

The Company is committed to protecting the information that our guests, prospective guests, patrons, employees, and suppliers have entrusted to us.

This Privacy Policy applies to all personal data in any format or medium, relating to all guests, prospective

guests, patrons, employees, suppliers and others who do business with the Company.³¹

Venetian's Privacy Policy describes to Venetian's guests (and prospective guests) that Venetian collects its guests' personal data or information, stating in relevant part as follows:

We only collect personal data that you provide to us, or that we are authorized to obtain by you or by law. For example, we obtain credit information to evaluate applications for credit, and we obtain background check information for employment applications. The type of personal data we collect from you will depend on how you are interacting with us using our website, products, or services. For example, we may collect different information from you when you make reservations, purchase gift certificates or merchandise, participate in a contest, or contact us with requests, feedback, or suggestions. The information we collect may include your name, title, email address, mailing information, phone number, fax number, credit card information, travel details (flight number and details, points of origin and destination), room preferences, and other information you voluntarily provide.³²

Venetian's Privacy Policy includes offering Venetian's guests an opportunity to choose what personal information, if any, they wish to share and/or with whom Venetian may share information. Venetian provides guests with the ability to control what information Venetian maintains and to whom it is disseminated. For example, Venetian's Privacy Policy provides the following:

³¹ Appendix, Vol. 3, Tab 22, VEN 486-95, *Privacy Policy, The Venetian Resort Las Vegas* (July 7, 2019), <https://www.venetian.com/policy.html> at VEN 486-87 (emphasis added).

³² *Id.* at VEN 488.

Access, Correct, Update, Restrict Processing, Erase:
You may have the right to access, correct, and update your information. You also may request that we restrict processing of your information or erase it. To ensure that all of your personal data is correct and up to date, or to ask that we restrict processing or erase your information, please contact us using the methods in the Contact Us section below.³³

Petitioners' guests are promised and expect the Venetian to protect their confidential information. The District Court's order currently compels Petitioners to utterly disregard this promise to protect guest's confidential information. The wide dissemination of this information intended by Sekera may very well result in claims by those guests for the disclosure of this information without their consent or notice.

Petitioners contend that if the March 13, 2020 order is not vacated and the privacy rights of the innocent individuals protected, then Venetian may face further claims from aggrieved guests. Moreover, it will cause irreparable damage to Petitioners' relations with its guests and prospective guests. Therefore Petitioners respectfully request that this Court issue an order vacating the District Court's March 13, 2020 order and directing the District Court to issue an order protecting the private information on the third party individuals.

³³ *Id.* at VEN 492.

VIII. CONCLUSION

This petition seeks relief from this Court surrounding an important issue of law; *to wit*: whether property owners and innkeepers can be compelled to produce the private information of individuals who are not involved in a slip and fall tort lawsuit when the party seeking this confidential information has failed to make the showing required by NRCP, Rule 26(b)(1). This matter requires resolution on an emergency basis because once the confidential information is provided to plaintiff's attorney it will be freely distributed with impunity to third parties that are not involved in the instant litigation. This will effectively result in the Court sanctioning a widespread violation of individual's confidential information. If the requested relief is not granted on an emergency basis, or alternatively a stay ordered, then innocent third parties will have their privacy rights irreparably damaged. Petitioners herein respectfully move for the following:

1. That this Court issue an **immediate order vacating the District Court's March 13, 2020 order** directing Venetian to provide Sekera with unredacted copies of prior incident reports related to guests involved in other incidents occurring on the Venetian premises.
2. That this Court clarify the subject issue of law regarding the protection of private information produced in the course of discovery pursuant to NRCP, Rule 26(b)(1) and issue an order directing the

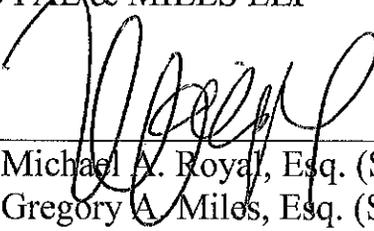
District Court to protect the private information of guests contained in the incident reports at issue.

In the interests of judicial economy and the administration of justice, reversal is required in order to avoid severe prejudice to Petitioner, innocent individuals, and any future defendants in similar cases as this.

DATED this 17 day of March, 2020.

ROYAL & MILES LLP

By


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CERTIFICATE OF COMPLIANCE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Michael A. Royal, hereby affirm, testify and declare under penalty of perjury as follows:

1. I am an attorney licensed to practice in the State of Nevada, and am a member of the law firm of Royal & Miles LLP, attorneys for Petitioners VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC.

2. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times Roman 14 point font.

3. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains **6,575 words** in compliance with NRAP 32(a)(1)(A)(ii) (having a word count of less than 14,000 words).

4. Finally, I hereby certify that I have read this Writ, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any

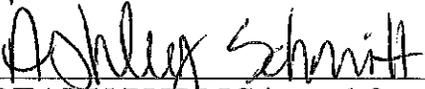
improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript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

Further affiant sayeth naught.

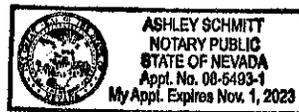


MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before
me by Michael A. Royal, Esq., on this
17 day of March, 2020.



NOTARY PUBLIC in and for said
County and State



PROOF OF SERVICE

The undersigned does hereby declare that I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by Royal & Miles LLP, 1522 W. Warm Springs Rd., Henderson, NV 89014. I am readily familiar with Royal & Miles LLP's practice for collection and processing of documents for delivery by way of the service indicated below. On March 17, 2020, I served the following document(s): PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e) on the interested party in this action as follows:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
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Honorable Kathleen Delaney
Eighth Jud. District Court, Dept. 25
200 Lewis Avenue
Las Vegas, NV 89155

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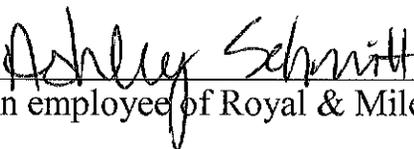
Attorneys for Real Party in Interest

X By Hand Delivery. By placing said document(s) in an envelope or package or collection and hand delivery, addressed to the person(s) at the address(es) listed above, following our ordinary business practices. I am readily familiar with the firm's Practice for hand delivering and processing of documents.

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

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

Executed on March 17, 2020, at Las Vegas, Nevada.


An employee of Royal & Miles LLP